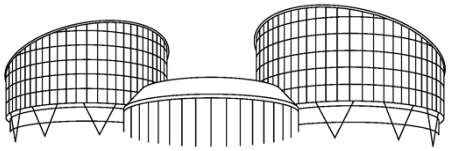

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AVANESYAN v. RUSSIA

(Application no. 41152/06)

JUDGMENT

STRASBOURG

18 September 2014

FINAL

18/12/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Avanesyan v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 26 August 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 41152/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Samvel Georgovich Avanesyan ("the applicant"), on 13 August 2006.

2. The applicant was represented by Mr N. Gasparyan, a lawyer practising in Stavropol Region. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, about an unlawful interference with his right to respect for his home and the absence of an effective remedy for that grievance.

4. On 6 July 2007 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Stavropol Region.

6. On 22 March 2006, following an application by a police chief and without the applicant's knowledge, a judge of the Georgievsk Town Court of Stavropol Region issued a decision authorising the taking of "operational-search measures", which read in its entirety as follows:

"[The court], having examined a decision by the chief of the Georgievsk district police station on the taking of operational-search measures,

FOUND AS FOLLOWS:

It follows from the decision and a memorandum that ... Samvel Avanesyan, residing at ... probably has in his household certain objects and items prohibited from free circulation and [which have also been] criminally acquired.

With a view to finding and seizing them, it is necessary to take operational-search measures. On the basis of Article 25 of the Constitution and section 6(8) of the Operational-Search Activities Act, the court

HOLDS:

That the carrying-out of operational-search activities, that is, an inspection of the premises, buildings, constructions, vehicles and plots of land belonging to Samvel Avanesyan, residing at [the address], is authorised."

7. On the same day two officers from the Georgievsk police station came to the applicant's house at the Budennova Street and "inspected" (*обследовали*) the living quarters.

8. The applicant was away from home on that day. The police showed the authorisation to the applicant's father. He had a heart attack and died before the ambulance arrived.

9. The "inspection record" (*акт о результатах обследования*) indicated that nothing had been found or seized.

10. On 29 March 2006 the applicant complained to the Georgievsk district prosecutor's office, claiming that the police officers had carried out an unlawful search. On 10 April 2006 (or 8 May 2006, according to the Government) an investigator from the prosecutor's office refused to institute criminal proceedings, finding that the officers had acted lawfully and that the death of the applicant's father had been a coincidence. According to the applicant, the existence of the judicial authorisation of 22 March 2006 was for the first time revealed in the investigator's reply.

11. The applicant unsuccessfully attempted to lodge a supervisory-review application against the judicial authorisation of 22 March 2006. He submitted that, contrary to the requirements of the Operational-Search Activities Act, the decision had not mentioned specific grounds for carrying out the "inspection" of his home or spelled out the information on which the suspicion had been founded. He had had no criminal record, no criminal charge had been levelled against him, and he had not been heard as a victim or witness. Furthermore, the scope of the decision had been too vague and imprecise; it had not mentioned what specific items were to be uncovered. The applicant relied on Article 8 of the Convention and the inviolability of his home under the Constitution.

12. On 20 June and 20 October 2006 two judges of the Stavropol Regional Court returned the supervisory-review applications to the applicant. Their covering letters stated that judicial decisions issued in the

framework of the Operational-Search Activities Act were not amenable to supervisory review.

13. The applicant also complained to the Constitutional Court, seeking a declaration of unconstitutionality of section 5 of the Operational-Search Activities Act. On 18 September 2007 the Constitutional Court rejected his complaint, informing him as follows:

> "In its Decision no. 86-O dated 14 July 1998 concerning the compatibility of certain provisions of the Operational-Search Activities Act with the Constitution, the Constitutional Court held that proceedings for judicial examination of the issue of whether an operational-search measure restricting the constitutional rights of an individual should be authorised, are not a trial hearing, not even a preliminary hearing: these proceedings are conducted *ex parte*. The individual concerned is not yet a party to the proceedings and need not be aware of the judicial authorisation. The proceedings are not transparent, public or adversarial; were it otherwise, the taking of covert operational-search measures would become impossible and operational-search activities pointless.
>
> Nevertheless, the absence of the individual concerned from the court session in which the authorisation of operational-search measures restricting the constitutional rights and freedoms is being decided upon does not dispense the court from the obligation to undertake a comprehensive examination of the grounds and conditions for such a measure. The judicial decision must be reasoned and it must refer to specific facts that confirm the indications of a serious or particularly serious crime or act that is being planned or executed or that has been committed.
>
> It follows from section 5 of the Operational-Search Activities Act that an individual who becomes aware that operational-search activities are being carried out against him on the basis of a judicial authorisation and who considers that his rights and lawful interests have been injured thereby may apply to a court for the protection of his rights in accordance with the established jurisdictional and procedural requirements.
>
> These findings by the Constitutional Court have been applicable to date.
>
> However, the Constitutional Court is not competent to verify the way in which the law-enforcement authorities interpreted and applied a specific legal act."

II. RELEVANT DOMESTIC LAW

A. Operational-Search Activities Act (no. 144-FZ of 12 August 1995)

14. The Operational-Search Activities Act provided as follows at the material time:

Section 1: Operational-search activities

> "An operational-search activity is a form of overt or covert activity carried out by operational divisions of State agencies authorised by this Act (hereinafter 'agencies performing operational-search activities') within the scope of their powers, with a view to protecting the life, health, rights and freedoms of individuals and citizens or property and protecting the public and the State against criminal offences."

Section 2: Aims of operational-search activities

"The aims of operational-search activities are:

– to detect, prevent, intercept and investigate criminal offences as well as search for and identify those responsible for planning or committing them;

..."

Section 5: Protection of human rights and citizens' freedoms during operational-search activities

"...

A person who considers that an agency conducting operational-search activities has acted in breach of his or her rights and freedoms may challenge the actions of that agency before a higher-ranking agency performing operational-search activities, a prosecutor's office or a court.

..."

Section 6: Operational-search measures

"In carrying out investigations the following measures may be taken:

...

8. inspection of premises, buildings, constructions, plots of land and vehicles ..."

Section 8: Conditions governing the performance of operational-search activities

"Operational-search activities involving interference with the constitutional right to ... privacy of the home, may be conducted, subject to a judicial authorisation, following the receipt of information concerning:

1. indications that a criminal offence is being planned, is being committed or has been committed, provided that a preliminary investigation is mandatory;

2. persons who are conspiring to commit, or are committing or have committed an offence, provided that a preliminary investigation is mandatory ..."

Section 9: Grounds and procedure for judicial authorisation of operational-search activities involving interference with the constitutional rights of individuals

"The examination of requests for the taking of measures involving interference with the constitutional right to ... privacy of the home, shall fall within the competence of a court at the place where the requested measure is to be carried out or at the place where the requesting agency is located.

The request must be examined immediately by a single judge; the examination of the request may not be refused.

The judge shall decide to authorise the operational-search measures involving interference with the constitutional rights of individuals ... on the basis of a reasoned decision by the chief of an operational-search agency ...

...

Upon consideration of the materials, the judge shall decide either to authorise the operational-search measures ... or to refuse authorisation, and issue a reasoned

decision to that effect. A seal shall be affixed to the decision, which is handed over to the requesting agency together with the supporting materials it provided to the judge.

If the judge refuses authorisation ... the requesting agency may raise the same request before a higher court ...”

Section 12: Protection of the information concerning operational-search agencies

“...

[3] A judicial decision authorising operational-search activities and the materials that served as a basis for that decision must be held in the exclusive possession of the agency performing the operational-search activities ...”

B. Civil Procedure Code

15. The relevant provisions of the Civil Procedure Code read as follows:

Article 22: Jurisdiction over civil claims

“1. Courts shall consider and decide upon:

...

(3) claims arising out of public law, as listed in Article 245 of the Code ...”

Article 245: Public-law claims

“Courts shall consider public-law claims:

- on an application by individuals, organisations and prosecutors who challenge normative legal acts in their entirety or in part ...

- on an application concerning challenges to actions (or failures to act) of State and municipal authorities or their officials ...”

Article 248: Refusal to consider the application or discontinuation of proceedings on a public-law claim

“The judge shall refuse to consider the application or discontinue the proceedings on a public-law claim if a judicial decision exists concerning the same matter that has come into legal force ...”

C. Case-law of the Constitutional Court

16. On 14 July 1998 the Constitutional Court, in its decision no. 86-O, declared inadmissible a request for a review of the constitutionality of certain provisions of the Operational-Search Activities Act. It held, in particular, that a judge was to authorise investigative measures involving an interference with constitutional rights only if he was persuaded that such measures were lawful, necessary and justified, that is, compatible with all the requirements of the Operational-Search Activities Act. The burden of proof was on the requesting State agency to show the necessity of the

measures. Supporting materials were to be produced to the judge at his request. It further held as follows:

> "The provisions of paragraph 3 of section 12, according to which a judicial decision authorising operational-search activities and the materials that served as a basis for that decision must be held in the exclusive possession of the agency performing the operational-search activities, does not violate the rights and freedoms of the claimant, including her right to judicial review and protection. The judicial authorisation is not amenable to an appeal at the stage by the individual affected because of the covert nature of operational-search measures. If a person has become aware of [such] measures [being taken against him], he has the right – in accordance with section 5 of the Act – to challenge the actions of the agency performing operational-search activities, the justification for opening an operative investigation file and the taking of operational-search measures, including those that require a judicial authorisation ..."

17. On 8 February 2007 the Constitutional Court, in its decision no. 1-O, declared inadmissible a request for a review of the constitutionality of section 9 of the Operational-Search Activities Act. The Court found that before giving authorisation to take operational-search measures the judge had an obligation to verify the grounds for that measure. The judicial decision authorising operational-search measures was to contain reasons and refer to specific grounds for suspecting that a criminal offence was being planned, was being committed or had been committed or that activities endangering national, military, economic or ecological security were being carried out, and that the person in respect of whom operational-search measures were requested was involved in those criminal or otherwise dangerous activities.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION

18. The applicant complained that his home had been searched in breach of Article 8 of the Convention and that he did not have an effective remedy required under Article 13 of the Convention. The provisions relied on read, in their relevant parts, as follows:

Article 8

> "1. Everyone has the right to respect for 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."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

19. The Government submitted at the outset that the application was belated. The application form was dated 15 November 2006 and the Registry of the Court received it on 7 December 2006. In their view, the application should have been lodged before 8 November 2006 in order to comply with the six-month time-limit.

20. The Court reiterates that, in accordance with its established practice and Rule 47 § 5 of the Rules of Court, as in force at the relevant time, it normally considered the date of the introduction of an application to be the date of the "first communication" indicating an intention to lodge an application and giving some indication of the nature of the application. Such first communication would in principle have interrupted the running of the six-month time-limit (see *Yartsev v. Russia* (dec.), no. 13776/11, 26 March 2013, and *Kemevuako v. the Netherlands* (dec.), no. 65938/09, § 19, 1 June 2010).

21. By letter of 13 August 2006 postmarked on the following day, the applicant stated his intention to complain about the search of his residence and provided a summary of the relevant facts and complaints. That letter of intention was sufficient to interrupt the running of the six-month time-limit which – on assumption that the applicant did not have an effective remedy for his complaint under Article 8 – must be taken to have begun on 22 March 2006, the day the search was carried out. It follows that the application is not belated and the Government's objection to that effect must be rejected.

22. The Government further submitted that the applicant had not exhausted the domestic remedies since he had not challenged the investigator's decision refusing to institute criminal proceedings against the police, before a supervising prosecutor or a court.

23. The Court notes that it cannot examine the Government's objection as to the non-exhaustion of the domestic remedies without addressing the substance of the applicant's complaint under Article 13. It follows that this objection by the Government should be joined to the merits.

24. The Court therefore considers that the complaints under Articles 8 and 13 of the Convention raise serious issues of fact and law under the Convention the determination of which requires an examination of the merits. They must therefore be declared admissible.

B. Merits

1. Compliance with Article 13 of the Convention

25. The Government submitted that a person who discovered that Operational-Search Activities were being carried out in his respect and who considered that his rights had been injured had the right to seek the judicial protection of his rights in accordance with Articles 22 and 245 of the Civil Procedure Code. The Government claimed that section 12(3) of the Operational-Search Activities Act, according to which the judicial authorisation and the materials on which it was based were to be retained by the operational-search authorities, did not restrict the applicant's right to judicial protection because that decision was not amenable to judicial review owing to the covert nature of the operational-search activities in question. In the circumstances of the present case, the applicant should have applied to the prosecutor's office or a court with a complaint about the actions of the police officers who carried out the search.

26. The applicant pointed out that under the Operational-Search Activities Act only the actions of the officers carrying out the operational-search activities, but not the judicial authorisation for those measures, were amenable to judicial review. The avenue suggested by the Government, that is, a public-law complaint in civil proceedings, would not be an effective remedy because such proceedings would not have any bearing on the validity of the judicial decision of 22 March 2006, which authorised an unlawful search at the applicant's home. For as long as the decision of 22 March 2006 remained in force, it would be futile to seek a declaration of unlawfulness of the search. In so far as section 5 of the Operational-Search Activities Act provides that an appeal against the actions of the police lay to the same District Court as that which issued the authorisation, it essentially required another judge of the same level of jurisdiction to give legal assessment to a valid decision of his or her fellow judge. Such an assessment would be unavoidable since the police would base a justification of the search on the judicial authorisation which allowed them to proceed as they did. In these circumstances, the procedure under section 5 of the Operational-Search Activities Act would be a mere formality and would not meet the criteria of an effective remedy. The applicant pointed out that the Russian courts at two levels of jurisdiction replied to him that the decision of 22 March 2006 was not amenable to judicial review. His application to the Constitutional Court was likewise fruitless. Lastly, the applicant emphasised that the existing legislation allowed the courts to authorise operational-search activities in respect of any person and on any grounds, without incurring a risk that the authorisation would later be quashed or set aside by a higher court.

27. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention is based on the assumption –

reflected in Article 13 of the Convention, with which it has close affinity – that an individual who has an arguable claim to be the victim of a violation of the rights set forth in the Convention should have an "effective" remedy before a national authority in order to deal with the substance of his Convention grievance and, if appropriate, to obtain redress. The "effectiveness" of a remedy does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy must be effective in practice as well as in law in the sense of being accessible, offering reasonable prospects of success and being capable of either preventing the alleged violation or its continuation or providing adequate redress for any violation that has already occurred. The burden is on the Government claiming non-exhaustion to satisfy the Court that the remedy was an "effective" one (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 93-96, 10 January 2012, with further references).

28. In the light of the fact that the police searched the applicant's home allegedly without proper justification, the Court considers that the applicant has an "arguable claim" to be the victim of a violation of his right to respect for his home under Article 8 of the Convention (see *Diallo v. the Czech Republic*, no. 20493/07, § 64, 23 June 2011, with further references). Accordingly, Article 13 requires that he should have a domestic remedy before a national authority in order both to have his claim decided and to be granted appropriate relief.

29. The Court accepts that in the specific context of covert operations there may be good reasons to issue a warrant in an *ex parte* procedure so as to avoid giving forewarning of a proposed search. In that case the notion of an effective remedy does not necessarily presuppose the possibility of challenging the issuing of the warrant prior to conducting the search (see *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 59, 22 May 2008, and *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII). However, once the search has been carried out or the person concerned has become otherwise aware of the existence of the warrant, there must exist a procedure whereby the person can impeach the legal and factual grounds of the warrant and obtain redress in the event that the search was unlawfully ordered or executed (see *Iliya Stefanov*, cited above, § 59).

30. The Court notes that a judicial decision authorising operational-search measures is not amenable to review by a higher court. The Operational-Search Activities Act does not provide for a possibility to file an appeal against that decision even after the need to keep it secret has ceased to exist either because the search has already been performed or because the concerned individual has come to know of its existence. The applicant's attempts to challenge the decision before the Regional Court proved to be futile; his applications to that effect were rejected by reference to the provisions of the Operational-Search Activities Act (see paragraph 12 above).

31. Section 5 of the Operational-Search Activities Act provides that an individual whose rights have been interfered with on account of operational-search measures against him has the right to complain about the actions of the agency taking such measures to a higher-ranking agency, a prosecutor or a court. However, such a review would only touch upon the actions of the State officials, that is, the question whether or not they carried out the search in a manner compatible with the applicable legal requirements and whether they abided by the terms of the judicial authorisation. The issues that are at the heart of the applicant's grievances, notably the existence of relevant and sufficient reasons for giving that judicial authorisation and its compatibility with the legal requirements, will be left outside the scope of the review.

32. The Court further reiterates that a hierarchical appeal to a direct supervisor of the authority whose actions are being challenged does not meet the requisite standards of independence needed to constitute sufficient protection against the abuse of authority. Nor is a complaint to a prosecutor an effective remedy because it does not give the person using it a personal right to the exercise by the State of its supervisory powers (see *Ananyev and Others*, cited above, §§ 100-104, with further references, and *Panteleyenko v. Ukraine*, no. 11901/02, § 80, 29 June 2006). Most importantly, neither the higher-ranking agency nor prosecutors are empowered to give an opinion on the lawfulness of, and justification for, the judicial decision authorising operational-search measures.

33. Inasmuch as section 5 refers to the possibility of bringing a complaint to a court, the Court notes that, in the light of the Government's clarification on the applicable jurisdictional and procedural rules, such a complaint would be examined in civil proceedings as a public-law claim under the Code of Civil Procedure. Both section 5 of the Operational-Search Activities Act and Article 245 of the Code of Civil Procedure provide for judicial review of the actions of State officials, that is, the way in which they acted while opening an operative file against the individual concerned and took operational-search measures (see the Constitutional Court's decision of 14 July 1998, cited in paragraph 16 above). Such review does not touch upon the validity of the underlying judicial authorisation of such measures. Pursuant to paragraph 3 of section 12 of the Operational-Search Activities Act, the authorisation was to remain in the exclusive possession of the agency performing the operational-search measure. The Court is also sensitive to the applicant's argument that a judge of the same level of jurisdiction in civil proceedings can neither review the substance of a judicial act which has not been appealed against, nor set it aside. In those proceedings, the domestic courts are not capable of providing a remedy because it is not open to them to deal with the substance of the Convention complaint that the interference with the applicant's right to respect for his home was not "in accordance with the law"; still less is it open to them to

grant appropriate relief in connection with the complaint (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 86, ECHR 2001-IX).

34. Finally, there remains the Government's argument that the applicant should have appealed against the investigator's decision to discontinue criminal proceedings against the police officers who had carried out the search. The Court reiterates that the notion of an effective remedy does not go as far as calling for the opening of criminal proceedings against the persons who had performed the search. Moreover, the prosecution of police officers, even if successful, was possible only in respect of their own actions and could not have led to a substantive review of the lawfulness of the judicial authorisation for the search (see *Golovan v. Ukraine,* no. 41716/06, § 72, 5 July 2012, and *Peev v. Bulgaria*, no. 64209/01, § 70, 26 July 2007).

35. The Government did not point to any other avenue of redress which the applicant could have used to vindicate his right to respect for his home. They have thus failed to show that any effective remedies existed in respect of the unlawful search in issue.

36. Having regard to the above considerations, the Court rejects the Government's objection as to the alleged non-exhaustion of the domestic remedy and finds that the applicant did not dispose of an effective remedy required by Article 13 of the Convention. There has therefore been a violation of that provision, read in conjunction with Article 8 of the Convention.

2. Compliance with Article 8 of the Convention

37. The Government submitted that an interference with the applicant's right to respect for his home did occur but was justified in the light of paragraph 2 of Article 8. The interference was based on section 7(2)(1) of the Operational-Search Activities Act and pursued the legitimate aim of uncovering and removing weapons, narcotics, prohibited and criminally acquired objects.

38. The applicant pointed out that a judicial authorisation for a search of his home could be issued only on the basis of operative information indicating that he was unlawfully keeping narcotics, weapons, ammunition or prohibited objects at his residence. In the applicant's opinion, no such information had existed because he had never been suspected of, or tried for, any criminal offence, he had not been heard as an injured party or a witness in any criminal proceedings, he was not a drug user and he had never acquired or kept any prohibited items. The judicial authorisation was based on suppositions ("... *probably* has ...") and did not specify what prohibited or criminally acquired objects could be found at the applicant's residence or whether such objects were narcotics, psychotropic substances, weapons, ammunition, explosives, and so on. The lack of specific arguments and details in the judicial authorisation suggested that there were no grounds for carrying out a search of the applicant's home. In breach of

section 9 of the Operational-Search Activities Act, the authorisation had not been reasoned; a reference to the memorandum was not sufficient to justify the interference, since the judge did not verify the information contained in the memorandum.

39. The Court notes that on 22 March 2006 two police officers "inspected" the living quarters of the applicant's house. This "inspection" being no different in its manner of execution and its practical effects from a search, the Court finds that it amounts, regardless of its characterisation under domestic law, to an interference with the applicant's right to respect for his home (see *Belousov v. Ukraine,* no. 4494/07, § 103, 7 November 2013). The parties did not dispute that. Such an interference gives rise to a breach of Article 8 unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to achieve those aims.

40. The parties disagreed as to whether the interference was prescribed by law and, in particular, whether the decision by the Georgievsk Town Court had been duly reasoned, as required by section 9 of the Operational-Search Activities Act. However, the Court may dispense with ruling on this point because, to the extent that the lawfulness issues are relevant to the assessment of the proportionality of the interference, they will be addressed below.

41. Having regard to the declared purpose of the search, which was stated to be the discovery of prohibited and criminally acquired objects, the Court is prepared to assume that the impugned measure pursued the legitimate aim of the prevention of disorder or crime.

42. As regards the proportionality requirement, the criteria the Court has taken into consideration in determining whether it was met include, but are not limited to, the severity of the offence in connection with which the search was effected, the manner and circumstances in which the order was issued, in particular whether the warrant was based on a reasonable suspicion, and the content and scope of the order, having particular regard to the nature of the premises searched and the safeguards taken in order to confine the impact of the measure to reasonable bounds (see *Iliya Stefanov*, cited above, § 38, and *Buck v. Germany*, no. 41604/98, §§ 44-45, ECHR 2005-IV).

43. The Court notes that in the present case the search of the applicant's home was conducted under a warrant issued by the Town Court. The Court does not consider that the fact that the warrant was obtained in an *ex parte* procedure was problematic in itself. However, the mere fact that an application for a warrant has been subject to initial judicial scrutiny will not in itself necessarily amount to a sufficient safeguard against abuse (see *Gerashchenko v. Ukraine*, no. 20602/05, § 130, 7 November 2013; *Iliya Stefanov*, cited above, § 39; and *Tamosius* (dec.), cited above). The Court

must rather examine the particular circumstances and evaluate whether the legal framework and the limits on the powers exercised were an adequate protection against arbitrary interference by the authorities. In previous Russian cases it was the vagueness and excessively broad terms of search warrants giving the authority executing them unrestricted discretion in determining the scope of the search that were considered to be the decisive element for the finding of a violation of Article 8 (see *Kolesnichenko v. Russia*, no. 19856/04, § 33, 9 April 2009; *Aleksanyan v. Russia*, no. 46468/06, § 216, 22 December 2008; and *Smirnov v. Russia*, no. 71362/01, § 47, 7 June 2007).

44. The failure to delineate the scope of the search and a lack of any safeguards which would confine the impact of the measure to reasonable bounds were particularly salient in the instant case. The judicial authorisation of 22 March 2006 did not refer to any pending proceedings or identify the offence or offences the applicant was suspected of, any reasons for raising such a suspicion or any evidence capable of corroborating it. This was in breach of the requirements of section 8 of the Operational-Search Activities Act, which established that operational-search measures interfering with an individual's right to respect for his home could only be taken if there was information about a criminal offence or its perpetrators. Furthermore, the judge did not specify what objects or items "prohibited from free circulation or criminally acquired" might be located at the applicant's house and what facts allowed him to reach the conclusion that the applicant was in possession of any such objects. Finally, the decision did not contain any information about the purpose of the search or the reasons why it was believed that a search of the applicant's house would enable evidence of an offence to be obtained. In sum, the Court finds that the decision of 22 March 2006 did not state any reasons for the interference with the applicant's right to respect for his home which it could describe as "relevant" and still less as "sufficient". That decision, which was moreover not amenable to further review, did not impose any meaningful limits on the power exercised by the police and was too lax and full of loopholes for the interference with the applicant's right to have been proportionate to the legitimate aim pursued (see *Smirnov*, cited above, §§ 45-47).

45. There has therefore been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Lastly, the applicant alleged a violation of Article 2 of the Convention on account of his father's death during the search. He also raised complaints under Articles 6 § 1 and 17 of the Convention.

47. The Court observes that, although the emotional anguish and stress provoked by the sudden appearance of the police on his doorstep may have precipitated the death of the applicant's father, it has not been claimed that

its cause was other than natural. His death was an unforeseen contingency. The complaint under Article 2 is therefore incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 4.

48. The Court also examined the other complaints submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government submitted that the claim was "inadmissible and unlawful".

52. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of his claim.

B. Costs and expenses

53. The applicant did not claim any costs and expenses.

C. Default interest

54. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the Government's objection as to the alleged non-exhaustion of domestic remedies, and *rejects* it;

2. *Declares* the complaints concerning the search and the absence of an effective remedy admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 13 of the Convention, taken in conjunction with Article 8;

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President