



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

THIRD SECTION

**CASE OF KRUGLOV AND OTHERS v. RUSSIA**

*(Applications nos. 11264/04 and 15 others – see appended list)*

JUDGMENT

Art 8 • Respect for home and correspondence • Search of lawyers' homes and offices and seizure of electronic devices • Courts' failure to assess necessity and proportionality of investigating authorities' actions • Domestic law lacking procedural safeguards to prevent interference with professional secrecy • Total lack of safeguards to protect professional confidentiality of legal advisers who are not members of a Bar  
Art 1 P 1 • Control of the use of property • Unjustified lengthy retention of seized data-storage electronic devices

STRASBOURG

4 February 2020

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Kruglov and Others v. Russia,**

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

Paul Lemmens, *President*,  
Paulo Pinto de Albuquerque,

Dmitry Dedov,  
Alena Poláčková,

María Elósegui,  
Gilberto Felici,

Lorraine Schembri Orland, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 14 January 2020,

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

**PROCEDURE**

1. The case originated in sixteen applications (nos. 11264/04 and fifteen others) 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 twenty-five Russian nationals. A list of the applicants, their representatives and their personal details is set out in the Appendix.

2. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants complained of searches in their premises and seizure and continued retention of data-storage devices. They also complained of the absence of effective remedies for those complaints.

4. Between 11 February 2008 and 9 February 2017 the Government were given notice of above complaints. The remaining complaints in applications nos. 60648/08, 14244/11, 18403/13 and 29786/15 were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE****A. Summary**

5. The applicants are practising lawyers (with the exception of Mr Sokolov, Mr Burykin and Mr Makovoz, who are clients of Ms Belinskaya, a lawyer, application no. 14244/11). With the exception of Mr Fedorov, Mr Silivanov and Mr Mezentsev (applications nos. 58290/08,

10825/11 and 73629/13), they are members of the Bar. Police officers searched the lawyers' homes or offices. The applicants complained to the national courts of the unlawfulness of the search warrants and/or of the manner in which the searches had been carried out. Their complaints were unsuccessful.

## **B. Particular applications**

### *1. Application no. 11264/04, Kruglov v. Russia*

6. Mr Kruglov (formerly Mr Krug) was suspected of libel of a high-ranking judge.

7. On 20 October 2003 the Samarskiy District Court of Samara authorised a search of Mr Kruglov's flat. It found that based on the submitted material there were sufficient grounds to believe that the instruments of the crime might be located at his home.

8. On 21 October 2003 the police searched the flat indicated in the court search warrant. As that was in fact Mr Kruglov's parents' residence, the police searched another flat where Mr Kruglov actually lived. They did so under the "urgent procedure" without seeking a court search warrant in respect of that flat.

9. Mr Kruglov brought proceedings under Article 125 of the Code of Criminal Procedure (the "CCrP", see below) alleging that the police's actions in respect of the search of his second flat had been unlawful. On 28 October 2003 the court dismissed his complaint, holding that the search procedure had been complied with; that the search had been based on a valid court search warrant and that there had been no information that the authorities had seized any private or professional confidential information belonging to Mr Kruglov.

10. Mr Kruglov appealed against the court decision of 20 October 2003 to issue a search warrant and the court decision under Article 125 of the CCrP of 28 October 2003. His appeals were dismissed on 5 December 2003.

### *2. Application no. 32324/06, Buraga v. Russia*

11. Ms Buraga's husband was suspected of theft.

12. On 1 November 2005 the Verkh-Issetskiy District Court of Yekaterinburg authorised a search of Ms Buraga's flat. It held that based on the submitted material there were sufficient grounds to believe that documents relevant to the criminal case might be located at Ms Buraga's home.

13. The search was performed on 22 November 2005. During the search, the police seized two computer central processing units, two mobile phones, a compact disc and a red file containing some documents, all belonging to

Ms Buraga. An expert examined the content of the seized computer units on 24 November 2005.

14. On 30 November 2005 Ms Buraga asked the investigator to return the objects seized during the search of her flat, as she used them for her professional activities as an advocate. On 5 December 2005 the investigator replied that the seized objects would be returned once the investigating authorities no longer needed them. On 13 December 2005 the vice-president of the Bar of which Ms Buraga was a member asked the investigating authorities to return material covered by professional legal privilege which had been seized during the search.

15. On 19 December 2005 the two computer units and mobile phones were returned to Ms Buraga. The remainder of the seized objects was joined to the criminal case.

16. Meanwhile, Ms Buraga appealed against the court decision to issue a search warrant of 1 November 2005. She argued, in particular, that the court had not taken into account that the flat belonged to her and that she was a lawyer admitted to the Bar, with the result that information covered by professional legal privilege had been seized. On 23 December 2005 the Sverdlovsk Regional Court dismissed the appeal on the grounds that Ms Buraga had not proved that she had been using her flat for professional activities.

17. Ms Buraga also brought proceedings under Article 125 of the CCrP, complaining about the police's actions when carrying out the search. She argued, among other things, that upon learning that she was an advocate, the police should have stopped the search. Ms Buraga further complained of the unlawful seizure of her computer processing units and documents, which contained legally privileged information concerning her clients. She also complained that the police had refused to permit her lawyer to assist her during the search. The court decisions on that complaint were quashed on two occasions, and on 3 February 2009 her complaint was eventually dismissed. The court established that the search had been lawful and well-founded; it had been based on a valid court search warrant, which had been issued not in respect of Ms Buraga, but in respect of her husband; Ms Buraga had not mentioned her status as an advocate in the search record; there had been no information that any legally privileged material had been seized; and her lawyer, Mr K., had not been allowed to attend the search because by the time he had arrived, the search had already begun.

18. The court decision of 3 February 2005 was upheld on appeal on 6 March 2005.

### *3. Application no. 26067/08, Belinskaya v. Russia*

19. Mr L., who resided with Ms Belinskaya in her flat, was suspected of drug dealing.

20. On 26 July 2006 the Vyborgskiy District Court of St Petersburg authorised a search of Ms Belinskaya's flat. It held that since L. resided in that flat, objects and documents which could be used as evidence and to identify the perpetrator(s) of the offence could be located there.

21. On 30 March 2007 Ms Belinskaya's home was searched. She brought proceedings under Article 125 of the CCrP complaining of the authorities' unlawful actions during the search of her flat. In particular, she argued that after she had told the police officers that she was an advocate, they should have stopped the search. On 25 July 2007 the Vyborgskiy District Court dismissed her complaint. It held that the search had been based on a valid court search warrant issued as part of an ongoing criminal investigation not against Ms Belinskaya but against D., who was suspected of drug offences; that Ms Belinskaya had not made any comments, including about her advocate status, in the search record; and that no documents subject to legal privilege had been seized.

22. The above-mentioned court decision was upheld on appeal on 17 October 2007.

#### *4. Application no. 58290/08, Fedorov v. Russia*

##### **(a) Court search warrant**

23. Mr Fedorov is a lawyer working for a human rights organisation. He is not a member of a Bar association.

24. On 6 August 2007 Mr Fedorov was engaged to defend Mr. Ye., who was suspected of theft. On 13 August 2007 the Ibresinskiy District Court of the Republic of Chuvashiya authorised a search of Mr Fedorov's flat. It found that there were reasons to believe that the objects stolen by Z. could be located at Mr Fedorov's home and thus the search would help uncover evidence relevant for the criminal investigation.

25. On 14 August 2007 an investigator searched Mr Fedorov's flat in the presence of Mr Fedorov and two witnesses. He found and seized two bracelets, a ring, a car radio and a notepad.

##### **(b) *Ex post facto* judicial review of the decision to issue a search warrant**

26. On 18 September 2007 the Supreme Court of the Republic of Chuvashiya quashed the decision of 13 August 2007 and remitted the matter to the first-instance court for fresh examination. It held, in particular, that the first-instance court's conclusion as to the possible presence of stolen property at Mr Fedorov's home had not been consistent with the facts of the criminal case.

27. On 3 October 2007 the Ibresinskiy District Court of the Republic of Chuvashiya, having examined the case anew, held that the investigating authorities had not provided sufficient information to support their request

for a search of Mr Fedorov's flat and accordingly dismissed the request. On the same day the items seized from Mr Fedorov's flat were returned to him.

28. On 13 November 2007 the Supreme Court of the Republic of Chuvashiya upheld that decision.

**(c) Compensation proceedings**

29. On 31 March 2008 Mr Fedorov brought court proceedings against the Ministry of Finance of the Russian Federation before the Leninskiy District Court of Cheboksary, Republic of Chuvashiya ("the Leninskiy District Court"). He sought compensation for non-pecuniary damage on the grounds that the search of his flat had been declared unlawful.

30. On 22 May 2008 the Leninskiy District Court dismissed Mr Fedorov's claim as unsubstantiated. On 25 June 2008 the Supreme Court of the Republic of Chuvashiya upheld that judgment on an appeal.

*5. Application no. 60648/08, Fast v. Russia*

31. The police had been investigating allegedly fraudulent claims for damages and legal expenses from the Russian Railways using forged documents – bills for legal services provided by the law firm Pravovoye Sodeystviye, where Ms Fast worked.

32. On 3 September 2008 the Leninskiy District Court of Nizhniy Novgorod granted an application lodged by the investigator for a warrant to search the premises of the law firm, having found it "well-founded".

33. On 5 September 2008 the police searched Ms Fast's office. During the search they seized seven computer central processing units from her office.

34. On 17 October 2008 an appeal complaint lodged by Ms Fast arguing that the search warrant of 3 September 2008 and the seizure of the computer units had been unlawful was dismissed.

35. On 29 May 2009 the criminal case within the framework of which Ms Fast's office had been searched was closed for lack of *corpus delicti*. On an unspecified day thereafter, the seized computer units were returned to Ms Fast.

*6. Application no. 2397/11, Balyan and others v. Russia*

36. The authorities opened a criminal investigation against G. and B. and other unidentified people who were suspected of carrying out business activities without a proper licence and with the use of fictitious companies. It appears that the investigating authorities believed that a law firm, ZAO "Printsip prava", could have had information about those fictitious companies. It applied to a court for a warrant to search the firm's premises.

37. On 17 December 2009 the Tverskoy District Court of Moscow issued a search warrant in respect of the law firm. It held that the

investigator's application for a search warrant had complied with the criminal procedural requirements to its form and content, and that the investigator had had sufficient grounds to believe that objects and documents relevant for the investigation could have been located at the law firm's premises. On 25 December 2009 the search was carried out.

38. The offices of the applicants Mr Balyan, Mr Sokolov and Mr Solovyev (who are all advocates) were located on the premises of that law firm, and during the search of the firm their offices were also inspected.

39. During the search the police seized a computer central processing unit and two hard drives. A metal safe with money was seized from Mr Balyan's office. On 14 January 2010 he asked the investigator to return his safe with its contents. On 19 January 2010 the investigating authorities examined the objects and documents contained in the safe and concluded that they were unrelated to the criminal case being investigated. On 19 March 2010 the investigator issued a decision to return the safe with its contents to Mr Balyan. The decision was enforced on the same day.

40. On 24 March 2010 the Moscow City Court quashed the court decision of 17 December 2009 because the search warrant had not indicated the particular grounds for the search or the exact documents and objects to be seized. It remitted the case for a new examination.

41. Based on the fact that the court decision of 17 December 2009 had been quashed, Mr Balyan, Mr Sokolov and Mr Solovyev asked the investigator, on at least four occasions, to return the seized objects. On 29 March, and 5, 9 and 16 April 2010 the investigator refused their requests. The investigator's decisions indicated that Mr Balyan, Mr Sokolov and Mr Solovyev were entitled to challenge before the courts the refusals to return their computer unit and two hard drives. It appears that those devices have still not been returned.

42. On 16 April 2010 the Tverskoy District Court of Moscow held a fresh hearing on the investigator's application for a search warrant. Although Mr Balyan's then representative (Mr Nikolayev), Mr Sokolov and Mr Solovyev arrived at the hearing and the judge allowed them to remain, they were not permitted to make any submissions. The court referred to Article 165 § 3 of the CCrP (see paragraph 90 below), which only provided for the right of a prosecutor and an investigator to participate in court hearings on search warrants. The court again authorised the search of the law firm. It found that the investigator's application for a search warrant complied with criminal-procedure requirements and that there were sufficient grounds to believe that objects and documents relevant to the criminal case could be located at the law firm's office. The court also noted that given Mr Balyan, Mr Sokolov and Mr Solovyev had the status of advocates, the search of their law firm had been possible on the basis of the court search warrant.



43. On 23 June 2010 an appeal lodged by Mr Balyan, Mr Sokolov and Mr Solovyev complaining about the search warrant of 16 April 2010 was dismissed.

44. Meanwhile, Mr Balyan also brought proceedings under Article 125 of the CCrP, complaining about the manner in which the search had been carried out and the seizure of documents and objects. In particular, he argued that the court search warrant of 17 December 2009 had been issued in respect of the law firm, but had not covered his advocate's office, a search of which should have been authorised on an individual basis. On 4 June 2010 his complaint was dismissed. The court held that the search had been performed in compliance with the criminal-procedure requirements and that it had been based on a valid court search warrant issued as part of an ongoing criminal investigation.

45. On 2 August 2010 the above decision was upheld on appeal.

*7. Application no. 10825/11, Silivanov v. Russia*

46. Mr Silivanov is a practising lawyer, but is not a member of a Bar association. He had provided legal services to Ms M., who later became the subject of a criminal investigation in respect of illegal real-estate transactions.

47. On 16 July 2010 the Kirovskiy District Court of Yekaterinburg granted an application lodged by the investigator for a warrant to search Mr Silivanov's flat, having found it well-founded. It held that as Mr Silivanov had a close relationship with Ms M., objects and documents about her real-estate transactions relevant to the investigation could be located at Mr Silivanov's home. On 20 July 2010 Mr Silivanov's home was searched.

48. Mr Silivanov appealed against the court's decision of 16 July 2010 to issue a search warrant, claiming that it was groundless, excessively wide-ranging and disproportionate. Mr Silivanov also relied on the Court's case-law requiring special procedural safeguards to be available in respect of searches of lawyers' premises. On 11 August 2010 the Sverdlovsk Regional Court upheld the decision to issue a search warrant.

*8. Application no. 14244/11, Belinskaya and others v. Russia*

49. Ms Belinskaya was suspected of having been involved in the production of an allegedly forged medical report about the state of health of a client of hers, Mr Makovoz. Mr Sokolov and Mr Burykin were other clients of Ms Belinskaya at the relevant time.

50. On 25 March 2010 the Kalininskiy District Court of St Petersburg authorised a search of Ms Belinskaya's office. It found that the forged medical report had been issued at the request of Ms Belinskaya as an advocate, and thus objects and documents relevant to the ongoing criminal

investigation could be located at her office. The court ordered the seizure of all data-storage devices with information about the medical report.

51. On 26 March 2010 the police searched Ms Belinskaya's office. During the search, they seized a hard drive and two computers belonging to her. Ms Belinskaya appealed, alleging that the court search warrant of 25 March 2010 had been unlawful. Her appeal was dismissed on 11 May 2010.

52. Ms Belinskaya and Mr Makovoz also brought proceedings under Article 125 of the CCrP. They complained that no special procedural safeguards had been put in place during the search and that Ms Belinskaya's hard drive and computers had been seized. The complaint was dismissed on 15 June 2010. The Kalininskiy District Court of St Petersburg established that a criminal case against Mr Makovoz had been opened; the investigator had had "grounds to believe that Ms Belinskaya had been involved in the offence committed"; the search of the advocate's flat had been duly authorised by the court; "the search warrant had not contained any limitations"; Ms Belinskaya had not made any comments in the search record; and that the refusal to return the seized objects had been justified by the need to perform expert examinations of those objects. Ms Belinskaya's computer had already been returned to her. Thus, the court found no evidence of an unlawful interference with Ms Belinskaya's activities as an advocate or with her private and family life. On 30 August 2010 the above court decision was upheld on appeal.

53. Proceedings brought by Mr Sokolov under Article 125 of the CCrP were dismissed on 16 August 2010. The Kalininskiy District Court of St Petersburg declined to examine the complaint on the grounds that there had been no interference with Mr Sokolov's rights and freedoms as no documents or objects related to him had been searched for or seized and Ms Belinskaya's computer had already been returned to her. On 30 September 2010 that decision was upheld on appeal.

54. Proceedings brought by Mr Burykin under Article 125 of the CCrP were dismissed on 10 August 2010. The Kalininskiy District Court of St Petersburg established that a criminal case against Mr Makovoz had been opened; that the investigator had had grounds to believe that Ms Belinskaya had been involved in the offence committed; the search of her flat had been duly authorised by the court; Ms Belinskaya had not made any comments in the search record, thus there had been no evidence that the seized documents or objects contained information covered by professional legal privilege. On 23 September 2010 the above court decision was upheld on appeal.

#### *9. Application no. 78187/11, Bulycheva v. Russia*

55. Ms Bulycheva's office was located on the premises of a company belonging to Ms M. The police suspected the latter of being involved in

illegal money transfers. As Ms Bulycheva worked on the premises of Ms M.'s company, the police also suspected her of being involved.

56. On 22 April 2011 the Kirovskiy District Court of Khabarovsk authorised a search of Ms Bulycheva's office on the grounds that objects and documents relevant to the criminal case could be located there.

57. A search of Ms Bulycheva's office was conducted on 25 April 2011.

58. On 7 June 2011 an appeal lodged by Ms Bulycheva complaining of the unlawfulness of the court search warrant of 22 April 2011 was dismissed.

10. *Application no. 18403/13, Moiseyeva v. Russia*

59. Ms Moiseyeva was suspected of stealing three volumes of her client's criminal case file. On 13 July 2012 the Pervorechenskiy District Court of Vladivostok issued two identical search warrants, one for Ms Moiseyeva's home and another for her office. It held that the searches were necessary to find the stolen documents.

60. On 28 August 2012 an appeal lodged by Ms Moiseyeva challenging the lawfulness of the court search warrant of 13 July 2012 was dismissed.

11. *Application no. 73629/13, Mezentsev v. Russia*

61. Mr Mezentsev is a practising lawyer, but is not a Bar member. In 2011 he represented company P. in a tax dispute. In 2012 the tax authorities reported to the police an alleged offence of tax evasion by Mr M., a director of company P.

62. On 10 October 2012 the police performed a crime-scene examination (*осмотр места происшествия*) in Mr Mezentsev's office. They seized two documents and Mr Mezentsev's computer hard drive containing information about company P., as well as other companies and businessmen represented by Mr Mezentsev in other tax disputes. The tax authorities subsequently used the information from the hard drive as evidence in at least three of their disputes with Mr Mezentsev's clients. At the end of March 2013 the police returned the hard drive to Mr Mezentsev. No criminal charges were ever brought against Mr M.

63. Mr Mezentsev brought proceedings under Article 125 of the CCrP, complaining that the police actions had been unlawful. He argued, in particular, that although he was not a Bar member, he was a lawyer permitted by law to render legal services and that he owed a duty of confidentiality to his clients. Therefore, during the search of his office special procedural safeguards, such as prior court authorisation, should have been complied with.

64. On 18 March 2013 the Leninskiy District Court of the town of Orsk dismissed Mr Mezentsev's complaint, finding no irregularities in the conduct of the crime-scene examination of his office. In particular, the court

found that the police had been seeking information about criminal activities at company P. They had received “sufficient information giving grounds to believe that objects and documents concerning the activities of company P. might be located in the office ...”. The police had conducted a “crime-scene examination” of Mr Mezentsev’s office which did not require prior judicial authorisation under the CCrP; Mr Mezentsev had been apprised of his rights; two attesting witnesses had been present; and they and Mr Mezentsev had had the opportunity to add their comments to the record of the crime-scene examination. The court further held that prior authorisation for a search was required from a court only in respect of Bar members, which Mr Mezentsev was not. Finally, the court had found no evidence that Mr Mezentsev’s rights had been breached by the search and the seizure of his computer. On 30 April 2013 the Orenburg Regional Court upheld the decision on appeal, endorsing the reasoning of the first-instance court.

12. *Application no. 7101/15, Lazutkin v. Russia*

65. Mr Lazutkin represented the interests of company A. The Federal Security Service (“the FSB”) suspected unidentified people of transferring money via company A. On 23 September 2014 the Sverdlovsk Regional Court of Yekaterinburg granted requests by an FSB officer for authorisation of operational-search activities (under the Operational-Search Activities Act, see paragraph 88 below) in the form of an “inspection” (*обследование*) of Mr Lazutkin’s home, his office, and his workplace at company A. The court held that the FSB had information about Mr Lazutkin’s involvement in illegal foreign-currency transactions with the use of forged documents, and thus documents and objects used for criminal activities could be located at his premises.

66. During the searches on 25 September 2014 the police seized two of Mr Lazutkin’s notebooks and four computers belonging to company A. containing, among other things, documents subject to legal privilege. On 27 April 2016 the investigator issued a decision to retain the seized objects as physical evidence. It appears that the seized objects have not been returned to Mr Lazutkin.

13. *Application no. 29786/15, Parnachev and others v. Russia*

67. The applicants, Mr Parnachev, Mr Prokhorov, Mr Pestov and Mr Rozhkov (who are all advocates) were members of the Novosibirsk Town Advocate Association (“the NTAA”). A Mr Prokhorov’s client was suspected of misappropriation of funds by means of transferring money for consulting and legal services to a firm of auditors, company N., and to the NTAA. On 5 October 2014 the Oktyabrskiy District Court of Novosibirsk authorised a search of premises (located in one building) occupied by the

NTAA, company N. and other lawyers to find and seize documents related to the provision of consulting and legal services by company N. and the NTAA. The court search warrant contained a detailed list of the exact documents that the investigators were looking for. The court also ordered the seizure of all devices and mobile phones containing correspondence related to the provision of consulting and legal services by company N. and the NTAA. The search took place from 4 p.m. on 6 October 2014 until 11 a.m. on 8 October 2014 as a result of which the police seized all computers and hard drives. It appears that the seized objects have not been returned.

68. Mr Parnachev, Mr Prokhorov, Mr Pestov and Mr Rozhkov appealed against the court's decision to issue a search-and-seizure order of 5 October 2014. In particular, they argued that a search in respect of a lawyer's premises should relate to an individual lawyer, rather than to premises including all lawyers working there. Mr Parnachev, Mr Prokhorov, Mr Pestov and Mr Rozhkov considered that the searches of their offices had constituted a disproportionate interference with their rights under Article 8 of the Convention, as it had breached professional secrecy without applying any procedural safeguards as required by the Court's case-law. On 3 December 2014 the Novosibirsk Regional Court dismissed the appeal. On 25 February 2015 an appeal in cassation lodged by them was also dismissed. A second appeal in cassation was successful and the first-instance court's decision to issue a search warrant was remitted to the appellate court for fresh examination. On 9 December 2016 the Novosibirsk Regional Court decided to amend the initial search warrant of 5 October 2014, specifying in more detail the documents to be sought by the investigating authorities.

14. *Application no. 19667/16, Ponyayeva v. Russia*

69. The police investigated Mr N. on suspicion of fraud. Ms Ponyayeva provided legal services to Mr N.'s companies and the police suspected her of involvement in the alleged fraud. Neither Mr N. nor Ms Ponyayeva have ever been officially accused of having committed any offences.

**(a) Search of Ms Ponyayeva's office**

70. On 26 January 2015 the Moskovskiy District Court of St Petersburg authorised a search of the office of a company which was a client of Ms Ponyayeva and where she rented a room in which to work. It held that the investigator's application for search warrant had been lawful, well-founded and reasoned and, thus, had had to be granted. The court noted that the materials submitted to it demonstrated objectively that the investigator had had sufficient grounds to believe that objects and documents relevant for the investigation could have been located on the premises of a company

belonging to Mr N. The judge was aware that Ms Ponyayeva represented the interests of Mr N. before courts and other authorities, but found it unsubstantiated that Ms Ponyayeva was a member of the Bar and that she indeed had a workplace at the company.

71. Ms Ponyayeva brought proceedings under Article 125 of the CCrP, complaining that the police, while searching the company's office, had also searched the individual workplace that she rented there, despite her status as an advocate.

72. On 15 April 2015 Ms Ponyayeva's complaint was dismissed. The court found that the search had been based on a valid court order. It further examined the search record, which contained a comment about the seizure of Ms Ponyayeva's legally privileged documents. The court questioned a witness who confirmed Ms Ponyayeva's position, but it dismissed her statements as unreliable. It thus concluded that there was no evidence that documents covered by professional legal privilege had been seized. The court considered that the remainder of Ms Ponyayeva's complaint related rather to admissibility of evidence, and was thus outside its competence.

73. The above court decision was upheld on appeal on 25 August 2015.

**(b) Search of Ms Ponyayeva's flat**

74. On 13 February 2015 the Primorskiy District Court of St Petersburg authorised a search of Ms Ponyayeva's flat, having found "an objective necessity" to allow it.

75. On 8 September 2016 the St Petersburg City Court declined to examine an appeal lodged by Ms Ponyayeva against the decision to issue a search warrant, and terminated the proceedings as the criminal case – in which Ms Ponyayeva's flat had been searched – had already been sent for trial.

15. *Application no. 36833/16, Levchenko v. Russia*

76. The authorities were investigating illegal transfers of money based on an allegedly fraudulent arbitral award. They decided to apply for a warrant to search the office of the arbitral tribunal located at an advocates' association "Gorodskaya", headed by Mr Levchenko. On 15 April 2015 the Leninskiy District Court of Orenburg granted an application for a search warrant on the grounds that it would contribute to the finding of additional information relevant to the criminal investigation.

77. On 16 April 2015 the police searched the office of the arbitral tribunal, allegedly also shared by the collegium of advocates "Gorodskaya". They seized advocates' notebooks and returned them one year and three months later. The case file indicates that a lawyer from another advocates' association was eventually convicted in relation to the illegal money transfers under investigation.

78. Mr Levchenko brought proceedings under Article 125 of the CCrP, complaining that the search warrant had concerned only the office of the arbitral tribunal and, thus, the search of the office of the advocates' association had been unlawful. He also complained of the unlawful seizure of his notebook containing information subject to professional legal privilege. On 13 May 2015 the Leninskiy District Court found, in particular, that it had initially authorised the search as part of a criminal investigation; the search had been attended by attesting witnesses; Mr Levchenko's workplace had been searched because there was no physical separation between it and the arbitral tribunal's office; and the seizure of Mr Levchenko's notebook had also been lawful. An appeal lodged by Mr Levchenko was dismissed on 20 July 2015; two appeals on cassation were dismissed on 29 October 2015 and 24 December 2015 respectively.

16. *Application no. 39456/16, Pashkina and others v. Russia*

79. The authorities were investigating the allegedly deliberate bankruptcy of company T. by its director, Mr M. On 24 March 2016 the Tsentralnyy District Court of Sochi authorised a search of the office of lawyers Ms Pashkina, Mr Privalov and Mr Levin. The court referred to the FSB's "results of operational-search activities" and the need to collect evidence for the criminal investigation.

80. On 25 March 2016 the authorities searched the office and seized a number of litigation case files and the information database from all the office computers. On 12 May 2016 the court's decision to issue the search warrant was upheld on appeal.

## II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

### A. Provision of legal assistance and services

#### 1. *Types of legal advisers*

81. Where legal advice is concerned, Russian law distinguishes between legal assistance (*юридическая помощь*), which is provided by qualified advocates, and legal services (*юридические услуги*), which may be rendered by "other people" such as in-house counsel, partners or employees of law firms or other organisations giving legal advice, or independent legal advisers registered as individual businesses (section 1 of the Advocates Act (Law no. 63-FZ of 31 May 2002)). Advocates are independent legal advisers who have been admitted to the Bar and who may not be employed by an organisation (section 2 of the Advocates Act). There are no qualifying requirements to satisfy in order to be allowed to provide legal services.

## *2. Right to represent parties in court proceedings*

82. Parties to constitutional, criminal, civil, commercial and administrative proceedings may be represented by an advocate or “another person”, as follows.

### **(a) Criminal proceedings**

83. Under Article 49 § 2 of the Code of Criminal Procedure (“the CCrP”), a defendant may be represented in criminal proceedings against him or her by an advocate. Subject to the court’s consent a defendant may also be represented by “another person” together with an advocate. In criminal proceedings before justices of the peace “another person” may take the place of an advocate.

### **(b) Civil proceedings**

84. Under Article 49 of the Code of Civil Procedure (“the CCP”), representatives in civil proceedings should be legally capable and have power of attorney to pursue the case.

### **(c) Commercial proceedings**

85. Under Article 59 §§ 3 and 6 of the Code of Commercial Procedure (“the ComPC”), parties may be represented by advocates and “other persons” with legal capacity and power of attorney to pursue the case.

### **(d) Administrative proceedings**

86. Under Article 55 §§ 1 and 3 of the Code of Administrative Procedure (“the CAP”), representatives in administrative proceedings may be advocates and “other people” with full legal capacity, a law degree and power of attorney to pursue the case.

## *3. Professional confidentiality and other obligations*

87. Advocates are required to abide by the professional ethics code (section 7(4) of the Advocates Act); any breach of the code will be subject to disciplinary liability. Their obligations include a duty of confidentiality to their clients (section 6(5) of the Advocates Act). Any search of an advocate’s premises is subject to certain procedural safeguards (see paragraph 93 below). There are no particular professional requirements or disciplinary liability in respect of other legal advisors. Their premises do not have any special protection from searches.



## **B. Authorisation of searches**

### *1. General provisions*

88. The Operational-Search Activities Act (Law no. 144-FZ of 12 August 1995 – hereinafter “the OSAA”) provides that investigating authorities may perform various operational-search measures, including “inspection of premises, buildings, constructions, plots of land and vehicles” (section 6(8)). Operational-search measures involving interference with the constitutional right to, among other things, privacy of the home, may be conducted subject to judicial authorisation (section 8).

89. The CCrP provides that examination of a crime scene, a plot of land, residential and other premises, objects and documents may be performed in order to discover criminal traces or other circumstances which are relevant to an investigation (Article 176 § 1). Crime-scene examination of residential premises may be performed only with the consent of the residents or on the basis of a court warrant (Article 176 § 5). In the latter case, an application for a court warrant is made in accordance with the procedure set out in Article 165.

90. A search of a place of residence requires a search warrant issued by a court on the basis of an application by an investigator (Article 165). A prosecutor and the investigator have the right to participate in the court hearing on the investigator’s application for a search warrant (Article 165 § 3).

91. The Constitutional Court of Russia, in its decision no. 70-O of 10 March 2005, held that Article 165 § 3 does not deprive a person whose home was searched of the possibility to participate in a judicial review of the lawfulness of the search.

92. The CCrP provides that there are grounds to carry out a search if there is sufficient information to believe that instruments of a crime or objects, documents or valuables relevant to a criminal case might be found in a specific place or on a specific person (Article 182 § 1). A lawyer of the person whose premises are searched may be present during the search (Article 182 § 11).

### *2. Search of an advocate’s premises*

93. A search of the residential and professional premises of an advocate must be authorised by a court warrant. The information, objects and documents obtained during the search may be used in evidence only if they are not covered by lawyer-client confidentiality in a given criminal case (section 8(3) of the Advocates Act).

94. The Constitutional Court invited the legislator to adopt additional safeguards for searches of lawyers’ premises, in particular, to ensure that documents covered by professional legal privilege were treated differently

from regular material (Resolution 33P/2015 of 17 December 2015). Since 17 April 2017 a new Article 450.1 of the CCrP provides that an advocate's premises may be searched only if he or she is a suspect in a criminal investigation, on the basis of a court warrant, and in the presence of a representative from the relevant collegium of advocates. A crime-scene examination at an advocate's premises may exceptionally be carried out without those conditions being complied with.

### **C. Seizure and retention as material evidence**

95. Article 81 § 4 of the CCrP provides that objects seized during an investigation but not retained as material evidence should be returned to the people from whom they were seized. Since 28 June 2012 such objects include electronic data-storage devices, which may be returned to their owner after inspection and other necessary investigative actions, if this does not compromise the evidence.

96. Since 3 July 2016 a new Article 81.1 of the CCrP provides that an investigator must take a decision to retain a seized object as material evidence within ten days of the seizure. If the number of seized objects is considerable or if there are other objective circumstances, the period may be extended to thirty days. Seized objects which are not to be retained as material evidence have to be returned within five days of the expiry of the above-mentioned periods.

97. Since 27 December 2018 Article 164 § 4.1 of the CCrP prohibits an unreasonable use of measures which could interrupt lawful activities of legal persons or individual businessmen, including seizure of electronic data-storage devices within the framework of investigations of certain offences, subject to a number of exceptions. Under Article 164.1 § 3 an investigator may copy information contained on electronic data-storage devices.

### **D. Judicial review**

#### *1. The OSAA*

98. A judicial decision authorising operational-search measures, including a search of premises, is not amenable to appeal. However, a person concerned may challenge before a court the actions of the authorities carrying out operational-search activities, even where those actions were authorised by a court (section 5(3) and (9), and Constitutional Court decision no. 86-O of 14 July 1998).

99. The Plenary Supreme Court, in its Ruling no. 1 of 10 February 2009, held that actions of officials or State agencies conducting operational-search activities at the request of an investigator could be challenged in accordance with the procedure prescribed by Article 125 § 4 of the CCrP.

## 2. *The CCrP*

100. 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. Following examination of the complaint, the court either declares the challenged decision, act or failure to act unlawful or unjustified and instructs the responsible official to rectify the indicated shortcoming, or dismisses the complaint (Article 125 § 5). When instructing the official to rectify the indicated shortcoming, the court may not indicate any specific measures to be taken by the official or annul or require the official to annul the decision that had been found to be unlawful or unjustified (paragraph 21 of Ruling no. 1 of 10 February 2009 of the Plenary Supreme Court of the Russian Federation).

101. All court decisions taken during the pre-trial stage of a criminal case, including decisions to authorise a search under Article 165 of the CCrP, are amenable to appeal (Article 127).

### **E. International Legal Materials**

102. According to paragraph 22 of the Basic Principles on the Role of Lawyers (adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders), “Governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.

103. In its Recommendation Rec(2000)21, the Committee of Ministers of the Council of Europe recommends the governments of member States to take all necessary measures “to ensure the respect of the confidentiality of the lawyer-client relationship”. Exceptions to that principle could be allowed “only if compatible with the Rule of Law”.

104. In Recommendation 2085 (2016) and Resolution 2095 (2016) the Parliamentary Assembly of the Council of Europe reminded member States of the role of human rights defenders and the need to strengthen their protection.

105. In its Recommendation Rec 2121 (2018) the Parliamentary Assembly further invited the Committee of Ministers to draft and adopt a convention on the profession of lawyer, based on the standards set out in Recommendation No. R (2000) 21 and other relevant instruments, including the Council of Bars and Law Societies of Europe’s Charter of Core Principles of the European Legal Profession, the International Association of Lawyers’ Turin Principles of Professional Conduct for the Legal Profession in the 21st Century and the International Bar Association’s Standards for the Independence of the Legal Profession, International Principles on Conduct for the Legal Profession and Guide for Establishing

and Maintaining Complaints and Discipline Procedures. In the opinion of the Parliamentary Assembly, the convention would help to reinforce such fundamental guarantees as legal professional privilege and the confidentiality of lawyer-client communications.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

106. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications.

### II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

107. The applicants complained that the searches of their residential or professional premises and the seizure of electronic devices containing personal information or documents covered by professional legal privilege amounted to a violation of Article 8 of the Convention. They also complained that in breach of Article 13 of the Convention, taken together with Article 8, there had been no effective remedies available to them in respect of the searches of their premises. The relevant parts of the Convention provisions read as follows:

#### **Article 8**

“1. Everyone has the right to respect for his private and family 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.”

#### **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**

108. The Court notes that the Government did not raise any objections as to the admissibility of this part of the application. Nevertheless, it will need to ascertain whether the applicants submitted their complaints within six months of the final decision in the process of exhaustion of domestic remedies. To that end, it will have to establish which, if any, remedies were available to them and whether they had the features of an effective remedy.

*1. Summary of the remedies used by the applicants in the present cases*

109. The Court observes at the outset that one applicant did not use any remedies (application no. 7101/15). The other applicants used one or two remedies in respect of the searches of their premises. In particular, applicants in four applications contested only the investigating authorities' actions during the searches (applications nos. 11264/04 (second search), 73629/13, 19667/16 (in respect of the office search) and 36833/16). Applicants in nine applications challenged only the lawfulness of the search warrants (applications nos. 11264/04 (first search), 58290/08, 60648/08, 10825/11, 78187/11, 18403/13, 29786/15, 19667/16 (in respect of the flat search) and 39456/16). In four applications (applications nos. 32324/06, 26067/08, 2397/11 (first applicant) and 14244/11) the applicants challenged both the lawfulness of the search warrants and the lawfulness of the authorities' actions during the searches. The Court has to determine from the final decision in the exhaustion of which, if any, of those remedies the six-month period has been running and whether the applicants have complied with it.

110. Furthermore, one applicant was successful in challenging the lawfulness of the search warrant in respect of his flat (application no. 58290/08). However, when he subsequently applied for damages, his civil action claims were rejected. The Court has to determine whether this applicant also has complied with the six-month rule.

*2. Search under the OSAA: no remedies have been used*

111. The applicant in case no. 7101/15 (Mr Lazutkin) did not make any complaints to the domestic authorities about the search of his premises, which had been authorised under the OSAA. He lodged the application with the Court within six months of the date of the search.

112. The Court has previously found that a judicial decision authorising operational-search measures under the OSAA was not amenable to a review by a higher court and that no other remedies in respect of such decisions were available (see *Avanesyan v. Russia*, no. 41152/06, §§ 30-36, 18 September 2014). These findings are applicable in Mr Lazutkin's case and the Government did not argue otherwise. This application cannot therefore be rejected for non-exhaustion or for failure to comply with the six-month time-limit.

*3. Judicial review of the terms of search warrants*

113. Applicants in twelve applications (applications nos. 11264/04 (first search), 32324/06, 26067/08, 58290/08, 60648/08, 2397/11 (first applicant), 10825/11, 14244/11, 78187/11, 18403/13, 29786/15, 19667/16 (in respect of the flat search) and 39456/16) – some of them in addition to using another remedy – appealed to a higher court seeking a full review of the

decision to issue a search warrant. The Court accepts that an appeal against a decision to issue a search warrant is a *prima facie* effective remedy. The six-month period should be calculated from the date of the appeal decision. All of the applications but one (application no. 58290/08, see below) were lodged with the Court within six months of the appeal decision; they were therefore not belated.

114. In application no. 58290/08 the applicant successfully appealed against the search warrant. He then made a claim for compensation in the civil courts, which was eventually dismissed. The Court finds it appropriate to take the start of the six-month period from the date of the final decision of 25 June 2008 dismissing the applicant's claims for non-pecuniary damages for the unlawful search. As he lodged his application within six months of that decision, it was not belated.

*4. Judicial review of the manner of conducting the search (Article 125 of the CCrP)*

115. The applicants in eight applications (applications nos. 11264/04 (second search), 32324/06, 26067/08, 2397/11 (first applicant), 14244/11, 73629/13, 19667/16 (in respect of the office search) and 36833/16) applied for a judicial review under Article 125 of the CCrP. The Court notes that the scope of a judicial review under that provision was limited to reviewing the manner in which State officials had acted. A judge examining such a complaint was required to establish whether or not the investigating authorities had complied with the applicable legal requirements and whether they had abided by the terms of the judicial authorisation. The review under Article 125 of the CCrP did not touch upon the legal and factual grounds for the underlying judicial authorisation, that is to say, whether there had been relevant and sufficient reasons for granting that judicial authorisation and whether it was compatible with the legal requirements (see *Avanesyan*, cited above, §§ 31-33, in respect of searches, and *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 95-97, 7 November 2017, in respect of surveillance activities). Even if a judge had detected irregularities in the manner in which the search had been performed, this would not have affected the validity of the underlying judicial authorisation. The Court concludes that a judicial review under Article 125 of the CCrP could not provide relief in respect of complaints about allegedly unlawful judicial decisions authorising investigative measures such as searches or surveillance activities.

116. The Court observes that in one of those eight cases (application no. 14244/11) the applicants complained about the search of the first applicant's office and seizure of her electronic devices both in the appeal complaint against the court search warrant and in the complaints about the authorities' allegedly unlawful actions under Article 125 of the CCrP. The applicants submitted their application to the Court on 5 February 2011,

which was outside the six-month period as regards the appeal decision of 11 May 2010 on the lawfulness of the court search warrant (see § 51 above) and within the six-month period as regards the final decisions on the complaints under Article 125 of the CCrP (30 August, 23 and 30 September 2010, see §§ 52 – 54 above). The Court notes that the court search warrant of 25 March 2010 had imposed “no limitations” on the investigator’s discretion during the performance of the search (see § 50 above). Thus, the manner of the performance of the search of the flat and the seizure of the electronic devices resulted from the search warrant itself and its terms rather than from the authorities’ unlawful actions, for instance, at variance with the search warrant. Therefore, a complaint under Article 125 of the CCrP could not have provided a redress to the applicants’ grievances stemming from the terms of the search warrant itself.

117. Given that the complaints under Article 125 of the CCrP were ineffective for the applicants’ grievances, only the appeal decision on the search warrant should be taken into account for the purposes of the six-month period calculation. As noted above, the applicants filed their application more than six months after the appeal decision in respect of the search warrant. Thus, this application should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

118. As for the other applicants who had used the complaint under Article 125 of the CCrP, the Court notes as follows. Two applicants (applications nos. 32324/06 and 26067/08) argued that the State officials should have stopped their search of the premises after learning on site that those premises had been in fact used by lawyers. Three applicants (applications nos. 2397/11, 19667/16 and 36833/16) considered that the State officials had unlawfully extended the search to encompass the premises not covered by the search warrants. Two applicants (applications nos. 11264/04 (second search) and 73629/13) complained about the authorities’ unlawful actions because the searches had been performed under the procedures not requiring a judicial authorisation at all, whether before or after the search. In the above circumstances, the applicants’ grievances stemmed from the manner in which the authorities had acted, rather than from any supposed defects in the underlying judicial authorisation, where it existed. Given the courts’ power to declare such actions unlawful or unjustified, the Court accepts that in the above circumstances the applicants’ attempts to challenge the actions of the investigating authorities under Article 125 of the CCrP were reasonable.

119. The Court further notes that, with the exception of one (application no. 36833/16), all of the above applications were submitted within six months after the appeal decisions taken on the complaints under Article 125 of the CCrP. Thus they were not belated. Mr Levchenko (application no. 36833/16) chose to continue the chain of appeals by using the two-tier cassation procedure and lodging an application with the Court within six

months of its conclusion. That procedure, although it dealt with the applicant's claim against the State, was governed by the CCrP. As to the latter, the Court established in *Kashlan v. Russia* ((dec.), no. 60189/15, 19 April 2016) that the two-tier cassation procedure is not an effective remedy in proceedings under the CCrP. However, at the material time, the *Kashlan* decision had not yet been adopted and the previous case-law applied, in which the cassation procedure could be considered to be an effective remedy (see *Kashlan*, § 27; *Myalichev v. Russia* [Committee], 9237/14, § 13, 8 November 2016; and *Rozhkani v. Russia* [Committee], 14918/14, § 25, 9 July 2019). It was therefore not unreasonable for the applicant to attempt the cassation appeal procedure at that time. Accordingly, the Court finds that his application was not belated.

### 5. Conclusion

120. In sum, the Court has found that none of the applications, except application no. 14244/11, were lodged belatedly. Thus, application no. 14244/11 should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention. The complaints related to the searches of the remaining applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

### 1. Submissions of the parties

121. The applicants submitted that the searches of their premises had fallen short of the standards set out in Article 8 of the Convention. The judicial decisions authorising the searches, where issued, had not been based on sufficient evidence to support the allegations that the applicants were in possession of the information sought. In fourteen applications the applicants had not been official suspects in the relevant investigations. In twelve applications the applicants' only connection to the criminal cases had been the fact that they had provided legal services to an individual or a legal person involved in those criminal proceedings. Furthermore, the courts had not specified in detail the scope of the searches and had not given any instructions aimed at protection of documents subject to professional legal privilege. Lastly, the searches of the premises and seizures of electronic devices had not been accompanied by procedural safeguards, such as the presence of independent observers.

122. The Government submitted that the searches of the applicants' premises had been performed in compliance with national legislation and had not infringed the applicants' rights set out in the Convention. The investigating authorities had conducted the searches within the framework



of preliminary investigations or pending criminal proceedings against the applicants or third parties. The investigating authorities had obtained judicial authorisation for the searches in respect of the advocates, in accordance with the procedure prescribed by law. Those applicants who were practising lawyers but not advocates had not been entitled to the same protection as members of the Bar, but the procedural requirements for the searches of their premises had also been complied with. The purpose of the searches had been to obtain information necessary for the criminal investigations. The investigating authorities had had sufficient grounds to believe that the applicants could have been keeping such information on their premises. The court search warrants instructed the investigating authorities to seize only documents pertaining to the relevant investigations. The Government asserted that the applicants had failed to show that any personal or legally privileged documents unrelated to the investigations in question had been seized or used against anyone. Thus, the searches had not affected the interests of the applicants or of their clients. The court search warrants had been scrutinised and the courts' decisions to issue them upheld on appeal. Therefore, the searches had been lawful and proportionate to their legitimate aim.

## 2. *The Court's assessment*

123. The Court notes that the investigating authorities performed "inspections", "crime-scene examinations" or "searches" of the applicants' homes or offices. The Court reiterates that any measure, if it is no different in its manner of execution and its practical effects from a search, amounts, regardless of its characterisation under domestic law, to interference with applicants' rights under Article 8 of the Convention (see *Belousov v. Ukraine*, no. 4494/07, § 103, 7 November 2013, and *Avanesyan*, cited above, § 39).

124. With the exception of two applications (application nos. 11264/04 (second search) and 73629/13), the searches were based on search warrants, and their stated aim was to uncover criminal evidence. In the two applications where the searches were performed without a court search warrant, they were carried out under different procedures set for urgent situations (application no. 11264/04 (second search)) and for crime scene examinations (application no. 73629/13). The Court will proceed on the assumption that the searches in all applications were lawful in domestic terms and pursued the legitimate aim of the prevention of crime. It remains to be ascertained whether the impugned measures were "necessary in a democratic society", in particular, whether the relationship between the aim sought to be achieved and the means employed can be considered proportionate (see *Yuditskaya and Others v. Russia*, no. 5678/06, § 26, 12 February 2015).

125. 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, searches of lawyers' homes or offices should be subject to especially strict scrutiny (see *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, § 669, 13 November 2003; *Xavier Da Silveira v. France*, no. 43757/05, § 41, 21 January 2010; and *Leotsakos v. Greece*, no. 30958/13, § 42, 4 October 2018; see also international legal materials on the protection of lawyer-client relationship, paragraphs 102-105 above). To determine whether the measures were "necessary in a democratic society", the Court has to ascertain whether effective safeguards against abuse or arbitrariness were available under domestic law and how those safeguards operated in the specific cases under examination. Elements to be taken into consideration in this regard are the severity of the offence in connection with which the search and seizure were effected, whether they were carried out pursuant to an order issued by a judge or a judicial officer or subjected to after-the-fact judicial scrutiny, whether the order 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, including – where a lawyer's office is concerned – whether it was carried out in the presence of an independent observer or whether other special safeguards were available to ensure that material covered by legal professional privilege was not removed. The Court must lastly take into account the extent of the possible repercussions on the work and the reputation of the persons affected by the search (see *Yuditskaya*, cited above, § 27).

126. Turning to the present cases, the Court observes that in only one of fifteen applications (application no. 11264/04) was the applicant advocate officially suspected of having committed a criminal offence – libel of a judge. In the other fourteen applications the applicants were lawyers who were not under criminal investigation. In two applications (application nos. 32324/06 and 26067/08) the searches had been authorised in respect of the applicants' relatives, who were suspected of criminal offences. In the other twelve applications, the lawyers' premises were searched because their clients were under investigation and thus the lawyers might have been in possession of some useful information about them.

127. The court search warrants, where issued, indicated that the material submitted from the criminal cases had provided sufficient grounds to believe that documents or objects relevant to the investigation could be located on the applicants' premises (see paragraphs 7, 12, 20, 24, 32, 37, 47, 56, 59, 67, 70, 74, 76 and 79 above). They did not however explain what those materials were or on what grounds the belief that the relevant evidence might be found at the premises to be searched was based (see, as a recent authority, *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 184, 20 September 2018). The court search warrants were couched in very broad terms, giving the investigators unrestricted discretion as to how to carry out

the searches. 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 *Yuditskaya*, cited above, § 29, with further references).

128. Furthermore, as regards the applicants who were members of the Bar, the national courts appeared to believe that the only safeguard to be ensured during the search of the lawyers' premises was a prior judicial authorisation, and that that requirement was of a merely procedural character. The Court has previously held that judicial scrutiny in itself is not a sufficient safeguard against abuse (see *Cronin v. the United Kingdom* (dec.), no. 15848/03, 6 January 2004, and *Gerashchenko v. Ukraine*, no. 20602/05, § 130, 7 November 2013). At no point did the national courts attempt to weigh the obligation to protect lawyer-client confidentiality against the needs of criminal investigations. For instance, the courts did not examine the possibilities of obtaining the information sought from other sources (for instance, from the clients of the lawyers themselves). Furthermore, there is nothing to demonstrate that the courts had any rules by which to determine when it might be and when it might not be permissible to breach the confidentiality of legally privileged documents (see *Sallinen and Others v. Finland*, no. 50882/99, § 92, 27 September 2005). On the contrary, in issuing the search warrants, the courts seemed to imply that lawyer-client confidentiality could be breached in every case as long as there was a criminal investigation, even where such investigation was not against the lawyers but against their clients.

129. The Court concludes that in the cases where a court search warrant was issued, the national courts did not carry out a balancing exercise or examine whether the interference with the applicants' rights had answered a pressing social need and was proportionate to the legitimate aims pursued.

130. Similarly, in cases where the applicants complained also or only about the manner of the execution of searches (applications nos. 11264/04 (second search), 32324/06, 26067/08, 2397/11 (first applicant), 14244/11, 73629/13, 19667/16 (in respect of the office search) and 36833/16), the national courts examined mainly whether the authorities' actions had complied with the relevant criminal procedural requirements (see paragraphs 17, 21, 44, 64, 72 and 78 above). However, the national courts did not assess the necessity and proportionality of the investigating authorities' actions.

131. As for particular procedural safeguards available to the applicants during the searches or in their aftermath, the Court finds as follows.

132. Russian law at the material time did not provide for procedural safeguards to prevent interference with professional secrecy, such as, for example, a prohibition on removing documents covered by lawyer-client confidentiality or supervision of the search by an independent observer capable of identifying, independently of the investigation team, which

documents were covered by such confidentiality (see *Yuditskaya*, cited above, § 30, with further references). The lack of procedural safeguards at the material time is confirmed by the subsequent legislative amendments of 17 April 2017 (see paragraph 94 above). These, however, did not affect the applicants' situations prior to that date. At the material time, there existed no possibility of ensuring the presence of a representative of a Bar association or of having an investigating judge decide whether or not particular documents or objects could be used by the investigation if the applicants objected to it on the grounds of professional confidentiality (compare with *Robathin v. Austria*, no. 30457/06, § 48, 3 July 2012). The presence of attesting witnesses was not a sufficient safeguard, as they were lay people without legal qualifications, unable to identify privileged material (see *Yuditskaya*, cited above, § 30, with further references). Moreover, as regards the data held on the applicants' electronic devices which were seized by the investigators, it does not seem that any sort of sifting procedure was followed during the searches (*ibid.*).

133. Even the existing safeguards, such as having recourse to legal assistance during a search, were unavailable to at least one applicant on the pretext that her lawyer had arrived at the scene belatedly when the search had already begun (application no. 32324/06, see paragraph 17 above). It is not clear how a lawyer could have appeared at the beginning of a search, given that the applicant had not been notified about the search in advance and the time at which the search had started had not been chosen by her.

134. In application no. 2397/11 the procedure of the *ex post facto* judicial review was deficient on account of the first-instance court's decision to bar Mr Balyan, Mr Sokolov and Mr Solovyev from making submissions to the court (see paragraph 42 above). The court offered a restrictive interpretation of Article 165 § 3 of the CCrP (see paragraph 90 above). It did not take into account that the search had already taken place and that there was accordingly no need for the kind of secrecy required in *ex parte* proceedings. Moreover, that restrictive interpretation appears to have been at variance with the case-law of the Constitutional Court (see paragraph 91 above), according to which that provision did not prevent those concerned from participating in a judicial review of the search. Thus the Court finds that Mr Balyan, Mr Sokolov and Mr Solovyev were restricted in their right to participate in the *ex post facto* judicial review of the search.

135. In application no. 19667/16 (second search), the appeal court refused to examine the applicant's appeal complaint against the court search warrant on the grounds that the criminal case against third persons, within the framework of which that warrant had been issued, had been by that moment sent for trial. The Court has not been provided with an explanation as to why the fact of pending criminal proceedings against third persons should have affected the applicant's right to verify the lawfulness of the

court search warrant in respect of her home. It thus considers that in this case the applicant was deprived of the *ex post facto* judicial review of the court search warrant issued in respect of her home.

136. Having regard to the above, the Court finds that the searches in the present cases impinged on professional confidentiality to an extent that was disproportionate to the legitimate aim being pursued.

137. As regards the three applicants who were practising lawyers but not members of the Bar (applications nos. 58290/08, 10825/11 and 73629/13), the Court further notes as follows. It is for States to determine who is authorised to practise law within their jurisdiction, and under what conditions. Furthermore, it is also for States to establish a system of particular safeguards of professional secrecy in the interests of proper administration of justice, given lawyers' role as intermediaries between litigants and the courts (see *André and Another v. France*, no. 18603/03, §§ 41-42, 24 July 2008, and *Michaud v. France*, no. 12323/11, §§ 118-19, ECHR 2012). In Russia, irrespective of the area of law, legal advice, as well as representation in court proceedings, may be provided by advocates and by "other persons", with few limitations (see paragraphs 81-87 above). However, professional secrecy is protected only to the extent that advocates are involved, thus leaving exposed the relationships between clients and other kinds of legal advisers (see paragraph 87 above). The Court concedes that potential clients should be aware of the difference between the status of advocates and that of other legal advisers. Advocates enjoy additional privileges which correspond to the fact that their obligations towards clients are greater than those of other legal advisers (see paragraph 87 above). However, it would be incompatible with the rule of law to leave without any particular safeguards at all the entirety of relations between clients and legal advisers who, with few limitations, practise, professionally and often independently, in most areas of law, including representation of litigants before the courts. Therefore, the Court also considers that the searches of the premises of those applicants who were practising lawyers but not members of the Bar were conducted without sufficient procedural safeguards against arbitrariness.

138. There has therefore been a violation of Article 8 of the Convention in respect of all the applicants. In the light of this finding, the Court considers that it is not necessary to examine whether, in these cases, there has also been a violation of Article 13.

### III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

139. The applicants in six of the applications (nos. 32324/06, 60648/08, 2397/11, 7101/15, 29786/15 and 36833/16) complained under Article 1 of Protocol No. 1 of a violation of their property rights resulting from the

seizure and continued retention of their data-storage devices. They also complained that in breach of Article 13 of the Convention, taken together with Article 1 of Protocol No. 1, they had had no effective remedies for that complaint. The relevant parts of Article 1 of Protocol No. 1 read as follows:

**Article 1 of Protocol No. 1**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

**A. Admissibility**

140. The Government did not raise any objection as to the admissibility of this part of the application. Accordingly, the Court is not required to examine whether, in the particular circumstances of the case, an application to the courts under Article 125 of the CCrP could have resulted in adequate redress, as it did in other cases concerning continued retention of seized property by the investigation (see *Lachikhina v. Russia*, no. 38783/07, §§ 16-22, 10 October 2017; *OOO KD-Konsalting v. Russia*, no. 54184/11, §§ 16-22, 29 May 2018; and *Barkanov v. Russia*, no. 45825/11, §§ 27-30, 16 October 2018).

141. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

**B. Merits**

142. The applicants complained that the investigating authorities had had no reasons to seize and retain their data-storage devices. The investigators could have copied the information contained on the devices. The seizure and continued retention of the devices had undermined the applicants’ ability to carry out their professional activities owing to the loss of access to the devices, professional software and client information.

143. The Government submitted that the seizure and retention of the applicants’ objects had been lawful.

144. The Court reiterates that retention of material evidence may be necessary in the interests of proper administration of justice, which is a “legitimate aim” in the “general interest” of the community. It observes, however, that there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any

measures applied by the State, including measures designed to control the use of the individual's property (see *Smirnov v. Russia*, no. 71362/01, § 57, 7 June 2007, and *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, §§ 100-01, 24 February 2011). The Court has previously found that continued retention of seized data-storage electronic devices had no apparent justification where the devices themselves were not an object, instrument or product of any criminal offence, and, thus, constituted a disproportionate interference with the right to peaceful enjoyment of possessions protected by Article 1 of Protocol No. 1 (see *Smirnov*, cited above, §§ 58-59).

145. These six applications (nos. 32324/06, 60648/08, 2397/11, 7101/15, 29786/15 and 36833/16) illustrate the issue. The data-storage devices seized were not in themselves an object, instrument or product of any criminal offence, so their continued retention had no apparent justification. There is nothing to explain why the investigating authorities could not have copied the information sought (see, for instance, *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 11, ECHR 2007-IV). The CCrP currently provides for such a possibility (see paragraph 97 above), but it did not exist at the material time. Furthermore, at least since 2012 the option of returning the devices after examining them (see paragraph 95 above) was available to the authorities, but apparently not used by them in three of the present cases (applications nos. 7101/15, 29785/15 and 36833/16) for unknown reasons. In the case of Ms Fast, the seized computer processing units were returned nine months later; Mr Levchenko received his possessions a year and three months after the search; while in three other cases the seized objects were never returned to the applicants. Even though the seized objects were returned to Ms Buraga a month later, the expert had assessed the computers within two days of the seizure, and the authorities did not explain why they had needed to keep the computer units for much longer. Since 2016 (see paragraph 96 above) the legislature has established time-limits for the retention or return of seized objects, but they did not affect the situations of Mr Balyan, Mr Sokolov and Mr Solovyev, Mr Lazutkin, and Mr Parnachev, Mr Prokhorov, Mr Pestov and Mr Rozhkov (applications nos. 2397/11, 7101/15 and 29785/15), whose possessions continued to be retained for unexplained reasons even after the new legislative provisions had been introduced.

146. Accordingly, the Court considers that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicants in each of the six cases. In the light of this finding, the Court considers that it is not necessary to examine whether, in these cases, there has also been a violation of Article 13.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

147. The Court has examined the other complaints submitted by one of the applicants (application no. 32324/06). However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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.”

149. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table, and dismisses the remaining claims for just satisfaction.

#### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* application no. 14244/11 inadmissible;
3. *Declares* the complaints lodged by the remaining twenty-two applicants under Article 8 of the Convention and Article 13 in conjunction with Article 8, as well as the complaints lodged by eleven applicants (applications nos. 32324/06, 60648/08, 2397/11, 7101/15, 29786/15 and 36833/16) under Article 1 of Protocol No. 1 to the Convention and Article 13 taken together with Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the applications inadmissible;
4. *Holds* that there has been a violation of Article 8 of the Convention in respect of the twenty-two applicants whose complaints have been found admissible;
5. *Holds* that there is no need to examine Article 13 in conjunction with Article 8 of the Convention;



6. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of eleven applicants (applications nos. 32324/06, 60648/08, 2397/11, 7101/15, 29786/15 and 36833/16);
7. *Holds* that there is no need to examine Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention;
8. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts indicated in the Appendix, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the awarded amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
9. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 4 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Paul Lemmens  
President

## APPENDIX

## List of the applicants and awards made by the Court under Article 41 of the Convention

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Just satisfaction claims	Award under Article 41
1.	11264/04 01/03/2004	<b>Aleksandr Gennadyevich KRUGLOV</b> (formerly KRUG) 30/10/1976 Samara Russian		Non-pecuniary damages: EUR 1,000,000	Non-pecuniary damages: EUR 9,800 (nine thousand eight hundred euros)
2.	32324/06 05/06/2006	<b>Irina Yuryevna BURAGA</b> 03/01/1964 Yekaterinburg Russian	Sergey Vyacheslavovich KOLOSOVSKIY	Non-pecuniary damages: EUR 100,000 Costs and legal expenses: EUR 4,065	Non-pecuniary damages: EUR 12,700 (twelve thousand seven hundred euros)  Costs and expenses: EUR 3,000 (three thousand euros)
3.	26067/08 17/03/2008	<b>Marina Aleksandrovna BELINSKAYA</b> 18/12/1970 St Petersburg Russian	Olga Andreyevna STASYUK	Non-pecuniary damages: EUR 100,000 Costs and legal expenses: EUR 10,000	Non-pecuniary damages: EUR 9,800 (nine thousand eight hundred euros)  Costs and expenses: EUR 1,000 (one thousand euros)
4.	58290/08 29/10/2008	<b>Denis Valerianovich FEDOROV</b> 12/08/1983 Cheboksary Russian	Aleksey Vladimirovich GLUKHOV	Non-pecuniary damages: EUR 7,143 Costs and legal expenses: EUR 1,070	Non-pecuniary damages: EUR 7,100 (seven thousand one hundred euros)  Costs and expenses: EUR 1,000 (one thousand euros) (to be paid to the representative)

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Just satisfaction claims	Award under Article 41
5.	60648/08 01/12/2008	<b>Irina Aleksandrovna FAST</b> 26/07/1974 Nizhniy Novgorod Russian		Non-pecuniary damages: EUR 15,000  Pecuniary damages: EUR 5,600  Costs and legal expenses: EUR 5,470	Non-pecuniary damages: EUR 12,700 (twelve thousand seven hundred euros)
6.	2397/11 21/12/2010	<b>Aleksandr Vanovich BALYAN</b> 25/12/1969 Novosibirsk Russian  <b>Sergey Anatolyevich SOKOLOV</b> 07/10/1969 Moscow  <b>Ruslan Vladislavovich SOLOVYEV</b> 28/04/1975 Cheboksary	Karina Akopovna MOSKALENKO	Non-pecuniary damages: first applicant: EUR 15,000 second and third applicants: EUR 10,000 each  Pecuniary damages: EUR 11,174.37  Costs and legal expenses: EUR 16,029.72	Non-pecuniary damages: EUR 12,700 (twelve thousand seven hundred euros) to each of the applicants  Costs and expenses: EUR 3,000 (three thousand euros)
7.	10825/11 10/02/2011	<b>Aleksey Vladimirovich SILIVANOV</b> 25/04/1977 Yekaterinburg Russian	Anton Leonidovich BURKOV	Non-pecuniary damages: EUR 5,000  Costs and legal services: EUR 9,663	Non-pecuniary damages: EUR 5,000 (five thousand euros)  Costs and expenses: EUR 1,000 (one thousand euros)

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Just satisfaction claims	Award under Article 41
8.	14244/11 05/02/2011	<p><b>Marina Aleksandrovna BELINSKAYA</b> 18/12/1970 St Petersburg Russian</p> <p><b>Nikita Nikolayevich SOKOLOV</b> 15/05/1977 St Petersburg</p> <p><b>Valeriy Vasilyevich BURYKIN</b> 02/12/1953 Markovo</p> <p><b>Oleg Yuryevich MAKOVOZ</b> 10/08/1968 St-Petersbourg</p>	<p>Tatyana Fedorovna KLYKOVA (representing the first, third and fourth applicants)</p> <p>Maksim Vladimirovich SEMENOV (representing the second applicant)</p>		
9.	78187/11 07/12/2011	<p><b>Tatyana Aleksandrovna BULYCHEVA</b> 07/10/1983 Khabarovsk Russian</p>		Non-pecuniary damages: EUR 2,000	Non-pecuniary damages: EUR 2,000 (two thousand euros)
10.	18403/13 26/02/2013	<p><b>Olesya Petrovna MOISEYEVA</b> 28/08/1973 Vladivostok Russian</p>		Non-pecuniary damages: EUR 100,000	Non-pecuniary damages: EUR 9,800 (nine thousand eight hundred euros)
11.	73629/13 30/10/2013	<p><b>Sergey Vilyevich MEZENTSEV</b> 10/01/1975 Orsk Russian</p>		Non-pecuniary damages: EUR 50,000	Non-pecuniary damages: EUR 9,800 (nine thousand eight hundred euros)

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Just satisfaction claims	Award under Article 41
12.	7101/15 27/01/2015	<b>Konstantin Viktorovich LAZUTKIN</b> 15/05/1974 Yekaterinburg Russian	Konstantin Gennadyevich KRASILNIKOV	Non-pecuniary damages: EUR 5,000  Costs and legal expenses: EUR 1,222	Non-pecuniary damages: EUR 5,000 (five thousand euros)  Costs and expenses: EUR 1,000 (one thousand euros)
13.	29786/15 02/06/2015	<b>Vladimir Vladimirovich PARNACHEV</b> 27/03/1973 Novosibirsk Russian  <b>Viktor Viktorovich PROKHOROV</b> 30/03/1978 Novosibirsk  <b>Aleksey Vladimirovich PESTOV</b> 22/05/1975 Novosibirsk  <b>Maksim Valeryevich ROZHKO</b> 30/10/1980 Tomsk	Karinna Akopovna MOSKALENKO	Non-pecuniary damages: EUR 20,000 each of the applicants  Pecuniary damages: first applicant: EUR 25,200 second applicant: EUR 16,733 third applicant: EUR 10,944 fourth applicant: EUR 10,604  Costs and expenses: EUR 18,078	Non-pecuniary damages: EUR 9,800 (nine thousand eight hundred euros) each of the applicants  Pecuniary damages: EUR 1,600 (one thousand six hundred euros) each of the applicants  Costs and expenses: EUR 3,000 (three thousand euros)
14.	19667/16 31/03/2016	<b>Svetlana Aleksandrovna PONYAYEVA</b> 13/10/1981 St Petersburg Russian		Non-pecuniary damages: EUR 100,000  Pecuniary damages: EUR 50,626  Costs and expenses: EUR 8,859	Non-pecuniary damages: 9,800 EUR (nine thousand eight hundred euros)  Costs and expenses: EUR 1,000 (one thousand euros)
15.	36833/16 15/06/2016	<b>Oleg Ariyevich LEVCHENKO</b> 28/02/1970 Orenburg Russian		The applicant seeks only a finding of violations of his rights.	

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Just satisfaction claims	Award under Article 41
16.	39456/16 24/06/2016	<p><b>Tatyana Aleksandrovna PASHKINA</b> 07/05/1953 Krasnodar Russian</p> <p><b>Danila Aleksandrovich PRIVALOV</b> 21/01/1985 Krasnodar</p> <p><b>Yevgeniy Anatolyevich LEVIN</b> 26/01/1969 Krasnodar</p>		Non-pecuniary damages: EUR 143,000 each of the applicants	Non-pecuniary damages: 9,800 EUR (nine thousand eight hundred euros) each of the applicants