

## Media & Entertainment - Switzerland

### Illegal raid at journalist's home

Contributed by **Pestalozzi Attorneys at Law**

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#### Newspaper article

In 2013 Ludovic Rocchi, a journalist working for the newspaper *Le Matin* in French-speaking Switzerland, revealed in a newspaper article a plagiarism affair involving a professor of economics at the University of Neuchâtel. An administrative investigation concluded that the professor had committed negligent plagiarism.

However, the professor filed a criminal complaint against the journalist soon after the article was published. The professor argued that by publishing the article the journalist had committed defamation, libel and other similar criminal acts.

#### Raid

Based on the criminal complaint, the competent state attorney's office in Neuchâtel ordered a raid at the journalist's home in August 2013. The journalist was absent so his wife had to assist the police with the seizure. The police seized, among other things, a personal computer, various notepads, CD-ROMs and USB sticks belonging to the journalist and his wife.

On the same day, police in the Canton of Ticino raided a hotel room in Locarno in which the journalist had stayed that day. The police were requested to initiate the raid by the state attorney's office in Neuchâtel by means of judicial assistance. The police seized the journalist's notebook.

The journalist immediately asked for the seized objects to be sealed, so that the state attorney's office would not be permitted to review and process the objects without court permission.

#### Procedural route

The state attorney asked the competent compulsory measures court to set aside the sealing of the seized objects.

However, at the same time, the journalist filed an appeal against the raids and seizures with the criminal chamber of the Neuchâtel Cantonal Court. The journalist asked that the court declare the raids to be illegal and that the seized objects be returned immediately without setting aside the sealing. The court followed the journalist's arguments and ordered the seized objects to be returned immediately.

The state attorney's office appealed the decision to the Federal Court. It argued that the cantonal court was not competent to decide on the legality of the raid and returning the seized objects. The Federal Court approved the appeal and held that the compulsory measures court in Neuchâtel was competent, not the cantonal court.

The compulsory measures court had to decide on the legality of the raids.

#### Raids illegal

In May 2014 the compulsory measures court in Neuchâtel decided that the raids were illegal and ordered the seized objects to be returned. It argued that there was a legal basis for the raids, but that the raids had infringed the principle of proportionality. It held that the freedom of the press, as a constitutional right, clearly had priority over the interest in the criminal investigation – the alleged crimes of the case (eg, defamation) were not *ex officio* crimes.

The court's decision is not final, as the state attorney's office may appeal to the Federal Court.

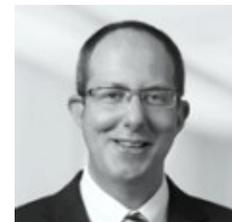
The proceedings were observed by Reporters Without Borders, which protested against the raids,

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and the Swiss Journalist Association. The Swiss Journalist Association welcomed the decision and announced that it was a great day for freedom of the Swiss press. Pursuant to the association of the privately organised media companies in French-speaking Switzerland, the matter demonstrated that the freedom of the press, even if guaranteed by the Constitution, cannot be taken for granted and must be defended daily.

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