European Court of Human Rights: Sergey Sorokin v. Russia

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The European Court of Human Rights (ECtHR) delivered a judgment on 30 August 2022 confirming, and further elaborating, the guarantees for the protection of journalistic sources under Article 10 of the European Convention on Human Rights (ECHR). The ECtHR concluded, unanimously, that the search of a journalist's flat and the seizure of his electronic devices containing his professional information amounted to a violation of Article 10 ECHR. The ECtHR emphasised the lack of assessment of the necessity and proportionality of the investigating authorities' actions. It found in particular problematic that all of the journalist's electronic devices had been seized, and that his professional information was accessed immediately, in the absence of any sifting procedure or other method which could protect the confidentiality of the journalist's sources.

The applicant in this case was Sergey Sorokin, an activist and journalist in the Republic of Komi who used to publish regional news articles on the Internet site www.zyryane.ru. In 2008 he had reported on a scandal involving the head of the Economic Crimes Department of the regional Ministry of the Interior, Lieutenant-Colonel T. ("Lt.-Col. T."), who had been arrested on suspicion of abuse of power. Lt.-Col. T. was accused of having unofficially obtained data on the telephone communications of a number of people, including of a politician. The matter had also received some national press coverage. Mr. Sorokin had published on his site an interview with a deputy head of the regional Ministry of the Interior, Mr L. According to the text of the interview, Mr L. had mentioned that Lt.-Col. T. had suspected leaks of operational information and had allegedly attempted to collect telephone communications data to find out who was responsible for those leaks. A few weeks later a criminal case was opened against Mr L. for disclosing information about operational activities which, by law, was considered a State secret. Mr. Sorokin was questioned as a witness, but refused to answer any questions to avoid self-incrimination. He was also asked to remove the interview with Mr L. from his Internet site, but had refused to comply. More than half a year later a court order, on request of an investigator of the Federal Security Service (FSB), had authorised the search of Mr. Sorokin's flat and the seizure of devices containing information relating to the interview of Mr L. The police seized the system unit of Sorokin's computer, four hard drives and an audio cassette. Sorokin's appeal against the search warrant was dismissed.

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A short time later Mr. Sorokin lodged an application with the ECtHR, complaining that the search of his flat and the seizure of his electronic devices containing all of his professional information amounted to a breach of Article 10 ECHR. After reiterating the general principles of the Court's case law with regard the robust protection of journalistic sources (such as in Sanoma Uitgevers B.V. v. the Netherlands, IRIS 2010-10/2 and Big Brother Watch and others v. the United Kingdom, IRIS 2021-7/20), the ECtHR accepted that the search and seizure measures pursued the legitimate aim of preventing crime and had a general legal basis in domestic law. Indeed according to the Russian Code of Criminal Procedure a search may be carried out if there are sufficient grounds for believing that instruments of a crime, objects, documents or valuables of relevance to a criminal case could be found in a specific place or on a specific person (Article 182 § 1). However, the criminal procedure law did not expressly provide for any protection of confidential journalistic sources in the context of searches and seizures. Therefore the ECtHR was not convinced that the domestic legal framework at the relevant time ensured a requisite legal protection of journalistic sources from arbitrary interferences. Nevertheless, the Court left the issue open whether or not the interference with Mr Sorokin's sources was prescribed by law, because it found that the interference complained of was in any event not "necessary in a democratic society". The ECtHR was of the opinion that the court order at issue had not contained any balancing exercise, that is, an examination of the question whether the interests of an investigation to secure evidence were sufficient to override the general public interest in the protection of journalistic sources. The domestic courts had limited their review to the examination of the formal lawfulness of the search instead of assessing the necessity and proportionality of the investigating authorities' actions. Furthermore, while authorising the search and seizure measures, the domestic courts had not instructed the investigative authorities to use any sifting procedure or otherwise ensure that the unrelated personal and professional information of Mr. Sorokin was not accessed by the authorities. The investigator seized all of the journalist's electronic devices – his computer and four hard drives – which must have contained information unrelated to the criminal case. The ECtHR also noted that the entirety of that information was accessed immediately by the investigative authorities in the absence of any sifting procedure or other methods which could protect the confidentiality of the journalist's sources and of other information unrelated to the criminal case against Mr L. The ECtHR therefore concluded that the search was carried out in the absence of procedural safeguards against interference with the confidentiality of Sorokin's journalistic sources and was therefore not "necessary in a democratic society" to achieve the legitimate aim pursued. There had therefore been a violation of Article 10 ECHR.

In a concurring opinion two judges agreed with the finding of a violation of Article 10 ECHR, not only because of a lack of procedural safeguards, but on substantive grounds. According to the concurring opinion the reasons put forward by the Government and the domestic authorities to justify the search and seizure did not

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bear any relation to a serious crime, as the criminal investigation against L. related to a breach of confidentiality without serious consequences for public order. Therefore the interference with Sorokin's professional material could not be justified as responding to an overriding requirement in the public interest, which is the crucial condition for justifying any interference with a journalist's sources (see also Goodwin v. the United Kingdom, IRIS 1996-4/4).

Judgment by the European Court of Human Rights, Third Section, in the case of Sergey Sorokin v. Russia, Application no. 52808/09, 30 August 2022

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