European Court of Human Rights: Case of Stoll v. Switzerland

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In December 1996, the Swiss ambassador to the United States drew up a "strategic document", classified as "confidential", concerning the possible strategies regarding the compensation due to Holocaust victims for unclaimed assets deposited in Swiss banks. The document was sent to the Federal Department of Foreign Affairs in Berne and to a limited list of other persons. Martin Stoll, a journalist working for *Sonntags-Zeitung* , also obtained a copy of this document, probably as a result of a breach of professional confidence by one of the initial recipients of such a copy. Soon afterwards, the *Sonntags-Zeitung* published two articles by Martin Stoll, featuring extracts from the document. Other newspapers soon followed suit. In 1999, Stoll was sentenced to a fine of CHF 800 (EUR 520) for publishing "official confidential deliberations" within the meaning of Article 293 of the Criminal Code. This provision not only targets the person who is responsible for the breach of confidence of official secrets, but also those who were accomplices in giving publicity to such secrets. The Swiss Press Council, to which the case also had been referred in the meantime, found that Stoll had irresponsibly made some extracts appear sensational and shocking by shortening the analysis and failing to sufficiently place the report in context.

In a judgment of 25 April 2006, the European Court of Human Rights held, by four votes to three, that the conviction of Stoll is to be considered as a breach of the journalist's freedom of expression as guaranteed by Article 10 of the Human Rights' Convention. For the Court, it is crucial that the information contained in the report manifestly raised matters of public interest, that the role of the media as critic and public watchdog also applies to matters of foreign and financial policy and that the protection of confidentiality of diplomatic relations, although justified, could not be secured at any price. The publication of the report did not undermine the very foundations of Switzerland. The Court therefore believes that the interests deriving from freedom of expression in a democratic society could legitimise the public discussion brought about by the document, initially classified as confidential. Fining Stoll for revealing the content of the document had amounted to a kind of censorship which would be likely to discourage him from expressing criticism of that kind again in the future. The Strasbourg Court considers the conviction of Stoll by the Swiss judiciary as liable to hamper the press in performing its task as purveyor of information and public watchdog. Furthermore, as Stoll had only been convicted for publishing parts of the document in the newspaper, the European Court believes the finding by the Swiss

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Press Council that he had neglected his professional ethics by presenting some extracts in a sensationalist way, should not be taken into account to determine whether or not publishing the document was legitimate. The Court once more underlines that press freedom also covers possible recourse to a degree of exaggeration, or even provocation. The dissenting opinion from Judges Wildhaber, Borrego Borrego and □ikuta emphasises the importance of respecting official secrets and Stoll's lack of professionalism in ignoring some fundamental rules of journalistic ethics. The dissenting judges also consider it as an important element that the articles at hand had not contributed in a useful way to the public debate on the issue of the unclaimed assets deposited in Swiss Banks. The majority of the Court however held that there has been a violation of Article 10 of the Convention, as Stoll's conviction was not necessary in a democratic society, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press.

Arrêt de la Cour européenne des Droits de l'Homme (quatrième section), affaire Stoll c. Suisse, requête n° 69698/01 du 25 avril 2006

Judgment by the European Court of Human Rights (Fourth Section), case of Stoll v. Switzerland, Application no. 69698/01 of 25 April 2006

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