



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

Information Note on the Court's case-law 221

August-September 2018

***Brazzi v. Italy* - 57278/11**

Judgment 27.9.2018 [Section I]

Article 35

Article 35-3-b

No significant disadvantage

Domestic proceedings, lack of effective judicial supervision of a house search devoid of any financial implications: *preliminary objection dismissed*

Facts – A search of the applicant's second home was ordered by the public prosecutor in the context of a tax audit. No evidence was seized and the proceedings were discontinued by the preliminary investigations judge.

The applicant continued to complain to the authorities, on a number of occasions, about the unlawfulness of the search measure, that he considered unjustified, and alleged before the European Court that no effective judicial supervision had been available to him under Italian law.

Law – Article 35 § 3 (b): The case had not had any financial implications in itself, because it concerned a house search not resulting in any seizure of property or other interference with assets. However, the seriousness of a violation had to be assessed taking into account both the applicant's subjective perception and what was objectively at stake in a particular case. In other words, a lack of significant disadvantage could be assessed on the basis of aspects such as the pecuniary consequences of the dispute in question or the importance of the matter for the applicant.

The dispute concerned a question of principle in the applicant's view, namely his right to the peaceful enjoyment of his possessions and his home. The subjective importance of the question appeared evident to the applicant, who had continued to appeal to the authorities to forcefully dispute the lawfulness of the search. As to what was objectively at stake in the case, it concerned the existence under Italian law of effective judicial supervision in respect of a search, therefore an important question of principle both in domestic law and in Convention law.

Thus the first condition of inadmissibility in Article 35 § 3 (b) of the Convention, namely that the applicant had not suffered a significant disadvantage, was not met.

Conclusion: preliminary objection dismissed (unanimously).

On the merits, the Court found unanimously that the interference with the applicant's right to respect for his home, namely the search, was not "in accordance with the law" and entailed a violation of Article 8 of the Convention, given that the national legislation, which did not provide for prior judicial scrutiny or subsequent judicial review of the

measure, had not afforded the applicant sufficient guarantees against abuse or arbitrariness.

(See also *Adrian Mihai Ionescu v. Romania* (dec.), 36659/04, 1 June 2010, [Information Note 131](#); *Giuran v. Romania*, 24360/04, 21 June 2011, [Information Note 142](#); *Shefer v. Russia* (dec.), 45175/04, 13 March 2012, [Information Note 150](#); and *Eon v. France*, 26118/10, 14 March 2013, [Information Note 161](#))

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