



Granting police access to computer files containing child pornography material without prior judicial authorisation, in a non-emergency situation, violated the owner's right to respect for his private life

In today's **Chamber judgment**¹ in the case of **Trabajo Rueda v. Spain** (application no. 32600/12) the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights

The case concerned the seizure of Mr Trabajo Rueda's computer on the grounds that it contained child pornography material.

The Court held that the police access to files in Mr Trabajo Rueda's personal computer and his conviction amounted to an interference with his right to respect for his private life. It noted that that interference was prescribed by law², combined with the case-law of the Constitutional Court establishing the rule that prior judicial authorisation was required where an individual's private life was likely to be infringed, except in emergency situations, in which case subsequent judicial scrutiny was possible.

However, the Court deemed that the police seizure of the computer and inspection of the files which it contained, without prior judicial authorisation, had not been proportionate to the legitimate aims pursued ("prevention of crime" and "protection of the rights of others") and had not been "necessary in a democratic society". The Court held that it was difficult to assess the urgency of the situation requiring the police to seize the files from Mr Trabajo Rueda's personal computer and to access their content, bypassing the normal requirement of prior judicial authorisation, when in fact the computer in question was already in the hands of the police and prior authorisation could have been obtained fairly quickly without impeding the police inquiries.

Principal facts

The applicant, Carlos Trabajo Rueda, is a Spanish national who was born in 1976 and lives in Seville (Spain).

On 17 December 2007 Mr Trabajo Rueda brought his computer to a computer shop to have a defective data recorder replaced. The technician duly replaced the part and tested it by opening a number of files, whereupon he noticed that they contained child pornography material. On 18 December 2007 he reported the facts to the authorities and handed over the computer to the police, who examined its content and passed it on to the police computer experts. The investigating judge was then informed of the ongoing police inquiries.

On 20 December 2007 Mr Trabajo Rueda was arrested on his way to the computer shop to pick up his computer. In May 2008 he was sentenced to four years' imprisonment by the Seville *Audiencia*

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2. Article 18 of the Constitution, Article 282 of the Code of Criminal Procedure, section 11 (1) of Organic Law No. 2/1986 of 13 March 1986, and sections 1 and 14 of Organic Law No. 1/1992.

provincial for possession and circulation of pornographic images of minors. Mr Trabajo Rueda invited the court to declare the evidence null and void on the grounds that his right to respect for his private life had been infringed by the fact that the police had accessed the content and archives of his computer, but this request was dismissed. Mr Trabajo Rueda appealed on points of law and lodged an *amparo* appeal with the Constitutional Court, both of which remedies proved unsuccessful.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that the police seizure and inspection of his computer had amounted to an interference with his right to respect for his private life and correspondence.

The application was lodged with the European Court of Human Rights on 15 May 2012.

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

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private life)

First of all, the Court held that the fact of accessing files in Mr Trabajo Rueda's personal computer and subsequently convicting him had amounted to an interference by the authorities with the applicant's right to respect for his private life, noting that that interference was prescribed by domestic law, namely legal texts³ combined with the interpretative case-law of the Constitutional Court establishing the rule that prior judicial authorisation was required where an individual's private life was likely to be infringed, except in emergencies, in which case subsequent judicial scrutiny was possible.

Secondly, the Court noted that the impugned interference had pursued the legitimate aim of "prevention of crime" and "protection of the rights of others", emphasising that "sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims" and that "children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives".

Thirdly, the Court found that the seizure and inspection of the computer files by the police as effected in the present case had been disproportionate to the legitimate aims pursued and had therefore not been "necessary in a democratic society". The Court pointed out that it was difficult, in the present case, to assess the urgency of the situation requiring the police to seize the files from Mr Trabajo Rueda's personal computer and to access their content, bypassing the normal requirement of prior judicial authorisation, given that there was no risk that the files would disappear, and that the computer had been seized and placed in safekeeping by the police and was not connected to Internet. The Court therefore failed to see why waiting the relatively short time to

³ Article 18 of the Constitution, Article 282 of the Code of Criminal Procedure, section 11 (1) of Organic Law No. 2/1986 of 13 March 1986, and sections 1 and 14 of Organic Law No. 1/1992.

secure prior judicial authorisation before examining Mr Trabajo Rueda's computer would have impeded the police investigation into the impugned facts. Consequently, it found a **violation of Article 8 of the Convention**.

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

The Court held, unanimously, that the finding of a violation in itself constituted sufficient just satisfaction for any non-pecuniary damage sustained by Mr Trabajo Rueda.

Separate opinion

Judge Dedov expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.