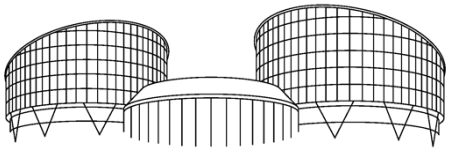

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SERGEY SOROKIN v. RUSSIA

(Application no. 52808/09)

JUDGMENT

Art 10 • Freedom of expression • Unjustified search of journalist's home and seizure of his electronic devices in absence of procedural safeguards against interference with confidentiality of journalistic sources

STRASBOURG

30 August 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sergey Sorokin v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Georges Ravarani, *President,*
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd,
Mikhail Lobov, *Judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 52808/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Vladimirovich Sorokin ("the applicant"), on 2 September 2009;

the decision to give notice to the Russian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 26 April 2022 and 21 June 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The present case concerns search and seizure measures carried out in respect of the applicant, who is a journalist, within the framework of a criminal case into the alleged disclosure of a State secret, initiated against a high-ranking police officer who had given an interview to the applicant.

THE FACTS

2. The applicant was born in 1958 and lives in Syktyvkar, Republic of Komi. The applicant was represented by Mr E.A. Mezak, a human rights defender from Syktyvkar, and Mr A.N. Laptev, a lawyer practising in Moscow.

3. The Government were represented initially by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND OF THE CASE

5. The applicant is a public activist and a journalist who used to publish his articles on an Internet site about news in his region. Thus in 2004 the applicant founded and became the chief editor of a weekly (printed) newspaper, "*Zyryanskaya zhizn*" and its official Internet site www.zyryane.ru. The printed newspaper ceased to exist in 2006, while the applicant and some other journalists continued to publish their articles on the above Internet site. As follows from unrelated court proceedings, the national authorities considered that Internet site to be a media outlet requiring its registration as such.

6. In 2007 a scandal involving public officers of high rank broke. The head of the Economic Crimes Department of the regional Ministry of the Interior, Lieutenant-Colonel T. ("Lt.-Col. T."), was arrested on suspicion of abuse of power. He was accused of having unofficially obtained data on the telephone communications of a number of people, including Mr Z., the then mayor of Syktyvkar and member of the "United Russia" political party. The matter received some national press coverage, for instance the newspaper *Kommersant* reported the above-mentioned events on 27 December 2007. That article mentioned, on the basis of the words of Lt.-Col. T.'s "colleagues", that he had suspected leaks of internal operational information and had attempted to collect telephone communications data in order to find out who was responsible for those leaks. That information was further mentioned in a number of other mass media.

7. On 4 February 2008 the applicant 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. also mentioned that Lt.-Col. T. had suspected leaks of operational information and had allegedly attempted to collect telephone communications data to find out those responsible for those leaks.

8. On 3 April 2008 a criminal case was opened against Mr L. for disclosing information about operational activities which, by law, was considered a State secret. The applicant was questioned as a witness, but refused to answer any questions to avoid self-incrimination. On 29 April 2008 an officer of the Federal Security Service (FSB) of the Republic of Komi sent a letter to the applicant, asking him to remove his interview with Mr L. from his Internet site, not to republish the information about operational activities and to provide all records of the interview. The applicant refused to comply.

9. On an unspecified date the criminal case against Mr L. was closed for lack of *corpus delicti*. On 26 December 2008 the investigation of that case was resumed and on the same date an FSB investigator asked for judicial authorisation to search the applicant's flat.

II. COURT SEARCH WARRANT

10. On 29 December 2008 the Syktyvkar Town Court of the Republic of Komi granted the investigator's application to authorise the search of the applicant's flat and seizure of devices containing information relating to the interview of Mr L. The court held as follows:

> "Having examined the [investigator's] application and the material submitted to support it, there are sufficient grounds to believe that at [the applicant's] place of residence could be located notes of his discussion with Mr L., electronic devices used by [the applicant] to prepare the text of the article, data storage devices containing an audio record of [the applicant's] discussion with Mr L., [and] a draft of the printed version of the article, which are relevant for the criminal case and might be used as evidence in the case, [and to] contribute to the thoroughness of the investigation and establishment of all the relevant circumstances of the case.
>
> On the basis of the above and under Articles 165, 182 (183) of the CCrP [the Code of Criminal Procedure],
>
> [the court] holds that it authorises the search of [the applicant's home]."

11. The search was performed on the same date. The police seized the system unit of the applicant's computer, four hard drives and an audio cassette. According to the applicant, the police did not find any information relevant for their investigation.

12. The applicant appealed against the search warrant. He also submitted an application to the appeal court seeking to declassify and be granted access to the investigative material on the basis of which the search warrant of 29 December 2008 had been issued. The applicant argued, in particular, that there was no State secret involved because the information about operational activities in respect of the mayor had already been made public. He considered that without declassification and study of that material his right to a fair trial and the principle of the equality of arms would be breached.

III. APPEAL COURT DECISION

13. On 3 March 2009 the Supreme Court of the Republic of Komi held an appeal hearing concerning the applicant's complaint about the search warrant. The hearing was closed to the public because of the State secret involved.

14. First, the appeal court dismissed the applicant's application to declassify the material on the basis of which the search warrant of 29 December 2008 had been issued. The court stated that all the material would be examined at the hearing with the participation of the applicant if he agreed to comply with the legal requirement which was a prerequisite for such participation (that is, the obligation to sign a non-disclosure statement). The applicant's right to a fair trial and the principle of the equality of arms would therefore be respected.

15. As the applicant and his representative refused to sign a non-disclosure statement in respect of the case material, they had to leave the hearing.

16. On the merits the court held as follows:

> "Under Article 182 § 1 of the CCrP the existence of sufficient information that at some place or with some person may be located instruments of a crime, [or] objects and valuables, which might be relevant for a criminal case, is a ground to perform a search. A search is performed on the basis of a court decision issued following the procedure set out in Article 165 of the CCrP.
>
> The above legal requirements have been complied with, [and] the grounds for and the necessity of the search of [the applicant's] home are substantiated by the material submitted by the investigator, and are sufficiently reasoned in [his application] for a judicial authorisation of the search and in the court search warrant. Moreover, the [application and the court search warrant] indicate the exact objective of the [search, which] was the establishment not of the source of the information used by [the applicant], but the discovery and seizure of devices containing that information, which could be used as evidence for a fuller investigation and identification of the person responsible for the leak of the secret information, establishment of all the circumstances of the case and prevention of future use of the secret information."

17. The applicant's appeal complaint against the search warrant of 29 December 2008 was, thus, dismissed.

18. In 2008 Lt.-Col. T. was convicted on the charges of an abuse of power and sentenced to a fine. In 2016 and 2018 Mr Z. was convicted for, among other offences, taking bribes, and sentenced to ten years' imprisonment and a fine. In 2009 Mr L. was convicted of an abuse of power and sentenced to two years' imprisonment. It appears that the criminal prosecution of Mr L. for disclosure of a State secret was terminated for lack of *corpus delicti*.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

19. The Code of Criminal Procedure ("the CCrP") provides that the search of a place of residence requires a search warrant issued by a court on the basis of an application by an investigator (Article 165).

20. 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).

21. Article 41 of the Media Act (Law of the Russian Federation N 2124-1 on Media Outlets of 27 December 1991, with amendments, as in force at the material time) set as follows:

> "The editors have no right to disclose ... the information which has been provided by a person on condition of its confidentiality.

> The editors must keep confidential the source of information and have the right not to identify the person who had provided information on condition of anonymity, except for when a requisite demand has been received from a court in connection with a case under its consideration."

22. In its ruling no. 16 of 15 June 2010 (as amended on 9 February 2012) the Plenary of the Supreme Court of the Russian Federation provided guidance to the lower courts on the interpretation and application of the Media Act. Regarding Article 41 of the Media Act, it noted as follows (section 26):

> "If a party to a dispute under consideration requests to disclose the source of information that served as the basis of a publication in a mass media outlet, the court has to be guided by Article 41 of the Media Act [...]. Thus, personal information of a person who has provided to the editors certain information on condition of anonymity constitutes a secret specifically protected by a federal law. The court may, at any stage of the proceedings, demand the editors to disclose the source of information, if there are no other ways to establish the circumstances relevant for a correct examination and adjudication of the case, and if the public interest in the disclosure of the source of information manifestly outweighs the public interest in keeping it confidential. A demand to disclose the source of information may be sent to the editors by the court in connection with a case under its examination."

II. INTERNATIONAL MATERIALS

23. Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information was adopted by the Committee of Ministers of the Council of Europe on 8 March 2000 and states, in so far as relevant:

> "[The Committee of Ministers] Recommends to the governments of member States:
>
> 1. to implement in their domestic law and practice the principles appended to this recommendation,
>
> ...
>
> Appendix to Recommendation No. R (2000) 7
>
> Principles concerning the right of journalists not to disclose their sources of information
>
> Definitions
>
> For the purposes of this Recommendation:
>
> a. the term 'journalist' means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication;
>
> b. the term 'information' means any statement of fact, opinion or idea in the form of text, sound and/or picture;
>
> c. the term 'source' means any person who provides information to a journalist;
>
> d. the term 'information identifying a source' means, as far as this is likely to lead to the identification of a source:

i. the name and personal data as well as voice and image of a source,

ii. the factual circumstances of acquiring information from a source by a journalist,

iii. the unpublished content of the information provided by a source to a journalist, and

iv. personal data of journalists and their employers related to their professional work.

Principle 1 (Right of non-disclosure of journalists)

Domestic law and practice in member States should provide for explicit and clear protection of the right of journalists not to disclose information identifying a source in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention) and the principles established herein, which are to be considered as minimum standards for the respect of this right.

...

Principle 3 (Limits to the right of non-disclosure)

a. The right of journalists not to disclose information identifying a source must not be subject to other restrictions than those mentioned in Article 10 § 2 of the Convention. In determining whether a legitimate interest in a disclosure falling within the scope of Article 10 § 2 of the Convention outweighs the public interest in not disclosing information identifying a source, competent authorities of member States shall pay particular regard to the importance of the right of non-disclosure and the pre-eminence given to it in the case-law of the European Court of Human Rights, and may only order a disclosure if, subject to paragraph b, there exists an overriding requirement in the public interest and if circumstances are of a sufficiently vital and serious nature.

b. The disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that:

i. reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and

ii. the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, bearing in mind that:

- an overriding requirement of the need for disclosure is proved,

- the circumstances are of a sufficiently vital and serious nature,

- the necessity of the disclosure is identified as responding to a pressing social need, and

- member States enjoy a certain margin of appreciation in assessing this need, but this margin goes hand in hand with the supervision by the European Court of Human Rights.

c. The above requirements should be applied at all stages of any proceedings where the right of non-disclosure might be invoked.

Principle 4 (Alternative evidence to journalists' sources)

In legal proceedings against a journalist on grounds of an alleged infringement of the honour or reputation of a person, authorities should consider, for the purpose of establishing the truth or otherwise of the allegation, all evidence which is available to them under national procedural law and may not require for that purpose the disclosure of information identifying a source by the journalist.

Principle 5 (Conditions concerning disclosures)

a. The motion or request for initiating any action by competent authorities aimed at the disclosure of information identifying a source should only be introduced by persons or public authorities that have a direct legitimate interest in the disclosure.

b. Journalists should be informed by the competent authorities of their right not to disclose information identifying a source as well as of the limits of this right before a disclosure is requested.

c. Sanctions against journalists for not disclosing information identifying a source should only be imposed by judicial authorities during court proceedings which allow for a hearing of the journalists concerned in accordance with Article 6 of the Convention.

d. Journalists should have the right to have the imposition of a sanction for not disclosing their information identifying a source reviewed by another judicial authority.

e. Where journalists respond to a request or order to disclose information identifying a source, the competent authorities should consider applying measures to limit the extent of a disclosure, for example by excluding the public from the disclosure with due respect to Article 6 of the Convention, where relevant, and by themselves respecting the confidentiality of such a disclosure.

Principle 6 (Interception of communication, surveillance and judicial search and seizure)

a. The following measures should not be applied if their purpose is to circumvent the right of journalists, under the terms of these principles, not to disclose information identifying a source:

i. interception orders or actions concerning communication or correspondence of journalists or their employers,

ii. surveillance orders or actions concerning journalists, their contacts or their employers, or

iii. search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work.

b. Where information identifying a source has been properly obtained by police or judicial authorities by any of the above actions, although this might not have been the purpose of these actions, measures should be taken to prevent the subsequent use of this information as evidence before courts, unless the disclosure would be justified under Principle 3.

Principle 7 (Protection against self-incrimination)

The principles established herein shall not in any way limit national laws on the protection against self-incrimination in criminal proceedings, and journalists should, as far as such laws apply, enjoy such protection with regard to the disclosure of information identifying a source."

For the precise application of the Recommendation, the explanatory notes specified the meaning of certain terms. As regards the term "source" the following was set out:

"c. Source

17. Any person who provides information to a journalist shall be considered as his or her 'source'. The protection of the relationship between a journalist and a source is the goal of this Recommendation, because of the 'potentially chilling effect' an order of source disclosure has on the exercise of freedom of the media (see, Eur. Court H.R., *Goodwin v. the United Kingdom*, 27 March 1996, para. 39). Journalists may receive their information from all kinds of sources. Therefore, a wide interpretation of this term is necessary. The actual provision of information to journalists can constitute an action on the side of the source, for example when a source calls or writes to a journalist or sends to him or her recorded information or pictures. Information shall also be regarded as being 'provided' when a source remains passive and consents to the journalist taking the information, such as the filming or recording of information with the consent of the source."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant complained that the search of his flat and the seizure of his electronic devices containing all of his professional information amounted to a breach under Article 10 of the Convention, which reads as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

25. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

26. The applicant submitted that the search of his flat and the seizure of his electronic devices had not pursued a legitimate aim and had been neither lawful, nor necessary in a democratic society.

27. He submitted, in particular, that the above measures had been carried out within the framework of a criminal investigation into Mr L.'s alleged disclosure of State secret information about operational activities in respect of the mayor, Mr Z. However, that information had already been published by other media, including the national media, and the Government had not denied it. Relying on PACE Resolution 1551 (2007) and *Vereniging Weekblad* Bluf! *v. the Netherlands* (9 February 1995, §§ 44-45, Series A no. 306), the applicant argued that information that was already in the public domain could not be considered as a State secret. As the information about operational activities in respect of the mayor, Mr Z., had ceased to be secret, the criminal proceedings against Mr L. for an alleged disclosure of a State secret and, consequently, the search of the applicant's flat and the seizure of his devices had therefore pursued no legitimate aim and had been unlawful. Moreover, the criminal case against Mr L. had eventually been terminated for the lack of *corpus delicti* in his actions.

28. With reference to the Government's submissions that the search and seizure measures had also been carried out because the applicant had refused to remove the interview from his Internet news site (see paragraph 34 below), the applicant claimed that the real aim of those measures had been to punish him for that refusal and to interfere with his journalistic activities, and that, therefore, they had not been legitimate.

29. The applicant further submitted that the court search warrant had been formulated in wide terms which had not limited the investigator's discretion regarding the performance of the search and seizure measures. This had led to the seizure of all the applicant's electronic devices which had stored a large amount of confidential information which was completely unrelated to the criminal case against Mr L.

30. The judicial review of the search and seizure measures had been perfunctory. The national courts had failed to balance the need to protect the confidentiality of journalistic sources and the needs of the criminal investigation because the national law did not require the judges to do so (the applicant referred to *Kablis v. Russia*, nos. 48310/16 and 59663/17, § 71, 30 April 2019).

31. Furthermore, no procedural safeguards in view of the applicant's profession as of a journalist had been available to him. Despite Recommendation No. R (2000) 7 of the Committee of Ministers of the

Council of Europe (see paragraph 22 above), the national law contained no norms providing procedural safeguards to protect the confidentiality of journalistic sources.

(b) The Government

32. Relying on Articles 165 and 182 of the CCrP (see paragraphs 19-20 above), the Government submitted that when examining an investigator's application to authorise a search warrant, a judge had to check (1) whether that application complied with the criminal procedural law requirements and (2) whether there were sufficient grounds (*данные*) to believe that objects and documents relevant for the criminal investigation could be located at the address indicated.

33. However, the judge was not to check the circumstances which had formed the grounds for opening a criminal investigation. In the present case, the national courts had considered the assertion that other media had already published the information about operational activities in respect of the mayor, Mr Z., as a circumstance relevant for opening a criminal investigation in respect of Mr L., and, therefore, not something a judge had to check while assessing the lawfulness of the search and seizure measures in respect of the applicant.

34. The Government mentioned that the applicant's home had been searched for two reasons. First, he had refused to remove the interview in question from his Internet news site. Second, electronic devices could have been located at the applicant's home which he had used to record the interview and draft the text and, potentially, other relevant objects and documents relevant for the criminal investigation.

35. The search did not pursue the objective of identifying the journalist's sources of information, but was aimed at finding and seizing devices containing information which was relevant for a thorough investigation and the identification of the person responsible for the disclosure of confidential material, and the prevention of the further use of confidential information.

36. The applicant's article containing Mr L.'s interview, and his subsequent articles concerning Mr L., were still accessible on his Internet news site. The applicant journalist's right to publish information on issues of public interest had therefore not been breached.

2. The Court's assessment

(a) Whether there was an interference

37. The Court finds, and this is not disputed by the parties, that the search of the applicant's home and the seizure of his electronic devices constituted an interference with the exercise of his right to freedom of expression under Article 10 of the Convention (see, as a recent authority, *Avaz Zeynalov*

v. Azerbaijan, nos. 37816/12 and 25260/14, § 98, 22 April 2021, with further references).

38. In order to be justified under Article 10 § 2 of the Convention, any interference must be prescribed by law, pursue one of the listed legitimate aims and be necessary in a democratic society.

(b) Whether the interference was justified

(i) General principles

39. Freedom of expression constitutes one of the essential foundations of a democratic society and the safeguards to be afforded to the press are of particular importance. Whilst the press must not overstep the bounds set, not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog". The right of journalists to protect their sources is part of the freedom to "receive and impart information and ideas without interference by public authorities" protected by Article 10 of the Convention and serves as one of its important safeguards. It is a cornerstone of freedom of the press, without which sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information to the public may be adversely affected (see *Sanoma Uitgevers B.V. v.the Netherlands* [GC], no. 38224/03, § 50, 14 September 2010, and, as a recent authority, *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 442, 25 May 2021, with further references).

40. The Court has always subjected the safeguards for respect of freedom of expression in cases under Article 10 of the Convention to special scrutiny. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest (*Sanoma Uitgevers B.V.*, cited above, § 51).

41. According to the Court's settled case-law the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (ibid., § 81).

42. For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted

to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (ibid., § 82).

43. Given the vital importance to press freedom of the protection of journalistic sources and of information that could lead to their identification any interference with the right to protection of such sources must be attended with legal procedural safeguards commensurate with the importance of the principle at stake (ibid., § 88).

44. Orders to disclose sources potentially have a detrimental impact, not only on the source, whose identity may be revealed, but also on the newspaper or other publication against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources by the disclosure, and on members of the public, who have an interest in receiving information imparted through anonymous sources (ibid., § 89).

45. Furthermore, a search and seizure warrant relating to the premises used by journalists is a more drastic measure than an order to disclose the source's identity, because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist (see *Roemen and Schmit v. Luxembourg*, no. 51772/99, § 57, ECHR 2003-IV).

46. First and foremost among the procedural safeguards is the guarantee of review by a judge or other independent and impartial decision-making body. The requisite review should be carried out by a body separate from the executive and other interested parties, invested with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources exists prior to the handing over of such material and to prevent unnecessary access to information capable of disclosing the sources' identity if it does not (*Sanoma Uitgevers B.V.*, cited above, § 90).

47. The Court is well aware that it may be impracticable for the prosecuting authorities to state elaborate reasons for urgent orders or requests. In such situations an independent review carried out at the very least prior to the access and use of obtained materials should be sufficient to determine whether any issue of confidentiality arises, and if so, whether in the particular circumstances of the case the public interest invoked by the investigating or prosecuting authorities outweighs the general public interest of source protection. It is clear, in the Court's view, that the exercise of any independent review that only takes place subsequently to the handing over of material capable of revealing such sources would undermine the very essence of the right to confidentiality (ibid., § 91).

48. Given the preventive nature of such review the judge or other independent and impartial body must thus be in a position to carry out this

weighing of the potential risks and respective interests prior to any disclosure and with reference to the material that it is sought to have disclosed so that the arguments of the authorities seeking the disclosure can be properly assessed. The decision to be taken should be governed by clear criteria, including whether a less intrusive measure can suffice to serve the overriding public interests established. It should be open to the judge or other authority to refuse to make a disclosure order or to make a limited or qualified order so as to protect sources from being revealed, whether or not they are specifically named in the withheld material, on the grounds that the communication of such material creates a serious risk of compromising the identity of journalist's sources. In situations of urgency, a procedure should exist to identify and isolate, prior to the exploitation of the material by the authorities, information that could lead to the identification of sources from information that carries no such risk (ibid., § 92).

49. Finally, the domestic law must contain a specific procedure or safeguards to address the examination of electronic data carriers containing protected materials (see, *mutatis mutandis*, in the context of searches of legally privileged (attorney-client) materials, *Särgava v. Estonia*, no. 698/19, §§ 103-07, 16 November 2021, and, in the context of bulk interception of journalistic communications, *Big Brother Watch and Others*, cited above, §§ 448-50).

(ii) Application of those principles

(α) Whether the interference was in accordance with the law

50. The Court will first examine whether the interference in question was "prescribed by law".

– *Basis in domestic law*

51. The Court accepts that the search and seizure measures in respect of the applicant had a general legal basis in domestic law (see paragraphs 19-20 above). There is no question of the relevant law being insufficiently accessible.

– *Quality of the law*

52. The Court will now examine whether the domestic law provides requisite procedural guarantees for the protection of journalistic sources.

53. The Court notes that under the criminal procedure law there were certain safeguards in place relating to searches and seizures in general. Indeed, a search could be carried out if there were sufficient grounds to believe 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. If a search was carried out at a place of residence, it was to be authorised by a court (see paragraphs 19-20 above).

54. However, the criminal procedure law did not expressly provide for any protection of confidential journalistic sources in the context of searches and seizures.

55. Furthermore, the Media Act imposed on editors of a mass media outlet the obligation not to disclose any information provided to them on condition of confidentiality and not to disclose a source of information which was provided to them on condition of anonymity unless ordered by a court (see paragraph 21 above).

56. However, it is not clear how, if at all, the Media Act would apply in the context of search and seizure measures in respect of a journalist.

57. The Supreme Court of the Russian Federation guided the lower courts that a court demanding the editors to disclose the source of information under Article 41 of the Media Act should ascertain that there are no alternative measures and that the public interest in the disclosure outweighs the public interest in the protection of the confidentiality of the source of information (see paragraph 22 above).

58. However, that ruling was issued after the events of the present case. In the absence of any other case-law provided by the Government regarding the application of the Media Act in the context of a criminal investigation, it is not clear how effective it was in practice for the purpose of protection of journalists against search and seizure measures at the relevant time.

59. Given the lack of procedural safeguards protecting journalistic sources and addressing the seizure and examination of data carriers, the Court is 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 does not need to determine this matter because the interference complained of was in any event not "necessary in a democratic society" for the following reasons.

(β) Whether the interference pursued a legitimate aim

60. The Court accepts that the interference pursued the legitimate aim of preventing crime since the search and seizure were ordered in the context of a criminal investigation opened into Mr L.'s alleged disclosure of State secret information.

(γ) Whether the interference was "necessary in a democratic society"

61. In the present case, while authorising the search warrant, the Syktyvkar Town Court relied on two premises: the fact that a criminal investigation into the disclosure of a State secret had been initiated, and the possibility that the applicant's devices could have had information about his interview with Mr L. (see paragraph 10 above). However, that reasoning does not contain any balancing exercise, that is, an examination of the question whether the interests of investigation in securing evidence were sufficient to

override the general public interest in the protection of journalistic sources (see, for instance, *Sanoma Uitgevers B.V.*, cited above, § 91, and *Nagla v. Latvia*, no. 73469/10, § 88, 16 July 2013). Equally, the Supreme Court of the Republic of Komi checked only "the grounds and necessity" of the search, where "grounds" referred to a possibility that devices or documents containing particular information could be located at the applicant's flat; and "necessity" was based on the need to obtain evidence relevant to the criminal investigation and to prevent future use of secret information (see paragraph 16 above). It therefore limited its review to the examination of the formal lawfulness of the search instead of assessing the necessity and proportionality of the investigating authorities' actions. The Government's submissions (see paragraph 32 above) confirm the above finding.

62. Furthermore, while authorising the search and seizure measures, the Town Court did not instruct the investigative authorities to use any sifting procedure or otherwise ensure that the unrelated personal and professional information of the applicant was not accessed by the authorities. Nor did the Town Court give any specific reasons for its finding that a search of all of the applicant's data was necessary for the investigation (see, *mutatis mutandis*, *Robathin v. Austria*, no. 30457/06, § 52, 3 July 2012).

63. The wording of the court search warrant was reflected in the way in which it was executed. The investigator seized all of the applicant's electronic devices – his computer and four hard drives – which must have contained information unrelated to the criminal case. There is nothing to show that the entirety of that information was not accessed immediately by the investigative authorities in the absence of any sifting procedure or other methods which could protect the confidentiality of the applicant's journalistic sources and of other information unrelated to the criminal case against Mr L.

64. The Court therefore concludes that the search was carried out in the absence of procedural safeguards against interference with the confidentiality of the applicant's journalistic sources and was therefore not "necessary in a democratic society" to achieve the legitimate aim pursued. There has therefore been a violation of Article 10 of the Convention.

65. Having drawn that conclusion, it is not necessary for the Court to examine the remainder of the parties' arguments under Article 10 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. The applicant also complained about the search and seizure measures and the subsequent court proceedings under Articles 6, 8 and 13 of the Convention. In the light of its findings and conclusion under Article 10 of the Convention, the Court considers that it is not necessary to examine separately the admissibility and merits of the applicant's complaints under Articles 6, 8 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

68. The applicant requested the Court to award him compensation in respect of non-pecuniary damage in accordance with its case-law.

69. The Government submitted that the applicant's claim under this heading should be dismissed because the applicant had not indicated an exact sum and because his rights had not been breached.

70. The Court awards the applicant 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant also claimed EUR 2,500 and EUR 6,000 in respect of the costs and expenses incurred before the domestic courts and before the Court, to be paid directly to Mr E. Mezak and Mr A. Laptev respectively. Mr E. Mezak represented the applicant before the appeal court and prepared his application to the Court, whereas Mr A. Laptev prepared the applicant's subsequent submissions to the Court (thirty hours in total at the rate of EUR 200 per hour). The applicant supported his claims with copies of legal services agreements with his representatives. Those agreements provided, in particular, that the applicant was to pay the above amounts to his representatives within six months (to Mr E. Mezak) and thirty days (to Mr A. Laptev) from the date when a decision or a judgment of the Court in the applicant's case became final. It was also agreed that the applicant could request the Court to pay his representatives' fees directly to them.

72. The Government submitted that the applicant's claim was excessive. They further submitted that the applicant had not actually incurred the sums claimed as he had not provided copies of any payment receipts. Lastly, the Government submitted that the legal services agreements had constituted a contingency fee agreement conditional upon the delivery of a Court judgment in the future, which, according to the Constitutional Court's ruling of 23 January 2007 no. 1-P, was not enforceable.

73. The Court notes that Mr E.A. Mezak did not seek leave to represent the applicant after the notification of the case to the Government, in accordance with Rule 36 §§ 2 and 4 (a) of the Rules of Court. The Court therefore rejects the applicant's claim for legal fees in respect of

Mr E.A. Mezak (see *Y.S. and O.S. v. Russia*, no. 17665/17, § 116, 15 June 2021).

74. Further, according to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court notes that a contingency fee agreement is an agreement whereby a lawyer's client agrees to pay the lawyer fees amounting to a certain percentage of the sum, if any, awarded to the litigant by the court (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI). The Court may recognise the validity of a contingency fee agreement (ibid.), however, it does not need to do so in the present case. The legal services agreement between the applicant and his representative does not have the above elements of a contingency fee agreement. It unequivocally establishes the applicant's obligation to pay the agreed fee within thirty days from the date of the Court's final decision or judgment in the present case (which is not unlike the Court's awards under Article 41 of the Convention). That obligation was not made dependent either on the substance (namely, the Court's finding in favour of the applicant) or on the sum awarded by the Court to the applicant. The Court, therefore, considers that the Government's argument contesting the enforceability of a contingency fee agreement is not relevant in the present case. The Court will therefore proceed on the assumption that the sum claimed is actually payable by the applicant in accordance with the legal service agreement between him and Mr A. Laptev.

75. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000, covering costs incurred before the Court, to be paid directly into the bank account of Mr A. Laptev, plus any tax that may be chargeable on that sum.

C. Default interest

76. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention concerning the search and seizure measures carried out in respect of the applicant admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaints under Articles 6, 8 and 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,000 (six thousand euros), to be paid directly into the bank account of Mr A. Laptev, plus any tax that may be chargeable on that sum to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 30 August 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Georges Ravarani
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Seibert-Fohr and Zünd is annexed to this judgment.

G.R.
O.C.

CONCURRING OPINION OF JUDGE ZÜND JOINED BY JUDGE SEIBERT-FOHR

1. In the present case the applicant, a journalist, published an interview with a deputy head of the regional Ministry of the Interior. Subsequently, a criminal case was opened against the latter for disclosing information about operational activities which, by law, was considered secret (see paragraphs 7 and 8 of the judgment). A search of the applicant's flat and the seizure of devices containing information relating to the interview were performed with the authorisation of a judge (see paragraphs 10 and 11 of the judgment). According to the Government, these measures were justified because the applicant had refused to remove the interview from his Internet site and because the electronic devices might have contained relevant information for the criminal investigation (see paragraph 34 of the judgment), and also in order to prevent the further use of confidential information (see paragraph 35 of the judgment).

2. The Court finds in this judgment that the search was carried out in the absence of procedural safeguards against interference with the confidentiality of the applicant's journalistic sources and that therefore there has been a violation of Article 10 of the Convention (see paragraph 64 of the judgment). In doing so, the Court reproaches the domestic authorities for having 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 (see paragraph 61 of the judgment). In this regard, the Court especially reproaches the domestic authorities for not having provided for a sifting procedure that could have protected the confidentiality of the applicant's journalistic sources unrelated to the criminal case at hand (see paragraphs 62 and 63 of the judgment).

3. While I may agree *in abstracto* that a sifting procedure may be necessary if the search and seizure of electronic devices belonging to a journalist are concerned, I disagree that in the case at hand such a procedure could have been appropriate to the aim pursued. This is because in the present case, even the prerequisites for a house search were lacking. As the Court has stated, "protection of journalistic sources is one of the basic conditions for press freedom" (see *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II). Admittedly, a disclosure order or even a search and seizure order may be justified by an overriding public interest when such measures prove necessary for the investigation of very serious crimes (see, for instance, *Nordisk Film & TV A/S v. Denmark* (dec.), no. 40485/02, ECHR 2005-XIII, and contrast *Jecker v. Switzerland*, no. 35449/14, 6 October 2020). However, the reasons put forward by the Government and the domestic authorities bear no relation to any such crime. Rather, they relate to a breach of the confidentiality of proceedings without serious consequences for public order. Furthermore, the measures taken in

the present case were explicitly intended to ensure that the applicant removed the interview from his Internet site and that he did not use the material for further publications. In my eyes, such goals cannot prevail. On the contrary, they are directed against freedom of expression. That is why, in my mind, the search and seizure measures were from the outset incompatible with Article 10 of the Convention on substantive grounds.