

1) Warrantless search of the apartment / email accounts

Article 17(1) of the ICCPR provides that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”¹ The UN Human Rights Committee has explicitly stated that a warrantless search of person’s home is, in the absence of a valid explanation by the government, a violation of that person’s right to privacy.² The Human Rights Committee has also emphasized that “Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto.”³ Furthermore, searches cannot be used for an improper purpose – they “should not be allowed to amount to harassment.”⁴

2) Sharing confidential information with Kazakh officials

Interpreting the scope of states’ obligations under Article 17 of the ICCPR, the Human Rights Committee has emphasized that states must “ensure that information concerning a person’s private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.”⁵

3) Search of a lawyer’s home

Interpreting the right to privacy, the European Court of Human Rights has repeatedly held that “searches of lawyers’ premises must be subject to a very strict examination.”⁶ In particular, there must be “independent observers” present for the search, and those observers must both “have legal qualifications in order to participate effectively” and “be vested with the power to prevent any possible interference with the solicitor-client privilege of the firm being searched.”⁷ The Court has applied a heightened standard to searches of lawyers’ homes as well.⁸

As Belgium is a party to the European Convention on Human Rights, these cases governing searches of lawyers’ premises are binding on the Belgian government. These cases further serve as persuasive authority regarding how the Human Rights Committee would interpret the right to privacy (Article 17) in the ICCPR.

¹ International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), U.N. GAOR, 21st Sess., Supp No. 16, U.N. Doc A/6316, at 52 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at Art. 17(1) [hereinafter ICCPR].

² *Darmon Sultanova v. Uzbekistan*, Communication No. 915/2000, U.N. Doc. CCPR/C/86/D/915/2000, U.N. HUMAN RIGHTS COMMITTEE, *adopted* Mar. 30, 2006, at ¶ 7.9 (“The Committee considers that in the absence of any explanation from the State party, the search of the author’s house without warrant . . . amounts to a violation of article 17.”).

³ *General Comment No. 16 on Article 17: Right to Privacy*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. HRI/GEN/1/Rev.1 at 21, Apr. 8, 1988, at ¶ 8.

⁴ *Id.*

⁵ *Id.*, at ¶ 10.

⁶ *Leotsakos v. Greece*, Application No. 30958/13, Eur. Court of Human Rights, Oct. 4, 2018, at ¶ 38 (unofficial translation); *see also Kolesnichenko v. Russia*, Application no. 19856/04, Eur. Court of Human Rights, Apr. 9, 2009, at ¶ 31 (“[P]ersecution and harassment of members of the legal profession strikes at the very heart of the Convention system. Therefore the searching of lawyers’ premises should be subject to especially strict scrutiny.”).

⁷ *Leotsakos v. Greece*, *supra* note 6, at ¶ 40 (unofficial translation).

⁸ *Smirnov v. Russia*, Application no. 71362/01, Eur. Court of Human Rights, June 7, 2007, at ¶¶ 34–49.

4) Search of a lawyer's correspondence

Analyzing Article 8 (right to privacy) of the European Convention on Human Rights, the European Court of Human Rights has explained that “while Article 8 protects the confidentiality of all ‘correspondence’ between individuals, it affords strengthened protection to exchanges between lawyers and their clients.”⁹ The Court emphasized that “legal professional privilege, while primarily imposing certain obligations on lawyers, is specifically protected” by Article 8.¹⁰ The “correspondence” protected under Article 8 includes hard drives¹¹ and electronic data.¹²

5) Arrest/detention during questioning

The Human Rights Committee, interpreting ICCPR Article 9(1) (prohibition on arbitrary detention), has held that detention solely for the purpose of forcing someone to cooperate with a criminal investigation is arbitrary because no one is required to provide such cooperation.¹³

6) Lawyer couldn't participate during the questioning by police

Article 14(3) of the ICCPR guarantees, in the determination of a criminal charge against a person, the right to communicate with counsel and the right to defend oneself through legal assistance.¹⁴ These rights apply during preliminary investigations and questioning before formal charges have been filed. The Human Rights Committee, for example, has criticized a state in which a person suspected of involvement in a criminal offense, but who was not yet detained, had no right to have legal counsel present during police questioning.¹⁵ Further, as the UN Working Group on Arbitrary Detention has explained, the right to counsel includes “the ability to *adequately consult* with counsel.”¹⁶

7) Requirement to protect human rights defenders from retaliation

The UN Declaration on Human Rights Defenders requires states to “ensure the protection by the competent authorities of everyone . . . against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of [their rights as a human rights defender].”¹⁷ The UN Working Group on

⁹ *Michaud v. France*, Application no. 12323/11, Eur. Court of Human Rights, Dec. 6, 2012, at ¶ 118.

¹⁰ *Id.*, at ¶ 119.

¹¹ *Petri Sallinen v. Finland*, Application no. 74336/01, Eur. Court of Human Rights, Sept. 27, 2005, at ¶ 71.

¹² *Wieser and Bicos Beteiligungen GmbH v. Austria*, Application no. 74336/01, Eur. Court of Human Rights, Oct. 16, 2007, at ¶ 45.

¹³ *Hugo van Alphen v. Netherlands*, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988, U.N. HUMAN RIGHTS COMMITTEE, *adopted* July 23, 1990, at ¶¶ 5.7–5.8.

¹⁴ ICCPR, *supra* note 1, at Art. 14(3)(b), (d).

¹⁵ *Concluding Observations on the Netherlands*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/NLD/CO/425, Aug. 2009, at ¶ 11.

¹⁶ *Hasna Ali Yahya Husayn v. Iraq*, Opinion No. 59/2011, U.N. Doc. A/HRC/WGAD/2011/59, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 21, 2011, at ¶ 17 (emphasis added).

¹⁷ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, *adopted* Dec. 9, 1998, at Art. 12(2).

Arbitrary Detention has also interpreted the prohibition on discrimination in ICCPR Article 26 to include discrimination based on one's status as a human rights defender.¹⁸

8) Duty to protect refugees from persecution

Belgium's Federal Agency for the Reception of Asylum Seekers has noted that, by signing the 1951 Convention Relating to the Status of Refugees, "Belgium undertook to protect refugees on its territory."¹⁹ This necessarily includes protecting refugees from judicial/legal harassment from the persecuting state. For example, in 2014, INTERPOL's Executive Committee adopted a policy regarding refugees.²⁰ The policy provides that Red Notices and Diffusion Notices against refugees requested by the persecuting state will not be processed (as long as the granting of refugee status itself was not politically-motivated).²¹ The policy states that this rule is necessary to "protect the rights of refugees, as guaranteed under the 1951 Convention relating to the Status of Refugees."²²

¹⁸ *Ny Sokha v. Cambodia*, Opinion No. 45/2016, U.N. Doc. A/HRC/WGAD/2016/45, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Nov. 21, 2016, at ¶¶ 44–45.

¹⁹ *Asylum in Belgium*, BELGIUM FEDERAL AGENCY FOR THE RECEPTION OF ASYLUM SEEKERS, accessed Oct. 15, 2019, available at <https://www.fedasil.be/en/asylum-belgium>.

²⁰ INTERPOL TEXT ON REFUGEE POLICY – EXCERPTS, FAIR TRIALS, available at <https://www.fairtrials.org/wp-content/uploads/INTERPOL-TEXT-ON-REFUGEE-POLICY.pdf?platform=hootsuite>.

²¹ *Id.*

²² *Id.*