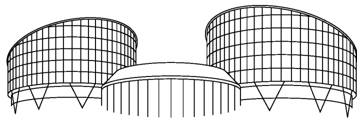

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 013 (2016)
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The security of 1.1 billion euros required from the bank UBS AG in the context of court supervision was compatible with the Convention

In its decision in the case of UBS AG v. France (application no. 29778/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a sum of 1.1 billion euros required by way of security in the context of the court supervision of a bank that was placed under formal investigation for illegal direct selling of banking products and aggravated laundering of the proceeds of tax fraud.

The Court noted that the security was intended to ensure the presence of the person under investigation for all the steps of the proceedings and for execution of the judgment, as well as payment of the fines and reparation for the damage caused by the offence.

The Court held that the security required constituted an interim measure which did not prejudge the outcome of the proceedings and that the amount had been assessed by the domestic judges, using particularly thorough reasoning, on the basis of the findings of the investigations, the alleged facts, the scale of the offences and the potential harm, and the fine payable in the event of a conviction. The assessment had also been based explicitly on the resources of the applicant bank, which had been afforded adequate procedural safeguards.

Principal facts

The applicant, the bank UBS AG, is a Swiss company with its registered offices in Basle and Zürich (Switzerland).

The bank UBS AG and its subsidiary UBS France were placed under investigation, respectively, for the illegal direct selling of banking or financial products to French residents and for supplying UBS AG with the means of committing the offence of illegal direct selling of banking products in France between 2004 and 2011. The bank UBS AG was placed under court supervision and ordered to pay a security of 2,875,000 euros (EUR) in accordance with Article 706-45 of the Code of Criminal Procedure. On 23 July 2014 UBS AG was also placed under investigation for aggravated laundering of the proceeds of tax fraud. On the same day the investigating judges amended the terms of the court supervision order. After summarising the alleged facts and the various investigative findings and noting that the bank had been unable or unwilling to disclose customers' names or the amount of the assets in question, the investigating judges held that, even taking a figure at the lower end of the range, the sums obtained fraudulently and laundered amounted to EUR 9,760,000,000 each year, resulting in a fine of EUR 4,880,000,000. Lastly, having also examined the applicant bank's resources, the investigating judges found that a security of EUR 1,100,000,000 appeared compatible with those resources. A total of one million euros was intended to ensure the applicant's presence for all steps in the proceedings, while EUR 1,099,000,000 was designed to cover the costs advanced by the civil party seeking damages (the French State), reparation for the damage caused and sums owed in restitution, and payment of the fines. The applicant appealed against that order. On 22 September 2014 the Investigation Division of the Paris Court of Appeal upheld the order. In December of the same year the Court of Cassation dismissed an appeal on points of law by the bank.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 June 2015.

Relying on Articles 5 § 3 (right to liberty and security), 6 § 1 (right to a fair trial), 6 § 2 (presumption of innocence), 7 (no punishment without law), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention, and on Article 1 of Protocol No. 1 (protection of property), the bank UBS AG complained of the amount of the security it had been required to pay in the context of the court supervision order.

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

Angelika **Nußberger** (Germany), *President*,
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia)*, Judges*,

and also Milan **Blaško**, *Deputy Section Registrar.*

Decision of the Court

Article 6 § 2

The Court observed that a distinction had to be made between decisions or statements which reflected the opinion that the person concerned was guilty and those which merely described a state of suspicion. The former violated the presumption of innocence, while the latter were in conformity with the spirit of Article 6 of the Convention. In the instant case the Court noted that the domestic decisions – whether the order made by the investigating judges or the judgments of the Investigation Division and the Court of Cassation – did not contain any reasoning that would suggest that the judges considered the bank UBS AG to be guilty. Accordingly, there had been no violation of the applicant's right to be presumed innocent.

Article 1 of Protocol No. 1

The Court noted that the interference by the authorities with the exercise of the applicant's right to the peaceful enjoyment of its possessions had been lawful, as the payment of a security was expressly provided for by Article 706-45 of the Code of Criminal Procedure. Furthermore, the Court was in no doubt that in seeking to ensure, in accordance with Article 142 of the Code, the presence of the person under investigation for all the steps of the proceedings and for execution of the judgment, as well as reparation for the damage caused by the offence and payment of the fines, the interference had pursued an aim in the general interest.

Lastly, with regard to the proportionality of the interference, the Court noted the growing and legitimate concern both in Europe and internationally in relation to financial offences, which constituted socially unacceptable behaviour, and the difficulty of combating such offences. It stressed that in the present case, firstly, the security constituted an interim measure which did not prejudge the outcome of the proceedings, as the sum paid was returned at the end of the proceedings if the person concerned was not convicted. Secondly, the amount of the security had been assessed by the investigating judges and by the Investigation Division, using particularly thorough reasoning, on the basis of the findings of the investigations, the alleged facts, the scale of the offences and the potential harm, and the amount of the fine payable in the event of a conviction. The assessment had also been based explicitly on the applicant bank's resources. Moreover, the bank had been afforded adequate procedural safeguards, as it had been able to make use of the remedies provided for by domestic law in order to challenge the decision in question and

to debate in adversarial proceedings the factors taken into consideration by the judges, first before the Court of Appeal and then before the Court of Cassation.

Accordingly, and taking into account the margin of appreciation allowed to the State in this sphere, the Court found that the interference had not been disproportionate and that a fair balance had been struck in the present case. It held that this part of the application was manifestly ill-founded and rejected it accordingly.

Articles 5 § 3, 6 § 1, 7, 13 and 14

The Court noted that these complaints, even assuming that they were applicable, had not been raised in the context of the appeal on points of law against the Investigation Division's judgment of 22 September 2014. They therefore had to be rejected for failure to exhaust domestic remedies.

The decision is available only in French.

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