



Tax authorities' consultation of lawyer's bank accounts amounted to an interference with her right to respect for private life

In today's **Chamber judgment**¹ in the case of **Brito Ferrinho Bexiga Villa-Nova v. Portugal** (application no. 69436/10) 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 access to the bank accounts of a lawyer charged with tax fraud.

The Court found that consultation of the lawyer's bank statements had amounted to an interference with her right to respect for professional confidentiality, which fell within the scope of private life. It observed that the proceedings to have professional confidentiality lifted had been conducted without the participation of Ms Brito Ferrinho Bexiga Villa-Nova, who had not at any time been able to submit her arguments. Furthermore, and contrary to the requirements of domestic law, an opinion had not been sought from the Lawyers Association during those proceedings. The Court also found that the requirement of an effective control laid down in Article 8 of the Convention had not been satisfied.

Having regard to the lack of procedural guarantees and effective judicial control of the proceedings for lifting professional confidentiality, the Court considered that the Portuguese authorities had failed to strike a fair balance between the demands of the general interest and the requirements of the protection of Ms Brito Ferrinho Bexiga Villa-Nova's right to respect for her private life.

Principal facts

The applicant, Sílvia Maria De Brito Ferrinho Bexiga Villa-Nova, is a Portuguese national who was born in 1969 and lives in Faro (Portugal).

While inspecting the accounts of Ms De Brito Ferrinho Bexiga Villa-Nova's law firm, the tax authorities noted that she had not paid value-added tax on fees collected in 2005 and 2006 which had been paid into her personal bank account. The tax authorities accordingly asked her to produce her personal bank statements, which she refused to do on grounds of professional confidentiality and bank secrecy. The prosecutor's office attached to the Faro Court opened an investigation for tax fraud. On 18 September 2009 Ms Brito Ferrinho Bexiga Villa-Nova was charged.

In an application of 30 October 2009 the prosecuting authorities requested the criminal investigating judge to lodge an interlocutory application for professional confidentiality to be lifted. In an order of 6 November 2009 the investigating judge requested the Evora Court of Appeal to authorise the lifting of professional confidentiality and bank secrecy. He observed that professional confidentiality was not absolute and could not preclude the overarching principles of administration of justice and ascertainment of the material truth. On 12 January 2010 the Court of Appeal ordered the lifting of professional confidentiality and bank secrecy on the grounds that the public interest should prevail

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.

over private interests. Ms Brito Ferrinho Bexiga Villa-Nova appealed. The Supreme Court declared her appeal inadmissible.

In an order of 29 July 2011 the prosecutor's office attached to the Faro Court discontinued the criminal proceedings instituted against the applicant for tax fraud.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing), 8 (right to respect for private life) and 13 (right to an effective remedy), the applicant complained that her bank statements had been consulted in criminal proceedings brought against her for tax fraud. She alleged a violation of the rules of professional confidentiality binding on her on account of her profession as a lawyer.

The application was lodged with the European Court of Human Rights on 15 November 2010.

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

András Sajó (Hungary), *President*,
Vincent A. de Gaetano (Malta),
Boštjan M. Zupančič (Slovenia),
Paulo Pinto de Albuquerque (Portugal),
Egidijus Kūris (Lithuania),
Iulia Antoanella Motoc (Romania),
Gabriele Kucsko-Stadlmayer (Austria),

and also Françoise Elens-Passos, *Section Registrar*.

Decision of the Court

[Articles 6 \(right to a fair hearing\), 8 \(right to respect for private life\) and 13 \(right to an effective remedy\)](#)

The Court held that the consultation of Ms Brito Ferrinho Bexiga Villa-Nova's bank statements had constituted an interference with her right to respect for professional confidentiality, which fell within the scope of private life. That interference had had a legal basis (Article 135 of the Code of Criminal Procedure) and pursued a legitimate aim, namely, the prevention of crime within the meaning of Article 8 § 2 of the Convention.

The Court observed that the proceedings for lifting the professional confidentiality binding on Ms Brito Ferrinho Bexiga Villa-Nova in her capacity as a lawyer had admittedly been conducted before a judicial body, but without the applicant's participation. Ms Brito Ferrinho Bexiga Villa-Nova had not become aware that professional confidentiality and bank secrecy had been lifted with regard to her bank statements until she had been served with the Evora Court of Appeal's judgment of 12 January 2010. She had not therefore been involved in the proceedings at any time and had thus been unable to submit her arguments.

The Court observed that domestic law contained a provision that the Lawyers Association had to be consulted in proceedings to have professional confidentiality lifted. In the present case, however, the Lawyers Association had clearly not been consulted. Even if, under the domestic law, an opinion from the Lawyers Association would not have been binding, the Court considered that an opinion from an independent body should have been sought in the present case because the information requested had been covered by professional confidentiality.

With regard to an "effective control" to challenge the disputed measure, the Court noted that Ms Brito Ferrinho Bexiga Villa-Nova's appeal to the Supreme Court challenging the Evora Court of

Appeal's decision had not been examined on the merits as the Supreme Court had considered that the applicant did not have any possibility of appealing against that judgment. The Court found that the simple fact that the applicant's appeal was declared inadmissible by the Supreme Court did not satisfy the requirement of an "effective control" laid down in Article 8 of the Convention. Accordingly, Ms Brito Ferrinho Bexiga Villa-Nova had not had any remedy by which to challenge the measure complained of.

Having regard to the lack of procedural guarantees and effective judicial control of the measure complained of, the Court considered that the Portuguese authorities had failed to strike a fair balance in the present case between the demands of the general interest and the requirements of the protection of the applicant's right to respect for her private life. Accordingly, there had been a violation of Article 8 of the Convention.

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

The Court held that Portugal was to pay the applicant 3,250 euros (EUR) in respect of non-pecuniary damage and EUR 463.98 in respect of costs and expenses.

The judgment is available only in French.

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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.