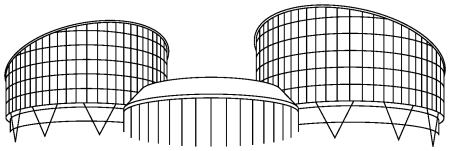

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YUDITSKAYA AND OTHERS v. RUSSIA

(Application no. 5678/06)

JUDGMENT

STRASBOURG

12 February 2015

FINAL

12/05/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Yuditskaya and Others v. Russia,

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

Isabelle Berro, *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 20 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 5678/06) 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 five Russian nationals, Ms Dina Yakovlevna Yuditskaya, Ms Natalya Vladimirovna Yuditskaya, Mr Aleksandr Viktorovich Kichev, Ms Yelena Robertovna Lavrentyeva and Mr Valeriy Valeryevich Frolovich ("the applicants"), on 22 December 2005.

2. 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 applicants alleged, in particular, that there had been no grounds for conducting a search of the premises of their law firm and seizing their computers.

4. On 16 March 2007 the application was communicated to the Government.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant, Ms Dina Yakovlevna Yuditskaya, was born in 1950. The second applicant, Ms Natalya Vladimirovna Yuditskaya, was born in 1979. The third applicant, Mr Aleksandr Viktorovich Kichev, was born in 1966. The fourth applicant, Ms Yelena Robertovna Lavrentyeva, was born in 1958. The fifth applicant, Mr Valeriy Valeryevich Frolovich, was born in 1966. They live in Perm.

7. The applicants are members of the Perm Bar. They are lawyers with the "Biznes i Pravo" law firm. At the relevant time, the firm's premises comprised a reception area, five offices and a conference room. The first and second applicant shared an office. The fourth applicant and lawyer P. each had an individual office. The third and fifth applicants shared an office with lawyer I.T. Each lawyer had his or her own computer. There was also one more computer shared by all lawyers.

8. On 1 December 2004 a criminal investigation was opened into bribe-taking by court bailiffs. One of the charges involved Kirov Perm Factory (the "Factory"), a State unitary enterprise, and bailiff T. According to the Government, in January 2005 the Factory's director K. had paid 300,000 roubles (RUB) to a bailiff as a bribe. The actual bagman for the bribe cash had been bailiff T. In order to legalise "the transaction", T. had asked his brother I.T. to sign a fictitious legal assistance contract with the Factory.

9. On 7 February 2005 I.T. signed a legal assistance contract with the Factory in respect of legal advice on tax and other matters.

10. According to the Government, on an unspecified date the investigator questioned K. and T. Both of them admitted to having been involved in the bribery scheme.

11. On 6 May 2005 the Leninskiy District Court of Perm issued a search warrant authorising a search of the premises of the "Biznes i Pravo" law firm. The entire reasoning read as follows:

> "On 1 December 2004 a criminal case was opened into [aggravated bribery] against Perm Regional Court bailiffs' service no. 48. The investigation established that the State unitary enterprise Kirov Perm Factory and the 'Biznes i Pravo' law firm had entered into a fictitious contract in order to cover up the bribery. The investigator is seeking authorisation for a search of the premises of the 'Biznes i Pravo' law firm with a view to seizing documents that may be relevant to the case.
>
> [The court] considers that the investigator's request is justified and must be granted because there are reasons to believe that documents of the 'Biznes i Pravo' law firm may contain evidence relevant to the criminal case."

12. On 16 May 2005 the investigator conducted a search of the applicants' premises. The applicants and two attesting lay witnesses were present during the search.

13. According to the applicants, they voluntarily handed over the documents sought by the investigators; nevertheless, all the offices, including those of the applicants who had no relationship with the Factory, were searched. The investigators took away all the desktop and laptop computers and copied the entire contents of their hard disks. The computers were returned one week later.

14. The applicants appealed against the District Court's decision of 6 May 2005. They submitted that the contract with the Kirov Perm Factory had been signed by I.T. in his personal capacity as a lawyer rather than by the "Biznes i Pravo" law firm and that there had been no grounds to search the entire premises of the law firm. Moreover, the District Court had declared that contract to be fictitious even before a judgment had been handed down. The information held on their computers had been protected by the attorney-client privilege and the search and seizure had amounted to a gross violation of the Advocates Act.

15. On 23 June 2005 the Perm Regional Court dismissed the applicants' appeal, finding that the search warrant had been lawful and justified. In the Regional Court's view, the District Court had not found that the contract was fictitious but had merely mentioned that the opinion of the investigation was that it had been fictitious.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The Code of Criminal Procedure of the Russian Federation (the CCP") provides that a search may be carried out if there are sufficient grounds for believing that instruments of a crime, or objects, documents or valuables having relevance to a criminal case might be found in a specific place or on a specific person (Article 182 § 1).

17. A search of the residential and professional premises of an advocate must be authorised by a judicial decision. The information, objects and documents obtained during the search may be used in evidence only if they are not covered by attorney-client privilege in a given criminal case (section 8 § 3 of the Advocates Act, Law no. 63-FZ of 31 May 2002).

18. When interpreting the applicable provisions of the CCP and the Advocates Act, the Constitutional Court of the Russian Federation stated that the judicial decision authorising the search of an advocate's premises should specify the scope of the search and the reasons for its conduct in order to prevent information concerning clients of the advocate's who are not subject to the criminal prosecution being collected by the investigating authorities during the search (Decision No. 439-O of the Constitutional Court of the Russian Federation of 8 November 2005).

19. Prior to starting the search, the investigator advises of the opportunity to surrender voluntarily objects, documents or valuables which are of relevance to the criminal case. If such objects have been handed over voluntarily, the investigator may decide not to proceed with the search (Article 182 § 5 of the CCP).

20. With the permission of the investigator, the counsel and/or advocate(s) of the person in whose premises the search is being carried out may be present during the search (Article 182 § 11 of the CCP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

21. The applicants complained that the search conducted in their offices and the seizure of their computers containing privileged information amounted to a violation of their rights set out in Articles 6 and 8 of the Convention. The Court will examine the application under Article 8, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life, his home and his correspondence.
>
> 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."

22. The Government contested that argument. They considered the applicants' complaint inadmissible. In their opinion, the search had been in compliance with national legislation and had not infringed the applicants' rights set out in the Convention. The investigating authorities had conducted a search within the framework of the criminal proceedings. They had obtained the judicial approval for it in accordance with the procedure prescribed by law. The purpose of the search had been to obtain documents necessary for the examination of the criminal case. In the course of the search, the investigator had seized a certain number of documents relating to financial operations between I.T. and the Factory. He had also seized the computers and consolidated the information stored there on a separate hard drive, as requested by the applicants. The computers had been returned to the applicants and the hard drive had subsequently been destroyed. The information contained on the applicants' computers had not been used in contravention of the applicable legislation protecting attorney-client privilege.

23. The applicants submitted that their complaint raised serious issues of law and fact and should be considered admissible. They further argued that the search conducted in the offices had fallen short of the standards set out in Article 8 of the Convention. The judicial decision authorising the search had not specified in detail the scope of the search or the measures aimed at excluding information concerning other clients of the firm from that scope. In their view, the real purpose of the search had been to collect information on local politicians and businessmen who were amongst the firm's clients. Lastly, they denied the Government's allegation that they had asked the investigator to transfer the information stored in the computers onto a hard drive.

A. Admissibility

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

The Court's assessment

(a) Whether there was an interference

25. It is not disputed between the parties that the measures complained of interfered with the applicants' rights under Article 8 of the Convention. The Court sees no reason to hold otherwise. It considered it established that the search of the applicants' legal offices and the seizure of their computers constituted an interference with their right to respect for "private life", "home" and "correspondence" (see, among other authorities, *Niemietz v. Germany*, 16 December 1992, §§ 29-32, Series A no. 251-B; and *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, §§ 43-45, ECHR 2007-IV).

(b) Whether the interference was justified

26. The Court further notes that the search was authorised by a judicial decision and purported to uncover evidence in a criminal case. Accordingly, it is prepared to accept the Government's argument that the search was lawful in domestic terms and pursued the legitimate aim of the prevention of crime. It remains to be ascertained, accordingly, whether the impugned measures were "necessary in a democratic society", in other words, whether the relationship between the aim sought to be achieved and the means

employed can be considered proportionate (see *Robathin v. Austria*, no. 30457/06, § 43, 3 July 2012).

27. The Court has repeatedly held that persecution and harassment of members of the legal profession strikes at the very heart of the Convention system. Therefore the searching of lawyers' premises should be subject to especially strict scrutiny *(*see *Elci and Others* v. *Turkey,* nos. 23145/93 and 25091/94, § 669, 13 November 2003). To determine whether these measures were "necessary in a democratic society", the Court has to explore the availability of effective safeguards against abuse or arbitrariness under domestic law and to check how those safeguards operated in the specific case under examination. Elements taken into consideration in this regard are the severity of the offence in connection with which the search and seizure have been effected, whether they were carried out pursuant to a warrant issued by a judge or a judicial officer (or subjected to after-the-fact judicial scrutiny), whether the warrant was based on reasonable suspicion and whether its scope was reasonably limited. The Court must also review the manner in which the search was executed, and – where a lawyer's office is concerned – whether it was carried out in the presence of an independent observer to ensure that material subject to legal professional privilege was not removed. The Court must finally take into account the extent of the possible repercussions on the work and the reputation of the persons affected by the search (see, among other authorities, *Kolesnichenko v. Russia*, no. 19856/04, § 31, 9 April 2009).

28. Turning to the present case, the Court observes that the search warrant of 6 May 2005 was issued by the District Court upon an application by the investigator in the context of criminal proceedings against a number of persons on charges of aggravated bribery. However, the Court is mindful of the fact that – as argued by the applicants, and not contested by the Government – only lawyer I.T. had been suspected of being an accessory to the crime. The applicants were not the subjects of any criminal investigation. Nevertheless, the District Court stated that the law firm had been one of the signatories to the fictitious contract and authorised the search of the firm's entire premises. Having regard to the above, the Court cannot accept that the search warrant was based on reasonable suspicion.

29. The Court also considers that the search warrant was couched in very broad terms, giving the investigators unrestricted discretion in the conduct of the search. It did not explain why it would not be sufficient to search only the office and the computer used by I.T. Moreover, in issuing the warrant the judge did not touch upon the issue of whether privileged material was to be safeguarded, although he was aware that the applicants were bar members and possessed documents covered by attorney-client privilege. According to the Court's case-law, search warrants have to be drafted, as far as practicable, in a manner calculated to keep their impact within reasonable bounds (see *Iliya Stefanov v. Bulgaria*, no. 65755/01,

§ 41, 22 May 2008; and *Van Rossem v. Belgium*, no. 41872/98, § 45, 9 December 2004). This requirement was manifestly disregarded in the present case.

30. The Court further observes that the warrant's excessive breadth was reflected in the way in which it was executed. The investigator seized all the applicants' computers. The Court notes that during the search no safeguard was in place to prevent interference with professional secrecy, such as, for example, a prohibition on removing documents covered by attorney-client privilege or supervision of the search by an independent observer capable of identifying, independently of the investigation team, which documents were covered by such privilege (see *Sallinen and Others v. Finland*, no. 50882/99, § 89, 27 September 2005; and *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII). The presence of two attesting witnesses obviously could not be considered a sufficient safeguard, given that they were laymen without any legal qualifications and therefore unable to identify privileged material (see *Iliya Stefanov*, cited above, § 43). Moreover, as regards the electronic data held on the applicants' computers which were seized by the investigator, it does not seem that any sort of sifting procedure was followed during the search (see *Wieser and Bicos Beteiligungen GmbH*, cited above, § 63).

31. Having regard to the materials that were inspected and seized, the Court finds that the search impinged on professional secrecy to an extent that was disproportionate to the legitimate aim being pursued. The Court reiterates in this connection that, where a lawyer is involved, an encroachment upon professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 of the Convention (see *Smirnov v. Russia*, no. 71362/01, § 48, 7 June 2007; and *Niemietz*, § 37, cited above).

32. In sum, the Court considers that the search carried out in the absence of a reasonable suspicion or any safeguards against interference with professional secrecy at the applicants' legal offices and the seizure of their computers went beyond what was "necessary in a democratic society" to achieve the legitimate aim pursued. There has therefore been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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."

34. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 12 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro
Registrar	President