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

FOURTH SECTION

CASE OF ROEMEN AND SCHMIT v. LUXEMBOURG

(Application no. 51772/99)

JUDGMENT

STRASBOURG

25 February 2003

FINAL

25/05/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Roemen and Schmit v. Luxembourg,

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

Sir Nicolas Bratza, *President*,
Mr M. Pellonpää,
Mrs E. Palm,
Mrs V. Strážnická,
Mr M. Fischbach,
Mr J. Casadevall,
Mr S. Pavlovschi, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having deliberated in private on 4 February 2003,

Delivers the following judgment which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 51772/99) against the Grand Duchy of Luxembourg lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Luxembourgish nationals, Mr Robert Roemen ("the first applicant") and Ms Anne-Marie Schmit ("the second applicant"), on 23 August 1999.

2. Before the Court, the applicants were represented by Mr D. Spielmann, of the Luxembourgish Bar. The Luxembourgish Government ("the Government") were represented by their Agent, Mr R. Nothar, of the Luxembourgish Bar.

3. The first applicant alleged, in particular, that his right, as a journalist, not to disclose his sources had been violated. The second applicant principally complained of an unjustified interference with her right to respect for her home.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 12 March 2002 the Chamber declared the application partly admissible.

6. The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*) and the parties replied in writing to each other's observations on the merits.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1945 in 1963 respectively and live in Luxembourg.

9. On 21 July 1998 the first applicant, acting in his capacity as a journalist, published an article in *Lëtzebuerger Journal*, a daily newspaper, under the headline "Minister W. convicted of tax fraud" (*Minister W. der Steuerhinterziehung überführt*). He alleged in the article that the minister had broken the Seventh, Eighth and Ninth Commandments by committing value-added tax (VAT) frauds. He went on to say that a politician from the right might have been expected to take the rules so carefully drawn up by Moses more seriously. He added that a fiscal fine of 100,000 Luxembourg francs had been imposed on the minister. He said in conclusion that the minister's conduct was particularly shameful in that it involved a public figure, who should have set an example.

10. The applicants produced documents showing that the fine had been imposed on the minister concerned on 16 July 1998 by the Director of the Registration and State-Property Department (*Administration de l'enregistrement et des domaines*), pursuant to section 77(2) of the VAT Act of 12 February 1979. The decision had been served on the minister on 20 July 1998. It also appears that on 27 July 1998 the minister appealed to the District Court against the fine. In a judgment of 3 March 1999, the District Court ruled that the fine was not justified as the offence under section 77(2) of the VAT Act of 12 February 1979 had not been made out. An appeal was lodged against that judgment to the Supreme Court of Justice. The parties have not furnished any further information regarding developments in those proceedings.

11. The decision of 16 July 1998 was the subject of comment in other newspapers, such as the daily *Le Républicain Lorrain* and the weekly *d'Lëtzebuerger Land*. A Liberal member of Parliament also tabled a parliamentary question on the matter.

12. Two sets of court proceedings were issued following the publication of the first applicant's article.

13. On 24 July 1998 the minister brought an action in damages in the District Court against the first applicant and *Lëtzebuerger Journal*, arguing that they had been at fault in publishing the information concerning the fiscal fine and making comments which he said constituted an attack on his honour. In a judgment of 31 March 1999, the District Court dismissed the minister's action on the ground that the article came within the sphere of

freedom of the press. In a judgment of 27 February 2002, the Court of Appeal overturned the District Court's judgment.

14. On 4 August 1998 the minister lodged a criminal complaint.

15. On 21 August 1998 the public prosecutor requested the investigating judge to open an investigation into a suspected offence by the first applicant of handling information disclosed in breach of professional confidence, and by a person or persons unknown of breach of professional confidence. The public prosecutor stated in his submissions: "The investigation and inquiries should determine which civil servant or civil servants from the Registration and State-Property Department had any involvement in the case and access to the documents." The public prosecutor also requested the investigating judge to carry out or arrange for searches of the first applicant's home and any appurtenances, the offices of *Lëtzebuerger Journal* and the Registration and State-Property Department offices.

16. Various searches were then carried out.

A. The searches of the first applicant's home and workplace

17. On 19 October 1998 the investigating judge issued two warrants for searches to be made of the first applicant's home and workplace, the investigators being instructed to "search for and seize all objects, documents, effects and/or other items that [might] assist in establishing the truth with respect to the above offences or whose use [might] impede progress in the investigation". The first order specified that the places to be searched were "Robert Roemen's home and appurtenances, ..., any place in which he may be found and cars belonging to or used by him".

18. Both warrants were executed on 19 October 1998, but no evidence was found.

19. On 21 October 1998 the first applicant applied for orders setting aside the warrants issued on 9 October 1998 and all the investigative steps taken pursuant thereto, in particular the searches carried out on 19 October 1998. In addition to arguments based on domestic law, he alleged a violation of Article 10 of the Convention, emphasising that he was entitled to protect his journalistic sources.

20. The District Court, sitting in closed session, dismissed both applications in two orders of 9 December 1998. It noted that the minister had complained of a number of matters, including the unlawful disclosure of information to the first applicant by Registration and State-Property Department officials, which the first applicant had allegedly gone on to use in a calumnious and defamatory newspaper article. Those matters were capable of falling within the definition of various criminal offences, including breach of professional confidence, breach of fiscal confidentiality, theft, handling, calumny and criminal defamation. The District Court said that civil servants were prohibited by Article 11 of the Central and Local

Government Service Code (*statut général des fonctionnaires*) from disclosing any information that was confidential by nature which they had acquired in the course of their duties. It was a criminal offence under the General Tax Act to disclose confidential fiscal information and an offence under Article 458 of the Criminal Code for anyone receiving confidential information as part of their professional duties to divulge it. As to the handling offence, the District Court said that Article 505 of the Criminal Code applied to anyone who, by whatever means, knowingly benefited from the proceeds of a serious crime (*crime*) or other major offence (*délit*). According to legal commentators and the leading cases, handling could extend to intangible property, such as claims, but also manufacturing secrets or material covered by professional privilege. In that connection, the fact that the circumstances in which the property had been obtained had not been fully established was of little relevance if the alleged handler was aware of its unlawful origin; the classification of the primary offence was immaterial. The District Court found that the investigating judge in charge of the investigation had been entitled to order an investigative measure to obtain corroboration of the incriminating evidence already in his possession. It added that there had been no violation of Article 10 of the European Convention on Human Rights, since the searches – which had been ordered to assemble evidence of and establish the truth concerning possible criminal offences that may have led to or facilitated the publication of a newspaper article – had not infringed freedom of expression or freedom of the press.

21. By two judgments of 3 March 1999, the Court of Appeal, sitting in closed session, dismissed appeals that had been lodged against the orders of 9 December 1998.

B. The search of the second applicant's office

22. On 19 October 1998 the investigating judge issued a search warrant for immediate execution at the offices of the second applicant, who was the first applicant's lawyer in the domestic proceedings.

23. In the course of the search, the investigators seized a letter of 23 July 1998 from the Director of the Registration and State-Property Department to the Prime Minister bearing a handwritten note: "To the Heads of Division. Letter transmitted in confidence for your guidance." The applicants explained that the letter had been sent anonymously to the editorial staff of *Lëtzebuerger Journal* and the first applicant had immediately passed it on to his lawyer, the second applicant.

24. On 21 October 1998 an application was made to have the search warrant and all subsequent investigative steps set aside.

25. The District Court, sitting in closed session, granted that application on the ground that, in breach of section 35 of the Lawyers Act, the report of

the police department that had executed the warrants on 19 October 1998 did not contain the observations of the Vice President of the Bar Council, who was present during the search and seizure operations. The District Court ruled that the seizure carried out on 19 October 1998 was invalid and ordered the letter of 23 July 1998 to be returned to the second applicant.

26. The letter was returned on 11 January 1999.

27. However, on the same day the investigating judge issued a fresh search warrant with instructions to "search for and seize all objects, documents, effects and/or other items that might assist in establishing the truth with respect to the above offences or whose use might impede progress in the investigation and, in particular, the document dated 23 July 1998 bearing the manuscript note to the heads of division". The letter was seized once again later that day.

28. On 13 January 1999 the second applicant applied for an order setting the warrant aside, arguing, *inter alia*, that there had been a breach of the principle guaranteeing the inviolability of a lawyer's offices and of the privilege attaching to communications between lawyers and their clients. That application was dismissed by the District Court, sitting in closed session, on 9 March 1999. It noted, firstly, that investigating judges were empowered to carry out searches even at the homes or offices of persons whose professional duties required them to receive information in confidence and who were legally bound not to disclose it and, secondly, that the provisions of section 35 of the Lawyers Act of 10 August 1991 had been complied with. The search and seizure operations had been executed in the presence of an investigating judge, a representative of the public prosecutor's office and the President of the Bar Council. In addition, the presence of the President of the Bar Council and the observations he had considered it necessary to make regarding the protection of the professional confidence attaching to the documents to be seized had been recorded in the police department's report.

29. In a judgment of 20 May 1999, the Court of Appeal, sitting in closed session, dismissed an appeal against the order of 9 March 1999.

C. The period following the searches

30. In a letter of 23 July 1999, the first applicant enquired of the investigating judge as to progress in the case. He complained that no other steps had been taken and reminded the judge that he was not supposed to disregard the provisions of Article 6 of the Convention. He sent a similarly worded reminder on 27 September 2000.

31. On 3 October 2000 the applicants provided the Court with an article from the 29 September 2000 edition of the weekly newspaper *d'Lëtzebuerger Land*, containing the following extract:

> "... the inquiry in the W. case has thus just ended with a search of the home of a Registration and State-Property Department official, a member of the Socialist Party, and the logging of the incoming and outgoing telephone calls of at least two other members of the [Socialist Party] ..."

32. On 18 April 2001 the first applicant sent a further reminder to the investigating judge, who stated in a reply of 23 April 2001: "The judicial investigation is continuing."

33. Following a letter from the first applicant dated 13 July 2001, the investigating judge informed him the same day that the police inquiries had finished and that the investigation file had just been sent to the public prosecutor for his submissions.

34. On 16 October 2001 the first applicant referred the public prosecutor to the terms of Article 6 of the Convention and reminded him that although the investigation in the case had taken three years, he had yet to be charged.

35. On 13 November 2001 the first applicant received a summons requiring him to attend for questioning on 30 November 2001 in connection with the offences referred to in the complaint. He was informed that he was entitled to have a lawyer present.

36. The first applicant was charged by the investigating judge on 30 November 2001 with "handling information received in breach of professional confidence".

37. The applicants produced an article from the 9 January 2002 edition of the newspaper *Le Quotidien*, which revealed that the Prime Minister "considered that the methods employed by the investigating judge in the investigation into a breach of professional confidence were 'disproportionate' ".

38. An order made on 1 July 2002 by the District Court, sitting in closed session, reveals that the charges against the first applicant were ruled to be null and void and that the case file was sent to the investigating judge with jurisdiction with instructions either to end or to continue the investigation.

39. On 14 January 2003 the applicant sent the Court a letter from the investigating judge dated 9 January 2003 informing him that "the judicial investigation [had] just ended".

II. RELEVANT DOMESTIC LAW

A. General rules governing searches and seizures

40. Article 65 of the Criminal Investigation Code provides: "Searches shall be carried out in any place in which objects that would assist in establishing the truth may be found."

41. Article 66 of that Code provides: "The investigating judge shall carry out the seizure of all objects, documents, effects and other items referred to in Article 31 § 3". Article 31 § 3 provides that the following may be seized: "... and generally, anything which may assist in establishing the truth, whose use may impede progress in the investigation or which is liable to confiscation or restitution."

B. Searches and seizures at lawyers' offices

42. Section 35(3) of the Lawyers Act of 10 August 1991 provides:

> "Lawyers' workplaces and all forms of communication between lawyers and their clients shall be inviolable. If in civil proceedings or a criminal investigation a measure is taken against or in respect of a lawyer in the circumstances defined by law, such measure shall not be implemented other than in the presence of the President of the Bar Council or his or her representative or after they have been duly convened.
>
> The President of the Bar Council or his or her representative may submit observations to the authorities which ordered the measures regarding the protection of professional confidence. A record of a seizure or search shall be null and void unless it contains a statement that the President of the Bar Council and his or her representative were present or had been duly convened and any observations they considered it necessary to make."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

43. The first applicant argued that his right as a journalist to refuse to reveal his sources had been violated by the various searches. In that connection, he relied on Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Submissions of the parties

1. The first applicant

44. The first applicant submitted that the searches constituted an interference with his rights guaranteed under Article 10 of the Convention. They had been conducted in order to discover the identity of the person responsible for the alleged breach of professional confidence, in other words the journalist's source of information. The impugned measures had been disproportionate and were liable to deter journalists from performing their essential role as "watchdogs" to keep the public informed on matters of public interest. The identity of the person responsible for the breach of professional confidence could have been discovered by other means, for instance by questioning officials from the Registration and State-Property Department. In addition, ample proof that the searches had not been necessary for the prevention of disorder or crime was to be found in the investigating and prosecuting authorities' failure to take further action once the searches had been carried out.

2. The Government

45. The Government said that, on the contrary, the actions of the domestic authorities had not interfered with the first applicant's rights under Article 10. The searches had been unproductive, as the sole document seized was not one the first applicant had used as a source for his newspaper article. Any interference had, in any event, been prescribed by law, namely Article 65 of the Criminal Investigation Code, and pursued the legitimate aim of preventing disorder or crime. It had also been necessary in a democratic society and was proportionate to the aim pursued. The approach followed in *Goodwin v. the United Kingdom* (judgment of 27 March 1996, *Reports of Judgments and Decisions* 1996-II) could not be applied in the instant case. Firstly, the first applicant had not been required to reveal his source on pain of a fine, but had merely been subjected to a search that had resulted in the seizure of a single document. Secondly, the aim pursued by the interference in the instant case was far more important than that of protecting the economic interests of a private undertaking, as in *Goodwin*. The investigation into an allegation of breach of professional confidence was of direct relevance to the proper functioning of public institutions. The prevention and punishment of that offence thus constituted a "pressing social need" that justified the interference.

B. The Court's assessment

1. General principles

46. Freedom of expression constitutes one of the essential foundations of a democratic society and the safeguards to be afforded to the press are of particular importance. The protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest. Limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court. The Court's task, in exercising its supervisory function, is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In so doing, the Court must look at the "interference" complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Goodwin*, cited above, pp. 500-01, §§ 39-40).

2. Application of the above principles

47. In the present case, the Court finds that the searches of the first applicant's home and workplace indisputably constituted an interference with his rights guaranteed by paragraph 1 of Article 10. The measures were intended to establish the identities of the Registration and State-Property Department officials who had worked on the file concerning the imposition of a fiscal fine on the minister. In that connection, the Court considers that the fact that the searches proved unproductive did not deprive them of their purpose, namely to establish the identity of the person responsible for the breach of professional confidence, in other words, the journalist's source.

48. The question is whether that interference can be justified under paragraph 2 of Article 10. It is therefore necessary to examine whether it was "prescribed by law", pursued a legitimate aim under that paragraph and was "necessary in a democratic society" (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, pp. 24-25, §§ 34-37).

49. The first applicant did not dispute the Government's assertion that the interference was "prescribed by law", in this instance Articles 65 and 66 of the Criminal Investigation Code. The Court accordingly sees no reason to reach a different view.

50. The Court considers that the interference pursued the "legitimate aim" of the prevention of disorder or crime.

51. The main issue is whether the impugned interference was "necessary in a democratic society" to achieve that aim. It must therefore be determined whether the interference met a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient.

52. The Court notes at the outset that the searches in the instant case were not carried out in order to seek evidence of an offence committed by the first applicant other than in his capacity as a journalist. On the contrary, the aim was to identify those responsible for an alleged breach of professional confidence and any subsequent wrongdoing by the first applicant in the course of his duties. The measures thus undoubtedly came within the sphere of the protection of journalistic sources.

53. In dismissing the applicant's applications to have the searches set aside, the domestic courts held that there had been no violation of Article 10 of the Convention. They thus considered that the searches – which had been ordered to assemble evidence of and establish the truth concerning possible criminal offences that had led to and facilitated the publication of a newspaper article – had not infringed freedom of expression or freedom of the press.

54. The Court notes that in his newspaper article the applicant published an established fact concerning a fiscal fine that had been imposed on a minister by decision of the Director of the Registration and State-Property Department. There is, therefore, no doubt that he was commenting on a subject of general interest and that an interference "cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest" (see *Fressoz and Roire v. France* [GC], no. 29183/95, ECHR 1999-I).

55. The public prosecutor's submissions of 21 August 1998 indicate that investigations were started simultaneously into allegations against officials from the Registration and State-Property Department and the applicant in order to establish the identities of the person responsible for an alleged breach of professional confidence and of the recipient of the information so obtained. The searches of the applicant's home and workplace were carried out shortly after those submissions were made. However, no warrants were executed against officials from the Registration and State-Property Department until a later date.

56. The Court agrees with the applicant's submission – which the Government have not contested – that measures other than searches of the applicant's home and workplace (for instance, the questioning of Registration and State-Property Department officials) might have enabled the investigating judge to find the perpetrators of the offences referred to in the public prosecutor's submissions. The Government have entirely failed to show that the domestic authorities would not have been able to ascertain

whether, in the first instance, there had been a breach of professional confidence and, subsequently, any handling of information thereby obtained without searching the applicant's home and workplace.

57. In the Court's opinion, there is a fundamental difference between this case and *Goodwin*. In the latter case, an order for discovery was served on the journalist requiring him to reveal the identity of his informant, whereas in the instant case searches were carried out at the first applicant's home and workplace. The Court considers that, even if unproductive, a search conducted with a view to uncover a journalist's source is a more drastic measure than an order to divulge the source's identity. This is because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist. The Court reiterates that "limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court" (see *Goodwin*, cited above, pp. 500-01, § 40). It thus considers that the searches of the first applicant's home and workplace undermined the protection of sources to an even greater extent than the measures in issue in *Goodwin*.

58. In the light of the foregoing, the Court reaches the conclusion that the Government have not shown that the balance between the competing interests, namely the protection of sources on the one hand and the prevention and punishment of offences on the other, was maintained. In that connection, the Court would reiterate that "the considerations to be taken into account by the Convention institutions for their review under paragraph 2 of Article 10 tip the balance of competing interests in favour of the interest of democratic society in securing a free press (ibid., p. 502, § 45).

59. The Court is thus of the opinion that while the reasons relied on by the domestic authorities may be regarded as "relevant", they were not "sufficient" to justify the searches of the first applicant's home and workplace.

60. It therefore finds that the impugned measures must be regarded as disproportionate and that they violated the first applicant's right to freedom of expression, as guaranteed by Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

61. The second applicant complained that the search carried out at her offices constituted an unjustified interference with her right to respect for her home. She also argued that the seizure of the letter had infringed the right to respect for "correspondence between a lawyer and his or her client". She relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except as such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the well-being of the country, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Submissions of the parties

1. The second applicant

62. The second applicant said that the search and the seizure of a document that had been entrusted to her in connection with the first applicant's defence constituted an interference with her rights guaranteed by paragraph 1 of Article 8 of the Convention. That interference could not be regarded as being "in accordance with the law", since the Lawyers Act did not satisfy the qualitative requirements of Article 8. The second applicant said that in any event the interference had not been necessary. The search warrants had been drafted in particularly wide terms. In what was, after all, an ordinary – albeit highly politicised – case, the means employed by the domestic authorities at the beginning of the investigation had been disproportionate, particularly when the investigating judge's subsequent failure to act was taken into account.

2. The Government

63. The Government maintained that even supposing that the search amounted to an interference with the second applicant's rights under Article 8, it had been justified under paragraph 2 of that provision. The interference was in accordance with the law and pursued a legitimate aim, namely the prevention and punishment of criminal offences. Lastly, it had been necessary in a democratic society. The search warrants had been drafted in narrow terms covering only the search for and seizure of a single document. The offences that had triggered the search were serious ones, as they called into question the very functioning of the State institutions, a factor that justified the investigating judge's taking any measure which he considered would assist in establishing the truth.

B. The Court's assessment

64. The Court reiterates, firstly, that the protection afforded by Article 8 may extend, for instance, to the offices of a member of a profession (see *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, p. 34, § 30).

65. It accepts the second applicant's submission that the search of her law offices and seizure of a document relating to her client's file constituted an interference with her rights, as guaranteed under paragraph 1 of Article 8 of the Convention.

66. It finds that that interference was "in accordance with the law", since Articles 65 and 66 of the Criminal Investigation Code deal with searches and seizures in general, whereas section 35(3) of the Act of 10 August 1991 lays down the procedure to be followed for searches and seizures at a lawyer's office or home.

67. It also finds that the interference pursued a "legitimate aim", namely the prevention of disorder or crime.

68. As to the "necessity" for the interference, the Court reiterates that "the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly, and [that] the need for them in a given case must be convincingly established" (see *Crémieux v. France*, judgment of 25 February 1993, Series A no. 256-B, p. 62, § 38).

69. The Court notes that, unlike *Niemietz*, the search in the present case was accompanied by special procedural safeguards. The warrant was executed in the presence of an investigating judge, a representative of the public prosecutor and the President of the Bar Council. In addition, the President of the Bar Council's presence and the observations he considered it necessary to make on the question of the protection of professional confidence were recorded in the police department's report.

70. On the other hand, the Court is bound to note that the search warrant issued on 11 January 1999 was drafted in relatively wide terms. In it, the investigating judge instructed the investigators to "search for and seize all objects, documents, effects and/or other items that might assist in establishing the truth with respect to the above offences or whose use might impede progress in the investigation and, in particular, the document dated 23 July 1998 bearing the manuscript note to the heads of division". It thus granted them relatively wide powers (see *Crémieux*, cited above).

71. Above all, the ultimate purpose of the search was to establish the journalist's source through his lawyer. Thus, the search of the second applicant's offices had a bearing on the first applicant's rights under Article 10 of the Convention. Moreover, the search of the second applicant's offices was disproportionate to the intended aim, particularly as it was carried out at such an early stage of the proceedings.

72. In the light of the foregoing and for reasons analogous in part to those set out in Part I of this judgment, the Court holds that there has been a violation of the second applicant's rights under Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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 decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

74. The applicants each claimed 5,000 euros (EUR) for the non-pecuniary damage they had suffered. They said that the searches had proved a traumatic experience that had attracted considerable media attention and damaged their reputations.

75. The Government disputed the figures put forward by the applicants.

76. Ruling on an equitable basis, as required by Article 41, the Court awarded each of the applicants EUR 4,000 for non-pecuniary damage.

B. Costs and expenses

77. The first applicant claimed EUR 35,176.97 for costs and expenses. He produced two fee notes. The first, dated 17 January 2002 and containing a statement of the legal fees paid to Ms Schmit for the proceedings in the domestic courts, came to EUR 25,547.56. The second was dated 3 April 2002 and was for EUR 9,629.41 for fees incurred in the proceedings before the Court. The first applicant argued that he would also have to pay legal fees for the remainder of the proceedings before the Court and sought a payment on account of future costs and expenses in the sum of EUR 1,000.

78. The second applicant made no claim for costs or expenses.

79. The Government disputed the amounts claimed by the first applicant.

80. The Court reiterates that an applicant may recover his costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers the sum of EUR 11,629.41 to be reasonable and awards the first applicant that amount.

C. Default interest

81. The Court considers it appropriate to base the rate of the default interest to be paid on outstanding amounts 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. *Holds* that there has been a violation of Article 10 of the Convention with respect to the first applicant;

2. *Holds* that there has been a violation of Article 8 of the Convention with respect to the second applicant;

3. *Holds*

(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 4,000 (four thousand euros) for non-pecuniary damage;

(ii) EUR 11,629.41 (eleven thousand six hundred and twenty-nine euros forty-one cents) for costs and expenses;

(b) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) for non-pecuniary damage;

(c) 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;

4. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 25 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle
Registrar

Sir Nicolas Bratza
President