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

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The search and seizure operations carried out at a company's premises did not breach the Convention

In its decision in the case of **Janssen Cilag S.A.S. v. France** (application no. 33931/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns search and seizure operations carried out at the applicant company's premises.

The Court observed that the searches carried out at the applicant's premises had been aimed at gathering evidence of abuse of a dominant position and anti-competitive practices. It noted that the applicant company had been assisted by three lawyers during the operations. The domestic judge, after setting aside the order for the seizure of three files, had conducted an effective review of the applicant's allegations. In that regard, the judge had noted in particular that the applicant company had not claimed that any protected documents that it had specifically identified had been wrongly seized; moreover, the judge had informed the administrative authorities of his consent to the return of such documents. The provisions of Article L. 450-4 of the Commercial Code had therefore been applied in such a way as to ensure observance of the guarantees in a practical and effective manner.

Accordingly, in view of the State's margin of appreciation in this sphere, the Court considered that the interference had not been disproportionate and that a fair balance had been struck in the present case.

Principal facts

The applicant is Janssen-Cilag, a company incorporated under French law with its head office in Issy-les-Moulineaux (France).

In an order of 29 April 2009 the liberties and detention judge of the Nanterre *tribunal de grande instance* authorised officials of the competition authority to carry out search and seizure operations at the premises of the applicant company. During the operations, which were carried out on 5 and 6 May 2009 by officials of the authority, numerous documents and computer files were seized and catalogued.

On 18 May 2009 the applicant company applied to the President of the Versailles Court of Appeal for judicial review of the search and seizure operations. In an order of 19 February 2010 the judge set aside the order for the seizure of three files in respect of which neither the inventory nor the written report made clear whether they contained documents connected with the authorisation issued by the liberties and detention judge. However, the judge found the search and seizure operations to have been otherwise lawful.

In a judgment of 30 November 2011 the Court of Cassation dismissed the appeals on points of law lodged by the applicant company and the general rapporteur of the competition authority.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 May 2012.

Relying on Article 6 § 1 (right to a fair trial) read in conjunction with Article 8 (right to respect for the home and correspondence) of the European Convention on Human Rights, the applicant complained that the principle of the confidential nature of lawyer-client correspondence had been infringed. It also alleged that the number of lawyers permitted to monitor the search operations had been

restricted, in breach of Article 6 § 3. Lastly, relying on Articles 6 § 1 and 13 (right to an effective remedy) of the Convention, the applicant complained that it had not had an effective remedy by which to obtain a review of the manner in which the searches had been carried out.

The decision was given by a Committee of three judges, composed as follows:

Erik **Møse** (Norway), *President*,
Yonko **Grozev** (Bulgaria),
Lətif **Hüseynov** (Azerbaijan), *Judges,*

and also Anne-Marie **Dougin**, *acting Deputy Section Registrar*.

Decision of the Court

Article 6 § 1 read in conjunction with Article 8

The Court considered it appropriate to examine this complaint from the standpoint of Article 8 of the Convention alone.

The Court began by observing that, in the case of *Vinci Construction and GTM Génie Civile et Services v. France* (nos. 63629/10 and 60567/10, 2 April 2015), it had already been called upon to rule on a similar situation concerning search and seizure operations carried out under Article L. 450-4 of the Commercial Code. It had taken the view that the seizures in question amounted to interference with the rights guaranteed by Article 8 of the Convention. It found in that case that the interference in question had been "in accordance with the law" and had pursued a legitimate aim. The Court saw no reason to reach a different conclusion in the present case.

The Court noted first that the searches carried out at the applicant's premises had been aimed at gathering evidence of abuse of a dominant position and anti-competitive practices, and hence did not appear in themselves disproportionate in view of the requirements of Article 8 of the Convention.

The Court also noted that the applicant company had been assisted by three lawyers during the operations. It was beyond dispute that, in terms of their number and status, the lawyers had been in a position to familiarise themselves with at least some of the documents seized and to discuss their seizure.

Unlike in the case of *Vinci Construction and GTM Génie Civil et Services*, the Court observed that in the instant case the domestic judge, after setting aside the order for the seizure of three files, had conducted an effective review of the applicant's allegations. In that regard, the judge had noted in particular that the applicant company had not claimed that any protected documents that it had specifically identified had been wrongly seized; moreover, the judge had informed the administrative authorities of his consent to the return of such documents. It followed that the provisions of Article L. 450-4 of the Commercial Code had been applied in such a way as to ensure observance of the guarantees in a practical and effective manner.

In view of the foregoing, and of the State's margin of appreciation in this sphere, the Court found that the interference had not been disproportionate and that a fair balance had been struck in the present case.

It followed that the complaint was manifestly ill-founded and had to be rejected.

Article 6 §§ 1 and 3 and Article 13

In view of all the information in its possession, the Court saw no appearance of a violation of the rights and freedoms guaranteed by the Convention and the Protocols thereto.

This part of the application was thus manifestly ill-founded and had to be dismissed accordingly.

The decision is available only in French.

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