



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

FOURTH SECTION

**CASE OF NAGLA v. LATVIA**

*(Application no. 73469/10)*

JUDGMENT

STRASBOURG

16 July 2013

*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 Nagla v. Latvia,**

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

David Thór Björgvinsson, *President*,

Ineta Ziemele,

Päivi Hirvelä,

Ledi Bianku,

Vincent A. De Gaetano,

Paul Mahoney,

Faris Vehabović, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 25 June 2013,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 73469/10) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Latvian national, Ms Ilze Nagla (“the applicant”), on 13 December 2010.

2. The applicant was represented by Mr L. Liepa, a lawyer practising in Riga. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine, and, subsequently, Mrs K. Līce.

3. The applicant alleged that she had been compelled to disclose information that had enabled a journalistic source to be identified, in violation of her right to receive and impart information.

4. On 26 January 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Riga.

6. The applicant, at the time of the material events, was working for the national television broadcaster *Latvijas televīzija* (“LTV”). She was a producer, reporter and host of the weekly investigative news programme *De facto*, aired in prime time every Sunday night.

### **A. Events leading up to and including the broadcast of 14 February 2010**

7. On 10 February 2010 the applicant received an e-mail from a person who called himself “Neo”, revealing that there were serious security flaws in a database maintained by the State Revenue Service (*Valsts ieņēmumu dienests* – “the VID”). Allegedly, these flaws made it possible to access the data stored in the Electronic Declaration System (*Elektroniskā deklarēšanas sistēma* – “the EDS”) without breaching any security protocols. In support of his allegations, “Neo” attached some examples of the data which he had downloaded in this manner (for example, salaries of LTV employees), the veracity of which the applicant could confirm. The applicant concluded that the data were genuine and that, most probably, there was a serious security flaw in the system. She then proceeded to inform the VID of a possible security breach.

8. “Neo” did not reveal his identity to the applicant during their e-mail correspondence. He told her that there were more data which showed that the austerity measures in the public sector did not affect the highest-paid State officials. It transpired during their correspondence that “Neo” did not wish to reveal his identity.

9. On 14 February 2010 the applicant, acting in her capacity as a journalist, announced during the broadcast of *De facto* that there had been a massive data leak from the EDS. She reported that the information concerned the income, tax payments and personal identity details of public officials, as well as private individuals and companies.

10. One week after the broadcast, “Neo” started to publish data through his Twitter account concerning the salaries paid at various public institutions, at State and municipal levels; in some cases the names of the officials were included, and in others only the salaries were published. The information received wide media coverage. On 18 April 2010 he stopped publishing it.

### **B. Criminal proceedings concerning the data leak**

11. On 10 February 2010, upon an application by the VID, criminal proceedings were instituted concerning the data leak.

12. On 19 February 2010 the police went to LTV to take evidence from the applicant as a witness in the criminal proceedings. They asked for a transcript of the 14 February 2010 broadcast, as well as access to the e-mail correspondence with “Neo”. The applicant declined to disclose the identity of her source or any information which could lead to its disclosure, referring to the right of non-disclosure as set forth in section 22 of the Law on Press and Other Mass Media.

13. On the same date another journalist was also asked to disclose the identity of his journalistic source, as he had had a public communication with “Neo”, which had been aired during another television broadcast. He refused to testify since he did not consider that his source had done anything wrong.

14. According to the Government, on 11 May 2010 the investigating authorities established that two of the IP address which had been used to connect to the EDS, had been used by a certain I.P. It was also established that I.P. had made several phone calls to the applicant’s phone number.

15. On 11 May 2010, at about 6.55 p.m., I.P. was arrested in connection with the criminal proceedings; he was released from custody a few months later.

16. On 12 May 2010 a police investigator informed the investigating judge that on the previous day four urgent searches had taken place at I.P.’s home, work and other premises. She also informed the judge of an urgent search at the applicant’s home (see paragraph 21 et seq. below). She then requested, under section 180, paragraph 5 of the Criminal Procedure Law, that the lawfulness of and the grounds for those searches be examined.

17. On 14 May 2010 the investigator ordered a technical examination of the data storage devices that had been seized at the applicant’s home on 11 May 2010. According to the Government, all these devices were handed over to the relevant examination body within the State Police in two sealed bags. These packs remained unopened until 17 May 2010, when an expert opened them; their packaging or seals were not damaged. On 17 and 18 May 2010 the expert copied all the information from the data storage devices onto another computer using a special software programme. On 19 May 2010 he sealed the bags and handed them back to the investigator. On 21 May 2010 the data storage devices were returned to the applicant.

18. On 15 June 2010 the technical examination was completed and, according to the Government, the information that had been copied was destroyed.

19. The criminal proceedings against I.P. concerning the data leak appear to be pending at the pre-trial investigation stage.

### **C. The search at the applicant’s home on 11 May 2010 and subsequent judicial review**

20. On 11 May 2010 the investigator drew up a search warrant, which was authorised by a public prosecutor the same day. The relevant parts of the warrant read as follows:

“It transpires from the case materials that [I.P.] was using mobile phone number ... at the material time. According to the information provided by the [mobile phone service provider], on 6 July 2009, the registered date of the first attempt to download a nonexistent EDS XML file, and also on 8 July 2009 and 28 October 2009, the

established dates on which separate EDS XML files were downloaded via the anonymous ‘TOR’ servers, subscriber ... made outgoing calls to the subscriber with number ... . Periodic communication took place until 14 February 2010, when it ceased completely. According to the call history printouts, on several occasions both subscribers were served by the same electronic communications base stations, indicating the possibility that the subscribers met.

It was established that [the applicant], identity code ..., residing in ..., was using the phone number ... .

The facts and circumstances established in connection with the criminal proceedings taken together serve as grounds for the conclusion that at the time the criminal offence was committed [the applicant] had frequent communication with [I.P.] and might possibly have information about the unlawful activities of [I.P.] connected with the illegal downloading of EDS XML files, and also on the processing, storage and distribution of these files, his accomplices and other information in connection with the criminal proceedings.

Taking into account that the case materials give reasonable grounds to consider that at [the applicant’s home] there might be data storage devices that contain the XML files illegally downloaded from the EDS database and any derivatives thereof, software for processing these files, information about the obtaining and distribution of these files and other documents and items containing information about the crime that could serve as evidence in the criminal proceedings, it is necessary to carry out the search under the urgent procedure to prevent the destruction, concealment or damaging of such evidence.

On the basis of sections 180(3) and 337 (2)(2) of the Criminal Procedure Law:

DECIDED:

1. to search [the applicant’s home] with a view to finding and seizing documents and data storage devices containing XML files illegally downloaded from the EDS database and any derivatives thereof, software for processing these files, information about the obtaining and distribution of these files and any other items containing information about the crime under investigation.”

21. On 11 May 2010, from 9.34 to 10.30 p.m., the police conducted a search at the applicant’s home.

22. According to the applicant, upon her return home that night a plain-clothes policeman approached her in the stairwell and, without identifying himself, physically prevented her from closing the doors. Only then did he present a search warrant and proceed to conduct the search together with two other officers. During the search the following data storage devices were seized: a personal laptop, an external hard drive, a memory card and four flash drives. According to the applicant, these devices contained a large body of her personal data as well as most of her work-related material.

23. The Government did not contest the applicant’s version of the events.

24. On 12 May 2010 the investigating judge retrospectively approved the search warrant of 11 May 2010 in the form of an “approval” written on that warrant. No reasons were given.

25. On 14 June 2010 the President of the first-instance court, upon a complaint by the applicant, upheld the investigating judge's decision and concluded that the search was lawful and that the evidence obtained was admissible in the criminal proceedings. No hearing was held. She examined the applicant's written complaints, the criminal case file and the investigator's written explanation. The relevant part of the decision, which was final, reads:

“Having considered the impugned decision of the investigating judge on its merits, I find it to be in compliance with the legal norms and the actual state of affairs. ...

The investigator has taken sufficient actions to protect the rights of [the applicant] as a journalist. In particular, she assigned police officers to question [the applicant] as a witness, and [the applicant] used her right not to disclose her source.

According to the domestic case-law, in most cases the court imposes an obligation on journalists to disclose sources of information only in cases when, purely objectively, there are no other options for solving or preventing a crime or in cases when any further crimes would substantially harm public and national-security interests.

In the present proceedings, although the unlawful processing and uncontrolled dissemination of the personal data of several thousand, even hundreds of thousands of people is considered a substantial violation of the rights of the general public, the investigating authority did not apply to the investigating judge for an order to disclose the information source ... because ... it was decided not to pursue any investigative activities that would concern journalists, in line with the principle of proportionality and the rights of non-disclosure ...

Accordingly, as the material in the case file shows, the further investigation focused on other leads, and the probable suspect was established by processing and analysing the records of the EDS, that is, with no disclosure of a journalist's source. ...

There is no reasonable ground to believe that the search at [the applicant's] home was performed for the purpose of identifying the source of the information, because the aim of the search was to find the XML files downloaded from the EDS database and any derivatives thereof, software for processing these files and information about the obtaining and distribution of the files, and to stop any further unlawful dissemination of personal data. ...

The present criminal proceedings were opened in connection with facts directly relating to the exchange of information in electronic form and therefore it is important to take into account the specific features of cybercrime, where the preservation, acquisition and recording of evidence in electronic form is delicate owing to the fact that such evidence can be modified or destroyed very quickly; it is also important to take into account the *mens rea* of the crime. ... I find that in this particular case the search under the urgent procedure was admissible. ...

Since [the applicant] is an in-house and not a freelance journalist, there are no grounds to assume that material directly related to her professional activity would definitely be stored at her home, especially if she herself did not indicate that this was the case. If any such indications had been given, the investigating judge would have had grounds to evaluate such facts. ...

In view of the above, I find that the 12 May 2010 decision by the investigating judge is justified and lawful and there are no grounds to revoke it; I am also of the opinion

that there are no reasons to consider that the results of the actions under consideration are void.

At the same time it should be explained to [the applicant] that any complaints of alleged breaches during the search or other investigative activities ought to be submitted in accordance with the procedure laid down in section 337 of the Criminal Procedure Law ...”

#### **D. Other review by the domestic authorities**

26. On 21 May 2010 a senior prosecutor replied to the applicant’s complaints about the investigator’s decision to conduct the search, its authorisation by the supervising prosecutor and the police officers’ actions while carrying it out. He stated that he could not examine the grounds for the search; these had in any case been examined by the investigating judge and the President of the court.

27. Moreover, he found that on 11 May 2010 the supervising prosecutor had lawfully authorised the search warrant. As to the return of the seized items, the matter was to be discussed with the competent investigating authority. Finally, a note was added that the applicant could lodge a complaint against the senior prosecutor’s reply with another branch of the prosecutor’s office.

28. The Internal Security Bureau of the State Police (*Valsts policijas Iekšējās drošības birojs*), of its own motion, examined the police officers’ conduct during the search. On 20 July 2010 the applicant was informed that no breaches of either the Criminal Procedure Law or the general principles of police officers’ ethics had been found.

#### **E. Review by the Ombudsman**

29. On 13 May 2010 the Ombudsman opened an inquiry into the search at the applicant’s home with a view to ascertaining whether the search had interfered with her freedom of expression and whether the domestic authorities had had sufficient regard to the assessment of the limitations imposed on the freedom of the press.

30. On 28 September 2010 he delivered his opinion, which was not binding on the domestic authorities. He examined not only whether the alleged violation of the applicant’s freedom of expression had taken place, but also whether there was an effective monitoring system in the country in that regard. As concerns the alleged interference with freedom of expression, and proportionality, he noted the following [emphasis as in the original]:

“The protection of journalistic sources is provided for under section 22 of the Law [on Press and Other Mass Media] ... This does not mean the absolute immunity of a

journalist in criminal proceedings, but the necessity to respect journalists' professional interests and legal guarantees.

The decision of the competent investigating authorities to search the applicant's place of residence was based on the information made public in the *De facto* broadcast. According to the list of objects searched, it was important to secure the evidence and to clarify how the journalist had received the information about the data "leak" from SRS EDS, and who was guilty. The wording used in the search warrant – "information about the obtaining and distribution" – clearly demonstrates the purpose of the competent investigating authorities to identify the journalistic source.

That being so, the activities of the competent investigating authorities in the particular case concern[ed] the protection of journalistic sources and thus interfere[d] with the journalist's freedom of expression.

At the same time, the protection of journalistic sources is not absolute and may be restricted in certain cases in the public interest. This means that the competent investigating authorities, when taking a decision affecting a journalist, should evaluate the aspects of restriction of freedom of expression and the proportionality of such action - is the disclosure of such information truly necessary? Or maybe there are reasonable alternative measures, as specified in Principle 3 of the Recommendation [No. R(2000) 7].

[Reference to sections 12, 154, 179 and 180 of the Criminal Procedure Law] Therefore, there is a legal basis for disclosure of journalistic sources, for searches and also for the lawful and proportionate restriction of human rights in criminal proceedings. It follows that such restrictions are prescribed by law.

To assess the proportionality of those restrictions and the possibility of applying less harmful alternative means of achieving the aim, the Ombudsman asked the responsible authorities whether, for the purpose of obtaining information from the journalist, there had been sufficient grounds to opt for an emergency search out of all options offered by the [Criminal Procedure Law], rather than for a disclosure order under section 154 of the [Criminal Procedure Law].

[The prosecutor's office] replied that the purpose of the search had been to substantiate and obtain evidence in criminal proceedings, and not to identify the journalistic source, which was already known to the police; that was why disclosure under section 154 of the [Criminal Procedure Law] was not ordered. The prosecutor's office held the view that it had no right to give any opinion on the validity of the investigative action, since the activities of the investigating judge who approved the search had been examined by the President of the court.

The court substantiated the need for a search under the urgent procedure by the fact that in criminal proceedings involving a flow of electronic documents it was necessary to take into account the specifics of cybercrimes, where the preservation, obtaining and recording of electronic evidence was rather delicate because such evidence could be altered and destroyed very quickly and irreversibly.

Such a statement should be considered critically, since the officers of the State Police turned to the applicant with the request to provide information on her source on 19 February 2010, but the search under the urgent procedure was carried out on 11 May 2010. The materials submitted by the State authorities and the court to the Ombudsman do not contain any evidence of attempts by the journalist to continue unlawfully processing and further distributing the data, or to destroy such information.

The need to conduct the search under the urgent procedure has also not been explained in the assessment provided by the court, if the materials of the case provided sufficient basis to consider that the applicant most likely knew, supported or participated in the crime under investigation by simultaneously using the information for journalistic purposes. If the competent investigating authority had such information at the time of making the decision on conducting the search, it is not clear why the police did not apply the status of a suspect to the journalist before the search and did not search the journalist's place of work.

It is considered established that the decision of the court is based upon assumptions, and in reaching the decision the court has not respected the status of the journalist, whose immunity and protection against disclosure of the information source are established in the law.

Consequently, it can be concluded that by approving the search warrant issued by the competent investigating authority under the urgent procedure, the supervising prosecutor and the court made no critical assessment of the need for and validity of those actions.

The Ombudsman has reservations as to whether a search at the applicant's home under the urgent procedure was actually the most reasonable means of putting a stop to the disclosure of information at that point in the proceedings. In order to ensure compliance with the key principles of criminal proceedings established under section 12 of the [the Criminal Procedure Law], the competent investigating authority should have given more careful consideration to whether the information necessary for the investigation could have been obtained by means less harmful to the interests of the person."

His final conclusions were as follows:

"Freedom of expression includes the right not to disclose journalistic sources. Only a court, observing the principle of proportionality, may order the disclosure of an information source to protect the essential interests of private individuals or society.

By conducting the search in [the applicant's] home, purportedly in search, among other things, of information about the obtaining and distribution of the EDS database XML files, the competent investigating authority – in securing the evidence and disregarding the requirement to have a court order – discovered the identity of the applicant's source.

In authorising the search warrant issued by the investigator under the urgent procedure, the supervising prosecutor and the court failed to effect a critical examination of the urgency and the necessity of such a measure and did not sufficiently evaluate the threat to freedom of expression.

Accordingly, the freedom of expression and the right not to disclose journalistic sources enshrined in the Constitution and binding international treaties have been violated.

Since the legally protected immunity of a journalist in criminal proceedings is not incorporated in [the relevant chapter of the Criminal Procedure Law] and the domestic case-law shows that the competent investigating authorities do not pay sufficient attention to it, it would be advisable to initiate a discussion on [legislative] amendments [to the relevant provision of the Criminal Procedure Law]. In all likelihood the law should specify that it is prohibited to perform investigative activities involving journalists on premises belonging to them if there are reasonable

grounds to consider that this might restrict the scope of the rights guaranteed to journalists.”

## II. RELEVANT INTERNATIONAL AND DOMESTIC LAW

### A. International and European law

31. Several international instruments concern the protection of journalistic sources, including the Resolution on Journalistic Freedoms and Human Rights, adopted at the 4<sup>th</sup> European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994) and the European Parliament’s Resolution on the Confidentiality of Journalists’ Sources (18 January 1994, Official Journal of the European Communities No. C 44/34).

32. 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,
2. to disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and
3. to bring them in particular to the attention of public authorities, police authorities and the judiciary as well as to make them available to journalists, the media and their professional organisations.

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 2 (Right of non-disclosure of other persons)*

Other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information, should equally be protected under the principles established herein.

*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.”

33. For the precise application of the Recommendation, the explanatory notes specified the meaning of certain terms. As regards the terms “source” and “information identifying a 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.

d. Information identifying a source

18. In order to protect the identity of a source adequately, it is necessary to protect all kinds of information which are likely to lead to the identification of a source. The potential to identify a source therefore determines the type of protected information and the range of such protection. As far as its disclosure may lead to an identification of a source, the following information shall be protected by this Recommendation:

i. the name of a source and his or her address, telephone and telefax number, employer’s name and other personal data as well as the voice of the source and pictures showing a source;

ii. ‘the factual circumstances of acquiring this information’, for example the time and place of a meeting with a source, the means of correspondence used or the particularities agreed between a source and a journalist;

iii. ‘the unpublished content of the information provided by a source to a journalist’, for example other facts, data, sounds or pictures which may indicate a source’s identity and which have not yet been published by the journalist;

iv. ‘personal data of journalists and their employers related to their professional work’, i.e. personal data produced by the work of journalists, which could be found, for example, in address lists, lists of telephone calls, registrations of computer-based communications, travel arrangements or bank statements.

19. This list is not necessarily exhaustive. Paragraph c has to be read and interpreted in a manner which allows an adequate protection of a source in a given case. The decisive factor is whether any additional information is likely to lead to the identification of a source.”

## B. Domestic law

34. Section 22 of the Law on Press and Other Mass Media (*likums “Par presi un citiem masu informācijas līdzekļiem”*) lays down the principle of non-disclosure in Latvian law. The mass media have a right not to disclose sources of information (paragraph 1). An order to disclose a source of information may be made only by a court, after considering proportionality, for the protection of the essential interests of private individuals or society (paragraph 2).

35. Section 154 of the Criminal Procedure Law (*Kriminālprocesa likums*) sets forth the circumstances when a journalist or an editor is under

obligation to disclose a source of information. Such an order may be made only by a court (paragraph 1). The investigating judge, upon an application by an investigator or a public prosecutor, hears the parties and examines the material in the case file (paragraph 2) and assesses the proportionality of the measure (paragraph 3). The decision is amenable to judicial review by a higher-court judge, under a written procedure, whose decision is final (paragraph 4).

36. Section 180 of the Criminal Procedure Law lays down the procedure for issuing a search warrant. Under the ordinary procedure, the investigating judge or court authorises the search upon an application by the competent investigating authority (*procesa virzītājs*), having examined the case file (paragraph 1). Under the urgent procedure, when a delay could allow the relevant documents or objects to be destroyed, hidden or damaged or the person to abscond, the search warrant may be issued by the competent investigating authority. Authorisation by a public prosecutor is necessary for a search warrant issued by the investigator (paragraph 3). A search warrant issued under the urgent procedure has to be submitted on the following day to the investigating judge, who then examines the lawfulness of and the grounds for the search; if an investigative action is unlawful, the investigating judge declares such evidence inadmissible in the criminal proceedings and decides on further action in relation to the evidence (paragraph 5).

37. Section 337 of the Criminal Procedure Law lays down the procedure for submission of complaints. A complaint shall be addressed to and lodged with the authority that is competent to decide on it; it can also be submitted to an official whose action or decision is contested (paragraph 1). A complaint about an action or decision by an investigating judge shall be forwarded for examination to the President of the court (paragraph 2, part 4). When examining a complaint, the President of the court has to decide on merits; his/her decision is final (paragraph 4).

38. Section 12 of the Criminal Procedure Law provides as follows:

#### **Section 12 - Human rights guarantees**

“1. Criminal proceedings shall be performed in compliance with internationally recognised human rights, without imposing unjustified criminal procedural obligations or disproportionate interferences with a person’s private life.

2. Human rights shall be restricted only for public safety reasons and only in accordance with the procedure specified by this Law, regard being had to the nature and danger of the criminal offence.

3. The application of security measures depriving people of their liberty, and the infringement of the inviolability of private premises, or of the confidentiality of correspondence and means of communication, shall be allowed only with the consent of an investigating judge or court.

4. Officials involved in the conduct of criminal proceedings shall protect the confidentiality of private life and of commercial activities. The relevant information shall be obtained and used only if such information is necessary to establish the truth.

5. An individual shall have the right to request the exclusion from the criminal case of information concerning ... his or her private life ... if such information is not necessary for the fair resolution of the criminal proceedings.”

39. On 13 May 2010 the Latvian Parliament (*Saeima*) adopted legislative amendments to the effect that all public institutions were to make available on the internet information about the salaries paid to their officials. These amendments took effect on 15 June 2010.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

40. The applicant complained that she had been compelled to disclose information that had enabled a journalistic source to be identified, in violation of her right to receive and impart information as guaranteed by Article 10 of the Convention. In her submission, the interference with her freedom of expression was not prescribed by law, did not pursue a legitimate aim and was not necessary in a democratic society. The applicant further asked the Court to clarify the duties of the State under this provision in these circumstances. Article 10 of the Convention reads as follows:

“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.”

41. The Government denied that there had been a violation of that Article.

#### A. Admissibility

42. Firstly, the Government raised a preliminary objection that the applicant had not supplied the Court with any copies of her complaints lodged with the domestic authorities, and had thus failed to demonstrate that

the issues complained of before the Court had been raised at least in substance at the national level. They considered that she had thereby failed to comply with Article 34 of the Convention and had not lodged her application properly, in conformity with the requirements of Rule 47 of the Rules of Court.

43. The applicant disagreed and insisted that her application, together with the enclosed documents, had complied with Article 34 of the Convention and Rule 47 of the Rules of Court. She had submitted the relevant available documents which, according to her, were the search warrant and the final decision dismissing her complaints. The latter document as well as the Ombudsman's opinion contained a sufficient summary of her complaints at the national level.

44. The Court reiterates that it examines the applications lodged before it within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court according to their content and their meaning. It further notes that together with her application form the applicant provided evidence that she had approached the domestic authorities and that she had received the final domestic decision of 14 June 2010, which, together with other relevant documents, set out the scope of her complaints at the domestic level. The Court would also add that Rule 47 of the Rules of Court specifically instructs the applicants to submit only "relevant documents" (in the French text – "*documents pertinents*").

45. In such circumstances the Court considers that the application form and the evidence submitted by the applicant contained sufficient information for those documents to be considered "an application" within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court. It follows that the Government's objection in this regard should be dismissed.

46. Secondly, the Government raised a preliminary objection concerning the exhaustion of domestic remedies, relying on the Court's decision in *Grišankova and Grišankovs v. Latvia* (no. 36117/02, ECHR-2003 II (extracts)). They considered that the applicant should have lodged a complaint with the Constitutional Court if she considered that the procedure under section 180 of the Criminal Procedure Law as applied to her lacked sufficient procedural guarantees, or that the failure to provide additional statutory safeguards in respect of journalists regarding non-disclosure privilege (sections 121 and 122 of the Criminal Procedure Law) had interfered with her human rights. She should have raised the issue of compliance of these legal provisions with the Latvian Constitution and the Convention itself.

47. The applicant disagreed and submitted that the Latvian model of a constitutional complaint was subject to several limitations, relying, *inter alia*, on the Court's decision in *Liepājnieks v. Latvia* (no. 37586/06, 2 November 2010).

48. The Court reiterates that it has already on several occasions dismissed a similar preliminary objection by the Latvian Government as concerns the Constitutional Court in cases that relate to the interpretation or application of a legal provision, or an alleged legislative gap (see *Liepājnieks*, cited above, §§ 73-76; *Savičs v. Latvia*, no. 17892/03, §§ 113-117, 27 November 2012; and *Mihailovs v. Latvia*, no. 35939/10, §§ 157-158, 22 January 2013). The Court sees no reason to decide otherwise in the present case. It follows that the Government's objection in this regard should be rejected.

49. Finally, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The applicant**

50. First of all, the applicant in substance maintained that there had been an interference with her freedom of expression. She pointed out that searches of journalists' homes and workplaces undermined the protection of sources to an even greater extent than direct orders to disclose a source.

51. The applicant did not deny that there had been a statutory basis for the interference under section 180 of the Criminal Procedure Law. She denounced the quality of the law and argued that the law should be both sufficiently accessible and foreseeable, that is, formulated with sufficient precision to enable an individual – if need be with appropriate advice – to regulate his conduct. She noted that Latvian law did not set any limits as to the grounds for conducting a search of a journalist or the methods used. The applicant referred in this regard to the Court's case-law under Article 10 of the Convention and to Recommendation No. R (2000) 7 of the Committee of Ministers of the Council of Europe on the right of journalists not to disclose their sources of information (see paragraphs 32 and 33 above).

52. The applicant further specified that she did not claim that absolute immunity from criminal proceedings should be granted to journalists or that the existing regulation in Latvia was unconstitutional. She argued that the law in its substantive sense and the actions taken by officials had to be foreseeable.

53. According to the applicant, the Latvian legal system did not provide her with adequate legal safeguards to allow an independent assessment of whether the interests of the criminal investigation overrode the public interest in the protection of journalistic sources. In the applicant's case the search warrant did not contain any exceptions or limitations on the search or

the documents to be seized that might safeguard her right not to disclose her sources or any information leading to them. The applicant did not contest that a judicial review as such was possible. She was rather of the opinion that it had not been possible for the investigating judge to make a proper assessment as there were no clear criteria or guidance in the domestic law as regards searches of journalists, save for cases when a court order under section 154 of the Criminal Procedure Law was issued, which was not the case here.

54. She insisted that the quality of Latvian law was deficient in terms of the lack of foreseeability as there were no criteria in the law or any other regulations to prevent officials from erroneously applying or interpreting the law and from interfering with journalists' right not to disclose information directly or indirectly related to their sources. The applicant argued that her case had not been an isolated incident, and referred to a search of another journalist on 15 December 2011 as an example.

55. Secondly, the applicant argued that there had been no legitimate aim for the interference with her freedom of expression. In the applicant's view, the aim of the search had been to identify her source and to obtain information or substantiate what the authorities already knew about I.P. This could not possibly be considered as a legitimate aim.

56. The applicant also disagreed with the Government that the interference had pursued the legitimate aim of prevention of crime and protection of the rights of others. She emphasised that the information she had reported on served a legitimate public interest and contributed to the public debate on solidarity regarding the implementation of austerity measures. No personal information that did not serve that purpose had been revealed and no claims had been lodged in that regard by the individuals concerned. Therefore, there had been no reason to consider that any further disclosure of data by the applicant would be in breach of any Article 8 rights. After all, if the aim had been to prevent further disclosure of personal data, why had the police, having copied all the files, returned the data storage devices to the applicant without deleting any files or information contained therein?

57. If, however, the aim of the search had been to prevent the applicant from further disseminating information of legitimate public interest, under no circumstances, she argued, could that be considered a legitimate aim. Similarly, the securing of evidence for the purposes of detecting and prosecuting a crime could not possibly override the rights and interests in the protection of journalistic sources.

58. Thirdly, the applicant submitted that the interference had not been necessary in a democratic society as it did not correspond to any pressing social need. The applicant argued that a fair balance should have been struck in the present case between the general public interest in the protection of journalistic sources and the interests of the investigation. The

criminal investigation had related to alleged arbitrary access to the EDS database. It had never been disputed that poor security had made the access possible. If any crime had been committed at all, it was a minor one. It was not among the crimes listed in the above-cited Recommendation as serious enough to justify the interference with the applicant's rights. Accordingly, the particular interests of the investigation were not sufficiently vital and serious to prevail over the general public interest of source protection.

59. In response to the Government's argument that the search had not been carried out with a view to establishing the identity of the applicant's source, the applicant noted that she had no way of knowing what information had been at the disposal of the authorities before the search and seizure were authorised and conducted. According to the information provided by her source, "Neo" was the head of a group of people who claimed to have discovered a means of downloading information from the EDS database without cracking any passwords, thereby revealing gaps in the VID's security system. The applicant had publicly announced during the 14 February 2010 broadcast that "Neo" claimed to be leading a group who called themselves "4ATA" and whose aim, among other things, was to strive for a better future for Latvia by making sure that public officials responsible for negligence and corruption were held to account. The search warrant had also authorised the search for information concerning other members of that group.

60. The applicant further argued that the information contained in her data storage devices, to which the Government referred as evidence, was covered by the journalist's right to protect his sources. She referred to principle 6 of the Recommendation and the terms used therein. In her view the wording "information about the obtaining and distribution of the files" used in the search warrant clearly demonstrated that the purpose was to identify the source of information or at least to verify it. The Government's reference to a reasonable suspicion concerning the applicant's connection with the criminal offence showed a dangerous understanding and approach by the State authorities. She referred to the Court's case-law and emphasised that the right not to disclose journalistic sources was not a mere privilege which could be granted or taken away depending on the lawfulness or unlawfulness of their sources (see *Tillack v. Belgium*, no. 20477/05, § 65, 27 November 2007).

61. The applicant submitted that as soon as she received information from her source, she had informed the SRS about the possible security breach and about the need to prevent further data leaks. She had also verified the accuracy of the information. When there was no doubt that the leak had taken place and that the information was true, the applicant – acting in her capacity as a journalist and in good faith – had announced information that was of legitimate public interest. She insisted that the mere fact that a journalist had been in contact with the source or any other suspect

could not be enough to allege that he or she might be connected with the criminal offence and deserved to be searched. Furthermore, the Government had not demonstrated that there had been any grounds to assume – in order to justify the search under the urgent procedure – that information or documents possessed by the applicant would be altered or destroyed. The applicant had not demonstrated any negative attitude towards the investigation other than exercising her right of non-disclosure.

**(b) The Government**

62. The Government did not deny that there had been interference. They believed, however, that the interference at issue was prescribed by law, pursued a legitimate aim and was necessary in a democratic society.

63. Firstly, they submitted that the search had a legal basis in national law. They relied on section 180, paragraph 3 of the Criminal Procedure Law and contended that the domestic procedural requirements for conducting the search had been duly complied with.

64. As concerns the quality of law, the Government agreed with the applicant that there were no specific procedures to be followed for searches of journalists' premises. The Government, however, had serious doubts as to whether any statutory regulation of the sort was in place in the rest, or at least in the majority, of the Council of Europe Member States. In any event, they contended that the procedure envisaged by section 180 of the Criminal Procedure Law provided the applicant with adequate legal safeguards to allow an independent assessment of whether the interests of the criminal investigation overrode the public interest in the protection of journalistic sources.

65. The Government referred to section 180, paragraph 1 of the Criminal Procedure Law and noted that in Latvia, as a rule, only an investigative judge or court could authorise a search, upon an application by the competent investigating authority. Under this general procedure any search, including those carried out on journalists, was subjected to prior judicial review in keeping with the principles enshrined in section 12 of the Criminal Procedure Law.

66. At the same time, they also noted that section 180, paragraph 3, provided for an exception from the general rule in the event of particular urgency, which was sufficiently precisely defined in their view. The Government further explained that under both procedures the investigating judge and the supervising prosecutor were presented with the criminal case file in its entirety, and that they were obliged to have due regard to all the circumstances of the case, and had to consider the impact of the search on the individual's human rights, including freedom of speech, in the light of the criteria set out in section 12 of the Criminal Procedure Law. The Government argued that for the purposes of the urgent procedure, the

supervising prosecutor exercised his judicial functions and was an independent and impartial decision-making body.

67. The Government believed that the system in place in Latvia was in no way unusual. In their opinion it was doubtful that in all the Council of Europe Member States prior judicial review was ensured in all cases, without any exceptions in relation to searches carried out on journalists. In any event, where a search was authorised by the supervising prosecutor, there was a statutory requirement for immediate *a posteriori* judicial review by the investigating judge (see paragraph 36 above). Thus, the legislator had provided for two-tier scrutiny in cases where searches were performed under the urgent procedure.

68. The Government also pointed out that the investigating judge had sufficiently wide, binding and enforceable authority to revoke the search warrant. As indicated by the the President of the court in her decision of 14 June 2010, the investigating judge had the power and the obligation to assess the scope of the information seized as a result of the search, namely, whether the information seized could possibly be related to the applicant's professional activities. Thus, there existed a procedure for identifying and withholding from disclosure information that could lead to the identification of journalistic sources other than that which had value as evidence for the purposes of the pending criminal proceedings.

69. In the light of the above considerations, the Government considered the circumstances of the present case to be fundamentally different from those of *Sanoma Uitgevers B.V. v. the Netherlands* [GC] (no. 38224/03, 14 September 2010), as a statutory obligation of *a posteriori* judicial review was in place.

70. Secondly, the Government submitted that the interference at issue had pursued the legitimate aim of preventing crime – that concept encompassing the securing of evidence for the purposes of detecting and prosecuting crime – and protecting the rights of others, by preventing the further disclosure of personal data.

71. Thirdly, the Government insisted that the interference had been “necessary in a democratic society”. In this regard they referred to the general principles reiterated by the Court (in *Kasabova v. Bulgaria*, no. 22385/03, § 54, 19 April 2011, and *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 85-86, 7 February 2012). The Government also referred to the margin of appreciation accorded to the States in striking the appropriate balance. The balancing exercise in the present case involved the applicant's right to freedom of expression against the right of hundreds of thousands of individuals in Latvia to the protection of their personal data.

72. The Government affirmed that the aim of the search had not been to reveal journalistic sources, and argued that the present case should be distinguished from such cases as *Goodwin v. the United Kingdom* (27 March 1996, *Reports of Judgments and Decisions* 1996-II), *Roemen and*

*Schmit v. Luxembourg* (no. 51772/99, ECHR 2003-IV), *Voskuil v. the Netherlands* (no. 64752/01, 22 November 2007) and *Tillack* (cited above). The Government pointed out that at the time of the search at the applicant's home the police had already discovered Neo's identity and had known by which means the data had been obtained. I.P. had been subjected to searches and had been apprehended by the police prior to the search at the applicant's home. Nor was the search aimed at identifying or disclosing other sources of information. It was the Government's view that the search warrant had demonstrated that its aim was both to find and seize XML files or their derivatives downloaded from the EDS database, software for processing these files, information concerning the acquisition of the files, as well as other objects containing information about the criminal offence under investigation, and to prevent further dissemination of the personal data of hundreds of thousands of people. The Government insisted that regard should be had to the nature of the offence under criminal investigation and the value which the objects of the search might have had for the investigation.

73. At the material time the state authorities had been faced with the task of classifying the crime allegedly committed by I.P., including establishing any aggravating or mitigating circumstances: they had to establish whether it had been intentional or accidental, whether there had been plans to hand the data over to any third persons, and whether I.P. had acted alone or with accomplices. The Government also argued that they had to establish the applicant's role – whether she had reported on the data in her capacity as a journalist, that is whether it “served legitimate journalistic purposes”, or she was the organiser, or an abettor or accomplice to the offence.

74. According to the Government, prior to accepting the search warrant issued by the police investigator, the supervising prosecutor had duly acquainted herself with the criminal case file materials. It was her informed opinion that the authority responsible for the criminal proceedings had reasonable suspicion that the applicant's home might contain important information that might serve as evidence for the purposes of the criminal proceedings. The applicant had accordingly been requested to hand over the data storage devices that might serve as evidence in the criminal proceedings.

75. The Government also pointed out that at the initial stage of the criminal proceedings the competent investigating authority could have resorted to the procedure under section 154 of the Criminal Procedure Law and sought a disclosure order from a court. However, they chose not to do this and other investigative activities followed and the alleged perpetrator was identified by other means. The Government wished to emphasise that the domestic authorities deliberately chose to pursue a more time-consuming course of investigation, thus clearly demonstrating their respect for freedom of expression and the rights of journalists not to

disclose their sources. The Government held the view that the competent authorities had properly balanced the conflicting interests of the protection of journalistic privilege against those of the criminal investigation.

76. Furthermore, when the urgent search was authorised the police had established that I.P.'s telephone conversations with the applicant corresponded to the dates when the XML files from the EDS database had been downloaded. Thus the police had reasonable suspicion that the applicant might be connected with the criminal offence and that she possessed the downloaded files or other evidence.

77. Finally, the Government argued that no alternative means of search and seizure had been available and that the domestic authorities had feared the destruction, concealment or damaging of evidence after I.P.'s arrest. The urgent procedure had therefore been necessary. Nor could any other means have been employed than the seizure of the applicant's data storage devices, which the Government considered had been sufficiently precisely defined in the search warrant. Referring to the technical examination that followed the search at the applicant's home, the Government affirmed that only the expert had had access to the seized devices and that the information had been deleted once the examination was completed.

## *2. The Court's assessment*

78. The Court will start by addressing the Government's argument that the search had not been carried out with a view to establishing the identity of the applicant's source of information but rather to gather evidence in the criminal proceedings against I.P., whose identity had already been established at that point in the investigation. The Court considers that the issue to be determined in the present case is whether the search at the applicant's home, who was a well-known journalist at the material time, in view of obtaining information in such circumstances falls within the scope of Article 10 of the Convention.

79. The Court observes that the parties agree that I.P. was arrested on the same day, one and a half hours before the search at the applicant's home, in connection with the criminal proceedings concerning the data leak. The Court does not have any reason to doubt that the domestic authorities had a reasonable suspicion that I.P. had some connection with the data leak at the time of the search at the applicant's home. However, the fact remains that the investigating authorities searched the home of the applicant journalist on the basis of a wide-reaching search warrant. The Court considers that the circumstances invoked by the Government cannot exclude the applicability of Article 10 of the Convention in the present case.

80. The Court has already found that Article 10 of the Convention does not only protect anonymous sources assisting the press to inform the public about matters of public interest (see *Nordisk Film & TV A/S v. Denmark* (dec.), no. 40485/02, ECHR 2005-XIII). In that case the Court considered

that Article 10 of the Convention applied even when a journalist had worked undercover and had used a hidden camera to film participants in a television programme, who could thus not be regarded as “sources of journalistic information in the traditional sense”. It was rather the compulsory handover of his research material that was susceptible of having a chilling effect on the exercise of journalistic freedom of expression. In that case, the identity of the journalistic sources in the traditional sense was adequately protected, and the handing over of the research material in relation to an alleged perpetrator, whose actions were under criminal investigation and whose identity was known to the police, was not deemed disproportionate to the legitimate aim pursued and the reasons given by the national authorities were considered to be relevant and sufficient.

81. The Court’s understanding of the concept of journalistic “source” is “any person who provides information to a journalist”; it understands “information identifying a source” to include, as far as they are likely to lead to the identification of a source, both “the factual circumstances of acquiring information from a source by a journalist” and “the unpublished content of the information provided by a source to a journalist” (see Recommendation No. R (2000) 7 and its explanatory notes, quoted in paragraphs 32 and 33 above).

82. The Court notes that the Government admitted that the search at the applicant’s home had been aimed at gathering “information about the criminal offence under investigation” and that it authorised not only the seizure of the files themselves but also the seizure of “information concerning the acquisition of these files”. While recognising the importance of securing evidence in criminal proceedings, the Court emphasises that a chilling effect will arise wherever journalists are seen to assist in the identification of anonymous sources (see *Financial Times Ltd and Others v. the United Kingdom*, no. 821/03, § 70, 15 December 2009). In the present case, irrespective of whether the identity of the applicant’s source was discovered during the search, as found by the Ombudsman, or at the very least confirmed during that search, as submitted by the applicant, it nevertheless remains that the seized data storage devices contained not only information capable of identifying her source of information, pertaining either to “the factual circumstances of acquiring information” from her source or to “the unpublished content” of that information, but also information capable of identifying her other sources of information. It does not need to be further demonstrated that the search yielded any results or indeed proved otherwise productive (see *Roemen and Schmit*, cited above, § 57, and *Ernst and Others v. Belgium*, no. 33400/96, § 103, 15 July 2003). The Court therefore does not accept the Government’s argument that the search did not relate to journalistic sources.

83. Accordingly, the Court concludes that the search at the applicant's home and the information capable of being discovered therefrom comes within the sphere of the protection under Article 10 of the Convention.

**(a) Interference**

84. The parties agree that there has been an "interference" with the applicant's freedom to receive and impart information. The Court sees no reason to hold otherwise.

**(b) Prescribed by law**

85. The Court refers to the applicable principles under Article 10 of the Convention (see *Sanoma Uitgevers*, cited above, §§ 81-83).

86. The Court notes that the parties agree that the search at the applicant's home had a statutory basis, namely, section 180, paragraph 3 of the Criminal Procedure Law. The applicant, relying to a large extent on the Grand Chamber judgment in the above-cited *Sanoma Uitgevers* case, argued that the law in Latvia concerning urgent searches in relation to journalists lacked foreseeability. The Government, however, drew a distinction between the two cases on the facts, because in the present case the law had provided for the investigating judge's involvement.

87. The Court reiterates that the above-cited *Sanoma Uitgevers* case concerned the quality of Dutch law and the lack of adequate legal safeguards to enable an independent assessment of whether the interests of the criminal investigation overrode the public interest in the protection of journalistic sources. The situation in Latvia in this respect, as noted by the Government, is quite different. Indeed, in accordance with the ordinary procedure under section 180 of the Criminal Procedure Law, the investigating judge weighs the potential risks and respective interests prior to authorising a search. Also, under section 154 of the same Law the investigating judge makes this assessment prior to issuing a disclosure order. Therefore, it appears that in principle there are procedural safeguards in place in Latvia by virtue of prior judicial scrutiny by the investigating judge for searches under the ordinary procedure and for disclosure orders.

88. The Court notes, however, that the present applicant alleged the lack of adequate legal safeguards for searches under the urgent procedure, which was applied to her on the basis of section 180, paragraph 3 of the Criminal Procedure Law. The Court has already acknowledged 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 (see *Sanoma Uitgevers*, cited above, § 91).

89. The Court observes that under Latvian law the investigating judge examines “the lawfulness of and the grounds for the search” carried out under the urgent procedure on the day following the search. It cannot therefore be said that there are no safeguards that render the relevant legal provision foreseeable as such. Although it appears that the investigating judge’s approval of the search warrant was not made in a separate decision in the present case, but rather was limited to an “approval” written on the search warrant itself, the reasons for that decision were explained in writing by the President of the court upon examining the applicant’s complaint against the decision.

90. The Court notes that unlike in the *Sanoma Uitgevers* case, the investigating judge has the authority under Latvian law to revoke the search warrant and to declare such evidence inadmissible (see paragraph 36 above). Moreover, according to the information submitted by the Government, which the applicant did not dispute, the investigating judge also has the power to withhold the disclosure of the identity of journalistic sources (*ibid.*). The Court considers that the last two elements pertaining to the investigating judge’s involvement in an immediate *post factum* review are sufficient to differentiate this case from the above-mentioned *Sanoma Uitgevers* case (see also *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, no. 39315/06, § 120, 22 November 2012, where a similar distinction was made). The Court, therefore, does not deem it necessary to examine the Government’s submissions concerning the role of the supervising prosecutor in authorising searches under the urgent procedure.

91. In these circumstances the Court considers that the interference complained of was “prescribed by law” within the meaning of Article 10 § 2 of the Convention.

**(c) Legitimate aim**

92. The parties disputed this element, but the Court could accept that the interference was intended to prevent disorder or crime and to protect the rights of others, both of which are legitimate aims.

**(d) Necessary in a democratic society**

93. The Court refers to the applicable principles under Article 10 of the Convention (see *Financial Times Ltd and Others*, cited above, §§ 59-63, and, more recently, *Telegraaf Media Nederland Landelijke Media B.V. and Others*, cited above, §§ 123-126). In exercising its supervisory function, the Court’s task is not to take the place of the national authorities, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the

provisions of the Convention relied upon (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 86, 7 February 2012).

94. The Court must accordingly examine the reasons given by the authorities for the applicant's search, together with the scope of the search warrant, in order to ascertain whether those reasons were "relevant" and "sufficient" and thus whether, having regard to the margin of appreciation afforded to the national authorities, the interference was proportionate to the legitimate aims pursued and whether it corresponded to a "pressing social need".

95. The Court notes, at the outset, that there is a fundamental difference between this case and other cases, where disclosure orders have been served on journalists requiring them to reveal the identity of their sources (see the above-cited cases of *Goodwin*, *Voskuil*, *Financial Times Ltd and Others* and *Telegraaf Media Nederland Landelijke Media B.V. and Others*). The distinguishing feature lies not, as the Government suggested, in the fact that I.P.'s identity had been known to the investigating authorities prior to the applicant's search, which fact does not remove the applicant's protection under Article 10 of the Convention (see paragraphs 78-83 above). The Court has already held that a search conducted with a view to identifying a journalist's source is a more drastic measure than an order to divulge the source's identity (see the above-cited cases *Roemen and Schmit*, § 57, and *Ernst and Others*, § 103). The Court considers that it is even more so in the circumstances of the present case, where the search warrant was drafted in such vague terms as to allow the seizure of "any information" pertaining to the crime under investigation allegedly committed by the journalist's source, irrespective of whether or not his identity had already been known to the investigating authorities. As the Court has already noted in *Roemen and Schmit* and *Ernst and Others*, investigators who raid a journalist's workplace or home unannounced and are armed with search warrants have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist. The Court reiterates that limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court.

96. As to the reasons for the search of 11 May 2010, the Court notes that according to the search warrant, issued by the investigator under the urgent procedure, the factual basis for the search was the applicant's communication with I.P., by phone and possibly in person, on several occasions prior to the broadcast of 14 February 2010. The Government have submitted to the Court that the investigating authorities were faced with the task of classifying the crime allegedly committed by I.P. and establishing the applicant's role. The Court, however, does not consider that the reasons given by the domestic authorities are "relevant" and "sufficient" in the circumstances of the present case or correspond to a "pressing social need".

97. The Court notes that the subject-matter on which the applicant reported and in connection with which her home was searched made a twofold contribution to a public debate. It was primarily aimed at keeping the public informed about the salaries paid in the public sector at a time of economic crisis, when a variety of austerity measures had been introduced. It is not insignificant that, around the same time, legislative amendments were being drafted to make information concerning salaries in public institutions available to the general public (see paragraph 39 above). In addition, the applicant's broadcast also exposed security flaws in the database of the State Revenue Service, which had been discovered by her source. Admittedly, the actions of her source are subject to a pending criminal investigation. The applicant herself, however, for the purposes of this investigation was questioned as a witness; it appears that her procedural status remained unaltered throughout this investigation. The Court emphasises that the right of journalists not to disclose their sources cannot be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution (see *Tillack*, cited above, § 65). Given the multiple interests in issue, the Court emphasises that the conduct of the source will merely operate as one factor to be taken into consideration in carrying out the balancing exercise required under Article 10 § 2 of the Convention (see *Financial Times Ltd and Others*, cited above, § 63).

98. The Court observes that the broadcast during which the applicant informed the public about the data leak from the EDS was aired on 14 February 2010, that is, nearly three months before the search at the applicant's home. According to the investigator, since that date there had been no further communication between the applicant and her source. In this respect, the Court notes that when the investigating authorities, almost three months after the broadcast and after the applicant had agreed to testify, decided that a search at her home was necessary, they proceeded under the urgent procedure without any judicial authority having properly examined the relationship of proportionality between the public interest of investigation, on the one hand, and the protection of the journalist's freedom of expression, on the other hand.

99. The Court will now turn to the reasons advanced for the search under the urgent procedure. According to national law, such search could be envisaged only if the delay could allow the relevant documents or objects to be destroyed, hidden or damaged or the person to abscond (see paragraph 36 above). In the case at hand, the reasons spelled out in the search warrant for the urgency was "to prevent the destruction, concealment or damaging of evidence" without further explanation or reference to particular facts or any other indication. It is not clear from the case materials on what grounds the above-mentioned assertion was made and in what context. The Government

insisted that the applicant's role had not been clear at the time of the search. However, it has not been suggested that during the preliminary investigation any information was acquired linking the applicant to I.P. in any other way than in her capacity as a journalist; her status as a witness in the criminal proceedings only further evidences that. On the contrary, it was noted in the search warrant itself that the applicant's last communication with I.P. had been on the day of the broadcast. In these circumstances only weighty reasons could have justified the urgency of the applicant's search.

100. The Court has already noted above that it may be impracticable for the prosecuting authorities to state elaborate reasons for urgent searches; in such circumstances the necessary assessment of the conflicting interests could be carried out a later stage, but in any event at the very least prior to the access and use of the obtained materials (see paragraph 88 above). In Latvia, according to the Government, the assessment is carried out by the investigating judge on the next day following an urgent search. In the present case, however, no further reasons were given either by the investigating judge or by the President of the court who subsequently examined the applicant's complaint against the decision of the investigating judge. Both judges limited themselves to finding that the search did not relate to the journalist's sources at all, so they did not proceed to examine the conflicting interests. For the reasons explained above (see paragraphs 78-83) the Court cannot subscribe to such a finding.

101. The Court considers that any search involving the seizure of data storage devices such as laptops, external hard drives, memory cards and flash drives belonging to a journalist raises a question of the journalist's freedom of expression including source protection and that the access to the information contained therein must be protected by sufficient and adequate safeguards against abuse. In the present case, although the investigating judge's involvement in an immediate *post factum* review was provided for in the law, the Court finds that the investigating judge failed to establish that the interests of the investigation in securing evidence were sufficient to override the public interest in the protection of the journalist's freedom of expression, including source protection and protection against the handover of the research material. The scarce reasoning of the President of the court as to the perishable nature of evidence linked to cybercrimes in general, as the Ombudsman rightly concluded, cannot be considered sufficient in the present case, given the investigating authorities' delay in carrying out the search and the lack of any indication of impending destruction of evidence. Nor was there any suggestion that the applicant was responsible for disseminating personal data or was implicated in the events other than in her capacity as a journalist; she remained "a witness" for the purposes of these criminal proceedings. If the case materials did include any indication in that regard, it was the investigating judge's responsibility to carry out the necessary assessment of the conflicting interests, which was not done.

102. The foregoing considerations are sufficient to enable the Court to conclude that “relevant and sufficient” reasons for the interference complained of were not given. There has therefore been a violation of Article 10 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

103. The applicant also complained that the search constituted unjustified interference with her right to respect for her home and private life, as protected by Article 8 of the Convention. She noted that her laptop, which had been seized, contained private information which she did not consider was necessary for the purposes of the investigation. She objected, in that regard, to the wide scope of the search warrant.

104. The Court notes that the applicant has failed to mention, even in a summary fashion, the type of information stored in her personal laptop or other data storage devices and the extent of the alleged interference with her private life. In so far as the applicant’s right to respect for her home is concerned, the Court has already examined the factual circumstances surrounding that search under Article 10 of the Convention. It does not consider it necessary to examine the admissibility and merits of this complaint separately under Article 8 of the Convention in the circumstances of the present case (compare and contrast with the above-cited case of *Telegraaf Media Nederland Landelijke Media B.V. and Others*, where two journalists were subject to surveillance measures, such as interception and recording of their telecommunications, which necessitated concurrent examination under Articles 8 and 10 of the Convention; in the same case the order to surrender documents was examined solely under Article 10 of the Convention; compare and contrast also with the above-cited case of *Ernst and Others*, where four journalists’ homes were searched in what was a much wider operation).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage she allegedly suffered. She submitted that the search

had been a traumatic experience and had damaged her reputation in the eyes of existing and potential sources of information.

107. The Government contested this claim.

108. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

109. The applicant also claimed 12,679.53 Latvian lati (approximately EUR 18,114) for the costs and expenses incurred before the domestic courts and before the Court excluding VAT. This claim was supported by time sheets.

110. The Government considered these claims unfounded. They submitted that some of the costs incurred in the domestic proceedings were not related to the violation of Article 10 of the Convention (in connection with the Ombudsman's review and other discussions between the applicant and her lawyer). They also considered that the applicant had not adduced adequate details of the breakdown of the work carried out in relation to the domestic and Strasbourg proceedings. Lastly, the Government argued that the amount claimed for legal services was unreasonably high.

111. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Sanoma Uitgevers B.V.*, cited above, § 109). 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 10,000 covering costs under all heads.

### **C. Default interest**

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

3. *Holds* that no separate issues arise under Article 8 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos  
Registrar

David Thór Björgvinsson  
President