European Court of Human Rights: The journalist's sources protected by Article 10 of the European Convention on Human Rights

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In its judgment of 27 March 1996 the Grand Chamber of the European Court of Human Rights with an 11 to 7 majority came to the conclusion that a disclosure order requiring a British journalist to reveal the identity of his source and the fine imposed upon him for having refused to do so, constitutes a violation of the freedom of expression and information as protected by Article 10 of the European Convention for the protection of human rights and fundamental freedoms.

In 1990 William Goodwin, a trainee-journalist working for "The Engineer", was found guilty by the House of Lords of Contempt of Court because he refused to disclose the identity of a person who previously supplied him with financial information derived from a confidential corporate plan of a private company. According to the House of Lords, the necessity of obtaining disclosure lay in the threat of severe damage to the private company which would arise if the information contained in their corporate plan was disseminated while their refinancing negotations were still continuing. The disclosure order was estimated to be in conformity with Section 10 of the Contempt of Court Act of 1981, as the disclosure was held to be necessary in the interest of justice.

The European Court of Human Rights, however, is of the opinion that the impugned disclosure order is in breach of Article 10 of the European Convention on Human Rights. Although the disclosure order and the fine imposed upon Goodwin for having refused to reveal his source are "prescribed by law" and pursue a legitimate aim ("the protection of the rights of others"), the interference by the English courts in Goodwin's freedom of expression and information is not considered as necessary in a democratic society. The majority of the Court, and even the joint dissenters, firmly underline the principle that "protection of journalistic sources is one of the basic conditions for press freedom" and that "without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest". In its judgment the Court emphasizes that without protection of a journalist's sources "the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected". The Court considers that a disclosure order cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public

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interest. As the Court pointed out : "In sum, limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court". The European Court in casu is of the opinion that the interests of the private company in eliminating, by proceedings against the source, the (residual) threat of damage through dissemination of the confidential information, are not sufficient to outweigh the vital public interest in the protection of the applicant journalist's source.

The judgment of the European Court in the Goodwin case gives important and additional support in favour of the protection of journalistic sources as reflected already in some national laws and in international policy instruments on journalistic freedoms (see, for example, the Resolution of the European Parliament on the Confidentiality of Journalists' Sources, OJEC, 14 February 1994, No C 44: 34 and the Resolution on Journalistic Freedoms and Human Rights, adopted in the framework of the Council of Europe's Conferrence of ministers responsible for media policies, held in Prague, 7-8 December 1994 (see: IRIS, 1995-1: 4).

European Court of Human Rights, Case of Goodwin v. the United Kingdom, 27 March 1996, No 16/1994/463/544.

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