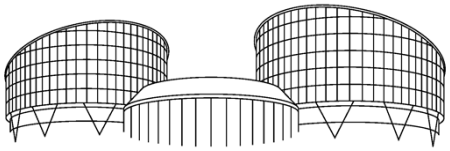

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF NAUMENKO AND SIA RIX SHIPPING v. LATVIA

(Application no. 50805/14)

JUDGMENT

Art 8 • Private life • Home • Correspondence • Proportionate search of business premises and seizure of large amounts of documents and electronic files in "dawn raid" by the Competition Authority, in relation to possible competition law infringement • Relevant domestic law safeguards, including prior judicial authorisation and subsequent judicial review • Sufficient procedural safeguards to counterbalance broad discretion conferred on officials in present case • Margin of appreciation

STRASBOURG

23 June 2022

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 Naumenko and SIA Rix Shipping v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 50805/14) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Naumenko ("the first applicant"), and SIA RIX Shipping ("the second applicant"), on 8 July 2014;

the decision to give notice to the Latvian Government ("the Government") of the complaint concerning Article 8 and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 5 April 2022 and 31 May 2022,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The case concerns the applicants' allegations under Article 8 of the Convention that a search of the second applicant's business premises and the seizure of large amounts of documents and electronic files in an unannounced operation ("dawn raid") by the Competition Authority (*Konkurences padome*) was unlawful and disproportionate and that procedural safeguards were insufficient.

THE FACTS

2. The first applicant was born in 1973 and lives in Riga. He is the sole owner and board member of the second applicant, a limited liability company established in 2008, registered in Latvia and providing shipping agency services. The applicants were represented by Mr K. Oļehnovičs, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. INSTITUTION OF PROCEEDINGS AGAINST THE NALSA

5. On 10 May 2013 the Competition Authority instituted proceedings against the National Association of Latvian Shipbrokers and Shipping Agents ("the NALSA") in response to allegations that the NALSA had entered into a prohibited agreement within the meaning of section 11(1) of the Competition Law (*Konkurences likums*).

6. On 9 January 2014 the Competition Authority lodged an application with the Riga City Vidzeme District Court (*Rīgas pilsētas Vidzemes priekšpilsētas tiesa*) ("the District Court"), requesting leave to carry out the procedural actions listed in section 9(5)(4) and 9(5)(5) of the Competition Law (see paragraph 19 below) with regard to four legal entities, including the NALSA and the second applicant. To substantiate its request, the Competition Authority referred to a document available online entitled "Recommended scale of agency fees" (approved by the NALSA), to an invoice issued by the second applicant stating that the price had been determined in accordance with the recommendation in question, and to an examination question for shipping agents on "agency fees; their calculation", set by the NALSA. According to the second applicant, it did not have any other information about the invoice (such as a number, date or addressee) to be able to comment.

7. On 14 January 2014 a judge of the District Court granted the request, finding that the material submitted to her and the explanations provided by the Competition Authority confirmed that there was reasonable suspicion that four legal entities – including the NALSA and the second applicant – had entered into a prohibited agreement within the meaning of section 11(1) of the Competition Law. She stated that there were no other means of obtaining evidence, without giving any further details. The operative part of the decision reads:

> "... [the court] has decided to allow the officials of ... the Competition Authority, in the presence of the police and without prior notification, to carry out the actions listed in section 9(5)(4) and 9(5)(5) of the Competition Law ... in the movable and immovable properties that are in the possession or use of [the second applicant] and its officials and employees, as well as at other persons' [properties], if there is reasonable suspicion that documents or property items that could serve as evidence of a violation of the Commercial Law [*sic*] are stored in non-residential premises, vehicles, apartments, buildings and other movable or immovable objects that are in the ownership, possession or use of other persons."

II. DAWN RAID OF 28 JANUARY 2014

8. On 28 January 2014 at 10 a.m., officials from the Competition Authority, in the presence of a police officer, entered the premises of the second applicant. Simultaneous searches were carried out at the premises of the NALSA and two other legal entities (see paragraph 6 above). After

waiting for the arrival of the applicants' lawyer, at around 11.10 a.m. they carried out a search of those premises. In particular, they examined invoices and other accounting documents and the information available on the first applicant's computer, which was located in his office, and the second applicant's server, which was located in a special room. After allowing for short consultations with the applicants' lawyer, at around 11.30 a.m. the officials started to question the first applicant, who offered his full cooperation. The first applicant asked the officials not to seize any originals of accounting documents; that request was granted. At around 2.50 p.m. an IT expert arrived on the premises. At around 4 p.m. the police officer left, with the mutual agreement of the parties concerned.

9. According to the relevant record, the officials of the Competition Authority seized two invoices issued by the second applicant (dating from 2012), the first applicant's emails (dating from 2014), and letters addressed to clients by the second applicant (dating from 2009 and 2014). It was also noted that they created and seized a mirror copy from the data stored on the first applicant's computer (see paragraph 10 below) and the second applicant's server (see paragraph 11 below).

10. As to the first applicant's computer, he protested about the indiscriminate copying of his old correspondence with no connection to the second applicant (including emails dating from 1993), and relating to his private life. Passwords for his email accounts had been copied, allowing further access. He pointed out that any leaks might cause significant damage to the commercial activities of the second applicant. The IT expert agreed to delete 70.1 GB of data; he created a new mirror copy, which amounted to 25.7 GB. According to the relevant record, the first applicant's emails in connection with the second applicant were copied from folders named "a. naumenko in", "a. naumenko out", "administration in", "accounting in" and "reports in" (83,581 emails in total). According to the relevant record, the first applicant acknowledged that the amount of data seized had been reduced but he expressly noted that his objections had nevertheless not been resolved.

11. The first applicant also protested that a mirror copy from the data stored on the second applicant's server had been made. According to the relevant record, those data included a copy of an Outlook Express email account, which amounted to 141 MB; however, there is no further information about its contents or the number of files copied. The first applicant protested about the copying of the data from the second applicant's server, as the Competition Authority had already acquired all the necessary data. Emails copied from the server had not been indexed, numbered or described. According to him, the data retained did not relate to the administrative case and could not be used as evidence; their retention was unjustified and unlawful. Despite the first applicant's objections, the data in question were retained by the authorities.

12. The parties disagree as to what data was actually retained. According to the first applicant, his emails allegedly of a personal nature dating from 2003 were included in the data retained; but he provided no further information as to whether they were retained from his computer or the second applicant's server. According to the Government, only the second applicant's documents (including emails) were seized, and the first applicant's request that the seized documents and files be given the status of restricted access information was granted.

13. At around 8 p.m. the operation was completed.

III. REVIEW OF THE JUDICIAL AUTHORISATION

14. On 7 February 2014 the first applicant, acting on behalf of the second applicant, lodged a complaint with the President of the District Court, requesting that the decision (see paragraph 7 above) be set aside "in so far as it concerned the second applicant". The impugned decision had not referred to any circumstances that could lead to the conclusion that a prohibited agreement might have been entered into; the second applicant had not been a member of the NALSA. There had been no necessity to search the property of the second applicant, its officials and employees, and to examine their property items, documents and electronic files. The impugned decision had contained no reasoning as to why specifically the investigative actions set out in section 9(5)(4) and 9(5)(5) of the Competition Law, which were very intrusive, had been justified and proportionate. It had been drafted in very broad terms and had authorised the Competition Authority to carry out searches with respect to an unidentified group of persons for an indeterminate amount of time. As a result, the power to decide on searches had been left entirely within the discretion of the Competition Authority – an outcome that was contrary to the purpose of the Competition Law, which required judicial authorisation. The impugned decision had failed to observe a fair balance between the need to acquire the necessary information and the need to protect human rights.

15. On 18 February 2014 the President of the District Court dismissed that complaint. She considered that the judicial authorisation had been issued in accordance with the law; there were no grounds to quash or amend it. The President referred to the domestic legal provisions and noted that the Competition Authority had competence to verify suspicions and obtain information about prohibited agreements. It had been authorised to carry out specific procedural actions under section 9(5)(4) and 9(5)(5) of the Competition Law on the basis of a judicial authorisation.

16. The judicial authorisation of 14 January 2014 had complied with section 9^1(1) of the Competition Law. The President considered that the judge had duly assessed the necessity of the requested procedural actions. As required under section 9^1(1), the judge had examined the material submitted

to her, had heard the information provided by an official of the Competition Authority and had adopted a decision within seventy-two hours. The judge had not been required to refer to information contained in the case material, given that access to that information had been restricted while the Competition Authority was gathering information. In sum, the President considered that the judicial authorisation was proportionate in order to ensure supervision of the market, an objective investigation and the preservation of evidence in the light of the infringement the Competition Authority was investigating. That decision was final.

IV. CONCLUSION OF THE PROCEEDINGS AGAINST THE NALSA

17. On 8 September 2014 the Competition Authority imposed on the NALSA an administrative fine in the amount of 715.35 euros (which was 5% of its income for the year 2013) for having entered into a prohibited agreement in which it had set a minimum or fixed price for its members for services rendered by shipping agents. In reaching that decision, the Competition Authority took into account the information obtained during the dawn raid of 28 January 2014 carried out in respect of four legal entities, including in the business premises of the second applicant. The data obtained included invoices issued by and emails sent on behalf of the second applicant (see paragraphs 10-11 above). The NALSA did not lodge an appeal against that decision. There is no further information about any proceedings being pursued directly against the second applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. EUROPEAN UNION LAW AND PRACTICE

18. The relevant provisions of European Union ("EU") law and practice are set out in *DELTA PEKÁRNY a.s. v. the Czech Republic* (no. 97/11, §§ 52-55, 2 October 2014).

II. DOMESTIC LAW AND PRACTICE

A. Competition Law prior to 2016

19. Section 9(5) of the Competition Law sets out the actions which the Competition Authority is allowed to carry out when supervising the market or investigating potential violations of, *inter alia*, the Competition Law. These include the following, in particular:

> "(4) on the basis of a judicial warrant, without prior notice and in the presence of the police, [the Competition Authority is authorised] to enter non-residential premises, vehicles, apartments, buildings and other movable and immovable objects that are in the ownership, possession or use of a market participant or of an association of market

participants, to open [those objects] and the storage facilities therein, to carry out a forcible search of those objects and storage facilities, and to examine the property items and documents therein, including the information (data) stored in an electronic information system – computers, floppy disks and other information media. If a person whose property undergoes a search refuses to open the objects or the storage facilities therein, the officials of the Competition Authority shall be authorised to open them, without causing substantial harm. During the search and examination, the officials of the Competition Authority shall be entitled to:

(a) prohibit the persons who are present at the site from leaving it without permission, from moving and from conversing among themselves until the end of the search and examination;

(b) become acquainted with the information included in the documents and in the electronic information system (including information containing commercial secrets);

(c) seize any property items and documents which may be of importance to the case;

(d) request and receive document copies that are certified in accordance with the procedures laid down in laws and regulations;

(e) print out or record to an electronic information medium the information (data) stored in the electronic information system;

(f) request and receive written or oral explanations from the employees of the market participant;

(g) seal the non-residential premises, vehicles, buildings and other objects and the storage facilities therein for a period of up to seventy-two hours, in order to ensure the preservation of evidence;

(5) on the basis of a judicial warrant, if there is reasonable suspicion that documents or property items that might serve as evidence of a violation of this Law are being stored in the non-residential premises, vehicles, apartments, buildings and other movable and immovable objects that are in the ownership, possession or use of other persons, [the Competition Authority is authorised] to perform, in the presence of the police, the actions listed in sub-paragraph 4 of this paragraph in relation to such persons ...”

20. Section 9^1(1) of the Competition Law (as in force at the relevant time and until 15 June 2016) provided that a warrant authorising the actions listed in section 9(5)(4) and 9(5)(5) of that Law had to be issued by a judge of a district court. The judge had to examine, within seventy-two hours, the application by the Competition Authority and the documents justifying the necessity of such activities, hear the information provided by the officials of the Competition Authority, and decide on whether to give or refuse permission for the actions. A complaint against a warrant issued on that basis had to be lodged with the president of the district court within ten days from the date of its receipt (section 9^1(3)). A decision taken by the president of the district court was final and not subject to appeal (section 9^1(4)). The evidence obtained on the basis of a warrant that had been revoked or amended could not be used to the extent to which that warrant had been found to be unlawful (section 9^1(6)).

21. Section 9^2 (1) of the Competition Law provides that records must be drawn up in relation to the procedural actions taken in relation to supervision

of the market and the investigation of potential violations of the Competition Law. The records must include information about the items and documents seized (section 9^2 (2)(8)).

22. Section 9^3 of the Competition Law provides for the rights of the market participants and other persons in relation to whom procedural actions referred to in section 9(5)(4) and 9(5)(5) have been taken. They include the right to be present, to submit comments and make requests, the right to legal assistance, the right to request that certain information be given the status of restricted access information, and the right to submit a complaint to the Chairperson of the Competition Authority regarding the actions of an official of that authority (section 9^3(2)).

23. Section 11 of the Competition Law reads as follows:

> "(1) Agreements between market participants, which have as their object or effect the hindrance, restriction or distortion of competition in Latvia, shall be prohibited and null and void from the moment of being entered into, including agreements regarding:
>
> 1) the direct or indirect fixing of prices and tariffs in any manner, or provisions for their formation, as well as regarding such exchange of information as relates to prices or conditions of sale;
>
> 2) the restriction or control of the volume of production or sales, markets, technical development or investment;
>
> 3) the allocation of markets, taking into account territory, customers, suppliers, or other conditions;
>
> 4) provisions in accordance with which the conclusion, amendment or termination of a transaction with a third party is made dependent on whether such third party accepts obligations which, according to commercial usage, are not relevant to the particular transaction;
>
> 5) the participation or non-participation in competitions or auctions, or the provisions governing such actions (or inaction), except for cases when the competitors have publicly announced their joint tender bid and the purpose of such a tender bid is not to hinder, restrict or distort competition;
>
> 6) the application of unequal provisions in equivalent transactions with third parties, creating disadvantageous conditions for them in terms of competition;
>
> 7) action (or inaction) owing to which another market participant is forced to leave a relevant market or the entry of a potential market participant into a relevant market is hindered."

B. Supreme Court's analytical report of case-law prior to 2016

24. In 2014 the Supreme Court's division of case-law and research published an analytical report on the case-law of the domestic courts relating to the application of section 9(5)(4) and 9(5)(5) of the Competition Law in practice (*Tiesu prakse Konkurences likuma 9.panta piektās daļas 4. un 5. punkta piemērošanā*). On 15 October 2014 that report was discussed and adopted by the plenary of the Criminal Cases Division of the Supreme Court (*Augstākās tiesas Krimināllietu departamenta tiesnešu kopsapulce*).

25. Thirteen cases were analysed. In all those cases a judge had granted authorisations for procedural actions sought by the Competition Authority. Complaints against those authorisations had been lodged in two cases. In both cases, the President of the District Court had dismissed the complaints as the authorisations had been issued in accordance with the law.

26. In all cases the court's findings had been based on a summary of the application made by the Competition Authority. Those decisions contained statements that there had been no other means of obtaining evidence, without providing any further details. Procedural actions were authorised not only in relation to specific legal persons, but also in relation to "other persons" without them being identified.

27. The following conclusions and recommendations were made:

> "1. Currently, a regulatory framework for the courts to examine the cases mentioned in this report is lacking [*iztrūkst*].
>
> 2. ... [These] cases should be examined by an investigating judge in accordance with the requirements laid down in section 9^1 of the Competition Law.
>
> 3. When authorising procedural actions listed in section 9(5)(4) and 9(5)(5) of the Competition Law, the judge must indicate on what grounds the application by [the Competition Authority] substantiates the necessity to carry out specific actions and how justified the suspicion is that evidence of a violation may be located in the specific premises.
>
> 4. The judge's written decision must indicate where [and] at which property [the procedural actions are to be carried out], and what items, documents or information are to be searched and seized, in so far as this has been determined.
>
> 5. The judge must indicate a time-limit for carrying out procedural actions, that is, until what date [such actions] are authorised.
>
> 6. [This analytical report] is to be sent to the Ministry of Justice and the Competition Authority for information and for consideration as to whether legislative amendments to the Competition Law, and in particular section 9^1, are necessary."

C. Competition Law, as amended in 2016

28. Since 15 June 2016 section 9^1 of the Competition Law has been repealed in its entirety and more detailed rules on judicial authorisation, its scope and the limits on procedural actions have been set out in other provisions of the Competition Law (chapter II^1, sections 10^1 to 10^7). In particular, section 10^4(1) of the Competition Law provides as of that date as follows:

> "In its decision to authorise the performance of the actions referred to in section 9(5)(4) and 9(5)(5), the judge shall specify in respect of which market participants or their association or [other] persons the procedural actions need to be performed, the subject [matter] and purpose of these actions, and, to the best of his or her knowledge, what assets, information or documents are going to be searched for, as well as the time-limit for carrying out procedural actions."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The applicants complained that the search of the second applicant's business premises and the seizure of large amounts of documents and electronic files had been unlawful and disproportionate, and that the procedural safeguards put in place had been insufficient. They relied on Articles 6 and 8 of the Convention.

30. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that this complaint falls to be examined solely under Article 8 of the Convention, which reads as follows:

> "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 is 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."

A. Admissibility

1. Preliminary objections as regards the first applicant

31. The Government raised several objections as regards the first applicant. Firstly, he lacked victim status since the search had been directed against the second applicant's business activities and not against the first applicant as a natural person. Secondly, he had abused the right of application, as his private correspondence had not been seized. The IT expert had retained only the information related to the second applicant's business activities after the first applicant had raised concerns during the search (they referred to the facts described in paragraph 10 above).

32. The first applicant did not specifically address those issues.

33. The Court accepts the Government's argument that the search was ordered and carried out in relation to the business activities of the second applicant, which was a limited liability company. The first applicant took part in the relevant events and proceedings primarily by representing the interests of the second applicant. As can be seen from the procedural record in the case file, the first applicant mainly raised concerns about the damage that a possible data leak could cause to the second applicant's commercial activities (see paragraph 10 above).

34. The Court further notes that the first applicant did not raise any specific issues either with the domestic authorities or with the Court in

relation to the alleged retention of his personal data. While he alleged that his old personal emails had been retained, he did not provide any further information as to what specific data unrelated to the second applicant's business activities had actually been retained (see paragraph 12 above). According to the relevant procedural record, the domestic authorities retained only the second applicant's documents, including the first applicant's emails in connection with the second applicant (see paragraphs 10 and 12 above). It appears that passwords for the first applicant's email accounts were not retained as the data in question had been deleted at his request (see paragraph 10 above).

35. Furthermore, when challenging the judicial authorisation of 14 January 2014, the first applicant – acting on behalf of the second applicant – requested that it be set aside "in so far as it concerned the second applicant"; he did not raise any specific issues with the President of the District Court in relation to the alleged retention of his personal data (see paragraph 14 above).

36. Taking into account the fact that the first applicant did not sufficiently demonstrate that he was personally and directly affected either by the operation carried out by the Competition Authority in the business premises of the second applicant or by the judicial review carried out by the President of the District Court, the Court finds that there was no interference with his rights under Article 8 of the Convention. This should not, however, prevent the Court from taking into account, in its wider assessment of the merits of the application, the second applicant's interest in protecting its "officials", "employees" and "other persons" (see paragraph 42 below) given the wide scope of the judicial authorisation in the present case (compare *Bernh Larsen Holding AS and Others v. Norway*, no. 24117/08, §§ 90 and 107, 14 March 2013).

37. It follows that the first applicant's complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Preliminary objections as regards the second applicant

38. The Government raised objections in relation to the non-exhaustion of domestic remedies as regards actions taken by the officials during the operation. The second applicant had failed to lodge an administrative complaint with the Chairperson of the Competition Authority (see paragraph 22 above). The decision of the Chairperson could have been subject to an appeal to the Minister of Economics, whose decision could in turn be subject to an appeal before the administrative courts in accordance with the general procedure applicable to "actions of a public authority" (*faktiskā rīcība*). They did not, however, provide specific examples of domestic case-law showing that this remedy had been available and effective in practice.

39. The second applicant disagreed.

40. The Court does not consider it necessary to determine whether the remedies referred to by the Government could be effective and should be pursued in relation to any activities and operations carried out by the Competition Authority. It cannot be ruled out that in cases where the main issue concerns, for example, specific actions taken by the officials of the Competition Authority during the operation that were not covered by the judicial authorisation, the remedies suggested by the Government might be effective. However, that was not the situation in the case at hand. In the specific circumstances of the present case, since the alleged unlawfulness and disproportionate nature of the operation was claimed to be the direct consequence of an overly broad judicial authorisation which, moreover, was upheld by the President of the District Court (see paragraph 42 below), the remedies suggested by the Government were not capable of providing redress in this respect. Therefore, the second applicant did not need to avail itself of them. The Court accordingly dismisses the Government's objections in this regard.

41. The Court notes that the second applicant's complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

42. The second applicant submitted that its main complaint was directed against the judicial authorisation of 14 January 2014. It argued that the scope of the authorisation had been too wide as it had been directed not only against the second applicant and other companies, but also their "officials", "employees" and "other persons", as well as their movable and immovable property, without any time-limits being imposed. Thus, it had not been issued "in accordance with the law". Furthermore, the judge had not indicated any reasonable suspicion or justification for the search of a wide range of subjects at the discretion of the Competition Authority. Moreover, it had been the NALSA which had been under investigation by the Competition Authority and not the second applicant; the latter had not been a member of the NALSA. The second applicant contended that, as a result, the interference with its Convention rights had not pursued a legitimate aim and had not been necessary in a democratic society.

43. The Government acknowledged that the search and seizure at the second applicant's premises had amounted to an interference with its right to respect for its private life and correspondence. However, it had been lawful as it had been authorised by a competent judge in a well-reasoned decision and upheld by the President of the District Court. The interference had pursued the legitimate aim of protecting market participants and preventing

crime in the area of competition policy. Lastly, the judicial authorisation had provided a detailed analysis of the factual and legal situation and had been based on sufficiently reasonable suspicion since there was evidence to believe that the second applicant was party to an illegal cartel agreement. According to the Government, the second applicant had been a member of the NALSA.

44. Regarding the lawfulness and scope of the judicial authorisation, the Government submitted that it had clearly identified the objects to be searched and seized, since the operation at the second applicant's premises had been aimed at finding evidence in the investigation into anti-competitive practices. A procedural record had been issued to the second applicant, and its legal counsel had been present during the entire operation.

2. The Court's assessment

(a) Whether there was an interference

45. According to the Court's well-established case-law, searches and seizures carried out on the premises of a commercial company constitute an interference with the rights protected by Article 8 of the Convention. More specifically, the search and seizure of electronic data has been held to amount to an interference with the right to respect for "private life" and "correspondence" (see *Vinci Construction and GTM Génie Civil et Services v. France*, nos. 63629/10 and 60567/10, § 63, 2 April 2015, and the cases cited therein).

46. The parties agreed that the search and seizures as authorised by the District Court and carried out on 28 January 2014 constituted an interference with the second applicant's "private life" and "correspondence". The second applicant also mentioned that the impugned operation concerned its business premisses. The Court, having regard to its case-law, finds that there has been an interference with the second applicant's right to respect for its "home" and "correspondence" (see, for example, *Société Colas Est and Others v. France*, no. 37971/97, §§ 40-42, ECHR 2002-III; *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 45, ECHR 2007-IV; and *Vinci Construction and GTM Génie Civil et Services*, cited above, §§ 70 and 72).

(b) Whether the interference was justified

47. Next, the Court has to determine whether the interference was justified under paragraph 2 of Article 8 – in other words whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph, and was "necessary in a democratic society" to achieve those aims.

(i) Whether the interference was "in accordance with the law"

48. The Court notes that the impugned measure had a statutory basis, namely section 9(5)(4) and 9(5)(5) of the Competition Law. The District

Court, acting under those provisions and in accordance with section 9(1)[1] of the Competition Law, authorised the Competition Authority to carry out a wide range of procedural actions. There is no indication in the case material that the judicial authorisation was issued in breach of any rules of the domestic law or was otherwise incompatible with the requirement of lawfulness. While some of the second applicant's arguments concerning the allegedly excessive scope of the discretion left to the Competition Authority by the judicial authorisation to carry out the search and seizures may be understood as being also directed against the "quality" of the relevant domestic law which allowed such an approach, the Court considers that those issues should be examined below as part of the analysis regarding justification and safeguards. It therefore proceeds on the basis that the interference complained of was "in accordance with the law".

(ii) Legitimate aim

49. The Court accepts that the impugned measure pursued the legitimate aim of both "the economic well-being of the country" and "the prevention of crime" (see *Société Colas Est and Others*, § 44, and *Vinci Construction and GTM Génie Civil et Services*, § 72, both cited above).

(iii) Necessary in a democratic society

50. The Court refers to the general principles summarised in *DELTA PEKÁRNY a.s. v. the Czech Republic* (no. 97/11, §§ 82-83, 2 October 2014) and *Vinci Construction and GTM Génie Civil et Services* (cited above, §§ 65-67). In particular, the Court's review is not limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith. In exercising its supervisory jurisdiction, the Court must consider the impugned decisions in the light of the case as a whole and determine whether the reasons adduced to justify the interference at issue are "relevant and sufficient". With regard to, in particular, searches of premises and seizures, the Court has recognised that while States may consider it necessary to have recourse to such measures in order to obtain physical evidence of certain offences, nevertheless, the relevant legislation and practice must afford adequate and effective safeguards against abuse (see *Société Canal Plus and Others v. France*, no. 29408/08, § 54, 21 December 2010).

51. The Court will take into account the fact that the national authorities are accorded a certain margin of appreciation, the scope of which will depend on such factors as the nature and seriousness of the interests at stake and the gravity of the interference. One factor that militates in favour of strict scrutiny in the present case is that a large number of documents and emails were retained. On the other hand, the fact that the measure in question mainly targeted legal persons meant that a wider margin of appreciation could be

applied than would have been the case had it concerned an individual (see *Bernh Larsen Holding AS and Others*, cited above, §§ 158-59, and the cases cited therein).

52. With regard to the safeguards against abuse set forth in Latvian law, the Court notes that the impugned operation was carried out on the basis of an authorisation issued by the District Court. The operation was therefore subject to prior judicial scrutiny (contrast *Société Colas Est and Others*, § 45, and *DELTA PEKÁRNY a.s.*, § 86, both cited above).

53. The judge of the District Court issued the authorisation following an application to that effect lodged by the Competition Authority. As to whether there were "relevant and sufficient" reasons to consider the impugned operation necessary, the judge of the District Court relied on the material provided by the Competition Authority indicating that the NALSA might have entered into a prohibited agreement distorting competition for services rendered by shipping agents. The parties disputed whether the second applicant was a member of the NALSA at the material time, but it is clear that the second applicant was a shipping agent and market participant. The authorities relied on one piece of evidence possibly pointing to the second applicant's implication in the alleged anti-competitive practice under investigation: an invoice issued by it containing a reference to the "Recommended scale of agency fees" (see paragraph 6 above). The Court notes that the second applicant did not deny having issued such an invoice and that the Competition Authority submitted it to the District Court together with other material, providing explanations regarding their suspicion concerning anti-competitive practices. While the District Court did not provide any further reasons as to why the Competition Authority targeted the NALSA and some selected market participants, including the second applicant, but not others, the Court is prepared to accept that the District Court examined the information provided to it by the Competition Authority in that regard. Accordingly, the necessity to carry out the impugned operation was subject to prior judicial scrutiny and "relevant and sufficient" reasons were given in that respect.

54. As to the scope of the judicial authorisation, the Court considers that it was formulated in rather broad terms. It referred to a wide range of procedural actions, such as searches and examinations during which officials of the Competition Authority were allowed not only to seize any property items or documents but also to impose restrictions of movement and communication on anyone present at the site and also to seal premises for up to seventy-two hours. The officials were also authorised to become acquainted with the information (data) stored in the electronic information systems, including sensitive information such as commercial secrets (see paragraph 19 above). In practice, this meant that the officials were authorised not only to examine and make mirror copies from the second applicant's server but also from computers of its "employees", "officials" and "other

persons" (including the first applicant's computer). Even if the Court considers that the first applicant did not sufficiently demonstrate that he had been personally and directly affected (see paragraph 27 above), the second applicant's rights under Article 8 of the Convention were significantly affected during the operation since the Competition Authority examined and retained a large amount of the correspondence of its most senior official, which included confidential information about the second applicant's commercial activities.

55. At the same time, the Competition Authority relied on a possible infringement of section 11(1) of the Competition Law and the judge accepted that there were reasonable grounds to suspect an infringement. Although the operative part of the decision dated 14 January 2014 contained a mistaken reference to the Commercial Law, it was evident – given the overall context – that the judge intended to authorise procedural actions in relation to a possible infringement of the Competition Law (see paragraph 7 above). Thus, it appears that the scope of the whole operation was limited to the second applicant's business activities in relation to a possible infringement of section 11(1) of the Competition Law. Admittedly, the scope of that provision prohibited a very broad range of anti-competitive practices (see paragraph 23 above). However, as the Court will examine below, procedural safeguards as put in place and applied in the present case sufficiently limited the power entrusted to the Competition Authority.

56. The Court recalls that in cases arising from individual petitions its task is usually not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the general context, to examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the Competition Law as it stood at the material time in Latvia, but to determine, *in concreto*, the effect of the interference with the second applicant's rights under Article 8 of the Convention (see, *mutatis mutandis*, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 69-70, 20 October 2011, with further references). In this respect, the Court notes that the second applicant, in essence, raised the following points in relation to the contents of the court warrant issued on 14 January 2014 (see paragraph 42 above).

57. Firstly, it was issued not only in respect of the second applicant but also in respect of unspecified "other persons" which expanded the scope of that warrant to a possibly unlimited range of subjects. Secondly, certain doubts arise as to whether the subject matter and the purpose of the operation was clearly and sufficiently limited in that warrant. Thirdly, there is no indication that any temporal limits for carrying out the operation were set by the judge.

58. The Court cannot but note that similar shortcomings have been analysed by the Supreme Court in 2014, indicating that the changes in the

legal regulation were necessary (see paragraphs 24-27 above). Subsequently, in 2016 more detailed rules on judicial authorisation, its scope and the limits on the procedural actions have been set out in the Competition Law (see paragraph 28 above).

59. However, the second applicant has not substantiated that those shortcomings manifested themselves during the operation of 28 January 2014. It is clear that the court warrant was issued explicitly in respect of the second applicant and there appear to have been no particular delays in executing that warrant given the size of the operation, involving not only the second applicant but also other legal entities (see paragraphs 6 and 8 above). As to the subject matter and purpose of the operation, as noted in paragraph 55 above, the operation appears to have been limited to the second applicant's business activities in relation to a possible infringement of section 11(1) of the Competition Law. The second applicant has not put forward any arguments which would allow the Court to conclude otherwise.

60. As to the manner of exercise of the broad discretion conferred on the Competition Authority, the Court considers that it was sufficiently circumscribed and that its application in practice does not appear to be disproportionate in the present case. In addition to the prior judicial scrutiny, further procedural safeguards were available – such as the right for an official and a lawyer representing the second applicant to be present during the whole operation, to submit requests and make comments and they were actively used by the second applicant (see paragraph 22 above). The relevant procedural records were drawn up (see paragraph 21 above), specifying the type of documents seized and retained. It is precisely because those procedural safeguards were put in place and applied in respect of the second applicant that, following the objections raised by the second applicant's official and lawyer, the amount of electronic data retained from the first applicant's computer, including correspondence relating to the second applicant, was significantly reduced (see paragraph 10 above). As to the second applicant's server, there is no suggestion that any private or irrelevant data were seized: the arguments that were raised in connection with that server related solely to the necessity of the retention of an email account (see paragraph 11 above). The second applicant did not substantiate to what extent, if at all, non-business-related documents or electronic data were actually seized during the operation.

61. Furthermore, the Court observes that a subsequent judicial review was available in the present case (compare *Société Canal Plus and Others*, §§ 56-57, and *Vinci Construction and GTM Génie Civil et Services*, § 78, both cited above), which resulted in the President of the District Court confirming that when issuing the prior judicial authorisation, the judge had assessed the necessity of the requested procedural actions. Moreover, the President considered that the judicial authorisation had been lawful and proportionate in the circumstances (see paragraph 16 above).

62. To sum up, the Court notes that relevant safeguards are enshrined in Latvian domestic law, most notably prior authorisation by a judge of the District Court and its subsequent review by the President of the District Court. In the present case, the judge of the District Court reviewed the case material presented to her and considered that the procedural actions in relation to the second applicant were necessary. Moreover, sufficient procedural safeguards to counterbalance the broad discretion conferred on the officials of the Competition Authority were put in place and applied in respect of the second applicant. The Competition Authority was able to delimit the wide scope of the operation to what was necessary in the specific circumstances of the present case. While a large amount of documents and electronic files were seized during the operation, they were sifted in order to address the second applicant's concerns about ensuring that only documents relating to it were seized. The second applicant did not substantiate to what extent, if at all, non-business-related documents or electronic data were actually seized during the operation. Lastly, the second applicant was able to obtain a judicial review by the President of the District Court.

63. It follows that, given the margin of appreciation left to the authorities (see paragraph 51 above), the impugned interference with the second applicant's rights was proportionate to the aim pursued. Therefore, there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the second applicant's complaint under Article 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention in respect of the second applicant.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President