



Inspection of a lawyer's bank account breached his right to professional confidentiality and private life

In today's Chamber judgment¹ in the case of [Sommer v. Germany](#) (application no. 73607/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned a complaint brought by a criminal defence lawyer, Ulrich Sommer, about an inspection of his professional bank account by the public prosecution office. The prosecuting authorities' requests to inspect his account was made in the context of a criminal investigation into organised fraud, one of the suspects being a client of Mr Sommer. Mr Sommer complained that the German authorities had, without justification, collected, stored and made available information about his professional bank account, thereby also revealing information about his clients.

The Court found that the inspection of Mr Sommer's bank account had been disproportionate. It notably bore in mind: the low threshold for inspecting Mr Sommer's account under the relevant domestic law, which allowed such measures to be carried out as soon as there was as suspicion of a criminal offence; the wide scope of the prosecuting authorities' requests for information, which were only only limited in time and covered all information concerning Mr Sommer's bank account and banking transactions; the subsequent disclosure and continuing storage of his personal information; and the fact that those shortcomings had not been offset by proper procedural safeguards.

Principal facts

The applicant, Ulrich Sommer, is a German national who was born in 1952 and lives in Cologne (Germany). He works as a criminal defence lawyer.

In March and April 2011 the public prosecutor contacted Mr Sommer's bank requesting information about all transactions relating to his professional bank account over the previous two years, as well as information about further, possibly private accounts. The requests, based in particular on Article 161 of the Code of Criminal Procedure ("the CCP"), was made in the context of a criminal investigation into organised fraud, one of the suspects being a client of Mr Sommer. The prosecutor notably suspected that money transferred from this client's fiancée to Mr Sommer to pay his legal fees had stemmed from illegal activities. The bank was also asked by the prosecution not to reveal the request to Mr Sommer. The bank complied and a list of 53 transactions was subsequently included in the investigation file as evidence.

Mr Sommer learned of these investigative measures concerning his bank account when granted access to the case file, as the lawyer of the accused, in January 2012. Mr Sommer asked the prosecuting authorities and then the courts – to whom the file had been transferred because the criminal proceedings against Mr Sommer's client had started – to return the data, without success.

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.

The domestic court notably found that the investigation was lawful and that the bank had provided the information voluntarily. This decision was confirmed on appeal. The Court of Appeal found that the safeguards – in particular lawyer-client privilege under Article 160a in conjunction with Articles 53 and 53a of the CCP – in place concerning seizure of documents entrusted to lawyers were not applicable in Mr Sommer's case. The Federal Constitutional Court refused to admit Mr Sommer's complaint in September 2013.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), Mr Sommer complained that the German authorities had, without justification, collected, stored and made available information about his professional bank account, thereby also revealing information about his clients.

The application was lodged with the European Court of Human Rights on 25 November 2013.

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

Erik **Møse** (Norway), *President*,
Angelika **Nußberger** (Germany),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

First, the Court held that collecting, storing and making available Mr Sommer's professional bank transactions had interfered with his right to respect for professional confidentiality and his private life. The justification for that interference, namely to prevent crime and to protect the rights and freedoms of others as well as the economic well-being of the country, had been legitimate.

However, it found that the scope of the prosecuting authorities' requests for information had been very wide. The requests, only limited in time, covered all information concerning Mr Sommer's bank account and banking transactions. Indeed, the information submitted by the bank had provided the public prosecutor and the police with a complete picture of Mr Sommer's professional activity and, moreover, with information about his clients.

Furthermore, the shortcomings in the limitation of the requests for information had not been offset by proper procedural safeguards. First, Article 161 of the CCP, the legal foundation for the requests and for the subsequent collection as well as storage of the information, had not provided any particular safeguards. This was because the threshold for inspecting Mr Sommer's account under that provision was low, as it allowed relatively low levels of interference as soon as there was a suspicion of a criminal offence. Second, although the specific safeguard for lawyers under Article 160a of the CCP, namely lawyer-client privilege, could be suspended if certain facts substantiated a suspicion of participation in an offence, the Court considered that the suspicion against Mr Sommer had been rather vague. Lastly, the inspection had not been ordered by a judicial authority and no specific procedural guarantees had been applied to protect legal professional privilege. Even though there was the possibility of a judicial review of the investigative measures against him, that review had been retrospective as Mr Sommer had only learnt of the measures against him by coincidence, neither the bank nor the prosecuting authorities having informed him about the inspection.

Given the above, the Court concluded that the inspection of Mr Sommer's bank account had not been proportionate and had not been necessary in a democratic society. There had therefore been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that Germany was to pay Mr Sommer 4,000 euros (EUR) in respect of non-pecuniary damage.

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.