***Case of Sergey Sorokin v Russia*) | Columbia Global Freedom of Expression**

***Meta-Data*:**

* **Case Number**: App. No. 52808/09
* **Corresponding Law Reference**: Not found
* **Date of decision**: August 30, 2022
* **Featured case**: N/A
* **Region**: Europe and Central Asia
* **Country**: Russian Federation
* **Type of expression**: Electronic/internet based communication
* **Judicial Body**: European Court of Human Rights (ECtHR)
* **Type of law**: International/Regional Human Rights Law
* **Main Themes**: Violence Against Speakers/Impunity
* **Outcome**: ECtHR, Article 10 violation
* **Status**: Closed
* **Tags**: Search Warrant, Protection of sources

***Analysis:***

* **Summary and Outcome**:

On August 30, 2022, the Third Section of the European Court of Human Rights (ECtHR) held the State of Russia responsible for searching a journalist's home and authorizing the seizure of his electronic devices, as a direct interference with the right to freedom of expression under Article 10 of the Convention. The case arose after a journalist published an interview on the website of his weekly newspaper,” *Zyryanskaya zhizn*” with a high-ranking police officer regarding a scandal. A criminal case was subsequently opened against the police officer for disclosing State secrets, and the Syktyvkar Town Court of the Republic of Komi authorized a search of the applicant's flat and the seizure of devices containing information relating to the interview. The journalist's computer, four hard drives, and an audio cassette were seized during the search. As a result, the applicant appealed to the Supreme Court of the Republic of Komi; however, his plea was unsuccessful on grounds that the search and seizure authorization were reasoned and substantiated by materials submitted by the investigator.

The ECtHR held that while the search and seizure measures had had a general legal basis in domestic law, there was a lack of procedural safeguards protecting journalistic sources and addressing the seizure and examination of data carriers.

* **Facts**:

The applicant, Sergey Sorokin, was a public activist and a journalist from Syktyvkar, Republic of Komi, Russia.  In 2004, Sorokin founded and became the chief editor of "Zyryanskaya zhizn", a weekly printed newspaper, and its official website, www.zyryane.ru.

In 2006, the printed version of the newspaper ceased to exist; nevertheless, Sorokin and some other journalists continued to publish articles on the website.

In 2007, 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 on grounds of unofficially possessing telephonic communicated data of several including Mr. Z., the then mayor of Syktyvkar (capital of the Komi Republic) and a member of the "United Russia" political party.

On February 4, 2008, Sorokin published an interview with Mr. L, deputy head of the regional Ministry of the Interior, on his website. According to the publication, Mr. L. stated that Lt.-Col. T. presumed there were leaks of operational information internally, after which he allegedly made an attempt to collect the telephonic data to find the person responsible behind the leaks.

Subsequently, on April 3, 2008, a criminal case was initiated against Mr. L. for disclosing information about operational activities, which, by law, was regarded as a State secret. During the proceedings, Sorokin was questioned as a witness, and to avoid any self-incrimination, the applicant did not answer any questions.

On April 29, 2008, an officer of the Federal Security Service (FSB) of the Republic of Komi sent a letter to Sorokin, requesting him to remove his interview with Mr. L. from the website, and not to publicise the details of the operational activities and to hand up all the interview records. To this,  Sorokin did not agree to comply.

On an unknown date, Mr. L.'s criminal case was closed for lack of corpus delicti. However, on December 26, 2008, the investigation was resumed, and an FSB investigator requested judicial authorization to search Sorokin's flat and seize devices containing information relating to the interview of Mr. L. On December 29, 2008 after the Syktyvkar Town Court of the Republic of Komi granted the application, the police seized the system unit of Sorokin's computer, four hard drives, and an audio cassette.

Sorokin then filed an appeal against the search warrant and asked the court to declassify and provide him access to the evidence that had led to the search warrant's issuance. The applicant argued that the information regarding the operational actions had already been made public and that no State secrets had been involved.

On March 3, 2009, the Supreme Court of the Republic of Komi dismissed Sorokin's application to declassify the material on the grounds that all the material would be examined if he agreed to comply with the legal requirement of signing a non-disclosure statement. Since Sorokin refused to sign the statement, the Court dismissed the appeal.

* **Decision Overview**:

The decision of the ECtHR (Third Section) was delivered on August 30, 2022.

Issues found by the Court:

The main issue for the Third Section of the ECtHR to examine in this case was whether the search of the journalist's home and the seizure of his electronic devices constituted a justified interference with the exercise of his right to freedom of expression under Article 10 § 2 of the ECHR.

Parties’ Submissions

In his submission to the ECtHR, Mr. Sorokin argued that the search of his home and the seizure of his electronic devices had not pursued a legitimate aim and had been neither lawful nor necessary in a democratic society. Mainly, Sorokin argued that the search had been conducted 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. Relying on PACE Resolution 1551 (2007) and the criteria set out in the ECtHR ruling in the case of [Vereniging](https://globalfreedomofexpression.columbia.edu/laws/echr-vereniging-weekblad-bluf-v-netherlands-app-no-1661690-1995/) [Weekblad Bluf! v. the Netherlands](https://globalfreedomofexpression.columbia.edu/laws/echr-vereniging-weekblad-bluf-v-netherlands-app-no-1661690-1995/), Sorokin argued that information was already in the public domain, thus, and could not be considered a state secret.

Sorkin argued that the court's search warrant was written in a broad manner which did not restrict the investigator's discretion in deciding how to carry the search and seizure procedures. Similarly, Sorokin claimed that the judicial review of the search and seizure measures were tokenistic as the national courts failed to balance the need to protect the confidentiality of journalistic sources while referring to the ruling set in the [Case of Kabalis v. Russia](https://hudoc.echr.coe.int/eng?i=001-192769).

In turn, the Government argued that Sorokin's home had been searched because he refused to remove the interview from his Internet news site and because the electronic devices that could have been located at the applicant's home could potentially contain relevant information for the criminal investigation and was compliant with Articles 165 and 182 of the Code of Criminal Procedure.

The Government explained that the search did not pursue the objective of identifying the journalist's sources of information but aimed to find and seize devices containing information 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. Moreover, the Government considered that since Sorokin's articles were still accessible on his website, his right to publish information on issues of public interest had not been breached.

The Court’s Findings

The Court began its analysis of the case by noting that the search of Sorokin's home and the seizure of his electronic devices interfered with his right to freedom of expression under Article 10 of the ECHR, and referred to the ruling of [*Avaz Zeynalov v. Azerbaijan*](https://hudoc.echr.coe.int/eng?i=001-209346) . The Court stated that an interference must be mandated by law, pursue legal objectives and be required for a democratic society to remain justified under Article 10 § 2.

Before examining whether the interference was legitimate in the immediate case, the Court emphasized that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are particularly important. Moreover, the Court highlighted that considering the importance of the protection of journalistic sources for press freedom in a democratic society, for an interference to be compatible with Article 10 of the ECHR, it must be justified by an overriding requirement in the public interest. The court highlighted the importance of freedom of press protected under Article 10, without which the role of press can be undermined and reliable information coverage be affected, as seen in cases of[Sanoma Uitgevers B.V. v.the Netherlands [GC]](https://globalfreedomofexpression.columbia.edu/cases/sanoma-uitgevers-b-v-v-the-netherlands/) and Big [*Brother Watch and Others v. the United Kingdom.*](https://hudoc.echr.coe.int/eng?i=001-210077)

According to the Court, expressions "prescribed by law" and "under the law" under Articles 8 to 11 of the ECHR require the impugned measure to have some basis in domestic law and refer to the quality of the law in question. The Court noted that for domestic law to meet such requirements, it must afford legal protections against arbitrary interferences by public authorities and define the scope of any legal discretion vested in the competent authorities and the manner of its exercise.

The Court stressed upon the procedural safeguards that the domestic law should consider is the guarantee of review by a judge or an independent and impartial decision-making body. The Court underscored that such a decision must be "governed by clear criteria, including whether a less intrusive measure can suffice to serve the overriding public interests established..... to protect sources from being revealed....on the grounds that the communication of such material creates a serious risk of compromising the identity of journalist’s sources." [para.48]. The Court noted that similar to what was held in the cases of[Särgava v. Estonia](https://hudoc.echr.coe.int/fre?i=002-13472) and[*Big Brother Watch v. The United Kingdom*](https://globalfreedomofexpression.columbia.edu/cases/big-brother-watch-v-united-kingdom/); domestic law must contain specific guidelines and safeguards to examine electronic data carriers containing protected materials.

The Court then proceeded to analyze the applicability of those principles to the present case.

i). Whether the interference was in accordance with the law

The Court acknowledged that the search and seizure measures of Sorokin's flat and personal devices had a general legal basis in domestic law, particularly in Articles 165 and 182 § 1 of the Code of Criminal Procedure.

ii). Quality of the law

 The Court remarked that the domestic criminal procedure law failed to provide any protection for confidential journalistic sources in the context of searches and seizures.

iii). Whether the interference pursued a legitimate aim.

The Court recognized that the interference pursued the legitimate objective of preventing crime as the search and seizure procedure were authorized in the the "context of an a criminal investigation opened into Mr. L.'s alleged exposure of State secret information: [para 60]

iv). Whether the interference was "necessary in a democratic society."

The Court recalled that the Syktyvkar Town Court relied on two suppositions to authorize the search warrant: "(1) The fact that a criminal investigation into the disclosure of a State secret had been initiated, and (2) the possibility that Sorokin's devices could have had information about his interview with Mr. L." [Para 61]

However, by referring to the cases of  [Nagla v. Latvia and Sanoma Uitgevers B.V.](https://globalfreedomofexpression.columbia.edu/cases/nagla-v-latvia/) and [Sanoma Uitgevers B.V. v.the Netherlands [GC]](https://globalfreedomofexpression.columbia.edu/cases/sanoma-uitgevers-b-v-v-the-netherlands/) the Court emphasized that the decision failed to examine whether the interests of investigation in securing evidence were sufficient to override the general public interest in the protection of journalistic sources. Moreover, the Court noted that the Supreme Court of the Republic of Komi had limited its review solely to the assessment of the "formal lawfulness of the search" [para 61] rather than focusing on the "necessity and proportionality of the investigating authorities' actions." [para 61] The Court inferenced that the Town Court had failed to require the investigative authorities to ensure that the applicant's unrelated personal and professional information was not accessed and did not clarify if the search of all of the data in the applicant's house was important for the investigation [*(Robathin v. Austria)*](https://hudoc.echr.coe.int/eng?i=001-111890).

The Court came to the conclusion that the search for Sorokin's home was conducted without proper procedural safeguards to protect the privacy of his  journalistic sources and that it was not "necessary for a democratic society"[para 64] to accomplish the legitimate goal pursued, indicating the violation of Article 10 of the Convention.

Other alleged violations of the Convention

The Court found that while Sorokin had complained about the search and seizure measure and the subsequent court proceedings under Articles 6, 8, and 13 of the Convention, it's drawing of conclusion under Article 10 made it unnecessary to examine the admissibility and merits of Sorokin's complaints separately.

Damages

The Court ordered the Russian State to pay Sorokin, under Article 44 § 2 of the Convention, EUR 7,500 in respect of non-pecuniary damage and EUR 6,000 to be paid directly into the bank account of Mr. A. Laptev (Sorokin's Lawyer) in respect of costs and expenses.

Concurring opinion of Judge Zünd, joined by Judge Seibert-Fohr.

In Judge Zünd's view, he consented that "in abstracto that a sifting procedure may be necessary if the search and seizure of electronic devices belonging to a journalist are concerned" [para 3]; however, he disagreed that in the instant case, such a procedure could have been appropriate to the aim pursued. In his opinion, while a disclosure order or even a search and seizure order could be justified by an overriding public interest when such measures prove necessary for the investigation of very serious crimes, and thought that there was no connection to the crime between any such act and the justifications offered by the Government and the domestic authorities. Mainly, Judge Zünd considered that 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, an effort directed against freedom of expression. For Zünd, the search and seizure measures were, from the outset, "incompatible with Article 10 of the Convention on substantive grounds." [para 3]

***Direction:***

* **Outcome**: Expands Expression.
* **Information**:
* The ruling broadens the scope of freedom of expression by concluding that the applicant's right to the freedom was violated when his home was authorized for a search and seizure of his electronic devices. In particular, the Court upheld that while the impugned measures found a legal basis in domestic law, there was a lack of procedural safeguards protecting journalistic sources and addressing the seizure and examination of data carriers; leading to the undermining of the press's task of imparting and dissemination information of public interest.

***Perspective***:

* **Outcome**: International and/or Regional Perspective
* **Related International and/or regional laws**:

ECHR, art. 6;

ECHR, art. 8;

ECHR, art. 10;

ECHR, art. 41;

[ECtHR,](https://hudoc.echr.coe.int/eng#{"itemid":["001-95154"]})  Sanoma Uitgevers B.V. v. the Netherlands, App. No. 38224 (2003);

[ECtHR,](https://hudoc.echr.coe.int/eng#{"fulltext":["\)  Big Brother Watch and Others v. the United Kingdom (2021), app. no. 58170/13, 62322/14 and 24960/15.;

ECtHR, Roemen v. Luxembourg, No. 51772/99 (2003);

[ECtHR,](https://hudoc.echr.coe.int/eng#{"fulltext":["\)  Särgava v. Estonia, App. No. 698/19 (2021);

[ECtHR,](https://hudoc.echr.coe.int/eng#{"fulltext":["\)  Nagla v. Latvia, App. No. 73469/10 (2013);

[ECtHR,](https://hudoc.echr.coe.int/eng#{"fulltext":["\)  Robathin v. Austria, App. No. 30457/06 (2012);

[ECtHR,](https://hudoc.echr.coe.int/eng#{"fulltext":["janowski"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58909"]})  Nordisk Film & TV A/S v. Denmark, App. No. 40485/02 (2005);

ECtHR, Vereniging Weekblad Bluf! v. the Netherlands, App. No 16616/90 (1995)

ECtHR, Case of Kabalis v Russia, App. No 48310/16 and 59663/17 (2019)

ECtHR, Avaz Zynalov v. Azerbaijan, App. No 37816/12 and 25260/14 (2021)

* **National law or jurisprudence**:

Russ., Code of Criminal Procedure, art. 165

Russ., Code of Criminal Procedure, art. 182 § 1

Russ., Resolution of the Supreme Court No 16 "On the practice of courts of the Russian Federation on Mass Media Law", June 15, 2010

* **Other national law or jurisprudence**: N/A.

***Significance***:

* **Significance:** The decision establishes a binding or persuasive precedent within its jurisdiction.
* **Related Cases**: Self-generated.

***Documents:***

* **Official Case Documents**:

Judgment (ECtHR) (in English) [[Attached](https://hudoc.echr.coe.int/eng?i=001-218918)];

* **Amicus briefs and other legal authorities**:

[Case Guide of the ECtHR on Article 10 (Freedom of Expression) (in English)](https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf) [Attached].