European Court of Human Rights: Cases of Voskuil v. the Netherlands and Tillack v. Belgium

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In two recent judgments, the European Court of Human Rights has given substantial protection to journalists' right of non-disclosure of their sources under Article 10 of the Convention. The case of Voskuil v. the Netherlands concerns Mr Voskuil's allegations that he was denied the right not to disclose his source for two articles he had written for the newspaper Sp!ts and that he was detained for more than two weeks in an attempt to compel him to do so. Voskuil had been summoned to appear as a witness for the defence in the appeal proceedings concerning three individuals accused of arms trafficking. The court ordered the journalist to reveal the identity of a source, in the interests of those accused and the integrity of the police and judicial authorities. Voskuil invoked his right to remain silent (*zwijgrecht*) and, subsequently, the court ordered his immediate detention. Only two weeks later, the Court of Appeal decided to lift the order for the applicant's detention. It considered that the report published by the applicant was implausible and that the statement of Voskuil was no longer of any interest in the proceedings concerning the arms trafficking. In Strasbourg, Voskuil complained of a violation of his right to freedom of expression and press freedom, under Article 10 of the Convention. The European Court recalled that the protection of a journalist's sources is one of the basic conditions for freedom of the press, as reflected in various international instruments, including the Council of Europe's Committee of Ministers Recommendation No. R (2000) 7. Without such protection, sources might be deterred from assisting the press in informing the public on matters of public interest and, as a result, the vital public-watchdog role of the press might be undermined. The order to disclose a source can only be justified by an overriding requirement in the public interest. In essence, the Court was struck by the lengths to which the Netherlands authorities had been prepared to go to learn the source's identity. Such far-reaching measures cannot but discourage those who have true and accurate information relating to an instance of wrongdoing from coming forward in the future and sharing their knowledge with the press. The Court found that the Government's interest in knowing the identity of the journalist's source had not been sufficient to override the journalist's interest in concealing it. There had, therefore, been a violation of Article 10.

The other case concerns the journalist H.M. Tillack, who complained of a violation, by the Belgian authorities, of his right to protection of sources. Tillack, a journalist working in Brussels for the weekly magazine Stern, was suspected of having

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bribed a civil servant, by paying him EUR 8,000, in exchange for confidential information concerning investigations in progress in the European institutions. The European Anti-Fraud Office OLAF opened an investigation in order to identify Tillack's informant. After the investigation by OLAF failed to unmask the official at the source of the leaks, the Belgian judicial authorities where requested to open an investigation into an alleged breach of professional confidence and bribery involving a civil servant. On 19 March 2004, Tillack's home and workplace were searched and almost all his working papers and tools were seized and placed under seal (16 crates of papers, two boxes of files, two computers, four mobile phones and a metal cabinet). Tillack lodged an application with the European Court of Human Rights, after the Belgian Supreme Court rejected his complaint under Article 10 of the Convention. The European Court emphasised that a journalist's right not to reveal her or his sources could not be considered a mere privilege, to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but was part and parcel of the right to information and should be treated with the utmost caution (even more so in the applicant's case, since he had been under suspicion because of vague, uncorroborated rumours, as subsequently confirmed by the fact that no charges were placed. The Court also took into account the amount of property seized and considered that although the reasons given by the Belgian courts were "relevant", they could not be considered "sufficient" to justify the impugned searches. The European Court accordingly found that there had been a violation of Article 10 of the Convention.

Urteil des Europäischen Gerichtshofs für Menschenrechte (Dritte Sektion), Rechtssache Voskuil gegen die Niederlande, Antrag Nr. 64752/01 vom 22. November 2007

Judgment by the European Court of Human Rights (third section), case of Voskuil v. the Netherlands , Application no. 64752/01 of 22 November 2007

https://hudoc.echr.coe.int/eng?i=001-83413

Urteil des Europäischen Gerichtshofs für Menschenrechte (Zweite Sektion), Rechtssache Tillack gegen Belgien, Antrag Nr. 20477/05 vom 27. November 2007

Judgment by the European Court of Human Rights (second section), case of Tillack v. Belgium, Application no. 20477/05 of 27 November 2007

https://hudoc.echr.coe.int/eng?i=001-83527

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