



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

## FIRST SECTION

Application no. 55382/07  
Yelena Viktorovna AILDERS and others  
against Russia  
lodged on 21 November 2007

### **STATEMENT OF FACTS**

The applicants are three Russian nationals. The first applicant is Yelena Viktorovna Ailders (maiden name Davydova), born in 1971, who lives in Leverkusen, Germany. The second and third applicants are her parents, Galina Pavlovna Zabelina, born in 1943, and Viktor Aleksandrovich Zabelin, born in 1942, who live in Tambov, Russia. The applicants are represented by M. Krylovskiy, a lawyer practicing in Tambov.

#### **A. The circumstances of the case**

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

##### *1. Criminal proceedings against P.Z.*

The applicant's close relative, P.Z., is the first applicant's brother and the son of the second and third applicants. Prior to 2007 he lived in Moscow.

In 2006 P.Z. was charged with large scale swindling. It follows from the documents submitted by the applicants that in 2006 the investigation concluded that some of the funds allegedly criminally appropriated by P.Z. had been transferred to his relatives.

In June 2007 P.Z. was declared fugitive from justice and his name was put by the Russian General Prosecutor's Office on the international search list. In August 2007 P.Z. was granted refugee status in Estonia.

In February 2010 P.Z., *in absentia*, was sentenced to eight years of prison by the Khamovnicheskiy District Court of Moscow for large scale swindling. On 12 April 2010 the Moscow City Court in the final instance confirmed the sentence.

In June 2011 he was sentenced, also *in absentia*, to nine years of prison term by the same court and on similar charges. On 17 August 2011 the Moscow City Court in the final instance confirmed the sentence. The City

Court noted that the question of the arrested property, including that of the applicants, could be resolved in the process of execution of the sentence by the competent court.

### *2. Searches and seizure of the applicants' property and travel passports*

On 7 May 2007 the Basmanny District Court of Moscow decided that some of the documents and other evidence relative to the criminal investigation against P.Z. could be stored by him at his parents' flat in Tambov.

On 10 May 2007 the second and third's applicants' house in Tambov was searched. The investigation collected the second and third applicants' mobile phones, their telephone books, the second applicant's credit card, personal notes and business cards. The investigation also seized the second and the third applicants' travel passports.

On 9 July 2007 the Basmanny District Court of Moscow rejected the second applicant's complaint lodged under Article 125 of the Code of Criminal Procedure. It concluded that the search and seizure of the applicant's property and travel passports had been lawful and well-founded within the criminal proceedings against P.Z.

On 10 October 2007 the Moscow City Court confirmed the decision of 9 July 2007. That court, too, concluded that the actions of the investigators had been lawful and founded within the pending criminal proceedings.

It is unclear for how long the second and third applicants' travel passports remained seized.

### *3. The second applicant's questioning*

On 10 May 2007 the second applicant was questioned as a witness in the criminal case against P.Z. She stated that P.Z. had regularly given the applicants significant sums of money to cover their daily expenses and vacations. He had also given money to purchase the Nissan vehicle and the flats in Tambov. She attested the correctness of the record and signed the caveat explaining that she had been made aware of the right not to testify against herself or her close relatives.

In July 2007 the second applicant complained to the Prosecutor's Office that during the questioning she had not been sufficiently informed of her rights under Article 51 of the Russian Constitution not to testify against herself or her close relatives. In September 2007 the General Prosecutor's Office replied that there were no reasons to suspect the investigator of unlawful actions, as she had signed both the record and the explanation of her rights.

On 18 October 2007 the Basmanny District Court of Moscow rejected the second applicant's complaint. The court, too, noted, that the applicant had been fully informed of her procedural rights as a witness and that no unlawful actions had been taken by the investigator.

The second applicant appealed to the Moscow City Court. On 26 December 2007 the Moscow City Court confirmed the decision of 18 October 2007.

#### *4. Arrest of the applicants' flat*

On 24 May 2007 the Basmanny District Court of Moscow granted the investigator's motion to arrest the second applicant's flat. The court referred to the information submitted by the investigator that P.Z. had been charged with misappropriating over 800,000,000 Russian rubles (RUB) and that part of these funds he had used in 2002 for purchasing the apartment in Tambov where the second and third applicants now lived. The court also took note of the record of the second applicant's questioning of 10 May 2007.

In the case materials the applicants found a letter of 8 May 2007, by which the Tambov Regional Department of the Federal Security Service (the FSB) had informed the investigator in P.Z.'s case that four flats owned by the first applicant and one flat owned by the second applicant in Tambov had been purchased with P.Z.'s money.

The applicants then attempted to obtain more details about whether any operative information has been collected in their respect by the FSB. They pointed out that the Law on the Operative Search Measures had provided that a person, whose guilt has not been established, has the right to obtain the operative information collected in his respect. In August 2007 the Regional Department of the FSB informed each of the three applicants that no criminal proceedings had been opened or closed in respect of them and that, accordingly, that provision was inapplicable.

The applicants appealed the actions of the FSB to the Tambov Regional Court, which on 13 September 2007 refused to consider the complaint on the merits. The applicants were advised to apply to the competent district court.

#### *5. Arrest of the third applicants' car*

On 24 May 2007 the Basmanny District Court of Moscow granted the investigator's motion and arrested Nissan X-Trail vehicle. The court noted the prosecutor's information that the vehicle had been bought by P.Z. using criminally obtained money, and that the third applicant's formal ownership of the vehicle had been used as a means to cover up the embezzlement. The court relied on Article 115 § 2 of the Code of Criminal Procedure which allowed seizure of property held by third persons where there were sufficient reasons to believe that it had been obtained through criminal means.

The third applicant appealed the decision to the Moscow City Court. He stressed that he had been the only legal proprietor of the vehicle, that he had not been charged with any crime, that his ownership has not been put in question and that the civil claim in the criminal proceedings had been brought in respect of P.Z. On 13 August 2007 the Moscow City Court rejected the third applicant's complaint. The City Court concluded that there were sufficient grounds to suspect that the car had indeed been purchased by P.Z. who had been charged with large scale embezzlement and misappropriation of funds.

**B. Relevant domestic law**

Under Article 125 of the Code of Criminal Procedure, decisions of the investigator can be appealed against to the court by persons who are not parties to the criminal proceedings if the decisions at issue affect their rights or legitimate interests.

**COMPLAINTS**

1. The second applicant complains under Article 3 that the level of stress and anguish suffered by her as a result of the questioning on 10 May 2007 had amounted to inhuman and degrading treatment.

2. Under Article 6 the applicants complain of unfair proceedings carried out by the courts upon their complaints.

3. Under Article 1 of Protocol No. 1 to the Convention, the applicants complain about interference with their property – arrest of the second applicant's flat and the third applicant's car, as well as their mobile telephones and personal notes and papers.

4. Referring to Article 2 of Protocol No. 4 to the Convention, the second and third applicants complained about seizure of their travel passports.

### **QUESTIONS TO THE PARTIES**

Was any restriction placed on the second and third applicant's freedom to leave the territory of the respondent State, as guaranteed by Article 2 § 2 of Protocol No. 4, by the seizure of their travel passports? If so, was that restriction in accordance with the law and necessary in terms of Article 2 § 3 of Protocol No. 4?