

# *Media freedom and source protection in international and European standards*

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## **Abstract**

*The role of the media in the society, as a powerful means that contributes to democracy, is strictly related to its responsibility. It implies that the information should be gathered and disseminated in compliance with the law, but also according to ethical professional standards. This is crucial not just for the public trust in the institutions, but also as a testbed to data protection and privacy rights. On the other side, the protection of journalistic sources as a cornerstone of press freedom, enables whistleblowing, investigative journalism, and democratic accountability. However, in the face of threats to national security, terrorism, or serious crime, states increasingly invoke public interest to justify limiting this protection. The tension lies competing public goods: press freedom and rule of law versus public safety. The doctrine considers the protection of journalistic sources as a qualified right, not an absolute one, which is subject to strict scrutiny when limitations are considered. Given the premises, the aim of this paper is to provide a general picture of the international standards invoked*

*to strike the balance between guarantying media freedom and source protection, in the age of digital media and rapid information flows. The methodology used in this paper is doctrinal legal research method, analyzing critically and in a comparative perspective, relevant theories, legal framework and jurisprudence.*

**Keywords:** media freedom, restrictions, responsible journalism, proportionality, public interest.

## Introduction

Media freedom plays a key role in strengthening democratic institutions, protecting human rights, and assuring the proper functioning of the rule of law (Council of Europe, 2016). While upholding their obligations to report truthfully, fairly, and in the public interest, they allow journalists to fulfil their watchdog function, which includes looking into wrongdoing, holding those in authority accountable, and fostering civic engagement (European Court of Human Rights – ECtHR, *Bladet Tromsø and Stensaas v Norway*, 1999).

The limits of journalism have grown in the era of digital media and quick information flows, increasing its threats and impact. Global discussions on journalistic ethics, the boundaries of press freedom, and the function of regulating bodies have been reignited by the spread of false information, sensationalism, and politically driven reporting (European Commission, 2022). As Brown (2016) warns, “the new threat is not state orders for disclosure, but silent technological incursions that render formal protections obsolete” (p. 30). A growing number of sources could be proxies or state actors attempting to influence democratic processes through leaks. Keane (2017) affirms, “the normative foundation of source protection rests on the journalist’s due diligence. Disseminating unverified or strategically misleading leaks weakens the claim to legal immunity” (p. 137). Thus, journalists have a responsibility to contextualise and validate information,

In this light, responsible journalism represents more than just a normative ideal; it becomes a practical imperative for preserving democratic ideals and public trust (Christians et al., 2009). Codes of ethics and legislative provisions govern responsible journalism. In dealing with sources, codes of conduct place a strong emphasis on truthfulness, equity, and accountability. Even though they are not necessarily penalised by law, ethical transgressions damage journalists’ legitimacy and reputation. Leveson (2012) sustains that “accountability begins with self-regulation (...) but the state has a duty to intervene when journalism causes serious public harm” (p. 662).

In order to hold journalists accountable, states refer to: a) defamation and privacy law (which strikes a balance between Articles 10 and 8 of the European Convention on Human Rights - ECHR); confidentiality violations, particularly in corporate or national security circumstances; c) crime-related cooperation (e.g., allowing the release of illegally obtained or classified material). Investigative journalism, whistleblowing, and democratic accountability are all made possible by the protection of journalistic sources, which is a fundamental component of press freedom. However, states are increasingly using the public interest as a justification for restricting this protection when faced with risks to national security, terrorism, or major criminality. The challenge is to maintain democratic scrutiny without sacrificing public safety or the interests of law enforcement. According to the comparative study of the international legal system and pertinent jurisprudence, the following guidelines may be used to balance the interests involved:

- Necessity- disclosure must be necessary to prevent a serious crime or threat. “The protection of journalistic sources is one of the basic conditions for press freedom (...). Without such protection, sources may be deterred from assisting the press in informing the public” (Council of Europe, 2000: 2).
- Proportionality - it emerges from ECtHR’s jurisprudence (especially Article 10 of the ECHR). Stone Sweet and Mathews (2008) argue that proportionality has become a “general principle of law” and is particularly useful in cases where competing rights and interests—such as freedom of expression and national security—must be reconciled.
- Judicial oversight - a competent, independent authority (preferably a judge) must review requests for disclosure. The academic consensus stresses the need for independent judicial oversight and procedural safeguards. According to Venturini: “Any attempt to compel source disclosure must be reviewed by an independent body capable of assessing competing interests—this is not merely procedural but a substantive guarantee” (p. 229).
- Least intrusive means - if the information can be obtained otherwise, source disclosure is impermissible. Freedom of expression is not absolute, but any limitation must pass the three-part test: a) prescribed by law; b) pursue a legitimate aim (e.g., national security, prevention of crime); c) necessary in a democratic society (strict proportionality test). “The necessity requirement imposes a high threshold (...). Authorities must demonstrate that the disclosure is the least restrictive means of achieving the legitimate aim” (Rowbottom, 2010: 381).

## Doctrinal debate

### *Freedom of expression and its limitations*

The conflict between liberal principles of free speech and practical concerns about equality, harm, and order characterises the doctrinal dispute on freedom of expression. The paramount liberal justification for free speech is articulated in Mill's reflections "On Liberty" (1859).

He emphasises that individual liberty and democratic engagement depend on free discourse, which can only be tolerated under certain conditions, mainly when speech directly injures other people (*Harm Principle*). The *liberal theory of the press*, which is based on the principles of pluralism, public accountability, and free expression, contends that media freedom is a prerequisite for democracy and is important to many democracies (Siebert, Peterson, & Schramm, 1956). According to this view, the press facilitates the free flow of information required for informed public engagement by acting as a "watchdog" over the government and other centres of power. "Journalists act as public watchdogs, and this function is critically dependent on the ability to maintain source confidentiality" (Barendt, 2005: 422). From this perspective, restrictions on media freedom are viewed as threats to democratic deliberation and civil liberties.

The *social responsibility* doctrine contends that ethical duties to the public must be balanced with media freedom, having been formed in response to alleged abuses under the liberal model. As Christians et al. (2009) highlight, responsible journalism is not only a normative ideal but also a practical requirement for upholding democratic ideals and preserving public confidence. Thus, the press should be accountable in addition to being free, guaranteeing truthfulness, equity, and the general welfare. According to this perspective, press freedom is not unrestricted and entails obligations to protect the truth and refrain from harmful content, including hate speech, disinformation, and provocation. Codes of ethics, self-regulation, and media regulation are therefore valid ways to guarantee ethical journalism without unnecessarily compromising editorial independence.

A contextual approach is encouraged by *balanced constitutionalism*, which holds that restrictions must be properly interpreted and supported by the law, but that press freedom and source protection are not unqualified (Barendt, 2005). Mendel (2013) states that: "A doctrinal approach must reconcile the right of journalists with the procedural rights of defendants, particularly in criminal trials where exculpatory evidence may depend on source disclosure" (p. 45). While some legal academics emphasise the state's responsibility to protect vulnerable communities from incitement to hatred and violence, others contend that even

laws prohibiting hate speech run the risk of stifling opposing viewpoints (Waldron, 2012; Weinstein, 2009).

According to the *security realism* theory, security concerns may take precedence over civil freedoms, including press freedom, under extreme situations like terrorism or state collapse (Posner, 2006). However, Gillian (2006) points out that governments are increasingly using ambiguous or overbroad language related to national security to impose restrictions on press freedom. This raises questions about how the press's democratic watchdog role is being undermined.

Scholars often warn of the *chilling effect* of legislative incursions into journalistic freedom, forceful subpoenas, and state surveillance. Benkler (2011) presents the idea of a *networked public sphere* and makes the case that even slight legal restrictions have the power to stifle critical voices and limit the scope of investigative journalism. According to this perspective, "the mere potential of state monitoring or retaliation changes journalistic behaviour, often discouraging coverage of contentious topics" (p. 327).

### *Media responsibility and source protection*

Media responsibility and source secrecy may mutually be reinforcing rather than antagonistic. According to if journalists behave in the public interest, in good faith, and with ethical consideration Plaisance (2014). While cautioning against protecting self-serving or manipulative individuals, the author supports "ethically justified secrecy" when it safeguards susceptible sources. According to Kovach and Rosenstiel (2014), journalists can still be held accountable without revealing their sources as long as they: a) explain why the source is reliable; b) justify the need for anonymity; and c) are open and honest about what is unknown or unproven. The focus of this paradigm is on "methodological accountability" rather than complete source disclosure. Source protection facilitates the dissemination of accurate information that is essential to deliberative democracy, according to the liberal philosophy of the press (Habermas, 2006). Weaver and Willnat (2012) emphasise that when institutional checks are ineffective, secrecy enables sources to come forward with material that could uncover issues of great public concern or expose misconduct.

Conversely, "the lack of source protection deters insiders from coming forward, which diminishes the media's ability to expose misconduct". (Schulhofer, 2010). Some academics support almost complete protection, particularly where it serves the public interest. "When the information revealed is of public interest, protection of sources must be near absolute. The burden of proof must lie squarely with the state to justify interference" (Leveson, 2012: 672). Critics caution, however, that unqualified source protection could hide dishonest reporting, particularly in the era of disinformation, harmful leaks, and clandestine state manipulation. Not all journalists serve the public

interest, and automatic privileges may be abused Schauer (2005). “There must be safeguards to ensure that source protection is not invoked to conceal illegality or abuse journalistic immunity” (Schauer, 2005: 55). Same considerations are held by Fenwick & Phillipson (2006), who argue that: “A journalist who becomes a conduit for falsehood or state propaganda cannot invoke source protection without question. Accountability must temper immunity” (p. 220).

## **International and European legal framework on media freedom and its limitations**

As the foundation of democratic societies, freedom of expression offers a strong set of guidelines to safeguard media freedom and encourage ethical reporting. These standards outline duties for moral behaviour, professional integrity, and social responsibility in addition to upholding the legal rights to freedom of expression and the press.

The freedom to “seek, receive and impart information and ideas through any media and regardless of frontiers” is protected by Article 19 of the Universal Declaration of Human Rights (UDHR) (United Nations, 1948). Freedom of expression, which encompasses freedom of the press, is established as a basic right by this clause. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) goes into further detail about it. It requires states to uphold media freedom, but it also allows for restrictions, like those required to safeguard public order, national security, or other people’s rights, only when necessary and proportionate (United Nations, 1966).

The most reliable legal foundation for media freedom is found in Article 10 of the (ECHR). According to the Council of Europe (1950), it safeguards the “freedom to hold opinions and to receive and impart information and ideas without interference by public authority.” When it comes to political speech and issues of public concern, the ECtHR has repeatedly upheld that media freedom is “one of the cornerstones of a democratic society” (*Handyside v. the United Kingdom*, 1976).

However, Article 10(2) permits limitations that are “necessary in a democratic society” and “prescribed by law” for purposes like maintaining national security or safeguarding the reputation of others. As a result, there is now a legal balance between freedom and res, and states are responsible for making sure that any restrictions on media freedom are reasonable and appropriate. By acknowledging that the preservation of journalistic sources is crucial to the media’s watchdog role, the Court also encourages ethical journalism (*Goodwin v. United Kingdom*, 1996).

The Council of Europe in its Recommendation CM/Rec (2011)7 on media freedom and responsible journalism highlights that: “Media have

responsibilities and duties when exercising their freedom of expression. Among these responsibilities is a minimum requirement to check the accuracy of their information and to provide an opportunity for a person criticized to respond". The Declaration of the Committee of Ministers (2007) on the responsibility of journalists that: "Responsible journalism means journalists should be accurate, fair, impartial, and respect human dignity and reputation, while serving the public's right to know".

Freedom of expression and freedom of the media are guaranteed under Article 11 of the European Union Charter of Fundamental Rights (European Union, 2012). Initiatives like the European Media Freedom Act (EMFA) and the European Democracy Action Plan (EDAP), which seek to improve ownership transparency, combat disinformation, and boost media independence, further solidify the EU's commitment (European Commission, 2022).

While avoiding inciting hatred or violence, Member States are also required by the EU Audiovisual Media Services Directive (AVMSD) to maintain editorial independence and journalistic standards in broadcasting (European Parliament & Council, 2018). Furthermore, independent organisations like the European Regulators Group for Audiovisual Media Services (ERGA) advocate best practices in responsible journalism around the continent and assist in keeping an eye on adherence to EU regulations.

Mill's reasoning is mainly reflected in modern human rights legislation. Restrictions that are "prescribed by law," promote a "legitimate aim" (such as national security, public order, health, or morals), and are "necessary in a democratic society" are permitted under ECHR Article 10(2). Similar grounds for restriction are established under ICCPR Article 19(3), which also requires need and proportionality. Therefore, restrictions are permitted—but only under close examination—even if the right to free speech is a fundamental one. Source protection is acknowledged as crucial both the OSCE Representative on Freedom of the Media and the UN Human Rights Committee (General Comment No. 34, 2011), while both parties recognise possible limitations under strict necessity and proportionality (OSCE, 2012).

## **Case law on restrictions to media freedom in a comparative perspective**

### *ECtHR's jurisprudence*

In accordance with Article 10 of the ECHR, which protects freedom of expression, the ECtHR has produced a complex and dynamic body of case law. The study that follows examines how the Court has interpreted acceptable limitations on



media freedom, namely when it comes to matters of national security, illegal information collection, and journalistic source protection. According to Article 10, there are some exceptions to the rule of free speech. These must be interpreted strictly, though, and the necessity of any limitations must be demonstrated (*Stoll v. Switzerland* ([GC], paragraph 101, as reaffirmed in *Morice v. France* ([GC], paragraph 124), and *Pentikäinen v. Finland* ([GC], paragraph 87)).

The European Court of Human Rights (ECtHR) highlights that national courts have broad discretion when deciding whether to restrict media freedom, particularly when it comes to national security issues (*Hadjianastassiou v. Greece*, paragraph 47). However, these courts must make a comprehensive and equitable evaluation, weighing public and private interests rationally rather than depending just on the formal designation as “secret” (*Görmüş and Others v. Turkey*, paragraphs 64–66; *Gîrleanu v. Romania*, paragraph 95). The responsible authorities may not be required to provide as much depth in their reasoning in national security issues as they would in, say, routine civil or administrative cases (*Šeks v. Croatia*, paragraph 71).

In *Brambilla and Others v. Italy* the European Court of Human Rights (ECtHR) made clear the concept of responsible journalism, affirming that: “if a journalist’s actions breach the duty to comply with criminal law, they must be aware of the legal responsibilities, including the possibility of punishment for violating the law,” (paragraph 64). In this instance, the applicants—including journalists—participated in the unlawful interception of phone calls, including those from the police that were not meant for them. This means that if a journalist obtains information unlawfully, e.g., by conducting unauthorized wiretaps, this activity is illegal and may be punished in accordance with national laws and international human rights standards. Media freedom cannot be used to protect actions that constitute violations of criminal law, and such punishment is not inappropriate or arbitrary but necessary to uphold the rule of law and trust in public institutions. In this context, the ECtHR has made it clear that there is a boundary which journalist cannot cross as otherwise, they risk legal sanctions, including fines, imprisonment, or other penalties.

Similar considerations were held in *Dammann v. Switzerland* (paragraph 55), affirming that using unfair tactics, including threats or deception, to get information is against the law and ethics and may be grounds for punishment. As a result, a journalist must adhere to the legal and professional ethics frameworks while also respecting the legal restrictions on the methods of obtaining information. provided individuals go beyond these bounds, their behaviour might be subject to legal repercussions; nevertheless, provided the penalty is reasonable and equitable, it will not violate their Article 10 right to free speech.

The European Court of Human Rights has stressed that when evaluating potential limitations, journalists should consider how they acquired information



that is categorised as “secret” (*Stoll v. Switzerland* [GC], paragraphs 140-141). The result can be different in situations when the journalist received the information unlawfully (for example, by unauthorised means). However, the European Court of Human Rights (ECtHR) has determined that the journalist’s professional obligations are not always satisfied by the lack of criminal activity in getting the material (*Stoll v. Switzerland* [GC], paragraph 144; *Fressoz and Roire v. France* [GC], paragraph 52). Therefore, it is necessary to assess whether a journalist complied with journalistic ethics and obligations, even if they did not break any laws.

Therefore, the Court highlights two main aspects to be assessed in assessing journalists’ *responsibility*: 1) the method of obtaining the information and 2) the way it is presented in publication (*Stoll v. Switzerland* [GC], paragraph 140). A journalist must engage in responsible journalism, balancing the public’s right to be informed with the potential harm that might arise from publishing secret information. Moreover, the Court emphasizes that *public interest* is a key factor in assessing restrictions: if the published material is important for informing the public about issues of general interest, this may provide protection for the journalist (*Norman v. UK*, paragraphs 88–90). In this case, a prison employee was punished for misconduct after disclosing information about the prison in exchange for payment, and the ECtHR considered the punishment lawful, citing the lack of public interest and the financial motivation of the offender.

The ECtHR promotes responsible journalism by recognizing the protection of journalistic sources as essential to media’s watchdog function (*Goodwin v. United Kingdom*, 1996). “Without such protection, sources may be deterred from assisting the press in informing the public” (paragraph 39). In this case the Court held that compelling a journalist to reveal a source was disproportionate since the commercial interests at stake were not serious enough to override the chilling effect on press freedom (para. 45). However, in *Nordisk Film & TV A/S v. Denmark* (2021), the Court allowed disclosure in the context of an ongoing terrorism investigation, showing that exceptions are permitted under strict scrutiny. In this case, limited interference with source protection was allowed, due to the gravity of the crime (terrorism) and the fact that the identity of the source was already known to police. Thus, the ECtHR ruled that the interference passed the proportionality test.

## *US jurisprudence*

From a comparative perspective of legal system, Georgiou (2017) explores how different legal cultures treat journalistic privilege and source protection. While civil law countries tend to codify protections narrowly, common law systems rely more on judicial interpretation and a balancing of interests. “Comparative

jurisprudence reflects a spectrum of protections, with the strongest frameworks being those that combine constitutional guarantees, statutory protections, and robust judicial oversight” (Georgiou, 2017: 245).

In *Branzburg v. Hayes* (1972), the U.S. Supreme Court decided that reporters do not have an absolute First Amendment privilege when a journalist named Paul Branzburg declined to testify before a grand jury regarding his sources in drug-related stories. According to the argument, journalists who are forced to testify before grand juries—even if doing so means disclosing private sources—are not protected by the First Amendment. However, Justice Powell’s concurring opinion recommended that judges weigh press freedom against the need for evidence on an individual basis, allowing for a qualified privilege. Numerous federal circuit courts have acknowledged the qualified reporter’s privilege in both civil and criminal matters, notwithstanding *Branzburg*. Whether the information is a) relevant and material, b) not available through other sources, and c) there is a compelling interest in disclosure are frequently the three main tests. For instance, the court acknowledged qualified privilege in civil matters in the case *United States v. Burke* (1983), and it confirmed that the right also applies to non-confidential information in the case of *Shoen v. Shoen* (1993).

In addition, the First Amendment does not protect journalists from being held liable when they break a confidentiality promise to a source. In the case *Cohen v. Cowles Media Co.* (1991), a source gave information to reporters in exchange for confidentiality. The papers published his name anyway. The Court upheld a breach of contract claim. In the case *Zerilli v. Smith* (1981), the court stressed that civil litigants must demonstrate they have exhausted all other sources before compelling reporters to reveal sources.

Case law protecting journalists, known as shield law vary widely between states: some offer absolute privilege in civil cases (e.g., California, New York), others offer only qualified privilege or no protection in criminal matters. For example, in the case *In re Judith Miller* (2005), the reporter for *The New York Times*, refused to testify before the jury on her confidential source who revealed the identity of a CIA operative. Her source was found guilty of perjury and obstruction, and the court denied her claim of reporter’s privilege. She was also imprisoned for contempt of court.

In a latest case, *Chen v. FBI et al.* (2024), Dr. Chen, a naturalized U.S. citizen and founder of the University of Management and Technology (UMT) came under FBI investigation over alleged misrepresentations on her immigration forms concerning past work in China. The FBI executed search warrants on her home and UMT’s offices, seizing personal and institutional documents. Though prosecutors ultimately declined to file charges, Fox News aired a series of reports, written by the journalist Herridge, suggesting Chen concealed

ties to the Chinese military and may have used UMT to facilitate intelligence collection. The reports included sensitive documents and photos believed to have originated from the FBI's investigation. Believing the leak violated the federal Privacy Act, Chen spent years trying to find the source of the leak and filed lawsuits against four government institutions, using discovery tools, subpoenas, depositions, and interviews, yet was unable to confirm who released the materials.

Chen subpoenaed Fox News and the journalist Herridge for depositions and documents, arguing she had exhausted all other avenues. The media moved to quash the subpoenas, invoking the reporter's qualified First Amendment privilege. The District Court partially denied Herridge's motion, holding that under binding precedents (*Zerilli v. Smith*, 1981; *Lee v. DOJ*, 2005), the privilege could be overcome if the information sought is central to the plaintiff's case and if the plaintiff has exhausted all alternative sources. The Court found both criteria met: the identity of the leaker was critical to proving the Privacy Act violation, and Chen had undertaken exhaustive steps over five years to identify the leaker, leaving Herridge as the only viable source. Therefore, the Court ruled that Herridge must comply with the subpoena.

In this decision, the Court carefully balances the foundational role of a free press with binding precedent that limits an absolute reporter's privilege. It acknowledges the importance of investigative journalism and confidential sources, invoking *N.Y. Times Co. v. United States* (1971), to reaffirm the press's duty to inform the public. Nonetheless, the Court stresses that it cannot "place a thumb on the scale in favor of confidentiality" at the expense of the legal standards set in *Zerilli v. Smith* (1981), and *Lee v. Dep't of Justice* (2005). These decisions show that when a litigant can show the importance of the information and the depletion of alternate sources, the reporter's privilege is not absolute and should cede.

Moreover, the Court rejects the notion that compelling disclosure will have a chilling effect on journalism. It observes that "almost two decades have passed since *Lee* reaffirmed *Zerilli*," yet confidential-source journalism continues robustly. Empirical studies cited, such as RonNell Andersen Jones's 2008 work, suggest that while subpoena requests may have risen slightly, they have not led to an "avalanche" of disclosures. In fact, most courts applying the *Zerilli-Lee* standard still rarely compel source identification, and "cases requiring reporters to divulge confidential sources have remained few and far between." Even anecdotal concerns of a chilling effect appear overstated, with one study showing most newsroom leaders found sources still willing to speak confidentially (Jones, 2008: 648–49). Ultimately, the Court emphasizes that while DOJ policy changes may strengthen protections internally, judicial rulings must adhere to binding precedent and not on policy preferences or hypothetical fears.

## UK jurisprudence

The question of whether journalists could be forced to disclose a source who leaked a secret company document was resolved by the House of Lords (now the Supreme Court) in the case *Financial Times Ltd & Others v. Interbrew SA* (2002). In this case, several media outlets, including the *Financial Times*, published leaked documents related to a company (*Interbrew*), which sought a disclosure order to identify the source. Journalists invoked source protection under Article 10 of the ECHR. In its judgment, the House of Lords held that source protection is not absolute, but disclosure orders must meet a strict necessity test. It argued that Courts must balance Article 10 rights with competing interests (e.g. preventing serious harm). However, in this case, the order was upheld: *Interbrew's* commercial interests and the leak's potential for harm justified the request. The standards provided in this case is that the protection of journalistic sources is a fundamental condition of press freedom, but it can be overridden if: a) the information is crucial to the claim; b) there are no alternative means to obtain it; c) disclosure serves a pressing social need.

In the case *Times Newspapers Ltd v. Flood* (2017), the Supreme Court issued on the question defamation versus public interest in reporting police corruption. In this case, a police officer (Flood) was accused in *The Times* of corruption. He later sued for defamation, and *The Times* relied on the public interest defense. The Court decided in favor of *The Times*, emphasizing the role of responsible journalism under the Reynolds defense (now codified in Defamation Act 2013 as the “public interest” defense). The case involved source protection indirectly, by upholding journalists’ right to report sensitive allegations without naming sources, if they act responsibly.

In the case *ABC & Others v. Telegraph Media Group Ltd* (2018), the second instance court imposed a temporary injunction on the *Daily Telegraph* preventing publication of #MeToo allegations, citing confidentiality agreements. Though not a Supreme Court case, it raised serious concerns about source protection and press freedom. The claimants withdrew, and the Supreme Court refused to consider another appeal, but the case led to public and legal criticism of gag orders restricting journalism.

The limitations on the freedom of expression were also highlighted in *Ashworth Hospital Authority v. MGN Ltd* case (2002). In its decision, the House of Lords ruled on protection of journalist sources considering public interest in preventing crime and preserving healthcare confidentiality. *The Daily Mirror*, owned by MGN Ltd, published a story about Ian Brady, the convicted Moors murderer, who was detained at Ashworth High-Security Hospital. The story was based on confidential medical and internal information leaked by an employee of the hospital. Ashworth

Hospital sought a disclosure order to detect the source but MGN refused to disclose it, claiming journalistic privilege and the relevance of public interest journalism. The House of Lords ruled in favor of Ashworth Hospital, reaffirming that freedom of expression is not an absolute right. It argued that: a) the leak of confidential medical and security information posed serious risks to hospital integrity, patient safety, and staff security; b) although source protection is fundamental, this was a justifiable interference; c) the disclosure was necessary for the prevention of crime, especially given the breach of trust and misconduct by a hospital insider.

## Concluding remarks

In conclusion, while freedom of expression and media freedom are firmly entrenched as foundational rights within international and regional human rights frameworks, they are not unfettered. International law establishes a dual framework: one that robustly protects the media's role as a public watchdog, and another that imposes corresponding responsibilities to ensure that journalistic activity adheres to the rule of law, professional ethics, and the public interest. Contemporary legal standards demand that any interference with press freedom be justified by legitimate aims and implemented through measures that are strictly necessary and proportionate, reflecting a careful equilibrium between media freedom and press accountability.

Across European, American, and UK jurisprudence, courts have consistently affirmed that while journalists serve a vital democratic function by informing the public and scrutinizing power, the exercise of press freedom is conditioned by legal and ethical boundaries. The ECtHR, through cases such as *Brambilla v. Italy* and *Dammann v. Switzerland*, has underscored that journalists may be held accountable when their conduct involves criminal breaches or unethical information gathering techniques. The Court applies a contextual and proportionality-based analysis, particularly when publication involves classified or sensitive material, requiring scrutiny of both the means of obtaining information and the manner of its dissemination, as articulated in *Stoll v. Switzerland*.

In the United States, although the First Amendment offers expansive protections, the U.S. Supreme Court in *Branzburg v. Hayes* declined to recognize an absolute reporter's privilege, instead allowing for compelled disclosure in judicial proceedings. Subsequent case law, notably *Zerilli v. Smith* and the recent *Chen v. FBI* (2024) decision, has developed a qualified privilege framework based on the centrality of the information to a legal claim and the exhaustion of alternative sources. In *Chen*, the court concluded that these criteria were met, thereby compelling the journalist to testify, illustrating that press freedom does not override substantial legal interests when due process and accountability are at stake.

Similarly, UK jurisprudence reinforces a measured approach to source protection. In *Financial Times v. Interbrew* and *Ashworth Hospital v. MGN*, courts acknowledged that journalistic privilege, while fundamental, may be overridden where disclosure is strictly necessary to protect public safety, prevent harm, or serve the interests of justice. The courts have also embraced the concept of “responsible journalism” as a normative benchmark, particularly where reporting implicates issues such as defamation, commercial harm, or confidentiality breaches.

Thus, the comparative case law reveals a converging legal approach where media freedom, though essential to democratic governance, is not absolute. Journalists are expected to operate within a framework of legality, ethics, and responsibility. The courts have made clear that the protection of journalistic sources and editorial independence must be balanced against other fundamental constitutional rights. Ultimately, responsible journalism entails not only accurate and fair reporting but also lawful and ethical methods of information gathering, with due regard for the rights and reputations of others.

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