EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Journalist fined for breaching secrecy of judicial investigation into a case of alleged paedophilia: no violation of the Convention

In today's **Chamber** judgment[1] in the case of **Y. v. Switzerland** (application no. 22998/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the fining of a journalist for reporting information covered by the secrecy of a judicial investigation.

The magazine article in question concerned criminal proceedings against a "leading property manager" on charges of paedophilia. The journalist criticised the fact that the accused had been released, citing extracts from the prosecution's appeal against the decision of the investigating judge to end the pre-trial detention. The article went on to describe the alleged facts in detail.

Like the domestic courts, the Court took the view that while the protection of the accused's private life had not played a decisive role in the weighing up of the various interests, the fact that the article had contained a considerable amount of detailed information and extracts from the complainant's statement to the police had constituted a breach of the privacy of those concerned and did not contribute to a public debate on the functioning of the justice system.

The Court lastly found that the fine – which had been paid on behalf of the journalist by the magazine's director – was a sanction for breaching the secrecy of the criminal investigation and protected the administration of justice, the rights of the accused to a fair trial and the rights of the complainant and presumed victims to respect for their private life. Sanctions for breaches of the secrecy of a criminal investigation were general in scope and were not intended solely for persons actually under investigation. The matter fell with the State's margin of appreciation.

Principal facts

The applicant, Y., is a Swiss journalist who was born in 1965 and lives in Switzerland.

In January 2009 Y. wrote an article in a weekly magazine concerning criminal proceedings against a "leading property manager" on charges of paedophilia. The article took the form of an interview with the father of one of the alleged victims. In it, the journalist criticised the fact that the accused had been released, citing extracts from the prosecution's appeal against the decision of the investigating judge to end the pre-trial detention. The article went on to describe the alleged facts in detail.

Mandatory criminal proceedings were brought against Y. for publishing documents covered by the secrecy of a judicial investigation. The public prosecutor issued him with a fixed penalty order to pay a fine of 5,000 Swiss francs (CHF – approximately 3,850 euros (EUR) at the relevant time). Y. appealed but was sentenced in a judgment of 15 June 2011 to pay that fine. He lodged an appeal against that judgment with the Criminal Appeals Division of the Vaud Cantonal Court but was

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

unsuccessful. He subsequently lodged a further criminal-law appeal with the Federal Court, which dismissed it in a judgment of 27 September 2012.

Complaints, procedure and composition of the Court

The applicant argued that his sentence had constituted a disproportionate interference with his right to freedom of expression under Article 10 of the European Convention on Human Rights.

The application was lodged with the European Court of Human Rights on 27 March 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Branko **Lubarda** (Serbia),
Luis **López Guerra** (Spain),
Helen **Keller** (Switzerland),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar.*

Decision of the Court

Article 10

The Court noted that the applicant's right to inform the public and the public's right to receive information could come into conflict with public and private interests of similar importance – authority and impartiality of the judiciary, effectiveness of the criminal investigation, right of the accused to be presumed innocent, rights of other parties to the proceedings to the protection of their private life – , which were protected by the prohibition on disclosing information covered by the secrecy of a judicial investigation.

Y. had obtained the relevant documents from the father of one of the victims who had asked him to publish the information contained in them. Y. had not therefore obtained the information unlawfully. However, as a professional journalist he could not have been unaware that the disclosure of that information was punishable under the Swiss Criminal Code. Y. did not deny that he had been aware that the information came from the investigation file or that it was classified as secret.

The Court noted that the Federal Court, in its judgment of 27 September 2012, had found that the article suggested the accused was guilty, described in pointless detail the acts perpetrated against the alleged victims and mentioned the continuation of relations between the accused and the complainant after the opening of the criminal investigation. The Federal Court had concluded that the article was more sensationalist in its intention rather than seeking to inform the public objectively or to open a debate on a topical theme. The Court shared the Federal Court's opinion that the impugned article contained details which were neither necessary nor justified by a public interest.

The Federal Court observed that the reported facts had taken place mainly within a family, or at least in a very confined environment, and that there was nothing to suggest that the accused was known to the general public. The Court thus concluded that there was no pre-existing debate on the subject, but accepted that the release of the presumed perpetrator of sexual offences against children during the pre-trial proceedings was nevertheless a matter of general interest. The Federal Court had found that, apart from the criticism from the father of one of the presumed victims, in

whose view the accused had been released on account of his social status, no other element in the article contributed to any debate in the public interest.

The Court, for its part, found that some of the extracts from the prosecution's appeal concerning the accused's release – opposed by the public prosecutor – might contribute to a public debate on this matter. However, it took the view that neither the considerable amount of detailed information nor the extracts from the complainant's statement to the police in the article had been such as to contribute to a public debate on the functioning of the justice system. Similarly, it found that any contribution to a public debate on possible omissions during the investigation was extremely limited.

As regards the risk that the impugned article might influence the ongoing criminal proceedings, the Court found that it left no doubt as to the journalist's opinion concerning the guilt of the accused and there was thus a risk of influence. The Court noted, however, that the domestic courts had not based their decisions on the need to protect the accused's own private life. Like the domestic courts, the Court took the view that the protection of the accused's private life had not played a decisive role in the weighing up of the various interests.

As regards the breach of privacy of the other parties to the criminal proceedings – the two presumed child victims and the complainant – the Federal Court had emphasised that the minor victims could demand that the sordid details should not be reported in the press. The Court thus observed that the article described in an extensive and detailed manner the sexual abuse committed against the victims, quoting passages from documents in the investigation file. In the Court's view, this type of information called for a high degree of protection under Article 8 of the Convention. Even when designated by pseudonyms, the victims could have been identified by the indications in the article. The fact that Y. published his article after being approached by the father of one of the victims did not release him from his ethical duty to act with extreme restraint and to consider the interests of the child victims.

As to the complainant's interest, the Court noted that Y., referring to the documents in the investigation file, had quoted her statements as recorded in a police report which concerned, in particular, her sex life and her financial reliance on the accused. The article thus disclosed information concerning the strictly private, or even intimate, life of the complainant, the kind of information that received heightened protection under Article 8 of the Convention. In this connection, the complainant had requested and obtained significant compensation from the magazine following the article's publication.

The Court noted that the domestic courts had sentenced Y. to a fine of CHF 5,000 (approximately EUR 3,850 at the relevant time). The fine was a sanction for breaching the secrecy of the criminal investigation and protected the administration of justice, the rights of the accused to a fair trial and the rights of the complainant and presumed victims to respect for their private life. In the Court's view, such a sanction could not be regarded as potentially having a chilling effect on the exercise of freedom of expression by Y. or any other journalist wishing to inform the public about ongoing criminal proceedings. Sanctions for breaches of the secrecy of a criminal investigation were general in scope and were not intended solely for persons under investigation. The matter fell with the margin of appreciation of the Contracting States.

The Court observed that the national courts had convicted and sentenced Y. after carefully weighing up the competing rights in the case and taking account above all of the interests of the two presumed minor victims. The Court did not see any reason to substitute its own opinion for that of the Federal Court. The national authorities had not overstepped their margin of appreciation and the applicant's sentence was proportionate to the legitimate aims pursued.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.