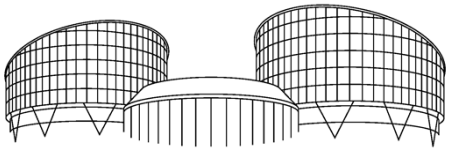

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KAVEČANSKÝ v. SLOVAKIA

(Application no. 49617/22)

JUDGMENT

Art 8 • Private life • Home • Search of applicant's notary's office and unoccupied non-residential premises and seizure of his electronic devices, on the basis of search warrants issued by the investigator and approved by the prosecutor in the context of criminal proceedings • No prior judicial warrant or possibility of obtaining an effective judicial review *a posteriori* of either the decision ordering the searches or the manner in which they were conducted • Insufficient judicial safeguards before the issuing of a search warrant or after a search was carried out despite a general basis for the impugned measures in domestic law • Interference not "in accordance with the law"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 April 2025

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 Kavečanský v. Slovakia,

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

Erik Wennerström*, President*,
Alena Poláčková,
Georgios A. Serghides,
Raffaele Sabato,
Frédéric Krenc,
Alain Chablais,
Anna Adamska-Gallant*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 49617/22) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mr Vojtech Kavečanský ("the applicant"), on 17 October 2022;

the decision to give notice to the Slovak Government ("the Government") of the complaints under Articles 8 and 13 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 25 March 2025,

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

INTRODUCTION

1. The application concerns searches of the applicant's notary's office and non-residential premises and the seizure of electronic devices belonging to him, carried out on the basis of search warrants issued by the investigator and approved by the prosecutor. The applicant relied on Articles 8 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1979 and lives in Košice. He was represented by Ms E. Hencovská, a lawyer practising in Košice.

3. The Government were represented by their Agent, Ms Miroslava Bálintová, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicant has been a notary since 2009. According to him, he was the victim of an extortionate kidnapping between 30 April and 2 May 2021, when he was ambushed outside his notary's office while carrying out his duties. He was allegedly threatened with the death of his wife and then four-year-old daughter and was forced to withdraw money from his safe

(4,000,000 euros (EUR)) and hand it over in Austria on the evening of 1 May 2021. He was missing for a total of forty-nine hours.

6. On 2 May 2021 the applicant reported his abduction to the police.

7. On 3 May 2021 he was placed on sick leave after being diagnosed with an acute stress reaction.

8. On 10 May 2021 an investigator opened a criminal case in connection with the applicant's alleged kidnapping.

9. On 16 May 2021 the applicant's father informed the president of the Chamber of Notaries (*Notárska komora*) of his son's kidnapping and that, because he was on sick leave, a trainee notary had been managing the notary's office since 3 May 2021.

10. On 19 and 25 May 2021 the Chamber of Notaries carried out an unannounced inspection of the notary's office, which the applicant was unable to attend due to his sick leave. Its report, dated 31 May 2021, revealed serious irregularities in the management of the notary's office and the administration of notarial affairs.

11. On 14 June 2021 the Chamber of Notaries appointed a replacement notary on account of the applicant's sick leave with effect from 15 June 2021. The applicant was suspended from practising as a notary.

12. As part of the investigation into the alleged kidnapping, on 15 June 2021 the police carried out a search of non-residential premises on Rumanová Street belonging to the applicant, which were destined for use as his future notary's office.

13. On 21 and 25 June 2021 a police investigator of the Košice Regional Police Directorate (*Krajské riaditeľstvo Policajného zboru* – hereinafter "the investigator") initiated criminal proceedings under Article 213 §§ 1 and 4 (a) of the Criminal Code on suspicion of a particularly serious form of embezzlement, following the failure of the applicant's notary's office to release funds amounting to several hundred thousand euros from its deposit accounts.

14. On 13 and 20 July 2021 the investigator extended the criminal proceedings by taking several further actions.

15. On 16 July 2021 the Minister of Justice released the applicant from the obligation of confidentiality pending the outcome of the embezzlement proceedings, allowing him to disclose all the facts of which he had become aware in the course of his notarial activities concerning the deposits that met the conditions for release and were the subject of the ongoing criminal proceedings.

16. On 20 July 2021 the applicant was summoned to appear before the police for questioning at 9 a.m. on 4 August 2021 in connection with the kidnapping case.

17. On 2 August 2021 the prosecutor applied to the court for a search warrant for the applicant's home.

18. On the same day the investigator issued search warrants under Article 101 § 1 of the Code of Criminal Procedure for the applicant's notary's office on Kmeťová Street and his non-residential premises on Rumanová Street, concluding that there was a reasonable suspicion that evidence relevant to the embezzlement proceedings would be found at those addresses, in particular (i) documents recording transfers of funds to the applicant's accounts – both private and notarial – relating to the period from 1 July 2020 to 2 August 2021; (b) cash funds probably derived from criminal activity subject to criminal prosecution; and (c) computer equipment used to transfer funds, such as computers, laptops, USB keys, phones and tablets, during the period from 1 July 2020 to 2 August 2021. The warrants referred to the investigations opened on 21 and 25 June and 13 and 20 July 2021 and the evidential basis for them. The investigator explained that the need to carry out a search arose from the evidence and documents presented to date that the applicant had committed the acts under investigation, that any pieces of evidence obtained during the search would further corroborate these facts, and that merely requesting them from the applicant without carrying out a search would lead to their devaluation or loss and damage. In addition, the applicant would have on the searched premises the computer equipment used for the transfers, related documents and, possibly, substantial funds from his clients' deposits. Lastly, the warrant indicated that the search would be carried out on 4 August or 5 August 2021.

19. The search warrants, particularly the warrant for the address used by the applicant as his notary's office, did not indicate how the investigator would deal with the possibility that material gathered during the searches unrelated to the ongoing criminal proceedings against him and/or covered by notary-client privilege would be secured.

20. On 2 August 2021 both search warrants were approved by the prosecutor.

21. On the same day the investigator requested the assistance of the Institute of Forensic Science of the Slovak Republic (*Kriminalistický a expertízny ústav Policajného zboru Slovenskej republiky*) and the presence of an expert on 4 and possibly 5 August 2021 to make copies of the computer hard drives found during the searches.

22. On 3 August 2021 a judge at the Košice District Court (*okresný súd*) issued a search warrant for the applicant's home, which was worded similarly to the two above-mentioned search warrants.

23. On 4 August 2021 the investigator charged the applicant with aggravated embezzlement under Article 213 §§ 1 and 4 (a) of the Criminal Code, consisting of nine separate acts and causing damage amounting to EUR 1,084,549.94.

24. Between 9.20 a.m. and 12.05 p.m. that day the applicant's home was searched in the presence of his wife, who had been served with the search warrant at 8.42 a.m.

25. According to the Government, the applicant was not at home when the police arrived, and his wife refused to tell them of his whereabouts. At the end of the search, she signed the search report and was given a copy. A police officer from the Košice Municipal Police was present as an independent observer but did not directly take part. An expert from the Institute of Forensic Science participated in the search and took the following secured items for expert examination: seven USB keys, two tablets, one mobile phone and four laptops.

26. According to the applicant, before the search began, his wife had asked for a lawyer to be present, but the investigator had refused because he had been unwilling to wait a few minutes for the lawyer to arrive. The applicant disputed the Government's allegation that his wife had refused to inform the police officers of his whereabouts at the time of the search, as she had informed them immediately after the police officers had entered the property that he was undergoing a medical examination in Humenné. According to the applicant, on 3 August 2021 his lawyer informed the police that he would be unable to appear for questioning the following day in connection with the kidnapping case because of his sick leave and inability to testify. At around 9.30 a.m. on 4 August 2021 the applicant's mother telephoned the police on her own initiative and subsequently spoke to the investigator, whom she informed that the applicant was in Humenné, some 80 km from Košice, for a medical examination. The investigator told her that the police were going to carry out a search of the applicant's home and two further searches of the office premises, and that they would have to serve the search warrants on him. The applicant's mother said that her son would not waive his participation in the searches and would take part in them after his medical examination. They agreed that after the medical examination at 3.45 p.m., she and the applicant's father would accompany the applicant to the non-residential premises on Rumanová Street. She informed the investigator that these premises had already been searched on 15 June 2021 and that the only keys were at home in Trsťany (see paragraph 12 above).

27. Later that day, at 1 p.m., the police began to search the applicant's notary's office on Kmeťová Street. As he was not present at the start of the search, at 12.50 p.m. the search warrant was handed to the caretaker, who represented the owner of the building. The search was carried out in the presence of the caretaker, with a municipal police officer as an independent observer (see paragraph 25 above), a forensic technician and a forensic computer (*kriminalistická informatika*) expert. The search ended at 2.23 p.m. As a result, five mobile phones, two laptops, two computers and a network storage device were secured.

28. According to the Government, the caretaker of the building was present during the search of the notary's office, since it had not been possible to locate and arrest the applicant at the relevant time. The applicant's wife, who had been informed of that search during the home search, refused to

participate for health reasons, which she explained to the investigator. The search was carried out in the usual manner and the items seized were sent to the forensic computer expert for examination.

29. At 3.30 p.m. the applicant was arrested in Košice and served with an indictment. At 3.54 p.m. he was handed the search warrant for his non-residential premises on Rumanová Street. The search began at 6 p.m. and was carried out in the presence of the municipal police officer as an independent observer (see paragraphs 25 and 26 above), the forensic technician and the applicant's mother, who had given access to the premises. The search was completed at 6.30 p.m., without any material evidence being found.

30. According to the Government, the applicant refused to take part in the search of his non-residential premises but asked his mother to unlock the premises and take part.

31. The applicant denied that he had refused to participate in the search of his non-residential premises and asked his mother to open the premises and take part. According to him, his mother had acted on the instructions of the investigator. He referred to a statement given by her on 28 December 2020 stating that he had not refused to take part in the search and that she and the investigator had therefore agreed that, after his medical examination, they would go to Trsťany to collect the keys to the non-residential premises and then meet at the entrance on Rumanová Street. She had also stated that he had been arrested in front of their house in Trsťany. The investigator had told her and her husband that the police were taking him to a pre-trial detention facility and had asked them to go to Rumanová Street with the keys to the non-residential premises.

32. On 2 September 2021 the investigator decided to return to the applicant's wife the two computers and two laptops secured during the search of the notary's office (see paragraph 27 above) and the seven USB keys and four laptops secured during the home search (see paragraph 25 above). In his decision, the investigator explained:

> "[In the course of the home search and the search of the notary's office on 4 August 2021], the investigator secured, among other things, the computer devices for the purpose of drawing up an expert opinion, for which it was necessary to make identical data copies of the material traces seized and then to archive them, which would later be subject to expert examination. For the purpose of making identical copies, the Institute of Forensic Science ... was appointed in the proceedings pursuant to Article 141 of the Code of Criminal Procedure; [it] had already made identical data copies of the [above-mentioned] material traces at the investigator's request and subsequently returned the above-mentioned evidence to the investigator on 31 August 2021.
>
> Since the required actions based on the investigator's request were taken with respect to the evidence secured on 4 August 2021 ... and since the secured items were no longer necessary for further proceedings ... it was necessary to return the items to the authorised person ..."

33. On 19 October 2021 the investigator returned to the applicant's wife the five mobile phones and network storage device secured during the search of the notary's office (see paragraph 27 above) and the two tablets and mobile phone secured during the home search (see paragraph 25 above). In his decision, the investigator explained:

> "[It was necessary] to make identical data copies from the secured evidence and then archive them, which would then be subject to expert examination. For the purpose of making identical data copies, the Institute of Forensic Science was appointed in the proceedings pursuant to Article 141 of the Code of Criminal Procedure; [it] made identical data copies from the secured evidence in accordance with the investigator's order and subsequently returned the above-mentioned evidence to the investigator on 7 October 2021 ... and 5 October 2021 ... respectively."

34. On 20 November 2021 the forensic computer expert submitted his report, prepared in accordance with guidelines given by the investigator on 12 October 2021. His tasks were (i) to archive the data on the submitted data carrier and, depending on their size, place them on the corresponding data carrier; (ii) to examine the mobile device data images located on the submitted hard drives, focusing on the terms TIPSPORT (and spreadsheets created with deposits or winnings in the betting office in question), records of the notarial deposits referred to in the separate acts of the applicant's indictment, lists of the unpaid notarial deposits and lists of all records of the notarial deposits, corresponding to the period from 2018 to 4 August 2021; (iii) to ascertain when and by whom such lists and records had been made; and (iv) to state and evaluate any other relevant facts that came to light in the course of the examination, which he deemed necessary and had not been previously questioned.

35. By a decision of 24 August 2021, the supervising prosecutor of the District Prosecutor's Office dismissed as unjustified a complaint brought by the applicant against the decision of 4 August 2021 to charge him.

36. On 1 October 2021 the applicant filed a constitutional complaint alleging a violation of his rights guaranteed, *inter alia*, by Article 6 § 1 and Article 8 § 1 of the Convention in connection with the searches of his notary's office and non-residential premises carried out based on the warrants issued on 4 August 2021.

37. On 1 June 2022 the Constitutional Court (IV. ÚS 286/2022) rejected the applicant's constitutional complaint for non-exhaustion of domestic remedies, referring to section 56(2)(d) and section 132(2) of the Constitutional Court Act (Law no. 314/2018). The court stated in particular:

> "The applicant, as the accused, has the right to challenge the illegality of the evidence obtained in the course of the investigation and, in particular, in the case of an indictment, in the course of the examination of the evidence at the trial. The criminal-law aspect of the legality (and at the same time constitutionality) of the termination of the criminal proceedings also implies an interference (or lack thereof) with other fundamental rights identified by the applicant (protection of private life, family life, inviolability of home and property), since a constitutionally compliant procedure cannot interfere with the

fundamental rights of the accused. On the contrary, an unlawful procedure has primarily criminal procedural consequences (typically the inadmissibility of evidence – in this case the execution of the search of [the applicant's premises]), while the violation of the law, depending on its impact on the overall outcome of the proceedings, may (even) have a constitutional dimension, which, in addition to the violation of the fundamental right under Article 46 § 1 of the Constitution, is linked to the interference with other fundamental rights mentioned above. The principle of subsidiarity precludes the Constitutional Court from interfering with the prerogatives of other bodies, since its intervention constitutes the *ultima ratio* for the protection of the rights of the person concerned.

In the circumstances of the present case, the Constitutional Court, therefore, finds that, at the time of the filing of the complaint with the Constitutional Court, the applicant's criminal case was at the ... preparatory stage, in which [he] defends himself against the charges brought against him in the manner available at the various stages of the proceedings, while the court has not yet ruled on the merits, and thus on the legality and constitutionality, of his prosecution. It follows from the foregoing ... that the applicable legal regime of criminal proceedings allows the applicant, as the accused, and, if necessary, at a later stage of the criminal proceedings (after the filing of the indictment), as the defendant, to object in a legally effective manner to the violation of the fundamental rights and freedoms guaranteed by the Constitution, including the rights identified by the accused. According to the applicant, the violation of these rights in the present context should have occurred as a consequence of the action of the criminal authorities in issuing the search warrants and in carrying out the search pursuant to Article 101 of the Code of Criminal Procedure, which is inseparably linked to the filing of the indictment (and thus to the subsequent prosecution of [the applicant]). The procedural guarantees of the lawfulness (but also the constitutionality) of the procedure of the competent authorities and of the ordinary courts ... derive from ... the Code of Criminal Procedure."

38. On 28 January 2022, while the applicant's complaint was pending before the Constitutional Court, he was indicted on charges of aggravated embezzlement under Article 234 §§ 1 and 4 (a) of the Criminal Code of his clients' property, amounting to EUR 1,796,975.83. The detailed expert report, based on the items secured during the searches of his home and notary's office, was included in the investigation file. The criminal proceedings are still ongoing.

RELEVANT LEGAL FRAMEWORK

THE CODE OF CRIMINAL PROCEDURE (AS IN FORCE AT THE RELEVANT TIME)

39. Article 90 § 1 defined the conditions for the securing and surrendering of computer data. It provided, *inter alia*, that if preserving stored computer data, including operational data stored through a computer system, was necessary for the clarification of facts necessary for the criminal proceedings, a warrant could be issued by a presiding judge or, prior to the initiation of the criminal prosecution or during the pre-trial stage, a prosecutor. The warrant had to be supported by the facts of the case and could be issued against

a person in possession or having control over such data, or against a provider of such services. The warrant could order, *inter alia*, the creation and preservation of a copy of such data, and the surrender of such data for the purposes of the criminal proceedings.

40. Article 93 provided that reports of measures taken under Articles 89 and 90 had to include a precise description of surrendered items, provided items or computer data to enable their identification. In addition, persons who had surrendered items or computer data, had had items or computer data seized from them or had handed over items or computer data had to be provided with written confirmation or a counterpart of the relevant report by the authority that had conducted the relevant measure. Persons whose items or computer data had been secured had to be notified in writing by the authority that had taken control of the items or computer data.

41. Article 99 set out the grounds for conducting searches of homes, individuals, non-residential premises and land. Under Article 99 § 1, a search could be carried out if there were grounds for suspecting that a dwelling or other premises used as a residence or premises belonging to it contained something relevant to the criminal proceedings or that a person suspected of a criminal offence was hiding there, or if seizing movable property was necessary to satisfy a compensation claim from the injured party. Article 99 § 2 stated that searches could also be carried out of non-residential premises and land not open to the public based on the grounds specified in Article 99 § 1.

42. Article 101 defined the conditions under which searches of non-residential premises and land could be carried out. Under Article 101 § 1, a search could be ordered by a warrant issued by a presiding judge or, prior to initiation of the criminal prosecution or during the pre-trial stage, a prosecutor or a police officer with the prosecutor's consent. The warrant had to be issued in writing, state the reason for the search and be served on the owner or user of the premises, or on an employee thereof, at the time of the search and, if this was not possible, within twenty-four hours after the obstacle to service had been resolved. Under Article 101 § 2, the search had to be conducted without delay by the authority that had ordered it or a police officer acting on its instructions.

43. Article 105 defined the conditions for conducting searches and entering dwellings, non-residential premises and plots of land. Under Article 105 § 1, the authority conducting the search had to allow the occupant or an employee to participate in the search and had to inform him or her of the right to do so. Under Article 105 § 5, the person whose premises had been searched had to receive written confirmation of the search from the authority that had carried it out and, if this was not possible at the time, within twenty-four hours of the end of the search or the removal of the obstacle to the fulfilment of this obligation, along with a copy of the receipt for any items handed over or secured, or a copy of the search report.

THE LAW

I. SCOPE OF THE CASE

44. In his application, the applicant only complained about the searches of his notary's office and unoccupied premises (see paragraph 1 above and paragraph 48 below). The Court will accordingly only examine those matters, even though the police also searched his home in the course of their operations (see paragraphs 24-26 above).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. Relying on Articles 8 and 13 of the Convention, the applicant complained about the search of his notary's office and unoccupied non-residential premises and the seizure of his electronic devices. He also complained of a lack of safeguards in that regard. The Court considers that, on the facts, the applicant's complaints fall to be examined under Article 8 of the Convention only (see *Haščák v. Slovakia*, nos. 58359/12 and 2 others, §§ 66-67, 23 June 2022, with a further reference), the relevant parts of which read as follows:

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

46. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Parties' submissions

(a) The applicant

47. The applicant maintained that the concept of home contained in Article 8 § 1 of the Convention includes not only an individual's private home, but also a lawyer's office or a law firm, as well as premises where notarial practice is carried out. The search of his notary's office should therefore have been ordered by a court, in accordance with Article 100 of the Code of Criminal Procedure.

48. The applicant argued that, contrary to the law, he had not been allowed to be present at either of the two searches, even though the investigator had known of his whereabouts from at least 9 a.m. on the day in question. His four employees had not been allowed to be present either, even though they had been available. Furthermore, it remained unclear why the search warrant for the notary's office had not been served on his wife, an employee, but instead on the caretaker. In addition, the search of the non-residential premises had been carried out at 5.55 p.m. without him being present, even though he had already been available, since his arrest had taken place at 3.30 p.m.

49. The applicant further argued that national law did not compensate for the absence of an *ex ante* judicial review by providing for an *ex post factum* judicial review of the lawfulness of and justification for the measure. He had therefore been unable to obtain an effective judicial review of the warrant and the manner in which it had been implemented, both in fact and in law. As regards a review of legality at the pre-trial stage of the proceedings by the prosecutor, such a review did not meet the minimum requirements of independence; a request for a review of the police officer's actions could not therefore be regarded as an effective remedy enabling appropriate redress to be sought. In addition, although he could arguably have sought redress before the ordinary courts in relation to potential violations of his right to a fair trial, this did not directly affect his rights protected independently under Articles 8 and 13 of the Convention.

50. According to the applicant, an effective review of the lawfulness of and justification for the investigative measure in question had been all the more necessary in his case because at no point beforehand had it been specified exactly which documents and items relating to the criminal investigation the investigators had expected to find and seize during the searches of the premises.

(b) The Government

51. The Government conceded that the search of the notary's office and the seizure of material evidence in the course of that search constituted an interference which required protection under Article 8 of the Convention. However, they submitted that this interference had been lawful and necessary within the meaning of Article 8 § 2 of the Convention.

52. They maintained that the need to search the premises of the notary's office had arisen from the evidence obtained up to that point regarding the suspected criminal activities and that the items searched had had the potential to confirm the facts established. The defined specific purpose of the search had been to secure the computer equipment used by the accused to carry out the transfers of funds and the related documents. The search had been strictly limited to the needs of the investigation of the specific criminal offence and

the acts of which it had consisted, with the aim of establishing the execution of financial transfers from the notary's office.

53. The search of the notary's office had been carried out shortly after the completion of the search of the applicant's home. As the applicant had not been present at the notary's office or at his home address, the relevant search warrants could not be served on him and the search warrant for his notary's office had been served on the owner of the premises, represented by the caretaker. The applicant's wife, an employee of the notary's office, had been informed of the planned search of those premises but had refused to take part. The search of the non-residential unoccupied premises had been carried out following the applicant's arrest, so the search warrant for those premises had been served on him. However, he had refused to take part in the search and had asked his mother to do so in his place. Accordingly, his presence at the search could not, for objective reasons, be guaranteed.

54. The Government further maintained that national law did not require the presence of a representative of the Chamber of Notaries at a search of non-residential premises.

55. With regard to the secured items – computer equipment and other electronic devices – the Government first pointed out that no one present had had access to them in the manner described by the applicant, that is, with free access to their contents, including information constituting notarial secrets or containing confidential information in the notary-client relationship. All the items detailed in the report had been immediately handed over for expert examination during the search, so not even the investigator had had access to the secured computer data stored on various protected data carriers.

56. The Government submitted in this regard that it was also necessary to strictly distinguish the present case from cases in which State authorities had conducted searches of premises of law firms to obtain information of a confidential nature arising from the lawyer-client relationship. In the present case, the subject of the investigation had been the applicant's serious criminal conduct and the injured parties had been his clients. For this reason, and taking into account the strict limitation of the objectives of the search, there could have been no breach of the confidential relationship between the applicant as a notary and his client, and no information could have been obtained that could have breached this relationship.

57. Lastly, the Government maintained that the domestic legal system provided sufficient and effective safeguards against its arbitrary use, namely supervision by the prosecutor at the pre-trial stage of proceedings and by the courts after the filing of an indictment. They relied, in this regard, on the Constitutional Court's decision in the present case. In addition, they submitted that the applicant could have filed a complaint under Law no. 9/2010 on Complaints in conjunction with Law no. 171/1993 on Police Force and possibly claimed damages from the State for wrongful official conduct under the State Liability Act (Law no. 514/2003).

2. The Court's assessment

(a) Existence of an interference

58. The Court considers, first, that there was an interference with the applicant's exercise of his right to respect for his home and private life, since his business premises were searched and the police secured items belonging to him (see *Buck v. Germany*, no. 41604/98, §§ 31-32, ECHR 2005-IV; *Heino v. Finland*, no. 56720/09, § 33, 15 February 2011; *Prezhdarovi v. Bulgaria*, no. 8429/05, § 41, 30 September 2014; and *Popovi v. Bulgaria*, no. 39651/11, § 103, 9 June 2016).

(b) Justification for the interference

59. The Court must next examine whether the interference satisfied the conditions of Article 8 § 2. The expression "in accordance with the law" requires, firstly, that the impugned measure should have some basis in domestic law; second, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see *Gutsanovi v. Bulgaria*, no. 34529/10, § 218, 15 October 2013, with further references; *Prezhdarovi*, cited above, § 43, with further references; *Särgava v. Estonia*, no. 698/19, § 86, 16 November 2021, with further references).

60. In the context of searches and seizures, domestic law must provide the individual with some protection against arbitrary interference with Article 8 rights. It must therefore be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances and conditions under which public authorities are empowered to resort to any such measures (see *Särgava*, cited above, § 87). Moreover, the measure of search and seizure constitutes a serious interference with private life, home and correspondence and must accordingly be based on a "law" that is particularly precise. It is essential to have clear, detailed rules on the subject (see *Saber v. Norway*, no. 459/18, § 50, 17 December 2020).

61. Regarding procedural protection in the context of Article 8, the Court has attached particular weight to lawyers' professional privilege, which is linked to their role in the administration of justice and the protection of a client's right to a fair trial, as guaranteed by Article 6 of the Convention (see, for example, *Niemietz v. Germany*, 16 December 1992, § 37, Series A no. 251-B; *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 65, ECHR 2007; and *Michaud v. France*, no. 12323/11, § 118, ECHR 2012). The same argument may also apply to the protection of information relating to the exercise of other legal professions that involve the processing of client information covered by professional secrecy, such as the profession of notary in the Slovak legal system.

62. As regards the facts of the case, the Court notes that the searches and seizure in question were carried out on the basis of Article 101 § 1 and, in substance, Article 99 §§ 1 and 2 of the Code of Criminal Procedure (see paragraphs 18, 41 and 42 above). It finds, therefore, that the interference had some formal basis in national law.

63. The Court further considers that the above-mentioned legal provisions do not raise any problem of accessibility or foreseeability within the meaning of its case-law.

64. As regards the last qualitative condition which the national legislation must satisfy, namely compatibility with the rule of law, the Court reiterates that, in the context of seizures and searches, it requires national law to provide appropriate and sufficient safeguards against arbitrariness. Notwithstanding the margin of appreciation which the Court recognises the Contracting States have in this sphere, it must be particularly vigilant where, as in the present case, the authorities are empowered under national law to order and effect searches without a judicial warrant. If individuals are to be protected from arbitrary interference by the authorities with the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for (see *Gutsanovi*, § 220, and *Prezhdarovi*, § 44, both cited above; and *Brazzi v. Italy*, no. 57278/11, § 41, 27 September 2018).

65. As stated above, Article 99 §§ 1 and 2 and Article 101 § 1 of the Code of Criminal Procedure in force at the relevant time allowed the investigating authorities to carry out searches and seizures in non-residential premises at the initial stage of criminal proceedings, without prior judicial authorisation, on the basis of a search warrant issued by an investigator and approved by a prosecutor, if there was a reasonable suspicion that an item relevant to a criminal case would be found. In that regard, the Court observes that the wording of these provisions did not limit the discretion of the investigating authorities, who were solely responsible for assessing the necessity and scope of searches and seizures.

66. The Court has already held that, in such cases, even the absence of a judicial warrant may be counterbalanced by the availability of an effective and diligently conducted *ex post factum* judicial review of the lawfulness of, and justification for, the search warrant (see *Heino*, cited above, § 45; *Gutsanovi*, cited above, § 222; *Modestou v. Greece*, no. 51693/13, § 49, 16 March 2017; and *Bostan v. the Republic of Moldova*, no. 52507/09, § 25, 8 December 2020).

67. The Court finds it appropriate to turn at this juncture to the Government's argument that supervision of the lawfulness and effective protection against arbitrary interference with the applicant's rights under Article 8 of the Convention was provided by the prosecutor at the pre-trial stage and by the courts after the filing of the indictment. The Court considers that under Slovak law the public prosecutor does not have an independent status comparable to that of an independent tribunal within the meaning of

Article 6 of the Convention. Moreover, any opportunity for the applicant to challenge the warrants or any aspect of their implementation in the criminal proceedings against him would have concerned the protection of his right to a fair hearing in the determination of the criminal charge against him, which is not at issue in the present case, but would have had no direct bearing on his rights protected independently under Article 8 of the Convention (see *Plechlo v. Slovakia*, no. 18593/19, § 46, 26 October 2023). In any event, the criminal proceedings against the applicant were, at the date of the latest information available to the Court, still pending (see paragraph 38 above). The Government also suggested that the applicant could have disputed the manner in which the searches had been carried out by filing a complaint (with the Office of the Inspection Service) under Law no. 9/2010 in conjunction with Law no. 171/1993. However, the outcome of that procedure would have been indirect and without any immediate effect.

68. In the light of the foregoing, the Court considers that the applicant's right to respect for his private life and home was thus violated by the fact that there was no prior judicial warrant and no possibility of obtaining an effective judicial review *a posteriori* of either the decision to order the searches or the manner in which they were conducted (see paragraphs 18, 48-50, 65 and 67 above). The situation in the present case was aggravated by the fact that the searches took place in the premises of the notary's office. The Court notes with satisfaction that the legal provision of Article 101 §§ 1 and 2 of the Code of Criminal Procedure governing searches of non-residential premises has been amended by Law no. 40/2024 with effect from 15 March 2024 in that a search in those premises shall be based on a prior judicial warrant, and an *ex post factum* judicial approval shall be given if a search has been carried out without such a warrant.

69. The Court therefore concludes that, at the relevant time, even if it could be said that there existed a general legal basis in Slovak law for the impugned measures, that law did not provide sufficient judicial safeguards, either before the issuing of a search warrant or after a search was carried out. The applicant was therefore deprived of the minimum protection to which he was entitled under the rule of law in a democratic society.

70. The Court finds that, in these circumstances, it cannot be said that the interference in question was "in accordance with the law", as required by Article 8 § 2 of the Convention. In view of this conclusion, the Court need not examine whether the interference pursued one of the legitimate aims referred to in Article 8 § 2 and was necessary in a democratic society.

71. There has accordingly been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government considered this claim overstated and requested that the Court, should it find a violation of the Convention, award the applicant appropriate compensation.

75. The Court finds the applicant's claim reasonable and awards him EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

76. The applicant claimed EUR 460.90 for costs and expenses incurred before the domestic courts. He also claimed EUR 7,120 for costs and expenses incurred before the Court, which included EUR 2,120 for translation fees and EUR 5,000 for his legal representation.

77. The Government requested the Court to award the applicant only the costs and expenses reasonably incurred and supported by relevant documents.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full amount claimed in respect of costs and expenses, namely EUR 7,580.90, plus any tax that may be chargeable to the applicant.

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, the following amounts:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 7,580.90 (seven thousand five hundred and eighty euros and ninety cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts 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 29 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Erik Wennerström President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The application concerned searches and the seizure of electronic devices in a notary's office belonging to the applicant, carried out on the basis of search warrants issued by an investigator and subsequently approved by a prosecutor, without judicial scrutiny. The applicant complained that the search warrants had not been sufficiently reasoned and had not contained any relevant grounds or safeguards against interference with professional secrecy. He further complained that neither he, nor his lawyer, nor his employee were present at the searches and that beforehand no written search warrants had been served on him or on a person who had authority to act on his behalf. The applicant relied on Articles 8 and 13 of the Convention.

2. The judgment in paragraph 45 considers that, on the facts, the applicant's complaints fall to be examined only under Article 8 of the Convention (referring to *Haščák v. Slovakia*, nos. 58359/12 and 2 others, §§ 66-67, 23 June 2022, with a further reference). However, neither the present judgment nor the judgment in *Haščák* explain why and how it is possible that the other complaints, in the present case an Article 13 complaint, fall to be examined under Article 8.

3. In its operative provisions, the judgment declares the application admissible and finds that there has been a violation of Article 8 of the Convention, but it says nothing about Article 13.

4. Though I voted in favour of all three points of the operative provisions, I disagree with the judgment in two respects: (a) the fact that it does not also examine the complaint under Article 13; and (b) the fact that it does not contain a corresponding operative provision finding a violation of Article 13.

Since I have previously dealt with a similar issue in a number of separate opinions, I will refer to them without further analysis: (i) partly dissenting opinions in *Adamčo v. Slovakia (no. 2),* nos. 55792/20, 35253/21 and 41955/22*,* 12 December 2024, §§ 2-8; *Italgomme Pneumatici S.r.l. and Others v. Italy*, no. 36617/18 and 12 others, 6 February 2025, §§ 6-7; *Grande Oriente d'Italia v. Italy*, no. 29550/17, 19 December 2024, § 3; *M.I. v. Switzerland*, no. 56390/21, 12 November 2024, §§ 6-7; *Zarema Musayeva and Others v. Russia*, no. 4573/22*,* 28 May 2024, §§ 7-8; *Mandev and Others v. Bulgaria*, nos. 57002/11 and 4 others, 21 May 2024, §§ 4-8; *Thanza v. Albania*, no. 41047/19, 4 July 2023; *Gashi and Gina v. Albania*, no. 29943/18, 4 April 2023, §§ 2-3; and *Podchasov v. Russia*, no. 33696/19, 13 February 2024, §§ 4-5; and (ii) partly concurring and partly dissenting opinions in *A.M.A. v. the Netherlands*, no. 23048/19, 24 October 2023, §§ 13-18, and *Stanevi v. Bulgaria*, no. 56352/14, 30 May 2023, §§ 4-15.

There has been some academic support for my view, see for a recent example Alan Greene, "Allegation-picking and the European Court of

Human Rights: A pervasive Court practice in plain sight" (Strasbourg Observers, published on 25 February 2025)[1].

5. It may seem unusual to agree with all points of the operative provisions of the judgment but to still write a "partly dissenting" opinion. However, a judgment of the Court is not confined to the operative part and given how this judgment is presented (omitting a provision on which I would have dissented), while having regard to the reasons explained above, I feel that I cannot do otherwise.

[1] https://strasbourgobservers.com/2025/02/25/allegation-picking-and-the-european-court-of-human-rights-a-pervasive-court-practice-hiding-in-plain-sight/