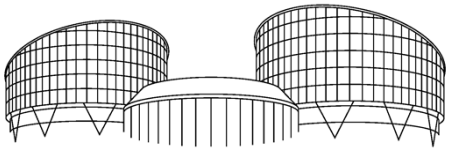

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GRANDE ORIENTE D'ITALIA v. ITALY

(Application no. 29550/17)

JUDGMENT

Art 8 • Home • Correspondence • Search of applicant association's premises (a Masonic lodge) ordered by a parliamentary commission of inquiry and seizure of large number of paper and digital documents, including the list of the association's members, their names and their personal data • Search carried out in the context of an investigation into the serious matter of Mafia infiltration of masonic lodges • Search order not subject to prior judicial scrutiny capable of circumscribing its wide and indeterminate scope • Lack of evidence or a reasonable suspicion of the applicant's involvement in the matter under investigation • Absence of sufficient counterbalancing guarantees, in particular of an independent and impartial review of the search order • Need for some form of *ex ante* or *ex post control* required by an independent and impartial authority as a safeguard against arbitrariness • In the specific case-circumstances and in view of the subsidiarity principle and the State's margin of appreciation in matters closely linked to the separation of powers, not for the Court to indicate the type of remedy to be provided • Impugned measure not "in accordance with the law" nor "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 December 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Grande Oriente d'Italia v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić*, President*,
Alena Poláčková,
Georgios A. Serghides,
Erik Wennerström,
Raffaele Sabato,
Alain Chablais,
Artūrs Kučs*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 29550/17) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an association registered under Italian law, Grande Oriente d'Italia ("the applicant association"), on 13 April 2017;

the decision to give notice of the application to the Italian Government ("the Government");

the parties' observations;

Having deliberated in private on 26 November 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a search of the applicant association's premises ordered by a parliamentary commission of inquiry and the subsequent seizure of a number of paper and digital documents, in particular a list, including names and personal data, of more than 6,000 members of the applicant association. The applicant association raises complaints under Articles 8, 11 and 13 of the Convention.

THE FACTS

2. The applicant association is an Italian Masonic association which groups together several lodges. It has been in existence since 1805 and is affiliated to Universal Freemasonry. In Italian law the applicant association has the status of an unrecognised private law association under Article 36 of the Civil Code. It therefore does not have legal personality. It has filed its Articles of Association with a notary (*notaio*) and anyone can have access to them. The applicant association was represented by Mr V. Zeno Zencovich, a lawyer practising in Rome.

3. The Government were represented by their Agent, Mr L. D'Ascia, *Avvocato dello Stato* (counsel representing the State).

4. The facts of the case may be summarised as follows.

5. The Parliamentary Commission of Inquiry on the phenomenon of mafias and other criminal associations, including foreign ones (*Commissione parlamentare d'inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali anche straniere*; hereinafter "Parliamentary Commission of Inquiry") was established by Law no. 87 of 19 July 2013 ("Law no. 87/2013"; see paragraph 25 below). It was mandated, *inter alia*, to conduct an inquiry into the relations between the Mafia and Freemasonry because of information emerging from criminal proceedings that were then proceeding in various courts.

6. On 3 August 2016 the Parliamentary Commission of Inquiry heard Dr Bisi, the Grand Master of the applicant association, in an "informal hearing" (*libera audizione*), meaning that he was not burdened by any particular legal obligation. The hearing concerned the relationship between the Mafia and Freemasonry. Dr Bisi was asked whether he was prepared to hand over to the Parliamentary Commission of Inquiry a list of the members of the lodges participating to the applicant association, and he replied that this was not possible for reasons of confidentiality.

7. On 4 August 2016 the President of the Parliamentary Commission of Inquiry wrote to Dr Bisi asking him to provide the abovementioned list. By a letter of 11 August 2016, Dr Bisi replied that he could not comply with the request. He relied on the Italian law on the protection of personal data, but also on the fact that the request of the Parliamentary Commission of Inquiry appeared to aim at a fishing expedition, as it did not mention any ongoing investigations against identified members of the applicant association nor specify any particular suspected crimes.

8. On 19 September 2016 the applicant association asked for an opinion of the National Data Protection Authority (*Garante per la protezione dei dati personali*) on whether the applicant association would be in breach of the domestic rules on data protection if it handed over a list of its members, including their names and personal data, as requested by the Parliamentary Commission of Inquiry.

9. On 4 October 2016 the National Data Protection Authority, relying on judgment no. 4 of 12 March 1983 of the Court of Cassation (see paragraph 29 below), said that it had no competence over the powers of Parliament, including its power to institute or regulate parliamentary commissions of inquiry.

10. On 21 December 2016 the President of the Parliamentary Commission of Inquiry reiterated its request for a list of the members of the applicant association's constituent lodges (see paragraphs 6-7 above). This request was however limited to lists of the members of lodges in the regions of Calabria and Sicily, starting from 1990, and lists of the lodges in the other regions of the country, giving the number of individual members in each lodge.

11. By a letter of 9 January 2017, Dr Bisi again refused to give the Parliamentary Commission of Inquiry any list. He observed that its request

had made no reference to any ongoing investigations and that the request was not limited to information about specific crimes allegedly committed by individual members of the applicant association. The Grand Master considered that the request was generic and unreasoned and could therefore not be upheld. He argued, in particular, that under Article 82 of the Italian Constitution a parliamentary commission of inquiry had the "same powers and limitations" as the judicial authorities and that, in his view, the Parliamentary Commission of Inquiry was, in the present case, exceeding those limitations.

12. The Parliamentary Commission of Inquiry therefore summoned Dr Bisi as a witness, so that he was required by law to tell the truth and would otherwise be guilty of the offence of perjury. At the sitting of 18 January 2017, Dr Bisi again said that he was unable to disclose the names of the members of the applicant association, as requested by the Parliamentary Commission of Inquiry.

13. On 1 March 2017 the Parliamentary Commission of Inquiry, meeting in a private session, ordered a search of the applicant association's premises and the seizure of various paper and digital documents. The reasoning of the order reads as follows:

> "WHEREAS
>
> ...
>
> - from the hearings held up to now and from the documentation acquired, it has emerged that there is a definite danger that *Cosa Nostra* and the *Ndrangheta* have infiltrated Freemasonry, assisted by the principle of confidentiality and by the bonds of obedience of Masonic associations, and it is also pointed out that, in parallel to the changes in mafia-type associations, unlawful arrangements can also be made through Masonic lodges whose members may include members of the ruling class and the country's businessmen;
>
> - in order for the parliamentary inquiry to be conducted successfully, it is essential that a list of the names of the members of Masonic lodges is obtained urgently, in order to check whether there are individuals among those members that are linked, in any of various ways, to mafia-type associations, and to find out how many of them there are;
>
> - in particular, it is necessary to obtain, as matter of priority, a list of the lodges of Sicily and Calabria (those being the regions where the main past and present criminal investigations have been focused, and where Masonic lodges have a substantial and increasing number of members), and of the names of their members starting from 1990 (the period to which the most relevant reports about Mafia infiltration in Freemasonry refer)."

14. The search order referred to the following sources of information: prosecutorial hearings conducted by the Public Prosecutor's Offices of Reggio Calabria, Palermo and Trapani; witness statements of Grand Masters and other members of Italian Masonic lodges; and documents obtained by the National Anti-Mafia and Anti-Terrorism Directorate.

15. The Parliamentary Commission of Inquiry ordered a search of the applicant association's premises, including outbuildings and furnishings,

computers and electronic information systems, even where they were protected by security measures, in order to find and seize lists of all categories of members of the lodges of Calabria and Sicily, starting from 1990, including people whose membership of the associations or active participation in them had ceased, and giving their rank and role in each case, and also all documentation concerning suspended or dissolved lodges in Calabria and Sicily, again starting from 1990 and including the names of all their members and their personal files and information about any inquiries held and the decisions taken.

The Parliamentary Commission of Inquiry then ordered the seizure of the abovementioned documents, if they were in hard copy, and the seizure of computer files of whatever nature that contained such documents. These had to be copied immediately, in the presence of the interested parties, so as to ensure that they were a true copy of original and to avoid alteration of the original data, and the computers and files seized had to be restored to the legitimate owners once the operation was over.

16. The search was conducted by the Central Service for the Investigation of Organised Crime of the Revenue Police (*Guardia di Finanza*). The officers identified and seized the identity documents of the personnel present in the applicant association's premises. The search covered all the applicant association's premises, including archives and library, several computers and the personal residence of the Grand Master. The search resulted in the seizure of numerous paper and digital documents, including lists of the names of approximately 6,000 persons who were registered with the applicant association, as well as hard disks, pen drives and computers.

17. The seized items were kept in accordance with the secrecy regime established under sections 5 and 6 of Law no. 87/2013 (see paragraph 25 below). The Parliamentary Commission of Inquiry ordered that they had to be kept "at premises under the control of the judicial police dealing with this matter, so as to prevent computer access other than that authorised in the proceedings between the parties", in a room equipped with a security door, video surveillance and an alarm.

18. On 1 March 2017 another Masonic lodge which had been subjected to a similar search applied to the Rome District Court for a review of the search order under Article 257 of the Code of Criminal Procedure (CCP). The court dismissed the application on 16 March 2017, observing that an ordinary judge had no jurisdiction to review any act of a parliamentary commission of inquiry, including a search order (see paragraphs 29-32 below).

19. On 16 March 2017 the applicant association asked the Parliamentary Commission of Inquiry to reconsider the search order under its own procedures (*ricorso in autotutela*; see paragraph 26 below), arguing that it was unlawful and illegitimate and that it was generic and did not contain any allegations of specific offences. The Parliamentary Commission of Inquiry made no ruling on the request.

20. On several dates, selected elements of the extensive material seized were examined by the domestic authorities, in the presence of a representative of the applicant association. Only material specifically referred to in the search and seizure order was disclosed, and the parties had the right to be present while the material was being selected and seized. Anything found that was not related to the subject matter of the search and seizure order was destroyed. A copy of all the computer material was made and the originals were returned on 28 March 2017.

21. On 31 March 2017 the Grand Master of the applicant association filed a criminal complaint with the Public Prosecutor's Office of the Rome District Court. He argued that both the search and seizure order itself and the way it had been enforced constituted criminal offences. Claiming that State powers had been misused, the applicant association requested the prosecutor to apply, under Article 134 of the Italian Constitution, for a judicial review by the Constitutional Court of a misuse of powers as between State bodies (*conflitto di attribuzione tra poteri dello Stato*; see paragraphs 23 and 35 below).

22. On 23 October 2017 the Public Prosecutor dismissed that application, including its request to apply for a judicial review of a conflict of jurisdiction between the powers of the State, and discontinued the investigation of the applicant association's criminal complaint.

The public prosecutor observed, in particular, that the ordinary judge lacked jurisdiction over the acts of a parliamentary commission of inquiry (see paragraphs 29-30 below). The public prosecutor further observed that the conflict of jurisdiction could have been taken up with the Constitutional Court, but further observed that the conditions for seeking such a review had not been met in the specific circumstances of the case, since there were no criminal proceedings about the same issues which were being investigated by the Parliamentary Commission of Inquiry and there were therefore no judicial functions being exercised that it could interfere with. Moreover, referring to the different nature and purpose of a parliamentary commission of inquiry, the public prosecutor further held that no conflict of jurisdiction could be identified in the present case.

As regards the way the search and seizure order in the present case had been carried out, the public prosecutor denied that that had been unlawful.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Constitution

23. The relevant Articles of the Constitution read as follows:

Article 18

"Citizens have the right to form associations freely and without authorisation for purposes that are not forbidden by the criminal law. Secret associations and associations that even indirectly pursue political aims by means of organisations of a military character shall be forbidden."

Article 82

"Each Chamber of Parliament may order inquiries into matters of public interest.

For these purposes it shall appoint a commission from among its members reflecting the proportion of the various groups within the Chamber. The commission of inquiry shall conduct investigations and examinations with the same powers and limitations as a judicial authority."

Article 134

"The Constitutional Court adjudicates ... on applications for judicial review of misuse of powers as between State bodies [*conflitto di attribuzione tra poteri dello Stato*] ..."

B. Code of Criminal Procedure

24. The relevant provisions of the CCP read as follows:

Article 247: Cases and forms of searches

"1. When there is a well-founded reason to believe that someone is concealing on his person the proceeds of the offence or things pertaining to the offence, a personal search shall be ordered. When there is a well-founded reason to believe that such things are in a specifiable place or that the arrest of an accused person or fugitive may be carried out there, a search of that place shall be ordered.

1-*bis*. When there is a well-founded reason to believe that data, information, computer programs or evidence in any way pertinent to the offence are in a computer or telecommunications system, even if it is protected by security measures, a search shall be ordered, using technical means to ensure the preservation of the original data and to prevent their alteration.

2. The order for the search shall give reasons.

3. The judicial authority may proceed through their own staff or arrange for the search to be performed by judicial police officers, to whom power should be delegated by the same order."

Article 248: Delivery request

"1. If a search is to be made for a specific thing, the judicial authority may ask for it to be handed over. If the thing is presented, the search shall not be carried out unless it is considered useful to do so for the completeness of the investigation.

2. In order to trace the things to be seized or to ascertain other information useful for the investigation, the judicial authority or officers of the judicial police delegated by it may examine bank accounts, documents and correspondence as well as data, information and computer programs. In the event of a refusal, the judicial authority shall conduct a search."

Article 252: Seizure following a search

"1. Things found as a result of a search shall be seized in accordance with the provisions of Articles 259 and 260."

Article 257: Review of the seizure order

"1. The defendant, the individual from whom items were seized and the individual who would be entitled to have them returned may lodge an application for review (*riesame*) under Article 324.

2. The application for review (*riesame*) shall not suspend the enforceability of the seizure order."

C. Law no. 87 of 19 July 2013 (Institution of a Parliamentary Commission of Inquiry on the phenomenon of mafias and other criminal associations, including foreign ones)

25. Law no. 87 of 19 July 2013 instituted the Parliamentary Commission of Inquiry. Its relevant provisions read as follows:

Section 1: Parliamentary Commission of Inquiry into the phenomenon of mafias and other criminal associations, including foreign ones

"1. A Parliamentary Commission of Inquiry into the phenomenon of mafias and other criminal associations, including foreign ones in so far as they operate in the national territory, is hereby established for the duration of the 17th Legislature, pursuant to Article 82 of the Constitution, with the following tasks:

...

(e) ascertaining and assessing the nature and characteristics of the changes and transformations of the phenomenon of the Mafia and all its connections, including the institutional ones, with particular regard to those organisations permanently established in regions other than those into which they have traditionally penetrated and those where they have become strongly involved in the local economy or developed international connections, including cooperation with other criminal organisations in order to conduct new forms of illegal activity likely to cause damage to persons, the environment, assets, intellectual property rights or national security, with particular regard to the promotion and exploitation of irregular migrants; and for the same purposes to acquire a deeper knowledge of the economic, social and cultural characteristics of the areas where those criminal organisations originate and expand;

...

2. The Commission shall conduct investigations and examinations with the same powers and limitations as a judicial authority. The Commission may not take measures relating to the freedom and secrecy of correspondence and any other form of communication or to any personal freedom, with the exception of forcing a person summoned to appear as a witness for failure to appear under Article 133 of the Code of Criminal Procedure.

3. The same tasks are allocated to the Commission with reference to other criminal associations under whatever names, to foreign mafias, or those of a transnational nature within the meaning of Article 3 of Law no. 146 of 16 March 2006, and to all criminal

groupings that have the characteristics referred to in Article 416-*bis* of the Criminal Code or that present a serious danger to the social, economic and institutional system."

Section 5: Request for acts and documents

"1. The Commission may obtain, also by way of derogation from the prohibition laid down in Article 329 of the Code of Criminal Procedure, copies of orders and documents relating to proceedings and investigations conducted by a judicial authority or other investigating bodies, as well as copies of orders and documents relating to parliamentary enquiries and investigations.

A judicial authority may also forward copies of orders and documents on its own initiative.

2. The Commission shall ensure that secrecy is maintained where the acts and documents copied pursuant to paragraph 1 are covered by secrecy.

3. The Commission may obtain, from bodies and offices of the public administration, copies of deeds and documents held, produced or otherwise acquired by them on matters pertaining to the purposes of this Law.

4. The judicial authority shall act promptly and where copies of deeds or documents have been requested may delay the transmission of them by order giving reasons relating only to its preliminary investigation. The order is valid for six months and may be renewed. When the reasons for the order cease to exist, the judicial authority shall transmit the material requested without delay. The order may not be renewed or take effect after the close of the preliminary investigation.

5. When orders or documents have been made subject to functional secrecy by the relevant parliamentary commissions of enquiry, that secrecy cannot be used against the Commission under this Law.

6. The Commission shall determine which orders and documents must not be disclosed, and the same applies in relation to requirements relating to other ongoing investigations or enquiries."

Section 6: Secrecy

"1. Members of the Commission, officials and staff of any rank and grade attached to the Commission and any other person who cooperates with the Commission or carries out or assists in carrying out investigative measures or has knowledge thereof by reason of their office or employment shall be bound by an obligation of secrecy with regard to all the orders and documents referred to in Article 5(2) and (6).

2. Unless it constitutes a more serious offence, a breach of secrecy shall be punished pursuant to Article 326 of the Penal Code.

3. Unless the breach of secrecy constitutes a more serious offence, the same penalties shall apply to any person who discloses, in whole or in part, even in summary or in the form of reported information, orders or documents from investigation proceedings whose disclosure has been prohibited."

D. The power of self-correction (*autotutela*)

26. As part of its power of "self-correction" (*autotutela*), a public administrative body can annul or revoke decisions that have already been made, without the intervention of a judicial authority.

II. RELEVANT DOMESTIC CASE-LAW

A. Constitutional Court

27. In judgment no. 231 of 22 October 1975, the Constitutional Court clarified that the purposes and activities of parliamentary commissions of inquiry differ markedly from those of investigations conducted by judicial authorities. The task of parliamentary commissions of inquiry is not to adjudicate but only to gather the information and data necessary for the exercise of the Parliament's legislative functions; they do not aim to effect, nor could their concluding reports effect, any legal changes (unlike when they take a judicial decision), but simply aim to make available as much useful information as possible to the Chambers of Parliament so that they can decide what to do with full knowledge of the facts, and can either propose legislation or invite the Government to take appropriate measures.

28. The Constitutional Court therefore held that holding an inquiry was part of the function of parliamentary scrutiny; an inquiry was motivated by political concerns and had equally political ends; it could not take decisions on crimes or criminal responsibility, because if it did so, it would usurp the jurisdiction of the courts. The Constitutional Court further held that if a parliamentary commission became aware of facts that could constitute offences during the course of its investigations, it would be obliged to report them to the judicial authorities (see also, Constitutional Court, judgments no. 219 of 24 June 2003, and no. 26 of 13 February 2008).

B. Court of Cassation

1. Lack of jurisdiction of the ordinary judge

29. In judgment no. 4 of 12 March 1983, the Court of Cassation, sitting as a full court, held that an ordinary judge had no jurisdiction over the actions of a parliamentary commission of inquiry. The case concerned an application for review of a search order issued by a parliamentary commission of inquiry against the applicant association, concerning a list of the names of its members.

30. As regards the nature of a parliamentary commission of inquiry, the Court of Cassation observed that it was not a "body" of the Chambers of Parliament but a direct instance of the Chambers themselves which allowed them to acquire the information needed to exercise their legislative powers by holding an inquiry. Accordingly, the Court of Cassation held that a parliamentary commission of inquiry could not be considered, from either an objective or a subjective point of view, a body with a particular jurisdiction or exercising judicial functions. It exercised of a "power of inquiry" which was different in nature and purpose from the exercise a judicial function. In particular, a parliamentary commission of inquiry did not have any power to adjudicate, but only to collect information and data relevant to the exercise of

legislative powers. The Court of Cassation therefore concluded that a parliamentary commission of inquiry was a "political body".

31. With specific regard to search and seizure ordered by a parliamentary commission of inquiry, the Court of Cassation held that it was different, in its purpose and effects, from a search ordered by a judge in relation to a crime. A search ordered by a judge was limited by the judgment which would conclude the criminal proceedings: by that point, the seized items had to have been either confiscated or returned, as provided for by law. Search and seizure ordered by a parliamentary commission of inquiry concerned items pertaining to the inquiry, with the consequence that it was limited by the inquiry: items seized could be retained for a limited period of time, which could not extend beyond the inquiry, which of its nature was limited in time.

32. The Court of Cassation further held that Article 82 of the Constitution, which said that the powers exercised by a parliamentary commission of inquiry were subject to the same limitations as a judicial authority, did not entail that the same remedies (including an application for review of a search order) applied. In the same way that a search order made by a judge was subject to review by a judge, a search order made by a parliamentary commission of inquiry would have to be subject to review by a body of the same legislative power.

33. In the light of the above, the Court of Cassation concluded that an ordinary judge had no jurisdiction over the actions of a parliamentary commission of inquiry and could not quash, revoke or modify something such as a search and seizure order.

34. As regards the remedies available to the individual affected by the actions of a parliamentary commission of inquiry, the Court of Cassation held that they were subject to the ordinary provisions concerning liability for unlawful acts, both civil and criminal.

*2. Application for judicial review of a misuse of powers as between State bodies (*conflitto di attribuzione tra poteri dello Stato*)*

35. In judgment no. 15236 of 12 May 2022, the Court of Cassation, sitting as a full court, reiterated that a judge was not obliged to make an application for judicial review by the Constitutional Court of a misuse of powers as between State bodies. The judge had the power to decide whether the case in front of him or her fell within the domestic jurisdiction of Parliament as a matter of its autonomy and independence, or whether it was a matter for him or her under the ordinary rules of his or her jurisdiction.

3. Search orders

36. In several judgments, the Court of Cassation held a search order to be void where it did not include a description of the allegations against the person under investigation, the legislative provision making that conduct a criminal offence, or the nature of the objects that had to be seized and how

they were relevant to the crime under investigation, and that merely referring to the provision supposedly violated was insufficient (see, for example, Court of Cassation judgments no. 41765 of 12 September 2023; no. 37639 of 13 March 2019; no. 13594 of 27 February 2015; and no. 5930 of 31 January 2012).

37. The Court of Cassation further held that the judiciary had to order the return of objects seized once the criminal investigation and trial were over (see Court of Cassation, judgment no. 22078 of 18 April 2023).

III. RELEVANT INTERNATIONAL INSTRUMENTS

A. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

38. The relevant part of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereinafter "the Data Protection Convention"), which entered into force on 1 September 2001 in respect of Italy, read as follows:

Article 6: Special categories of data

> "Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions."

B. Recommendation R (87)15 of the Committee of Ministers of the Council of Europe, regulating the use of personal data in the police sector

39. Recommendation R (87)15 was adopted by the Committee of Ministers of the Council of Europe on 17 September 1987 at the 410th meeting of the Ministers' Deputies. Its relevant parts read as follows:

Principle 2: Collection of data

> "2.1. The collection of personal data for police purposes should be limited to such as is necessary for the prevention of a real danger or the suppression of a specific criminal offence. Any exception to this provision should be the subject of specific national legislation.
>
> ...
>
> 2.4. The collection of data on individuals solely on the basis that they have a particular racial origin, particular religious convictions, sexual behaviour or political opinions or belong to particular movements or organisations which are not proscribed by law should be prohibited. The collection of data concerning these factors may only be carried out if absolutely necessary for the purposes of a particular inquiry."

IV. INTERNATIONAL MATERIALS

A. Venice Commission

40. In paragraph 131 of its opinion CDL-AD(2019)015 of 24 June 2019, the European Commission for Democracy through Law (the Venice Commission), the Council of Europe's advisory body on constitutional matters, noted that the creation of committee of inquiries by national parliaments is a common feature of many countries. Their mandate is to investigate specific events or situations. Their primary functions appear to be to ensure parliamentary supervision of the executive, but they may also be created for other purposes, for example collecting information for lawmaking purposes.

41. In its third-party intervention in the case of *Rywin v. Poland* (nos. 6091/06 and 2 others, 18 February 2016), the Venice Commission observed, *inter alia*, that in the majority of the countries examined those bodies could be provided with some or all of the usual powers of the investigating judges, and that this is a matter largely defined by the State's history and experience in the field. The third-party intervention was summarised by the Court as follows:

> "190. In its observations, the European Commission for Democracy through Law, known as the Venice Commission, emphasised the essentially political nature of proceedings conducted by parliamentary commissions of inquiry, which were not to be confused with criminal investigations or proceedings. Such commissions should not make any assessment or adjudication as to the criminal liability of persons covered by the inquiry, those powers being reserved for the public prosecutor and the courts.
>
> At the same time, it was in the nature of political 'scandals' – whether alleged or real – that they might give rise to parallel processes. A case under parliamentary inquiry might at the same time be subject both to administrative inquiries and to court proceedings. However, this situation required all parties involved to ensure that proper distance was kept between the parliamentary (political) inquiry and the criminal investigations or proceedings.
>
> 191. The Venice Commission took the view that in the event of the discovery of elements suggesting a criminal offence, the commission of inquiry would naturally have to notify the public prosecutor and provide the latter with the relevant information and documents, to the extent that it was allowed to do so under national law.
>
> Such discovery should not in itself stop an otherwise legitimate parliamentary process of inquiry. There was no such legal obligation under international or European law. In accordance with the principle that Parliament – as an autonomous institution separate from the judiciary – cannot be impeded from carrying out its own inquiries, the commission should continue to look into the case and make its own (political) assessment on the basis of its own examination. It should in particular have full discretion to continue examining the facts, even if they may constitute criminal charges.
>
> 192. The Venice Commission pointed out that, even when a commission looked into the possible criminal conduct of individuals, its process was essentially one of a political nature and was not to be confused with criminal investigations and proceedings. The results of a parliamentary inquiry would not alter the legal order. The

report which closed its work was in itself only an incentive to parliamentary discussion. The ultimate aim of the inquiry was transparency with a view to ensuring that the public were informed of matters affecting the *res publica* (the public good).

193. In the Venice Commission's opinion, searching for offences could not be the only goal of an inquiry conducted by a parliamentary commission, or even the main purpose of its creation. This would be unconstitutional, even if domestic law did not provide for any sanction. The means granted to a commission of inquiry always had to serve the jurisdiction of the parliament in a system of separation of powers – either to establish the responsibility of government and ministers or to collect information necessary for more effective legislation or to present political recommendations to government.

Even if identical items might be subject to both criminal proceedings and a parliamentary inquiry, the aim of the two processes should always be different. The criminal investigation should lead to an individual legal measure: the conviction or acquittal of the accused. The commission of inquiry, for its part, had no power over individuals, except to call them to testify.

194. The Venice Commission stressed the fact that proper procedures had to be established for cooperation and the exchange of information and evidence between the commission of inquiry and the public prosecutor, while respecting the differences between the two processes and the procedural rights of the person suspected of committing a criminal offence or other persons appearing before the commission.

195. During its inquiries, hearings and deliberations, a parliamentary commission had to take proper account of the pending criminal investigations or proceedings. Its members had to exercise caution so as not to make assessments or statements on the issue of guilt, or in other ways disregard the presumption of innocence principle. A commission had to take great care to ensure that its inquiries did not obstruct or in any other way unduly interfere with the criminal investigation or proceedings.

When drafting its report, a parliamentary commission had to take care not to make any assessments of a criminal legal nature and in particular not to pass judgment on the criminal liability of the persons concerned. It should, however, remain free to describe and analyse all the facts of the case and to assess these from a political perspective.

196. The fact that persons not holding public powers were involved should not prevent a parliamentary commission from enquiring into the conduct of such person to the extent that it was relevant. If a public scandal was being scrutinised, the fact that a person did not occupy any public role should not exempt him or her from appearing before the commission.

197. The Venice Commission took the view that it should primarily be for the national law to determine whether and to what extent the hearings of a parliamentary commission should be open to the public. This applied regardless of whether the witnesses summoned to give testimony were private individuals or official figures (ministers or civil servants).

From a legal perspective this was only problematic if the process led to the disclosure of secret or classified information, or if the persons summoned to give testimony were forced to publicly disclose information that was protected as confidential by law, or if their rights to privacy under national or European law were infringed.

As regards the summoning before a commission of inquiry of individuals holding public office, any restriction to the public nature of their hearing should be exceptional and justified by specific objectives such as national security or the protection of secret or confidential information.

198. When private persons were summoned to testify before parliamentary commissions, they would usually be asked to give information about their relations and dealings with government figures. In such cases the public might well have a legitimate interest in full openness and transparency. At the same time, the right of private individuals to respect for their private and family life might more easily justify or necessitate the conduct of proceedings behind closed doors. There might be circumstances where this was necessary to ensure conformity with the European Convention on Human Rights, in particular Article 8 thereof. Moreover, holding closed-door meetings of some sessions of the commission of inquiry might also contribute to their effectiveness, as witnesses tend to feel freer is the proceedings are covered by secrecy.

199. In the Venice Commission's view, the 'best model' was one under which a balance of interests was maintained by the parliamentary commission's members on the basis of the case at hand. This should preferably be provided for expressly in the inquiry's procedure, whether laid down in statute law or in parliamentary rules of procedure."

B. European Parliament

42. In March 2020 the European Parliament published a comparative survey on committees of inquiry in national parliaments, which gathered information from in total 20 Member States' parliaments that replied to a questionnaire. The survey noted that most EU Member States' parliaments can set up parliamentary committees of inquiry, and the legal basis for their establishment is often enshrined in the Constitution.

43. As regards their investigative powers, the survey observed that it appears that all parliamentary committees of inquiry have the right to request information or documentation from public bodies, such as government members, administrative authorities and both public and private bodies, whenever deemed necessary for the conduct of their proceedings. However, while in some Member States the refusal to provide necessary information can lead to sanctions, in a few national parliaments sanctioning mechanisms are considered unjustified, due to the parliamentary committees of inquiry's purely political role, that excludes any powers similar to those of the judiciary.

44. They survey further showed that in many parliaments there are legal remedies in place for the situations where the committee of inquiry as a whole or its individual members or staff commit an act or omission violating either the rules of procedure or the rights of natural or legal persons concerned by an investigation.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Alleged failure to exhaust domestic remedies

1. The parties' submissions

(a) The Government

45. The Government submitted that the application was inadmissible for failure to exhaust the available domestic remedies, since the present application had been made on 20 April 2017, less than two months after the disputed search had taken place and without any attempt to seek redress from the national authorities. In particular, the Government submitted that there were two available effective remedies that the applicant association could have exhausted before making the present application: specifically, either an application to the Constitutional Court for a decision on the misuse of powers as between State bodies under Article 134 of the Italian Constitution (*conflitto di attribuzione*) or a request to the Parliamentary Commission of Inquiry itself to use its "self-correction" procedure (*ricorso in autotutela*).

46. As regards the former, the Government referred to Constitutional Court judgment no. 231/1975, in which the court had given a ruling in a similar case (see paragraph 27 above). It submitted that the applicant association should have appealed to the territorially competent ordinary court and asked it to seek a finding from the Constitutional Court that the Parliamentary Commission of Inquiry had not had the power to authorise a search.

47. As regards the latter, the Government observed that the Parliamentary Commission of Inquiry, by exercising its power of "self-correction", could have decided to amend its own requisition – that is, the search and seizure order – and could have revoked its actions itself. If the applicant association said that its Convention rights had been breached as a consequence of actions of the Parliamentary Commission of Inquiry, it should have sought a remedy from the Commission itself exercising its powers of self-correction. In the Government's view, the Parliamentary Commission of Inquiry satisfied the conditions established in the Court's case-law for an independent and impartial court established by law and whose activities were regulated by law.

(b) The applicant association

48. The applicant association contested the Government's submission. It considered that it had exhausted all the possible domestic remedies against the search and seizure order, and that all of them had proved to be ineffective.

49. First, the applicant association argued that, in its submissions, the Government had recognised that Parliament could not be held liable for its actions and that it could not be subject to scrutiny by the ordinary courts.

A similar application had been made by a different Masonic lodge, but it had been dismissed by the Rome District Court on the basis of the lack of jurisdiction of the ordinary courts over the actions of a Parliamentary Commission of Inquiry (see paragraph 18 above).

50. Secondly, the applicant association observed that the Government had also admitted that, had it asked an ordinary court to make an application to the Constitutional Court to review whether the Parliamentary Commission of Inquiry had misused its powers, the competent ordinary court could have raised the issue but would not have been obliged to do so. The possibility that the case would be referred for a decision on the possible misuse of powers (*conflitto di attribuzione*) was merely hypothetical and was not something an individual could arrange for. In this regard, the applicant association stressed that the Italian legal system, unlike others such as those of Germany or Spain, did not allow individuals direct access to the Constitutional Court. Under Article 134 of the Constitution only the domestic courts could decide whether an action taken by Parliament was in conflict with their powers and, consequently, only they could have raised the issue before the Constitutional Court. Relying on judgment no. 15236 of 12 May 2022 of the Court of Cassation (see paragraph 35 above), the applicant association stressed that an ordinary judge was not obliged to raise the issue with the Constitutional Court. The applicant association further submitted that it had expressly asked the Public Prosecutor of the Rome District Court to ask the Constitutional Court to review whether the Parliamentary Commission of Inquiry had misused its powers (see paragraph 21 above) in relation to its criminal complaint, but the request had been dismissed (see paragraph 22 above).

51. Thirdly, the applicant association submitted that it had asked the Parliamentary Commission of Inquiry to act in "self-correction" (*autotutela*) and revoke the search and seizure order, but the Commission had not even replied (see paragraph 19 above).

52. Lastly, the applicant association stressed that it had also made a complaint to the National Data Protection Authority, which had rejected it, saying that it had no competence over the actions of a parliamentary commission of inquiry.

2. The Court's assessment

(a) General principles

53. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Communauté genevoise*

d'action syndicale (CGAS) v. Switzerland [GC], no. 21881/20, § 139, 27 November 2023).

54. Thus, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 73, 25 March 2014). In this connection, the Court has considered, for example, that applicants were dispensed from the obligation to exhaust a remedy referred to by the Government where it was bound to fail and there were objective obstacles to its use, or where its use would have been unreasonable and would have constituted a disproportionate obstacle to the effective exercise of the right of individual application under Article 34 of the Convention (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, 141).

55. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy advanced by them was an effective one, available in theory and in practice at the relevant time. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see *Vučković and Others*, § 77, and *Communauté genevoise d'action syndicale (CGAS)*, § 143, both cited above).

(b) Application of the above principles to the present case

*(i) The application for judicial review by the Constitutional Court of a misuse of powers as between State bodies (*conflitto di attribuzione tra poteri dello Stato*)*

56. As regards whether the applicant association was obliged to institute proceedings in the ordinary courts asking them to make a request for judicial review by the Constitutional Court of a misuse of powers as between State bodies, the Court reiterates that a remedy which is not directly accessible for an applicant but is dependent on the exercise of discretion by an intermediary is not effective for the purpose of Article 35 of the Convention (see *Tănase v. Moldova* [GC], no. 7/08, § 122, ECHR 2010).

57. The Court has observed in the past that, in the Italian legal system, it had not been shown, based on established case-law and practice, that an action by the applicant before the ordinary courts combined with the duty on those courts to raise a question of constitutionality before the Constitutional Court in the light of the Convention amounted to an effective remedy. Accordingly, in the absence of specifics of the functioning of constitutional review proceedings in the domestic system at issue, such an application could not be a remedy whose exhaustion was required under the Convention (see *Parrillo v. Italy* [GC], no. 46470/11, §§ 101 and 104, ECHR 2015, with further references).

58. However, the Court notes that the present case does not concern an "ordinary" question of constitutionality, but rather an application for judicial

review by the Constitutional Court of a possible misuse of powers as between State bodies.

59. In this regard, the Court notes that an application under Article 134 of the Constitution for judicial review of a misuse of powers as between State bodies can be made at the discretion of an authority, whether judicial or non-judicial, which considers that its powers have been usurped. Should this issue emerge before a judicial authority, the parties to the proceedings have no procedural right to insist on whether to refer the situation to the Constitutional Court. In this regard, the Court observes that the Italian Court of Cassation recently reiterated that an ordinary judge is not obliged to make an application for judicial review by the Constitutional Court of a possible misuse of powers as between State bodies. The decision on whether a case before him or her falls within the domestic jurisdiction of Parliament is a matter entirely for the judge (see paragraph 35 above).

60. Moreover, taking into account the domestic case-law on the powers of parliamentary commissions of inquiry (see paragraphs 27-34 above), the Court cannot definitively conclude whether the situation in the present case would have warranted the ordinary judge making such an application to the Constitutional Court.

61. In any event, the Court observes that the applicant association did try to use that remedy. As the applicant association has said, its representative made a criminal complaint to the Office of the Public Prosecutor of the Rome District Court and asked the Public Prosecutor to refer the issue to the Constitutional Court (see paragraph 21 above). However, the request was dismissed by the Public Prosecutor, who said that the conditions for making an application for judicial review of misuse of powers as between State bodies had not been met in the specific circumstances of the case, since there were no criminal proceedings concerning the same issues which were being investigated by the Parliamentary Commission of Inquiry and where the exercise of judicial functions could have been interfered with by the Commission (see paragraph 22 above).

62. In the light of the above, the Court considers that the applicant association should not have had to institute an action before an ordinary court which would have had no jurisdiction over the actions of a parliamentary commission of inquiry (see paragraph 29 above), with the sole purpose of asking that court to exercise its discretion to make an application for judicial review by the Constitutional Court of a possible misuse of powers as between State bodies. Such a requirement would amount to an unreasonable and disproportionate obstacle to the effective exercise of the right of individual application under Article 34 of the Convention (see paragraph 54 above).

*(ii) Parliament's power to act in self-correction (*ricorso in autotutela*)*

63. As regards the Government's argument that the applicant should have asked the Parliamentary Commission of Inquiry to act in self-correction

(*autotutela*) and revoke the search order (see paragraph 26 above), the Court notes that the applicant association made such a request but to no avail (see paragraph 19 above).

64. In any event, the Court reiterates that discretionary or extraordinary remedies are not considered effective remedies within the meaning of Article 35 § 1 of the Convention and thus need not be used (see *Goulandris and Vardinogianni v. Greece*, no. 1735/13, § 27, 16 June 2022, and *Talmane v. Latvia*, no. 47938/07, § 21, 12 October 2016). Moreover, remedies which have no precise time-limits, thus creating uncertainty and rendering nugatory the six-month rule contained in Article 35 § 1 of the Convention, are not effective remedies within the meaning of Article 35 § 1 (see *Nicholas v. Cyprus*, no. 63246/10, § 38, 9 January 2018).

65. In the particular circumstances of the present case, the Court notes that there was no procedure laid down in regulations and the procedure in question is the result of *ad hoc* discretionary decisions of the Parliamentary Commission of Inquiry. There are no provisions regulating how a parliamentary commission may exercise its power to correct its own actions or within what time-limits. Accordingly, the applicant association was not required to ask the Parliamentary Commission of Inquiry to exercise its power of self-correction.

(c) Conclusions as to the exhaustion of domestic remedies

66. In the light of the above, the Government's objection of non-exhaustion of domestic remedies must be dismissed.

B. Allegedly manifestly ill-founded nature of the application

67. Relying on the Court's case-law on the autonomy of Parliaments and the importance of the principle of the separation of powers, the Government argued that the application was, in its entirety, manifestly ill-founded.

68. The applicant association did not comment on this issue.

69. The Court considers that the Government's preliminary objection raises complex issues of facts and law which cannot be determined without an examination of the case on its merits. It follows that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court therefore dismisses the Government's objection (for a similar approach, see *Mehmet Zeki Doğan v. Türkiye (no. 2)*, no. 3324/19, § 74, 13 February 2024, and *Gil Sanjuan v. Spain*, no. 48297/15, § 23, 26 May 2020).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

70. The applicant association complained that the search of its premises and the seizure of the list of its members, including their names and personal data, was not "in accordance with the law" within the meaning of Article 8 of

the Convention and was grossly disproportionate, since the contested measure had not been based on relevant or sufficient reasons, it was extremely broad in its scope, and there were no sufficient procedural safeguards against abuse and arbitrariness. Article 8 reads as follows:

> "1. Everyone has the right to respect for his ... home ...
>
> 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."

A. Admissibility

71. The Court notes that this complaint is neither manifestly ill-founded (see paragraph 69 above) nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant association

72. The applicant association argued that the search and seizure had not been in accordance with the law and had been grossly disproportionate.

73. It submitted that under Article 82 of the Italian Constitution the Parliamentary Commission of Inquiry had the same powers and limitations as a judicial authority.

74. In its view, there had been no reasons sufficient to justify the search and seizure. In addition, its purpose – specifically, finding out whether there was anyone among the members of the applicant association that was connected to criminal organisations – could have been achieved by less intrusive means. In particular, according to the applicant association, the Parliamentary Commission of Inquiry could have enquired confidentially of the central Masonic organisation whether any of the individuals accused of being involved in criminal activities were or had been members. The search order made was instead very vague, since the expression "variously connected" to criminal organisations was open to the broadest interpretation and had no legal meaning. Furthermore, the order covered twenty-seven years, a time span incompatible with any judicial investigation, which would surely have been outside any limitation period.

75. According to the applicant association, a judicial authority could not have validly and lawfully issued a search warrant in similar terms. Relying on several judgments of the Court of Cassation (see paragraph 36 above), the applicant association submitted that a search warrant issued by a judicial authority would be void if it did not contain a description of the allegations

against the person under investigation, the legislation making the alleged conduct a criminal offence, the nature of the objects that had to be seized and how they were involved with the crime under investigation, and that merely referring to the provision supposedly breached was insufficient. In this connection, the applicant association argued that the search order had been in breach of domestic law as it did not comply with the rules concerning search orders made by a judicial authority, as required by Article 82 of the Constitution.

76. In the applicant's association's view, membership of a Masonic lodge fell within the definition of "other beliefs" as protected under Article 6 of the Data Protection Convention (see paragraph 38 above) and the search order had been in breach of the principles established in Recommendation R (87)15 of the Committee of Ministers of the Council of Europe (see paragraph 39 above). Referring to the Court's case-law on mass surveillance, the applicant association further argued that the mass collection of sensitive personal data was incompatible with the Convention.

77. Furthermore, the applicant association complained that the data seized are still held in the archives of the Parliamentary Commission of Inquiry. In its view, this retention is unlawful under domestic law, which provides that once the purpose for which data is obtained has been achieved, there is no longer any justification for retaining the information. In this regard, the applicant association stressed that the Parliamentary Commission of Inquiry issued its report in 2017 and was dissolved in 2018. The applicant association further stressed that under Article 263 of the CCP and domestic case law (see paragraph 37 above), the material seized had to be returned once the investigation was over. In the present case, by contrast, a digital copy of the electronic files and a photocopy of the hard copy documents seized were both still being held in the Parliamentary archives, in breach of domestic law.

78. The applicant association further argued that the measure was not undertaken in a proportionate way as (i) it was carried out by thirteen police officers specialised in countering organised crime; (ii) the documents requested had immediately been provided by the applicant association, which cooperated fully with the authorities; (iii) all the employees of the applicant association who were present at the moment of the search were identified; (iv) the search continued for fourteen hours; (v) the private apartment of the Grand Master was also searched, including its loft, balcony, garden and garden shed; and (vi) the documents seized included data concerning members of the applicant association who did not belong to the Sicily or Calabria lodges.

(b) The Government

79. The Government submitted that the search and seizure had been carried out in accordance with the law, specifically in compliance with Article 82 of the Constitution and Law no. 87/2013, and that it had been necessary in

a democratic society for reasons of security, maintenance of public order and the prevention of crime. They considered that the measure had been in accordance with the law because the powers of the Parliamentary Commission of Inquiry had been clearly set out in domestic law.

80. In their view, the reasons justifying the contested measure were clearly given by the Parliamentary Commission of Inquiry at their sitting of 18 January 2017 and in the search order of 1 March 2017.

81. According to the Government, the measure was compatible with Article 6 of the Data Protection Convention. In particular, as reiterated by its Grand Master, the applicant association was not a political association. The Government submitted that Masonic lodges were known entities which were accepted as legal bodies, and that the names of members belonging to regular lodges were confidential but certainly not secret. As regards Recommendation R (87)15 of the Committee of Ministers of the Council of Europe, the Government stressed that it was not binding and that it had not been infringed given that the collection of data in the present case had not been for the "only reason" of establishing the membership of a specific association but also for the purposes of criminal proceedings and of the investigation carried out by the Parliamentary Commission of Inquiry. It therefore pertained to "a specific inquiry", within the meaning of principle 2.4. of the Recommendation cited.

82. In this regard, the Government submitted that the Court's judgment in *Szabo and Vissy v. Hungary* (no. 37138/14, 12 January 2016), which the applicant association had referred to (see paragraph 76 above), was irrelevant. In that case, the Court censured the Hungarian law granting the executive (not the legislature) excessive discretion in determining the number of individuals to be subject to covert interception for reasons of national security. The Court pointed out that this was in practice a law under which all citizens could potentially be subjected to surveillance without their knowledge. The situation in the present case was clearly completely different. Leaving aside the obvious difference between a specific house search and unrestricted telephone wiretapping, the search order made by the Parliamentary Commission of Inquiry was based on limited and specific reasons and the applicant association had been told about it in advance.

83. The Government further submitted that the measure was not disproportionate. On the contrary, the Parliamentary Commission of Inquiry had adopted a gradual approach and offered the applicant association multiple opportunities for cooperation. The duration of the search and the number of police officers involved was completely irrelevant.

84. Moreover, the Government submitted that, even assuming that the disclosure of the information seized had been an interference with the applicant association's Article 8 rights, that interference would have been proportionate as the search and seizure had been conducted in the context of an investigation aimed at countering mafia infiltration.

85. As regards the remedies available to the applicant association for the contested measure, the Government admitted that an application for review of a search order pursuant to Article 257 CCP (*riesame*) could not be made where the search order had been made by a parliamentary commission of inquiry. However, the Government submitted that the applicant association could have asked the ordinary judge to refer the case to the Constitutional Court for review of a possible misuse of powers as between State bodies (*conflitto di attribuzione*) or it could have asked the Parliamentary Commission of Inquiry to act in self-correction (*autotutela*).

86. Moreover, the Government justified the absence of a judicial remedy against a search order of a parliamentary commission of inquiry on the basis of the principle of the separation of powers and the need to protect the autonomy and independence of Parliament.

2. The Court's assessment

(a) Whether there was an interference

87. The Court observes first of all that it is common ground between the parties that in the present case there has been an interference with the rights guaranteed by Article 8 of the Convention. On the basis of the following considerations, it finds no reasons to hold otherwise.

88. A "search" of an individual's domicile constitutes an interference with the right to respect for the home, within the meaning of Article 8 (see *Modestou v. Greece*, no. 51693/13, § 29, 16 March 2017, and *Gutsanovi v. Bulgaria*, no. 34529/10, § 217, ECHR 2013 (extracts)). The Court has already held that a legal person is entitled to respect for its "home" within the meaning of Article 8 § 1 of the Convention. An association is therefore not wholly deprived of the protection of Article 8 by the mere fact that it is a legal person (see *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, no. 62540/00, § 60, 28 June 2007, with further references, and *Société Colas Est and Others v. France*, no. 37971/97, § 41, ECHR 2002-III). The Court has further held that any measure, if it is no different in its manner of execution and its practical effects from a search, amounts, regardless of its characterisation under domestic law, to interference with the rights guaranteed under Article 8 of the Convention (see *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, § 123, 4 February 2020, and the case-law cited therein). Accordingly, the Court found that the search of a legal person's premises and the seizure of its documents constituted an interference with its right to respect for its "home" (see *Erduran and Em Export Dış Tic A.Ş. v. Turkey*, nos. 25707/05 and 28614/06, § 78, 20 November 2018, and *Bernh Larsen Holding AS and Others v. Norway*, no. 24117/08, § 106, 14 March 2013).

89. The Court further reiterates that the search and seizure of electronic data amounts to an interference with a legal person right to respect for its "correspondence" (see *Wieser and Bicos Beteiligungen GmbH v. Austria*,

no. 74336/01, § 45, ECHR 2007-IV; *Vinci Construction and GTM Génie Civil et Services v. France*, nos. 63629/10 and 60567/10, § 63, 2 April 2015; *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, § 45, 23 June 2022; and *UAB Kesko Senukai Lithuania v. Lithuania*, no. 19162/19, § 109, 4 April 2023).

90. Moreover, although the applicant association cooperated with the domestic authorities and supplied the documents requested, the Court has already clarified that the absence of coercive powers does not mean there is no interference with the rights guaranteed by Article 8 (see, *mutatis mutandis*, *Halabi v. France*, no. 66554/14, § 55, 16 May 2019, and the case-law cited therein).

91. The Court therefore considers that the search of the applicant association's premises and the subsequent seizure of various paper and digital documents, including the list of the association's members, their names and their personal data, amounted to an interference with the right to respect for its home and correspondence.

(b) The nature of the interference

92. In the assessment of whether such an interference was justified, the scope of the domestic authorities' margin of appreciation will depend on such factors as the nature and seriousness of the interests at stake and the gravity of the interference (see *Bernh Larsen Holding AS and Others*, § 158, and *Naumenko and SIA Rix Shipping*, § 51, both cited above).

93. In the present case, on the one hand, the Court must remain mindful of the fact that the nature of the interference complained of was not of the same seriousness and degree as is ordinarily the case where search and seizure are carried out under criminal law, the type of measures considered by the Court in a number of previous cases (see *Bernh Larsen Holding AS and Others*, § 173, and *Erduran and Em Export Dış Tic A.Ş.*, § 98, both cited above). Moreover, the Court reiterates that the Contracting States' margin of appreciation and the corresponding entitlement to interfere may be more far-reaching where the business premises of a legal person, rather than an individual, are concerned (see *Niemietz v. Germany*, 16 December 1992, § 31, Series A no. 251-B; see also *Société Colas Est and Others*, § 49; *Bernh Larsen Holding AS and Others*, § 159; *Naumenko and SIA Rix Shipping*, § 51; and *Erduran et Em Export Dış Tic A.Ş.*, § 99, all cited above).

94. On the other hand, even where a wide margin of appreciation is accorded to the State, the Court's review is not limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith (see *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, § 82, 2 October 2014, and *Naumenko and SIA Rix Shipping*, cited above, § 50). Moreover, the Court has also previously acknowledged that where a large amount of information is seized, that is a factor militating in favour of strict scrutiny on its part (see *Bernh Larsen Holding AS and Others*, § 159;

Naumenko and SIA Rix Shipping, § 51; and *UAB Kesko Senukai Lithuania*, § 119, all cited above) and, in the present case, it is undisputed that the domestic authorities seized a very large quantity of documents (see paragraph 16 above).

(c) Whether the interference was justified

95. A similar interference entails a violation of Article 8 of the Convention unless it complied with the requirements of the second paragraph of such provision. The Court must therefore examine whether the interference was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve the aim or aims in question (see, among many other authorities, *Heino v. Finland*, no. 56720/09, § 35, 15 February 2011, and *DELTA PEKÁRNY a.s.*, cited above, § 79).

(i) Whether the interference was "in accordance with the law"

(α) General principles

96. The expression "in accordance with the law", within the meaning of Article 8 § 2 of the Convention, requires firstly that the impugned measure should have some basis in domestic law. Second, the domestic law must be accessible to the person concerned. Third, the person affected must be able, if need be with appropriate legal advice, to foresee the consequences of the domestic law for him, and fourth, the domestic law must be compatible with the rule of law (see *Brazzi v. Italy*, no. 57278/11, § 39, 27 September 2018; *De Tommaso v. Italy* [GC], no. 43395/09, § 107, 23 February 2017; and *Heino*, cited above, § 36). The concept of "law" must be understood in its "substantive" sense, not its "formal" one. It therefore includes everything that goes to make up the written law, including enactments of lower rank than statutes, and the relevant case-law authority (see, among others, *Bodalev v. Russia*, no. 67200/12, § 66, 6 September 2022, and *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, nos. 48151/11 and 77769/13, § 160, 18 January 2018).

97. In the context of investigative activities such as the one at issue, because of the lack of public scrutiny and the risk of abuse of power, compatibility with the rule of law requires that the domestic law provide adequate protection against arbitrary interference with Article 8 rights (see, *mutatis mutandis*, *Rustamkhanli v. Azerbaijan*, no. 24460/16, § 41, 4 July 2024, and *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 80).

(β) Application of the above principles to the present case

98. As regards whether the measure contested in the present case had a sufficient basis in domestic law, the Court notes that the power of the Chambers of Parliament to institute a parliamentary commission of inquiry

was enshrined in Article 82 of the Italian Constitution, which gives those entities the "same powers and limitations as a judicial authority" (see paragraph 23 above). The Parliamentary Commission of Inquiry in the present case was instituted under Article 1 of Law no. 87/2013 (see paragraph 25 above). The power of parliamentary commissions of inquiry to order search and seizure was therefore based on the reference in Article 82 of the Constitution to the "same powers" held by judicial authorities and, therefore, to the relevant provisions of the Code of Criminal Procedure (see paragraph 24 above), and that power had never previously been disputed (see paragraph 31 above).

99. The Court is therefore satisfied that the measure being discussed in the present case had a sufficient legal basis in domestic law. It must now assess whether domestic law and practice afforded adequate and effective safeguards against abuse and arbitrariness (see paragraph 97 above).

100. In this regard, the Court observes that under Article 247(2) CCP when a search is ordered, reasons must be given (see paragraph 24 above). In the context of criminal proceedings, the Court of Cassation clarified that a search warrant would be void if it did not contain a description of the allegations against the person under investigation, the legislation making the alleged conduct a criminal offence, the nature of the objects that had to be seized and their involvement in the crime under investigation, and that merely referring to the provision supposedly breached was insufficient (see paragraph 36 above).

101. Moreover, the Court of Cassation further held that the seizure was limited in time, because at the end of the criminal proceedings the seized items had to be returned (see paragraph 37 above). With specific regard to search and seizure ordered by a parliamentary commission of inquiry, the Court of Cassation held that seized items could be retained for a limited period of time which could not extend beyond the parliamentary commission of inquiry, which of its nature was limited in time (see paragraph 31 above).

102. The Court therefore considers that the guarantees provided by the reference in Article 82 of the Italian Constitution to the "same limitations" as those on the powers of judicial authorities, adapted where appropriate to the context of a parliamentary inquiry, were sufficient to prevent abuse and arbitrariness by a parliamentary commission of inquiry.

103. The parties disagreed, however, as to whether the Parliamentary Commission of Inquiry had complied with the requirements and limitations established under domestic law. In the present case, the applicant association's complaints had mainly concerned the authorities' alleged failure to comply with those provisions. The complaints therefore relate primarily to the manner in which the legal framework was applied. The applicant association's arguments concerning the lawfulness of the interference being closely related to the question as to whether the "necessity" test was complied with in their case, the Court will address jointly the "in accordance with the law" and "necessity" requirements (see, for an example of such approach,

Erduran and Em Export Dış Tic A.Ş., cited above, § 82, with further references).

(ii) Whether the interference pursued a "legitimate aim"

104. The Government maintained that the search and seizure had served a legitimate aim, namely the interests of national security, public safety and the prevention of crime. Their submission was not disputed by the applicant association.

105. The Court, observing that the search and seizure was ordered in the context of an inquiry concerning the Mafia, finds no reason to arrive at a different conclusion in this regard.

(iii) Whether the interference was "necessary in a democratic society"

(α) General principles

106. The notion of "necessity" implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" the Court will take into account the fact that a certain margin of appreciation is left to the Contracting States (see paragraph 93 above). However, the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly, and the need for them in a given case must be convincingly established (see *Smirnov v. Russia*, no. 71362/01, § 43, ECHR 2007-VII, with further references, and *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 85).

107. As regards, in particular, searches and inspections of the premises of legal persons and the seizure or copying of their documents, the Court has observed that while States may consider it necessary to have recourse to such measures in order to obtain physical evidence of certain offences, nevertheless, the relevant legislation and practice must afford adequate and effective safeguards against abuse and arbitrariness (see *Naumenko and SIA Rix Shipping*, § 50; *DELTA PEKÁRNY a.s.*, § 83; and *Société Colas Est and Others*, § 48, all cited above).

108. In this context, in exercising its supervisory jurisdiction, the Court must consider the impugned decisions in the light of the case as a whole and determine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (see *Naumenko and SIA Rix Shipping*, cited above, § 50) and whether the proportionality principle was adhered to (see *Vinks and Ribicka v. Latvia*, no. 28926/10, § 102, 30 January 2020, and *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 87).

109. In the context of criminal proceedings, the criteria the Court has taken into consideration in determining whether the proportionality principle was adhered to are, *inter alia*: the severity of the offence in connection with which the search and seizure was effected; the manner and circumstances in which the order was issued, in particular, whether any further evidence was

available at that time; the content and scope of the order, having particular regard to the nature of the premises searched and the safeguards implemented in order to confine the impact of the measure to reasonable bounds; and the extent of possible repercussions on the reputation of the person affected by the search (see *Vinks and Ribicka*, § 102, and *Erduran and Em Export Dış Tic A.Ş.*, § 87, both cited above, with further references).

110. In cases concerning the protection of individuals and legal persons from arbitrary interferences with their rights guaranteed by Article 8, the Court has held that the absence of a prior judicial warrant may be counterbalanced by the availability of an *ex post* judicial review (see *Smirnov*, § 45; *Heino*, § 45; and *DELTA PEKÁRNY a.s.*, § 83 *in fine*, all cited above). This review must be effective in the particular circumstances of the case in question (see *Gutsanovi*, cited above, § 222). The Court has also held that, although Article 8 of the Convention cannot be interpreted as requiring an *ex post* judicial review in all cases concerning a search or seizure carried out in the premises of a legal person, the availability of such a review may be taken into account, among other elements, when assessing the compliance of searches and seizures with Article 8 (see *UAB Kesko Senukai Lithuania*, cited above, § 117).

111. With specific regard to the interference at issue in the present case, the Court has held that a remedy against a search undertaken in alleged violation of the rights guaranteed by the Convention must allow an assessment of the lawfulness and necessity of the impugned measure (see *Contrada v. Italy (no. 4)*, no. 2507/19, § 51, 23 May 2024; *Popovi v. Bulgaria*, no. 39651/11, § 122, 9 June 2016; *Stoyanov and Others v. Bulgaria*, no. 55388/10, § 152, 31 March 2016; *Govedarski v. Bulgaria*, no. 34957/12, § 94, 16 February 2016; *Gutsanovi*, cited above, § 234; *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 44, 22 May 2008; and *Brazzi*, cited above, § 46). In particular, once the search has been carried out or the person concerned has become otherwise aware of the existence of the search order, there must exist a procedure whereby the person can challenge the legal and factual grounds of the order and obtain redress in the event that the search was unlawfully ordered or executed (see *Avanesyan v. Russia*, no. 41152/06, § 29, 18 September 2014).

112. In different contexts, the Court has observed that the procedural safeguards required by the Convention should be adapted to the parliamentary context, bearing in mind the generally recognised principles of parliamentary autonomy and the separation of powers (see *Mándli and Others v. Hungary*, no. 63164/16, § 72, 26 May 2020, and *Drozd v. Poland*, no. 15158/19, § 73, 6 April 2023).

(β) Application of the above principles to the present case

113. In the present case, the parties' submissions concentrated on the necessity of the interference and, in particular, on the questions of whether

the measure was proportionate to the legitimate aim pursued and whether the procedural safeguards provided for by the Code of Criminal Procedure, to which Article 82 of the Constitution made reference, were adequately complied with, as well as on whether the applicant association had had at its disposal a remedy to deal with the alleged unlawfulness of the contested measure.

114. As regards the scope of the domestic authorities' margin of appreciation, the Court considers that one factor that militates in favour of strict scrutiny in the present case is that the authorities seized and copied a very large quantity of paper and digital documents (see paragraph 16 above), without there being any demonstration that they were all relevant to the ongoing inquiry about the Mafia (see, *mutatis mutandis*, *Naumenko and SIA Rix Shipping*, cited above, § 51; see paragraphs 130-131 below). On the other hand, the fact that the measure was aimed at legal persons meant that a wider margin of appreciation could be applied than would have been the case had it concerned an individual (see *DELTA PEKARNY a.s.*, § 88, and *Bernh Larsen Holding AS and Others*, § 159, both cited above).

115. In the light of the principles reiterated above (see paragraphs 106-112 above), although considering that they must be adapted to the different context of a parliamentary inquiry, and taking into account the applicant association's complaints, the Court will examine the seriousness of the matter being investigated in connection with which the measure was effected (see paragraphs 116-117 below); the manner and circumstances in which the search and seizure order was issued (see paragraphs 118-124 below); the content and scope of the order (see paragraphs 125-145 below), and the existence of sufficient procedural safeguards against abuse and arbitrariness (see paragraphs 132-145 below).

– *The seriousness of the matter being investigated*

116. The Court notes that the search of the premises of the applicant association was for the purpose of obtaining a list of the names of the members of certain masonic lodges, in order to verify whether there were individuals among them who were linked, for various reasons, to mafia-type associations (see paragraph 13 above).

117. It therefore considers that the matters being investigated were serious.

– *The manner and circumstances in which the order was issued*

118. As regards the manner in which the order was issued, the Court notes that the search order was made by the Parliamentary Commission of Inquiry itself, since it had the "same powers" as a judicial authority (see paragraphs 23 and 31 above), and that it was not subject to prior judicial scrutiny capable of circumscribing its scope (see, *a contrario*, *Société Canal Plus and Others*,

§§ 55-56; *Wieser and Bicos Beteiligungen GmbH*, § 59; and *Naumenko and SIA Rix Shipping*, § 53, all cited above).

119. In this connection, the Court reiterates that it has already held that it must redouble its vigilance where domestic law allows a search to be undertaken without prior judicial scrutiny (see *DELTA PEKARNY a.s.*, § 83; *Brazzi*, § 41; and *Halabi*, § 64, all cited above; see also *Bostan v. the Republic of Moldova*, no. 52507/09, § 23, 8 December 2020).

120. As regards the circumstances in which the order was issued, the Court must consider whether it was based on evidence or reasonable suspicion of the existence of an involvement in the matter being investigated (see, *mutatis mutandis*, *Wieser and Bicos Beteiligungen GmbH*, § 57; *Heino*, § 41; and *Naumenko and SIA Rix Shipping*, §§ 54-55, all cited above) and, in particular, whether any further evidence was available at the time (see, for a similar assessment, *Vinks and Ribicka*, § 102, and *Erduran and Em Export Dış Tic A.Ş.*, § 87, both cited above).

121. In this regard, the Court observes that the applicant association had been informed that the inquiry concerned, in general, the infiltration by Mafia groups of Masonic lodges (see paragraph 5 above). As reiterated multiple times by the applicant association's representative, no references to specific investigations, offences or individuals capable of demonstrating that such infiltration had taken place were made by the Parliamentary Commission of Inquiry in its request for a list of the members of the applicant association (see paragraphs 7 and 11 above).

122. The Court further notes that the search order said that "from the hearings held up to now and from the documentation obtained, it is apparent that there is a concrete danger of the infiltration of Freemasonry by *Cosa Nostra* and the *Ndrangheta*" (see paragraph 13 above). As regards the evidence available at that time, the order referred generically to the results of previous hearings and to ongoing criminal investigations (see paragraph 14 above). However, no reference to individualised items of evidence was made in the search order.

123. In this context, the Court cannot but observe that that the Parliamentary Commission of Inquiry mentioned the subject of the ongoing inquiry only briefly in its order and did not set out the facts or documents capable of supporting a reasonable suspicion of an involvement in the matter being investigated (see, *mutatis mutandis*, *DELTA PEKARNY a.s.*, cited above, § 85). That lack of reasoning was in breach of the domestic provisions, which required reasons to be given (see paragraph 100 above).

124. The Court therefore considers that the measure was not based on relevant or sufficient reasons. In particular, it does not appear that the search order was based on elements giving rise to a reasonable suspicion that the applicant association had been involved in the matter being investigated.

– *The content and scope of the order*

125. As regards the content and scope of the order, the Court must assess whether it was reasonably limited (see *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 90). In particular, it must assess whether it defined the type of material that could be searched for, seized and copied, preferably by indicating the items of evidence that the authorities expected to find in connection with the allegations they were investigating (see *DELTA PEKARNY a.s.*, cited above, § 88) in order to avoid massive and indiscriminate access to items not related to the inquiry (see, *a contrario*, *Vinci Construction and GTM Génie Civil et Services*, § 76, and *UAB Kesko Senukai Lithuania*, § 118, both cited above).

126. As to the type of information sought, the Court considers it to have been of a very wide range, as the contested measure aimed at obtaining a list of anyone who had belonged, for any reason, to a Masonic lodge of Calabria or Sicily starting from 1990, including people who had ceased to belong to a lodge or ceased active membership, and information about the level of their membership and the role they played, as well as information about all the lodges of Calabria and Sicily which had been dissolved or suspended from 1990 onwards, including the names of all their members and their personal files, any inquiries held and the decisions taken (see paragraph 15 above).

127. The Court therefore has serious doubts as to whether the measure was confined to reasonable bounds (see, *a contrario*, *Vinci Construction and GTM Génie Civil et Services*, cited above, § 76).

128. As to the scope of the search order, the Court observes that it was formulated in somewhat broad terms. It referred to a wide range of actions, such as the search of the applicant association's premises, including annexes, chattels and associated premises, and of computers and electronic information systems, even if they were protected by security measures. It also ordered the seizure of the abovementioned documents, where they were in hard copy, and the seizure of computer files of whatever nature containing documents in digitised form, to be copied immediately in the presence of the interested parties in such a way as to ensure the conformity of the data acquired with the original and to avoid alteration of the original data, followed by the restitution, at the end of those operations, of the computers and files seized to their legitimate owners (see paragraph 15 above).

129. It therefore appears to the Court that the order was couched in very broad terms (see *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 90).

130. The Court further notes that, during the search, the officers identified the personnel present in the applicant association's premises, and that the search concerned all of those premises, including its archives, the library, and the personal residence of the Grand Master, and that several computers were searched (see paragraph 16 above). Moreover, the search resulted in the seizure of numerous documents, including lists of approximately 6,000

persons registered with the applicant association, as well as hard disks, flash drives and computers (ibid.).

131. The Court therefore considers that the applicant association's rights under Article 8 of the Convention were significantly affected during the operation since the domestic authorities examined and retained a large number of paper and digital documents, which included confidential information (see, *mutatis mutandis*, *Naumenko and SIA Rix Shipping*, cited above, § 54).

– *The existence of sufficient procedural safeguards against abuse and arbitrariness*

132. In this context, the Court must examine whether the deficiencies in the limitation of the scope of the order were offset by sufficient procedural safeguards capable of protecting the applicant association against any abuse or arbitrariness (see *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 90) and confining the impact of the measure to reasonable bounds.

133. The Court observes at the outset that some safeguards were effectively put in place. In particular, the seized items were subjected to the secrecy regime established under sections 5 and 6 of Law no. 87/2013 (see paragraph 25 above). Moreover, the Parliamentary Commission of Inquiry ordered that the seized documentation had to be kept "at premises at the disposal of the delegated judicial police, suitable to prevent computer access other than that authorised in the proceedings between the parties", in a room equipped with a security door, video surveillance and alarms (see paragraph 17 above).

134. However, the Court notes that under Italian law the applicant association had no means of contesting the lawfulness of the search order or its execution before an independent and impartial authority (see, *Iliya Stefanov*, cited above, § 44, and *a contrario*, *Bernh Larsen Holding AS and Others*, cited above, § 164-65).

135. In this connection, the Court has already concluded that the remedies asserted by the Government, notably the judicial review by the Constitutional Court of a possible misuse of powers as between State bodies, and the power of Parliament to self-correct its actions, cannot be considered effective for the purpose of the Convention (see, respectively, paragraphs 59-60 and 65 above).

136. Moreover, the Court notes that the Government admitted (see paragraph 85 above) that the remedy provided for by Article 257 CCP, notably an application for review of the search order (*riesame*; see paragraph 24 above) could not be applied for in respect of search orders made by a parliamentary commission of inquiry (see, as regards the general features of the application for review, *Brazzi*, cited above, § 19, and *Contrada v. Italy (no. 4)*, no. 2507/19, §§ 16-20, 23 May 2024). This is confirmed by the case-law of the Court of Cassation, which held that the remedy in question

could not be sought in respect of a search order made by a parliamentary commission of inquiry (see paragraph 32 above).

137. As the system in Italy currently stands, no other remedy is available following a search and seizure order made by a parliamentary commission of inquiry, whether before a judicial authority or any other body. Indeed, domestic law confers exclusive jurisdiction on Parliament to rule on the validity of its acts. Under domestic law, the courts decline jurisdiction to deal with disputes concerning the actions of a parliamentary commission of inquiry (see paragraphs 18 and 29 above). The measure therefore could not be subjected to an *ex post* scrutiny by an independent authority (see *DELTA PEKARNY a.s.*, cited above, § 86).

138. The Court notes that the Government justified the absence of a means of contesting the search order on the basis of the principle of the separation of powers and the need to protect the autonomy and independence of Parliament (see paragraph 86 above).

139. In this regard, the Court notes that the principles concerning parliamentary autonomy were outlined in *Karácsony and Others v. Hungary* ([GC], nos. 42461/13 and 44357/13, §§ 138-47, 17 May 2016), a case concerning disciplinary proceedings which was examined under Article 10 of the Convention. They may be summarised as follows. Parliament is a unique forum for debate in a democratic society, which is of fundamental importance (ibid., § 138). There is a close nexus between an effective political democracy and the effective operation of Parliament (ibid., § 141). The rules concerning the internal operation of Parliament are the exemplification of the well-established principle of the autonomy of Parliament. In accordance with this principle, Parliament is entitled, to the exclusion of other powers and within the limits of the constitutional framework, to regulate its own internal affairs, for example the composition of its bodies. This forms part of "the jurisdictional autonomy of Parliament" (ibid., § 142). In principle, the rules concerning the internal functioning of national parliaments, as an aspect of parliamentary autonomy, fall within the margin of appreciation of the Contracting States (ibid., § 143).

140. The Court has also already found, for example, that the inherent characteristics of the system of parliamentary immunity and the resulting derogation from the ordinary law pursue the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions (see *A. v. the United Kingdom*, no. 35373/97, § 79, ECHR 2002-X; *Cordova v. Italy (no. 1)*, no. 40877/98, § 59, ECHR 2003-I; *Cordova v. Italy (no. 2)*, no. 45649/99, §§ 60 and 62, ECHR 2003-I (extracts); *Zollamann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII; *De Jorio v. Italy* (dec.), no. 73936/01, § 52, 3 June 2004; *C.G.I.L. and Cofferati v. Italy*, no. 46967/07, § 71, 24 February 2009; *Kart v. Turkey* [GC], no. 8917/05, § 88, ECHR 2009 (extracts); and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 256, 22 December 2020).

141. Moreover, the Court has pointed out that it cannot impose on States a given constitutional model governing, in one way or another, the relations and interaction between the various State powers (see *Savino and Others v. Italy*, nos. 17214/05 and 2 others, § 92, 28 April 2009; *Thiam v. France*, no. 80018/12, § 62, 18 October 2018; and *Eminağaoğlu v. Turkey*, no. 76521/12, § 94, 9 March 2021). In this connection, in *Savino and Others* the Court held that the choice of the Italian legislator to preserve the autonomy and independence of Parliament by granting it immunity from the ordinary courts could not in itself be challenged before the Court (cited above, § 92).

142. However, the Court has also stressed that the national discretion of the domestic authorities, which is inherent in the notion of parliamentary autonomy, is not unfettered, but should be compatible with the concepts of "effective political democracy" and "the rule of law" to which the Preamble to the Convention refers (see *Karácsony*, cited above, § 147; *Mugemangango v. Belgium* [GC], no. 310/15, § 74, 10 July 2020; and *Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, nos. 24159/22 and 25751/22, § 63, 16 April 2024). Therefore, reiterating that none of the provisions of the Convention requires States to comply with any theoretical constitutional concepts regarding the permissible limits of the powers' interaction (see *Thiam*, cited above, § 62), the Court stresses that the question is always whether, in a given case, the requirements of the Convention are met (see *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, § 193, ECHR 2003-VI, and *Savino and Others*, cited above, § 93).

143. In the light of the above, while reiterating that some form of *ex ante* or *ex post* control of a measure by an impartial authority with sufficient degree of independence from the authority which ordered the measure is an essential safeguard against arbitrary interference by public powers with the rights protected by Article 8 (see paragraph 110 above), the Court considers, having also regard to the subsidiarity principle and the margin of appreciation afforded to Contracting States in matters closely linked to the separation of powers (see, *mutatis mutandis, Mugemangango*, cited above, § 138), that it is not for it to indicate what type of remedy should be provided in order to satisfy the requirements of the Convention in the specific circumstances of the present case

144. Lastly, the Court observes that, according to the information provided by the applicant association and not contested by the Government, a copy of the seized documents is still held in the archives of the Parliamentary Commission of Inquiry, notwithstanding the facts that its functions are complete and it has been dissolved (see paragraph 77 above).

145. In this connection, the Court reiterates that it has already observed that the absence of regulations requiring the destruction of copies of documents obtained through a search may be incompatible with Article 8 (see *DELTA PEKARNY a.s.*, cited above, § 92).

146. In the present case, it appears that, under the relevant domestic legislation and case-law, the seized documents should have been returned, or the copies of them destroyed, at the conclusion of the inquiry (see paragraphs 31 and 37 above). However, this provision was not complied with.

(iv) Conclusion

147. In the light of the foregoing and, in particular, of the lack of evidence or a reasonable suspicion of involvement in the matter being investigated, capable of justifying the measure (see paragraph 124 above), its wide and indeterminate content (see paragraphs 126-131 above), and the absence of sufficient counterbalancing guarantees, in particular of an independent and impartial review of the contested measure (see paragraphs 134-145 above), the Court concludes that the disputed measure was not "in accordance with the law" nor "necessary in a democratic society".

148. There has accordingly been a violation of Article 8 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

149. The applicant association also complained that the search and seizure order further entailed an unlawful and disproportionate interference with its right to freedom of association, guaranteed by Article 11 of the Convention, and that there was no effective remedy within the meaning of Article 13 of the Convention for any unlawfulness and lack of proportionality of the contested measure.

150. Having regard to the facts of the case, the submissions of the parties and its findings above (see paragraph 148 above), the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of these complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

151. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

152. The applicant association asked the Court to award compensation for non-pecuniary damage on an equitable basis.

153. The Government submitted that the claim was unsubstantiated.

154. The Court considers that the applicant association certainly sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation (see, for example, *Société Colas Est and Others*, cited above, § 55) and, ruling on an equitable basis, awards the applicant association 9,600 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

155. The applicant association also claimed EUR 16,552.60 for the costs and expenses incurred in dealing with the domestic authorities and EUR 5,344 for those incurred before the Court.

156. The Government did not comment on this issue.

157. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022).

158. As regards the claims concerning the costs and expenses incurred before the domestic authorities, the Court notes that they were submitted without any description of the legal services that had been provided. In particular, the documents submitted to the Court merely mentioned "consultation in the field of freedom of association". As a result, the Court is unable to find that those expenses were related to the present case and that they were necessarily incurred (see *UAB Kesko Senukai Lithuania*, cited above, § 136). The Court therefore rejects the applicant association's claim for costs and expenses in the domestic proceedings.

159. As regards the costs and expenses incurred in the proceedings before the Court, it considers that, taking into account the legal issues raised in the present case, the amount claimed by the applicant association can be considered reasonable as to quantum. It therefore grants that part of the claim in full and awards the applicant association EUR 5,344, plus any tax that may be chargeable to it.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 8 of the Convention admissible;

2. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by six votes to one, that there is no need to examine the admissibility and merits of the complaints under Articles 11 and 13 of the Convention;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant association, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 9,600 (nine thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,344 (five thousand three hundred and forty-four euros), plus any tax that may be chargeable to the applicant association, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, by six votes to one, the remainder of the applicant association's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Ivana Jelić
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge G. A. Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicant association (hereinafter the "applicant") is an Italian Masonic association which groups together several lodges. The applicant complained that there had been violations of Articles 8, 11 and 13 of the Convention owing to a search of its premises ordered by a parliamentary commission of inquiry and the subsequent seizure of a number of paper and digital documents, in particular a list, including names and personal data, of more than 6,000 members of the association.

2. I voted in favour of all points of the operative provisions of the judgment except for points 3 and 5. In particular, I disagree that having found a violation of Article 8 of the Convention – and on the ground that the Court has "dealt with the main legal questions raised by the case" – there is no need to examine the admissibility and merits of the complaints under Articles 11 (freedom of association) and 13 (effective remedy) of the Convention (point 3 and paragraphs 149 and 150 of the judgment). I also disagree with the dismissal of the remainder of the just satisfaction claim.

3. Since I recently took the same position in my partly dissenting opinion in *Adamčo v. Slovakia (no. 2)*, nos. 55792/20 and 2 others, 12 December 2024 (not yet final), where I thoroughly presented all arguments relevant to the issue at hand, I opt to refer to that opinion rather than restate the same arguments here.