



## Insufficient safeguards in national law to protect data in seized lawyer's mobile phone

In its committee judgment in the case of [Nezirić v. Bosnia and Herzegovina](#) (application no. 4088/21) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for correspondence) of the European Convention on Human Rights.**

The case concerned the seizure and examination of a lawyer's mobile phone in the context of a criminal investigation against him.

The Court was particularly concerned about the practical framework for the protection of legal professional privilege in cases such as this. Mr Nezirić's phone was seized in his office and its entire contents copied, transferred and examined elsewhere, without either Mr Nezirić or a member of the Bar Association present. The data retrieved had subsequently been sifted through, but without any judicial supervision. Moreover, the entire copied contents of the phone had ultimately been submitted as evidence at trial, and not the sifted data.

The judgment is final.

### Principal facts

The applicant, Sanel Nezirić, is a national of Bosnia and Herzegovina who was born in 1976 and lives in Sarajevo. He is a lawyer.

In 2018 a criminal investigation was opened against Mr Nezirić on suspicion of criminal association and abuse of office. The investigating authorities authorised the seizure and examination of his mobile phone. The courts upheld this decision on appeal.

Mr Nezirić's phone was seized in his office and its exterior examined in the presence of a member of the Sarajevo Bar Association. An expert copied the entire contents of the phone to a DVD, and subsequently two investigators – at the request of the prosecution – sifted through this data, using the phone numbers of the other suspects in the case as search parameters.

However, the entire contents of the phone were later submitted as evidence at trial. Mr Nezirić objected to this, and the trial court ordered the prosecutor to filter the evidence so as to disclose only the communications relevant to the criminal proceedings.

The criminal proceedings in Mr Nezirić's case are apparently still ongoing.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 10 December 2020.

Relying on Article 8 (right to respect for correspondence), Mr Nezirić complained of the seizure and examination of his mobile phone, alleging that it breached his right to legal-professional privilege.

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

Faris **Vehabović** (Bosnia and Herzegovina), *President*,  
Armen **Harutyunyan** (Armenia),  
Anja **Seibert-Fohr** (Germany),

and also Simeon Petrovski, *Deputy Registrar*.

## Decision of the Court

It was not in dispute that the seizure and examination of Mr Nezirić's mobile phone had interfered with his right to respect for correspondence. That interference had had a general legal basis in national law, namely the Code of Criminal Procedure and the Bar Association Act.

The Court reiterated the importance of protecting the confidentiality of exchanges between lawyers and their clients and of legal-professional privilege. It noted that there were procedural safeguards in place in Bosnia and Herzegovina in general for searches and seizures and specifically in the context of a search of a lawyer's office.

However, it was concerned about the practical framework for the protection of legal-professional privilege in cases such as Mr Nezirić's.

In particular the actual examination of his phone – after the entire contents had been copied and transferred – had not been carried out at the site of the search. Neither Mr Nezirić nor a member of the Bar Association had been present during the examination, and the law did not envisage such a possibility.

Similarly, the carrying-out of targeted searches was not obligatory under domestic legislation. In Mr Nezirić's case, it had been the prosecutor who had orally requested that investigators sift through the copied contents of the phone, using the phone numbers of the other suspects in the case as search parameters. Despite that sifting, the entire copied contents of his phone had ultimately been submitted as evidence at trial.

In conclusion the domestic legislation had lacked the appropriate procedural safeguards to protect data covered by legal-professional privilege. There had therefore been a violation of Article 8.

### Just satisfaction (Article 41)

The Court held that Bosnia and Herzegovina was to pay the applicant 1,970 euros (EUR) in respect of costs and expenses, but that it was not necessary to make an award in respect of non-pecuniary damage.

*The judgment is available only in English.*

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