



The search of a law firm's offices and the seizure of computer files and emails did not infringe right to respect for private life

In today's **Chamber** judgment¹ in the case of [Sérvulo & Associados - Sociedade de Advogados, RL v. Portugal](#) (application no. 27013/10) the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the search of a law firm's offices and the seizure of computer files and email messages, during an investigation into suspected corruption, acquisition of prohibited interests and money laundering in connection with the purchase by the Portuguese Government of two submarines from a German consortium.

The Court found that the seizure of computer records in the offices of the law firm had been compensated for by procedural safeguards to prevent abuse and arbitrariness and to protect legal professional secrecy.

Principal facts

The applicants are a firm of lawyers, Sérvulo & Associados – Sociedade de Advogados RL, whose registered office is in Lisbon, and four Portuguese nationals, Teresa Serra, José Lobo Moutinho, Ricardo Guimarães and Pedro Duro, who are lawyers and a partner in the firm respectively and who were born in 1948, 1963, 1975 and 1974 and live in Lisbon (Portugal).

The Central Department for Investigations and Prosecutions (DCIAP) opened an investigation concerning several Portuguese and German nationals, including a lawyer who had worked on behalf of the applicant firm, on suspicion of corruption, acquisition of prohibited interests and money laundering in connection with the purchase by the Portuguese Government of two submarines from a German consortium. The DCIAP then applied to the Central Criminal Investigation Court (TCIC) for warrants to search, among other places, the business premises of the law firm Sérvulo & Associados and to seize any documents relevant to the investigation.

The TCIC investigating judge accordingly issued warrants allowing computerised data to be seized on the basis of a list of 35 keywords connected with the investigation, including the names of companies and banks linked to the investigation and terms such as “financial contributions” and “funding”.

Before the searches commenced, the applicants lodged a complaint with the President of the Lisbon Court of Appeal, stating that the keywords in question were routinely used by their firm of lawyers and would thus lead to a disproportionate number of documents being seized which were unrelated to the investigation and were covered by professional secrecy.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The investigating judge of the TCIC allowed the complaint and ordered all the seized documents to be placed under seal, without being inspected, and sent to the President of the Court of Appeal for a ruling on the validity of the submission invoking professional secrecy.

However, the Vice-President of the Court of Appeal dismissed the applicants' complaint and ordered the documents to be sent to the investigating judge.

After viewing the computer records, the TCIC investigating judge ordered the deletion of 850 records containing personal data or data covered by professional secrecy, in accordance with domestic law.

The DCIAP subsequently dropped the investigation.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained of the search and seizure of documents and computer data on their business premises.

The application was lodged with the European Court of Human Rights on 30 April 2010.

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

Isabelle **Berro** (Monaco), *President*,
 Khanlar **Hajiyev** (Azerbaijan),
 Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
 Julia **Laffranque** (Estonia),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway) and,
 Paulo Jorge **Saragoça Da Matta** (Portugal), *ad hoc judge*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 8

The searches carried out in the law firm's computer system and the seizure of computerised data had been ordered by means of two warrants issued by the investigating judge of the TCIC at the request of the DCIAP. They had been conducted on the basis of 35 keywords linked to the investigation. Some of the words were either in general use or were routinely used in a firm of lawyers specialising in financial law. Thus, the scope of the search and seizure warrants appeared to have been broad.

The Court noted that, under the terms of the Bar Association statutes, documents covered by professional secrecy could not be seized unless the lawyer in question had been placed under formal investigation. The Code of Criminal Procedure and the Bar Association statutes provided for a number of procedural safeguards concerning search and seizure operations in law firms. The Court observed that in the present case all those safeguards had been applied. It noted that the applicants had been present during the search operations, together with a representative of the Bar Association. An investigating judge had also overseen the operations and an official report had been drawn up afterwards.

The Court further observed that under Portuguese law the investigation was headed by the public prosecutor's office, with the investigating judge acting as the guarantor of fundamental freedoms in the context of the criminal investigation.

As to search and seizure operations carried out in a law firm, the Court noted that the investigating judge exercised a supervisory role before, during and after the operations.

The Court observed that, following the applicants' complaint, the computer files and emails that were seized had been sealed and sent to the President of the Court of Appeal in accordance with the Bar Association statutes. The seals had subsequently been opened by the Vice-President of the Lisbon Court of Appeal, who had examined the contents. He eventually dismissed the applicants' complaint on the ground that the 35 keywords appeared to be related to the investigation and to be proportionate to the aim pursued, that the information seized was relevant to the investigation, that there had been no flagrant breach of legal professional secrecy and, lastly, that it was for the investigating judge of the TCIC to sift through the information and identify the elements of relevance to the investigation.

Accordingly, the applicants' complaint to the President of the Court of Appeal had constituted an adequate and effective remedy, in combination with the supervision by the investigating judge, such as to compensate for the extensive scope of the search warrant.

After viewing the computer files and emails that had been seized, the TCIC investigating judge had ordered the deletion of 850 records which he considered to be private, to be covered by professional secrecy or to have no direct bearing on the case. The Court saw no reason to call into question the assessment made by the judge, who had intervened to review the lawfulness of the search and seizure operations and especially to protect legal professional secrecy.

Lastly, in response to the applicants' objection that the computer records seized had not been returned to them, the Court noted that the originals had been given back and that there was no obligation to return the copies, which could be retained throughout the limitation period for the crimes in question. As to their use in the context of the investigation relating to the same offences but different suspects, the Court considered that this had been accompanied by safeguards against abuse and arbitrariness.

The Court found that, notwithstanding the scope of the search and seizure warrants, the safeguards afforded to the applicants against abuse, arbitrariness and breaches of legal professional secrecy had been adequate and sufficient. Hence, the search and seizure operations had not amounted to disproportionate interference with the applicants' right to respect for their private and family life, in view of the legitimate aim pursued.

The Court therefore held that there had been no violation of Article 8 of the Convention.

Separate opinion

Judge Paulo Jorge **Saragoça Da Matta** expressed a separate opinion which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.