



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

FIRST SECTION

DECISION

Application no. 12097/05
Vitaliy Sergeyeovich PETROV
against Russia

The European Court of Human Rights (First Section), sitting on 22 October 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 8 March 2005,

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, Mr Vitaliy Sergeyeovich Petrov, is a Russian national who was born in 1948 and lives in Orsk. He is represented before the Court by Mr S. Kiryukhin, a lawyer practising in Orsk, Orenburg region.

2. The Russian Government (“the Government”) are represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

4. On 19 August 2008 the Orenburg Region Department of the Interior opened a criminal investigation of the activities of Volna LLC. Yu., the director of the said company, testified that S. Kiryukhin was *de facto* in charge of the company's activities.

5. The investigator established that Mr Kiryukhin had visited a certain law office on several occasions, and asked the court to authorise a search of its premises in order to seize the company's financial documents and stamps.

6. On 27 August 2004 the Orsk Leninskiy District Court granted the investigator's request. The court order referred to a search of a law office located in a block of flats. Neither the applicant's name nor specific flats owned by him were indicated. The applicant's flats were searched the same day on the basis of the court order.

7. On 7 September 2004 the applicant complained to the court. He sought to have the search declared unlawful.

8. On 4 November 2004 the District Court dismissed the applicant's complaint. The court found that the search had been carried out in accordance with the applicable provisions of the rules of criminal procedure. The applicant appealed, alleging that the court had erred in matters of law.

9. On 14 December 2004 the Orenburg Regional Court upheld the decision of 4 November 2004 on appeal. The court dismissed the applicant's allegations as unsubstantiated and found no violation of any applicable law. The court noted that the search had been subject to prior judicial approval and had been conducted by authorised persons.

10. On 27 April 2009 the Presidium of the Orenburg Regional Court quashed, by way of supervisory review, the decisions of 4 November and 14 December 2004 and remitted the matter for fresh consideration.

11. On 14 May 2009 the District Court allowed the applicant's claim and found the search of the applicant's flats to be in contravention of Article 25 of the Constitution of the Russian Federation. The court established that the order of 27 August 2004 had not authorised a search of the applicant's flats. It also accepted the applicant's argument that police officer A., who had conducted the search of the flats, had not been authorised to do so.

12. On 23 June 2009 the Regional Court upheld the decision of 14 May 2009 on appeal.

B. Relevant domestic law

13. The Constitution of the Russian Federation establishes that the home is inviolable. No one shall enter a dwelling against the will of those living there, unless otherwise established by a federal law or in accordance with a court order (Article 25).

COMPLAINTS

14. The applicant alleged a violation of Article 1 of the Convention.

15. The applicant complained under Article 6 § 1 of the Convention that the proceedings concerning the lawfulness of the search of his home had not been fair.

16. The applicant complained under Article 8 of the Convention that the search of his flats amounted to a violation of his right to respect for his private and family life and home.

17. The applicant complained under Articles 7 § 2 and 8 of the Convention that Mr Kiryukhin, his representative in the proceedings before the Court, had been wrongfully accused of criminal offences that he had not in fact committed.

18. The applicant complained under Article 34 of the Convention that for six months he had been unable to communicate with the Court because Mr Kiryukhin had been placed in custody.

19. The applicant complained under Articles 5 § 1 (c), 7 § 2, 13, 14 and 35 of the Convention that Mr Kiryukhin had been unlawfully deprived of his liberty.

THE LAW

20. The applicant complained that the search of his flats had amounted to a violation of his right to respect for his private and family life and home as provided in Article 8 of the Convention, the relevant part of which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

21. The Government contested that argument. In their opinion, the applicant's rights set out in Article 8 of the Convention had not been infringed, and his complaint should be dismissed as manifestly ill-founded.

22. The applicant maintained his complaint.

23. The Court notes from the outset that the Government have not raised an objection as to whether, in the circumstances of the case, the applicant could still claim to be a victim of the violation alleged. It will examine it of its own motion (see, *mutatis mutandis*, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009).

24. In this connection the Court reiterates that under Article 34 of the Convention it may receive applications from any person claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to an applicant is not, in principle, sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among others, *Burdov v. Russia* (no. 2), no. 33509/04, §§ 54-55, ECHR 2009).

25. As regards the redress which has to be afforded to an applicant in order to remedy a breach of a Convention right at the national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard in particular to the nature of the Convention violation found. In cases in which a violation of the Convention has caused significant pecuniary or non-pecuniary damage to the applicant, the Court has further found it decisive for an applicant’s loss of victim status that the latter has received a payment of compensation which is reasonable as to quantum (compare *Busa v. Hungary*, no. 28453/95, Commission decision of 15 January 1997, Decisions and Reports (DR), in respect of a complaint under Article 3 against excessive use of force by the police; *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006, concerning a breach of the administrative authorities’ positive obligations under Article 2, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI, in respect of a conviction in breach of Article 10).

26. The Court notes that in the present case the domestic courts unequivocally acknowledged that the search of the applicant’s flats conducted by a police officer had been unlawful as contravening Article 25 of the Constitution of the Russian Federation, which provisions reflected the substance of the applicant’s rights under Article 8 of the Convention in respect of his home.

27. The question remains accordingly whether sufficient redress was afforded to the applicant in respect of the breach of his Convention rights.

28. The Court notes that in certain cases, where it has itself found a violation of Article 8 in respect of the right to respect for the inviolability of the home, the Court has held that the finding of a violation constitutes sufficient just satisfaction for the breach (see, for example, *Niemietz v. Germany*, 16 December 1992, §§ 41-43, Series A no. 251-B; *Buck v. Germany*, no. 41604/98, §§ 60-63, ECHR 2005-IV; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, §§ 92-94, ECHR 2010 (extracts); and *Camenzind v. Switzerland*, 16 December 1997, §§ 59-61, *Reports of Judgments and Decisions* 1997-VIII). The practice in other similar cases

has been to award a modest sum in compensation for non-pecuniary damage (see, for example, *Zborowski v. Poland (no. 2)*, no. 45133/06, §§ 46-48, 15 January 2008, and *Sallinen and Others v. Finland*, no. 50882/99, §§ 112-14, 27 September 2005). However, in those cases, unlike the present case, there was no finding by the domestic courts, and no admission on the part of the authorities at the domestic level, that the applicant's Convention rights had been violated or that the search of the applicant's premises was otherwise unlawful.

29. The Court observes that in the instant case the applicant did not complain to the domestic authorities that he had suffered any non-pecuniary damage as a result of the search of his flats. Nor did he argue before the Court that such a complaint would have been to no avail.

30. In view of the above, the Court finds that the acknowledgment of the breach of the applicant's rights afforded the applicant sufficient redress even in the absence of a financial award.

31. It follows that the applicant can no longer claim to be the victim of a violation of his rights under Article 8 within the meaning of Article 34 of the Convention, and that his application must be rejected pursuant to Article 35 § 4.

32. The applicant also complained that the proceedings by which he had challenged the lawfulness of the search of his flats and the arrest and conviction of his representative had been unfair. He referred to Articles 1, 6, and 7 in respect of further irregularities in the investigation and trial and the seizure of his money. He also referred to Articles 5, 6, 8, 13, 14, 34 and 35 of the Convention.

33. However, having regard to all the material in its possession and in so far as the complaints fall within its competence, the Court finds that the complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President