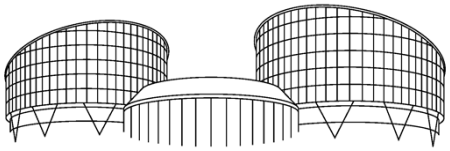

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SVETOVA AND OTHERS v. RUSSIA

(Application no. 54714/17)

JUDGMENT

Art 8 • Private life • Home • Unjustified search of journalists' home and indiscriminate seizure of their personal belongings • Measures on the basis of a search warrant overly broad in scope and issued in connection with an unrelated criminal case against third parties Art 10 • Search and seizure of electronic data storage devices constituting disproportionate interference with journalistic freedom of expression Art 13 (+ Art 8) • Domestic court's failure to consider applicant's complaints about legality and execution of search warrant denying effective remedy

STRASBOURG

24 January 2023

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 Svetova and Others v. Russia,

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

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar*

Having deliberated in private on 6 December 2022,

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

INTRODUCTION

1. The case concerns complaints about an unjustified search in the home of the applicants and the indiscriminate seizure of their personal belongings under Article 8 of the Convention. Ms Svetova also complained that the above measures amounted to a breach of her journalistic freedom under Article 10 of the Convention.

PROCEDURE

2. The case originated in an application (no. 54714/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Russian nationals, Ms Zoya Feliksovna Svetova, Mr Viktor Mikhaylovich Dzyadko and their three children whose names are listed in the appendix ("the applicants"), on 27 July 2017.

3. The applicants were represented by Ms Karinna Moskalenko and Ms Anna Stavitskaya, lawyers admitted to practice in Russia. The Russian Government ("the Government") were represented by Mr M. Vinogradov, Representative of the Russian Federation to the European Court of Human Rights.

4. On 15 October 2020 the applicant Mr Viktor Dzyadko died. His daughter, Ms Anna Viktorovna Dzyadko, expressed the wish to continue the proceedings in his stead.

5. On 2 November 2021 the applicants' complaints under Articles 8, 10 and 13 of the Convention were communicated to the Government. The Government were invited to indicate, by 1 February 2022, whether they wished to discuss the terms of a friendly settlement with the applicants.

6. On 18 February 2022, following the parties' refusal to discuss the terms of a friendly settlement, the Court invited the Government to submit their

written observations on the admissibility and merits of the complaints, at the latest on 13 May 2022.

7. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

8. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

9. On 3 June 2022, having noted that the Government had not submitted their observations by 13 May 2022 and had not asked for an extension of the time-limit, the Court invited the applicants to submit any written observations and their claims for just satisfaction. Upon their receipt, on 19 July 2022 the Court asked the Government to produce any further observations they wished to make and their comments on the applicants' claims. The Government did not reply.

10. On 5 September 2022 the Plenary Court took formal notice of the fact that the office of judge with respect to the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of the cases where the Russian Federation was the Respondent State.

11. By letter of 8 November 2022 the parties were informed that the President of the Section intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of the present case (applying by analogy Rule 29 § 2 of the Rules of Court). The respondent Government were informed that it was also envisaged to apply the same approach in respect of other applications against that State that the Court remained competent to deal with. They were invited to comment on that arrangement by 22 November 2022, but had not submitted any comments.

12. Accordingly, the President of the Chamber decided to appoint an *ad hoc* judge among the members of the composition, applying by analogy Rule 29 § 2 (b) of the Rules of Court.

THE FACTS

13. The facts of the case, as submitted by the applicants, may be summarised as follows.

14. The first applicant, Ms Zoya Svetova, is a human rights activist and journalist. Between 2008 and 2016 she was a member of the Moscow public monitoring commission, an advisory body made up of members of civil society who may visit detention facilities, collect complaints from detainees and give recommendations to public authorities. The second applicant, Mr Viktor Dzyadko, was an artist and Soviet dissident. The third applicant, Mr Filipp Dzyadko, is the editor-in-chief of educational website Arzamas. The fourth applicant, Mr Timofey Dzyadko, is the editor of the fuel and energy industry section in a business newspaper. The fifth applicant, Mr Tikhon Dzyadko, is the editor-in-chief of the TV Rain channel.

15. As a journalist, the first applicant collaborated with the Open Russia Foundation, a non-profit organisation founded by Mr Mikhail Khodorkovskiy. Mr Khodorkovskiy, formerly one of Russia's wealthiest businessmen, has been involved in politics since the early 2000s. He had allocated significant funds to support the opposition parties and openly voiced criticism of what he considered Russia's anti-democratic trends. He had founded and funded the Open Russia Foundation to promote democratic values in Russian society (see *Khodorkovskiy v. Russia*, no. 5829/04, §§ 7-9, 31 May 2011, and *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 24-27, 25 July 2013).

16. On 20 June 2003 the Prosecutor General of the Russian Federation opened a criminal investigation into the financial dealings of Mr Khodorkovskiy and his business associates (criminal case no. 18/41-03). In 2005 Mr Khodorkovskiy and Mr Lebedev were found guilty on embezzlement and tax evasion charges and given lengthy custodial sentences (see *Khodorkovskiy and Lebedev*, cited above, §§ 42-46 and 276). The applicants were not involved in those proceedings in any capacity.

17. On 18 January 2017 the Basmannyy District Court in Moscow issued, in *ex parte* proceedings, a warrant to search the flat where the applicants lived.

18. At 11 a.m. on 28 February 2017 the police arrived at the applicants' apartment in Moscow to execute the warrant. According to the applicants, the officers did not introduce themselves and did not show their badges. They refused to let the applicants read the search warrant or to postpone the search until the arrival of their lawyers. After the lawyers arrived at about 4 p.m., the officers gave them access to the District Court's warrant of 18 January 2017 which referred to criminal case no. 18/41-03 opened in 2003 (see paragraph 16 above). One of the lawyers started making a handwritten copy of the warrant but was soon interrupted. The applicants provided the Court only with the text of the introductory part of the warrant which the lawyer had managed to copy. It appears from the search record drawn up on that date that the purpose of the search was to discover and seize any documents containing information about the funds received by the applicants from the owners of several offshore companies, including Mr Khodorkovskiy.

19. During the search, the investigator seized personal items belonging to the applicants, including an e-book, a mobile phone, bank cards, flash drives, micro-audio cassettes, CDs, and laptops. He also downloaded information from Ms Svetova's computer which contained interviews conducted for the purpose of her journalistic work and other journalistic materials.

20. By decision of 9 March 2017, as upheld on appeal on 3 May 2017 and on cassation on 9 August 2017, the Basmannyy District Court refused to consider the applicants' complaint against the conduct of the police during the search and about the interference with the applicants' professional journalistic activity by that search and seizure of electronic data storage devices. It held that the legal basis and justification for the search could only be reviewed by a trial court at the pre-trial stage of the criminal proceedings (see paragraph 16 above).

21. On 28 February and 26 June 2017 Ms Svetova asked the investigator to return the items seized during the search. On 3 March and 2 July 2017 the investigator issued decisions attaching the seized items as physical evidence. It appears that the seized items have not been returned to the applicants to this date.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

22. For the relevant domestic law and practice concerning searches, see *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, §§ 88-101, 4 February 2020.

THE LAW

I. PRELIMINARY ISSUES

A. Whether the Court has jurisdiction to deal with the case

23. The Court observes that the respondent State ceased to be a member of the Council of Europe on 16 March 2022 (see paragraph 7 above) and that it also ceased to be a Party to the Convention on 16 September 2022 (see paragraph 8 above).

24. In those circumstances, the Court is called upon to determine whether it has jurisdiction to deal with the present application, although its jurisdiction has not been disputed in the context of the present proceedings by the respondent State. Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case, the mere absence of a plea cannot extend that jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III). The Court must satisfy itself that it has jurisdiction in any case brought before it and is therefore obliged to examine the question of its jurisdiction at

every stage of the proceedings, of its own motion where necessary (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 201, ECHR 2014 (extracts)).

25. Article 58 of the Convention provides:

> "1. A High Contracting Party may denounce the ... Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
>
> 2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under [the] Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
>
> 3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to [the] Convention under the same conditions ..."

26. It appears from the wording of Article 58, and more specifically the second and third paragraphs, that a State which ceases to be a Party to the Convention by virtue of the fact that it has ceased to be a member of the Council of Europe is not released from its obligations under the Convention in respect of any act performed by that State before the date on which it ceases to be a Party to the Convention.

27. This reading of Article 58 of the Convention was confirmed by the Court, sitting in plenary session (in accordance with Rule 20 § 1 of the Rules of Court), in its "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights", adopted on 22 March 2022. The Court stated that it "remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022" (see paragraph 2 of the Resolution).

28. In the present case, the facts giving rise to the violations of the Convention alleged by the applicants took place before 16 September 2022. Accordingly, the Court has jurisdiction to deal with them.

B. Consequences of the Government's failure to participate in the proceedings

29. The Court notes that, by failing to submit the written observations when requested to do so (see paragraph 9 above), the respondent Government manifested their intention to abstain from further participating in the examination of the present application. However, the Convention puts an obligation on the States to furnish all necessary facilities to make possible a proper and effective examination of applications (see, for a summary of the relevant principles in the context of Articles 34 and 38 of the Convention,

Georgia v. Russia (I) [GC], no. 13255/07, § 99, ECHR 2014 (extracts), and *Carter v. Russia*, no. 20914/07, §§ 92-94, 21 September 2021). Rule 44 A of the Rules of Court provides that parties have a duty to cooperate with the Court.

30. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt", its conclusions supported by free evaluation of all the evidence; the distribution of the burden of proof remains intrinsically linked to the specificity of the facts, the nature of the allegations made and the Convention right at stake, as well as the conduct of the parties (see, for general principles, *Georgia v. Russia (I)*, cited above, §§ 93-95 and 138, and *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 480-83, 31 May 2018). Pursuant to Rule 44C § 2 of the Rules of Court, "a respondent Contracting Party's failure or refusal to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of an application." This provision acts as an enabling clause for the Court, making it impossible for a party unilaterally to delay or obstruct the conduct of proceedings. A situation where a State did not participate in at least some stages of the proceedings did not prevent the Court from conducting the examination of an application in the past. The Court considered that the respondent Government's failure to submit their memorials or participate in a hearing in the absence of sufficient cause can be considered as a waiver of their right to participate. It was satisfied that proceeding with the examination of the case in the face of such a waiver was consistent with the proper administration of justice (see *Cyprus v. Turkey* [GC], no. 25781/94, §§ 10-12, ECHR 2001-IV, see also *Denmark, Norway and Sweden v. Greece*, no. 4448/70, Commission (Plenary) decision of 16 July 1970). The Court may draw such inferences as it deems appropriate from a party's failure or refusal to participate effectively in the proceedings (see Rule 44C § 1 of the Rules of Court). At the same time, the failure of the respondent State to participate effectively in the proceedings should not automatically lead to acceptance of the applicants' claims, and the Court must be satisfied by the available evidence that the claim is well founded in fact and law (compare with the approach taken in *Cyprus v. Turkey*, cited above, § 58, and *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, §§ 47-60, 17 July 2018, where one of the respondent Governments have only submitted observations on the issue of jurisdiction).

31. The cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies (see paragraph 26 above). This duty continues for as long as the Court remains competent to deal with applications arising out of acts or omissions capable of constituting a violation of the Convention, provided that they took place prior to the date on which the respondent State ceased to be a Contracting Party to the Convention. Since the events in the instant case which the applicants complained about had occurred before 16 September

2022 and the Court is competent to deal with the application, the respondent Government's failure to engage with the proceedings cannot be an obstacle for its examination.

C. Procedural succession in respect of Mr Viktor Dzyadko

32. Following the death of Mr Viktor Dzyadko during the proceedings before the Court, his daughter, Ms Anna Dzyadko, expressed the wish to pursue the application in his stead (see paragraph 4 above).

33. The Court has previously recognised the right of the relatives of a deceased applicant to continue with the application in cases concerning alleged violations of the right to respect for private or family life, home or correspondence (see *Misan v. Russia*, no. 4261/04, § 30, 2 October 2014, and the cases cited therein). Applying that approach, the Court accepts that Ms Anna Dzyadko may pursue the application introduced by her late father.

II. ALLEGED VIOLATION OF ARTICLES 8, 10 AND 13 OF THE CONVENTION

34. The applicants complained that the search of their flat and the seizure of their personal belongings had amounted to a violation of Article 8 of the Convention, taken alone or together with Article 13 on account of the absence of effective remedies available to them. Ms Svetova also complained that the search and seizure of items relating to her journalistic work amounted to a breach of Article 10 of the Convention. 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 ..."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime ..."

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

35. The Court considers that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

36. The applicants submitted that the search of their flat and an indiscriminate seizure of their personal belongings had not pursued a legitimate aim and had been neither lawful nor necessary in a democratic society. They had not had any procedural status in the criminal proceedings in which the search of their flat had been ordered. Ms Svetova submitted that, for the same reasons, the search and seizure interfered with her right to protection of her journalistic sources under Article 10 of the Convention. Lastly, the applicants alleged that no effective remedies had been available to them.

37. The Court considers, first, that the search of the applicants' flat and the seizure of the applicants' personal belongings constituted an interference with the exercise of the applicants' right to respect for their private life and home within the meaning of Article 8 § 1 of the Convention (see *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, § 78, 22 April 2021, with further references). Such interference will constitute a breach of Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in Article 8 § 2 and is "necessary in a democratic society" to achieve those aims.

38. The Court notes that the applicants had not been given a copy of the search warrant but had only been allowed to read it briefly. It further notes that the Russian courts declined to carry out a judicial review of the reasons underlying the issuance of the warrant (see paragraphs 18 and 20 above) and that the respondent Government chose not to participate in the proceedings and not to submit any documents or arguments in their defence. Accordingly, the Court will need to examine the application on the basis of the applicants' submissions which will be presumed to be accurate where supported by evidence and as long as other evidence available in the case file does not lead to a different conclusion.

39. The Court finds no indication that the applicants were charged with or suspected of any criminal offence or unlawful activities. Their home was searched in connection with a criminal case against third parties in which the

applicants did not have any procedural status. In the absence of a copy of the search warrant and the domestic courts' findings, the Court is unable to satisfy itself that the warrant was based on a reasonable suspicion that any items indicative of any criminal activities might be found in the applicants' flat (compare *Misan*, cited above, §§ 56-57). The reasons indicated in the search record which appear to reflect the language of the search warrant (see paragraph 18 above) cannot be accepted as "relevant" or "sufficient" as they did not indicate any possible connection between the applicants and the criminal case against the third parties.

40. The Court further notes that the search warrant was issued fourteen years after the opening of a criminal case against the third parties and was executed forty days after it had been issued. Such a wide time frame, in the absence of any explanation, makes doubtful its usefulness for the investigation.

41. The Court observes that in previous Russian cases it was the vagueness and excessively broad terms of search warrants that were considered to constitute the decisive element for the finding of a violation of Article 8, as they gave the authority executing them unrestricted discretion in determining the scope of the search (see *Aleksanyan v. Russia*, no. 46468/06, § 216, 22 December 2008; *Kolesnichenko v. Russia*, no. 19856/04, § 33, 9 April 2009; and *Misan*, cited above, § 60).

42. In the instant case, the search record, which appears to reflect the language of the search warrant, indicated that the purpose of the search was to discover and seize any documents containing information about funds received from the owners of several offshore companies, including Mr Khodorkovskiy. In light of the extremely wide time frame of the criminal proceedings and the fact that the applicants were not suspected of any criminal behaviour, the Court considers that these are general and broad terms which gave the police unrestricted discretion in determining which items and documents were to be seized (compare *Misan*, cited above, § 61). On the basis of that overly broad scope, the investigator removed multiple personal items belonging to the applicants (see paragraph 18 above). Such indiscriminate seizure cannot be considered "necessary in a democratic society".

43. The foregoing considerations are sufficient to enable the Court to conclude that the interference did not comply with the requirements of Article 8 § 2 of the Convention.

44. Next, the Court notes that, even if the purpose of the searches and seizures was not to uncover Ms Svetova's journalistic sources, the vagueness of the formulations and the unrestricted discretion in the determination of the scope of the search were too broad to rule out that possibility. They, therefore, constituted an interference with Ms Svetova's journalistic freedom of expression and were disproportionate and not "necessary in a democratic society" within the meaning of Article 10 § 2 (see *Avaz Zeynalov*, cited above,

§ 104, and *Sergey Sorokin v. Russia,* no. 52808/09, §§ 62-64, 30 August 2022, with further references).

45. Lastly, the Court notes that the Russian courts declined to consider the applicants' complaint about the legality and the manner in which the search and seizure measures had been executed. They held that those matters would be examined at some future point in time during a criminal trial. This, however, had the practical effect of denying an effective review of the applicants' grievances in so far as they were not the individuals being investigated and had no status in any criminal proceedings. It follows that they were denied an effective remedy required by Article 13 of the Convention.

46. There has accordingly been a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13, in respect of all the applicants, and a violation of Article 10 of the Convention in respect of Ms Svetova.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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."

48. Ms Svetova claimed 10,000 euros (EUR), Mr Dzyadko claimed EUR 7,000, and each of their children claimed EUR 4,000 in respect of non-pecuniary damage.

49. Having regard to the documents in its possession and its case-law, the Court considers it reasonable to award the applicants the amounts claimed, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022, and the Government's failure to cooperate presents no obstacles in this regard;

2. *Decides* that Ms Anna Dzyadko may pursue the application lodged by her late father, Mr Viktor Dzyadko;

3. *Declares* the application admissible;

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

5. *Holds* that there has been a violation of Article 10 of the Convention in respect of Ms Svetova;

6. *Holds* that there has been a violation of Article 13 of the Convention, in conjunction with Article 8, in respect of all the applicants;

7. *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 following amounts in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 10,000 (ten thousand euros) to Ms Zoya Svetova, EUR 7,000 (seven thousand euros) to Ms Anna Dzyadko as the heir of Mr Viktor Dzyadko, and EUR 4,000 (four thousand euros) each to Mr Filipp Dzyadko, Mr Timofey Dzyadko and Mr Tikhon Dzyadko, plus any tax that may be chargeable to the applicants;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President

APPENDIX

Applicant **Year of Birth** **Place of Residence** **Nationality**
1. Zoya Feliksovna SVETOVA 1959 Moscow Russian **2. Anna Viktorovna DZYADKO** 1998 Moscow Russian **(heir of late Viktor Mikhaylovich DZYADKO** 1955 Moscow Russian) **3. Filipp Viktorovich DZYADKO** 1982 Moscow Russian **4. Timofey Viktorovich DZYADKO** 1985 Moscow Russian **5. Tikhon Viktorovich DZYADKO** 1987 Moscow Russian