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

COURT (CHAMBER)

CASE OF NIEMIETZ v. GERMANY

(Application no. 13710/88)

JUDGMENT

STRASBOURG

16 December 1992

In the case of Niemietz v. Germany*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr C. RUSSO,
Mr A. SPIELMANN,
Mr N. VALTICOS,
Mr A.N. LOIZOU,
Sir John FREELAND,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 29 May and 23 November 1992,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 July 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13710/88) against the Federal Republic of Germany lodged with the Commission under Article 25 (art. 25) on 15 February 1988 by a German citizen, Mr Gottfried Niemietz, who is a lawyer.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Germany recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8) of the Convention.

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* The case is numbered 72/1991/324/396. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and sought leave, which was granted by the President of the Court, to present his own case (Rule 30) and to use the German language (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr R. Bernhardt, the elected judge of German nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 August 1991 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr J. Cremona, Mr L.-E. Pettiti, Mr C. Russo, Mr A. Spielmann, Mr N. Valticos, Mr A.N. Loizou and Sir John Freeland (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr B. Walsh, substitute judge, replaced Mr Cremona, whose term of office had expired and whose successor at the Court had taken up his duties before the hearing (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Deputy Registrar, consulted the Agent of the German Government ("the Government"), the Delegate of the Commission and the applicant on the organisation of the procedure (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received, on 16 December 1991, the applicant's claims under Article 50 (art. 50) of the Convention and, on 23 December, the Government's memorial. By letter of 4 March 1992, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 2 April the Commission filed a number of documents which the Registrar had sought from it on the President's instructions. A further document was filed by the applicant on 20 May.

5. As directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 May 1992. The Court had held a preparatory meeting beforehand and the President had, on 4 May, granted the members of the Government's delegation leave to use the German language (Rule 27 para. 2).

There appeared before the Court:

- for the Government
  Mr J. MEYER-LADEWIG, Ministerialdirigent,
  Federal Ministry of Justice, *Agent*,
  Ms E. CHWOLIK-LANFERMANN, Richterin am Oberlandesgericht,
  Federal Ministry of Justice, *Adviser*;
- for the Commission
  Mr A. WEITZEL, *Delegate*;
- the applicant
  Mr G. NIEMIETZ, in person.

The Court heard addresses by Mr Meyer-Ladewig for the Government, by Mr Weitzel for the Commission and by the applicant, as well as replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Niemietz lives in Freiburg im Breisgau, Germany, where he practises as a lawyer (Rechtsanwalt).

7. On 9 December 1985 a letter was sent by telefax from the Freiburg post office to Judge Miosga of the Freising District Court (Amtsgericht). It related to criminal proceedings for insulting behaviour (Beleidigung) pending before that court against Mr J., an employer who refused to deduct from his employees' salaries and pay over to the tax office the Church tax to which they were liable. The letter bore the signature of one Klaus Wegner - possibly a fictitious person -, followed by the words "on behalf of the Anti-clerical Working Group (Antiklerikaler Arbeitskreis) of the Freiburg Bunte Liste (multi-coloured group)" and a post-office box number. It read as follows:

> "On 10.12.1985 the trial against Mr [J.] will take place before you. We, the Anti-clerical Working Group of the Freiburg Bunte Liste, protest most strongly about these proceedings.
>
> In the FRG, the Church, on the basis of the Hitler concordat and in violation of the State's duty to maintain neutrality, enjoys most extensive privileges. As a result, every non-Christian citizen of this State has to suffer disadvantages and daily annoyance. Among other things, the FRG is the only State which acts as Church-tax collector. It requires employers, whether they be Christians or not, to pay over Church tax for their Christian employees and thus relieve the Church of financial administrative work. [J.] has, for years, courageously and consistently refused to support the financing of the Church in this way and has made an appropriate arrangement whereby the Church tax of his Christian employees is paid without his own involvement.
>
> This attempt - in a State which counts the separation of State and Church among its basic principles - to insist upon just such a separation has not only exposed [J.] to persistent vexation and interferences on the part of State authorities, culminating in the tax office employing coercive measures, such as attachment, to collect from him Church tax which his employees had already paid a long time previously. It has in addition involved him - when he called these underhand methods by their name - in the present proceedings for alleged insulting behaviour.
>
> Were it your task as the competent judge to conduct an unbiased examination of this 'case of insulting behaviour', then it must be said that you have not only failed to carry out this task, but also abused your office in order to try - by means which give a

warning and a reminder of the darkest chapters of German legal history - to break the backbone of an unloved opponent of the Church. It was with extreme indignation that we learned of the compulsory psychiatric examination which was conducted on your instructions, and to which [J.] has had to submit in the meantime. We shall use every avenue open to us, in particular our international contacts, to bring to public notice this action of yours, which is incompatible with the principles of a democratic State subscribing to the rule of law.

We shall follow the further course of the proceedings against [J.] and expect you to abandon the path of terrorisation which you have embarked upon, and to reach the only decision appropriate in this case - an acquittal."

8. The applicant had, as a city councillor, been chairman for some years of the Freiburg Bunte Liste, which is a local political party. He had also played a particularly committed role in, although he had never been a member of, its Anti-clerical Working Group, which sought to curtail the influence of the Church.

Until the end of 1985 certain of the mail for the Bunte Liste, which had as its address for correspondence only the post-office box number that had been given in the letter to Judge Miosga, had been delivered to the office (Bürogemeinschaft) of the applicant and a colleague of his; the latter had also been active on behalf of the party and had acted for it professionally.

9. On 13 January 1986 the Director of the Munich I Regional Court (Landgericht) requested the Munich public prosecutor's office (Staatsanwaltschaft) to institute criminal proceedings against Klaus Wegner for the offence of insulting behaviour, contrary to Article 185 of the Criminal Code. Attempts to serve a summons on him were unsuccessful. The applicant's colleague refused to give any information about Klaus Wegner or his whereabouts and other attempts to identify him failed.

10. In the context of the above-mentioned proceedings the Munich District Court issued, on 8 August 1986, a warrant to search the law office of the applicant and his colleague and the homes of Ms D. and Ms G. The warrant read as follows:

"Preliminary investigations against Klaus Wegner concerning Article 185 of the Criminal Code

Decision

The search of the following residential and business premises for documents which reveal the identity of 'Klaus Wegener' [sic] and the seizure of such documents is ordered.

1. Office premises shared by the lawyers Gottfried Niemietz and ...,

2. Home (including adjoining rooms and cars) of Ms [D.] ...,

3. Home (including adjoining rooms and cars) of Ms [G.]

Reasons

On 9 December 1985 a letter insulting Judge Miosga of the Freising District Court was sent by telefax from the Freiburg post office. It was sent by the Anti-clerical Working Group of the Freiburg Bunte Liste. The letter was signed by one Klaus Wegener.

Until now it has not been possible to identify the signatory. The Freiburg Bunte Liste could not be contacted by mail otherwise than through a box number. Until the end of 1985 such mail was forwarded to the office of Niemietz and ..., and since the start of 1986 to Ms [D.]. It has therefore to be assumed that documents throwing light on the identity of Klaus Wegener can be found at the premises of the above-mentioned persons.

Furthermore, it is to be assumed that there are such documents in the home of Ms [G.], the Chairwoman of the Freiburg Bunte Liste.

For these reasons, it is to be expected that evidence will be found in the course of a search of the premises indicated in this decision."

11. The search of the law office, the need for which the investigating authorities had first tried to obviate by questioning a witness, was effected by representatives of the Freiburg public prosecutor's office and the police on 13 November 1986. According to a police officer's report drawn up on the following day, the premises were entered at about 9.00 a.m. and inspected in the presence of two office assistants. The actual search began at about 9.15 a.m., when the applicant's colleague arrived, and lasted until about 10.30 a.m. The applicant himself arrived at 9.30 a.m. He declined to give any information as to the identity of Klaus Wegner, on the ground that he might thereby expose himself to the risk of criminal prosecution.

Those conducting the search examined four filing cabinets with data concerning clients, three files marked respectively "BL", "C.W. -Freiburg District Court ..." and "G. - Hamburg Regional Court" and three defence files marked respectively "K.W. - Karlsruhe District Court ...", "Niemietz et al. - Freiburg District Court ..." and "D. - Freiburg District Court". According to the applicant, the office's client index was also looked at and one of the files in question was its "Wegner defence file". Those searching neither found the documents they were seeking nor seized any materials. In the proceedings before the Commission, the applicant stated that he had been able to put aside in time documents pointing to the identity of Klaus Wegner and had subsequently destroyed them.

12. The homes of Ms D. and Ms G. were also searched; documents were found that gave rise to a suspicion that the letter to Judge Miosga had been sent by Ms D. under an assumed name.

13. On 10 December 1986 the Chairman of the Freiburg Bar Association, who had been informed about the search by the applicant's colleague, addressed a formal protest to the President of the Munich District Court. The Chairman sent copies to the Bavarian Minister of Justice and the

Munich Bar Association and invited the latter to associate itself with the protest.

In a reply of 27 January 1987, the President of the Munich District Court stated that the search was proportionate because the letter in question constituted a serious interference with a pending case; hence no legal action on the protest was necessary.

14. The criminal proceedings against "Klaus Wegner" were later discontinued for lack of evidence.

15. On 27 March 1987 the Munich I Regional Court declared an appeal (Beschwerde) lodged by the applicant, pursuant to Article 304 of the Code of Criminal Procedure, against the search warrant to be inadmissible, on the ground that it had already been executed ("wegen prozessualer Überholung"). It considered that in the circumstances there was no legal interest in having the warrant declared unlawful. It had not been arbitrary, since there had been concrete indications that specified material would be found. There was no ground for holding that Article 97 of the Code of Criminal Procedure (see paragraph 21 below) had been circumvented: the warrant had been based on the fact that mail for the Freiburg Bunte Liste had for some time been delivered to the applicant's office and it could not be assumed that that mail could concern a lawyer-client relationship. In addition, personal honour was not so minor a legal interest as to render the search disproportionate. There could be no question in the present case of preventing a lawyer from freely exercising his profession.

16. On 28 April 1987 the applicant lodged a constitutional complaint (Verfassungsbeschwerde) against the search warrant of 8 August 1986 and the Munich I Regional Court's decision of 27 March 1987. On 18 August a panel of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) declined to accept the complaint for adjudication, on the ground that it did not offer sufficient prospects of success.

The Federal Constitutional Court also found that the Munich I Regional Court's decision of 27 March 1987 that the applicant's appeal was inadmissible was not objectionable in terms of constitutional law. Furthermore, as regards the actual execution of the warrant, Mr Niemietz had not exhausted the remedy available to him under section 23(1) of the Introductory Act to the Courts Organisation Act (Einführungsgesetz zum Gerichtsverfassungsgesetz).

II. RELEVANT DOMESTIC LAW

17. The search complained of was ordered in the context of criminal proceedings for insulting behaviour, an offence punishable by imprisonment for a maximum, where no physical violence is involved, of one year or a fine (Article 185 of the Criminal Code).

18. Article 13 para. 1 of the Basic Law (Grundgesetz) guarantees the inviolability of the home (Wohnung); this provision has been consistently interpreted by the German courts in a wide sense, to include business premises (see, in particular, the Federal Constitutional Court's judgment of 13 October 1971 - Entscheidungssammlung des Bundesverfassungsgerichts, vol. 32, p. 54).

19. Article 103 of the Code of Criminal Procedure provides that the home and other premises (Wohnung und andere Räume) of a person who is not suspected of a criminal offence may be searched only in order to arrest a person charged with an offence, to investigate indications of an offence or to seize specific objects and provided always that there are facts to suggest that such a person, indications or objects is or are to be found on the premises to be searched.

20. Search warrants may be challenged, as regards their lawfulness, in proceedings instituted under Article 304 of the Code of Criminal Procedure and, as regards their manner of execution, in proceedings instituted under section 23(1) of the Introductory Act to the Courts Organisation Act.

21. In Germany a lawyer is an independent organ in the administration of justice and an independent counsel and representative in all legal matters.

An unauthorised breach of secrecy by a lawyer is punishable by imprisonment for a maximum of one year or a fine (Article 203 para. 1(3) of the Criminal Code). A lawyer is entitled to refuse to give testimony concerning any matter confided to him in a professional capacity (Article 53 para. 1(2) and (3) of the Code of Criminal Procedure). The last-mentioned provisions, in conjunction with Article 97, prohibit, with certain exceptions, the seizure of correspondence between lawyer and client.

III. CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22. In its judgment of 21 September 1989 in Joined Cases 46/87 and 227/88 Hoechst v. Commission [1989] European Court Reports ("ECR") 2859 at 2924, the Court of Justice of the European Communities stated as follows:

> "Since the applicant has also relied on the requirements stemming from the fundamental right to the inviolability of the home, it should be observed that, although the existence of such a right must be recognized in the Community legal order as a principle common to the laws of the Member States in regard to the private dwellings of natural persons, the same is not true in regard to undertakings, because there are not inconsiderable divergences between the legal systems of the Member States in regard to the nature and degree of protection afforded to business premises against intervention by the public authorities.
>
> No other inference is to be drawn from Article 8(1) (art. 8-1) of the European Convention on Human Rights which provides that: 'Everyone has the right to respect

for his private and family life, his home and his correspondence'. The protective scope of that article is concerned with the development of man's personal freedom and may not therefore be extended to business premises. Furthermore, it should be noted that there is no case-law of the European Court of Human Rights on that subject.

None the less, in all the legal systems of the Member States, any intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, must have a legal basis and be justified on the grounds laid down by law, and, consequently, those systems provide, albeit in different forms, protection against arbitrary or disproportionate intervention. The need for such protection must be recognized as a general principle of Community law. In that regard, it should be pointed out that the Court has held that it has the power to determine whether measures of investigation taken by the Commission under the ECSC Treaty are excessive (judgment of 14 December 1962 in Joined Cases 5 to 11 and 13 to 15/62 San Michele and Others v. Commission [1962] ECR 449)."

This statement was affirmed in the same court's judgments of 17 October 1989 in Case 85/87 Dow Benelux v. Commission [1989] ECR 3137 at 3157 and Joined Cases 97 to 99/87 Dow Chemical Ibérica and Others v. Commission [1989] ECR 3165 at 3185-6.

PROCEEDINGS BEFORE THE COMMISSION

23. In his application (no. 13710/88) lodged with the Commission on 15 February 1988, Mr Niemietz alleged that the search had violated his right to respect for his home and correspondence, guaranteed by Article 8 (art. 8) of the Convention, and had also, by impairing the goodwill of his law office and his reputation as a lawyer, constituted a breach of his rights under Article 1 of Protocol No. 1 (P1-1). In addition, he submitted that, contrary to Article 13 (art. 13) of the Convention, he had no effective remedies before German authorities in respect of those complaints.

24. By decision of 5 April 1990, the Commission declared the complaints under Article 8 (art. 8) of the Convention and Article 1 of Protocol No. 1 (P1-1) admissible and the remainder of the application inadmissible.

In its report of 29 May 1991 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 8 (art. 8) of the Convention and that no separate issue arose under Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 251- B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

FINAL SUBMISSIONS MADE TO THE COURT

25. At the hearing, the Agent of the Government invited the Court to find that the Federal Republic of Germany had not violated Article 8 (art. 8) of the Convention in the present case.

The applicant, for his part, requested the Court to hold that the search of his office had constituted a breach of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

26. Mr Niemietz alleged that the search of his law office had given rise to a breach of Article 8 (art. 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."

This submission was accepted by the Commission, on the basis that the search constituted an unjustified interference with the applicant's private life and home.

A. Was there an "interference"?

27. In contesting the Commission's conclusion, the Government maintained that Article 8 (art. 8) did not afford protection against the search of a lawyer's office. In their view, the Convention drew a clear distinction between private life and home, on the one hand, and professional and business life and premises, on the other.

28. In arriving at its opinion that there had been an interference with Mr Niemietz's "private life" and "home", the Commission attached particular significance to the confidential relationship that exists between lawyer and client. The Court shares the Government's doubts as to whether this factor can serve as a workable criterion for the purposes of delimiting the scope of the protection afforded by Article 8 (art. 8). Virtually all professional and business activities may involve, to a greater or lesser degree, matters that are

confidential, with the result that, if that criterion were adopted, disputes would frequently arise as to where the line should be drawn.

29. The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of "private life". However, it would be too restrictive to limit the notion to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.

There appears, furthermore, to be no reason of principle why this understanding of the notion of "private life" should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world. This view is supported by the fact that, as was rightly pointed out by the Commission, it is not always possible to distinguish clearly which of an individual's activities form part of his professional or business life and which do not. Thus, especially in the case of a person exercising a liberal profession, his work in that context may form part and parcel of his life to such a degree that it becomes impossible to know in what capacity he is acting at a given moment of time.

To deny the protection of Article 8 (art. 8) on the ground that the measure complained of related only to professional activities - as the Government suggested should be done in the present case - could moreover lead to an inequality of treatment, in that such protection would remain available to a person whose professional and non-professional activities were so intermingled that there was no means of distinguishing between them. In fact, the Court has not heretofore drawn such distinctions: it concluded that there had been an interference with private life even where telephone tapping covered both business and private calls (see the Huvig v. France judgment of 24 April 1990, Series A no. 176-B, p. 41, para. 8, and p. 52, para. 25); and, where a search was directed solely against business activities, it did not rely on that fact as a ground for excluding the applicability of Article 8 (art. 8) under the head of "private life" (see the Chappell v. the United Kingdom judgment of 30 March 1989, Series A no. 152-A, pp. 12-13, para. 26, and pp. 21-22, para. 51.)

30. As regards the word "home", appearing in the English text of Article 8 (art. 8), the Court observes that in certain Contracting States, notably Germany (see paragraph 18 above), it has been accepted as extending to business premises. Such an interpretation is, moreover, fully consonant with the French text, since the word "domicile" has a broader connotation than the word "home" and may extend, for example, to a professional person's office.

In this context also, it may not always be possible to draw precise distinctions, since activities which are related to a profession or business may well be conducted from a person's private residence and activities which are not so related may well be carried on in an office or commercial premises. A narrow interpretation of the words "home" and "domicile" could therefore give rise to the same risk of inequality of treatment as a narrow interpretation of the notion of "private life" (see paragraph 29 above).

31. More generally, to interpret the words "private life" and "home" as including certain professional or business activities or premises would be consonant with the essential object and purpose of Article 8 (art. 8), namely to protect the individual against arbitrary interference by the public authorities (see, for example, the Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 15, para. 31). Such an interpretation would not unduly hamper the Contracting States, for they would retain their entitlement to "interfere" to the extent permitted by paragraph 2 of Article 8 (art. 8-2); that entitlement might well be more far-reaching where professional or business activities or premises were involved than would otherwise be the case.

32. To the above-mentioned general considerations, which militate against the view that Article 8 (art. 8) is not applicable, must be added a further factor pertaining to the particular circumstances of the case. The warrant issued by the Munich District Court ordered a search for, and seizure of, "documents" - without qualification or limitation - revealing the identity of Klaus Wegner (see paragraph 10 above). Furthermore, those conducting the search examined four cabinets with data concerning clients as well as six individual files (see paragraph 11 above); their operations must perforce have covered "correspondence" and materials that can properly be regarded as such for the purposes of Article 8 (art. 8). In this connection, it is sufficient to note that that provision does not use, as it does for the word "life", any adjective to qualify the word "correspondence". And, indeed, the Court has already held that, in the context of correspondence in the form of telephone calls, no such qualification is to be made (see the above-mentioned Huvig judgment, Series A no. 176-B, p. 41, para. 8, and p. 52, para. 25). Again, in a number of cases relating to correspondence with a lawyer (see, for example, the Schönenberger and Durmaz v. Switzerland judgment of 20 June 1988, Series A no. 137, and the Campbell v. the United Kingdom judgment of 25 March 1992, Series A no. 233), the Court did not even advert to the possibility that Article 8 (art. 8) might be inapplicable on the ground that the correspondence was of a professional nature.

33. Taken together, the foregoing reasons lead the Court to find that the search of the applicant's office constituted an interference with his rights under Article 8 (art. 8).

B. Was the interference "in accordance with the law"?

34. The applicant submitted that the interference in question was not "in accordance with the law", since it was based on suspicions rather than facts and so did not meet the conditions laid down by Article 103 of the Code of Criminal Procedure (see paragraph 19 above) and since it was intended to circumvent the legal provisions safeguarding professional secrecy.

35. The Court agrees with the Commission and the Government that that submission must be rejected. It notes that both the Munich I Regional Court and the Federal Constitutional Court considered that the search was lawful in terms of Article 103 of the aforesaid Code (see paragraphs 15-16 and 19 above) and sees no reason to differ from the views which those courts expressed.

C. Did the interference have a legitimate aim or aims?

36. Like the Commission, the Court finds that, as was not contested by the applicant, the interference pursued aims that were legitimate under paragraph 2 of Article 8 (art. 8-2), namely the prevention of crime and the protection of the rights of others, that is the honour of Judge Miosga.

D. Was the interference "necessary in a democratic society"?

37. As to whether the interference was "necessary in a democratic society", the Court inclines to the view that the reasons given therefor by the Munich District Court (see paragraph 10 above) can be regarded as relevant in terms of the legitimate aims pursued. It does not, however, consider it essential to pursue this point since it has formed the opinion that, as was contended by the applicant and as was found by the Commission, the measure complained of was not proportionate to those aims.

It is true that the offence in connection with which the search was effected, involving as it did not only an insult to but also an attempt to bring pressure on a judge, cannot be classified as no more than minor. On the other hand, the warrant was drawn in broad terms, in that it ordered a search for and seizure of "documents", without any limitation, revealing the identity of the author of the offensive letter; this point is of special significance where, as in Germany, the search of a lawyer’s office is not accompanied by any special procedural safeguards, such as the presence of an independent observer. More importantly, having regard to the materials that were in fact inspected, the search impinged on professional secrecy to an extent that appears disproportionate in the circumstances; it has, in this connection, to be recalled that, where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6

(art. 6) of the Convention. In addition, the attendant publicity must have been capable of affecting adversely the applicant's professional reputation, in the eyes both of his existing clients and of the public at large.

E. Conclusion

38. The Court thus concludes that there was a breach of Article 8 (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

39. Mr Niemietz also argued that, by impairing his reputation as a lawyer, the search constituted a violation of Article 1 of Protocol No. 1 (P1-1), which provides:

> "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."

40. Having already taken into consideration, in the context of Article 8 (art. 8), the potential effects of the search on the applicant's professional reputation (see paragraph 37 above), the Court agrees with the Commission that no separate issue arises under Article 1 of Protocol No. 1 (P1-1).

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

41. Article 50 (art. 50) of the Convention reads:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

42. In a letter filed on 16 December 1991 (see paragraph 4 above), the applicant requested the Court, taking into account in particular the damage caused to the reputation of his practice, to award him under Article 50 (art. 50) compensation of a type and amount to be determined by the Court in its discretion.

43. The Court is unable to accede to that request.

The applicant has, in the first place, not established that the breach of Article 8 (art. 8) caused him pecuniary damage. If and in so far as it may

have occasioned non-pecuniary damage, the Court considers, like the Delegate of the Commission, that its finding of a violation constitutes of itself sufficient just satisfaction therefor. Finally, although Mr Niemietz stated at the hearing that his request extended to his costs and expenses referable to the proceedings in Germany and in Strasbourg, he has supplied no particulars of that expenditure.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 8 (art. 8) of the Convention;

2. Holds that no separate issue arises under Article 1 of Protocol No. 1 (P1-1);

3. Dismisses the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 December 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar