



Banking data, irrespective of whether it contains sensitive information, is protected under the Convention

In today's **Chamber judgment**¹ in the case of [M.N. and Others v. San Marino](#) (application no. 28005/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private life and correspondence) of the European Convention on Human Rights in respect of one of the applicants, M.N..

The case concerned the search and seizure of documents relating to banking and fiduciary relationships.

The applicants, four Italian nationals, notably complained about a decision by the San Marino judicial authorities ordering the seizure of banking documents related to them. The decision was made at the request of the Italian prosecution authorities in the context of an on-going criminal investigation – not involving the applicants – into money laundering in Italy.

The Court underlined that there was no doubt that banking documents amounted to personal data concerning an individual, irrespective of whether or not they contained sensitive information, and irrespective of who was the owner of the medium on which the information was held. Such information was thus protected under Article 8's notion of "private life". Furthermore, the right to respect for correspondence under Article 8 was also engaged as the seizure order covered the exchange of letters and e-mails.

The Court found that there had been a lack of procedural safeguards under San Marino law, in so far as M.N. had not been able to contest the search and seizure decision in his regard, following its implementation. Given that M.N. had not been charged with any financial wrongdoing nor had he been the owner of the banking institutes searched, he had no standing to contest the seizure, copying and subsequent storage of information retrieved from his bank statements, cheques, fiduciary dispositions and e-mails. Indeed M.N., who was not an accused in the original criminal procedure, had been at a significant disadvantage as compared to the accused in those proceedings or to the possessor of the banking or fiduciary institute, all of whom were entitled to challenge the search and seizure decision. As a result, M.N. had not enjoyed the effective protection of national law.

Principal facts

The applicants, S.G, M.N, C.R., and I.R., are Italian nationals who live in Italy.

In the context of criminal proceedings in Italy in 2009 against several people (not including the applicants) on suspicion of a number of offences – including conspiracy, money laundering, embezzlement, tax evasion and fraud – the Italian prosecutors asked the San Marino authorities for assistance. Following that request, the San Marino first-instance tribunal issued a search and seizure decision in respect of all banks, fiduciary institutions and trust companies in San Marino.

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.

Banking data relating to the applicants were thus seized and copied in the course of the operation. The applicants were notified about the measure applied to them about one year after the adoption of the search and seizure decision.

The applicants then lodged a complaint before the judge of criminal appeals against the decision to seize documents related to them. In February and June 2011, respectively, that judge declared their complaints inadmissible, as the applicants had no standing to institute such proceedings, and noting that any breach of the rights of a person concerned by the investigation as a result of the execution of the relevant court decision had to be raised before the Italian courts. The applicants' appeals against that decision before the third-instance judge were rejected on different dates in 2011.

Complaints, procedure and composition of the Court

The applicants complained about the decision ordering the seizure of banking documents relating to them, alleging that they did not have effective access to court to complain about it and that it interfered with their private life and correspondence. They relied on Article 6 § 1 (right to a fair trial – access to court), Article 8 (right to respect for private and family life, the home and the correspondence) and Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 26 April 2012.

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

Josep **Casadevall** (Andorra), *President*,
Luis **López Guerra** (Spain),
Ján **Šikuta** (Slovakia),
Kristina **Pardalos** (San Marino),
Johannes **Silvis** (the Netherlands),
Valeriu **Grițco** (the Republic of Moldova),
Iulia Antoanella **Motoc** (Romania),

and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private life and correspondence\)](#)

The Court declared the complaints of S.G, C.R., and I.R. inadmissible for non-exhaustion of domestic remedies and/or non-compliance with the six-month rule, which allows the Court to only consider matters within a period of six months from the final decision at national level.

The Court decided to examine the complaints of the remaining applicant, M.N., solely under Article 8 of the Convention, first of all dismissing the Government's argument that Article 8 was not applicable in the circumstances of the case as, in their view, the case-law to-date did not protect the confidentiality of materials relating to banking and fiduciary relationships.

The Government notably argued that no searches had taken place in M.N.'s home or work place and that the documents in question, which had simply been submitted, copied for information purposes and returned, were not personal or of an intimate nature.

The Court, on the other hand, considered that there was no doubt that banking documents amounted to personal data concerning an individual, irrespective of whether or not they contained sensitive information. Such information could also concern professional dealings and there was no reason to justify excluding activities of a professional or business nature from the notion of "private life". In addition, the right to respect for one's correspondence was also engaged since the seizure

order had covered letters and e-mails exchanged between M.N. and third parties, which had been in the bank's possession. The Court recalled in that connection that Article 8 protected the confidentiality of all exchanges between individuals for the purposes of communication. Moreover, it was of no consequence that the original documents remained with the bank. The copying and subsequent storage of information retrieved from bank statements, cheques, fiduciary dispositions and e-mails had therefore amounted to an interference with both M.N.'s "private life" and "correspondence".

That interference had been prescribed by law, namely Article 29 of the Bilateral Convention on Friendship and Good Neighbourhood between Italy and San Marino of 1939 and the relevant laws which provided for an exception to the right of banking secrecy in the context of criminal proceedings, and pursued the legitimate aims of, among other things, prevention of crime and the economic well-being of the country.

However, the Court found that there had been a lack of procedural safeguards to contest the interference with M.N.'s "private life" and "correspondence", notably the fact that he had had no means available to him under national law to challenge the measure to which he had been subjected. Given that M.N. had not been charged with any financial wrongdoing, nor was he the owner of the banking institutes, he had no standing under San Marino law to contest the seizure and copying for storage purposes of his banking data. Indeed M.N., who was not an accused person in the original criminal procedure, had been at a significant disadvantage as compared to the accused in those proceedings or to the possessor of the banking or fiduciary institutes, all of whom had been entitled to challenge the search and seizure decision. As a result, M.N. had not enjoyed the effective protection of national law.

On that account M.N., not being an "interested person" within the meaning of the domestic law as interpreted by the domestic courts, had been denied the "effective control" to which citizens were entitled under the rule of law and which would have restricted the interference in question to what had been "necessary in a democratic society". The Court therefore held that there had been a violation of Article 8 in respect of M.N..

Given that finding, the Court held that there was no need to examine M.N.'s further complaint under Article 6 § 1 about being denied access to court concerning the constitutional legitimacy of the interpretation given to the law.

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

The Court held that San Marino was to pay M.N. 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.