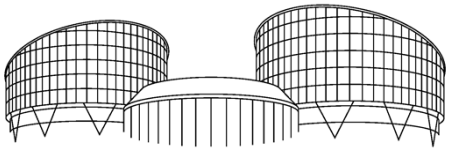

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BRD – GROUPE SOCIÉTÉ GÉNÉRALE S.A. v. ROMANIA

(Application no. 38798/13)

JUDGMENT

Art 8 • Home • Correspondence • Unannounced inspection of applicant company's premises by competition authority without prior judicial authorisation • Adequate procedural safeguards against abuse • Relevant and sufficient reasons • Adequate *ex post facto* judicial review concerning impugned measure's necessity and proportionality in general administrative proceedings • Proportionate interference given the authorities' margin of appreciation
Art 8 • Home • Correspondence • Seizure of two computers from applicant company's premises and subsequent electronic search during criminal investigation against its employees based on prosecutorial decision not subject to an effective judicial review • No meaningful examination of impugned measures' proportionality • Criminal investigation pending for several years • Disproportionate interference

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 March 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 BRD – Groupe Société Générale S.A. v. Romania,

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

Lado Chanturia, *President*,
Jolien Schukking,
Faris Vehabović,
Tim Eicke,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Sebastian Răduleţu, *judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 38798/13) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian company, BRD – Groupe Société Générale S.A. ("the applicant company"), on 11 June 2013;

the decision to give notice of the application to the Romanian Government ("the Government");

the parties' observations;

Having deliberated in private on 5 October 2021, 18 October 2022, 26 November 2024 and 25 February 2025,

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

INTRODUCTION

1. The application concerns, firstly, the alleged unlawfulness of an unannounced inspection conducted on the premises of the applicant company by the Competition Council. Secondly, it concerns the alleged unlawfulness of searches conducted on the premises of the applicant company by the investigative authorities in the context of criminal investigations in respect of several of its employees, as well as the seizure of computers and documents, including information stored electronically belonging to the applicant company. According to the latter, the inspection, the searches and the seizures were carried out in the absence of adequate procedural guarantees and in breach of Articles 6, 8 and 13 of the Convention and of Article 1 of Protocol No. 1.

THE FACTS

2. The applicant company is a bank founded in 1990 with its headquarters in Bucharest. It was represented by Mr D.S. Bogdan, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently, Ms S.M. Teodoroiu, of the Ministry of Foreign Affairs.

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

I. INVESTIGATION BY THE COMPETITION COUNCIL

A. Background

5. On 29 October 2008, following reports in the media of statements by officials of the National Bank concerning the establishment of a secret agreement between commercial banks in order to raise the interest rate for inter-bank loans, an internal report was prepared by five inspectors of the Competition Council ("the Council"). The report mentioned that it appeared from a survey of the retail banking market carried out by the Council that there was a constant exchange of information between certain banks. The inspectors considered that the Council was competent to investigate the reported situation on the basis of Article 2 § 4 (b) of Law no. 21/1996 on competition ("the Competition Act" – see paragraph 47 below), which excluded the money market from the scope of the Competition Act only where it was subject to special legal provisions, and that was not the case in the case at hand. In view of the above elements, and considering that the reported practices affected the inter-bank loan market, the report proposed opening an investigation into possible breaches of Article 5 § 1 of the Competition Act (see paragraph 47 below) and Article 81 § 1 of the Treaty establishing the European Community ("TEC") by commercial companies or associations of commercial companies on the banking market. No specific banks were named in the report.

B. The inspection of 30 October 2008

6. On 29 October 2008 the report was discussed in the plenary of the Council, which voted in favour of opening an investigation. That same day, the president of the Council by issuing Order no. 420 ("the investigation order"), opened an investigation into alleged breaches of internal market regulations contrary to Article 5 § 1 of the Competition Act (see paragraph 47 below) and Article 81 § 1 of the TEC, by commercial companies or associations of commercial companies on the banking market. The internal report of 29 October 2008 (see paragraph 5 above) was referred to as the starting-point for the investigation. The investigation was to be carried out in compliance with the powers provided for by Articles 35 to 39 of the Competition Act (see paragraph 47 below).

7. In the above context, by Order no. 424 of 30 October 2008 ("the inspection order"), the president of the Council ordered an unannounced

inspection at the applicant company's premises on the basis of Order no. 420 and pursuant to Article 26 (b) and Article 27 § 4 taken together with Article 36 of the Competition Act (see paragraph 47 below). The inspection was to be carried out between 30 and 31 October 2008 at the applicant company's headquarters and at any other premises where it carried out its activities by four inspectors whose names were listed in the inspection order.

8. On 30 October 2008, according to the inspection report drafted on that date, the four inspectors arrived at the applicant company's headquarters at 10.15 a.m. They were met by a representative of the applicant company, who was given copies of the two above-mentioned orders. After waiting for the arrival of the head of the applicant company's legal department, the actual inspection started at 1 p.m. and lasted until 9.30 p.m. The head of the applicant company's legal department assigned teams of two representatives of the applicant company – one from the legal department and one IT officer – to accompany the inspectors. They entered several offices belonging to the general manager and the deputy general managers in order to inspect the computers and the files. A total of thirty-two emails were printed from the offices of the general manager and the deputy general managers and copies of those emails were taken by the inspectors. The details of the emails copied by the inspectors were listed in the report and copies of those emails were also given to the representatives of the applicant company. The report also included lists of all the email messages accessed on various electronic storage devices by the inspectors with their location, sender, subject and date, and a description of the documents examined on paper. The report lastly mentioned that possible reasons justifying the need for the documents taken to remain confidential were to be submitted to the Council within five days from the date of the report. The report was signed without objections on behalf of the applicant company by the deputy general secretary and the head of the legal department. A copy of the report was given to the latter.

9. On 4 November 2008 the applicant company lodged with the Council a request for the emails taken by the inspectors to remain confidential (see paragraph 50 *in fine* below). It explained that the documents in question contained names of clients, aspects of its commercial strategy and data concerning its cash flow. The request was allowed by the Council.

C. The applicant company's appeals

1. Before the Council

10. On 10 December 2008 the Council rejected a complaint lodged by the applicant company asking for the annulment of Orders nos. 420 and 424 (see paragraphs 6 and 7 above), considering that no breach of law had occurred. In its complaint, the applicant company had argued, among other elements, that the suspected breach of the Competition Act was unfounded because the increase of the interest rate for inter-bank loans had had a real economic basis

and any agreement on this issue would have caused damage to the banks involved in the long term.

2. Before the Bucharest Court of Appeal

11. On 7 January 2009 the applicant company lodged with the Bucharest Court of Appeal a complaint asking for the annulment of Orders nos. 420 and 424 and of all subsequent acts issued on the basis or in the enforcement of those orders. It argued that the orders were vague, and that they did not indicate any of the suspected breaches of the Competition Act, the reasons for the unannounced inspection, the documents and information that was to be verified, the period of time concerned by the inspection or the extent of the inspectors' powers. This failure and the absence of prior judicial authorisation gave the inspectors unlimited powers and was in breach of Article 36 § 2 of the Competition Act. Relying on the judgment of 22 October 2002 of the Court of Justice of the European Union (CJEU) in *Roquette Frères* (C-94/00, EU:C:2002:603), it argued that the investigation initiated by the Council and the inspection had also lacked proportionality, for the same reasons connected to the alleged vague wording of the two orders. The applicant company also complained that the competition inspectors had accessed its information technology system and electronic correspondence despite being warned that they also contained personal information that should have been accessible only with a judicial warrant. Moreover, the inspectors had accessed information that was not relevant to the investigation and which was covered by banking secrecy, and had taken copies of emails that contained information that was not relevant to the investigation and personal information. It concluded that all these shortcomings were in breach of the guarantees in Article 8 of the Convention as regards the right to home and correspondence as set out in *Copland v. the United Kingdom* (no. 62617/00, ECHR 2007-I).

12. Before the Court of Appeal the Council submitted copies of the entire investigation file, including the internal report of 29 October 2008 mentioned in Order no. 420 (see paragraph 5 above). They argued that sufficient information about the scope and extent of the inspection had been given verbally to the representatives of the applicant company at the start of the inspection.

13. The proceedings before the Court of Appeal were suspended pending the examination by the Constitutional Court of a complaint of unconstitutionality, lodged by the applicant company in connection with the provisions of Articles 36 to 38 of the Competition Act (see paragraph 47 below). On 2 January 2010 the Constitutional Court rejected the applicant company's complaint, holding that the premises of companies were not automatically subjected to the same rules as the home of a private person. According to the Constitutional Court, the provisions of the Competition Act

allowing inspections on the premises of commercial companies without prior judicial authorisation were in compliance with the Constitution.

14. Following the decision of the Constitutional Court, the proceedings resumed before the Court of Appeal. At the hearing of 7 September 2010 the applicant company requested the court to send a preliminary question to the Court of Justice of the European Union (CJEU) in order to clarify the safeguards against arbitrary and abuse in case of unannounced inspections by competition inspectors. The court rejected the request considering that the case-law of the CJEU was clear as regards safeguards in connection with inspections and the relevance of those safeguards to the case at hand was to be examined together with the merits.

15. On the same date the applicant company lodged an application with the Court of Appeal complaining that copies of the emails taken during the inspection of 30 October 2008, submitted by the Council at positions 6 to 14 in their list of evidence and stored in the case file that was accessible to the public, also included confidential information (such as the names of clients, aspects of its commercial strategy and data concerning its cash flow – see paragraph 9 above) and requested that the documents concerned be returned to the Council so that they could be resubmitted in a format that would allow that information to remain confidential. The file does not contain information as to whether this application received a reply. However, at a subsequent stage of those proceedings, in its appeal on points of law (see paragraph 20 below), the applicant company did not raise any complaints or arguments in respect of this issue.

16. In its written conclusions submitted to the Bucharest Court of Appeal, the applicant company complained that the inspection had unreasonably disrupted its activities and the inspectors had abusively opened, read and taken confidential documents not related to the investigation. In addition, the documents submitted by the Council during the proceedings had not proved the existence of suspicions that could have justified the necessity and proportionality of the inspection. In its supplementary written conclusions, the applicant company again requested the annulment of the two orders as well as of all subsequent acts and submitted that the general wording of Order no. 424 had not allowed its representatives to understand the extent of their obligation to cooperate with the inspectors, who could have seen and taken any type of document, addressed to or sent by any person, referring to any service or product offered by the bank, from any period of time and from any place it may have been found on the premises.

17. On 21 December 2010 the Bucharest Court of Appeal rejected the applicant company's complaint, holding that the two orders in question had been issued in compliance with the procedure prescribed by law and had been adequately reasoned since the first was based on an internal report approved by the plenary of the Council and the second made reference to the first order and to the applicable legal norms. The fact that the two orders did not mention

in detail the reasons justifying the investigation was not a reason for their annulment, bearing in mind the unannounced character of the inspection and the necessity to ensure the highest efficiency. The court considered that the alleged overstepping of their legal competencies by the inspectors during the search could not be regarded as a reason to find the order in question unlawful. Such a situation could be seen as a possible breach of that order and hence it could be a reason for the annulment of the decision that would be issued at the end of the investigation, a decision that could be contested separately as provided by Article 47 of the Competition Act (see paragraph 48 below).

18. The court explained that Order no. 420 (see paragraph 6 above) had been adopted in accordance with the law which granted the Council competencies in investigations concerning compliance with competition rules. Where the Council did indeed lack competence was in regulating the money market, which had not taken place in the case before it.

19. As regards Order no. 424 (see paragraph 7 above), the court held that it fully complied with the law. Firstly, its content could not be exhaustively detailed due to the unannounced character of the inspection. Secondly, as regards the complaint concerning the lack of judicial authorisation, the court considered that the case before it was similar to that in *Société Colas Est and Others v. France* (no. 37971/97, ECHR 2002-III). More specifically, it noted that the situations requiring judicial authorisation were listed in Articles 37 and 38 of the Competition Act, and related to inspections of residences, land or means of transport of employees of the companies subject to investigation. However, Order no. 424 had its basis in Article 36 of that Act (see paragraph 47 below) which did not provide for prior judicial authorisation. Nor did the relevant EU Regulation No. 1/2003 (see paragraph 59 below) require such a warrant in the case of the applicant company. Judicial authorisation was required for the actions set out in Article 37 of the Competition Act and could be obtained following a request lodged on the basis of Article 38 of the Act. Only such a request had to respect the provisions of the applicable EU regulations and the case-law of the CJEU. In any event, such a request was an element which came after the inspection order and could not affect the lawfulness of the order. The court further considered that the inspection had been just one step in the investigation and the applicant company's arguments concerning its unlawfulness and, especially, the lack of judicial authorisation were to be raised in a complaint against the decision finalising the investigation.

3. Before the High Court of Cassation and Justice

20. The applicant company lodged an appeal on points of law (*recurs*) against that judgment with the High Court of Cassation and Justice ("the High Court") reiterating its previous arguments (see paragraphs 11 and 16 above). It also submitted that the lower court had incorrectly interpreted the

applicable law and the evidence and had not replied to the arguments raised in connection with the absence of suspicions that could have justified the necessity and proportionality of the inspection or to all the arguments raised in respect of the vague wording of the inspection order, hence depriving the applicant company of an effective remedy. Therefore, not only had the inspection lacked prior judicial authorisation, it had also lacked an effective *ex post facto* judicial review.

21. On 11 April 2013 the High Court rejected the appeal on points of law with final effect. The court first clarified that it would examine only the arguments put forward as regards Order no. 424 since it considered that the applicant company had withdrawn its complaints regarding Order no. 420 and the unlawful opening of the investigation.

22. The court further considered that the lower court had adequately replied to all the arguments raised before it and correctly applied the relevant legal provisions. Nevertheless, it went on to review the examination carried out by the lower court and held that Order no. 424 had been adopted in accordance with the law in force at the relevant time: Article 26 (b), Article 27 § 4 and Article 36 of the Competition Act (see paragraph 47 below). The sole condition provided by the above legal provisions for the adoption of such an order was the existence of reasons to believe that documents necessary for the investigation could be found on the premises of the company. The order in the present case had relied on indications (*indicii*) that information or documents necessary for the investigation into possible breaches of the Competition Act – resulting from the internal report of 29 October 2008 (see paragraph 6 above) – might be found on the premises of the applicant company. The law did not require that the Council prove direct participation by the applicant company in the suspected breach of the Competition Act. As regards the applicant company's argument concerning the vague wording of the order (see paragraphs 11 and 20 above), the court held that the Competition Act did not provide for a specific format for such an order or for specific textual elements in the absence of which such an order could be annulled. The court further explained that the CJEU case-law quoted by the applicant company stated that the content of inspection orders depended on the context of their adoption and the issuing authority was in no way under an obligation to provide all the information it disposed of or the exact legal provisions supposedly breached by the company under investigation. The court also explained that a more detailed description of the suspected breaches of the Competition Act, the applicant company's role or the exact description of the object of the search could have rendered ineffective the unannounced character of the inspection.

23. As regards the complaint that the inspection lacked judicial authorisation, the High Court noted that, at the relevant time, the national legal framework did not require judicial authorisation in cases such as the present one. As regards the complaint that the inspection order lacked a

description of the limits of the powers held by the inspectors and their competencies, the court noted that the limits of those powers and competencies and the company's obligation to cooperate were clearly provided in Article 36 §§ 1 to 4 of the Competition Act (see paragraph 47 below). The court considered that the inspection had been proportionate due to the severity of the suspected acts, the importance of the market involved and the possible consequences of the suspected acts on that market. All those elements justified the Council's choice of an unannounced inspection as opposed to the instruments set out in Article 35 of the Competition Act. When examining the proportionality of the measure adopted in this case with the aim pursued, the court considered that the applicant company had failed to show and to prove the actual damage sustained by the unannounced inspection on its premises. Therefore, the inspection had complied with both EU law and the provisions of Article 8 of the Convention.

24. As regards the applicant company's complaint of lack of access to a court due to the lower court's statement that certain arguments concerning the inspection were to be raised at a later stage of the proceedings (see paragraph 17 above), the court considered it as having been resolved since the applicant company had had the opportunity to raise its arguments in its appeal before the High Court and had received reasoned replies in the judgment at hand.

D. Conclusion of the competition investigation

25. On 29 May 2013 the applicant company was notified that the president of the Council had decided to close the investigation into it as the evidence collected did not disclose a finding of an infringement of the Competition Act.

II. CRIMINAL PROCEEDINGS

26. In 2012 two separate criminal investigations were started by the Directorate for Investigating Organised Crime and Terrorism attached to the General Prosecutor's Office (DIICOT) involving a large number of suspects, including employees of the applicant company, suspected of large-scale fraud and money laundering.

A. Case no. 102/D/P/2012

27. A first set of proceedings, conducted under case no. 102/D/P/2012 (hereinafter referred to also as "the first criminal case"), established that, starting in 2008, employees of the applicant company, most of them holding management positions, together with external people and companies, had created an organised criminal group with the purpose of obtaining bank loans

unlawfully and committing fraud, forgery and money laundering. These activities caused several million euros in damages to the applicant company and also to the State budget.

28. On 16 November 2012 and 8 February 2013, the applicant company lodged criminal complaints against seven of its employees for complicity in fraud in the context of credit operations, joining a request for civil damages allegedly caused by the crimes in question.

29. In an interlocutory judgment of 12 December 2012, a judge of the Bucharest Court of Appeal allowed the prosecutor's request to conduct search operations at forty-eight locations, including two locations belonging to the applicant company. The judge examined the material in the criminal case file, which had been submitted by the prosecutor, and, sitting in camera, decided that there were sufficient grounds to consider that evidence relevant to the case might be found at the locations in question and that the requirements set out in Articles 100 et seq. of the Code of Criminal Procedure ("the CCP" – see paragraph 68 below) had been fulfilled so that it was possible to fully allow the prosecutor's request. The judge then issued separate authorisations for the two locations belonging to the applicant company. The authorisations mentioned that they were based on the interlocutory judgment adopted on the same date and included the addresses where the searches were to take place and a time frame of ten days in which to carry them out from 12 to 21 December 2012.

30. On 13 December 2012 several police officers carried out searches of the two offices in question in the presence, for each location, of two independent witnesses, several employees and a lawyer representing the interests of the applicant company. According to the search reports, signed without objections by the representatives of the applicant company, a number of documents and electronic storage devices (memory sticks and DVDs) were seized as evidence (*ridicare de obiecte*) as well as fourteen computers (central units) used by the suspects, the branch manager and other employees. All items seized were listed in the reports and placed in sealed bags and boxes.

31. Later that same day, the applicant company applied to the General Prosecutor for the immediate return of the computers and of copies of the documents taken from its offices, as they contained information necessary for the continuation of its activities. It also pointed out that a computer belonging to an employee who had not been involved in the investigation could have been wrongfully seized. The DIICOT replied to this application a few days later that formalities for the issuance of authorisations for electronic searches were under way.

32. On 4 January 2013, following an application by the prosecutor, a judge from the Bucharest Court of Appeal adopted an interlocutory judgment in camera authorising the search of the electronic evidence stored on the computers and the other storage devices seized on 13 December 2012, on the basis of Articles 55 and 56 of Law no. 161/2003 on ensuring transparency in

the exercise of public duties and responsibilities and in business, and on preventing and punishing corruption (see paragraph 71 below) and Articles 100 et seq. of the CCP (see paragraph 68 below). On the basis of this judgment, the judge issued a separate authorisation for a period of thirty days for the search of the electronic evidence and to copy it for storage. Subsequently, the judge extended the authorisation, upon the prosecutor's request, for another thirty days from 6 February to 7 March 2013 in respect of two computers seized from the premises of the applicant company, and then again from 29 March to 27 April 2013.

33. The bags containing the seized documents and storage devices had been unsealed on 4 January 2013 at the DIICOT, in the presence of an employee of the applicant company and a lawyer representing the interests of the applicant company, who made no objections to the report drafted on that occasion.

34. Between 16 and 25 January 2013, in the presence of a representative of the applicant company and its lawyer as well as an independent witness, the data found on the devices seized from the applicant company were stored in electronic format on external hard disks and other storage devices and the seized objects were placed under seal and remained in the authorities' possession. The reports listing all the computers and other storage devices accessed were signed by all present without objections. Electronic searches of these data took place on several dates between 5 March and 29 April 2013 and the documents and information considered relevant to the investigation were identified and printed out. These consisted of email messages between the employees of the applicant company and various documents attached to the messages in question. Among these documents, there were client evaluation reports and other information concerning the companies under investigation as well as documents concerning an internal audit involving the work of the two employees who were the subject of the criminal investigation. For each electronic search, a report was drafted mentioning the date and time of the search and type and number of documents printed. Copies of those documents were joined to the reports.

35. On 25 February 2013 two of the defendants (not employed by the applicant company) asked for the return of computers and mobile phones seized from their homes under Article 109 § 4 of the CCP (see paragraph 68 below). Their request was allowed by the prosecutor on 7 March 2013.

36. On 19 March 2013 two digital video-recorders were returned to a representative of the applicant company on the basis of Article 109 § 4 of the CCP, without their hard disks.

37. On 3 October 2013 the investigation was concluded and the accused, including the employees of the applicant company, were sent to trial. At the date of the latest information available to the Court (September 2024), the trial was pending before the Bucharest Court of Appeal.

B. Case no. 2352/D/P/2013

38. At the end of 2012 the DIICOT started a second investigation (hereinafter referred to also as "the second criminal case") into several people including employees of the applicant company (other than the ones investigated in case no. 102/D/P/2012) on suspicion of conspiracy to commit fraud and forgery by unlawfully facilitating the approval of non-performing loans.

39. On 9 January 2014 the case prosecutor ordered, on the basis of Articles 96 to 99 of the CCP (see paragraph 68 below), the seizure as evidence (*ridicare de obiecte*) of the computers used in their work by the suspect L.A. and the witness B.C.R., who both worked for the applicant company. The prosecutor considered that the two computers might be used in evidence since they might contain information necessary for the investigation.

40. In enforcement of the above order, on 13 January 2014 two computers were taken from the offices of the above-mentioned employees on the premises of the applicant company, in the presence of the representative of the applicant company, L.A., B.C.R. and an independent witness. The report drafted on that occasion by the police officers who carried out the operation included the following objections raised by the representative of the applicant company: that he had not been allowed to make a copy of the prosecutor's order of 9 January 2014; that there had been no prior request for handing over the computers as evidence, therefore the seizure was in fact a search for which judicial authorisation should have been obtained; that one of the computers seized belonged to a commercial manager of the central office and contained confidential information concerning clients as well as commercial strategies which were protected by the banking secrecy and were not necessary for the investigation; that the order of 9 January 2014 provided no reasoning as to the necessity and justification of the measure in so far as it had been ordered more than a year after the opening of the investigation and the applicant company had consistently cooperated with the prosecutor and had provided all the documents and information required.

41. On 16 January 2014 a complaint lodged by the applicant company against the prosecutor's order of 9 January 2014 was registered at the DIICOT. The applicant company reiterated the objections it had raised on the occasion of the seizure as included in the report drafted by the authorities on that occasion (see paragraph 40 above). Furthermore, it also argued that the electronic search had not been provided for by law for the crimes under investigation in the case at hand. More specifically, Law no. 161/2003 (see paragraph 71 below) allowed such searches only in cases of crimes committed through information technology systems. In addition, that Law did not contain any provisions for the prevention of abuse as there were no provisions concerning the actions taken after the seizure, such as the conditions in which the data would be accessed, copied, safeguarded, and by

whom, as well as whether it would be destroyed. The applicant company also complained about the lack of judicial authorisation for the seizure which had led to the absence of judicial control over the lawfulness and necessity of the measure contested. It argued that the seizure of information technology devices was part of the electronic search and should therefore have been the subject of judicial authorisation together with that search. It also submitted that the measure had been disproportionate and capable of causing substantial damages because it had led to the accessing and storage of more information than had actually been necessary. Lastly, the applicant company asked to be summoned when the request for judicial authorisation for the search on the computers seized was made and to be allowed to be present during all steps of the search, including for the deletion of the unnecessary information from the devices belonging to the authorities.

42. On 20 January 2014 the applicant company's complaint was examined on the merits and rejected on the basis of Articles 275 to 278 of the CCP (see paragraph 70 below) and Article 64 § 3 of Law no. 304/2004 (see paragraph 72 below) by the hierarchically superior prosecutor within the DIICOT. After reviewing all the steps taken in the investigation and the manner in which the seizure had been carried out, the prosecutor held that the decision of 9 January 2014 (see paragraph 39 above) had been lawful. The seizure had been justified by the nature of the crimes under investigation and the need to examine the data stored on the computers used by one of the suspects and a witness with a view to uncovering evidence revealing the truth in the case. The seizure had been carried out by police officers who had been lawfully assigned to the task by a decision of the prosecutor, in the presence of L.A., B.C.R. and a legal representative of the applicant company who had had, and had used, the opportunity to make objections (see paragraph 40 above). The prosecutor therefore considered that the search had been ordered and carried out in compliance with the relevant legal provisions of Articles 96 to 99 of the CCP (see paragraph 68 below). The prosecutor also argued that further safeguards were in place since, if it proved to be necessary, the electronic search of the data stored on the computers would be conducted only with prior judicial authorisation and in the presence of the people from whom the two computers had been seized. The report drafted following such a search would be included in the investigation file, in compliance with the procedural rules.

43. In an interlocutory judgment of 20 January 2014, on the basis of Articles 100 et seq. of the CCP (see paragraph 68 below) and Article 56 §§ 1 and 2 of Law no. 161/2003 (see paragraph 71 below), a judge from the Bucharest County Court allowed the prosecutor's request for the search of the electronic evidence stored on the two computers. According to the prosecutor's request, the applicant company had been informed about the investigation in November 2012 and had been requested to provide copies of the electronic correspondence conducted between the two employees under

investigation. However, the applicant company had informed the prosecutor that the electronic correspondence between the two employees had not been saved on the server and therefore copies of certain exchanges between them could be submitted only by the employees themselves. Therefore, the prosecutor had requested the authorisation to search the two computers in order to find a specific email message sent on a certain date that would clarify the circumstances in which L.A. had requested B.C.R. to examine a credit request. On the basis of the above interlocutory judgment, the judge issued two separate authorisations for the search of each computer, both valid for a period of twenty days starting on 20 January 2014.

44. The searches took place on 27 January 2014, separately for each computer, in the presence of the suspect L.A., his lawyer and an independent witness for the first computer and the witness B.C.R. and an independent witness for the second one. According to the search reports signed by all of the parties without objections, the computer used by L.A. was encrypted and could not be accessed, therefore it had been placed in a sealed bag and remained in the authorities' possession. The computer used by B.C.R. was accessed and an email between her and L.A. had been found to be useful to the case. It was therefore printed out and also stored on a storage device together with the technical data of the hard disk (such as the number, type and capacity of the partitions, the hardware components, and the date and time of the last shutdown). At the end of the search, this computer had also been placed in a sealed bag and remained in the authorities' possession.

45. On 10 March 2014 the two computers were returned to L.A. and B.C.R. upon their request, in the presence of the applicant company's legal representative.

46. At the date of the latest information available to the Court, the investigation was still pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE REGARDING COMPETITION AND BANKING

47. Law no. 21/1996 on competition ("the Competition Act"), as in force at the relevant time, read as follows in its relevant parts:

Article 2 § 4

"The present law does not apply to:

...

(b) the money and securities markets, provided that free competition in those markets is subject to special regulations."

Article 5 § 1

"Express or tacit agreements and decisions between companies or associations of companies, with the purpose or effect to prevent, restrict or distort competition within the Romanian market or parts of the market, are forbidden, ... "

Article 26

"The Competition Council has the following competencies:

...

(b) takes the decisions provided by the present law in cases of a violation of the provisions of Articles 5, 6, 9, 12 and 15, established following investigations carried out by the competition inspectors, in accordance with the provisions of the law and the inspection powers endowed on them by order of the president; a copy of this order shall be handed over by the competition inspectors to the company or the association of companies under investigation; ..."

Article 27 § 4

"The Competition Council ... orders the conduct of investigations [and] orders inspections and measures to be taken regarding commercial companies."

Article 34 § 1

"The Competition Council orders investigations ...:

(a) of its own motion;

..."

Article 35

"While carrying out investigations and discharging their functions under the present law, competition inspectors may request information or documents needed from companies or associations of companies, by mentioning the legal grounds and scope of the request, and may set deadlines for the submission of such information and documents, under the sanctions provided by the present law."

Article 36

"1. For the purpose of conducting investigations into breaches of the present law, competition inspectors, except for junior inspectors, are vested with inspection powers and may:

(a) enter premises, land and means of transport under the lawful possession of companies and associations of companies;

(b) examine any documents, records, financial, accounting and trade acts and other records related to the business, irrespective of where they are stored;

(c) take statements from representatives of the company or association of companies on facts or documents considered relevant;

(d) take (*să ridice*) or obtain in any form copies of or extracts from such documents, records, financial, accounting and trade acts or from other records concerning the activities of the company or association of companies;

(d) seal any premises used for the activity of the company or association of companies and any documents records, financial, accounting and trade acts or records ..., for the period of and to the extent necessary for the inspection.

2. Competition inspectors vested with inspection powers shall conduct the activities in paragraph 1 only where there are reasons to believe (*indicii*) that documents could be found or information obtained which are necessary for the discharge of their functions; the result [of the inspection] shall be recorded in an inspection report.

3. Competition inspectors vested with inspection powers may conduct unannounced inspections and may request any information or explanations concerning the discharge of their functions, both at the scene and by summons at the office of the Competition Council.

4. Inspection powers shall be exercised according to the Regulations on the organising, functioning and procedure of the Competition Council."

Article 37

"On the basis of a judicial warrant issued by a court, pursuant to Article 38, the competition inspector may conduct inspections in any other premises, including the residence, land or means of transport belonging to the managers, administrators or other employees of companies and associations of companies subjected to investigation."

Article 38

"1. Competition inspectors may conduct inspections pursuant to Article 37 only following an order of the president of the Competition Council and a judicial warrant issued by a court, delivered by the president of the county court or by a judge delegated by the latter ...

2. The request for a warrant must include all the information justifying the inspection and the judge shall verify the merits of the request. ...

5. Regardless of the circumstances, the inspection may not begin before 8 a.m. or after 6 p.m. and must be conducted in the presence of the owner of the premises or of his or her representative; only the competition inspectors, the owner of the premises or his or her representative may consult the documents before they are taken."

Article 39

"1. The bodies of central and local public administration, as well as any other public institutions and authorities, shall allow competition inspectors access to the documents, data, and information held by them, in accordance with the inspection powers established by the President of the Competition Council, without being able to invoke state secret or other restricted status concerning such documents, data, and information.

2. Competition inspectors, upon receiving access to the documents, data, and information referred to in paragraph 1, are required to strictly observe the confidentiality assigned by law to those documents, data, and information."

Article 44

"...

2. The president of the Competition Council may allow the parties access to the case file at the secretariat of the Competition Council and release [to them], ..., copies or excerpts from the documents concerning the investigation.

3. Documents, data and information in the case file which are either State secrets or of a confidential nature are only available to be examined, copied or excerpts obtained from them by prior decision of the president of the Competition Council."

48. Article 47 § 4 of the Competition Act provided at the relevant time that decisions taken by the Competition Council at the end of investigations under Article 5 could be subjected to judicial review, under the general administrative procedure (see paragraph 52 below), before the Bucharest Court of Appeal, within thirty days of the parties being notified of them.

49. Under Article 15 § 2 of the Regulations on the functioning of the Competition Council, as in force at the relevant time, published in Official Gazette no. 288 of 1 April 2004, should the Council intend to open an investigation of its own motion, such a decision was to be taken by the plenary and the investigation was then to be opened by order of its president.

50. The relevant provisions of the Competition Council Regulations on access to competition case files, as in force at the relevant time, published in Official Gazette no. 371 of 28 April 2006, provided that documents that were not related to the investigation had to be returned to the company from which they had been taken (Article 6).

Other relevant provisions read as follows:

Article 7

"Parties shall be afforded access to the [investigation] case file ..., except for ... the documents containing trade secrets of other companies or other confidential documents."

Article 14

"The ... file may also include documents that contain ... trade secrets and other confidential information, access to which may be totally or partially restricted. Access will be granted, if possible, to a non-confidential version of the initial information, as submitted by the company benefiting from confidentiality. Where confidentiality may be secured by a summary of the relevant information, access will be granted to such a summary. All other types of documents may be examined in their original form."

Article 20

"Information is to be regarded as confidential when a person or a company has made a reasoned request to that effect and the request has been granted by the Council."

51. The Competition Act was amended by Law no. 255/2013, which came into force on 1 February 2014 and introduced, *inter alia*, the following amendments: (a) the requirement of prior judicial authorisation for any

inspection and the possibility of contesting that authorisation to the higher court; (b) the obligation for the inspection order to mention the subject matter and scope of the inspection; and (c) the possibility of complaining about the inspection order to the courts. Further modifications were introduced by Government Emergency Ordinance no. 170/2020 which amended, in particular, Article 38 § 3 (former Article 36 § 3) relating to the procedure for unannounced inspections. The amendments provided in Article 38 § 3^1 mentioned that the documents, data and information taken or copied during the unannounced inspection could be accessed only in the presence of the company's representative at the Council headquarters.

52. Articles 1 and 8 of Law no. 554/2004 on administrative proceedings provide that individuals who consider themselves injured in respect of a legitimate right or interest by a public authority, through an administrative decision, or as a consequence of such an authority's failure to resolve a petition within the time frame provided by law may lodge before the competent administrative court an application to annul the contested decision, to acknowledge the claimed right or the legitimate interest, and to repair the damage sustained as a consequence thereof.

53. Government Emergency Ordinance no. 99/2006 on credit institutions provides in its Article 113 that the obligation to preserve professional secrecy in the banking sector cannot be opposed to authorities that are exercising their lawful supervisory powers. Moreover, pursuant to Article 114, banking institutions are obliged to provide the prosecutor, the court or the investigative authorities upon a prosecutor's approval, with information covered by banking secrecy about certain clients, after the opening of a criminal investigation in respect of those clients. Article 116 further provides that those who are entitled to request and receive information covered by banking secrecy are obliged to keep it confidential and may use it only for the purposes provided by law.

54. The Government submitted the following examples of the case-law of the domestic courts.

55. In a judgment of 11 December 2013, the High Court of Cassation and Justice ("the High Court") held that the decisions of the president of the Council concerning the confidentiality of documents obtained during an inspection were subject to judicial review as administrative acts, under the general provisions of Law no. 554/2004 (see paragraph 52 above).

56. In a judgment of 22 April 2016, the High Court examined a complaint asking for the annulment of two orders of the president of the Council, one starting an investigation and the other ordering an unannounced inspection. The complaint was lodged by a company against the final decision of the Council concluding the investigation against into it. In this context, the court considered itself competent to review complaints about the manner in which the inspection had been conducted and about the manner in which certain information and specific documents had been obtained (for example, the

copying of an entire hard drive). The court held that, even if at a specific time the law had not prescribed any mandatory content for the investigation order, the fact that the order referred to an internal note describing separately the reasons for opening an investigation could be regarded as sufficient reasoning of the investigation order. The court also held that the lack of prior judicial authorisation did not lead to an increased risk of abuse, as long as the orders concerning the inspection were, under the national law, subject to a subsequent judicial review concerning their lawfulness, pursuit of a legitimate aim and proportionality. The court examined and rejected all arguments adduced by the company, holding that all the acts adopted by the Council had been in accordance with the law.

57. In a judgment of 28 June 2016, the High Court examined a similar complaint as the one detailed in paragraph 56 above. In this context the court held that the applicant's request for the annulment of all inspection acts and of the inspection report could be examined only with the decision finalising the investigation.

58. Following the 2014 amendments to the Competition Act, introducing the requirement of prior judicial authorisation of inspections (see paragraph 51 above), the Government have found only one judgment of the High Court, of 28 June 2016, ruling that, whereas the appeal against the judicial decision authorising the inspection had been denied as ill-founded, a separate complaint against the conduct in practice of the inspection could only be lodged by joining it to the complaint against the Council's decision finalising the investigation. The Government contended that such an interpretation applied only to inspections conducted after the entry into force of the 2014 amendments to the Competition Act.

II. EUROPEAN LAW AND PRACTICE REGARDING COMPETITION AND BANKING

59. Articles 20 and 21 of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the TEC (now Articles 101 and 102 TFEU), OJ 2003 L 001, p.1 ("Regulation No. 1/2003") are applicable to the European Commission when it is undertaking inspections. They provide as follows:

Article 20 – The Commission's powers of inspection

"1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct all necessary inspections of undertakings and associations of undertakings.

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered:

(a) to enter any premises, land and means of transport of undertakings and associations of undertakings;

(b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;

(c) to take or obtain in any form copies of or extracts from such books or records;

(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;

(e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.

3. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Article 23 in case the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraph 2 of the present Article are incorrect or misleading. ...

4. Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the Court of Justice.

5. Officials of as well as those authorised or appointed by the competition authority of the Member State in whose territory the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.

6. Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

7. If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

8. Where authorisation as referred to in paragraph 7 is applied for, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the Member State competition authority, for detailed explanations in particular on the grounds the Commission has for suspecting infringement of Articles 81 and 82 of the Treaty, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the Commission's file. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice."

Article 21 – Inspection of other premises

"1. If a reasonable suspicion exists that books or other records related to the business and to the subject-matter of the inspection, which may be relevant to prove a serious

violation of Article 81 or Article 82 of the Treaty, are being kept in any other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, the Commission can by decision order an inspection to be conducted in such other premises, land and means of transport.

...

3. A decision adopted pursuant to paragraph 1 cannot be executed without prior authorisation from the national judicial authority of the Member State concerned. The national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. The national judicial authority may ask the Commission, directly or through the Member State competition authority, for detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged."

60. In the judgment of 6 September 2013 in *Deutsche Bahn and Others v. Commission* (T-289/11, T-290/11 and T-521/11, EU:T:2013:404), the General Court stated for the first time that EU law did not in principle require a prior judicial approval for inspections carried out on the basis of Article 20 of Regulation No. 1/2003 (see paragraph 59 above).

61. Notably, the General Court proceeded to analyse the situation under EU law, identifying five categories of safeguards in the context of an inspection carried out by the Commission: (1) the statement of reasons on which inspection decisions are based; (2) the limits imposed on the Commission during inspections; (3) the impossibility for the Commission to carry out inspections by force; (4) the intervention of national authorities; and (5) the existence of *ex post facto* remedies. The relevant parts of the General Court's reasoning read as follows:

"[Statement of reasons for the inspection]

75. In the first place, it has been held that the purpose of the statement of reasons on which an inspection decision is based is to show that the operation carried out on the premises of the undertakings concerned is justified (see *France Télécom v. Commission*, ..., paragraph 57 and the case-law cited). That decision also has to comply with the requirements set forth in Article 20(4) of Regulation No. 1/2003. The decision must therefore specify the subject-matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 of that regulation, as well as the right to have the decision reviewed by the Court of Justice. According to the case-law, the statement of reasons must also state the suppositions and presumptions that the Commission wishes to investigate (judgment of 12 July 2007 in Case T-266/03*, CB v. Commission*, not published in the ECR, paragraphs 36 and 37).

76. None the less, the Commission must not set out the exact legal nature of the alleged infringements, communicate to the undertaking all the information at its disposal, or indicate the period during which the suspected infringement was committed (*France Télécom v. Commission*, ..., paragraph 58).

> 77. However, in order to ensure that the undertaking is able to exercise its right of opposition, the inspection decision must contain, apart from the formal particulars listed in Article 20(4) of Regulation No. 1/2003, a description of the features of the suspected infringement, by indicating the market thought to be affected and the nature of the suspected competition restrictions, as well as the sectors covered by the alleged infringement, the supposed degree of involvement of the undertaking concerned, the evidence sought and the matters to which the investigation must relate (see *France Télécom v. Commission*, ..., paragraph 59 and the case-law cited).
>
> 78. The review of the statement of reasons on which a decision is based allows the courts to ensure that the principle of protection against arbitrary and disproportionate interventions and the rights of defence are respected ..."

62. In the judgment of 5 October 2020 in *Intermarché Casino Achats v. Commission* (T-254/17, EU:T:2020:459), the General Court based its examination of the effectiveness of the judicial review against an inspection decision on the following principles:

(1) there must be effective judicial review, both in fact and in law, of the regularity of the decision or measures concerned (the "effectiveness condition");

(2) the available remedies must allow for either preventing the operation from occurring in case of irregularity or providing appropriate redress if an irregular operation has already taken place (the "efficiency condition");

(3) the accessibility of the remedy concerned must be certain (the "certainty condition");

(4) the judicial review must take place within a reasonable time (the "reasonable-time condition").

63. In its examination of the above principles, the General Court explained that the courts of the European Union consistently relied on the case-law of the Court, from which it followed that the examination had to be based on a global analysis of the above-mentioned principles. More specifically, it was not necessary that all those principles were fulfilled for a finding of the existence of an effective remedy in a given case.

64. In the judgment of 5 October 2020 in *Les Mousquetaires and ITM Entreprises v. Commission* (T-255/17, EU:T:2020:460), the General Court examined a complaint lodged by two companies who requested (immediately after the inspection and before a final decision closing the investigation) the annulment of the inspection orders adopted by the Commission in accordance with Article 20 §§ 1 and 4 of Regulation No. 1/2003 (see paragraph 59 above). The applicant companies also requested the annulment of the Commission's decisions to take and copy information held on communication and storage devices that contained data relating to the private life of users of those devices and to refuse the return of that information.

65. As regards the complaint about the lack of an effective remedy owing to the absence of a specific avenue to complain about the conduct of the inspections, the General Court examined the remedies available and held that, taken together, those remedies were capable of offering adequate redress in

the applicants' situation. More specifically, the following possibilities for lodging complaints before a court were examined. The possibility under Article 20 §§ 4 and 8 of Regulation No. 1/2003 (see paragraph 59 above) of lodging a complaint against the inspection order that allows the CJEU to examine its lawfulness, especially as regards the existence of sufficiently serious reasons to suspect a breach of competition rules. In the event of a finding of unlawfulness, the CJEU could annul the order in question as well as all the measures taken on its basis. Another remedy available to the applicants was the possibility of complaining to the CJEU about any measure adopted by the Commission following the inspection order or during the inspection, such as a decision to refuse a request for the confidentiality of documents consulted or taken during the inspection or a decision to refuse a request for the protection of the private life of the employees of the company inspected. A third remedy available was the possibility of lodging a complaint with the CJEU against the final decision closing the investigation. This avenue offered the possibility of a judicial review of whether the limits imposed on the Commission by the legal framework in cases of unannounced inspections had been respected. Such proceedings were not, however, sufficient to offer adequate redress in cases of irregular accessing of confidential documents in the course of an inspection. Lastly, while confirming that the above-mentioned remedies taken together did not have suspensive effect, the General Court noted that Article 278 TFEU allowed for the possibility of obtaining a stay of execution of the contested acts by lodging an application for interim relief in the context of any of the above proceedings. Finally, another remedy available in the applicants' situation was the possibility, afforded by Article 340 § 2 TFEU, of initiating an action for non-contractual liability against the Commission. This possibility was available even before the adoption of a final decision ending the investigation and even in the event of the inspection not leading to such a final decision.

66. As regards the complaint of a breach of the applicant companies' right to home (corresponding to Article 8 of the Convention), the General Court proceeded to an extensive twenty-three-page examination of the proportionality of the inspection and of the existence of sufficiently serious reasons to justify the inspection decisions, such as serious material indicia capable of creating a suspicion of a breach of competition law. Finding that no such reasons existed in respect of one of the breaches under investigation, the General Court decided to annul the part of the inspection decision that referred to the breach in question.

67. The appeal against the above decision lodged by the applicant companies was allowed by the CJEU which delivered its judgment on 9 March 2023 (*Les Mousquetaires and ITM Entreprises v. Commission*, C-682/20 P, EU:C:2023:170). The CJEU re-examined the reasons put forward by the Commission to justify the inspection decisions and decided that the decisions in question had not been substantiated by sufficiently

serious indicia because the essential elements of those indicia were information obtained in disregard of procedural obligations (the interviews with suppliers carried out before the formal opening of the investigation in order to collect indicia of an infringement had been vitiated by a procedural irregularity). The CJEU accordingly annulled the inspection decisions.

III. DOMESTIC CRIMINAL LAW PROVISIONS

68. The relevant provisions of the former Code of Criminal Procedure ("the former CCP"), as in force at the relevant time, read as follows:

Article 96 – Seizure of objects and documents (*Ridicarea de obiecte și înscrisuri*)

"The criminal investigation body or the court is under the obligation to seize objects and documents that may serve as evidence in the criminal proceedings."

Article 97 – Surrender of objects and documents

"1. Any natural or legal person in possession of an object or a document that may serve as evidence is under an obligation to present and surrender it to the criminal investigation body or to the court, upon their request.

2. Where the criminal investigation body or the court finds that the copy of a document may serve as evidence, it shall retain only the copy.

3. Where the object or the document is of secret or confidential character, it shall be presented or surrendered under conditions guaranteeing its secrecy or confidentiality."

Article 99 – Forceful seizure of objects and documents (*Ridicarea silită de obiecte sau de înscrisuri*)

"1. Where the requested object or document is not willingly surrendered, the criminal prosecution body or court shall order its forceful seizure.

2. During trial, the decision to forcefully seize objects or documents is communicated to the prosecutor, who takes action to execute it, through the criminal investigation bodies."

Article 100 § 5 – Searches

"On the basis of the decision, the judge issues the search warrant that must contain:

(a) the name of the court;

(b) the time, date and hour of its issuance;

(c) the name and function of the person issuing the warrant;

(d) the time frame for the search;

(e) the address for the search;

(f) the name of the person who resides at the address;

(g) the name of the accused or defendant."

Article 109 – Decisions concerning the seized objects (*Măsuri privind obiectele ridicate*)

"1. The criminal prosecution body or the court shall decide whether objects and documents constituting evidence should be attached to the case file or otherwise stored ...

3. Material evidence is stored by the criminal prosecution body or by the court pending resolution of the case.

4. Objects surrendered or seized during a search and unconnected to the case are returned to the person to whom they belong. Objects subjected to confiscation are not returned.

5. Objects serving as material evidence, if not subjected to confiscation, may be returned to the person to whom they belong, even before the final settling of the case, except where such a return could hinder the discovery of the truth. The criminal prosecution body or the court shall warn the person to whom the objects or documents are returned that they must be kept until the case has been finally resolved."

Article 301 – Rights of the prosecutor and of the parties to the trial

"1. Pending trial, the prosecutor and the parties may submit requests, raise exceptions and arguments.

2. The aggrieved party may submit requests, raise exceptions and arguments concerning the criminal aspect of the case.

3. The civil party may submit requests, raise exceptions and arguments as far as they regard its civil claims."

69. The relevant provisions of the new Code of Criminal Procedure ("the new CCP"), as in force starting from 1 February 2014, read as follows:

Article 157 – When a home search may be ordered

"1. The search of a home or of goods located in a home may be ordered where there is a reasonable suspicion regarding the commission of an offence by a person or regarding the possession of objects or documents related to an offence and it is assumed that the search may lead to the discovery and collection of evidence related to that offence, to the preservation of evidence left by the offence committed or to the apprehension of the suspect or defendant.

2. Home is any house or space delimited in any manner that belongs to or is used by a natural or legal person."

Article 162 – Decisions concerning the seized objects (*Măsurile privind obiectele ori înscrisurile ridicate*)

"1. Objects and documents constituting evidence are attached to the case file or otherwise stored, whereas evidence of the offence is seized and preserved.

...

3. Material evidence is stored by the criminal prosecution body or by the court pending resolution of the case.

4. Objects unconnected to the case are returned to the person to whom they belong, except for those subjected to special confiscation, in accordance with the law.

5. Objects serving as evidence, if not subjected to confiscation, may be returned, even before the final settling of the case, to the person to whom they belong, except where such a return may hinder the discovery of the truth. The criminal prosecution body or the court shall warn the person to whom the objects or documents were returned that they must be kept until the case has been finally resolved."

Article 170 § 1 – Surrender of objects, documents or computer data

"Where there is a reasonable suspicion in relation to the preparation or commission of an offence and there are reasons to believe that an object or document may serve as evidence in a [criminal] case, the criminal prosecution bodies or the court may order the natural or legal person holding them to present and surrender them, subject to receiving proof of surrender. ..."

Article 171 – Forceful seizure of objects and documents (*Ridicarea silită de obiecte şi înscrisuri*)

"1. Where the requested object or document is not willingly surrendered, the criminal prosecution body, by order, or the court, by interlocutory ruling, [may] decide to forcefully seize [it]. During trial, the decision to forcefully seize objects or documents is communicated to the prosecutor, who takes action to execute it, through the criminal investigation bodies.

2. Any concerned person may lodge a complaint against the measures set out in Article 171 § 1 or against the procedure under which they were conducted. Article 250 provisions apply accordingly."

Article 249 § 1 – General conditions for precautionary measures

"The prosecutor, during the criminal investigation, the pre-trial judge and the court, during the pre-trial chamber or trial, may, either of their own motion or upon the prosecutor's request, take precautionary measures ... to prevent the concealment, destruction, selling or concealing [in court proceedings] of goods that may be subjected to special or extended confiscation or may serve as a warranty for enforcement of a [criminal] fine, return of judicial expenses or a remedy for damages resulting from a criminal offence."

Article 250 § 1 – Complaint against precautionary measures

"The suspect, accused or any other interested person may lodge a complaint with the court competent to decide on the merits of the case against the prosecutor's decision to take a precautionary measure, within three days of its notification or the date of its enforcement."

Article 255 – The return of goods

"1. Where the prosecutor or the rights and liberties judge, during pre-trial investigations, the pre-trial judge or the court, during the pre-trial chamber or trial, finds, upon request or of their own motion, that the goods seized (*ridicate*) from the suspect or the accused or from any person who received them for safekeeping are owned by the aggrieved party or by another person or that they have been unjustly taken out of their possession, he or she shall order restitution of the goods. Article 250 applies accordingly.

2. Goods shall be returned only where doing so does not hinder the finding of the facts or the determination of the case, under an obligation on behalf of the receiver that they keep them until the case is finally resolved."

Article 404 § 4 – The content of the operative provisions [of a court judgment]

"The operative provisions must include, if applicable, the court's decision in respect of:

...

(f) the return of the goods;

..."

70. Articles 275 to 278[1] of the former CCP set out the procedure for any person wishing to challenge any of the measures or decisions taken during a criminal investigation, in the event that they had harmed his or her legitimate interests (see, for instance, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 50, ECHR 2014). From 1 February 2014, similar provisions have been included in Articles 336 to 339 of the new CCP. Article 301 of the former CCP, in force at the relevant time and concerning the rights of the parties in the proceedings before the court, provided that the civil party could lodge requests, raise exceptions and submit arguments in connection with its civil claims.

71. Law no. 161/2003 on ensuring transparency in the exercise of public duties and responsibilities and in business, and on preventing and punishing corruption, as in force at the relevant time, provided in its Articles 55 and 56 that whenever for the discovery and gathering of evidence it was necessary to search a computer system or a computer data storage medium, the competent body provided by law could order a search. It further provided that the provisions of the above-mentioned Articles were to be read in conjunction with the provisions of the CCP on home searches and that they applied to all crimes committed using information technology systems/computers. Article 34 provided that, in applying the provisions of that Law, human rights and personal data should be protected.

72. Law no. 304/2004 on the organisation of the judiciary, as in force at the relevant time, provided in its Article 64 § 3 that decisions adopted by the prosecutor could be rejected by the hierarchically superior prosecutor in reasoned decisions, where they were considered unlawful.

IV. DOMESTIC PRACTICE CONCERNING CRIMINAL PROCEEDINGS

73. The Government submitted numerous judgments adopted by the domestic courts in cases in which third parties to criminal investigations had contested the seizure of their assets ordered by the prosecutor during the investigation as a precautionary measure (under Article 249 of the CCP – see paragraph 69 above) and not for the purpose of collection of evidence as in

the present case. All of these judgments were adopted in cases in which the criminal investigation had finished and the defendants had been sent to trial under the former CCP, or in cases concerning measures ordered after the entry into force of the new CCP. In one interlocutory judgment of 11 December 2017, concerning a complaint lodged by a third party to the proceedings against a seizure measure adopted by the prosecutor in 2011 as a precautionary measure, after examining the complaint on the merits, the Iași County Court decided to allow it and on the basis of Article 255 of the CCP ordered the revocation of the seizure measure. In this case also the criminal investigation had finished and the case had been sent to trial.

74. The Government also submitted a judgment adopted by the High Court on 30 January 2014 concerning a claim for compensation for damage incurred as a result of alleged unlawful detention, unlawful investigation and several preventive or precautionary measures adopted during the investigation into the plaintiff. The plaintiff in the case in question (a former customs officer and former member of parliament) had been placed in pre-trial detention for several months during the criminal investigation and then, eleven years later, the proceedings against him ended with the prosecutor's decision to close the investigation as he had committed no crime. Under Articles 504 and 505 of the former CCP concerning the right to compensation for unlawful conviction and deprivation of liberty and the general tort provisions in Articles 998 and 999 of the former Civil Code, the court awarded the plaintiff compensation in respect of non-pecuniary damage. The court established that the plaintiff had first been held in pre-trial detention but had not subsequently been brought before a court and had had the charges against him dropped. This was considered by the court to be a judicial error giving rise to the right to compensation. The court awarded compensation for a number of measures adopted by the prosecutor and their excessive duration. These measures included the pre-trial detention and seizure of the plaintiff's car.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicant company complained that the inspection and the searches conducted on its premises and the electronic searches of its computers had breached its right to private life, home and correspondence as provided in 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."

76. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant company also complained that its right of access to a court and to a fair trial had been breached due, principally, to the domestic courts' refusal to examine its arguments concerning the conduct of the inspection and the impossibility of challenging before a court the searches conducted on its premises in the context of the criminal proceedings.

77. Being the master of the characterisation to be given in law to the facts of the case (see, for example, *Radomilja and Others v. Croatia* [GC], no. 37685/10, §§ 114 and 126, 20 March 2018) and bearing in mind the procedural requirements inherent in Article 8 of the Convention, the Court finds it appropriate to examine the complaints raised under Article 6 § 1 and Article 13 of the Convention as part of the complaint under Article 8 (see, *mutatis mutandis*, *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, no. 47072/15, §§ 32-33, 23 October 2018).

78. The Court observes that the inspection and the searches on the applicant company's premises and the taking and seizure of materials belonging to it have been performed in two distinct type of proceedings: the Competition Act proceedings (see paragraphs 6 to 25 above) and the criminal proceedings (see paragraphs 26 to 46 above). For the purposes of the adjudication of the present complaint, the Court will examine these proceedings separately.

A. The Competition Act proceedings

1. Admissibility

(a) The Government's objection of non-exhaustion of domestic remedies

79. The Government argued that the applicant company had not exhausted the available domestic remedies in connection with its complaint concerning the inspection of 30 October 2008 (see paragraphs 7-8 above). More specifically, in its complaint before the Bucharest Court of Appeal (see paragraph 11 above) it had failed to include a complaint concerning the overall conduct of the inspection. The complaint had been raised in a vague manner and too late during the proceedings on appeal (see paragraph 20 above), thus the domestic courts had not been able to examine it.

80. In addition, the Government submitted that the applicant company could at any time have requested either the return of the copies of the emails taken by the inspectors if they were no longer necessary for the investigation or for the documents to remain confidential under the relevant provisions of the Competition Council Regulations of 2006 (see paragraph 50 above). A potential denial of such requests would have been subject to judicial review pursuant to the general provisions of Law no. 554/2004 on administrative

proceedings and, in this context, the applicant company could have requested financial compensation or other measures of redress (see paragraph 52 above).

(b) The applicant company's submissions

81. The applicant company submitted that its complaint about the inspection order had also included its grievances in connection with the conduct of the inspection, more specifically, the interference with its right to protection of its office, correspondence and private life as provided by Article 8 of the Convention. These complaints had been consistently raised before the first-instance court and on appeal. Bearing in mind that the national law did not provide for the possibility of lodging an independent complaint against an administrative operation such as the actions of the inspectors during the inspection of 30 October 2008, the applicant company had raised the above complaints in the context of its request for the annulment of the administrative acts on which the inspection had been based, under Law no. 554/2004.

82. Furthermore, the legal framework did not provide for any remedy against the manner in which an inspection by the competition inspectors was conducted and the Government had failed to indicate any specific legal provisions on which such a complaint could be based. Similarly, there was no available domestic remedy to complain about the report drafted following the inspection. This document could not be considered an administrative act either as it did not impose any measures. The applicant company referred on this point to domestic case-law confirming that complaints about administrative operations or preparatory acts were inadmissible (see paragraphs 57 and 58 above).

83. The applicant company was of the opinion that the possibility of requesting that documents taken by the competition inspectors remain confidential or be returned if not necessary for the investigation could not be considered an effective remedy with respect to the complaint under Article 8 as it would not have addressed the applicant company's main complaints concerning the absence of judicial control and the lack of necessity and proportionality of the inspection.

(c) The Court's assessment

84. The general principles concerning exhaustion of domestic remedies are resumed in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-145, 27 November 2023).

85. The Court notes that the Government's objection is two-fold: firstly, they argued that the applicant company had not clearly complained about the

overall conduct of the inspection (see paragraph 79 above); and, secondly, they submitted that the applicant company had not requested the return of the copies of the emails taken by the inspectors or for the documents to remain confidential (see paragraph 80 above). As concerns the first limb of the Government's objection, the Court observes that the applicant company contested before the courts the administrative orders that were presented to it as the legal basis for the inspection conducted by the competition inspectors (see paragraphs 11, 16 and 20 above). Moreover, in its submissions both before the Bucharest Court of Appeal and the High Court of Cassation and Justice ("the High Court"), the applicant company put forward arguments connected to the absence of a judicial warrant for the inspection and the unlawful conduct of the inspection (ibid.). The applicant company also explicitly invoked Article 8 of the Convention and the Court's case-law under this provision and argued that the inspection was both unjustified and disproportionate. These findings are sufficient for the Court to conclude that the applicant company adequately raised its complaints under Article 8 before the domestic courts. Therefore, the first limb of the Government's objection of non-exhaustion of domestic remedies must be dismissed.

86. As regards the second limb of the Government's objection concerning the possibility of requesting that the documents taken remain confidential or be returned if they were not necessary for the investigation (see paragraph 80 above), the Court observes that such a possibility was indeed provided for by the legal framework (see paragraph 50 above). The possibility of requesting that the documents taken remain confidential was also notified to the applicant company at the time of the inspection (see paragraph 8 above). The applicant company submitted such a request and its request was allowed by the Council (see paragraph 9 above). It is true that, subsequently, the documents in question were included by the Council in the court file (see paragraph 15 above). The applicant company complained about this before the first-instance court, but it is not apparent from the case file how this specific complaint was resolved. Nevertheless, the Court notes that the applicant company did not pursue its complaint in this respect on appeal (see paragraph 15 above). As regards the Government's argument that the applicant company had the possibility of requesting that the documents taken by the inspectors be returned if they were not necessary for the investigation, the Court notes that it is not apparent from the case file whether the applicant company availed itself of this possibility. Accordingly, the second limb of the Government's objection of non-exhaustion of domestic remedies must be upheld and the applicant company's complaint in respect of the taking by the inspectors of documents that were confidential or not related to the investigation must be dismissed for non-exhaustion of domestic remedies.

87. The Court further notes that the remainder of the applicant company's complaint under Article 8 of the Convention concerning the Competition Act proceedings is neither manifestly ill-founded nor inadmissible on any other

grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant company

88. The applicant company submitted that the inspection conducted at its premises on 30 October 2008 during which the competition inspectors had accessed several computers without any supervision or restrictions, read documents covered by banking secrecy or containing private conversations and taken copies of several such documents had been in breach of the guarantees set forth in Article 8 of the Convention because the inspection order that formed the basis for the inspection had not contained a precise description of the scope and the extent of the inspection and therefore had not protected against arbitrariness and abuse of powers. Furthermore, the applicant company reiterated that the inspection had lacked prior judicial authorisation and that it had been a disproportionate measure conducted in the absence of relevant and sufficient reasons and without any appropriate safeguards against abuse.

89. The inspection conducted on its premises on computers used by its employees had also not been provided by law as the legal basis for the inspection, Article 36 of the Competition Act (see paragraph 47 above), did not include provisions on searches of such information technology systems or electronic correspondence. Furthermore, the above law was unclear and did not provide for any safeguards for the protection of private correspondence found on these systems or of information covered by banking secrecy.

90. Furthermore, the applicant company had also been deprived of an adequate *ex post facto* review of the above interference with its right to home and correspondence in that, although it had been able to lodge a complaint raising the above arguments, the domestic courts had not adequately examined it.

(ii) The Government

91. The Government argued that the inspection had been lawful and proportionate to the legitimate aim pursued. Furthermore, the proceedings before the Bucharest Court of Appeal and subsequently before the High Court had been an effective remedy for the complaints formulated by the applicant company.

92. They contended that the applicant company had raised before the first-instance court and maintained on appeal only that the inspection order had been vague and not proportionate in that it had failed to include the scope of the inspection. This complaint had been thoroughly examined by the courts

and rejected in accordance with domestic and EU law and in compliance with the Convention standards. The other complaints had either not been raised on appeal, or raised for the first time on appeal, which had prevented their being examined from a procedural point of view. In any event, as regards the vague character of the inspection order, the Government pointed out that it appeared from the case file that the inspectors had supplemented the content of the inspection order by verbally informing the representatives of the applicant company about the scope and extent of the inspection. This assertion and, by implication, the fact that the applicant company had been adequately informed about the scope of the inspection at the time of the inspection was proved, in the Government's opinion, by the details given by the applicant company in their complaint before the Council (see paragraph 10 above).

93. The Government also argued that the applicant company had not been deprived of access to a court or of an *ex post facto* review of the inspection since, as the High Court had found in its judgment of 11 April 2013, the applicant company had been able and had in fact exercised its right to complain about the inspection order (see paragraph 24 above).

(b) The Court's assessment

(i) Whether there was an interference

94. The Court reiterates that it has already held on numerous occasions that the search of business premises and the search of electronic data were interference with the "the right to respect for home" (see *Société Canal Plus and Others v. France*, no. 29408/08, § 52, 21 December 2010, and *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, §§ 77-78, 2 October 2014) and "correspondence" (see *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 45, ECHR 2007-IV).

95. In the present case, the Court observes that it is not disputed that the applicant company was under a legal obligation to comply with the inspection order that authorised the inspectors to access its premises. The imposition of that obligation on the applicant company was an interference with its right to respect for its "home" and the material obtained undoubtedly concerned "correspondence" for the purposes of Article 8.

96. As regards the alleged interference with the applicant company's right to respect for private life, the Court notes that it claimed that the computers searched by the competition inspectors also contained copies of employees' personal correspondence (see paragraphs 11 and 20 above). However, no individual complained of an interference with his or her private life, either before the national courts or before the Court. In the absence of such a complaint, the Court does not find it necessary to determine whether there has been an interference with "private life" in the instant case. Any interest the applicant company may have in ensuring the protection of the privacy of individuals working for it should be taken into account in the assessment of

whether the conditions in Article 8 § 2 were fulfilled in the present case (see *Bernh Larsen Holding AS and Others–v. Norway*, no. 24117/08, § 107, 14 March 2013).

97. The Court must therefore determine whether the interference satisfied the requirements of paragraph 2 of Article 8.

(ii) Whether the interference was prescribed by law

98. The Court observes that the parties disagreed as to whether the interference was "prescribed by law". The difference in the parties' opinions as regards the applicable law stems from their diverging views on the issue of whether the Competition Act allowed for searches on information technology systems or electronic correspondence and whether it contained clear provisions and safeguards in relation to the protection of private correspondence or of information covered by banking secrecy in the context of unannounced inspections (see paragraphs 89 and 91 above).

99. As the Court has held on numerous occasions, it is not its task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Nor is it for the Court to express a view on the appropriateness of the methods chosen by the legislature of a respondent State to regulate in a given field (see, among many authorities, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 184, 8 November 2016, with further references).

100. In the instant case, the Court notes that the inspection and taking of documents by the competition inspectors was based on Article 26 (b) and Article 27 § 4 taken together with Article 36 of the Competition Act governing their investigative powers for the detection of economic offences relating to competition (see paragraphs 7 and 47 above). The Court further notes that the Constitutional Court rejected the applicant company's unconstitutionality complaint in connection with Articles 36 to 38 of the Competition Act (see paragraph 13 above). Furthermore, both the Bucharest Court of Appeal and the High Court analysed the applicant company's arguments in this respect and considered that the inspection complied with the legal framework in force at the relevant time (see paragraphs 17-19 and 22-23 above). In view of the above and in the specific circumstances of the present case, the Court sees no reason to question the domestic courts' interpretation of the applicable legislation and therefore accepts that the interference was "prescribed by law" within the meaning of the second paragraph of Article 8 of the Convention. The question whether the law at issue contained sufficient safeguards for the protection of private correspondence and information covered by the bank secret will be examined within the ambit of the proportionality of the interference.

(iii) Whether the interference pursued a legitimate aim

101. The Court considers that the measure in issue was taken in the interests of the economic well-being of the country and thus pursued a legitimate aim for the purposes of Article 8 § 2 of the Convention (see *DELTA PEKÁRNY a.s.*, cited above, § 81).

(iv) Whether the interference was necessary in a democratic society

(α) General principles

102. The general principles concerning searches and seizures on the premises of commercial companies were summarised in *DELTA PEKÁRNY a.s.* (cited above, §§ 82-83).

103. The Court has held, in particular, that in determining whether the impugned measure was "necessary in a democratic society", it will consider whether, in the light of the case as a whole, the reasons adduced to justify it were relevant and sufficient, and whether it was proportionate to the legitimate aim pursued. In so doing, the Court will take into account 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 (see, for instance, *Bernh Larsen Holding AS and Others*, cited above, § 158, with further references).

104. The Court also reiterates that searches and seizures conducted on the premises of commercial companies may be justified in order to prevent the disappearance or concealment of evidence of anti-competitive practices, but that the relevant legislation and practice should afford adequate and effective safeguards against any abuse and arbitrariness. In cases concerning unannounced inspections by the competition inspectors on the premises of commercial companies – carried out without prior authorisation from a judge or on the basis of decisions that were not open to review by a court – the Court has held that this lack of prior judicial warrant may be counterbalanced by the availability of an *ex post facto* judicial review of the lawfulness and the necessity of the impugned measure in the particular circumstances of the case. In practice, that would involve the persons concerned being able to obtain an effective judicial review, in fact and in law, of the impugned measure and its conduct and to be afforded adequate redress where an irregular search has already taken place (see *DELTA PEKÁRNY a.s.*, cited above, §§ 83-87, with further references). One of the elements that should be examined in the context of an effective *ex post facto* review was, in particular, the exercise by the competition authority of its power to decide upon the necessity, the duration and the extent of the inspection (ibid., § 91 *in fine*).

(β) Application of the above principles in the present case

105. Turning to the circumstances of the present case and with regard to the margin of appreciation afforded to the national authorities (see

paragraph 103 above), the Court notes that the fact that the measure was aimed at a legal person means that a wider margin of appreciation may be applied than would have been the case had it concerned an individual (see *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, § 51, 23 June 2022). Moreover, unlike in *Bernh Larsen Holding AS and Others* (cited above, § 159) where the authorities had taken all existing documents on the server, regardless of their relevance for the investigation, and in *Naumenko and SIA Rix Shipping* (cited above, § 51) where a large number of documents and emails were retained, the Court notes that in the present case only a limited number of documents were taken from the applicant company.

106. With regard to the safeguards against abuse provided for in Romanian law, the Court reiterates 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 Romania, but to determine, *in concreto*, the effect of the interference on the applicant company's rights under Article 8 of the Convention (see, *mutatis mutandis*, *Naumenko and SIA Rix Shipping*, cited above, § 56).

107. The applicant company argued, first, that the inspection order had not contained a precise description of the scope and extent of the inspection, thereby failing to protect it against arbitrariness and abuse (see paragraph 88 above). The Court notes that the impugned measure had its basis in a decision to begin an investigation approved by the plenary of the Council (see paragraph 6 above). At the start of the inspection, representatives of the applicant company were given copies of the two decisions on which the inspection was based (the two orders of the president of the Council – see paragraphs 6-7 above). It is true that those orders mentioned only briefly the suspected breaches of competition law and did not include any details as to the reasons on which those suspicions were based or the precise scope and extent of the inspection. However, the inspectors did not start the inspection until a legal representative for the applicant company was present, and, as it has been argued by the Government and as it appears from the documents in the case file, the inspectors verbally informed that representative about the scope and extent of the inspection (see paragraphs 10 and 92 above). Furthermore, the inspectors carried out their inspection only in the presence of representatives of the applicant company and drew up a detailed inspection report that mentioned all the offices and documents accessed and included a full list of the documents taken (see paragraph 8 above).

108. The Court also notes that in the present case a limited number of documents were taken in the context of the inspection, specifically, copies of thirty-two emails (contrast *Bernh Larsen Holding AS and Others,* cited above,

§ 159; *Vinci Construction and GTM Génie Civil et Services v. France*, nos. 63629/10 and 60567/10, § 75, 2 April 2015; *Naumenko and SIA Rix Shipping*, §§ 51 and 54; and *UAB Kesko Senukai Lithuania,* § 119, both cited above). Therefore, the Court considers that the present case does not concern a "massive and indiscriminate" taking of documents. On this point, the Court also notes that the representatives of the applicant company had the right to submit requests and make comments but signed without any objections the inspection report in which all the documents viewed and taken by the inspectors were listed (see paragraph 8 above).

109. Furthermore, the Court has already concluded that the domestic legal framework also offered the possibility of requesting that documents taken by the competition inspectors be kept confidential or be returned if they were not necessary for the investigation (see paragraphs 50 and 86 above).

110. The above-mentioned procedural safeguards allow the Court to conclude that the exercise of the discretion conferred on the Council was sufficiently circumscribed and that its application in practise does not appear to be disproportionate in the circumstances of the present case.

111. As regards the absence of prior judicial authorisation, the Court notes that the inspection of 30 October 2008 took place without any prior warrant being issued by a judge, solely on the basis of an administrative decision by the Council (see paragraph 7 above). Nevertheless, the Court has already held that in such cases the absence of a prior judicial warrant could be counterbalanced by the availability of an *ex post facto* judicial review that has to be effective in the particular circumstances of the case (see the case-law quoted in paragraph 104 above).

112. As regards the *ex post facto* review of the inspection, the Court observes that the domestic legal framework did not provide for a specific avenue to complain in respect of the conduct of inspections. However, the Competition Act provided for the possibility of complaining about decisions of the Council at the end of the investigation (see paragraphs 48, 56 and 57 above) and the general administrative proceedings law provides for the possibility of contesting before the courts either administrative decisions or a failure to resolve a petition by a public authority (see paragraph 52 above).

113. The Court further notes that the applicant company availed itself of the possibility open to it to raise its complaints before a court immediately after the inspection. More specifically, the applicant company initiated proceedings based on the general administrative proceedings law seeking the annulment of the two administrative decisions adopted in its case, Orders nos. 420 and 424 of the president of the Council (see paragraph 11 above). In this context, the applicant company also raised its complaints concerning the conduct of the inspection (see paragraphs 11, 16 and 20 above).

114. It is true that the Bucharest Court of Appeal, acting as the first-instance court, only examined the compliance with the Competition Act

of the two orders and held that the applicant company's further arguments concerning the alleged unlawfulness of the inspection were to be raised at the end of the investigation in a separate complaint against the decision that would be adopted (see paragraphs 17-19 above). Nevertheless, on appeal, the High Court did indeed review the legal basis of the two orders as well as the scope and proportionality of the inspection in the light of the domestic and EU law and practice. More specifically, the High Court reviewed the investigation file as submitted by the Council and found that the inspection order had relied on suspicions that documents necessary for the investigation could be found on the premises of the applicant company. It further considered that the choice of an unannounced inspection in the present case had been justified by the severity of the suspected breaches of competition law, the market involved and the possible consequences of the suspected acts on that market (see paragraphs 22-23 above). Lastly, in its examination of the proportionality of the inspection, the High Court had also taken into account the fact that the applicant company had not substantiated any damage as a result of that operation (see paragraph 23 *in fine* above, and also, *mutatis mutandis*, *Naumenko and SIA Rix Shipping*, cited above, § 60).

115. In view of the above, the Court considers that the High Court gave relevant and sufficient reasons for its decision. Accordingly, the necessity and proportionality of the measure was subject to an adequate *ex post facto* review.

116. To sum up, the Court notes that at the relevant time in the present case, adequate safeguards were enshrined in Romanian law. Specifically, unannounced inspections could take place by decision of the president of the Council in cases where investigations had been opened by decision of the plenary and could be carried out only in the presence of representatives of the company concerned. A detailed report of the inspection was to be drafted and the company could make comments, raise objections and request that any documents taken be treated as confidential or be returned if not related to the investigation. A subsequent review of the inspection was provided for by law both in the form of a complaint against the inspection order immediately after the inspection, on the basis of the general administrative proceedings law, and also at the end of the competition investigation, in the form of a complaint against the decision finalising that investigation on the basis of the Competition Act. In addition, a complaint could be lodged against any decision taken by the Council during an investigation, on the basis of the general administrative proceedings law (see paragraphs 52 and 112 above).

117. In view of the above considerations, it follows that, given the margin of appreciation afforded to the authorities (see paragraphs 103 and 105 above), the impugned interference with the applicant company's rights was proportionate to the aim pursued. Therefore, there has been no violation of Article 8 of the Convention.

B. The criminal proceedings

1. The Government's objection of non-exhaustion of domestic remedies in connection with the searches in case no. 102/D/2012

118. The Government submitted that, in the ambit of criminal case no. 102/D/2012, the applicant company had failed to exhaust the available domestic remedies in connection with its complaints under Article 8 of the Convention.

119. More specifically, referring to examples of case-law of domestic courts (see paragraph 73 above), they argued that the applicant company could have contested before the courts the lawfulness and the conduct of the searches and seizures since the accused had been brought before the court in October 2013 (see paragraph 37 above), rapidly after the searches. At that point, the applicant company had had the opportunity to raise before a court its complaints about the measures in question. A finding by the criminal court of any unlawfulness in the search and seizure process would have given rise to the possibility for the applicant company to lodge a claim for damages before a civil court under the general tort law (see paragraph 74 above).

120. The applicant company contended that it had no possibility of contesting the search authorisations, the conduct of the searches, or the seizure of evidence before a court. In accordance with the CCP and the practice of the domestic courts, the decisions issued by a judge to authorise home searches could be challenged before a court only together with the merits of the case. In its case, at the time of lodging the present application its possibility of complaining about the authorisations had been uncertain since the case had been pending before the prosecutor and it had not known when and if it would be sent before a court. Referring to *Compagnie des gaz de pétrole Primagaz* (cited above, § 24) in which the Court held that in the case of home searches, the persons concerned must be able to obtain judicial review, in fact and in law, of the regularity of the decision prescribing the search and, if necessary, of the measures taken on its basis, the applicant company contended that any complaint before the prosecutor – as provided by the legal framework at the relevant time – had not been capable of providing appropriate redress in the present case.

121. The general principles concerning exhaustion of domestic remedies are resumed in *Vučković and Others,* §§ 69-77 and *Communauté genevoise d'action syndicale (CGAS)*, §§ 138-145, both cited above.

122. The Court has already held that a complaint to a criminal court followed by a tort claim lodged with a civil court could be considered an effective remedy in the Romanian legal system in cases concerning the alleged unlawfulness and non-compliance with Article 8 of the Convention of phone tapping authorisations (see *Bălteanu v. Romania*, no. 142/04, § 32, 16 July 2013, and *Tender v. Romania* (dec.), no. 19806/06, §§ 21-23,

17 December 2013) and of home search authorisations (see *Bîrsan v. Romania* (dec.), no. 79917/13, §§ 56-57, 2 February 2016).

123. In the present case, the Court notes that the measures complained about had taken place between 12 December 2012 and 29 April 2013 (see paragraphs 29, 30 and 34 above) and that on 3 October 2013 the accused were brought before the court (see paragraph 37 above). The applicant company could have raised its complaints with the prosecutor *via* a challenge to the measures taken by the prosecutor under Articles 275 to 278 of the CCP (see paragraph 70 above; see also, for example, *Bîrsan*, cited above, § 17, and *Man and Others v. Romania* (dec.), no. 39273/07, § 95, 19 November 2019) or subsequently in its capacity of civil party to the proceedings, when the criminal case was referred to the court, from October 2013, as confirmed by the domestic law (see Article 301 § 3 of the former CCP, quoted in paragraph 68 above).

124. The Court observes nevertheless that, unlike in the second criminal case (see paragraphs 40-41 above), in the set of proceedings regarding the first criminal case the applicant company failed to raise any complaints either by way of objections to the search reports or by way of a complaint before the prosecutor. Furthermore, no information has been provided as to the requests or complaints made by the applicant company as party to the proceedings before the domestic courts from October 2013.

125. In the light of the above, the Court considers that the Government's objection should be allowed. It follows that this part of the application must be rejected pursuant to Article 35 § 1 of the Convention for non-exhaustion of domestic remedies.

2. The seizure and electronic search in case no. 2352/D/P/2013

(a) Admissibility

126. The Government submitted that, in this case too, the applicant company had failed to exhaust the available domestic remedies. It could have complained to a court even while the investigation was pending, since, from 1 February 2014, provisions to this purpose had been included in the new CCP (see paragraph 69 above).

127. The Court considers that in the particular circumstances of this case, the Government's objection is so closely linked to the substance of the applicant company's complaint under Article 8 that it should be joined to the merits.

128. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 § 3 (a) of the Convention. It must therefore be declared admissible.

(b) Merits

(i) The parties' submissions

(α) The applicant company

129. The applicant company complained that the seizure of the two computers conducted on its premises on 13 January 2014 had not been provided by law. Domestic law did not regulate the seizure of electronic storage devices in cases concerning crimes other than those committed using information technology systems. The subsequent electronic searches had also not been conducted in accordance with the law, as the provisions of Law no. 161/2003 (see paragraph 71 above), allowed for such searches only in cases of crimes committed using information technology systems, which had not been the case here.

130. Secondly, there had been no reasons justifying the seizure in the current case and the existence of such reasons had not been verified since the measure had been carried out based on the prosecutor's order without prior judicial authorisation.

131. Furthermore, the domestic legal framework did not provide sufficient safeguards in cases of electronic searches. Neither Law no. 161/2003 nor the CCP included any provisions concerning the procedure to be followed subsequent to the seizure of any electronic storage devices: when and under what conditions they will be accessed, who needs to authorise this access, who needs to be present, and whether copies can be made and, if so, the conditions of their storage, access or destruction.

132. Lastly, there was a lack of foreseeability in the laws governing banking secrecy and searches conducted in criminal cases as the domestic legal framework was very general and did not include any safeguards for the specific situation of searches conducted on the premises of a bank where data covered by banking secrecy could be affected.

133. The above situation had been aggravated by the impossibility of contesting the prosecutor's decision and its enforcement before a court. The applicant company contended that any complaint before the prosecutor – as provided by the legal framework at the relevant time – had not been capable of providing appropriate redress in the present case.

(β) The Government

134. The Government contended that the search and seizure of computers and electronic data had had a legal basis in Articles 99 and 100 of the CCP (see paragraph 68 above), had served a legitimate aim, namely the prevention of crime, and had been proportionate to the aim pursued, as the domestic legal framework provided for sufficient and adequate safeguards in the applicant company's situation. More specifically, the seizure had been authorised by the prosecutor and separate authorisations had been issued by a judge for the electronic searches.

135. The applicant company had had the possibility of contesting before the courts the lawfulness and the conduct of the seizure and subsequent searches starting on 1 February 2014 pursuant to the new CCP but had failed to do so.

136. The Government further argued that the computers seized had been returned upon request within a reasonably short period of time and concluded that the measures taken in the present case had been proportionate in the context of a sensitive and complex investigation.

(ii) The Court's assessment

(α) Whether there was an interference

137. The Court observes that it is not disputed that the seizure of the two computers from the applicant company's premises and the subsequent electronic search constitute an interference with the applicant company's right to respect for its home and correspondence (see *Wieser and Bicos Beteiligungen GmbH*, cited above, §§ 43 and 45). The Court does not find it necessary to determine whether there has also been an interference with the applicant company's right to private life (see paragraph 96 above).

138. The Court has next to determine whether the interference satisfied the requirements of paragraph 2 of Article 8.

(β) Whether the interference was prescribed by law and pursued a legitimate aim

139. The parties disagreed as to whether the interference was "prescribed by law", their opinions differing on the issue of whether the search of electronic storage devices was allowed by law in the present case (see paragraphs 129 and 134 above).

140. The Court notes that the seizure was based on Articles 96 to 99 of the CCP (see paragraphs 39 and 68 above) and the electronic searches were based on Article 100 of the CCP and also on the provisions of Article 56 of Law no. 161/2003 (see paragraphs 43 and 71 above). It is true that the CCP did not contain at the relevant time specific provisions for the search and seizure of computers. However, it contained detailed provisions for the seizure of objects and documents that could serve as evidence in criminal proceedings. Moreover, the electronic searches in the present case were authorised by a judge who had reviewed the applicable legal provisions (see paragraph 43 above).

141. As held on numerous occasions, the Court considers that it is not its task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see among many other authorities, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 52, Series A no. 222, and *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania*, no. 27227/08, § 42,

15 December 2015). In the present case too, the Court sees no reason to question the domestic court's interpretation of the Code of Criminal Procedure and therefore accepts that the interference was "prescribed by law" within the meaning of the second paragraph of Article 8 of the Convention.

142. The Court further observes that the measures complained of were ordered in the context of a criminal investigation into fraud and forgery (see paragraph 38 above). They therefore served a legitimate aim, namely to prevent crime and protect the rights of others.

(γ) Whether the interference was "necessary in a democratic society"

143. It remains to be determined whether the interference was "necessary in a democratic society". In comparable cases, when the Court has examined whether domestic law and practice afforded adequate and effective safeguards against any abuse and arbitrariness, it has taken into consideration whether the search was based on a warrant issued by a judge and based on reasonable suspicion; the circumstances in which the search warrant was issued – in particular whether any further evidence was available at that time; whether the scope of the warrant was reasonably limited; and the manner in which the search was carried out, including the presence of independent observers during the search in order to ensure that materials subject to professional secrecy were not removed (see *Wieser and Bicos Beteiligungen GmbH*, cited above, § 57, with further references, and *Smirnov v. Russia*, no. 71362/01, § 44, 7 June 2007).

144. With regard to the safeguards against abuse and arbitrariness set out in Romanian law at the time of the facts of the present case, the Court notes that the seizure of the two computers belonging to the applicant company was carried out following a decision of the prosecutor that was not subjected to judicial review in that specific phase of the proceedings. The Court previously held that, in the absence of a requirement for prior judicial authorisation, the investigation authorities had unfettered discretion to assess the expediency and scope of the search and seizure. In the cases of *Funke, Crémieux* and *Miailhe v. France* the Court found that owing, above all, to the lack of a judicial warrant, "the restrictions and conditions provided for in law... appear[ed] too lax and full of loopholes for the interferences with the applicant's rights to have been strictly proportionate to the legitimate aim pursued" and held that there had been a violation of Article 8 of the Convention (see *Funke v. France*, 25 February 1993, Series A no. 256-A, and *Crémieux v. France* and *Miailhe v. France (no. 1)*, 25 February 1993, Series A nos. 256-B and 256-C). However, in another case the Court also considered that the absence of a prior judicial warrant was, to a certain extent, counterbalanced by the availability of an *ex post facto* judicial review (see *Smirnov*, cited above, § 45).

145. The Court further notes that in the present case, the applicant company raised a number of complaints as regards, among others, the lack of

reasoning, justification and lawfulness of the measure in question. These complaints were raised both as objections to the seizure report (see paragraph 40 above) as well as in the form of a complaint before the superior prosecutor pursuant to Articles 275 to 278 of the CCP (see paragraphs 41 and 70 above). However, the hierarchical superior prosecutor only examined the general compliance of the prosecutor's order of 9 January 2014 with the legal provisions cited therein, without replying to the applicant company's specific complaints (see paragraph 42 above). Furthermore, owing to the fact that the criminal investigation was, at the date of the latest information available to the Court, still pending (see paragraph 46 above), the applicant company has not been able to benefit from an *ex post facto* judicial review either. The prosecutor's decision has been adopted and carried out in January 2014 (see paragraphs 39 and 40 above), within the scope of the former CCP. Under the legal framework in force at the time, the applicant company could not contest the measures in question before the courts (see paragraph 68 above). It is true that in February 2014 new criminal law provisions entered into force providing for the possibility of contesting measures such as those in the present case before the courts (see paragraph 69 above). However, the new provisions were applicable from the date of their entry into force and also introduced a time-limit for lodging such complaints (three days from the adoption of the measure – see, notably, Article 250 § 1 of the new CCP). The Government did not submit any examples of case-law where the domestic courts had examined, after February 2014, complaints against measures ordered by the prosecutors under the former CCP lodged by third parties while the criminal investigation was still pending (see paragraph 73 above and compare *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, § 83, 21 July 2020).

146. As regards the applicant company's complaint that the electronic searches, which took place on 27 January 2014 (see paragraph 44 above), had not been provided by law (see paragraph 129 above) the Court observes that it does not result from the file whether a formal complaint had been lodged before the prosecutor in this respect. However, in view of its previous findings on the reply given by the prosecutor to this specific type of complaint (see paragraph 145 above), the Court has doubts about the effectiveness of such a complaint. Also, in the specific circumstances of this set of proceedings where the investigation was still pending several years after the measures under dispute the applicant company was not able to bring its complaint to a court.

147. Consequently, the applicant company's arguments in connection with the seizure of 13 January 2014 and the subsequent electronic searches were not subjected to an effective review and no meaningful examination of the proportionality of these measures was carried out.

148. In view of the above, the Court considers that, given the particular circumstances of the second criminal case – notably the absence of any

meaningful judicial review and the duration of the criminal investigation –, the available safeguards, as applied in the case, failed to ensure effective protection of the applicant company's right to respect for its home and correspondence. Therefore, the interference with its rights cannot be regarded as proportionate to the aim pursued. It follows that the Government's objection of non-exhaustion of domestic remedies (see paragraphs 126 and 135 above) should be dismissed.

149. Accordingly, there has been a violation of Article 8 of the Convention in respect of the seizure of 13 January 2014 and the subsequent electronic searches of 27 January 2014.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

150. The applicant company also complained that the authorities' refusal to return the seized computers, documents and electronic storage devices in case no. 102/D/P/2012 and the impossibility of challenging this refusal before the courts had breached its right to the peaceful enjoyment of possessions contrary to Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

151. Relying on the arguments raised under Article 8 (see paragraphs 118-119 above), the Government argued that the applicant company had failed to exhaust the available domestic remedies. In addition, the applicant company could also have requested from the prosecutor during the investigation or, from October 2013, before the courts, the return of the objects and documents seized that were deemed unconnected or no longer necessary to the criminal investigation (see Article 109 of the former CCP, quoted in paragraph 68 above).

152. The applicant company contested those arguments (see paragraph 120 above). As regards the possibility of requesting the return of the seized goods, it submitted that their request in this respect had been ineffective (see paragraph 31 above).

153. The Court notes that it had already held that in the ambit of the criminal proceedings, the applicant company had at its disposal effective domestic remedies in order to raise its complaints under Article 8 of the Convention (see paragraph 122 above) but failed to use them (see paragraph 124 above). The Court considers that the same reasoning applies also to the complaint under Article 1 of Protocol no. 1. Furthermore, the Court

observes that Article 109 of the CCP provided for the possibility of lodging a request – to the prosecutor or the court – for the return of the seized goods (see paragraph 68 above). Other parties to the investigation (see paragraphs 35 and 45 above) and also the applicant company (see paragraph 36 above) had successfully made use of this possibility during the investigation as regards some of the goods. It is true that the applicant company's initial request for the return of the seized goods had been rejected. However, this was due to the fact that it had been lodged on the day of the searches and seizures, before the authorities had a chance to carry out electronic searches (see paragraph 31 above). If lodged again after the completion of the searches, such a request would not have been devoid of prospects of success.

154. In view of the above considerations, the Court finds that, in the circumstances of the instant case, the applicant company failed to have recourse to the effective remedies which were available to it under domestic law.

155. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

156. Lastly, the applicant company complained under Article 6 § 1 of the Convention of the unfairness of the proceedings finalised by the High Court's judgment of 11 April 2013 due to the rejection of its request for a preliminary ruling by the Court of Justice of the European Union on the guarantees to be observed in cases of unannounced inspections (see paragraph 14 above).

157. The Court has examined this complaint in the light of the applicant company's submissions. However, having regard to all the material in its possession, and in so far as it falls within its jurisdiction, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

158. 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

159. The applicant company claimed 9,000 euros (EUR) in respect of non-pecuniary damage for the breach of its rights in the competition proceedings and in the criminal proceedings.

160. The Government considered the claim excessive and submitted that the finding of a violation would be sufficient compensation for any non-pecuniary damage sustained by the applicant company.

161. The Court considers that the applicant company must have sustained non-pecuniary damage on account of the violation of Article 8 of the Convention found in respect of the second set of criminal proceedings (case no. 2352/D/P/2013). Ruling on an equitable basis, the Court awards the applicant company EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

162. The applicant company also claimed EUR 41,160 in respect of the costs and expenses incurred with its legal representation before the Court. It submitted copies of invoices and detailed documents indicating the number of hours worked by its lawyer in preparing the case.

163. The Government considered the amount claimed was excessive, ill-founded and unsubstantiated. They argued that the applicant company had failed to submit the legal representation contracts on which the invoices were based.

164. 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 accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Cobzaru v. Romania*, no. 48254/99, § 110, 26 July 2007).

165. In the present case, regard being had to the above criteria, to the complexity of the case and to the documents in its possession, the Court considers it reasonable to award the sum of EUR 10,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Joins to the merits* the Government's objection of non-exhaustion of domestic remedies in the second set of criminal proceedings and *dismisses* it;

2. *Declares* admissible the complaints under Article 8 of the Convention concerning the second set of criminal proceedings (case no. 2352/D/P/2013) and the Competition Act proceedings, with the exception of the complaint concerning the taking, by the competition inspectors, of documents which were either confidential or not related to the investigation which it *declares* inadmissible together with the remainder of the application;

3. *Holds* that there has been no violation of Article 8 of the Convention in respect of the inspection in the context of the Competition Act proceedings;

4. *Holds* that there has been a violation of Article 8 of the Convention in respect of the seizure of 13 January 2014 and of the electronic search carried out in the second set of criminal proceedings (case no. 2352/D/P/2013);

5. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant company, 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;

6. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski Deputy Registrar	Lado Chanturia President