European Court of Human Rights: Nagla v. Latvia

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Once again the European Court of Human Rights has found a breach of Article 10 of the Convention in a case of protection of journalistic sources. The Court is of the opinion that the Latvian investigating authorities failed to adequately protect the sources of a journalist of the national television broadcaster Latvijas televīzija (LTV), Ms Nagla. The journalist's home was searched and data storage devices were seized following a broadcast she had aired informing the public of an information leak from the State Revenue Service (Valsts ieņēmumu dienests - VID) database. Almost three months after the broadcast of the programme on LTV, Ms Nagla's home was searched, and a laptop, an external hard drive, a memory card, and four flash drives were seized with the aim of collecting information concerning the data leaks at VID. The search warrant was drawn up by the investigator and authorised by a public prosecutor. Relying on Article 10 of the European Convention, Ms Nagla complained that the search of her home meant that she had been compelled to disclose information that had enabled a journalistic source to be identified, violating her right to receive and impart information.

According to the Court the concept of journalistic "source" refers to "any person who provides information to a journalist", while "information identifying a source" includes, as insofar as they are likely to lead to the identification of a source, both "the factual circumstances of acquiring information from a source by a journalist" and "the unpublished content of the information provided by a source to a journalist". While recognising the importance of securing evidence in criminal proceedings, the Court emphasises that a chilling effect will arise wherever journalists are seen to assist in the identification of anonymous sources. The Court confirms that a search conducted with a view to identifying a journalist's source is a more drastic measure than an order to divulge the source's identity, and it considers that it is even more so in the circumstances of the present case, where the search warrant was drafted in such vague terms as to allow the seizure of "any information" pertaining to the crime under investigation allegedly committed by the journalist's source, irrespective of whether or not his identity had already been known to the investigating authorities. The Court reiterates that limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court. It also emphasises that any search involving the seizure of data storage devices such as laptops, external hard drives, memory cards and flash drives belonging to a journalist raises a question of the journalist's freedom of expression including source protection and that the access to the information

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contained therein must be protected by sufficient and adequate safeguards against abuse. The scarce motivation of the domestic authorities as to the perishable nature of evidence linked to cybercrimes in general, cannot be considered sufficient in the present case, given the investigating authorities' delay in carrying out the search and the lack of any indication of impending destruction of evidence. The Court finds that the investigating judge failed to establish that the interests of the investigation in securing evidence were sufficient to override the public interest in the protection of the journalist's freedom of expression, including source protection. Because of the lack of relevant and sufficient reasons, the interference with Ms Nagla's freedom to impart and receive information did not correspond to a "pressing social need", hence there was a violation of Article 10 of the Convention.

Judgment of the European Court of Human Rights (Fourth Section), case of Nagla v. Latvia, Appl. nr. 73469/10 of 16 July 2013

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