# European Court of Human Rights: Prezhdarovi v. Bulgaria

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In an unexpected judgment, the European Court of Human Rights found a violation of the right to respect for private life, as it considered that the confiscation of computers containing illegal software was not “in accordance with the law”, as required by Article 8 of the European Convention of Human Rights (ECHR). Rumen Trifonov Prezhdarov and Anna Aleksandrovna Prezhdarova had started a business in their garage renting computers to clients, without having the necessary software licence for reproduction and distribution of the software and games that were installed on the computers. After a complaint by a manager of a company that distributed computer games, the district prosecutor ordered a police inquiry. Three weeks later the police inspected the applicants’ computer club and found that five computers contained computer games. Prezhdarov was invited to present documents, such as purchase invoices or any other evidence of his title to the games. As he failed to do so, the police seized the computers. Several requests to return the computers, due to the fact that they contained personal data, were dismissed. During the further criminal proceedings and trial, the computers remained confiscated. Prezhdarov was convicted for illegally distributing computer games and for illegally reproducing computer programmes and films. He was sentenced to one year and six months’ imprisonment, suspended for three years, and ordered to pay a fine in the amount of BGN 4,000.The confiscated computers were not returned after sentencing.

Prezhdarov and Prezhdarova, relying on Article 8 ECHR, complained that the search in their garage and the seizure of five computers had not been conducted in accordance with the law. They argued, in particular, that private documents contained in the seized computers, which were unrelated to the criminal proceedings against the first applicant, had been caught up in the search-and-seizure operation.

The European Court of Human Rights emphasised that, in the context of search and seizure, the domestic law must provide for sufficient safeguards against arbitrary interference with Article 8 ECHR. The Court accepted that Bulgarian law allowed the police to conduct an immediate search-and-seizure operation outside the criminal proceedings if that was the only possibility of collecting and securing evidence. The Court, however, expressed its doubts of whether the circumstances in the present case were really pressing, given that the prosecutor ordered the

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said operation three weeks before it was conducted. Therefore, the authorities had enough time to collect more information regarding the alleged criminal conduct, to open criminal proceedings, and to submit a prior request to the Court.

Furthermore, the Court considered that the absence of a prior judicial warrant was not counterbalanced by the availability of a retrospective and effective judicial review. The Bulgarian court that approved the measure did not consider the scope of the operation, and did not make a distinction between information that was necessary for the investigation, and information that was not relevant. The European Court of Human Rights accepted that, as a matter of principle, the retention of the computers for the duration of the criminal proceedings pursued the legitimate aim of securing physical evidence in an ongoing criminal investigation. However, it was of the opinion that the lack of any consideration of the relevance of the seized information for the investigation, and of the applicants' complaint regarding the personal character of some of the information stored on the computers, rendered the judicial review formalistic and deprived the applicants of sufficient safeguards against abuse. Therefore, the Court considered that even assuming that there existed a general legal basis in Bulgarian law for the impugned measure, the applicants in the present case were not offered sufficient guarantees for their right to respect for their private life before or after the search-and-seizure operation. In these circumstances, the Court found that the interference with the applicants' right to respect for their private life was not "in accordance with the law" as required by Article 8 § 2 of the Convention and hence violated Article 8 of the Convention. Consequently, the Court did not need to examine whether the impugned measure had a legitimate aim and was proportionate.

One judge, Faris Vehabović, dissented, arguing that as Prezhdarov was sentenced for illegal use of software, it appeared that through his request for return of the confiscated computers (together with software installed on them), he was in fact seeking to regain possession of intellectual property acquired by committing a criminal act. In any democratic country, according to judge Vehabović, it would be unprecedented that property acquired as a result of a criminal act be returned to a convicted person, even if that property contained personal data, in order to satisfy the requirements of Article 8 under the concepts of "home" or "private life". But this argument could not persuade the majority of the Court that found a violation of Article 8.

***Judgment by the European Court of Human Rights (Fourth Section), case of Prezhdarovi v. Bulgaria, Appl. No. 8429/05 of 30 September 2014***

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