European Court of Human Rights: Diamant Salihu and others v. Sweden

IRIS 2016-8:1/1

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

A recent decision of the European Court of Human Rights (ECtHR) found that journalists who commit (minor) offences during newsgathering activities cannot invoke robust protection based on their rights to freedom of expression and information, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). Journalists of the Swedish newspaper Expressen had undertaken to demonstrate the easy availability of illegal firearms by purchasing one. The Swedish courts were of the opinion that the editor and the journalists could not be exempted from criminal liability as they had wilfully breached the Swedish Weapons Act. In a unanimous decision, the ECtHR confirmed the necessity of the journalists' criminal conviction. It declared the application for alleged breach of the right of journalistic newsgathering under Article 10 of the Convention manifestly ill founded.

In 2010, a series of shootings took place in southern Sweden, prompting lively public debate and calls for more stringent firearms control. Thomas Mattsson, Andreas Johansson and Diamant Salihu, the editor-in-chief, news editor and a journalist at the tabloid newspaper Expressen, decided to prepare a news story on the easy availability of illegal firearms. They successfully contacted several people who claimed that they could sell them a gun. Salihu bought one, while a photographer of Expressen was present during the transfer, with Johansson listening in via a mobile telephone for safety reasons. On arrival in their hotel, they called the police, photographed the weapon and put it in the hotel room's security box, until the police collected it half an hour later. The next day Expressen published an article portraying the events, including a large photograph of the firearm and a description of the contact leading up to its purchase.

Shortly after, the public prosecutor decided to press charges against the journalists, and all three were convicted for (incitement to) a weapons offence. The District Court and later the Court of Appeals found that the journalists had shown clear intent to commit punishable actions, and could not rely on the protection of Article 10 of the ECHR in this case. The journalists were not on trial for publishing an article, but for actions taken before the publishing. Furthermore, their actions appeared to be premeditated risk-taking to create sensational news, while it had not been necessary for the journalists to complete the purchase of

© European Audiovisual Observatory (Council of Europe) 2026

the firearm and to subsequently transport it in order to fulfil their journalistic mission. Their aim - to investigate whether illegal weapons were easily accessible in Sweden - had already been achieved when Salihu received the offer to buy the firearm.

The Supreme Court upheld the journalists' conviction, removing the suspended sentences, but increasing the level of the criminal fines from 30 to 80 day fines, which amounted, in total, to approximately EUR 8,400 for Mattsson, EUR 5,700 for Johansson and EUR 4,400 for Salihu. The Supreme Court emphasised the strong societal interest in controlling the handling of weapons, although it also recognised the journalistic purpose behind the purchase of the firearm. According to the Supreme Court, the question of whether it was easy to buy weapons could, however, have been illustrated by other means, and the weight of the journalistic interest was not sufficient to justify completion of the purchase of the firearm. With regard to the proportionality of the sanction, the Supreme Court noted that the conviction was not for the actual publication of the article, and that the sentences imposed were below those normally prescribed for the crime, in view of the journalistic context and the precautions the journalists had taken after obtaining the weapon. The Expressen journalists subsequently lodged an application before the European Court of Human Rights, complaining that their conviction was unlawful (constituting a breach of Article 7 ECHR) and violated their rights as journalists guaranteed under Article 10 ECHR.

In its decision of 10 May 2016, the ECtHR dismissed the double complaint. With regard to the alleged violation of Article 10 of the Convention, the Court finds that the journalists' convictions were lawful and pursued the legitimate aims of the protection of public safety and prevention of disorder and crime. Regarding the decisive question of whether the interference was "necessary in a democratic society", the Court refers to the fundamental principles concerning this issue, elaborated in some of its Grand Chamber judgments such as in Stoll v. Switzerland (seeIRIS 2008-3/2) and recently in Bédat v. Switzerland (see IRIS 2016-5/1). Referring to its Grand Chamber judgment in Pentikäinen v. Finland (see IRIS 2016-1/2), it reiterated, "notwithstanding the vital role played by the media in a democratic society, journalists cannot, in principle, be released from their duty to obey the ordinary criminal law on the basis that, as journalists, Article 10 affords them a cast-iron defence. In other words, a journalist cannot claim an exclusive immunity from criminal liability for the sole reason that, unlike other individuals exercising the right to freedom of expression, the offence in question was committed during the performance of his or her journalistic functions".

Turning to the facts, the ECtHR endorsed the main arguments developed by the domestic courts: the journalists wilfully infringed ordinary criminal law, they could have illustrated the easy availability of firearms in other ways, and the weight of the journalistic interest did not justify actually purchasing the firearm. The ECtHR furthermore observes that the question of the applicants' rights under Article 10

© European Audiovisual Observatory (Council of Europe) 2026

ECHR had been the subject of arguments, including during hearings, before all three domestic instances. The domestic courts had stressed the importance of journalists' role in society and made a balanced evaluation of all interests at stake. Taking into account the margin of appreciation afforded to the State in this area, and explicitly referring to the principle of subsidiarity, the ECtHR found that the reasons relied upon by the domestic courts were relevant and sufficient for the purposes of Article 10 ECHR, and that they struck a fair balance between the competing interests at stake. The conclusion is that the domestic courts were entitled to decide that the interference complained of was "necessary in a democratic society". The application was thus considered manifestly ill founded and therefore inadmissible.

Decision by the European Court of Human Rights, Third section, case of Diamant Salihu and others v. Sweden, Application no. 33628/15 of 10 May 2016

https://hudoc.echr.coe.int/eng?i=001-163642

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026