



## Searches and seizures carried out at "L'Equipe" and "Le Point" newspapers were disproportionate to the interest of democratic society in ensuring and maintaining a free press

In today's Chamber judgment in the case of [Ressiot and Others v. France](#) (application no. 15054/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned investigations carried out at the premises of *L'Equipe* and *Le Point* newspapers and at the homes of journalists accused of breaching the confidentiality of a judicial investigation. The authorities wanted to identify the source of the leaks in an investigation into possible doping in cycle racing. Searches were carried out at the newspaper offices and the journalists' homes: equipment was seized and lists of telephone calls were placed under seal. The five journalists were released for lack of evidence.

The Court found that the Government had not shown that a fair balance had been struck between the various interests involved. It reiterated that "the considerations to be taken into account by the Convention institutions for their review under paragraph 2 of Article 10 tip the balance of competing interests in favour of the interest of democratic society in securing a free press" (see [Goodwin v. the United Kingdom](#)). The measures taken were not reasonably proportionate to the legitimate aim pursued, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press.

### Principal facts

The applicants, Mr Ressiot, Ms Issartel, Mr Labbé, Mr Decugis and Ms Recasens, are French nationals who were born in 1964, 1967, 1967, 1963 and 1970 respectively. They are journalists who worked at the time for the French sporting daily *L'Equipe* and the weekly magazine *Le Point*. In 2004 a judicial investigation was launched into allegations of doping among members of the Cofidis cycle racing team.

On 22 January 2004 *Le Point* published an article signed by Mr Labbé, Mr Decugis and Ms Recasens that reproduced whole passages from records of transcripts of tapped telephone conversations made in the course of the investigation carried out by the Drugs Squad. On 29 January 2004 *Le Point* featured a new article, signed by the same journalists, divulging a list of illicit substances found during a search at the home of a former racing cyclist. The National Police Inspectorate opened a preliminary investigation into the leaks. On 4 February 2004 the Nanterre prosecutor's office asked the National Police Inspectorate to investigate the same events.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

On 8 April 2004 Cofidis lodged an urgent application for an injunction against an article to be published the following day in *L'Equipe*, alleging that it made insulting assertions and breached the presumption of innocence and the confidentiality of the judicial investigation.

On 9 and 10 April *L'Equipe* published a series of articles on the same subject, reproducing excerpts from official records and procedural documents. On 15 April Cofidis lodged a criminal complaint, together with an application to join the proceedings as a civil party claiming damages, against a person or persons unknown, for breach of confidentiality and use of information thus obtained. On 22 October 2004 the National Police Inspectorate's investigation was joined to the proceedings. Between 20 and 25 October 2004 twelve police officers, three journalists and the director of *Le Point* were interviewed. On 10 January 2005 the public prosecutor ordered a search of the offices of *L'Equipe* and *Le Point* in the hope of uncovering traces of the leaked documents.

On 1 July 2005 the investigating judge transferred the file to the public prosecutor to prepare the investigation of the journalists for using information obtained through a breach of the confidentiality of a judicial investigation. On 2-3 October 2005 *Le Monde* published an interview with the judge who had investigated the case, concerning possible complications he might have encountered; the judge told the newspaper that the case had not been not a priority case for the Ministry of Justice, that he had not had enough police officers to assist him and that technical errors had been made. At no point did he mention the articles that were published in *Le Point* and *L'Equipe*, or any negative repercussion they might have had on the ongoing investigation.

On 2 February 2006 Mr Ressiot and Ms Issartel requested that all the material relating to the search carried out at the offices of *L'Equipe* be declared null and void, together with all the materials relating to the search of the journalists' homes and the list of their telephone calls that had been placed under seal. On 13 February 2006 Mr Labbé, Mr Decugis and Ms Recasens made similar requests concerning the search at *Le Point* and the tapping of phone calls.

On 26 May 2006 the investigating division of the Versailles Court of Appeal pronounced judgment. It noted that the breach of confidentiality and the publication of the confidential information had compromised the investigation and constituted a violation of the presumption of innocence of the people referred to in the articles, as well as an interference with their private life through the publication of their telephone conversations. It declared null and void the investigative measures concerning the newspapers' switchboards and the telephone lines of certain journalists, considering that such measures were not necessary at that stage of the proceedings under the terms of Article 10 of the Convention. By contrast, it found that the seizure and placing under seal of certain materials had been legitimate, necessary and in keeping with the aim pursued, and amounted to interference that was proportionate with regard to the need for journalists to protect their sources.

The five journalists appealed against that judgment but their appeal was dismissed. On 26 May 2009 the investigating judge at the Nanterre *tribunal de grande instance* pronounced a partial discharge, considering that the persons concerned had not committed any breach of the confidentiality of the judicial investigation, but had made use of information obtained as a result of such a breach. On 11 May 2010 the *tribunal de grande instance* pronounced judgment and, because the searches had not unearthed any official records or excerpts thereof, considered that the charge of using unlawfully obtained information was not made out. The five journalists were acquitted.

## Complaints, procedure and composition of the Court

Mr Ressiot, Ms Issartel, Mr Labbé, Mr Decugis and Ms Recasens complained that the investigations against them had been carried out in violation of Article 10 of the Convention (freedom of expression).

The application was lodged with the European Court of Human Rights on 27 March 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Mark **Villiger** (Liechtenstein),  
Karel **Jungwiert** (the Czech Republic),  
Boštjan M. **Zupančič** (Slovenia),  
Ann **Power-Forde** (Ireland),  
Angelika **Nußberger** (Germany),  
André **Potocki** (France),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 10

The protection of journalistic sources was one of the cornerstones of freedom of the press. Without such protection, sources might be deterred from assisting the press in informing the public. As a result the vital public-watchdog role of the press might be undermined and the ability of the press to provide accurate and reliable information might be adversely affected.

In its [Dupuis and Others v. France](#) judgment the Court had reiterated the importance of the media's role in the area of criminal justice. The Committee of Ministers of the Council of Europe had adopted Recommendation [Rec\(2003\)13 \[English\]](#) on the provision of information through the media in relation to criminal proceedings. It stressed the importance of media reporting in informing the public on criminal proceedings and ensuring public scrutiny of the functioning of the criminal justice system.

Interference with the confidentiality of journalistic sources could only be justified by an overriding requirement in the public interest. Having regard to the particular circumstances of the case, the Court considered that the interference by the authorities out of concern for the confidentiality of the investigation had been aimed at preventing the disclosure of confidential information, protecting the reputation of others, ensuring the proper conduct of the investigation and therefore protecting the authority and impartiality of the judiciary.

The journalists had been suspected of using information unlawfully obtained from a judicial investigation. The subject of the articles – doping in professional sport, in this case cycle racing, and related problems – concerned a matter of public interest. The articles concerned answered a growing and legitimate public demand for information about doping in sport – particularly in cycle racing. While recognising the vital role played by the press in a democratic society, the Court stressed that journalists could not, in principle, be released from their duty to obey the ordinary criminal law.

The Court noted that the measures taken by the authorities had come relatively late in the day, between 24 September 2004 and January 2005, whereas the articles had been published on 22 and 29 January and 9 and 10 April 2004. When the searches were carried out and the telephone calls tapped the sole aim had been to identify the source

of the information published in the newspaper articles. The investigators' earlier efforts had failed to establish who could have leaked the information. The Court considered that such information clearly fell within the scope of the protection of journalistic sources.

The Court pointed out that the right of journalists not to disclose their 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. The seizure and placing under seal of the lists of the telephone calls of Mr Ressiot and Ms Issartel and the searches carried out at their homes, and the searches and seizures carried out on 13 January 2005 at the offices of *Le Point* and *L'Equipe* had been allowed by the investigation division without any evidence showing the existence of an overriding social need.

The Court concluded that the Government had not shown that a fair balance had been struck between the various interests involved. Even if the reasons given were relevant, the Court considered that they did not suffice to justify the searches and seizures carried out. The means used were not reasonably proportionate to the legitimate aims pursued having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press. There had therefore been a violation of Article 10.

### Just satisfaction (Article 41)

The court held that France was to pay the first two applicants jointly 18,896.80 euros (EUR) and the third, fourth and fifth applicants jointly EUR 25,064.78, in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.