

EUROPEAN COURT OF HUMAN RIGHTS

Strasbourg, France

APPLICATION

*under Article 34 of the European Convention on Human Rights
and Rules 45 and 47 of the Rules of Court*

IMPORTANT: *This application is a formal legal document and may affect your rights and obligations.*

I. THE PARTIES

A. THE APPLICANTS

1. *Name* – Interregional Association of Human Rights Organizations “AGORA”
Base – Kazan, Russian Federation

2. *Surname* – CHIKOV
First name (s) – PAVEL VLADIMIROVICH
Sex – male
Nationality – Russian

3. *Surname* – AKHMETGALIYEV
First name (s) – RAMIL KHAIDAROVICH
Sex – male
Nationality – Russian

4. *Surname* – KHRUNOVA
First name (s) – IRINA VLADIMIROVNA
Sex – female
Nationality – Russian

5. *Name of representative* – Yonko Grozev
Occupation of representative - Attorney-at-Law
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B. THE HIGH CONTRACTING PARTY

RUSSIAN FEDERATION

II. STATEMENT OF THE FACTS

1. The Interregional Association of Human Rights Organizations “AGORA” (hereafter “AGORA” or “the first applicant”), is a Russian human rights group based in Kazan. Mr. Pavel Vladimirovich Chikov (“the second applicant”), Mr. Ramil Khaidarovich Akhmetgaliyev (“the third applicant”) and Mrs. Irina Vladimirovna Khrunova (“the fourth applicant”) are citizens of the Russian Federation and work 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. The search was publicly announced by the prosecution as being based on anti-terrorism and organized crime legislation, but later justified in the course of the subsequent proceedings on tax law grounds. The applicants also complain in addition, about the electronic surveillance of the AGORA office, which they believe, was part of the same police operation. The applicants believe that the search and seizures, as well as the electronic surveillance, which apparently was also carried out by the police authorities, had the purpose of intimidating them from actively continuing their human rights work.
2. AGORA is a non-governmental organization, doing human rights litigation in Russia. AGORA has several prominent lines of work, among them representing victims of police brutality and cases of intimidation of human rights groups by the authorities. The organization enjoys high publicity, with 6,000 annual media publications covering its human rights work. AGORA has represented victims of police brutality in 250 cases over the last 8 years throughout the territory of the Russian Federation. AGORA’s funding comes from a number of foreign governments and private donors, among them United Nations Development Program, the European Commission, the Open Society Institute, the MacArthur Foundation and the National Endowment for Democracy. The second applicant is the Director of the Association AGORA. The third and fourth applicants are attorneys-at-law. While they work almost exclusively on AGORA’s cases, and their use the office of AGORA for their work, they do not have permanent contracts with AGORA. The two lawyers keep in the office of the organization all the 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 inquiry of the Ministry of the Interior

3. On 18 June 2009 the Tatarstan Prosecution Office (hereafter “the Prosecution Office”) sent a letter to the Tatarstan Ministry of the Interior (hereafter “the Ministry of Interior”) instructing the Ministry of Interior to start an inquiry into the activities of AGORA under the Act on Fight against Legalization of Criminal Income and Financing Terrorism (Федерального закона «О противодействии легализации доходов, полученных преступным путем, и финансированию терроризма») (hereafter “the Anti-Terrorism Act”).¹ According to this letter, the Prosecution Office acted on information of two financial transactions falling under the scope of the Anti-Terrorism Act, namely, a credit transaction of April 2006 named “grant” and a debit transaction of March 2007 described as “under a co-operation contract”.

¹ See Letter from the Tatarstan Prosecution Office to the Ministry of the Interior of 18/06/2009 – Exhibit No. 1.

4. On 20 July 2009 the Deputy Minister of the Interior of the Tatarstan Republic issued a decree No 51/97, ordering the search of AGORA's office and vehicles, which would include "search and seizure of objects, electronic data and documents (or their copies)" for the time period between 01/01/2006 and 31/06/2009. The search warrant did not specify what particular items were sought after but rather instructed a "search of premises, buildings, constructions, and vehicles linked with the AGORA Association".² The search warrant cited as a factual ground for the search "false statements in tax returns for the period 01/01/2006-31/06/2009", and as legal ground national tax laws.
5. On 20 July 2009, in the late afternoon, police officers arrived at AGORA's premises - office No. 55 and office No. 56 on 10 Meridiannaya Str, Kazan. One of the police officers carried a video camera and filmed the search and everyone who was at the time in the office from the very start. Between 4 p.m. and 2.30 a.m. on 21 July 2009 the police officers searched thoroughly the premises, examining extensively all documents that were to be found on the premises, without any exceptions. They seized the personal computer of the chief accountant and 2000 pages of original documents, financial documents, grant agreements, and all contracts of AGORA with its partner organizations and lawyers.³ Some of the seized documents covered time periods different from those indicated in the search warrant. The police officers also searched personal items of the applicants, such as handbags, the second applicant's wallet and the digital photos on the applicants' camera. The third and fourth applicants who were working in the office at the time of the search; the police officers searched their case files and their personal items. On the following day the police returned the computer.
6. On 21 July 2009 the Prosecution Office published on its official web-site a press release stating that the office has ordered the search on the basis of information regarding financial operations of AGORA, which fell under the Anti-Terrorism Act.⁴ On 24 July 2009 the Ministry of Interior announced that police officers had searched the applicants' office on the basis of a prosecutorial decree.⁵
7. With letters dated 29 July 2009, 30 July 2009 and 4 August 2009 the Director of the Tax Crimes Department of the Ministry of the Interior asked the second applicant to present additional financial documents of the organization.⁶ He asked, inter alia, for AGORA's contracts with the Open Society Institute - Assistance Foundation and the Tides Foundation. On 25 August 2009 the second applicant sent a letter in response, providing part of the requested information and indicating that the rest of these documents were in the computer seized by the police officers.⁷
8. On an unspecified date, the Director of the Tax Crimes Department at the Ministry of the Interior sent a letter to the Director of "Tatfondbank" asking for information regarding AGORA's bank account, in particular, which persons were authorized to sign financial documents according to cards with signature examples.⁸

² See Decree 51/97 of 20/07/2009 of the deputy Minister of the Interior – Exhibit No. 2.

³ See Minutes from search of 21/07/2009 with two attachments – Exhibit No. 3.

⁴ See Press release published on the Prosecution's Office web site – Exhibit No. 4.

⁵ See <http://www.kazved.ru/printa/25934.aspx>.

⁶ See letters to P. Chikov of 29/07/09, 30/07/09 and 04/08/09 – Exhibits Nos. 5,6 and 7.

⁷ See Letter by P. Chikov of 25/08/09 – Exhibit No. 8.

⁸ See letter from the TCD to Tatfondbank – Exhibit No. 9.

9. On an unspecified date in September 2009, a police officer from the Tax Crimes Department reported that on the basis of the inspection of AGORA's finances, he had reached the conclusion that the second applicant, in his capacity of Director of the organization, has failed to pay taxes due on grants by four donors, the MacArthur Foundation, the Open Society Institute, the National Endowment for Democracy and the Tides Foundation, an offence under Articles 250 and 251 of the Russian Tax Code. This finding was based on two facts. First, no separate accounting was run by AGORA for each and every separate grant ("целевое финансирование"), as required by law, but instead, a joint accounting was run for the whole organization and all the grants. Second, the last two donors, the National Endowment for Democracy and the Tides Foundation, were not on the list of donors, adopted with a decision No. 165 of 5 March 2001 of the Russian Government, grants from which were tax exempt.⁹
10. On 12 September 2009 an investigator with the Ministry of the Interior issued a decree, refusing to initiate criminal proceedings against the second applicant.¹⁰ The investigator confirmed the findings of the police report that AGORA had failed to keep separate accounts for each and every grant in violation of the Accounting Act and the Tax Code and as a result has failed to pay taxes due, which was a tax offence. However, the investigator held that AGORA's director, and its former and present chief accountant could not be held criminally responsible, as there was no evidence of intent in their actions. With respect to the second applicant, the investigator found that he did not have special knowledge in the field of taxes and accounting and was not aware of the necessity to have a separate accounting for every grant. All documents seized on 20 July 2009 were returned to the applicants.
11. In the meantime, on 26 June 2009, "in connection with the prosecution request of 18.06.2009", the Ministry of Justice took a decision to examine AGORA's activity, including the spending of the April 2006 grant.¹¹ 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.¹² On 30 July 2009, the Ministry of Justice issued a decision, finding that "the credit transaction ... received by the organization in April 2006 and the debit transaction of March 2007 ... correspond to the aims of the organization, as described in Article 3 of the by-laws of the organization and in Article 2 (2) of the 1996 Non-profit Organizations Act".¹³
12. On an unspecified date the General Prosecution Office of the Russian Federation ordered an inquiry into the legality of the actions of the police during the search of AGORA's premises. The Tatarstan Prosecution Office carried out the inquiry and on 15 August 2009 issued a report. The report's findings were that the police officers, in violation of the law, failed to explain to the applicants at the start of the search the procedure that will be followed and their rights. In addition, the authorities had seized also personal information of the applicants, in violation of their right to private life. In conclusion, the Tatarstan Prosecution Office instructed the Ministry of Interior to take

⁹ See Report by police officer from the TCD of August 2009 – Exhibit No. 10.

¹⁰ See Decree refusing to initiate criminal proceedings of 12/09/2009 – Exhibit No. 11.

¹¹ See Order of the Ministry of Justice of 26/06/2009 – Exhibit No. 12.

¹² See Notification from the Ministry of Justice to AGORA of 26/06/2009 – Exhibit No. 13.

¹³ See Report from inquiry of the Ministry of Justice of 30/07/2009 – Exhibit No. 14.

measures to prevent future violations and to discipline the responsible police officers.¹⁴ The applicants are not aware of any steps taken on the basis of this report.

13. On 5 August 2009 the Inter-District Tax Inspection #5 of the Tatarstan Republic opened a tax inspection of AGORA's activity for the financial years 2006 to 2009. On 5 October 2009 the Inter-District Tax Inspection issued a finding of an administrative offence on account of the fact that AGORA has failed to pay taxes for the grants and donations it had received from the National Endowment for Democracy and the Tides Foundation. In the course of the tax inspection, Inter-District Tax Inspection #5 took a decision to investigate the third and the fourth applicants, in particular, "to question the victims on their relations to the attorneys, in the course of questioning it must be established the cost and the procedure of the calculation for the services provided, as well as to establish concrete actions in the course of the service provided."¹⁵ The authorities questioned seven clients of AGORA represented by the third and fourth applicants. They asked AGORA's clients whether they received legal aid from certain attorneys, what particular actions were done by the attorneys, what was the quality of the services, whether they signed any contracts and paid any money for the services.
14. On 12 January 2010 the Inter-District Tax Inspection issued a decision, holding AGORA responsible for administrative tax offences on account of AGORA's failure to pay due taxes. AGORA appealed to the superior administrative authorities which confirmed the decision.¹⁶ The applicants appealed to the competent court. On 1 July 2010 the Tatarstan Arbitration Court confirmed the decision of the Inter-District Tax Inspection as lawful. The applicants appealed to the superior arbitration court. The proceedings are still pending.

The complaint against the search warrant

15. On 12 August 2009 the Association AGORA, represented by the second applicant, filed a claim¹⁷ with the Kazan District Court asking for the 20 July 2009 search and seizure decree to be declared unlawful. The applicants argued that the prosecutorial letter of 18 July 2009 could not serve as a valid basis for this decree, that no separate legal basis existed under domestic law and that in issuing it, the Deputy Minister of the Interior has exceeded his powers. They also argued that the decree did not state the reasons for the search, the type of items and documents that needed to be seized. They further indicated that the scope of the search should have been expressly limited to the April 2006 and March 2007 financial operations, which the decree failed to do. The applicants relied on the case-law of the ECtHR.
16. In the course of the court proceedings, the Ministry of the Interior indicated that the Deputy Minister of the Interior has acted on the basis of internal secondary legislation, namely a regulation, approved by an Order # 138 of 2 March 2009 of the Tatarstan Minister of the Interior. The applicants requested the court to instruct the defendants to present the relevant executive legislation, which has never been published. The court, however, ignored their request. The court also refused to instruct the Ministry of

¹⁴ See Report of the Tatarstan prosecution Office of 15/08/2009 – Exhibit No. 15.

¹⁵ See complaint by the third and the fourth applicants of 12/07/2010 – Exhibit No. 37.

¹⁶ See Decision No. 105/18.02.2010 and Decision No. 201/18.03.2010 of tax authorities – Exhibit No. 16.

¹⁷ See Claim to the Kazan District Court of 12/08/2009 – Exhibit No. 17.

Interior to produce the available evidence of a crime, on the basis of which it acted. A representative of the Prosecution Office testified before the court, that the Prosecution Office letter of 18 June 2009 “did not contain any evidence of a specific crime”, but rather referred the matter to the Ministry of Interior to act on its own discretion and further stated that “[w]hy the letter was sent to the Ministry of Interior I could not say”.¹⁸

17. On 19 August 2009 the Kazan District Court issued a judgment¹⁹ dismissing the applicants’ claim and refusing to declare the search warrant unlawful. The court held that the search order was reasoned and based on information of illegal activities by AGORA. The court held that the 20 July 2009 order was issued by the competent authority, the Deputy Ministry of Interior, as head of the investigation units within the Ministry and that he did have the powers to give orders to them. The court pointed out that the 20 July 2009 operation represented an inquiry (“оперативно-розыскное мероприятие”) but not a “search”, within the meaning of the Criminal Proceedings Code and for that reason the legal requirements for a search did not apply in the present case. The court further held that it was not possible to indicate with higher precision the documents that should be searched and 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 infringed the privacy of the persons who worked in AGORA, stating that these individuals could submit individual complaints to court and also that it was a well-known 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 those lawyers kept case files in AGORA’s office, as case files could only be kept in the courts and could not be given to the applicants for safe keeping. In conclusion, the Kazan District Court held that the applicants’ rights were not violated.
18. 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, never established what information served as a basis for opening the inquiry and ordering the search, failed to establish the legal ground on which the Deputy Minister of Interior ordered the search, and failed to address some of their evidentiary requests.²⁰
19. 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 relevant legislation, regulating their powers to carry out a police inquiry. It upheld the lower court’s judgment in full.²¹

The complaint against the actions of the police

20. On 16 September 2009 the applicants filed a claim²² with the Kazan District Court asking that the actions of the police officers who searched the office be declared unlawful. The applicants raised several groups of arguments regarding 1) the carrying

¹⁸ See Minutes from court hearing of 19/08/2009 – Exhibit No. 18.

¹⁹ See Judgment of the Kazan District Court of 19/08/2009 – Exhibit No. 19.

²⁰ See Cassation appeal against the 19/08/2009 judgment – Exhibit No. 20.

²¹ See decision of the Tatarstan Supreme Court of 08/10/2009 – Exhibit No. 21.

²² See Claim to the Kazan District Court of 16/09/2009 – Exhibit No. 22.

of the search and the filling in of the search minutes; 2) the requesting of additional documents after the completion of the search and 3) the requesting of bank information. The applicants complained that, for example, four police officers participated in the search, while only two were noted in the search minutes. The applicants argued that they were not informed about the procedure and about their rights within it before the start of the search, nor were they informed about the use of video-recording during the search. The applicants complained that, in breach of law, the police did not attach the video-record to the search record. Lastly, the applicants complained that the police officers did not indicate in the search record all the actions that have been carried out, for example the search of their personal items. In addition, the applicants argued that the police officers interfered with the applicants' private bank information and had asked for additional documents, after the search was completed, in breach of the law.

21. On 18 November 2009 the Kazan District Court found that carrying out the search, the police have acted in violation of certain procedural requirements, namely, they failed to describe in the minutes all their actions during the search; they failed to indicate in the record the conditions and the use of a video-recording; they failed to present the minutes for a signature; they requested for additional documents and inspected bank information.²³ The court held, however, that these procedural violations were not substantial, and thus, could not render the search and the seizures unlawful.
22. On 26 November 2009 the applicants appealed the Kazan District Court's decision to the Tatarstan Supreme Court.²⁴ On 27 November 2009 the defendant in the proceedings – the Tatarstan Prosecution Office – also submitted a cassation appeal. It argued that the video-recording of the search had the legal purpose of providing guarantees against abuse by the police.²⁵
23. 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 Supreme Court confirmed that the inspection of bank information was unlawful.²⁶

The electronic surveillance

24. On 14 August 2009 the second applicant found in AGORA's office a secret camera and a listening device, hidden in the wall. The camera appeared to be working and was connected to a cable, that run through the outside wall of the office, into the hallway and along the hallway into an adjacent room, which was used as a hair studio. The applicant could not pull the camera out of the wall from the office side of the wall, but was able to pull it out from the hallway side of the wall. The hallway is freely

²³ See Decree of the Kazan District Court of 18/11/2009 – Exhibit No. 23.

²⁴ See Cassation appeal by AGORA – Exhibit No. 24.

²⁵ See Cassation appeal by the Prosecution Office – Exhibit No. 25.

²⁶ See Decision of the Tatarstan Supreme Court of 22/12/2009 – Exhibit No. 26.

accessible to the public. He removed the camera and microphone and cut the cable to which it was attached.²⁷ On 24 August 2009 the second applicant reported the incident to the Investigation Department with the Prosecution Office, submitting that apparently unknown police officers have installed illegally electronic surveillance devices in his office.

25. On 26 August 2009 the Kazan Investigation Office informed the second applicant that the time period for investigation of his report was extended with ten days.²⁸
26. On 28 August 2009 the authorities inspected the applicants' office. In the wall they found the opening of a canal leading outside the office and seized for inspection the camera, the microphone and the cable removed by the second applicant.²⁹
27. On 1 September 2009 the leading investigator ordered a technical examination³⁰ and sent a letter to the Federal Security Agency asking if they had investigated AGORA³¹. On 2 September 2009 the investigator issued a decree refusing to open criminal proceedings.³² The investigator recited the testimony of the applicants and the applicable law, namely that electronic surveillance could be carried out only on the basis of a court issued warrant. He also quoted decree No 51/79 of 20 July 2009 of the Deputy Minister of the Interior of the Tatarstan Republic, which ordered investigation steps ("оперативно-розыскное мероприятие") and held that this allowed surveillance ("наблюдение"), including secret photo and video surveillance ("негласные фото или видеосъемки"). The investigator further held, that any person thus investigated, could request the police to present all the information collected on them in the process of the investigation, but the applicants have failed to avail themselves of that remedy. In conclusion, the investigator held that under those circumstances he was not competent to open criminal proceedings.
28. On 9 September 2009 the Federal Security Agency responded to the investigator that they had not investigated AGORA.³³
29. On 16 September 2009 the technical expert examination was completed.³⁴ The expert concluded that the surveillance devices found in the applicants' office were identical with those used by the investigation authorities.
30. The second applicant appealed the decree refusing to open criminal proceedings before the Kazan District Court, which ruled on the appeal on 15 March 2010.³⁵ The court found 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

²⁷ See testimony of the applicants reproduced in Decree refusing to open criminal proceedings of 02/09/2009 – Exhibit No. 31.

²⁸ See Letter from the Kazan Investigation Office to P. Chikov of 26/08/2009 – Exhibit No. 27.

²⁹ See Minutes from site inspection of 28/08/2009 – Exhibit No. 28.

³⁰ See Decree ordering technical examination of 01/09/2009 – Exhibit No. 29.

³¹ See Letter from the Kazan Investigation Office to the Federal Security Agency of 01/09/2009 – Exhibit No. 30.

³² See Decree refusing to open criminal proceedings of 02/09/2009 – Exhibit No. 31.

³³ See Letter from the Federal Security Agency to the Kazan Investigation Office of 09/09/2009 – Exhibit No. 32.

³⁴ See Expert examination of 16/09/2009 – Exhibit No. 33.

³⁵ See Decision of the Kazan District Court of 15 March 2010 – Exhibit No. 34.

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 violating 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 no crime was committed.

31. On 19 March 2010 the Kazan Prosecution Office appealed the 15 March 2010 decision to the Tatarstan Supreme Court.³⁶ On 4 May 2010 the Tatarstan Supreme Court issued a decision dismissing the appeal as ill-founded and confirming the lower court's judgment in full.³⁷
32. On 20 May 2010 the Kazan Investigation Office opened a fresh investigation only to end it nine days later on the grounds that there was no evidence that the camera was active at the moment of its removal by the second applicant.³⁸ The second applicant was repeatedly interrogated and gave statements that two police officers had told him informally that all police activity against AGORA was initiated by the Federal Security Agency. The applicants appealed the decree in court.

III. RELEVANT DOMESTIC LEGISLATION

33. The Investigation Activities Act (Федеральный закон от 12 августа 1995 г. N 144-ФЗ "Об оперативно-розыскной деятельности") describes the type of investigation measures the investigation authorities could undertake and the procedures they should follow. The Act expressly protects the right to privacy by requiring judicial authorisation for any investigation activities that interfere with privacy rights. Article 8 of the Act expressly indicates the privacy of communications and the inviolability of the home as such constitutionally guaranteed rights, any limitation of which, requires a judicial warrant. Sub-paragraphs 1 through 3 of Article 8 of the Act further indicate that such investigative steps could only be undertaken on the basis of information that a crime, for which a preliminary investigation is mandatory, was planned or has been committed. In emergency cases, the Act grants the investigating authority the power to undertake such measures without a prior judicial warrant, however, the competent court should be informed within 24 hours and a judicial warrant shall be received within 48 hours.
34. Article 9 of the Act regulates the procedure, under which a judicial warrant shall be issued. It states that "[t]he examination of requests for a measure of interference with the constitutional right to privacy of correspondence and telephone, postal, telegraphic and other communications transmitted by means of wire or mail services, or with the right to privacy of the home, shall fall within the competence of the court at the place where the requested measure is to be carried out or at the place where the requesting body is located. The request must be examined immediately by a single judge; the examination of the request may not be refused."

³⁶ See Cassation appeal against the 15/03/2010 decision – Exhibit No. 35.

³⁷ See Decision of the Tatarstan Supreme Court of 04/05/2010 – Exhibit No. 36.

³⁸ See Decree of the Kazan Investigation Office of 29/05/2010 – Exhibit No. 37.

35. The Federal Act of 7 August 2001 for Fight against Legalization of Income Received in a Criminal Way and Financing Terrorism (Федеральный закон от 07.08.2001 N 115-ФЗ (ред. от 28.11.2007) "О противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма" (принят ГД ФС РФ 13.07.2001) (с изм. и доп., вступающими в силу с 15.01.2008) is a money laundering prevention legislation. Under Article 8 of the Act, certain private individuals and entities have the duty to inform the law enforcement authorities, where they encounter data of a financial transaction, or a contract, which are related to legalization of income received in a criminal way or to financing terrorism.

III. ALLEGED VIOLATIONS OF THE CONVENTION AND RELEVANT ARGUMENTS

36. The applicants allege before the European Court of Human Rights that as a result of,
1) the search of their office, including case files, electronic data and personal items; and
2) the electronic surveillance of their office;
they suffered two separate violations of their right to respect for their private life and their correspondence, within the meaning of **Article 8** of the Convention.
They also argue that they did not have an effective remedy with respect to both violations of their Article 8 rights, namely the search and seizures and the electronic surveillance, in violation of **Article 13** of the Convention.

ALLEGED VIOLATIONS OF ARTICLE 8

1) The searches and seizures

Applicability of Article 8

37. The applicants submit that the search of their office, including of their case files, constituted an interference with their right to respect for their correspondence. They rely on the Court's judgment in the case of *Niemietz v. Germany* (appl. no. 13710/88). In this judgment, the Court held that "that provision does not use, as it does for the word "life", any adjective to qualify the word "correspondence". ... Again, in a number of cases relating to correspondence with a lawyer the Court did not even advert to the possibility that Article 8 might be inapplicable on the ground that the correspondence was of a professional nature" (para. 32 of the judgment).

38. The applicants further argue that the search also interfered with their private life. As the Court has noted "irrespective of whether in any particular case correspondence or diaries or other private documents are discovered and read or other intimate items are revealed in the search, the Court considers that the use of the coercive powers conferred by the legislation to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amounts to a clear interference with the right to respect for private life" (*Gillan and Quinton v. United Kingdom*, judgment of 12 January 2010, para. 63).

39. In the instant case, the decree issued by the Deputy Minister of the Interior ordered a search of and seizure of "documents" in the applicants' office - without any qualifications or limitations. Furthermore, those conducting the search examined at length all documents contained in the applicants' office, for over 10 hours, including all documents related to the complaints made by individual victims of human rights abuse, the case files related to those individuals, all the case files of the two lawyers working for the organization (the third and the fourth applicants), with the relevant data about their clients and the relevant case files, as well as a computer with individual files. Private belongings of the applicants were also searched, in the process and all individuals present at the time, including all three applicants, were filmed in the process of the search. Under those circumstances, the search and seizures has clearly interfered with the applicants' private life and has covered "correspondence" and materials that can properly be regarded as such for the purposes of Article 8.

Whether the search and seizures were justified

40. The applicants submit that the search and seizures were not justified, as they were not subject to the conditions provided for by national law and were not proportionate. The search warrant was not based on probable cause and its scope was unlimited. They also submit that, in view of the fact that lawyer's files were examined, no safeguards were put in place, to guarantee that no privileged information will be accessed.

41. The applicants also indicate, that under the well established case law of the ECtHR, any interference with Article 8 rights should be "in accordance with the law" and for domestic law to qualify as "law" under the Convention, it must be "adequately accessible"³⁹ and "formulated with sufficient precision to enable the citizen to regulate her/his conduct."⁴⁰ In other words it must be clear and foreseeable to prevent arbitrary actions by public authorities.

42. The applicants submit that the search and seizure were carried out in blatant violation of domestic law, or alternatively, that they were based on domestic legal provisions that could not qualify as "law" within the meaning of the Convention. The applicants submit that domestic law clearly mandates that any search of premises and seizure of items found in the course of the search should be carried out on the basis of a judicial warrant and that the only exception to that rule is in emergency cases, where a judicial warrant should be obtained within 48 hours after the search. Further, a search could be ordered only where there is sufficient evidence that a crime was committed or about to be committed (see para. 33 supra).

43. The applicants reaffirm their claim that in the instant case, there was no evidence of criminal activities and thus no ground to order and carry a search. As a result, the search was clearly unlawful under Russian law. As indicated earlier, under national law, the law enforcement authorities could start an inquiry and get a search warrant only if there is information of a planned or committed crime. There was no such information in the instant case. The only information the authorities had was about two financial transactions, a grant received by AGORA from the MacArthur Foundation and a payment under a contract with a partner organization. As the Prosecution Office stated later in the judicial proceedings, the Prosecution Office did

³⁹ Sunday Times v. UK, A30 para 49 (1979)

⁴⁰ Id.

not consider this to be evidence of a crime and had not treated it accordingly (see para. 16 supra). While arguing that it had such evidence, the Ministry of Interior failed to present any evidence either, despite the repeated request by the applicants in the domestic proceedings. In view of the lack of evidence that could give rise to a suspicion of a crime, the search warrant issued by the Deputy Minister of Interior, clearly lacked basis in national law.

44. The applicants further argue that even if the police had sufficient evidence to start an inquiry, the Deputy Minister of Interior clearly lacked the statutory powers to issue a search warrant. Under national law, only a court could issue a search warrant, and only in emergency cases the police could do that, but should receive a court issued confirmation within 48 hours. No one ever argued in the present case that there was an emergency, and there clearly was none. And no follow up court warrant was ever sought or received. Thus, the Deputy Minister of Interior clearly acted without legal powers, in blatant violation of domestic law.
45. Within the domestic judicial proceedings, the Ministry of Interior argued, that the Deputy Minister of Interior issued the search warrant on the basis of internal administrative regulations issued by the Ministry of Interior (see para. 16 supra). This, according to the argument of the Ministry of Interior, gave the Deputy Minister of Interior the powers to issue the search warrant. The request of the applicants in the judicial proceedings to have these regulations presented was not granted. The applicants argue before the Court that even if such regulations exist, and they do indeed grant the Deputy Minister of Interior the powers to issue a search warrant, they do not have any basis in national law, and because of the fact that they were never published, they clearly could not qualify as “law”, within the meaning of the Convention.
46. As to the proportionality of the search, the applicants submit that it was disproportionate. There was some discrepancy in the official statements of the authorities as to the purpose of the search, whether it was money laundering and financing of terrorism inquiry or a tax inquiry. In any event, the information available to the authorities, which apparently gave rise to the inquiry, was about two bank transfers, a grant received by AGORA from the MacArthur Foundation and a payment under a sub-contract from AGORA to a partner organization. The applicants argue, that given the source of the bank transfer, the activities of AGORA, the fact that these were bank transfers, and information about them could not be hidden by the applicants, there was absolutely no need of a search in the first place. All the information about the grants received by AGORA could be accessed through requests for information to AGORA, its donors and its bank, and all the relevant information regarding AGORA’s taxes was available to the authorities through AGORA’s tax returns. A tax inspection could have been carried out through requesting AGORA to present the relevant accounting documents, as in fact it was later done (see para. 7 supra). The applicants argue that under those circumstances there was absolutely no need for a search and that the authorities could obtain all the relevant information through less intrusive measures.
47. Finally, the applicants argue that the authorities failed to put in place safeguards that would guarantee that no privileged information will be accessed during the search. They refer to the Court’s case-law, according to which the authorities may consider it

necessary to have recourse to measures such as searches and seizures in order to obtain physical evidence of offences and, where appropriate, to prosecute those responsible. Nevertheless, the relevant legislation and practice must afford adequate and effective safeguards against abuse.⁴¹ 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. This is all the more important in cases where the premises searched are the office of a lawyer, which as a rule contains material which is subject to legal professional privilege".⁴² Therefore, in the circumstances, the decree was drawn in overly broad terms and was thus not capable of minimising the interference with the third and fourth applicant's Article 8 rights and their professional secrecy.

48. This was not done, however, in the instant case. At the material time the police officers carrying out the search were given very wide powers; in particular, they had exclusive competence to assess the expediency, length and scale of the inspections. The applicants point out that the decree itself did not specify what items and documents were expected to be found in the office, or how they would be relevant to the investigation. The decree failed to indicate in advance, what exactly the police was searching for and failed to indicate any privileged information that would be exempt from the search.
49. The applicants, in addition, submit that the decree's excessive breadth was reflected in the way in which it was executed. It should be noted that the police removed the applicants' entire computer. In addition, though not seizing those documents, they searched, read and took notes on information related to victims of human rights violations kept in the organization and the case files of the third and fourth applicants.
50. The applicants further submit that in Russia the search of a lawyer's office is not accompanied by any special procedural safeguards, such as the presence of an independent observer. They argue that the attendant publicity (see para. 6 above) must have been capable of affecting adversely the applicants' professional reputation, in the eyes both of their existing clients and of the public at large.⁴³
51. In light of all the relevant circumstances in the present case, namely the lack of clarity as to the grounds for the inquiry and the search, the available alternative ways of obtaining information about the financing and taxes of the organization, the public announcement that this was a money laundering and financing of terrorism inquiry, the excessive length of the search, the deliberate inspection of case files of human rights victims and the subsequent electronic surveillance of the organization, the applicants respectfully submit, that the actual aim of the search was not the collection of financial documents, but the collection of confidential information about the human rights cases AGORA and its lawyers work on and the intimidation of the applicants, in continuing their human rights work. An aim that could clearly not be justified under the Convention. Thus, the search and seizure carried out in their office can not be regarded as proportionate to the legitimate aim pursued. There has therefore been a violation of Article 8 of the Convention.

2) The electronic surveillance

⁴¹ See judgment in the case of *Cremieux v. France* of 25/02/1993, para 39.

⁴² See judgment in the case of *Iliya Stefanov v. Bulgaria*, appl. No. 65755/01, para 36.

⁴³ See judgment in the case of *Niemietz v. Germany*, para 37.

Applicability of Article 8

52. The applicants submit that the electronic surveillance of their office constituted a separate interference with their Article 8 rights. They point out that the surveillance was held by a public authority. They argue that, as of the expert report, the surveillance devices found in the applicants' office were identical with those used by the investigation authorities (see para. 29 above). The applicants also argue that the radio-transmitting device is, in terms of the nature and degree of the intrusion involved, is virtually identical to telephone tapping. Therefore, the Convention principles apply equally to them.⁴⁴

Whether the electronic surveillance was justified

53. The applicants submit that the electronic surveillance was not "in accordance with the law". They argue that the Court has already found that the quality of the law in question, namely the 1995 Investigation Activities Act, did not correspond to the Convention standards. In addition, they argue that the surveillance was not carried out pursuant to a warrant issued by a judicial officer, in breach of the Investigation Activities Act (see para 34 above).

54. The applicants rely on the Court's judgment in the case of *Bykov v. Russia*, of 10 March 2009, where it held in para 78:

"when it comes to the interception of communications for the purpose of a police investigation, "the law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence" ... In particular, in order to comply with the requirement of the "quality of the law", a law which confers discretion must indicate the scope of that discretion, although the detailed procedures and conditions to be observed do not necessarily have to be incorporated in rules of substantive law. The degree of precision required of the "law" in this connection will depend upon the particular subject-matter. Since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive – or to a judge – to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference."

55. In that case, the Court found that the use of surveillance technique as part of an "operative experiment" was open to arbitrariness and was inconsistent with the requirement of lawfulness.

56. The applicants submit that the Court could find a violation of Article 8 in their case on this ground. The Investigation Activities Act was not compatible with the rule of law

⁴⁴ See case of *Bykov v. Russia*, judgment of 09/03/2009, para 79.

because it permitted so-called “operative experiments” to be conducted for the investigation of serious crime, while it did not define what measures such “experiments” could involve.

57. In addition, the applicants submit that the installation of a camera in their office was not lawful because it was not based on a court decision. They recall that the surveillance devices found in their office were identical with those used by the investigation authorities. However, in the proceedings before the Kazan District Court the authorities failed to present a court decision on the grounds of which the devices might have been installed. The domestic court found that the relevant legislation provided for a court approval of the interference with one’s private life and correspondence (see para 30 above).

58. For the above reasons, the applicants consider that the electronic surveillance of their office was not “in accordance with the law”, as required by Article 8 of the Convention.

VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8

59. The applicants assert to the Court that they had no effective remedy with respect to the search and the electronic surveillance, whereby the lawfulness of those measures could be reviewed and they could receive compensation for the violation of their rights. This constituted a violation of Article 13 in conjunction with Article 8 of the Convention.

60. The applicants argue that although domestic legislation provided them with remedies to enforce their Article 8 rights, in the end those remedies were not effective, as the key legal issues were never addressed. With respect to the search, this remedy was an appeal against the search warrant in court. However, this remedy proved to be utterly ineffective, as the domestic courts failed to collect the relevant evidence and failed to address the key legal issues. With respect to the electronic surveillance, this remedy was the criminal investigation of the unlawful use of electronic surveillance, but again, the investigation failed to collect the relevant evidence.

61. The applicants argue that the domestic courts, which ruled on the lawfulness of the search warrant, considered the questions raised by them in an extremely formalistic manner, practically failing to address them. The courts reduced the analysis of the most essential question – whether there was information of a crime committed by the applicants – to a mere reiteration of the allegations of the police. In particular, the Kazan District Court simply stated: “at the Ministry of the Interior came information of illegal activity of AGORA.” The courts refused to instruct the Ministry of Interior to produce the available evidence on the basis of which it acted and no such evidence was ever collected. Despite this lack of evidence, however, the courts held that the search had a basis under national law.

62. As to the analysis of the legal basis on which the search was ordered, the domestic courts adduced irrelevant reasons such as that the search was an inquiry (“оперативно-розыскное мероприятие”) and not a “search” within the meaning of the Criminal Proceedings Code. Such an analysis completely fails to address the most

important issue in the case, and demonstrates blatant disregard for domestic law. The legal requirement for a judicial warrant for a search is part of precisely the Investigation Activities Act (Федеральный закон "Об оперативно-розыскной деятельности"), and not part of the Criminal Proceedings Code. And the Investigation Activities Act contains an express requirement for a judicial warrant for a search. This issue and the fact that the Minister of Interior did not have powers to adopt secondary legislation on this issue and no secondary legislation was ever presented, were the key issues in ruling on whether the Deputy Minister of Interior had the legal powers to order a search. The domestic courts, however, never addressed those issues.

63. The applicants also argue that the court failed to address crucial issues with respect to the proportionality of the search, by holding that no specific instructions could be given in a search warrant as to what items are sought for, and disregarding the claim that privileged information was accessed, by stating that no case files could be kept by the lawyers working for AGORA, as only courts could keep case files. These findings of the domestic court demonstrate its complete disregard for its role in protecting basic individual rights.
64. The applicants also argue that the domestic court, which ruled on the lawfulness of the police actions, while finding some minor violations, refused to hold the search unlawful, and to rule that it violated their rights. More significantly, the Tatarstan Supreme Court reversed even the findings of the lower court as to these minor procedural violations, failing to address the applicants arguments.
65. Finally, the applicants argue that the refusal to investigate the electronic surveillance, of which they were the target, did not provide them with any practical protection. They point out that the investigation authorities failed to take key investigation steps and failed to implement the court's instruction. Instead of carrying a full and thorough investigation, they quickly terminated the proceedings for a second time, albeit on a different ground.
66. The approach taken by the national courts in the instant case – refusing to review the measures taken against the applicants in the light of the factors relevant under Article 8 of the Convention – fell short of the Convention requirements. As a result, the applicants consider that the judicial review proceedings did not provide them with a forum, where they could adequately vindicate their right to respect for their private life and correspondence.⁴⁵ These proceedings did not, therefore constitute an effective remedy within the meaning of Article 13 of the Convention.

V. STATEMENT RELATIVE TO ARTICLE 35 OF THE CONVENTION

67. With respect to the search and the seizures, on 8 October 2009 the Tatarstan Supreme Court delivered the final judgment in the proceedings, which could have provided the applicants with redress. The applicants submitted their first letter to the Court on 7 April 2010, within the six-month time period set forth in the Convention.

⁴⁵ see, *mutatis mutandis*, *Peev v. Bulgaria*, no. 64209/01, §§ 72 and 73, 26 July 2007; *C.G. and others v Bulgaria*, 24 April 2008, § 60-63.

68. As to the electronic surveillance, the investigation has been recently ended for a second time, for reasons that there was no evidence of a crime. The applicants will seek for a second time judicial review of that decision. However, they submit their application to the Court at present, as in view of the investigation authorities' disregard of the instructions given earlier by the court and their second refusal to investigate the applicants' complaint, the investigation no longer seems to be an effective remedy. The applicants point out, in this respect, that the Kazan Investigation Office concluded both sets of inquiries in nine days only (24/08-02/09/2009 and 20/05-29/05/2010), the first time even prior to having at their disposal the expert opinion and the response of the Federal Security Agency (see para 27-29 above).

VI. Statement of the Objective of the Application

The objective of the application is a finding by the European Court of Human Rights of violations of Articles 8 and 13, and just compensation.

VII. Statement concerning other International Proceedings

No complaint has been submitted to any other international procedure of investigation or settlement.

VIII. List of Documents:

1. Letter from the Tatarstan Prosecution Office to the Ministry of the Interior of 18/06/2009 – Exhibit No. 1.
2. Decree 51/97 of 20/07/2009 of the deputy Minister of the Interior – Exhibit No. 2.
3. Minutes from search of 21/07/2009 with two attachments – Exhibit No. 3.
4. Press release published on the Prosecution's Office web site – Exhibit No. 4.
5. Letters to P. Chikov of 29/07/09, 30/07/09 and 04/08/09 – Exhibits Nos. 5,6 and 7.
6. Letter by P. Chikov of 25/08/09 – Exhibit No. 8.
7. Letter from the TCD to Tatfondbank – Exhibit No. 9.
8. Report by police officer from the TCD of August 2009 – Exhibit No. 10.
9. Decree refusing to initiate criminal proceedings of 12/09/2009 – Exhibit No. 11.
10. Order of the Ministry of Justice of 26/06/2009 – Exhibit No. 12.
11. Notification from the Ministry of Justice to AGORA of 26/06/2009 – Exhibit No. 13.
12. Report from inquiry of the Ministry of Justice of 30/07/2009 – Exhibit No. 14.
13. Report of the Tatarstan Prosecution Office of 15/08/2009 – Exhibit No. 15.
14. Decision No. 105/18.02.2010 and Decision No. 201/18.03.2010 of tax authorities – Exhibit No. 16.
15. Claim to the Kazan District Court of 12/08/2009 – Exhibit No. 17.
16. Minutes from court hearing of 19/08/2009 – Exhibit No. 18.
17. Judgment of the Kazan District Court of 19/08/2009 – Exhibit No. 19.
18. Cassation appeal against the 19/08/2009 judgment – Exhibit No. 20.
19. Decision of the Tatarstan Supreme Court of 08/10/2009 – Exhibit No. 21.
20. Claim to the Kazan District Court of 16/09/2009 – Exhibit No. 22.
21. Decree of the Kazan District Court of 18/11/2009 – Exhibit No. 23.
22. Cassation appeal by AGORA – Exhibit No. 24.
23. Cassation appeal by the Prosecution Office – Exhibit No. 25.

24. Decision of the Tatarstan Supreme Court of 22/12/2009 – Exhibit No. 26.
25. Letter from the Kazan Investigation Office to P. Chikov of 26/08/2009 – Exhibit No. 27.
26. Minutes from site inspection of 28/08/2009 – Exhibit No. 28.
27. Decree ordering technical examination of 01/09/2009 – Exhibit No. 29.
28. Letter from the Kazan Investigation Office to the Federal Security Agency of 01/09/2009 – Exhibit No. 30.
29. Decree refusing to open criminal proceedings of 02/09/2009 – Exhibit No. 31.
30. Letter from the Federal Security Agency to the Kazan Investigation Office of 09/09/2009 – Exhibit No. 32.
31. Expert examination of 16/09/2009 – Exhibit No. 33.
32. Decision of the Kazan District Court of 15 March 2010 – Exhibit No. 34.
33. Cassation appeal against the 15/03/2010 decision – Exhibit No. 35.
34. Decision of the Tatarstan Supreme Court of 04/05/2010 – Exhibit No. 36.
35. Decree of the Kazan Investigation Office of 29/05/2010 – Exhibit No. 37.
36. Complaint by the third and the fourth applicants of 12/07/2010 – Exhibit No. 38.
37. Letters of authority.
38. Copies of identity cards.

IX. DECLARATION AND SIGNATURE

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

Place

Date

Signature of the representative