



Inspections and seizures targeting commercial companies require the judge to carry out a specific review

In today's **Chamber judgment**¹ in the case of **Vinci Construction and GMT genie civil and services v. France** (applications no. 63629/10 and 60567/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, and a violation of Article 8 (right to respect for private and family life, for the home and for correspondence).

The case concerned inspections and seizures carried out by investigators from the Department for Competition, Consumer Affairs and Fraud Prevention on the premises of two companies. The central question was the weighing up of interests relating, on the one hand, to the legitimate search for evidence of offences under competition law, and, on the other, respect for home, private life and correspondence, and particularly for the confidentiality of lawyer-client exchanges.

The Court considered that the safeguards provided by domestic law, regulating inspections and seizures conducted in the area of competition law, had not been applied in a practical and effective manner in this case, particularly since it was known that the documents seized contained correspondence between a lawyer and his client, which was subject to increased protection. The Court held that where a judge was called upon to examine reasoned allegations that specifically identified documents had been seized, although they were unrelated to the investigation or were covered by legal professional privilege, he or she was required to examine in detail the documents in question and to order their return where appropriate.

Principal facts

The applicants are the companies Vinci Construction France and GTM Génie Civil et Services (GTM GCS), both based in Nanterre.

By an application of 3 October 2007 the Department for Competition, Consumer Affairs and Fraud Prevention (DGCCRF) asked the liberties and detention judge (JLD) at the Paris *tribunal de grande instance* for authorisation to carry out inspections and seizures on the applicant companies' premises, in the context of an investigation into illegal concerted practices. The judge granted that request in a decision of 5 October 2007. The inspections took place on 23 October 2007. Numerous documents and computer files were seized, as well as the entire contents of certain employees' email accounts.

In support of their appeals to the judge against those inspections, the applicant companies alleged that the seizures had been widespread and indiscriminate, in that they had concerned several thousand electronic documents, many of which were not connected to the investigation or were confidential, being protected by legal professional privilege. They also complained that no detailed inventory of the seized items had been drawn up.

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 DGCCRF argued that the inspections and seizures had been carried out in accordance with the law and on the basis of the judge's authorisation. It stated that the applicant companies had been given copies of the seized documents and a detailed inventory.

In two decisions of 2 and 9 September 2008, all of the claims by the applicant companies were dismissed, on the ground that the inspections and seizures in question had complied with the applicable provisions of the Commercial Code and the Code of Criminal Procedure, and with the rights guaranteed by the European Convention on Human Rights. Among other points, the judge held that respect for the secrecy of correspondence with a lawyer did not preclude the seizure of items and documents classified as such. An appeal on points of law by the applicant companies was dismissed by two judgments of 8 April 2010.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing), 8 (right to respect for private and family life, home and correspondence) and 13 (right to an effective remedy) of the Convention, the applicant companies alleged that there had been a violation of their right to an effective remedy, first because they had been unable to lodge a full appeal against the decision authorising the inspections and seizures, and secondly because they could only challenge the conduct of those operations before the judge who had authorised them, and who did not, in their view, meet the requisite conditions of impartiality. They further complained of a disproportionate interference with their defence rights and with the right to respect for home, private life and correspondence, particularly with regard to the confidentiality attached to lawyer-client relations, taking into account the widespread and indiscriminate nature of the seizures carried out and the lack of a detailed inventory.

The application was lodged with the European Court of Human Rights on 7 October 2010.

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

Mark **Villiger** (Liechtenstein), *President*,
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1 (right to a fair hearing)

With regard to the complaint alleging a lack of impartiality on the part of the judge who ruled on the lawfulness of the conduct of inspections and seizures that he himself had authorised, the Court noted that the applicants had not exhausted the domestic remedies in this connection, and declared this part of the applications inadmissible.

With regard to the second complaint, concerning the appeal on points of law lodged against the judge's decision to grant authorisation, the Court stated that it had already held in a number of other cases that the procedure provided for at the relevant time by the Commercial Code² did not allow for effective judicial review to challenge the lawfulness and merits of a decision by the liberties

² Article L. 450-4, paragraph 6 of the Commercial Code

and detention judge, authorising inspections and seizures. The Court therefore dismissed the French Government's objection based on the failure to exhaust domestic remedies and held that there had been a violation of Article 6 § 1 of the Convention.

Article 8 (right to respect for private and family life, home and correspondence)

The Court considered that the search and seizure of electronic data, made up of computer files and the email accounts of certain employees in the applicant companies, amounted to interference with the latter's rights as protected under Article 8 of the Convention. That interference had been "in accordance with the law", since the inspections and seizures were governed by the Commercial Code and the Code of Criminal Procedure. Given that they were intended to prove the existence of illegal agreements, they also had the legitimate aims of protecting the "economic well-being of the country" and "[preventing] disorder or crime", within the meaning of Article 8 § 2.

The Court then examined whether that interference had been proportionate and could be regarded as necessary for achieving those aims. It noted that the inspections in question had been aimed at seeking evidence of possible anti-competitive practices and did not therefore seem, in themselves, disproportionate with regard to the requirements of Article 8. The Court also reiterated that it had already noted that a number of safeguards were provided for in the national procedure³. It considered, however, that the question specifically raised in the present case was whether those safeguards had been applied in a manner that was practical and effective rather than theoretical and illusory. In assessing the seizures' proportionality in relation to the aim pursued, the Court examined, more precisely, whether, on the one hand, the seizures had been "widespread and indiscriminate" and, on the other, whether they had respected the confidentiality of the lawyer-client relationship.

The Court considered that the seizures had not been "widespread and indiscriminate", since the investigators had attempted to restrict their searches to the documents held by those employees working in the field of activity concerned, and that a copy of the seized files and a sufficiently detailed inventory had been handed over to the applicants.

The Court noted, however, that the seizures had concerned numerous documents, including the entirety of certain employees' professional email accounts, and contained correspondence exchanged with lawyers. The Court also noted that the applicant companies had been unable to discuss the appropriateness of the documents being seized, or inspect their content, while the operations were being conducted. Having been unable to object in advance to the seizure of documents covered by the confidentiality of lawyer-client exchanges or which were unrelated to the investigation, the applicant companies ought to have been able to obtain, after the inspection, a review of its lawfulness. While they did make use of an appeal to the liberties and detention judge, as provided by law, the latter had merely examined the lawfulness of the formal context in which the seizures were conducted, without carrying out the tangible examination which was nevertheless required after it had been acknowledged that the documents contained correspondence with a lawyer.

In this regard, the Court considered that where a judge was called upon to examine reasoned allegations that specifically identified documents had been taken, although they were unrelated to the investigation or were covered by legal professional privilege, he or she was required to rule on what would happen to them after conducting a detailed examination and a specific review of proportionality, and subsequently to order their restitution where appropriate.

³ Article L. 450-4 of the Commercial Code, see [Société Canal Plus and Others v. France](#) (no. 29408/08, Chamber judgment of 21 December 2010, available only in French)

In consequence, the Court concluded that the inspections and seizures carried out in the applicant companies' premises had been disproportionate to the aim pursued, in breach of Article 8.

[Article 41 \(Just satisfaction\)](#)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage sustained by the applicant companies, and that France was to pay them 15,000 euros in respect of costs and expenses.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.