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

THIRD SECTION

DECISION

Application no. 52585/11
Yelena Mikhaylovna EPELDIMOVA
against Russia

The European Court of Human Rights (Third Section), sitting on 5 October 2021 as a Committee composed of:

Peeter Roosma, *President,*
Dmitry Dedov,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 August 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Yelena Mikhaylovna Epeldimova, is a Russian national, who was born in 1969 and lives in Novosibirsk.

2. The Russian Government ("the Government") were initially represented by Mr G. Matyushkin and Mr M. Galperin, Representatives of the Russian Federation to the European Court of Human Rights, and then by their successor in that office, Mr A. Fedorov.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 23 May 2008 investigating authorities received a report about an alleged crime of tax evasion possibly committed by a Mr S., general director of company S. On the same date the police performed an "on-site examination" (*осмотр места происшествия*) of the company's office located at the flat belonging to the applicant rather than at its registered address. The applicant was the director of manufacturing of company S. and worked there. The police seized two computer hard drives one of which

belonged to the applicant. A year later Mr S. was charged with tax evasion. The applicant was a witness in that case.

5. On 11 February 2011 the applicant complained about the search of her flat under Article 125 of the Code of Criminal Procedure ("CCrP"). In particular, the applicant submitted that her flat had been registered as a residential premise and there had been no business signboards of company S. on the building or at the flat's entrance. Therefore, the applicant's flat could have been searched only based on a court search warrant.

6. On 15 February 2011 the Leninskiy District Court of Novosibirsk ("the District Court") refused to examine the applicant's complaint on the grounds that during the trial of Mr S., on 21 December 2010, the court had already examined and dismissed a similar complaint about the on-site examination of 23 May 2008. On 30 March 2011 the Novosibirsk Regional Court ("the Regional Court") upheld the decision on appeal.

7. In May 2011 the applicant attempted to bring the same complaint about the lawful search of her flat by means of a civil action. On 16 May 2011 the District Court treated her complaint as yet another one filed under Article 125 of the CCrP and again refused to examine it. On 6 July 2011 the Regional Court upheld that decision on appeal.

8. It appears that the criminal case in respect of the alleged tax evasion against Mr S. was terminated by a court in 2012.

COMPLAINTS

9. The applicant complained that the search of her flat without a court order, accompanied by the seizure of her computer's hard drive, was unlawful and violated her right to respect for her private life, home and correspondence under Article 8 of the Convention. She also complained about the lack of an effective remedy in respect of the allegedly unlawful search of her flat as she had been unable to obtain a judicial review of the search.

THE LAW

A. Submissions of the parties

1. The Government

10. The Government submitted as follows. The police carried out an on-site examination of the actual office of company S. on the suspicion of tax evasion. They relied on the record of the on-site examination which had contained no applicant's comments. In particular, the applicant had failed to indicate in the record that the flat in question had been her place of residence or that she had objected to the on-site examination. Further, as

also follows from the record, the flat in question was obviously used as an office by company S.

11. The Government asserted that the same issues had been raised by Mr S. in his complaints in respect of the on-site examination of 23 May 2008. Those complaints had been rejected by the national courts on 29 April 2010 and 16 August 2010 on the grounds that the flat in question had been in fact used as an office rather than as a residential premise. Furthermore, Mr S. also complained about the on-site examination of 23 May 2008 during the criminal proceedings against him. The trial court duly examined that complaint, questioned the applicant and studied the record of the on-site examination. It established that the flat in question had been an office with workplaces equipped with a large number of chairs, various shelves, tables, computers and other office equipment. A number of employees – managers, engineers, an accountant, Mr S. and the applicant herself were present in the office during its examination. The absence of signs of a residential place such as sleeping places, bed linen, household items or clothes demonstrated that the flat was used only as an office. According to the witness statement of the applicant and that of her father, the applicant had not been using that flat as her residence and lived elsewhere. Based on the above the trial court concluded on 21 December 2010 that the flat had not been a residential premise and, thus, the procedure of its on-site examination had been carried out in accordance with law.

12. When the applicant attempted to bring her own complaints in respect of the on-site examination of her flat on the same grounds, the national courts refused to examine her complaints as substantially the same.

13. The Government concluded that there had been no violation of the applicant's rights under Articles 8 and 13 of the Convention.

2. The applicant

14. The applicant submitted that her flat had been registered as a residential premise. Further, the on-site examination record of 23 May 2008 indicated that the flat had contained a kitchen equipped with furniture and a fridge. The applicant, therefore, argued that the flat was used for living purposes. Furthermore, although the record failed to mention it, the flat had a bathroom with a bath, shower, towels, toothpaste, shampoo, laundry detergent, etc.; sofa beds, wardrobes containing bed linen, towels, books, household items, and clothes. The presence of the above items also demonstrated that the flat was used for living purposes. The applicant denied having ever testified that she had lived elsewhere and doubted the veracity of the alleged statement of her father on the same matter. Therefore, the flat was her place of residence and its search without a judicial authorisation was unlawful both under the national law and Article 8 of the Convention. Finally, the applicant submitted that she had

been unable to obtain a judicial review of the search of her flat in breach of Article 13 of the Convention.

B. The Court's assessment

15. In the present case the applicant complained before the national authorities and the Court that the search of her flat had been unlawful because, although that flat had been officially registered as a residential premise, the search of her flat had not been authorised by a judge.

16. The Court reiterates that the notion of a "home" within the meaning of Article 8 of the Convention is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular habitation constitutes a "home" which attracts the protection of Article 8 § 1 of the Convention will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Prokopovich v. Russia*, no. 58255/00, § 36 with further references, ECHR 2004-XI (extracts)). The Court, therefore, considers that being on the register of residential premises does not automatically imply that the flat could be considered as the applicant's home for the purposes of Article 8 of the Convention.

17. As follows from the facts, the search was directed against company S. and concerned its office. According to the Government, the national courts in the criminal proceedings against Mr S. established that the flat in question had been in fact used as an office by company S. rather than by the applicant as her place of residence (see paragraph 11 above).

18. The Court notes that the applicant's submissions indicate that her flat was a residential premise fully equipped for living there. However, the applicant did neither deny that her flat had been company S.'s office, nor did she explain how it was possible for that flat to be used by company S. as its office and, at the same time, to be her actual place of living.

19. In the light of the above and given the particular circumstances of the case, the Court concludes that even though the applicant owned the flat, she failed to demonstrate sufficient and continuous links with that flat at the time of the events for it to be considered her "home" for the purposes of Article 8 of the Convention.

20. If the applicant may be understood to complain about the search of company S.'s office, this complaint is incompatible *ratione personae* with the provisions of the Convention as company S. is not an applicant in the present case.

21. If the applicant may be understood to complain that the search of company S.'s office interfered with her rights under Article 8 of the Convention because police had searched her workplace, computer or personal belongings, the Court observes as follows. The only grounds on which the applicant attempted to challenge the lawfulness of the search of

her flat related to the flat's registration as a residential premise and the legal requirement of a judicial authorisation for searches of such premises. However, (see paragraphs 5 and 7 above) the applicant did not allege an interference with her right to respect for her correspondence or for her private life in either of her complaints, which could have arguably resulted from the search of her work place at the office of company S., her computer or personal belongings.

22. Therefore, the applicant's complaint about the search of her flat from the above perspective is inadmissible due to the failure to raise the issue before the national courts and, therefore, to comply with the requirement to exhaust the available domestic remedies.

23. In view of the above, the Court concludes that the applicant's complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

24. In the absence of an "arguable claim" of a violation of a substantive Convention provision the Court finds that the applicant's complaint under Article 13 of the Convention is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares inadmissible the application.

Done in English and notified in writing on 4 November 2021.

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Olga Chernishova
Deputy Registrar

Peeter Roosma
President