

European Court of Human Rights: during the inspection of the Competition Council, there was no violation of the right to privacy and correspondence

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On 23 June 2022, the European Court of Human Rights (hereinafter - ECHR) adopted a judgment in the case Naumenko and SIA Rix Shipping v. Latvia, rejecting the applicants' application regarding the alleged violation of Section 8 (right to respect for private life and correspondence) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) by the Competition Council (hereinafter - CC) during its procedural activities - inspection - of the premises of SIA Rix Shipping.

On 10 May 2013, the CC initiated a case concerning a possible infringement of Competition Law (CL), i.e. a possible collusion between several ship agency service providers. On 14 January 2014, the Riga City Vidzeme Suburb Court granted the CC permission to carry out procedural actions at the premises of SIA Rix Shipping.

On 28 January 2014, the CC employees visited the premises of SIA Rix Shipping and carried out procedural actions pursuant to Section 9, Paragraph five, Clause 4 of the CL. Pursuant to the court's authorization, the CC employees inspected the servers and computer contents at the premises of SIA Rix Shipping, removed several documents and copied electronic evidence, creating a mirror image of the contents of the company's server.

The final decision of the Riga City Vidzeme Suburb Court dismissed the complaint of SIA Rix Shipping as unfounded. Having exhausted the possibilities of litigation within Latvia, SIA Rix Shipping and the physical person, who was at the same time the owner and a member of the board of SIA Rix Shipping, lodged a complaint with the ECHR for an alleged violation of the rights guaranteed by Section 8 of the Convention.

99 Valentīns Hitrovs, Director of the Legal Department of the CC: "The ECHR judgment is significant in that the court assessed the compliance of the Latvian competition rules, the authorizations granted by the national court and the procedural steps taken by the CC with the provisions of the Convention. The ECHR agreed with Latvia's view that the CC acted in accordance with the rules of the CL during the proceedings and that the purpose of these proceedings was to protect the economic well-being of the country and to prevent infringements of the law."

The ECHR also found that the CC employees had complied with the principle of proportionality for the purposes of the Convention in carrying out the procedural steps. The ECHR found that the decision to carry out the contested procedural actions had been taken by a judge of the Riga City Vidzeme Suburb Court after having read the materials of the case submitted by the CC, thus ensuring the court's prior control over the necessary interference with the rights of SIA Rix Shipping.

The ECHR considered that the court's decision was sufficiently precise in describing the actions to be taken and found no inconsistencies with the application of the court's decision in practice. In particular, in addition to the preliminary review by the national court, SIA Rix Shipping had access to a number of procedural safeguards, such as the possibility for its legal representative and legal aid provider to participate in the procedural steps and to submit requests and observations. The CC prepared protocols on the procedural steps taken, describing the scope and nature of the information to be seized. The ECHR underlined in particular that, thanks to these procedural safeguards, it was possible for the representatives of SIA Rix Shipping to raise objections concerning the amount of information to be seized during the procedural steps, with the result that the amount of data seized was reduced. Finally, the ECHR noted that SIA Rix Shipping also had access to judicial follow-up by the Chairperson of the Riga City Vidzeme Suburb Court, who concluded that the court's decision to take procedural steps was lawful and proportionate in the circumstances of the case.

Taking into account the above-mentioned considerations, the ECHR concluded that the State's interference with the rights of SIA Rix Shipping, in the exercise by the CC of the procedural steps provided for in the CL, was proportionate and there was no

violation of Section 8 of the Convention.

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