



June 2024

This Factsheet does not bind the Court and is not exhaustive

Legal professional privilege

"[W]hile Article 8 [of the European Convention on Human Rights¹] protects the confidentiality of all 'correspondence' between individuals, it affords strengthened protection to exchanges between lawyers and their clients. This is justified by the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. Yet lawyers cannot carry out this essential task if they are unable to guarantee to those they are defending that their exchanges will remain confidential. It is the relationship of trust between them, essential to the accomplishment of that mission, that is at stake. Indirectly but necessarily dependent thereupon is the right of everyone to a fair trial, including the right of accused persons not to incriminate themselves.

This additional protection conferred by Article 8 on the confidentiality of lawyer-client relations, and the grounds on which it is based, lead the [European] Court [of Human Rights] to find that, from this perspective, legal professional privilege, while primarily imposing certain obligations on lawyers, is specifically protected by that Article." (*Michaud v. France*, [judgment](#) of 6 December 2012, §§ 118-119).

Interception of communications, phone tapping and secret surveillance

Secret surveillance

[Klass and Others v. Germany](#)

6 September 1978

In this case the applicants, five German lawyers, complained in particular about legislation in Germany empowering the authorities to monitor their correspondence and telephone communications without obliging the authorities to inform them subsequently of the measures taken against them.

The Court held that there had been **no violation of Article 8** of the Convention, finding that the German legislature was justified to consider the interference resulting from the contested legislation with the exercise of the right guaranteed by Article 8 § 1 as being necessary in a democratic society in the interests of national security and for the prevention of disorder or crime (Article 8 § 2). The Court observed in particular that powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions. Noting, however, that democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction,

¹ Article 8 (right to respect for private and family life) of the [European Convention on Human Rights](#) states:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."



the Court considered that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications was, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime.

See also: [Tretter and Others v. Austria](#), inadmissibility decision (Committee) of 29 September 2020.

Pending applications

[Association confraternelle de la presse judiciaire v. France and 11 other applications \(nos. 49526/15, 49615/15, 49616/15, 49617/15, 49618/15, 49619/15, 49620/15, 49621/15, 55058/15, 55061/15, 59602/15 and 59621/15\)](#)

Applications communicated to the French Government on 26 April 2017

These applications, which were brought by lawyers and journalists, as well as legal persons connected with these professions, concern the French Intelligence Act of 24 July 2015.

The Court gave notice of the applications to the French Government and put questions to the parties under Articles 8 (right to respect for private life and correspondence), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention.

Monitoring of a law firm's telephone lines

Kopp v. Switzerland

25 March 1998

This case concerned the monitoring of the applicant's law firm's telephone lines on orders of the Federal Public Prosecutor in the context of criminal proceedings to which he was a third party.

The Court held that there had been a **violation of Article 8** of the Convention, finding that Swiss law did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in the matter. It consequently considered that the applicant, as a lawyer, had not enjoyed the minimum degree of protection required by the rule of law in a democratic society. The Court noted in particular that even though the Swiss Federal Court's case-law had established the principle, which was moreover generally accepted, that legal professional privilege covers only the relationship between a lawyer and his clients, the law did not clearly state how, under what conditions and by whom the distinction was to be drawn between matters specifically connected with a lawyer's work under instructions from a party to proceedings and those relating to activity other than that of counsel. Above all, in practice, it was, to say the least, astonishing that this task should be assigned to an official of the Post Office's legal department, who was a member of the executive, without supervision by an independent judge, especially in this sensitive area of the confidential relations between a lawyer and his clients, which directly concern the rights of the defence.

See also: [Dudchenko v. Russia](#), judgment of 7 November 2017, concerning, in particular, the interception of a suspect's telephone communications with his counsel.

Pruteanu v. Romania

3 February 2015

This case concerned the interception of the telephone conversations of a lawyer and his inability to challenge the lawfulness of the measure and to request that the recordings be destroyed. The applicant complained of interference with his right to respect for his private life and correspondence.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the interference complained of had been disproportionate to the legitimate aim pursued – namely to establish truth in connection with criminal proceedings and therefore to prevent disorder – and that, consequently, the applicant had not had an

effective means as required by the rule of law and capable of limiting the interference complained of to that which was necessary in a democratic society. The Court recalled in particular that the interception of conversations between the lawyer and his client undoubtedly breaches professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client.

Versini-Campinchi and Crasnianski v. France

16 June 2016

The applicants were a lawyer and his junior colleague. At the time of the events, during the BSE (“mad cow disease”) crisis, they were representing the interests of the managing director of a company suspected of breaching the embargo on beef imports from the United Kingdom. The case concerned the use as evidence in disciplinary proceedings against the second applicant of the transcript of a telephone conversation she had had with her client, which showed that the applicant had disclosed information covered by legal professional privilege.

The Court held that there had been **no violation of Article 8** of the Convention in respect of the second applicant, finding that the interference in question had not been disproportionate to the legitimate aim pursued – namely the prevention of disorder – and could be regarded as necessary in a democratic society. It considered in particular that, as the transcription of the conversation between the applicant and her client had been based on the fact that the contents could give rise to the presumption that the applicant had herself committed an offence, and the domestic courts had satisfied themselves that the transcription did not infringe her client’s rights of defence, the fact that the former was the latter’s lawyer did not suffice to constitute a violation of Article 8 of the Convention in the applicant’s regard.

Extraction and use of personal data from mobile phone

Saber v. Norway

17 December 2020

The applicant’s smart phone was seized by the police in the context of a criminal investigation against two people for conspiracy to murder him. The police captured a mirror image copy of the phone, which they wished to search. The applicant stated that his phone contained correspondence with two lawyers defending him in another case, in which he was a suspect (these proceedings ended with his acquittal). He submitted that the proceedings in respect of search and seizure of data from his smart phone, facilitating access to correspondence between him and his lawyers, had breached his rights.

The Court held that there had been a **violation of Article 8** of the Convention in the applicant’s case. It had no basis to decide whether or not legal professional privilege had actually been compromised in his case. In the Court’s view, however, the lack of foreseeability in the instant case, due to the lack of clarity in the legal framework and the lack of procedural guarantees relating concretely to the protection of legal professional privilege, had already fallen short of the requirements flowing from the criterion that the interference must be in accordance with the law.

Bersheda and Rybolovlev v. Monaco

6 June 2024²

This case concerned the conduct of a judicial investigation directed by a French judge seconded to the Monegasque courts. The first applicant, a lawyer who had the second applicant as a regular client, was charged with having secretly recorded a conversation of just under ten minutes with a third person (T.R.) during a private meal in February 2015. In the context of her defence, the first applicant handed over her mobile phone to

². This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

the police to allow the offending recording to be examined and to prove her good faith. The applicants complained of the massive, indiscriminate and disproportionate collection of all “visible” – but also erased and therefore “invisible” – data. They submitted that these unjustified investigations had been conducted without protecting the professional privilege to which the first applicant was entitled as a lawyer.

With regard to the second applicant’s application, the Court considered that the messages and conversations extracted in the context of the court-appointed expert’s assignment did not concern his personal data and correspondence or his exchanges with T.B., whether in a private context or that of the lawyer-client relationship. Consequently, it found that he could not claim to be a victim within the meaning of Article 34 (individual applications) of the Convention. His application was therefore declared **inadmissible**. With regard to the first applicant’s application, the Court declared it admissible, and it found that there had been, in respect of that applicant, a **violation of Article 8** of the Convention. The Court considered, in particular, that the investigations undertaken by the investigating judge involving a lawyer’s mobile phone and the massive, indiscriminate recovery of personal data – including those that had previously been erased by the applicant – had exceeded that judge’s remit, which had been confined to accusations of invasion of privacy, and had not been accompanied by safeguards to ensure due respect for the applicant’s status and professional privilege as a lawyer.

Interception of notes exchanged between lawyer and client

Laurent v. France

24 May 2018

This case concerned the interception by a police officer of papers that the applicant, a lawyer, had handed over to his clients, who were under police escort, in the lobby of a court building. The applicant alleged that the interception by the police officer of the papers he had handed over to his clients had amounted to a violation of his right to respect for his correspondence.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the interception and opening of the applicant’s correspondence with his clients, in his capacity as a lawyer, had not corresponded to a pressing social need and had therefore not been necessary in a democratic society within the meaning of Article 8. The Court specified in particular that a folded sheet of paper on which a lawyer has written a message before handing it over to his clients was protected correspondence within the meaning of Article 8 of the Convention. It also emphasised that the content of the documents intercepted by the police officer was immaterial given that, whatever its purpose, correspondence between lawyers and their clients concerned matters of a private and confidential character. In the present case, the applicant, in his capacity as a lawyer, had written and handed over the papers in question to his clients in full view of the senior escorting officer, without attempting to conceal his actions. In the absence of any suspicion of an unlawful act, the interception of the documents could not be justified.

Searches and seizures carried out at a lawyer’s offices or home

Niemietz v. Germany

16 December 1992

This case concerned a search of a lawyer’s office in course of criminal proceedings for insulting behaviour against a third party. The applicant complained in particular that his right to respect for his home and correspondence had been violated.

The Court held that there had been a **violation of Article 8** of the Convention finding that the interference complained of had not been proportionate to the legitimate aim pursued – namely the prevention of crime and the protection of the rights of others –

and could not be regarded as necessary in a democratic society. The Court noted in particular that, while it was true that the offence in connection with which the search was effected, involving as it did not only an insult to but also an attempt to bring pressure on a judge, could not be classified as no more than minor, on the other hand, the warrant was drawn in broad terms. Moreover, having regard to the materials that were in fact inspected, it considered that the search had impinged on professional secrecy to an extent that appeared disproportionate in the circumstances. In this connection, the Court recalled that, where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 (right to a fair trial) of the Convention.

Tamosius v. the United Kingdom

19 September 2002 (decision on the admissibility)

This case concerned the search of a lawyer's office and the removal of material in the context of a tax fraud investigation concerning certain of his clients. The applicant alleged in particular that the issue and execution of the warrants were in breach of his right to respect for his private life, and his correspondence. He maintained, *inter alia*, that the statutory definition of legal privilege was too narrow.

The Court declared the application **inadmissible** under Article 8 of the Convention, as being manifestly ill-founded, finding that the search as carried out in this case had not been disproportionate to the legitimate aims pursued, namely the prevention of crime and disorder, as well as the economic well-being of the country, and that adequate safeguards were attached to the procedure. It noted in particular that the search had been carried out under a warrant issued by a judge, and under the supervision of a counsel, whose task was to identify which documents were covered by legal professional privilege and should not be removed. Furthermore, having regard to the definition of privilege in domestic law, the Court considered that a prohibition on the removal of documents covered by legal professional privilege provided a concrete safeguard against interference with professional secrecy and the administration of justice, bearing in mind that removal of such documents was open to legal challenge and, potentially, the recovery of damages.

Petri Sallinen and Others v. Finland

27 September 2005

This case concerned the search of the premises of the first applicant, a lawyer, and the seizure of certain materials. The police kept back a copy of one of his hard disks which contained, among other things, private details of three of his clients at the relevant time, who were also applicants before the Court.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the interference complained of had not been in accordance with the law. In this regard, it considered in particular that Finnish law had not provided proper legal safeguards, in that it was unclear about the circumstances in which privileged material could be subject to search and seizure.

See also: **Heino v. Finland**, judgment of 15 February 2011.

Smirnov v. Russia

7 June 2007

The applicant, a lawyer, alleged in particular that his flat had been searched and numerous documents and the central unit of his computer seized, with a view to gaining access to the computerised files of his clients, were suspected of participating in organised crime, and to obtaining evidence against them.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the search had impinged on professional secrecy to an extent that had been disproportionate to whatever legitimate aim had been pursued. Noting in particular that the applicant himself had not been suspected of any criminal offence, the Court considered that the search had been carried out without sufficient and relevant grounds

or safeguards against interference with professional secrecy, the order's excessively broad terms giving total freedom to the police to determine what was to be seized.

See also: [Aleksanyan v. Russia](#), judgment of 22 December 2008; [Kolesnichenko v. Russia](#), judgment of 9 April 2009; [Yuditskaya and Others v. Russia](#), judgment of 12 February 2015.

Wieser and Bicos Beteiligungen GmbH v. Austria

16 October 2007

The applicants, a limited liability company and its owner and general manager, who was also a lawyer, complained about their business premises being searched and electronic data seized in the context of criminal proceedings concerning illegal trade in medicine. They unsuccessfully complained to the domestic courts that the search and seizure procedure in respect of the electronic data had violated the first applicant's professional secrecy obligations.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the police officers' failure to comply with certain procedural safeguards aimed at preventing arbitrariness and protecting lawyers' professional secrecy had made the search and seizure of the first applicant's electronic data disproportionate to the legitimate aim pursued, namely the prevention of crime. In particular, the representative of the bar association who was present during the search had not been able to properly supervise that part of the search, the report had been drawn up too late, and neither the first applicant nor the bar association representative had been informed of the results of the search. The Court also observed that, although the first applicant was not the second applicant's counsel, he did act as counsel for numerous companies whose shares it held. Moreover, the electronic data seized contained by and large the same information as the paper documents, some of which the investigating judge had returned to the first applicant as being subject to professional secrecy. It could therefore be reasonably assumed that the electronic data seized also contained such information.

Iliya Stefanov v. Bulgaria

22 May 2008

As part of a criminal investigation into allegations of extortion, the police carried out a search of the office of the applicant, a lawyer, in the presence of two of his neighbours. They seized the applicant's computer and all of his floppy disks. The investigation was later stayed and an order was issued to have the seized items returned to the applicant. The applicant complained in particular about the unlawfulness of that search and seizure. The Court held that there had been a **violation of Article 8** of the Convention, finding that the search had infringed the applicant's professional secrecy to an extent that had been disproportionate in the circumstances. While the Court was satisfied that the search warrant had been based on a reasonable suspicion as it had been granted following statements taken from several witnesses, it noted, however, that the warrant had been drawn up in overly broad terms and had allowed the police to seize for two whole months the applicant's entire computer as well as all his floppy disks, which contained material covered by the professional secrecy of lawyers. Furthermore, it had been highly unlikely that the neighbours, who had had no legal qualifications, could have provided any effective safeguard against excessive intrusion by the police into the applicant's professional secrecy. As there had been no procedure under Bulgarian law for the applicant to contest the lawfulness of the search and seizure or obtain redress, the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention.

See also: [Golovan v. Ukraine](#), judgment of 5 July 2012.

André and Another v. France

24 July 2008

This case concerned a search of the offices of the applicants, both lawyers, by the tax authorities in the hope of discovering incriminating evidence against a client company of

the lawyers which was suspected of tax evasion. A number of documents were seized, including hand-written notes and a document with a comment in the first applicant's handwriting. The chairman of the Bar Association pointed out that these were the lawyer's personal documents and were accordingly protected by the rule of absolute professional confidentiality and could not be seized. The applicants complained in particular of a breach of professional confidentiality and the lack of an effective remedy whereby they could contest the lawfulness of the searches and seizures at their offices.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the search and seizures had been disproportionate to the aim pursued, namely the prevention of disorder and crime. It recalled in particular that searches and seizures at a lawyer's office indubitably interfere with the professional privilege at the heart of the relationship of confidence which exists between the lawyer and his client and is the corollary of the lawyer's client's right not to incriminate himself. That being so, if domestic law could provide for the possibility of such searches of lawyers' premises, they should imperatively go hand in hand with special guarantees. In this case there had been a special procedural guarantee as the search had been carried out in the presence of the President of the Bar Association of which the applicants were members. His presence and his observations concerning the confidentiality of the documents seized had been mentioned in the subsequent report. However, not only had the judge who authorised the search been absent, but the presence of the President of the Bar Association and the objections he had voiced had not prevented the officers carrying out the search from looking at all the documents in the office and seizing them. On the matter of the seizure of notes hand-written by the first applicant, the papers concerned had been the lawyer's personal documents, and therefore subject to professional privilege. In addition, the tax inspectors and the senior police officer had been given extensive powers by virtue of the broad terms of the search warrant. Lastly, the Court noted that in the context of a tax inspection into the affairs of the applicants' client company the tax inspectorate had targeted the applicants for the sole reason that it was finding it difficult to carry out the necessary checks and to find documents capable of confirming the suspicion that the company was guilty of tax evasion, although at no time had the applicants been accused or suspected of committing an offence or participating in a fraud committed by their client.

See also: [Xavier Da Silveira v. France](#), judgment of 21 January 2010.

Robathin v. Austria

3 July 2012

A practising lawyer, the applicant complained about a search carried out in his office and seizure of documents as well as all his electronic data following criminal proceedings brought against him on suspicion of theft, embezzlement and fraud of his clients. He was ultimately acquitted of all charges against him.

The Court held that there had been a **violation of Article 8** of the Convention. It observed in particular that, although the applicant had benefited from a number of procedural safeguards, the review chamber to which he had referred the case had given only brief and rather general reasons when authorising the search of all the electronic data from the applicant's law office, rather than data relating solely to the relationship between the applicant and the victims of his alleged offences. In view of the specific circumstances prevailing in a law office, particular reasons should have been given to allow such an all-encompassing search. In the absence of such reasons, the Court found that the seizure and examination of all the data had gone beyond what was necessary to achieve the legitimate aim, namely crime prevention.

Vinci Construction and GMT Génie Civil and Services v. France

2 April 2015

This 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 applicants complained *inter alia* 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 Court held that there had been a **violation of Article 8** of the Convention, finding that the inspections and seizures carried out in the applicant companies' premises had been disproportionate to the aim pursued, namely the economic well-being of the country and the prevention of disorder or crime. It noted in particular 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. 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. The Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial) in this case, because the applicants had been unable to lodge a full appeal against the decision authorising the inspections and seizures.

Sérvulo & Associados - Sociedade de Advogados, RL v. Portugal

3 September 2015

This 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 held that there had been **no violation of Article 8** of the Convention. It 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 legitimate aim pursued, namely the prevention of disorder or crime. The Court observed in particular that, after viewing the computer files and emails that had been seized, the investigating judge from the Central Criminal Investigation Court 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. Moreover, 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.

Lindstrand Partners Advokatbyrå AB v. Sweden

20 December 2016

This case concerned a search undertaken on the premises of the applicant law firm by the Tax Agency in the course of audits which were being carried out on two other companies. The Tax Agency suspected that significant amounts of money had been shielded from Swedish taxation through irregular transactions between a client company of the applicant and a Swiss company. The applicant complained in particular that the firm's privacy rights had been infringed by the fact that the Tax Agency had been given access to search its premises and to seize data drives allegedly belonging to the firm.

The Court held that there had been **no violation of Article 8** of the Convention, finding that the search of the applicant's offices had not been disproportionate to the legitimate aim pursued, namely the economic well-being of the country. It noted in particular that

none of the material seized or copied by the Tax Agency had been found to contain information subject to professional secrecy. The Court held, however, that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 8**, considering that the applicant had been denied legal standing in the proceedings concerning the authorisation to search its premises and thus had not had access to any remedy for the examination of its objections to the search.

Tuheiaiva v. France

28 August 2018 (decision on the admissibility)

This case concerned a lawyer who complained about a visit by the Chair of the Bar Council to his professional premises during his absence. The applicant argued in particular that the visit during his absence had breached his right to respect for his home.

The Court declared the complaint of failure to respect the applicant's home **inadmissible** as being manifestly ill-founded. It found in particular that there had been no breach of professional secrecy in the case. Rather than an interference by an authority outside the profession, the visit had, on the contrary, been conducted by the Chair of the Bar Council, himself a lawyer and bound by the professional secrecy that it was his role to defend, in the interest of all members of the Bar. The Court noted that the visit had taken place in connection with the need to preserve the relationship of trust between lawyers and their clients. It reiterated that the special status of lawyers gave them a central position in the administration of justice as intermediaries between the public and the courts. As a result, while lawyers must be granted particular protection in discharging their professional duties, it was legitimate for standards of conduct to be required of them, under the monitoring and supervisory powers vested in Bar councils.

Leotsakos v. Greece

4 October 2018

This case concerned a search of the professional premises of the applicant, a lawyer, and the seizure of several items and documents in the framework of a criminal investigation concerning him personally. The applicant complained of the conditions in which the search of his office had been conducted.

The Court held that there had been a **violation of Article 8** of the Convention. It found in particular that the procedural defects were such that the search and seizure carried out in the applicant's 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, the applicant 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.

Kirdök and Others v. Turkey

3 December 2019

The applicants, lawyers, complained about the seizure of their electronic data by the judicial authorities for the purposes of criminal proceedings against another lawyer, who had shared their office.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the measures imposed on the applicants (the seizure of their digital data and the refusal to return or destroy them) had not corresponded to a pressing social need, had not been proportionate to the legitimate aims pursued (prevention of disorder, prevention of criminal offences and protection of the rights and freedoms of others), and had not been necessary in a democratic society. The Court noted in particular that, once the applicants had requested the return of the digital data, relying on the professional secrecy of exchanges between lawyers and their clients, the judicial authorities had been under a legal obligation promptly to assess the data seized and to

return the data protected by such secrecy to them or to destroy the data, as appropriate. However, domestic legislation and practice had been unclear as to the consequences of any failure by the judicial authorities to honour that obligation. The Assize Court had definitively refused to return or destroy the seized copies of the data, based on reasoning which had merely mentioned the lawfulness of the searches conducted in the legal offices, and had not reacted to the specific allegation of an infringement of the confidentiality of exchanges between lawyers and their clients. It would appear that the Assize Court had implicitly accepted the grounds put forward by the public prosecutor's office in order to justify the refusal to return the data seized, to the effect that since the data in question had not yet been transcribed, it had been impossible to ascertain their precise owners. The Court took the view that not only was such a ground of refusal not clearly prescribed by law, but also it was incompatible with the substance of the professional secrecy protecting exchanges between lawyers and their clients. At any event, it could not be concluded that the examination of the applicants' request by the judicial authorities had complied with the obligation to provide for especially strict verification of measures relating to data covered by legal professional secrecy.

Särgava v. Estonia

16 November 2021

The applicant, a lawyer, was suspected of belonging to a criminal organisation. The authorities authorised a search of his law firm, home and car. In the context of the criminal proceedings brought against him he unsuccessfully argued that the seizure of his laptop and mobile phone during the searches had been unlawful. The applicant submitted, in particular, that the information contained on his laptop and telephone was covered by legal professional privilege, and that its seizure had therefore been unlawful. The Court held that there had been a **violation of Article 8** of the Convention. It noted, in particular, that it had no basis on which to decide whether or not lawyer-client confidentiality had actually been compromised in the case at hand. However, the lack of procedural guarantees relating specifically to the protection of legal professional privilege already fell short of the requirements flowing from the criterion that the interference must be "in accordance with the law"

See *also*, inter alia:

Wolland v. Norway

17 May 2018

Obligation to report suspicions

Michaud v. France

6 December 2012

This case concerned the obligation on French lawyers to report their suspicions regarding possible money laundering activities by their clients. Among other things, the applicant, a member of the Paris Bar and the Bar Council, submitted that this obligation, which resulted from the transposition of European directives, was in conflict with Article 8 of the Convention, which protects the confidentiality of lawyer-client relations.

The Court held that there had been **no violation of Article 8** of the Convention. While stressing the importance of the confidentiality of lawyer-client relations and of legal professional privilege, it considered, however, that the obligation to report suspicions pursued the legitimate aim of prevention of disorder or crime, since it was intended to combat money laundering and related criminal offences, and that it was necessary in pursuit of that aim. On the latter point, the Court held that the obligation to report suspicions, as implemented in France, did not interfere disproportionately with legal professional privilege, since lawyers were not subject to the above requirement when defending litigants and the legislation had put in place a filter to protect

professional privilege, thus ensuring that lawyers did not submit their reports directly to the authorities, but to the president of their Bar association.

Disclosure of bank statements in criminal proceedings

Brito Ferrinho Bexiga Villa-Nova v. Portugal

1 December 2015

The applicant in this case complained that her bank statements had been consulted in criminal proceedings brought against her for tax fraud. She alleged a violation of the rules of professional confidentiality binding on her on account of her profession as a lawyer.

Having regard to the lack of procedural guarantees and effective judicial control of the measure complained of, the Court considered that the Portuguese authorities had failed to strike a fair balance in the present case between the demands of the general interest and the requirements of the protection of the applicant's right to respect for her private life. Accordingly, it held that there had been a **violation of Article 8** of the Convention. The Court noted in particular that consultation of the applicant's bank statements had amounted to an interference with her right to respect for professional confidentiality, which fell within the scope of private life. It also observed that the proceedings to have professional confidentiality lifted had been conducted without the participation of the applicant, who had not at any time been able to submit her arguments. Furthermore, and contrary to the requirements of domestic law, an opinion had not been sought from the Lawyers Association during those proceedings. The Court also found that the requirement of an effective control laid down in Article 8 of the Convention had not been satisfied.

Restrictions on divulgation of classified information to defence counsel and right to a fair trial

M. v. the Netherlands (no. 2156/10)

25 July 2017

This case concerned a former member of the Netherlands secret service (AIVD) who had been charged with leaking State secrets. In his capacity as audio editor and interpreter, he had access to classified information which he was under strict instruction not to divulge. This duty of secrecy continued even after he left the service. He had been charged with leaking State secrets to unauthorised persons, including terrorist suspects. The applicant submitted that the ensuing criminal proceedings had been unfair. He complained in particular that the AIVD had exercised decisive control over the evidence, restricting his and the domestic courts' access to it and controlling its use, thus preventing him from instructing his defence counsel effectively.

The Court held that there had been a **violation of Article 6 §§ 1** (right to a fair trial) **and 3 (c)** (right to legal assistance of own choosing) of the Convention, finding that, as a result of the threat of prosecution should the applicant divulge State secrets to his lawyers, communication between him and his counsel was not free and unrestricted as to its content, thus irretrievably compromising the fairness of the proceedings against him. While accepting that there was no reason in principle why secrecy rules should not be applicable when a former member of the security services was being prosecuted for revealing State secrets, the Court noted, however, that the question for it was how a ban on divulging secret information affected the applicant's right to defence. In this respect, it considered that, without professional advice, an individual who was facing serious criminal charges could not be expected to weigh up the benefits of disclosing his case in full to a lawyer against the risk of further prosecution for doing so. The Court held, however, that there had been **no violation of Article 6 §§ 1** (right to a fair trial)

and 3 (b) and (d) (right to adequate time and facilities for preparation of defence and right to obtain attendance and examination of witnesses) of the Convention in this case.

Refusal of a lawyer to testify in criminal proceedings against one of his clients

Klaus Müller v. France

19 November 2020

For almost 20 years, the applicant, a lawyer, and his firm gave legal advice to four companies. The companies went into insolvency and criminal proceedings were opened against their former managing directors. The applicant was summoned as a witness. Despite the managing directors at the time of the trial waiving lawyer-client privilege, he refused to testify, arguing that he was still bound by professional secrecy unless released by the former managing directors too. The applicant complained that compelling him to testify had breached legal professional privilege.

The Court held that there had been **no violation of Article 8** of the Convention, finding that the impugned interference with the applicant's right to respect for his correspondence and his private life could be regarded as necessary in a democratic society and had therefore been justified. It considered in particular that the reasons adduced by the German courts to justify the interference had been relevant and sufficient. The Court also noted that the domestic courts had thoroughly reasoned their decisions imposing the administrative fine, explaining in this context their stance on the scope of the legal professional privilege, and their interpretation had been formulated with sufficient precision to enable the applicant to regulate his conduct.

Media Contact:

Tel.: +33 (0)3 90 21 42 08