

European Court of Human Rights: Saint-Paul Luxembourg S.A. v. Luxembourg

IRIS 2013-6:1/2

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Ten years after the finding by the European Court of a violation of Articles 8 (right to respect for private and family life) and 10 (freedom of expression and information) of the European Convention of Human Rights in the case Roemen and Schmit v. Luxembourg (25 February 2003, IRIS 2003/5-3), the Luxembourg authorities have again been found in breach of these Articles by issuing a search and seizure warrant disrespecting the protection of journalistic sources.

In 2009 a judicial investigation was opened concerning an article in the newspaper Contacto, published by Saint-Paul Luxembourg S.A. The article described the situation of families who had lost the custody of their children. A social worker who was mentioned in the article and his employer, the central social welfare department, had lodged a complaint with the Attorney General, alleging defamation of the social worker in question and also of the judicial and social welfare system in Luxembourg in general. An investigating judge issued a search and seizure warrant of the offices of the publishing house in order to identify the author of the article at issue. A few days later, police officers presented themselves at the premises of the newspaper, with the search warrant. The journalist who had written the article (his name was partly mentioned under the article), was formally identified and he handed over a copy of the newspaper, a notebook and various documents used in preparing the article. During the search one of the police officers also introduced a USB-stick in the computer of the journalist, eventually copying files from that computer. A short time later the applicant company and the journalist applied to the District Court to have the warrant set aside and the search and seizure operation declared null and void, but this claim was rejected. Later the Court of Appeal upheld the warrant.

Relying on Article 8, Saint-Paul Luxembourg S.A. alleged that the search of the newspaper had infringed the inviolability of its “home” and had been disproportionate. Relying on Article 10 it argued that the measure in question had consisted of an attempt to identify the journalist’s sources and had had an intimidating effect. With regard to Article 8 of the Convention,, the European Court is of the opinion that the investigating judge could have opted for a less intrusive measure than a search in order to confirm the identity of the article’s author, as it was rather obvious which journalist of Contacto had written the article at issue. As the search and seizure operation was not necessary and had not been reasonably proportionate to the legitimate aims pursued, the European

Court held that there had been a violation of Article 8 of the Convention. The Strasbourg Court also considered that the warrant in question had given the police officers access to information that the journalist had not intended for publication and that would have made it possible to identify his sources. The purpose of the warrant had been to search for “and seize any documents or items, irrespective of form or medium, connected with the alleged offences”. Being formulated in such broad terms, the warrant had conferred extensive powers on the investigating officers. The search and seizure operation had been disproportionate in so far as it had enabled the police officers to identify the journalist’s sources and the warrant itself had not been sufficiently limited in scope to avoid the possibility of such abuse. Since the sole purpose of the search had been to ascertain the identity of the journalist who had written the article, a more narrowly-worded warrant would have sufficed. The European Court therefore also found a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des droits de l’homme (Cinquième section), affaire Saint-Paul Luxembourg S.A. c. Luxembourg, requête n° 26419/10 du 18 avril 2013

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-118604>

