



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 244

October 2020

Jecker v. Switzerland - 35449/14

Judgment 6.10.2020 [Section III]

Article 10

Article 10-1

Freedom of expression

Order for a journalist to disclose the identity of a drug dealer after publishing a report on him, without any balancing of the specific interests: *violation*

Facts – The applicant, a journalist, published an article entitled “Visiting a dealer” in a regional newspaper, containing an account of an hour-long visit to a drug dealer’s flat – during which three users had made purchases – and stating, among other things, that the dealer had been trafficking in cannabis and hashish for ten years and making an annual profit of more than 10,000 euros.

The public prosecutor opened a criminal investigation in respect of a person or persons unknown and ordered the applicant to give evidence, since the offence in question fell within the statutory exceptions to the right to protection of a journalist’s sources. The applicant challenged the order. Following its assessment of the circumstances of the case, however, the Federal Supreme Court did not find that there were sufficient grounds to call into question the balancing exercise already performed by the legislature between the relevant interests.

Law – Article 10

Lawfulness and aim of the interference – The order issued to the applicant had been prescribed by law. It was not disputed that it had pursued the legitimate aim of “prevention of crime”.

Necessary in a democratic society – Admittedly, the applicant had been the only person who could have helped the prosecuting authorities to identify the drug dealer in question, who had provided her with material for her article; and there had indisputably been legitimate grounds for prosecuting the dealer. These were undoubtedly relevant considerations.

However, in order to establish – for the purposes of “prevention of crime” – the necessity of disclosing the identity of a source, it was not sufficient to argue that, in the absence of such disclosure, it would not be possible to pursue a criminal investigation; account had to be taken of the seriousness of the offences forming the basis for the investigation.

In the present case, however, relatively little weight appeared to have been attached to the offence at issue: the Federal Supreme Court had deferred to the choice of the legislature to include it in the catalogue of offences justifying an exception to the

protection of sources, while at the same time criticising that catalogue's lack of consistency in systematic terms. Admittedly, in its judgment the Federal Supreme Court had identified other factors it considered relevant in assessing the seriousness of the offence. In that connection, it had emphasised above all the commercial nature of the dealer's activities and the profit he had made, rather than the fact that trafficking in soft drugs represented a considerable danger to the health of users.

In the Court's view, some significance should also have been attached to the following factors (in addition to the lesser degree of danger of the offence in question – soft-drug trafficking – in relation to the various exceptions provided for by law to the non-disclosure of sources): the considerable public interest likely to be aroused by the article that had been published (given that it had highlighted the fact that a drug trafficker had been able to remain active for years without being uncovered); the risks to the newspaper's reputation in the eyes of future potential sources; and the interest of members of the public in receiving information imparted through anonymous sources.

On the other hand, the applicant could not be reproached for failing to express a sufficiently critical view on the subject dealt with in her article, and nor could this be made a condition for the protection of sources, as the Federal Supreme Court appeared to be suggesting.

Having regard to the importance of the protection of journalistic sources for press freedom, it was not sufficient for the interference to have been imposed because the offence in question fell within a particular category or was caught by a legal rule formulated in general terms; instead, it should have been ascertained that it was necessary in the specific circumstances. Indeed, this appeared to have been the approach taken by the Federal Supreme Court itself in a previous case (in which it had held, in particular, that a requirement to give evidence was justifiable only where the interest in prosecution outweighed the journalist's interest in not disclosing his or her sources).

In the present case, however, after finding that no particular importance was to be attached either to the public interest or to the applicant's own interest, the Federal Supreme Court had deferred to the balancing exercise performed in general and abstract terms by the legislature. Its judgment could not therefore lead to a conclusion that the order for the applicant to give evidence had satisfied an overriding requirement in the public interest. It had failed to provide sufficient justification that the measure complained of had corresponded to a "pressing social need".

Conclusion: violation (unanimously).

Article 41: no claim made in respect of damage.

(See also *Becker v. Norway*, 21272/12, 5 October 2017, [Information Note 211](#); *Sanoma Uitgevers B.V. v. the Netherlands* [GC], 38224/03, 14 September 2010, [Information Note 133](#); *Voskuil v. the Netherlands*, 64752/01, 22 November 2007, [Information Note 102](#); and *Roemen and Schmit v. Luxembourg*, 51772/99, 25 February 2003, [Information Note 50](#))