

Soren Nielsen
Section Registrar, First Section
European Court of Human Rights
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Dear Mr. Nielsen,

I would like to file an application with the European Court of Human Rights on behalf of my clients, the Interregional Association of Human Rights Organizations “AGORA” (hereafter “AGORA” or “the first applicant”), a Russian human rights group based in Kazan, Mr. Pavel Vladimirovich Chikov (“the second applicant”), Mr. Ramil Khaidarovich Akhmetgaliyev (“the third applicant”), Irina Vladimirovna Khrunova (“the fourth applicant”) and Dmitriy Aleksandrovich Kolbasin (the fifth applicant), all four of them Russian nationals, working for the Association “AGORA”. Their complaints arise out of a search of the premises of Association “AGORA” by the Russian authorities and the seizure of items belonging to the applicants, based on organized crime and anti-terrorism legislation, as well as the electronic surveillance of the AGORA office. The applicants believe that the search and seizures, as well as the electronic surveillance, which apparently was carried by the authorities, in fact had the purpose of intimidating them in carrying out their human rights work.

AGORA is a non-governmental organization, doing human rights litigation in Russia. AGORA’s funding comes from a number of Government and private donors, among them United Nations Development Program, European Commission, The Open Society Institute – Assistance Foundation, The John D. and Catherine T. MacArthur Foundation, The National Endowment for Democracy. The second applicant is the Director of the Association Agora. The third and fourth applicants work at “AGORA” as attorneys-at-law. In the office of the organization they keep files and documents concerning criminal, civil and administrative cases of their clients – individuals and legal entities, including the files of about twenty cases pending before the European Court of Human Rights. The fifth applicant works at “AGORA” as a journalist and editor.

On 18 June 2009 the Tatarstan Prosecution Office ordered an inspection of the funding received by AGORA in April 2006 and March 2007, two grants from The Open Society Institute – Assistance Foundation, The John D. and Catherine T. MacArthur Foundation. On 26 June 2009, in connection with the prosecutorial inspection, the Ministry of Justice took a decision to examine AGORA’s activities. The Ministry of Justice informed the applicants that the information provided to the Ministry by the prosecution authorities will be examined and the applicants will be asked to present additional documents. On 30 July 2009, the Ministry of Justice issued a decision, finding that “AGORA”’s funding was in compliance with the relevant domestic legislation.

The Searches and Seizures

In the meantime, on 20 July 2009 the deputy Minister of the Interiors of the Tatarstan Republic issued a decree ordering the search of AGORA’s office and vehicles, which would

include search and seizure of objects, electronic data and documents. The search order did not specify what particular items were sought after. It said “to conduct a search of premises, buildings, constructions, landscape and vehicles in relation to the AGORA Association”.

On the same day, 20 July 2009, between 4 p.m. and 2.30 a.m. on 21 July 2009 police officers searched the applicants’ office. They seized a computer and 2000 pages of documents. The police officers also searched personal items such as handbags and the second applicant’s wallet. The third and fourth applicants were working in the office at the time of the search; the police officers searched their case files and their personal items.

On 29 and 30 July 2009 the police officers asked the applicants to present additional documents regarding the spending of their budget. On 21 July 2009 the Tatarstan Prosecution Office published on its official web-site a press release stating that they have received information regarding financial operations of non-governmental organizations that fall in the scope of the Act for Fight against Legalization of Income Received in a Criminal Way and Financing Terrorism. The Prosecution Office also announced that AGORA has made financial operations falling within the scope of this act. On 24 July 2009 the Ministry of the Interiors announced that police officers had searched the applicants’ office on the basis of prosecutorial decree.

On 12 September 2009 the prosecution authorities issued a decree refusing to investigate the origin of the applicants’ funding, as there was no evidence of criminal conduct. On 5 August 2009 the Federal Tax Agency of Tatarstan Republic ordered a tax inspection of AGORA. The second applicant was asked to present financial documents. He replied that he could not present these documents as they were seized by the police officers. On 14 August 2009 the Tax Agency joined the three police officers who searched the applicants’ office on 20 July 2009, to the team carrying out the tax inspection.

On 4 December 2009 the Tax Agency held that certain funding, which the first applicant has received, was not tax exempt and the first applicant has failed to pay due taxes. On 24 December 2009 the applicants submitted written observations. On 12 January 2010 the Tax Agency issued a decision, holding AGORA responsible for a tax offence. On 16 January 2010 AGORA appealed before the superior administrative authority but the appeal was not successful. This refusal was appealed in court, and the court proceedings are pending.

Upon the applicants’ request, the Supreme Prosecution Office of the Russian Federation held an internal inquiry into the lawfulness of the search and seizure operation and on 16 November 2009 issued a decision finding that the Tatarstan Prosecution Office has acted lawfully.

On 10 August 2009 the first applicant filed a claim with the Kazan District Court asking that the 20 July 2009 search and seizure decree be declared unlawful. The applicants argued that the prosecutorial order could not serve as a basis to issue this decree and the Deputy Minister of the Interiors had exceeded its powers in issuing it. They also argued that the decree did not state the reasons for the search, the type of items and documents that need to be seized and that the scope of the operation should have been limited to the funding received in April 2006 and March 2007. The applicants relied on the case-law of the ECtHR on searches and seizures. In the course of the court proceedings, the applicants asked the court to oblige the defendant to present the relevant internal executive legislation of the Ministry of Interior on searches and seizures. The court dismissed this request.

On 19 August 2009 the Kazan District Court issued a decision dismissing the applicants' claim. The court held that the search order was reasoned and based on information of illegal activity by AGORA. The court held that the 20 July 2009 order was issued by the competent authority and that the Prosecution Office did have the powers under domestic law to order the Ministry of the Interiors to carry out the search. The court pointed out that the 20 July 2009 operation represented a "police inspection" ("оперативно-розыскное мероприятие") but not a "search", within the meaning of the Criminal Proceedings Code. The court further held that "it was impossible to indicate in advance the exact title of the documents, which would disprove or confirm the information". The court dismissed the first applicant's complaint that the search order violated the rights of the persons who worked at AGORA as ill-founded. It argued that these persons could submit individual complaints to court and that it was a notorious fact that the lawyers were not part of AGORA's personnel, as they were members of the bar. In addition, the court rejected the allegation that case files were kept at AGORA's office, as case files could only be kept in the court, where the case was being considered and could not be given to the applicants to keep them. In conclusion, the Kazan District Court held that the applicants' rights were not violated.

On 28 August 2009 the applicants appealed the Kazan District Court's judgment to the Tatarstan Supreme Court. They argued that the court did not examine all the relevant facts and failed to address some of their requests for evidence. On 8 October 2009 the Tatarstan Supreme Court issued a decision dismissing the appeal. It found that the actions of the police officers were in compliance with the respective legislation, regulating their powers and the grounds to hold a police inspection. It upheld the lower court's judgment in full.

In October 2009 the applicants filed a claim to the Kazan District Court asking that the actions of the police officers who searched the office be declared unlawful. They argued that the police officers interfered with the applicants' bank private information and asked for additional documents, after the search was completed, in breach of the law. The applicants submitted that the authorities did not indicate in the search minutes all the persons that have been searched and all the police actions, for example, they did not attach the video-record taken during the operation. On 18 November 2009 the Kazan District Court found that the actions of the police were unlawful only with respect to the request for additional documents and the inspection of bank information. The applicants appealed the decision to the Tatarstan Supreme Court.

On 22 December 2009 the Tatarstan Supreme Court delivered a decision whereby it overruled the lower court's judgment and held that all police actions were lawful. The court held that the request for additional documents was lawful, as under the Police Act, police officers have the powers to request and receive all necessary information and documents. The court held that in the instant case the video-recording of the search was not for the purpose of collecting evidence, but for the purpose of avoiding future accusations against the police officers.

The Electronic Surveillance

On 14 August 2009 the second applicant found in AGORA's office a secret camera and listening device hidden in the wall. He removed the camera and the cable attached to it. The second applicant reported the incident to the Kazan Investigation Office, submitting that apparently unknown police officers have installed illegally electronic surveillance devices in his office. On 1 September 2009 the investigation authorities examined the applicants' office

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and the hidden camera and the listening device, and ordered an expert opinion. The expert opinion concluded that the surveillance devices found in the applicants' office were identical with those used by the investigation authorities. On 2 September 2009 the investigation authorities issued a decision refusing to initiate criminal proceedings for reasons of lack of sufficient evidence to prosecute any police officer. The second applicant appealed this decision before the Kazan District Court.

On 15 March 2010 the Kazan District Court delivered a judgment declaring the applicant's claim well-founded and the 2 September 2009 investigation decree – unlawful. It instructed the investigation authorities to remedy the violation. The court found that under the Russian Constitution every person had the right to respect for his/her private life, personal and family secret and correspondence and any interference with this right was only acceptable on the grounds of a court decision. The court also found that the domestic legislation provided for criminal liability for collecting data concerning someone's private life without his/her permission and for disrespecting the secret of phone calls, mails, correspondence by using special devices. The court further held that the investigator had failed to establish the facts as to the actions of the police officers and whether they were lawful. Without establishing these facts – according to the Kazan District Court – it was premature to make conclusions that there was no evidence of a crime. On 19 March 2010 the Kazan Prosecution Office submitted an appeal against the 15 March 2010 judgment before the Tatarstan Supreme Court. The proceedings are pending.

The applicants will allege before the European Court of Human Rights that the search of their office, including case files, electronic data and personal items, and the electronic surveillance amounted to an interference with their "private life" and "correspondence", within the meaning of Article 8 of the Convention. The applicants will argue that the search and seizure and the electronic surveillance were not justified, as they did not serve a legitimate aim, were not carried out pursuant to a warrant issued by a judicial officer, the search warrant was not based on a probable cause and its scope was unlimited. They will also argue that, in view of the fact that lawyer's files were examined, no safeguards were put in place, to guarantee the confidentiality of privileged information. Finally, they will argue that they did not have an effective remedy with respect to both the search and seizure and the electronic surveillance, in violation of Article 13 of the Convention.

I respectfully request that this letter be referred to the European Court of Human Rights, in accordance with Article 34 of the Convention, and that I be provided with the relevant application forms and any instructions for the filing of such application.

Sincerely yours,

Yonko Grozev