



Lack of judicial inspection of search of company office infringed rights

In today's **Chamber judgment**¹ in the case of [UAB Kesko Senukai Lithuania v. Lithuania](#) (application no. 19162/19) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned an inspection of Kesko Senukai Lithuania's registered office in 2018 by the Competition Council while the company, along with several other companies, had been under investigation for alleged price fixing. The national courts refused to review the inspection.

The Court found in particular that the lack of judicial review in the case had removed the legal safeguards against arbitrariness and abuse in how the inspection had been carried out.

Principal facts

The applicant, UAB Kesko Senukai Lithuania, is a company based in Kaunas (Lithuania). It is mainly involved in retail.

In April 2018 the Lithuanian Competition Council launched an investigation into suspected price fixing by six retailers, including Kesko Senukai Lithuania, in their shops. In June 2018, having obtained court authorisation, the Competition Council carried out an inspection of Kesko Senukai Lithuania's registered office in Kaunas, in the presence of its inhouse lawyer, other outside counsel and senior executives. According to the official record of the inspection, over 400 pages of documents were seized, five computers and a mobile phone were examined, and over 250 gigabytes of data were copied.

Kesko Senukai Lithuania lodged a request with the Competition Council to return to it or destroy all seized data that was not related to the investigation. The Competition Council instructed it to justify, within seven days, why each individual document should be excluded. Kesko Senukai Lithuania informed the Competition Council that that was impossible in view of the very large amount of data seized. The Competition Council dismissed the request.

Kesko Senukai Lithuania lodged a complaint with the Competition Council in June 2018, alleging, among other issues, that the Competition Council's staff had arrived at its office accompanied by the police and had not immediately explained their purpose; the record of the inspection had not been clear regarding the police involvement in the conduct of the inspection; its employees had not been properly informed of their rights; the inspectors had prevented staff from making telephone calls, or had made them use speakerphones, which had not been provided for by law; that an enormous and indiscriminate amount of documents had been copied and seized, without verification of their relevance to the investigation; and that the time-period for the search had not been made clear in the relevant decision.

That complaint was dismissed in June 2018. The Competition Council stated, among other things, that the purpose of the inspection must have been clear to the company's employees, that they had

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.

been allowed to seize everything that might have evidentiary value, that is was normal to have police officers at such inspections, and that the inspectors had restricted telephone calls only at the beginning of the inspection, with a view to ensuring its secrecy, and subsequently had only listened to the beginning of conversations in order to make sure that the employees had indeed been talking to lawyers.

Kesko Senukai Lithuania appealed to the courts, but the Vilnius Regional Administrative Court refused to examine the complaint, stating that a decision – such as the Competition Council’s decision to dismiss the company’s complaint regarding the conduct of the inspection – that did not give rise to legal consequences could not be the subject of an administrative case. Legal consequences would arise only when the investigation had been completed and issued a final decision in the case. Kesko Senukai Lithuania appealed.

In October 2018 the Supreme Administrative Court dismissed that appeal, holding, in particular, that the administrative courts dealt only with cases where there were legal consequences, and in this case Kesko Senukai Lithuania’s rights and obligations would not be changed by the case. In December of that year the court also rejected an application to reopen the proceedings.

In March 2020 the investigation was discontinued as there were no grounds to believe that the companies involved had committed any infringements. The seized information was ultimately destroyed.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for home and correspondence), 6 (right to a fair trial) and 13 (right to an effective remedy) the applicant company complained about the inspection of its office by the Competition Council, and about the lack of judicial review of its case.

The application was lodged with the European Court of Human Rights on 3 April 2019.

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

Arntfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Egidijus Kūris (Lithuania),
Saadet Yüksel (Türkiye),
Lorraine Schembri Orland (Malta),
Diana Sârcu (the Republic of Moldova),
Davor Derenčinović (Croatia),

and also Dorothee von Arnim, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court noted that its role in the present case was not to assess whether the actions of the Competition Council’s officials had been lawful and proportionate, but whether the refusal by the domestic courts to examine the complaints raised by the applicant company had been justified.

Article 8 of the Convention could not be interpreted as requiring a judicial review after the fact in all cases concerning a search or seizure carried out in the premises of a commercial company. However, according to the Court’s case-law, the availability of such a review may be taken into account, along with other factors, when assessing the compliance of searches and seizures with Article 8.

There were a number of procedural safeguards in Lithuanian law regarding how such inspections should be conducted. However, the applicant company did not question the legal framework, rather that the Competition Council had gone beyond their remit by seizing a large amount of information and by restricting the rights of its staff. Those complaints could in no way be seen as ill-founded. Indeed, the Competition Council had not refuted the allegations concerning material seized or restrictions on staff phone usage and so forth, instead merely arguing that those actions had been lawful. Therefore, Kesko Senukai Lithuania had a legitimate interest in having the courts review whether the officials' actions had complied with its Article 8 rights.

The national courts had refused to examine its complaint, however, because they considered that such complaints could not be examined by the courts at all. However, Lithuanian law provided for the possibility to appeal against decisions taken by the Competition Council before the administrative courts, and those courts had in the past examined several complaints similar to that of Kesko Senukai Lithuania. There was no indication that a judicial review of the Competition Council's decisions would have any negative effect on ongoing investigations.

Moreover, the Competition Council demand that the applicant justify the exclusion of each individual document had been disproportionate.

Lastly, since the investigation against Kesko Senukai Lithuania had eventually been discontinued, its complaints against the Competition Council had not been examined at any stage of the domestic proceedings.

The lack of judicial review had meant that there had not been effective safeguards against arbitrariness and abuse in the case. There had therefore been a violation of Article 8.

Other articles

The Court considered that the complaints under Articles 6 § 1 and 13 were absorbed under the Article 8 complaints and so there was no need to examine them separately.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicant company 26,577 euros in respect of costs and expenses.

The judgment is available only in English.

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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.