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Privacy in ambito professionale: diritto alla riservatezza nel rapporto tra difensore e assistito
(CEDU, sez. V, sent. 27 aprile 2017, ric. n. 73607-13)

La Corte di Strasburgo ha ritenuto violato l'art. 8 della Convenzione EDU in tema di tutela della riservatezza professionale e vita privata, poiché le autorità tedesche avevano disposto l'accesso al conto bancario professionale di un avvocato penalista nel corso di un'indagine svolta rendendo disponibili informazioni sul conto e sui clienti del legale. La Corte ha ritenuto l'accesso ispettivo al conto bancario dell'avvocato sproporzionato tenuto conto .

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SOMMER v. GERMANY

(Application no. 73607/13)

JUDGMENT

STRASBOURG

27 April 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sommer v. Germany,
The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Erik Møse, President,
Angelika Nußberger,
André Potocki,
Faris Vehabović,
Síofra O'Leary,
Carlo Ranzoni,
Mārtiņš Mits, judges,
and Milan Blaško, Deputy Section Registrar,
Having deliberated in private on 28 March 2017,
Delivers the following judgment, which was adopted on that date:
PROCEDURE

1. The case originated in an application (no. 73607/13) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Ulrich Sommer ("the applicant"), on 25 November 2013.
2. The German Government ("the Government") were represented by their Agents, Mr H.-J. Behrens and Mrs K. Behr, of the Federal Ministry of Justice and Consumer Protection.
3. Relying on Article 8 of the Convention, the applicant alleged that the public prosecution office had collected and stored information about his professional bank account in a manner which was disproportionate.
4. On 3 February 2016 the application was communicated to the Government.
5. Written submissions were received from the German Federal Bar Association (Bundesrechtsanwaltskammer), which had been granted leave by the Vice-President to intervene as third party (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).
THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Cologne. He works as a criminal defence lawyer.
7. In 2009 the applicant defended a client in criminal proceedings. After the proceedings had concluded, and when the client had already been imprisoned, the

client's fiancée transferred the applicant's legal fees (1,500 euros (EUR)) from her private bank account to the applicant's professional account. The subject of the bank transfer read: "Prof Dr Sommer fees (client's last name)".

8. In 2010 and 2011 the Bochum public prosecution office conducted investigations into several individuals suspected of having committed fraud on a commercial basis as members of a gang. One of the suspects was the aforementioned applicant's former client, who again retained the applicant as his defence lawyer. During these investigations, the bank accounts of several people, including the applicant's client and the client's fiancée, were inspected. The inspection revealed that the client's fiancée had received money (EUR 7,400) which was suspected to have stemmed from illegal activities, and had transferred EUR 1,500 for legal fees to the applicant's bank account.

9. On the basis of the bank transfer of fees from the fiancée to the applicant in relation to the first set of criminal proceedings, the Bochum public prosecution office also contacted the applicant's bank. On 1 March 2011 the public prosecutor asked for a list of all transactions concerning the applicant's bank account from 1 January 2009 until that day. He asked the bank not to reveal the request to the applicant. He based his request for information on Articles 161a, 51 and 70 of the Code of Criminal Procedure (hereinafter "the CCP"), in conjunction with Article 95 of that Code (see paragraphs 23-25 below).

10. On 1 April 2011 the public prosecutor requested further information and asked the following questions:

"(a) Which other bank accounts, investment accounts or safe deposit boxes at your bank belong to the person in question?

(b) What rights of disposal (Verfügungsberechtigungen) does the person in question have?

(c) Who else has a right of disposal?

(d) Do other accounts exist of which the person in question is the beneficiary?

(e) If so, what are the current balances on these accounts?

(f) If bank accounts have been closed by the person in question, please submit information about the date of closure and the balance at the time of closure, and where the money was transferred after closure.

(g) Which addresses of the person in question are known to you?

(h) Are you aware of any money transfers to or other transactions with foreign countries? If so, please specify the bank, account and amount of each transfer or transaction.

(i) Please submit a list of all transactions for all existing or closed accounts from 1 January 2009 onwards.

(j) Are there any credit cards connected to any of the accounts?"

11. The bank complied with both requests for information and submitted the information to the public prosecution office. In both instances, the public prosecutor did not order the bank to submit the information, but pointed to the obligations of witnesses set out in the CCP and the possible consequences of non-compliance (see paragraph 23 below).

12. The information received was analysed by the police and the public prosecutor, and a list of fifty-three transactions deemed to be relevant was included in the investigation file as evidence. Therefore, everyone who had access to the case file, such as the lawyers of the co-accused, also had access to the applicant's banking information, including the names of his clients who had transferred fees.

13. On 31 January 2012, after several unsuccessful requests, the applicant, as the lawyer of the accused, was granted access to the investigation file. From the case file he learned, for the first time, of the investigative measures concerning his own bank account.

14. On 24 April 2012 the applicant asked the Chief Public Prosecutor to hand over to him all data received from the bank and destroy all related data at the public prosecution office. In his request the applicant emphasised his role as a criminal defence lawyer, which was known to the acting public prosecutor, and the consequences for his clients, whose names were accessible through the banking information. He further argued that the investigative measures lacked a legal basis.

15. On 2 May 2012 the Bochum Chief Public Prosecutor refused the applicant's request. He stated that there was a suspicion that the money transferred from the client's fiancée stemmed from illegal activities. Consequently, it was legitimate for the public prosecutor to investigate whether further money transfers had taken place between the applicant and his client or the client's fiancée. Therefore, since the investigative measures were legitimate, the information received had to be kept in the investigation file. The Chief Public Prosecutor further pointed out that there was no legal basis for returning the data or taking the documents out of the investigation file. The Chief Public Prosecutor cited Article 161 of the CCP (see paragraph 22 below) as a legal basis

for the information requests, since the bank in question was a bank under public law and therefore considered to be an authority.

16. Subsequently, the file was transferred to the Bochum Regional Court ("the Regional Court"), because the criminal proceedings against the applicant's client had started. The applicant therefore asked the Regional Court to return the data.

17. On 19 July 2012 the Regional Court refused the applicant's application. The court found that the investigation was lawful, that the bank had provided the information voluntarily, that the documents could therefore only be returned to the bank and not to the applicant, and that the prohibition of seizure under Article 97 of the CCP (see paragraph 28 below) was not applicable, since the information had not been in the applicant's possession. Nonetheless, in order to safeguard the client-lawyer privilege, it also decided to separate the documents in question from the general court file and only grant access to them if reasons proving sufficient interest were provided.

18. The applicant appealed against the decision. He challenged in particular the findings that the bank had acted voluntarily and that there had been sufficient suspicion for such an extensive analysis of his banking transactions. He further reiterated that, owing to his position as a lawyer, there were several safeguards in place concerning the seizure of documents (see paragraphs 26-29 below), and these should not have been circumvented because his and his clients' personal information was stored at and by the bank, and not at his office.

19. On 13 September 2012 the Hamm Court of Appeal confirmed the decision of the Regional Court. It found that the decision was proportionate and that the safeguards were not applicable, in particular since the bank could not be considered a person assisting the applicant or a person involved in the professional activities of the applicant under Article 53a of the CCP (see paragraph 27 below).

20. On 19 September 2013 the Federal Constitutional Court refused to admit the applicant's constitutional complaint, without providing reasons (case no. 2 BvR 2268/12).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal basis for the requests for information

21. Article 160 of the CCP obliges the public prosecution office to investigate suspected criminal offences as soon as it obtains knowledge of them.

22. Article 161 § 1 of the CCP, in so far as relevant, provides:

"For the purpose indicated in Article 160 ..., the public prosecution office shall be entitled to request information from all authorities and conduct investigations of any kind, either itself or through the authorities and officials in the police force, provided there are no other statutory provisions specifically regulating their powers."

23. Pursuant to Article 161a of the CCP, witnesses are obliged to appear before the public prosecution office and make a statement. Articles 51 and 70 of the CCP specify that witnesses who refuse to testify without legal reason can be charged with the costs attributable to this refusal, and that they can be detained for up to six months in order to force them to testify.
24. Article 94 of the CCP, in so far as relevant, provides:
"(1) Objects which may be of importance as evidence for the investigation shall be impounded or otherwise secured.

(2) Such objects shall be seized if in a person's possession and not surrendered voluntarily."

25. Article 95 of the CCP reads:
"(1) A person who has in his possession an object of the kind mentioned above [in Article 94] shall be obliged to produce it and surrender it upon request.

(2) In the event of non-compliance, the regulatory and coercive measures set out in Article 70 may be used against that person [who has failed to comply]. This shall not apply to persons who are entitled to refuse to testify."

B. Protection of lawyers and the lawyer-client privilege

26. Article 53 of the CCP, in so far as relevant, reads:
"(1) The following persons may also refuse to testify:

...

2. defence counsel for the accused, in relation to information which was entrusted to them or became known to them in this capacity;

3. lawyers, ... in relation to information which was entrusted to them or became known to them in this capacity. In this respect, other members of a bar association shall be deemed to be lawyers;

..."

27. Article 53a of the CCP extends the right to refuse to testify to persons assisting and persons involved in the professional activities of those listed in Article 53 § 1 (1) to (4) as part of their training.
28. Article 97 of the CCP extends the right to refuse to testify by prohibiting the seizure of certain objects. The provision, in so far as relevant, reads:
"(1) The following objects shall not be subject to seizure:

1. written correspondence between the accused and persons who, in accordance with Article 52 or Article 53 § 1 (1) to (3b), may refuse to testify;

2. notes made by the persons specified in Article 53 § 1 (1) to (3b), in relation to confidential information entrusted to them by the accused or in relation to other circumstances covered by the right to refuse to testify;

3. other objects, including the findings of medical examinations, which are covered by the right to refuse to testify of the persons mentioned in Article 53 § 1 (1) to (3b).

(2) These restrictions shall apply only if these objects are in the possession of a person entitled to refuse to testify ... The restrictions on seizure shall not apply if certain facts substantiate the suspicion that the person entitled to refuse to testify participated in the criminal offence, or in aiding and abetting following the commission of the offence, or in obstructing justice or handling stolen goods, or where the objects concerned have been obtained by means of a criminal offence or have been used or are intended for use in perpetrating a criminal offence, or where they emanate from a criminal offence.

(3) In so far as the assistants (Article 53a) of the persons mentioned in Article 53 § 1 (1) to (3b) have a right to refuse to testify, §§ 1 and 2 shall apply mutatis mutandis.

..."

29. Article 160a of the CCP, in so far as relevant, reads:
"(1) An investigative measure directed against a person named in Article 53 § 1 (1), (2) or (4), a lawyer, ... shall be invalid if it is expected to produce information in respect of which that person would have the right to refuse to testify. Any information which is obtained nonetheless may not be used. Any record of such information is to be deleted without delay. The fact that the information was obtained and deleted shall be documented. Where information about a person referred to in the first sentence [of Article 160a § 1] is obtained through an investigative measure which is not aimed at

that person, and in respect of which that person may refuse to testify, the second to fourth sentences [of Article 160a § 1] shall apply mutatis mutandis.

...

(3) Paragraphs 1 and 2 are to be applied mutatis mutandis in so far as the persons named in Article 53a would have the right to refuse to testify.

(4) Paragraphs 1 to 3 shall not apply where certain facts substantiate the suspicion that the person who is entitled to refuse to testify participated in the offence or in aiding and abetting following the commission of the offence, or in the obstruction of justice or handling stolen goods. ...

(5) Article 97 and Article 100c § 6) shall remain unaffected."

30. During the legislative procedure regarding Section 160a of the CCP there was discussion about whether a formal requirement that there be an official preliminary investigation against the person entitled to refuse to testify should be included in Article 160a § 4. However, ultimately, the less formalistic requirement that there be "certain facts" was chosen. The Federal Constitutional Court (in case no. 2 BvR 2151/06, 30 April 2007) interpreted the requirement of "certain facts" in the context of Article 100a of the CCP as reasons for suspicion which exceed vague clues and mere speculation ("vage Anhaltspunkte und bloße Vermutungen").

C. Access to case files

31. Article 147 of the CCP regulates access to files and, in so far as relevant, reads:
"(1) Defence counsel shall have authority to inspect those files which are available to the court or which will have to be submitted to the court if charges are preferred, as well as to inspect impounded pieces of evidence.

...

(7) Where an accused has no defence counsel, information and copies from the files shall be given to the accused upon his application, provided that this is necessary for [his putting forward] an adequate defence and cannot endanger the purpose of the investigation, including in other criminal proceedings, and that overriding interests of third parties worthy of protection do not present an obstacle to this. ..."

32. Article 406e of the CCP allows a lawyer for the aggrieved person to inspect the files which are available to the court or the files which would be required to be submitted to the court if public charges were preferred. However, inspection of the files shall be refused if overriding interests worthy of protection, of either the accused or other persons, constitute an obstacle to such inspection.

D. Judicial review of investigative measures

33. Under Article 98 § 2 of the CCP, a person affected by the seizure of an object in the absence of court involvement may apply for a court decision at any time.

34. In accordance with the well-established case-law of the Federal Court of Justice (see, for example, case no. 5 ARs (VS) 1/97, 5 August 1998), an analogous application of Article 98 § 2 of the CCP offers the possibility of a judicial review of all investigative measures by a public prosecutor if a measure constituted an interference with the person's fundamental rights.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that the German authorities had, without justification, collected, stored and made available information about his professional bank account, and had thereby revealed information about his clients. He relied on Article 8 of the Convention, the relevant parts of which read:

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety ... for the prevention of disorder or crime ..."

A. Admissibility

36. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

37. The applicant argued that the conduct of the Bochum public prosecution office and the domestic courts had seriously interfered with his private life in several ways. He submitted that the information pertaining to all of his professional bank transactions for a period of nearly three years had been collected, that this information had subsequently been analysed and stored, and that an extract listing fifty-three transactions had been disclosed in the investigation file. He stated that, as a whole, the information gave a complete picture of his professional activity and provided information about his clients in respect of the period in question. Not only had the conduct of the public prosecutor interfered with the privileged relationship between him as a defence lawyer and his clients, but the requests for information from his bank had also circumvented his obligation to maintain confidentiality.

38. The applicant argued that, given the seriousness of the interference, Article 161 of the CCP had not been a suitable legal basis for the requests, as the provision allowed only minor interferences with the fundamental rights of a suspect. He further submitted that Article 161 of the CCP required there to be an official investigation into a suspect. However, no criminal investigation against him had been opened and there had been no sufficient suspicion in respect of his involvement in any criminal offence. Regarding this latter point, the applicant pointed to the fact that the inspection of his bank account had been solely based on the fact that the fiancée of his client had transferred the fee for his professional services as a defence lawyer. Furthermore, he pointed out that the investigative measure directed against him as a lawyer was prohibited under Article 160a of the CCP.

39. Lastly, the applicant submitted that, even assuming that there had been a legal basis for the requests for information, the interference had been disproportionate and not necessary in a democratic society. He argued that there had been no reasonable grounds for such a serious interference, and that no safeguards such as the judicial authorisation of the requests for information had been put in place to protect his role as a defence lawyer. He also submitted that the subsequent restriction of access to the list of bank transactions by the Regional Court could only reduce the seriousness of the ongoing interference, as the information had already been collected and disclosed to an unknown number of people. Besides the police officers, the public prosecutor and judges, counsel for all six of his client's co-accused had been able to find out about his bank transactions, the names of his clients and the fees they had paid.

(b) The Government

40. The Government acknowledged that the collection and disclosure of the applicant's financial information had constituted a relatively minor interference with his right to respect for private life. They pointed out that the information in question had consisted

entirely of financial data and had not revealed any private or intimate details of the applicant's life. The Government further submitted that only a fraction of the original information had been included in the case file, and that only a limited number of people, in essence the defence lawyers of the co-accused, had had access to the case file. Moreover, the Regional Court had further restricted access to the bank account information to people who could provide reasons proving sufficient interest.

41. Regarding the legal basis for the collection and storage of the information, the Government submitted that Article 161 of the CCP contained a "blanket clause" for investigative measures involving relatively low levels of interference. They further asserted that the prosecutorial measure served the purpose of preventing criminal acts, a legitimate goal in terms of Article 8 § 2 of the Convention.

42. The Government argued that the interference had been necessary in a democratic society, owing to the low level of interference and the seriousness of the crimes under investigation. They argued that due consideration had been given to the special status of the applicant as a lawyer, as the CCP provided sufficient protection for the lawyer-client relationship. Under Article 160a § 4 of the CCP, this protection was only lifted if a lawyer were suspected of being a participant in an offence or aiding and abetting following the commission of an offence. In the present case, such suspicion had been substantiated by certain facts, since the applicant had received money from the applicant's fiancée, who herself was suspected of having received money stemming from illegal activities. The Government also pointed out that Article 160a § 4 of the CCP did not require there to be a formal investigation against the applicant, a fact which could be inferred from the discussions during the legislative procedure.

43. The Government emphasised that the bank had provided the information concerning the applicant's bank account voluntarily. The public prosecutor had not used any coercive measures against the bank to obtain the information, but had merely notified them that refusing the requests for information could result in the issue of a coercive summons for formal questioning. The information provided to the bank had been correct, as bank employees were not considered "persons assisting" within the meaning of Article 53a of the CCP, and therefore did not have their own right to refuse to testify.

44. Lastly, the Government submitted that German law contained adequate procedural safeguards enabling the applicant to apply for judicial review of the investigative measure in question. The applicant had been able to have the investigative measure reviewed by a court under the analogous application of Article 98 § 2 of the CCP.

(c) The German Federal Bar Association

45. Referring to Michaud v. France (no. 12323/11, ECHR 2012), the German Federal Bar Association argued that the well-established case-law of the Court showed that the

confidentiality of privileged communications between lawyers and clients was protected under Article 8. This protection could also be found in the German CCP, as Article 160a of the CCP not only prohibited investigative measures against people under an obligation of professional confidentiality, but also entailed an absolute prohibition of the collection of evidence. This prohibition would only cease to apply, under Article 160a § 4 of the CCP, if the person under an obligation of professional confidentiality were suspected of having been involved in the offence.

46. The third-party intervener also argued that the effective protection of privileged communications between lawyers and clients required that Articles 53a and 97 of the CCP be extended to banks, which held information regarding the professional activities of a lawyer, because lawyers were not only dependent on bank transactions but also legally obliged to use an escrow account. Furthermore, the Federal Bar Association pointed out that, if a lawyer revealed the names of his clients, he or she could be held criminally liable under Article 203 § 1 (3) of the Criminal Code, and could have to face a term of imprisonment of up to one year or a fine for the disclosure of confidential information.

2. The Court's assessment

(a) The existence of an interference with the applicant's private life

47. The Court notes that the Government did not dispute that the prosecutorial measure constituted an interference with the applicant's right to respect for private life.

48. Having regard to M.N. and Others v. San Marino (no. 28005/12, §§ 51-55, 7 July 2015), Brito Ferrinho Bexiga Villa-Nova v. Portugal (no. 69436/10, § 44, 1 December 2015), and Michaud (cited above, §§ 90-92) the Court agrees with the parties and holds that collecting, storing and making available the applicant's professional bank transactions constituted an interference with his right to respect for professional confidentiality and his private life.

(b) Justification for the interference

49. The Court reiterates that an interference breaches Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is, in addition, "necessary in a democratic society" to achieve those aims (M.N. and Others v. San Marino, cited above, § 71, with further references).

(i) In accordance with the law

50. According to the Court's established case-law, the requirement that an interference be "in accordance with the law" does not only mean that the measure in question

should have some basis in domestic law, but also that the law should be accessible to the person concerned and foreseeable as to its effects.

51. The Court observes that the Government cited Article 161 of the CCP as the legal basis for the requests of information, while the applicant argued that the provision was not a suitable legal basis in respect of the present case. It also notes that there was no specific legal basis for the collection of banking information, and that the Government described Article 161 of the CCP as a "blanket clause" allowing investigative measures involving relatively low levels of interference.

52. As regards the protection of the professional confidentiality of lawyers, the Court observes that Article 160a § 4 of the CCP does not require there to be a formal investigation against the lawyer who is affected, but that the prohibition of investigative measures against lawyers under Article 160a §§ (1) to (3) of the CCP can be lifted if certain facts substantiate a suspicion of participation in an offence.

53. The Court considers that Articles 161 and 160a of the CCP are worded in rather general terms. It reiterates that, in the context of covert intelligence-gathering, it is essential to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards concerning, inter alia, duration, storage, usage, access of third parties, procedures for preserving the integrity and confidentiality of data and procedures for its destruction, thus providing sufficient guarantees against the risk of abuse and arbitrariness (see, S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 99, ECHR 2008, with further references). The Court concludes, however, that these important questions in the present case are closely related to the broader issue of whether the interference was necessary in a democratic society, and will therefore assess them as part of this issue (see paragraphs 55-62 below).

(ii) Legitimate aim

54. The Government submitted that the prosecutorial requests for information had served the purpose of preventing criminal acts, and this was not challenged by the applicant. The Court accepts that the interference aimed to investigate a criminal act and thereby served the legitimate aims of the prevention of crime, the protection of the rights and freedoms of others, and also the economic well-being of the country (compare M.N. and Others v. San Marino, cited above, §75).

(iii) Necessary in a democratic society

(α) General principles

55. As to the question of whether an interference is "necessary in a democratic society" in pursuit of a legitimate aim, the Court has consistently held that the notion of "necessity" implies that the interference corresponds to a pressing social need and, in

particular, that it is proportionate to the legitimate aim pursued (see Buck v. Germany, no. 41604/98, § 44, ECHR 2005-IV, with further references). Contracting States have a certain margin of appreciation in assessing the need for an interference, but it goes hand in hand with European supervision embracing both legislation and decisions applying it (see, among many other authorities, Roman Zakharov v. Russia [GC], no. 47143/06, § 232, ECHR 2015). The exceptions provided for in Article 8 § 2 are to be interpreted narrowly, and the need for them in a given case must be convincingly established (see Crémieux v. France, 25 February 1993, § 38, Series A no. 256-B).

56. When considering the necessity of an interference, the Court must be satisfied that there were sufficient and adequate guarantees against arbitrariness, including the possibility of effective control of the measure at issue (see M.N. and Others v. San Marino, cited above, § 73, with further references). Moreover, the Court has previously acknowledged the importance of specific procedural guarantees when it comes to protecting the confidentiality of exchanges between lawyer and client and of legal professional privilege (see Michaud cited above, § 130). It has emphasised that, subject to strict supervision, it is possible to impose certain obligations on lawyers concerning their relations with their clients, for example in the event that there is plausible evidence of the lawyer's involvement in a crime and in the context of the fight against money-laundering. The Court has further elaborated that the Convention does not prevent domestic law allowing for searches of a lawyer's offices as long as proper safeguards are provided, for example the presence of a representative (or president) of a bar association (see André and Another v. France, no. 18603/03, 24 July 2008, and Roemen and Schmit v. Luxembourg, no. 51772/99, § 69, ECHR 2003-IV, where there were no findings of a violation of Article 8; and Xavier Da Silveira v. France, no. 43757/05, §§ 37, 43, 21 January 2010, where there was a finding of a violation of Article 8 owing to the absence of such a safeguard).

(β) Application of these principles to the present case

57. Turning to the facts of the present case, the Court firstly notes the wide scope of the prosecutorial requests for information, which concerned information about all transactions relating to the applicant's professional bank account for a period of over two years, as well as information about further, possibly private, bank accounts of the applicant. It agrees with the applicant that the information submitted by the bank provided the public prosecutor and the police with a complete picture of his professional activity for the time in question, and moreover with information about his clients. It also considers that the interference was made more serious by the fact that excerpts of the information were included in the case file and made available to other people. The fact that only fifty-three transactions were considered relevant and included in the case file, and that the Regional Court restricted access to the relevant

parts of the case file later on, could not redress the already ongoing interference, but only limit it from becoming more serious. In sum, the Court concludes that the requests for information were only limited in relation to the period in question, but otherwise concerned all information concerning the bank account and banking transactions of the applicant. It will therefore examine whether the shortcomings in the limitation of the requests for information were offset by sufficient procedural safeguards capable of protecting the applicant against any abuse or arbitrariness (see, mutatis mutandis, Robathin v. Austria, no. 30457/06, § 47, 3 July 2012).

58. The Court notes that the Government submitted that Article 161 of the CCP had been the legal foundation for the prosecutorial requests for information and the subsequent collection and storage of the banking information. It also observes that Article 161 of the CCP allows relatively low levels of interference as soon as there is a suspicion of a criminal offence, and that the Government described it as a "blanket clause" for investigative measures. The Court therefore concludes that the threshold for interference under Article 161 of the CCP is relatively low and that the provision does not provide particular safeguards.

59. The Government also argued that the bank had provided the information concerning the applicant's bank account voluntarily, and that the public prosecutor had not used any coercive measures to obtain the information. In that regard, the Court observes that the requests for information included information notifying the bank that a refusal to submit the requested information could result in the issue of a coercive summons for formal questioning. Consequently, the Court is doubtful whether the bank acted entirely voluntarily. Furthermore, the Court reiterates that the storage or collection of data relating to the "private life" of an individual constitutes interference for the purposes of Article 8, irrespective of who is the owner of the medium on which the information is held (see, mutatis mutandis, M.N. and Others v. San Marino, cited above, § 53; Valentino Acatrinei v. Romania, no. 18540/04, § 53, 25 June 2013; Uzun v. Germany, no. 35623/05, § 49, ECHR 2010 (extracts); and Lambert v. France, 24 August 1998, § 21, Reports of Judgments and Decisions 1998-V).

60. In this context, the Court also observes that, according to the Government and the national authorities, banks and bank employees are not considered "persons assisting" within the meaning of Article 53a of the CCP, and therefore do not have their own right to refuse to testify. Since the applicant and the third party contested this interpretation of Article 53a of the CCP, the Court finds it necessary to reiterate that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation, and that the Court's role is confined to ascertaining whether the effects of such interpretation are compatible with the Convention (see M.N. and Others v. San Marino, cited above, § 80, with further references). However, the Court finds that the national authorities' interpretation of

Article 53a of the CCP had no effect in the present case, as the national authorities and courts concluded that Article 160a § 4 of the CCP allowed investigative measures against the applicant. Consequently, possible safeguards under Article 53a of the CCP would also have been suspended.

61. The Court observes that Article 160a of the CCP provides a specific safeguard for lawyers and lawyer-client privilege. However, it also notes that such protection can be suspended under Article 160a § 4 of the CCP if certain facts substantiate a suspicion of participation in an offence. According to the Government, with reference to the discussions during the legislative procedure, Article 160a § 4 of the CCP does not require there to be an official investigation against a lawyer before the protection of the professional confidentiality of lawyers is suspended. According to the national authorities and courts, the transfer of fees from the applicant's client's fiancée to the applicant, and the suspicion that money stemming from illegal activities had been transferred to the fiancée's bank account, sufficiently substantiated a suspicion against the applicant. On the basis of the information and documents provided by the parties, the Court considers that the suspicion against the applicant was rather vague and unspecific.

62. Lastly, the Court observes that the inspection of the applicant's bank account was not ordered by a judicial authority, and that no "specific procedural guarantees" (see paragraph 56) were applied to protect legal professional privilege. In so far as the Government submitted that the applicant could have the measures reviewed by a court under the analogous application of Article 98 § 2 of the CCP, the Court reiterates that a subsequent judicial review can offer sufficient protection if a review procedure at an earlier stage would jeopardise the purpose of an investigation or surveillance. However, the effectiveness of a subsequent judicial review is inextricably linked to the question of subsequent notification about the surveillance measures. There is, in principle, little scope for recourse to the courts by an individual unless he or she is advised of the measures taken without his or her knowledge and thus able to challenge the legality of such measures retrospectively (see Roman Zakharov, cited above, § 234; Klass and Others v. Germany, 6 September 1978, § 57, Series A no. 28; Weber and Saravia v. Germany, no. 54934/00, § 135, 29 June 2006; and Uzun v. Germany, cited above, § 72). In that regard, the Court observes that the public prosecutor asked the bank not to reveal his information requests to the applicant, that the applicant was not informed about the inspection of his professional bank account by the public prosecutor, and that he only learned of the investigative measures concerning his own bank account from the case file. The Court concludes that, even though there was no legal requirement to notify the applicant, by coincidence he learnt of the investigative measures and had access to a retrospective judicial review of the prosecutorial requests for information.

63. Having regard to the low threshold for inspecting the applicant's bank account, the wide scope of the requests for information, the subsequent disclosure and continuing storage of the applicant's personal information, and the insufficiency of procedural safeguards, the Court concludes that the interference was not proportionate and therefore not "necessary in a democratic society". There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government did not comment on the applicant's claim.

67. The Court, ruling on an equitable basis, awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;

2. Holds that there has been a violation of Article 8 of the Convention;

3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the

Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 27 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan BlaškoErik Møse

Deputy RegistrarPresident