

EUROPEAN COURT OF HUMAN RIGHTS

839

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Press release issued by the Registrar

CHAMBER JUDGMENT
TILLACK v. BELGIUM

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Tillack v. Belgium* (application no. 20477/05).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights as a result of searches carried out at the home and office of the applicant, a journalist.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 30,000 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

Hans Martin Tillack is a German national who was born in 1961 and lives in Berlin. He is a journalist with the German weekly magazine *Stern* and was assigned to Brussels, from August 1999 to July 2004, to report on the policies of the European Union and the activities of the European institutions.

In February and March 2002 Mr Tillack published two articles in *Stern* based on information from confidential documents from the European Anti-Fraud Office (OLAF). The first article reported the allegations of a European civil servant concerning irregularities in the European institutions, while the second concerned the internal investigations OLAF carried out into those allegations.

Suspecting the applicant of having bribed a civil servant by paying him EUR 8,000 in exchange for confidential information concerning investigations in progress in the European institutions, OLAF opened an investigation to identify the informant. In February 2004, after the investigation failed to unmask the official at the origin of the leaks, OLAF lodged a complaint against Mr Tillack with the Belgian judicial authorities, which opened an investigation against a person or persons unknown for breach of professional confidence and bribery involving a civil servant.

On 19 March 2004 the applicant's home and workplace were searched; almost all the applicant's working papers and tools were seized and placed under seal (16 crates of papers, two boxes of files, two computers, four mobile phones and a metal cabinet). The applicant requested that his belongings be returned, but to no avail.

In the meantime, the applicant had lodged a complaint with the European Ombudsman. In May 2005 the Ombudsman submitted a special report to the European Parliament in which he concluded that the suspicion of bribery on the part of the applicant had been based on mere rumours spread by another journalist and not by Members of the European Parliament as OLAF had suggested. The Ombudsman concluded in his recommendation that OLAF should acknowledge that it had made incorrect and

misleading statements in its submissions to the Ombudsman.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 May 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

András **Baka** (Hungarian), *President*,
Françoise **Tulkens** (Belgian),
Riza **Türmen** (Turkish),
Mindia **Ugrekhelidze** (Georgian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Danutė **Jočienė** (Lithuanian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment²

Complaints

The applicant complained in particular that the searches and seizures at his home and his place of work had constituted a violation of his right to freedom of expression, relying on Article 10.

Decision of the Court

Article 10

The Court reiterated that the press played an essential role in a democratic society and that the protection of journalistic sources was a basic condition for press freedom.

In the applicant's case the Court considered that the searches in question had amounted to interference with the applicant's right to freedom of expression. The interference had been provided for in the Belgian Code of Criminal Procedure and pursued the legitimate aim of preventing disorder and crime, as well as preventing the disclosure of information received in confidence and protecting the reputation of others.

As to whether the interference had been "necessary in a democratic society", the Court noted, among other things, that it was evident that, at the time when the searches took place, their purpose had been to identify the source of the information reported by the applicant in his articles. The measures had therefore concerned the protection of journalistic sources.

That being so, the Court emphasised that a journalist's right not to reveal her or his sources could not be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but was part and parcel of the right to information, to be treated with the utmost caution, even more so in the applicant's case, where he had been under suspicion because of vague, uncorroborated rumours, as subsequently confirmed by the fact that he had not been charged. The Court also took into account the amount of property seized.

Lastly, the Court considered that although the reasons given by the Belgian courts were "relevant", they could not be considered "sufficient" to justify the impugned searches. It accordingly found that there had been a violation of Article 10 and declared the remainder of the application inadmissible.