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

THIRD SECTION

DECISION

Application no. 69441/10
Marsel Valiyevich MUSIN
against Russia

The European Court of Human Rights (Third Section), sitting on 14 September 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 2 November 2010,

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

The applicant, Mr Marsel Valiyevich Musin, is a Russian national, who was born in 1945 and lives in Izhevsk, the Udmurtia Republic. He was represented before the Court by Mr A. Semin, a lawyer practising in Izhevsk.

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 M. Vinogradov.

A. The circumstances of the case

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

On 27 January 2010 a Vice Minister of the Interior of the Republic of Udmurtia (the "Vice Minister") ordered to carry out an operational-search activity - an inspection of the applicant's flat.

On 10 February 2010 the police inspected the applicant's flat.

The applicant brought a civil action complaining of the allegedly unlawful search order of 27 January 2010. On 5 March 2010 the Pervomayskiy District Court of Izhevsk (the "District Court") refused to examine the applicant's complaint. It considered that the applicant should have submitted a complaint under Article 125 of the Code of Criminal Procedure ("CCrP") regulating complaints against unlawful decisions and actions of law-enforcement agents.

On 7 April 2010 the Supreme Court of the Republic of Udmurtia ("Supreme Court of Udmurtia") quashed the above decision considering that the applicant had the right to challenge the search order by a civil action under the then Chapter 25 of the Code of Civil Procedure. The Supreme Court of Udmurtia remitted the case for new consideration.

On 6 May 2010 the District Court transferred the case to the Supreme Court of Udmurtia as having competence over the case.

On 4 June 2010 the Supreme Court of Udmurtia terminated the proceedings. The court held that a person may file a civil action to obtain redress of an alleged violation of his or her rights or interests. It then found that the applicant only sought to declare the search order unlawful and did not claim any redress of the alleged violation of his rights.

On 14 July 2010 the Supreme Court of the Russian Federation ("Supreme Court") agreed with the Supreme Court of Udmurtia in that the proceedings should be terminated, but on the other grounds. The Supreme Court considered that the applicant should have filed an action under Article 125 of the CCrP regulating complaints against unlawful actions of law-enforcement agents.

B. Relevant domestic law and practice

Article 125 of the CCrP provides that decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of parties to criminal proceedings are amenable to a judicial review.

The Plenary Supreme Court, in its Ruling no. 1 of 10 February 2009, held that decisions and actions of law-enforcement agents conducting operational-search activities at the request of an investigator could be challenged in accordance with the procedure prescribed by Article 125 of the CCrP.

COMPLAINTS

The applicant complained of an unlawful search of his flat under Article 8 of the Convention and the lack of an effective remedy in respect of the above complaint under Article 13 of the Convention.

THE LAW

The Government submitted that the applicant had failed to exhaust domestic remedies available to him – judicial review under Article 125 of the CCrP. The applicant maintained his complaints.

The Court notes that the applicant chose to contest the search order issued by the Vice Minister on 27 January 2010 by bringing a civil action. Although at least one national court agreed with the applicant that the above search order could be challenged by means of a civil action, the Supreme Court eventually considered that the proper venue was the judicial review under Article 125 of the CCrP.

The Court reiterates the fundamental principle according to which it is for the national authorities, notably the courts, to interpret and apply domestic law. It follows that the Court cannot call into question the findings of the domestic authorities on alleged errors of domestic law unless they are arbitrary or manifestly unreasonable (see, for instance, *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018, with further references).

In the present case the national courts' interpretation of the domestic law and practice that the applicant's complaint about the search had to be brought under Article 125 of the CCrP does not appear arbitrary or manifestly unreasonable. So, Article 125 of the CCrP provides for judicial review of decisions and acts or failures to act by an investigator or a prosecutor, while the Supreme Court's Ruling no. 1 of 10 February 2009 specifies that decisions or actions of law-enforcement agents conducting operational-search activities at the request of an investigator could also be challenged in accordance with the procedure prescribed by Article 125 of the CCrP. Given the courts' power to declare such actions unlawful or unjustified, the Court accepts that Article 125 of the CCrP was a remedy to exhaust (see *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, § 118, 4 February 2020). The applicant did not provide any arguments or evidence to show that his action against the search order of 27 January 2010 under Article 125 of the CCrP had been bound to fail, had been inaccessible to him or otherwise had not met the requirements of an effective remedy.

As the applicant did not attempt to use the judicial review under Article 125 of the CCrP in respect of the search order of 27 January 2010, the Court concludes that the applicant failed to exhaust the domestic remedies available to him and, therefore, his complaint about an alleged

unlawful search must be rejected as inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

As for the applicant's complaint under Article 13 of the Convention, the Court notes that it has established above that the Russian legal system afforded the applicant an effective remedy, which he had failed to use. Accordingly, his complaint under Article 13 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see, for example, as recent authorities, *Yankov v. Bulgaria* (dec.), no. 44768/10, § 34, 18 June 2019, and *Kužmarskienė v. Lithuania* (dec.), no. 54467/12, § 82, 11 July 2017).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Olga Chernishova
Deputy Registrar

Peeter Roosma
President