



Procedural defects in a search of a lawyer's office: violation of the right to respect for one's home

In today's Chamber judgment¹ in the case of [Leotsakos v. Greece](#) (application no. 30958/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned a search of the professional premises of a lawyer (Mr Leotsakos) and the seizure of several items and documents in the framework of a criminal investigation concerning him personally.

The Court found in particular that the procedural defects were such that the search and seizure carried out in Mr Leotsakos' law office could not be regarded as reasonably proportionate to the pursuit of the legitimate aims (the prevention of crime) in view of the interest of a democratic society in ensuring respect for one's home. Among other shortcomings, Mr Leotsakos had not been present at any time during the search, which lasted for 12 days, and the authorities had confiscated computers and hundreds of documents, including client files covered by professional secrecy. The presence of a neighbour as an independent witness had not been a sufficient safeguard because she had no legal knowledge and was incapable of identifying documents which concerned clients' cases.

Principal facts

The applicant, Petros Leotsakos, is a Greek national who was born in 1951 and lives in Athens. He has been practising as a lawyer in Greece since 1976.

In July 2010 the prosecutor's office at the Athens Court of Appeal ordered a search of Mr Leotsakos' professional premises in the framework of an investigation into a criminal organisation whose members were suspected of involvement in such offences as money laundering and bribery of judges. The search lasted 12 days and was conducted by a police officer accompanied by a deputy prosecutor. A neighbour, who had no legal knowledge, acted as a witness during the search. The authorities confiscated a computer and hundreds of documents, including client files relating to judicial proceedings and tax-related documents. Twelve confiscation reports were drawn up, making a total of 372 pages.

In May 2012 proceedings were brought against several individuals, including Mr Leotsakos. The following month he applied to the Indictments Division of the Athens Court of Appeal seeking a finding that the house search and seizure had been unlawful and that all confiscated items and documents should be returned to him. He relied, *inter alia*, on the principle of protection of professional secrecy. His application was declared ill-founded, and the public prosecutor at the Court of Cassation refused to lodge an appeal against that decision.

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.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), Mr Leotsakos complained of the conditions in which the search of his office had been conducted.

The application was lodged with the European Court of Human Rights on 30 April 2013.

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

Kristina **Pardalos** (San Marino), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (the former Yugoslav Republic of Macedonia),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

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

The Court pointed out that searches or inspections of the home or office of a lawyer lawfully practising his or her profession, principally as a member of the Bar, had to be accompanied by special procedural safeguards. In the present case Mr Leotsakos' status as lawyer had been known to the authorities, and the search, resulting in the seizure of documents and computers belonging to him, had constituted an interference with his right to respect for his "home" and his "correspondence". That interference had been in accordance with the law² and pursued a legitimate aim: the prevention of crime.

As to whether the interference had been necessary in a democratic society, the Court noted that the public prosecutor's search warrant had been drafted in general terms and that the Greek legislation did not provide for any prior scrutiny. Mr Leotsakos had not been present at any time during the search, which had lasted 12 days, and there was no evidence in the file to show whether the investigators had tried to inform him of their action, whereas under the Code of Criminal Procedure there was an obligation for the occupants of the premises to be present in the event of a search. In addition, the authorities had confiscated computers and hundreds of documents, including client files. The presence of a neighbour as an independent witness was not a sufficient safeguard because she had no legal knowledge and was incapable of identifying documents which concerned the cases of clients that were covered by professional secrecy. Nor had there been any subsequent judicial review (*ex post facto*) and it had never been elucidated whether the computers and documents seized had a direct link with the offence being investigated. Moreover, the Indictments Division of the Court of Appeal, to which the case had been brought by the applicant, had not ruled on the manner in which the search warrant had been drafted or on the question whether the seizure of all the documents and computers had been necessary for the investigation. Moreover, the entire collection of seized items had been retained by the authorities since the search and Mr Leotsakos still had no access to them. Lastly, a single person, the public prosecutor I.D., had conducted the preliminary investigation against Mr Leotsakos and had issued the search and seizure warrant against him. Subsequently, when Mr Leotsakos had disputed the lawfulness of those measures before the indictments division, the same prosecutor had been responsible for the case and had

² See the Court's analysis of this question in the judgment *Modestou v. Greece*, no. 51693/13, § 33-38, 16 March 2017.

made a proposal to the indictments division, which had endorsed it in few words by accepting all of the prosecutor's submissions and without hearing representations from Mr Leotsakos, as this was not provided for in domestic law.

The Court thus found that the procedural defects were such that the search and seizure carried out in Mr Leotsakos' law office could not be regarded as reasonably proportionate to the pursuit of the legitimate aims in view of the interest of a democratic society in ensuring respect for one's home.

There had thus been a violation of Article 8 of the Convention.

Article 41 (just satisfaction)

The Court held that Greece was to pay the applicant 2,000 euros (EUR) for non-pecuniary damage and EUR 2,034 for costs and expenses.

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.