THIRD SECTION

**CASE OF IVASHCHENKO v. RUSSIA**

*(Application no. 61064/10)*

JUDGMENT

STRASBOURG

13 February 2018

FINAL

13/05/2018

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

In the case of Ivashchenko v. Russia,

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

 Helena Jäderblom, *President,* Branko Lubarda, Luis López Guerra, Helen Keller, Dmitry Dedov, Georgios A. Serghides, Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 23 January 2018,

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

PROCEDURE

1.  The case originated in an application (no. 61064/10) 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 a Russian national, Mr Yuriy Nikolayevich Ivashchenko (“the applicant”), on 18 October 2010.

2.  The applicant was represented by Ms M. Dubrovina, a lawyer practising in Novorossiysk, Russia. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  The applicant alleged that actions by customs officials had constituted unlawful and disproportionate interferences with his correspondence, private life and freedom of expression and that the domestic remedies were ineffective.

4.  On 5 October 2011 the application was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1983 and lives in Krasnodar.

6.  The applicant had a press card issued to him as a photographer, stating that he was a “correspondent at Agency.Photographer.ru”. According to the applicant’s submissions, he also prepared various texts for publication in print and Internet media outlets on an occasional basis.

A.  Events on 27 August 2009

7.  In August 2009 the applicant and Ms D. travelled to Abkhazia to prepare a report with photographs on, as he described it, “the life of this unrecognised republic”.

8.  On 27 August 2009 they returned to Russia, arriving on foot at the Adler customs checkpoint. The applicant presented his Russian passport, press card and a customs declaration, stating that he had electronic information devices (a laptop and flash memory cards) in his luggage. The laptop was his own property, however, he also used it for professional purposes.

9.  The applicant and D. were examined by Officer K. In his report to his superior, drawn up at 10.40 a.m. on 27 August 2009, he stated that in view of the applicant’s answers to questions and because of his behaviour, neither of which have been specified to the Court, there was a need to verify the information contained in the applicant’s customs declaration by way of an “inspection procedure” (see paragraph 31 below) in respect of the items in his bag and backpack and to “apply the measure for minimising risk as per profile no. 55/1000000/11062008/00228 ...”.

10.  The Government have submitted to the Court a written statement from K., which reads as follows:

“Following the customs control measure of an interview and given [D.’s and the applicant’s] behaviour and the nature of their professional activities, a supposition/assumption (*предположение*) arose that they might have banned printed and/or audio- and video-material with extremist content in their bags ... Since [the applicant] noted in his declaration that he had electronic storage devices, I made a written report to the acting chief officer of the customs checkpoint concerning the need for carrying out an inspection of [the applicant’s] bags in the framework of the risk management system and for involving Officer B., an IT specialist. The inspection was approved by the chief officer by way of his handwritten approval on my report ... The chief officer issued an order for an inspection and authorised B. and myself to use the sampling procedure ... The above-mentioned supposition/assumption was based on the presence of a folder labelled “Extremist” in the laptop ... Data from it was copied on the same day [on the spot] ... to DVD RW disks, which were then sealed in a plastic bag ... [The applicant], B. and two attesting witnesses were present ... The sampling report contained a detailed description of the data that was copied, including the names of the folders that had been copied, their number and the number of files in each folder ... The copying was carried out by Officer B. I did not open or copy any electronic folders or files ... I did not read any ‘correspondence’ (personal correspondence or other text material) ... An order to carry out a forensic examination was issued on 8 September 2009 ... because on 27 August 2009 we had no information about the relevant expert organisations for that type of forensic examination ...”

11.  The Government have also submitted a written statement from Officer B., which reads as follows:

“In accordance with the order for an inspection [no. ...], which required sampling and which also indicated ‘other’, I copied data from [the applicant’s] laptop to six DVD RW disks ... because we had no other type of disks or electronic storage devices ... Since the laptop’s hard drive was some 160 Gb and at the time we had no means for fast copying, I decided only to copy folders with strange names. I did not read any ‘correspondence’ (personal correspondence or other text material) from the laptop.”

12.  According to the Government, after finding in the directory of the laptop an electronic folder entitled “Extremism (for RR[[1]](#footnote-1))”, which contained a number of photographs, the customs officer decided to copy it and some other folders from the laptop for further examination by an expert, who could determine whether they contained any information of an extremist nature.

13.  The folder contained seven subfolders and 180 files. The applicant made a note in the record, stating that the material had been copied onto rewritable DVD disks (thus technically allowing the data to be modified, including by way of adding data). According to the applicant, the folder had some photographs and a PDF copy of an article entitled “How to incite hatred?” on anti-extremism legislation. The article, written by Ms V., was published in the *Russian Reporter* magazine in June 2009 and was accompanied by photographs taken by the applicant. The author of the article discussed the controversies and difficulties relating to the interpretation and application of Russian anti-extremism legislation, with reference to four criminal cases under Article 282 of the Criminal Code. According to the applicant, the material that was copied included documents and text concerning two ethnic groups (the Yazidis and the Meskhetian Turks), who were allegedly under pressure from the Krasnodar regional administration. For instance, a folder named “Isolation” contained texts describing the social problems facing thirty-seven Yazidi families (with references to their personal details), who had been discriminated against by the regional administration.

14.  It can be seen from the record of the sampling that thirty-four folders (containing some 480 subfolders with over 16,300 electronic files) were copied. The folders had the following names (mostly in Russian): In motion, Miscellaneous, Desktop, Foto\_projects, On the road, Isolation, Drawings, 1 May, 9 May, 14 February, Law, Extremism (for RR).

15.  It appears that the data from the laptop was first copied to a mobile or external hard drive and then recopied to six DVDs. According to the Government, the information was then deleted from the external hard drive. The original data in the laptop was not deleted and remained intact.

16.  According to the applicant, his laptop remained with Officer B. for several hours. Allegedly, the officer read through the applicant’s correspondence in the ICQ messaging program and copied some 26 gigabytes of data, including the applicant’s personal correspondence, personal photographs and FTP[[2]](#footnote-2)-type passwords.

17.  The applicant submitted the following written statement by Ms D. to the Court:

“At 10 a.m. we presented ourselves at the border control and presented our passports ... We were then taken to the customs control area ... There the customs officers asked [the applicant] to hand over his press card; so they were aware that he had one ... Officer K. interviewed us about the purpose of our visit to Abkhazia and our professional and civic activities ... I heard an FSB border officer tell the customs officers about the need for a ‘special check’ of our electronic storage devices ... Seeing a laptop in [the applicant’s] bag, the customs officers expressed their intention to copy all the available information ... I was interviewed (again) about my civic activities, my political views and about [the applicant’s] professional activities ... the type of work done and the publications ...”

18.  On 9 September 2009 the applicant was informed that a report had been commissioned from a criminal forensics expert to determine whether the data copied from his laptop had any prohibited “extremist” content.

19.  In November 2009 the expert organisation returned the DVDs to the customs office, stating that it was not possible to carry out the examination, although it gave no reasons. In December 2009 a report was sought from another expert organisation. Apparently, it concluded that the data contained no extremist material. According to the applicant, the DVDs with his data were handed over to him in November 2011.

B.  Judicial review

20.  In the meantime, the applicant brought judicial review proceedings under Chapter 25 of the Code of Civil Procedure (“CCP”), challenging the adverse acts and actions of the customs officials.

21.  By a judgment of 25 January 2010 the Prikubanskiy District Court of Krasnodar dismissed his claims. The court held as follows:

“Laptops, storage devices, photo- and video-cameras should be considered as ‘goods’ within the meaning of Article 11 of the Customs Code. All goods should be presented for checking by customs, as required under Article 14 of the Code ... The customs authorities are authorised to take samples of goods for examination ... and to use technical devices to speed up the checks ... The data from the applicant’s laptop was copied for the purposes of examination in compliance with Presidential Decree no. 310 on combating fascism and political extremism ... In the circumstances, the fact that the samples taken for examination constituted all the relevant data was justified ...”

22.  The applicant appealed, arguing, *inter alia*, that the first-instance court’s assessment had not taken into account the requirements relating to Articles 8 and 10 of the European Convention, in particular, the requirement that any interference by a public authority had to be shown to be “necessary in a democratic society” and proportionate to the legitimate aims pursued. He mentioned the Court’s case-law relating to the seizure of printed material and electronic devices, an action which adversely affects the maintenance of professional secrecy. The applicant also argued as follows:

(a)  Compliance with Decree no. 310 was not possible without actually reading someone’s correspondence and other personal information, thereby interfering with the constitutional right to the protection of the secrecy of correspondence and other communications. Article 55 of the Constitution only permitted restrictions on people’s rights on the basis of a federal statute; the decree in question was secondary legislation (*подзаконный акт*) and could not lawfully introduce additional limitations on constitutional rights;

(b)  The trial court had mentioned that laptops, flash memory cards and the like were “goods” for the purposes of customs legislation. However, the sampling had been carried out in respect of the information they contained rather than the carriers or containers of the information (“the goods”). Access to that information, however, was only allowed on the basis of a court order, as stated in Article 23 of the Constitution;

(c)  In his “written explanations” to the appeal court, the applicant insisted that in Chapter 25 proceedings a public authority had the burden of proving that its acts were lawful and justified. However, the first-instance court had not required the customs authority to cite a specific legal provision authorising its officials to examine electronic data. According to the applicant, the customs authority representative had refused at the hearing to explain the specific content of the risk profile concerning the applicant, referring to the fact that the information in question was classified and was for internal use only. However, a 2004 Instruction by the Federal Customs Authority only authorised a customs inspection where the risk profile in question provided for that type of measure (see also paragraph 37 below).

23.  On 22 April 2010 the Krasnodar Regional Court upheld the judgment, essentially reproducing the lower court’s reasoning as follows:

“Under Articles 403 and 408 of the Customs Code, customs authorities fulfill the tasks and functions assigned to them by federal and other legislation ... and have the authority to apply measures prescribed by the Customs Code for ensuring compliance with customs legislation ...

Article 11 of the Customs Code defines goods (for the purposes of customs legislation) as movable property which is being transferred across the customs border. This includes laptops, memory flash cards, photo-cameras, video-cameras, printed material and the like. Article 14 of the Code provides that all such goods should be subject to customs clearance and customs control. Article 123 of the Code provides that goods should be declared when being transferred across the customs border. Article 124 of the Code provides that the declaration is made by way of presenting a written declaration or otherwise ... The transfer of goods by individuals for personal use is prescribed by Chapter 23 of the Customs Code, and Government decree no. 715 of 27 November 2003 and no. 718 of 29 November 2003. Article 13 of the Code provides that goods which are prohibited from being transferred to Russia must be removed from Russia.

By a letter of 16 July 2008 the Federal Customs Authority listed the goods which are banned from Russian territory ... By a letter of 3 May 2006 the Authority listed the goods that must be declared to customs.

The procedure for and the types of customs checks are described in Chapters 34-37 of the Code. Article 358 of the Code provides that customs checks are based on the principle of selectiveness and, as a rule, should be limited to such forms of control as are sufficient for ensuring compliance with customs legislation ... When selecting the form of control, the risk management approach is applied, which is based on the effective use of resources for preventing violations of the legislation ... Risk is defined as a probability of non-compliance with customs legislation.

When carrying out a customs check, the customs authority is allowed to take samples of goods which are needed for further assessment. The relevant procedure is defined in Article 383 of the Code and Customs Authority order no. 1519 of 23 December 2003. When carrying out a customs check, the authority is allowed to use technical means to limit the time of such checks; the list and procedures for their use are defined in Article 388 of the Code and in Customs Authority order no. 1220 of 29 October 2003 ...

Order no. 677 of 10 November 1995 by the Customs Authority (‘On preventing the transfer of prohibited printed, audio- and video-material across the customs border’) does not contradict the current customs legislation and has not been revoked because the current Customs Code contains Article 13 concerning bans and limitations on the transfer of goods across the customs border ...

In view of the above, the court agrees with the first-instance court that the customs inspection was authorised and carried out within customs control procedures and that the data was copied in line with Russian Presidential Decree no. 310 of 23 March 1995 ... Article 2 of the decree clearly requires the customs authority to ‘arrest and bring to liability persons who disseminate printed, cinematographic, audio-, photo- or video-materials which are aimed at being propaganda in favour of fascism, at inciting social, racial, ethnic or religious enmity; and to take measures for seizing printed material of that kind’ ...

Article 383 of the Code concerning the minimal amount of samples was complied with because the information taken for sampling was not homogenous. Thus when the samples were taken, it was necessary to take the full amount of information from the device ...

In addition, it is noted that under Article 10 of the Customs Code, information received by customs officials may be used exclusively for the purposes of customs legislation ...

Customs officials are not authorised to disclose that information or transfer it to third persons, except as set down in the Code or other legislation ...”

24.  The applicant does not appear to have been prosecuted subsequently in criminal, administrative or other proceedings in connection with the data obtained from his laptop by the customs authorities.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

A.  Constitution of the Russian Federation

25.  Article 23 § 2 of the Russian Constitution provides that everyone has the right to the privacy of his or her correspondence, telephone communications and postal, telegraphic or other messages. Restrictions may be imposed on that right by a court decision.

26.  Article 29 protects freedom of expression and prohibits incitement to social, racial, national or religious hatred. Everyone has the right to freely search for, receive, transmit, produce and disseminate information by lawful means.

27.  Article 55 § 3 of the Constitution provides that individuals’ rights and freedoms may be limited by a federal statute in so far as that is necessary to protect the constitutional structure, morals, health, the rights and freedoms of others, and to ensure the country’s national security and defence.

B.  Customs Code of the Russian Federation of 28 May 2003 (in force until 2010) and related legal Acts

28.  Article 11 of the Customs Code defined “goods” as any movable or immovable property being transferred across the customs border. By Article 130 of the Civil Code, all items that are not immovable property (for instance, money) should be recognised as being movable property.

29.  All goods and vehicles had to be presented for customs controls in accordance with the procedure and methods prescribed by the Customs Code; customs requirements in the course of a check could not impede the transfer of goods or vehicles across the border to an extent that exceeded what was necessary as a minimum for ensuring compliance with customs legislation (Article 14 of the Customs Code). Article 13 of the Customs Code provided that goods prohibited from entering Russia were to be removed from the country without delay, unless otherwise provided for by the Code or other federal statutes.

30.  Article 358 of the Code provided for the principles guiding the customs control process, namely that it was based on the selectiveness principle and, as a rule, had to be limited to such forms as were sufficient for ensuring compliance with customs legislation. When choosing a specific form of control, the customs authority was to be guided by the risk management system, which defined a risk as a probability of non‑compliance with customs legislation. The system was based on the effective use of the resources at the disposal of the customs authority for preventing violations of customs legislation, violations which, *inter alia*, could affect “important public interests which the customs authorities [were] empowered to protect”. The customs authorities had to apply risk assessment methods for determining the level of scrutiny in customs checks.

31.  Forms of customs control included the examination of documents, interviews, customs surveillance, customs examinations and inspections (*таможенный досмотр*) (Article 366 of the Code). The last mentioned was a check that included breaking the seals on goods, opening packaging, containers or other locations where goods were or could be located (Article 372 of the Code). Inspections were to be carried out in the presence of the person declaring the goods, except for some situations such as the moving of goods in international postal dispatches.

32.  Article 378 of the Code provided that goods and vehicles could be subjected to an expert assessment as part of the customs control procedure where special skills were needed for clarifying matters relating to such a procedure. A customs officer was allowed to take samples of goods for assessment, with the amount being the minimum needed to carry out such an assessment (Article 383). The person declaring the goods could be present during the sampling and was required to assist the officer carrying out the procedure (ibid.).

33.  As specified in the Regulations on Customs Procedures approved by the Russian Government on 2 February 2005, “inspections” entailed the examination of goods in order to prevent or stop violations of Russian legislation or to detect prohibited goods. Such inspections could include the opening or unsealing of containers (paragraph 14 of the Regulations).

34.  Order no. 1519 issued by the Federal Customs Authority on 23 December 2003, in force at the material time, provided further details about inspections but did not refer to the taking of samples of electronic data.

35.  Decree no. 310 issued by the President of Russia on 23 March 1995, “On measures for ensuring consolidated actions by public authorities in the fight against manifestations of fascism and other forms of political extremism in the Russian Federation”, reads as follows:

“Cases of incitement to social, racial, ethnic and religious enmity, as well as the proliferation of fascist ideas, have been growing in the Russian Federation. Anti‑constitutional activities by people or groups having extremist views have increased and become more defiant in their nature. Unlawful armed and paramilitary units have been created. There is a growing threat that they will join forces with certain trade unions, commercial or criminal groups.

These processes are extremely dangerous for our society and constitute a threat to the foundations of the constitutional system. They undermine constitutional rights and freedoms, the security of society and the unity of the Russian Federation.

It is unacceptable that the rise of political extremism should impede the forthcoming State and municipal elections and the free expression of voters, influence the resolution of labour disputes or pressure certain State or municipal authorities.

The activities of political extremists (some of whom openly associate themselves with National Socialism, using fascist slogans and symbols or ones that are similar) are deeply insulting to veterans and to the sacred memory that Russians have for the victims of the Great Patriotic War. Such activities are particularly provocative in the year of the celebration of the 50th anniversary of the victory over fascist Germany ...

 As guardian of the Constitution of the Russian Federation and of people’s rights and freedoms, with a view to ensuring the stability of the constitutional structure, public safety, and the maintenance of the unity of the Russian Federation, under Articles 13, 15, 80 and 82 of the Constitution and Article 22 of the International Covenant on Civil and Political Rights, I order:

...

2.  Within their respective competencies, the Ministry of the Interior, the Federal Counter-Intelligence Service, the State Customs Committee, and the State Border Service must arrest and bring to liability persons who are disseminating printed, cinematographic, photo-, audio- or video-materials which are aimed at inciting propaganda in favour of fascism, at inciting social, racial, ethnic or religious enmity; to take measures for seizing such printed material and other materials.

...

6.  I invite the Supreme Court of the Russian Federation to provide guidance concerning the notions and terminology relating to liability for acts aimed at inciting social, racial, ethnic and religious enmity ...”

36.  Order no. 677 issued by the Federal Customs Authority on 10 November 1995 read at the time as follows:

“In order to enforce Decree no. 310 of 23 March 1995 issued by the President of Russia, it is ordered as regards customs procedures that:

1. The chief officers of regional authorities must take effective measures for preventing the entry of printed, cinematographic, photo-, audio- and video-materials aimed at propaganda in favour of fascism and at inciting social, racial, ethnic or religious enmity. For that purpose it is necessary to assign officers specialised in checking the content of such material from the units that carry out customs inspections of goods and vehicles ...

2.  ... to apply Article 20 of the Customs Code [of 18 June 1993].[[3]](#footnote-3)”

37.  With their observations the respondent Government enclosed the Instruction on customs officials’ actions on the application of risk profiles during customs checks, approved by the Federal Customs Authority on 11 January 2008. It apparently replaced an earlier Instruction issued in 2004 and is no longer valid. At the relevant time the Instruction provided that a customs inspection could be carried out if there was information about a possible customs offence (*правонарушение*) or if there were justified “suppositions” (*обоснованные предположения*) that information that had been declared about certain goods was not correct (section 68). If a customs officer considered it necessary to carry out an inspection on the basis of information received or if he had justified grounds to assume that information that had been declared about goods or vehicles might be incorrect, he had to submit a report to his superior (section 71). The latter then authorised or refused an inspection (section 73).

38.  Pursuant to a letter dated 16 July 2008 issued by the Federal Customs Authority, the import of printed, cinematographic, photo-, audio‑ and video-materials aimed at Nazi propaganda or at inciting social, racial, ethnic and religious enmity was banned (section 3.1.2).

C.  Other legislation and documents

39.  Section 1 of the Suppression of Extremism Act (Federal Law no. 114-FZ on Combatting Extremist Activity, 25 July 2002), as in force at the material time, defined extremist activity or extremism as:

- a forcible change of the constitutional foundations of the Russian Federation and breaches of its territorial integrity;

- the public justification of terrorism or other terrorist activities;

- inciting racial, national, religious or social hatred;

- propaganda promoting the exceptional nature, superiority or inferiority of persons on the grounds of their religion, social position, race, nationality or language;

- violations of an individual’s rights and freedoms on account of his or her religion, race, national, social position or social origin;

- obstruction of the exercise of citizens’ electoral rights or violations of the secret ballot in voting, combined with violence or threats of the use thereof;

- obstruction of the lawful activities of State authorities, electoral commissions and their officials, non-governmental or religious organisations, combined with violence or threats of the use thereof;

- propaganda for and the public display of Nazi attributes or symbols or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming undistinguishable;

- public appeals to carry out the aforementioned acts or the mass distribution of manifestly extremist materials, their production or possession with the aim of mass distribution;

- making a public and manifestly false accusation against a State official of the Russian Federation or its constituent entities in relation to the commission of the acts mentioned in section 1 of this Act and which were a crime during the exercise of his or her official duties or in connection with those duties;

-  organising and preparing the above acts, as well as incitement to their commission;

- funding the aforementioned acts or any assistance in preparing and carrying them out, including by providing training, printing, material or technical support, telephone or other means of communication or information services.

“Extremist material” was defined as documents or information in other forms which are designed for dissemination, and calls for carrying out extremist activities or justifying the need for such activities, including publications that justify national or racial superiority or justify war crimes or other crimes, which are aimed at the full or partial destruction of an ethnic, national, social, racial or religious group.

40.  Article 13 of the Code of Criminal Procedure provides that a court order is needed to impose restrictions on a citizen’s right to the secrecy of his or her correspondence, telephone or other communications, postal, telegraphic and other messages. A court order is also needed for seizing postal and telegraphic communications.

41.  Section 8 of the Operational-Search Activities Act (Federal Law no. 144-FZ of 12 August 1995) provides that operational-search activities involving interference with the constitutional right to the secrecy or privacy of correspondence, postal, telegraphic and other communications transmitted by means of a telecommunications network or mail services can be conducted on the basis of a court order. It can be allowed following the receipt of information (1) that a criminal offence has been committed, is ongoing, or is being plotted; (2) about persons conspiring to commit, who are committing, or have committed a criminal offence; or (3) about events or activities endangering the national, military, economic or ecological security of the Russian Federation.

THE LAW

I.  THE GOVERNMENT’S PRELIMINARY OBJECTION

42.  The Government argued that the applicant had not complied with the six-month rule under Article 35 § 1 of the Convention because there was no evidence that he had dispatched his application form within eight weeks of the Court’s letter acknowledging receipt of his initial letter.

43.  The applicant stated that he had dispatched his application form on 16 December 2010.

44.  As confirmed by the stamp on the envelope, the application’s first letter was dispatched to the Court on 18 October 2010, which was less than six months after the appeal decision in his case (see paragraph 23 above). The application form was dispatched to the Court on 16 December 2010, which was within the time-limit set by the Court in its letter confirming receipt of the applicant’s initial communication. The Court therefore dismisses the Government’s objection.

II.  ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45.  The applicant complained under Article 8 of the Convention that the customs authorities had unlawfully and without any valid reasons examined the data contained on his laptop and in storage devices, and had copied electronic data relating to both his personal life and professional activities.

46.  Article 8 of the Convention reads as follows:

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

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A.  Admissibility

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

B.  Merits

1.  The parties’ submissions

(a)  The applicant

48.  The applicant argued that the customs officials’ actions had amounted to “interference by a public authority” with both his “private life” and his “correspondence” within the autonomous meanings arising from Article 8 of the Convention. That “interference” had been unlawful because there had been no criminal investigation in respect of him and no court order, in breach of Article 23 of the Constitution, Article 13 of the Code of Criminal Procedure and section 8 of the Operational-Search Activities Act of 1995 (see paragraphs 25, 40 and 41 above). The domestic courts had failed to make any substantive findings on the matter of legality and had carried out no proportionality assessment in respect of the impugned “interference”. It could not be reasonably accepted that the contested measures had been lawfully authorised by the Customs Code (namely Article 372) since that only concerned an “inspection” of “vehicles, cargo and goods” (see paragraph 28 above). The situation complained of had not fallen in any of the above categories. In particular, the electronic data on the applicant’s laptop was not “goods” within the ordinary meaning of that term under the Civil Code or the Customs Code.

49.  The applicant argued that the various pieces of legislation applied to him, even read together, did not satisfy the “quality of law” requirement arising from the Court’s case-law regarding “interferences” under both Articles 8 and 10 of the Convention. In particular, Presidential Decree no. 310 of 23 March 1995 (see paragraph 35 above) was not a piece of primary legislation (namely a federal statute) but had less legal value, which was not sufficient under the Constitution (see paragraphs 25 and 27 above) for a lawful “interference” with fundamental rights and freedoms. Moreover, the decree was worded in vague and exceedingly wide terms and, in any event, could not have guided the customs authority’s actions in a situation such as the applicant’s, that is in relation to electronic data.

50.  The “interference” had not been shown to pursue any legitimate aim and had not been convincingly demonstrated as being “necessary in a democratic society”. The applicant had not been subject to any criminal prosecution and had crossed the border lawfully. As of 27 August 2009 the authorities had not advanced any argument pertaining to the need to ascertain whether the applicant’s laptop contained any “extremist material”. That explanation had only been put forward subsequently. The customs authority’s actions had been motivated merely by the discovery of a folder named “Extremism” on the applicant’s laptop. That did not justify the steps taken initially to access the laptop. The respondent Government had not specified what part of the data constituted a threat to national security, public safety or the economic well-being of the country. The copying of the applicant’s data had not been selective and had included a variety of personal and professional data.

51.  Lastly, the applicant noted that it was possible to challenge the actions of public officials by way of a judicial review under Chapter 25 of the CCP, which had been done. However, the domestic courts had not proceeded to an adequate assessment of the adverse impact that the officials’ actions had had on the applicant’s right to respect for his private life and correspondence or his right to freedom of expression. In particular, they had not carried out an assessment of whether the officials’ actions had been proportionate to any particular legitimate aim.

(b)  The Government

52.  The Government accepted that the inspection and copying of the applicant’s materials had constituted “interference by a public authority” with the applicant’s “private life”. However, they denied that there had been any reading or copying of the applicant’s “correspondence”. The photographs taken by the applicant and which had given rise to the copying procedure could not pass for such “correspondence” within the meaning of Article 8 § 1 of the Convention. The customs officers had not read any personal correspondence and had not copied any email, Facebook or Skype passwords. The applicant had failed to discharge the burden of proving the existence of any “interference” in that regard.

53.  The Government submitted that the customs inspection of the applicant’s bags and the “sampling” of “goods” had not been random as they had been carried out after examining his customs declaration and with regard to his conduct and answers to the officer’s questions. Those acts had given rise to a reasonable suspicion “regarding the applicant’s compliance with the legislation in force”. The ensuing actions had been based on a specific risk profile, which had then justified the application of certain measures. Every risk profile contained objective criteria, which could determine the need for taking certain measures in each particular case. The customs inspection and the sampling of data from the applicant’s laptop had been a necessary measure to minimise the risk emerging from the specific risk profile. In addition, the customs officer had made a report to his supervising officer before inspecting the applicant’s luggage.

54.  The presence of the folder with photographs and entitled “Extremism” had been a legitimate reason for further actions on the part of the customs officers, including the copying of electronic data concerning the photographs. It had not been possible for the officers to take another course of action and the law had required them to obtain an expert conclusion as to the presence of “extremist material”. The applicant had raised no objection relating to the copying or to its extent. The applicant had only voiced a concern that further information, not related to him, could be added to the DVDs containing his photographs. The subsequent use of the copied information had been strictly limited to the needs of the expert examination.

55.  The Government also argued that Russian law contained a number of safeguards against abusive or arbitrary actions on the part of customs officers. The Russian Constitution expressly limited interferences with the inviolability of people’s private lives to situations where it was necessary for a legitimate aim and which was prescribed by a federal statute (such as the Customs Code). The inspection and copying of the applicant’s materials had been authorised by Articles 372 and 383 of the Customs Code and had been further detailed in related legal acts, including orders issued by the Federal Customs Authority. Those provisions conferred corresponding and sufficiently fettered powers on customs officers without any need for a court order, which would be required in the case of interference with someone’s “correspondence”.

56.  The Customs Code contained provisions limiting the use of private information and provided for liability for breaching those limitations. The same limitations were also imposed on experts examining “samples”.

57.  The Government submitted some statistical data for 2009-11 aimed at demonstrating (by contrast to the Court’s findings in *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 84, ECHR 2010 (extracts)) that the inspection and sampling procedures in relation to suspicions of the presence of extremist or other prohibited material in electronic form had been rarely applied (for instance, various types of materials relating to Jehovah Witnesses or Scientology, various types of goods or materials showing Nazi symbols or those resembling them in various contexts).

58.  Lastly, the Government submitted that the applicant had had effective remedies at his disposal in respect of his complaints. The judicial review procedure under Chapter 25 of the CCP was capable of remedying violations of individual rights. The applicant’s case had been examined by the courts on the merits. They had dealt with matters relating to legality and had concluded that the customs officials’ actions had not breached his rights. The Government enclosed fourteen judgments from various Russian courts in cases that had been lost by the customs authorities (such as the unlawful levying of customs fees, an unlawful refusal to release an international postal package or the unlawful retention of a vehicle). The Government argued that the absence of a requirement to obtain a court authorisation was counterbalanced by the availability of a judicial review under Chapter 25 of the CCP, which was essential for ascertaining the legality of the public officials’ actions. It was also possible to claim compensation under Article 1070 of the Civil Code for damage caused by the actions of public officials.

2.  The Court’s assessment

(a)  Whether there was “interference by a public authority” with the applicant’s rights under Article 8 of the Convention

(i)  Correspondence

59.  The applicant argued that the customs officers’ actions had constituted an “interference” with his “correspondence” with the meaning of Article 8 § 1 of the Convention and, first and foremost, under Article 23 of the Russian Constitution, which required a court order for that type of “interference” with correspondence or “other communications” (see paragraph 25 above).

60.  First of all, the Court notes that the applicant’s complaint is related to data contained on his laptop. There is no evidence that the applicant’s flash memory cards were inspected or that any data was copied from them.

61.  Second, it can be accepted that the applicant’s laptop allowed for access to his ICQ conversations with other people. However, it has not been specified whether access to that program was protected by a password or whether no such password was technically required. The applicant has not specified what other “correspondence”, such as emails, was readily accessible for reading on the laptop (see *Posevini v. Bulgaria*, no. 63638/14, § 75, 19 January 2017). It does not appear that the applicant was required to disclose any password. As regards the applicant’s submission concerning “the copying of his passwords”, it has not been specified, and the Court does not have sufficient information at its disposal on this point, how it was technically practicable to “copy” passwords for such accounts as those needed for email, Facebook or Skype.

62.  The Court has previously held that the search and “seizure” of electronic data constituted an interference with the right to respect for “correspondence” within the meaning of Article 8 of the Convention (see, in respect of legal entities, *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 45, ECHR 2007‑IV; *Vinci Construction and GTM Génie Civil et Services* *v. France*, nos. 63629/10 and 60567/10, § 63, 2 April 2015; and *Sérvulo & Associados - Sociedade de Advogados, RL* *and Others v. Portugal*, no. 27013/10, § 76, 3 September 2015; see *Robathin v. Austria*, no. 30457/06, § 39, 3 July 2012). In the circumstances of the present case and noting insufficient elements to conclude that the applicant’s “correspondence” was adversely affected by the customs officers’ actions, the Court finds it more appropriate to focus on the notion of “private life” (see below; see also *Trabajo Rueda v. Spain*, no. 32600/12, § 32, 30 May 2017).

(ii)  Private life

63.  The Court reiterates that the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. The notion of personal autonomy is an important principle underlying the interpretation of its guarantees (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). This Article also protects a right to identity and personal development, and the right to establish relationships with other human beings and the outside world. It may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of “private life”. There are a number of elements relevant to a consideration of whether a person’s private life is concerned in measures effected outside a person’s home or private premises. In this connection, a person’s reasonable expectations as to privacy may be a significant, though not necessarily conclusive, factor (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, §§ 56-57, ECHR 2001-IX).

64.  The Court has previously held, in the context of a search on the street, that 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 use of the coercive powers conferred by 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 (see *Gillan and Quinton*, cited above, § 63).

65.  In a recent case, the Court considered that there had been an “interference” with the applicant’s right to respect for her “private life” on account of the search of her bag and seizure of a notebook from it because it was believed to contain information relevant to the criminal investigations against her (see *Cacuci and S.C. Virra & Cont Pad S.R.L. v. Romania*, no. 27153/07, §§ 70-71, 17 January 2017; see also *Amarandei and Others v. Romania*, no. 1443/10, § 216, 26 April 2016).

66.  In *Gillan and Quinton* (cited above), the Court also made the following findings as regards the context of the search to which passengers submit at airports or at the entrance to a public building, essentially for security reasons:

“64. ... [The Court] does not need to decide whether the search of the person and of his bags in such circumstances amounts to an interference with an individual’s Article 8 rights, albeit one which is clearly justified on security grounds, since for the reasons given by the applicants the situations cannot be compared. An air traveller may be seen as consenting to such a search by choosing to travel. He knows that he and his bags are liable to be searched before boarding the aeroplane and has a freedom of choice, since he can leave personal items behind and walk away without being subjected to a search. The search powers under section 44 are qualitatively different. The individual can be stopped anywhere and at any time, without notice and without any choice as to whether or not to submit to a search.”

67.  In the present case the applicant’s complaint is not related to being asked questions during the initial customs procedure or about customs officers looking inside his bags. The thrust of his complaint was and remains about the search of his laptop, which lasted several hours, allegedly without any reasonable suspicion of any offence or unlawful conduct; the copying of his personal and professional data, followed by its communication for a specialist assessment; and the retention of his data for some two years. In the Court’s view, those actions went beyond what could be perceived as procedures that were “routine”, relatively non-invasive and for which consent was usually given. The applicant could not choose whether he wanted to present himself and his belongings to customs and a possible customs inspection (compare *Gillan and Quinton*, § 64).

68.  In addition, the Court emphasises that the present case concerns the context of customs controls for “goods” carried by a person arriving at customs to declare items rather than the context of security checks, in particular those that may be carried out in relation to a person and his or her effects prior to admission to an aircraft, train or the like (see also, by way of comparison, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 59, ECHR 2012; *Gahramanov v. Azerbaijan* (dec.), no. 26291/06, §§ 40-41, 15 October 2013, and, *mutatis mutandis*, *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 64 and 74, ECHR 2008, and *Bowler International Unit v. France*, no. 1946/06, §§ 40-47, 23 July 2009, under other Articles of the Convention and Protocols to it). In the Court’s view, by submitting his effects to customs controls a person does not automatically and in all instances waive or otherwise forgo the right to respect for his or her “private life” or, as the case may be in other applications, his or her “correspondence”.

69.  Thus, in view of the above observations, the Court considers that it is open to the applicant to rely on the right to respect for his “private life” and that there has been an “interference” under Article 8 of the Convention.

70.  An interference is justified by the terms of paragraph 2 of Article 8 only if it is “in accordance with the law”, seeks to pursue one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” in order to achieve the aim or aims.

(b)  Whether the “interference” was justified

(i)  General principles

71.  The Court reiterates that the expression “in accordance with the law” requires that the impugned measure should have “some basis” in domestic “law”, which should be understood in its “substantive” rather than “formal” sense. In a sphere covered by the written law, the “law” is the enactment in force as the competent courts have interpreted it (see *Société Colas Est and Others v. France*, no. [37971/97](http://hudoc.echr.coe.int/eng#{"appno":["37971/97"]}), § 43, ECHR 2002‑III). The “law” may encompass enactments of lower ranking statutes and, for instance, regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament (see *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 83, 14 September 2010).

72.  In addition, the phrase “in accordance with the law” (as well as “prescribed by law” in Article 10) requires the impugned measure to be compatible with the rule of law, which is mentioned in the preamble to the Convention and inherent in the object and purpose of Article 8 of the Convention. The “law” must thus be accessible to the person concerned and foreseeable as to its effects, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct.

73.  For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see, under Article 8 of the Convention in the context of secret measures of surveillance and data gathering by public authorities, *Malone v. the United Kingdom*, 2 August 1984, § 67, Series A no. 82 and *Rotaru v. Romania* [GC], no. 28341/95, § 55, ECHR 2000-V, and under other Articles of the Convention and/or in other contexts: *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI; *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004‑I; *Sanoma Uitgevers B.V.* [GC], cited above, § 82; *Gillan and Quinton*, cited above, § 77; and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 411, 7 February 2017). The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see, for example, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 31, ECHR 1999‑VIII).

74.  In that connection, the existence of sufficient procedural safeguards may be particularly pertinent, having regard to, to some extent at least and among other factors, the nature and extent of the interference in question (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 46, ECHR 2001‑IX). In various contexts of Article 8 of the Convention, the Court has emphasised that measures affecting human rights must be subject to some form of adversarial proceedings before an independent body competent to review in a timely fashion the reasons for the decision and the relevant evidence (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 123, 20 June 2002; *X v. Finland*, no. 34806/04, §§ 220-222, ECHR 2012 (extracts); *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 184, ECHR 2013; and *Kotiy v. Ukraine*, no. 28718/09, §§ 68-70, 5 March 2015; see also *Milojević and Others v. Serbia*, nos. 43519/07 and 2 others, § 64, 12 January 2016).

75.  The above considerations under the heading of “quality of law” may overlap with similar issues analysed under the heading of “necessary in a democratic society” (see *Ustinova v. Russia*, no. 7994/14, § 44, 8 November 2016). The Court reiterates that where a wide margin of appreciation is afforded to the national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by the Convention (see, in the context of decisions relating to town and country planning policies, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001‑I, and in other contexts: *Hatton and Others v. the United Kingdom* [GC],no. 36022/97, § 99, ECHR 2003‑VIII; *Fernández Martínez* *v. Spain* [GC], no. 56030/07, § 147, ECHR 2014 (extracts); see also *Liu v. Russia* (no. 2), no. 29157/09, §§ 85-86, 26 July 2011; *Gablishvili v. Russia*, no. 39428/12, § 48, 26 June 2014; *Yefimenko v. Russia*, no. 152/04, §§ 146-50, 12 February 2013, and *Lashmankin and Others*, cited above, § 418).

76.  As regards specifically searches and seizures or similar measures (essentially in the context of obtaining physical evidence of certain offences), it is pertinent to assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the proportionality principle has been adhered to (see *Camenzind v. Switzerland*, 16 December 1997, § 45, *Reports of Judgments and Decisions* 1997‑VIII, with further references). As regards the latter point, the Court must firstly ensure that the relevant legislation and practice afford individuals “adequate and effective safeguards against abuse”; notwithstanding the margin of appreciation which the Court recognises the Contracting States have in this sphere, it must be particularly vigilant where the authorities are empowered under national law to order and effect searches without a judicial warrant (see also *Gutsanovi v. Bulgaria*, no. 34529/10, § 220, ECHR 2013 (extracts)). If individuals are to be protected from arbitrary interference by the authorities with the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for. Secondly, the Court must consider the particular circumstances of each case in order to determine whether, in the concrete case, the interference in question was proportionate to the aim pursued (see *Camenzind*, cited above, § 45).

(ii)  Application of the principles to the present case

77.  As regards the requirement that an “interference” should be “in accordance with the law”, the Court reiterates at the outset that in the first place it is for the national authorities, notably the courts, to interpret and apply domestic law (see *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176‑A; *Kopp v. Switzerland*, 25 March 1998, § 59, Reports 1998-II; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012; see also *Delfi AS v. Estonia* [GC], no. 64569/09, § 127, ECHR 2015).

(α)  Formal legality

78.  First of all, as to formal legality (meaning compliance with rules of domestic law), the Court dismisses as unsubstantiated the applicant’s assertion that (i) the impugned measures were in breach of Russian law if there was no ongoing criminal investigation or measures under the Operational-Search Activities Act, and/or (ii) in the absence of a prior judicial authorisation (see paragraphs 25, 40 and 41 above). The applicant’s second argument concerned the allegedly unforeseeable application of the provisions concerning customs inspections of “goods and vehicles” and the customs procedure for the “sampling of goods” to the examination and copying of electronic data from his laptop.

79.  The domestic courts shed no light on the question of the applicability of Article 23 § 2 of the Russian Constitution, which protects the right to the secrecy or privacy of “correspondence” or “other messages” and requires a court decision for imposing restrictions on that right. Nor did the courts make any other specific findings relating to the applicant’s rights as protected by Article 23 of the Constitution or Article 8 of the Convention. In the absence of any domestic findings, the Court is unable to reach any conclusion as regards formal compliance with Russian law on that account.

80.  At the same time, it is noted that the domestic courts merely referred to Article 11 of the Customs Code, which defines goods for the purpose of customs legislation as movable property that is being transferred across the customs border, to then conclude that such items as laptops, flash memory cards, cameras, video-cameras, printed material and the like fell within the notion of “goods” (see paragraphs 21, 23 and 28 above). This served as a basis for then asserting that such “goods” could be lawfully subjected to the sampling procedure, without any further consideration of the context in which the customs control concerned the non-material digital contents (electronic data amounting to information or images, for instance) accessed by way of “opening” a “container” (the laptop) (see paragraphs 31 and 33 above). Before the Court the Government attempted to supplement that consideration by references to further provisions of Russian law, such as the Civil Code. However, those provisions were not part of the domestic assessment and, in any event, do not seem to provide a sufficiently sound legal basis for copying electronic data in the customs context. Having regard to the reasoning of the domestic decisions, the Court is not satisfied that the combined reading of the relevant provisions of the Customs Code (a “federal statute” within the meaning of Article 55 of the Constitution, cited in paragraph 27 above) and other legal rules constituted a foreseeable interpretation of national law and provided a legal basis for the copying of electronic data contained in electronic documents located in such a “container” as a laptop.

(β)  Protection against arbitrariness and adequate safeguards

81.  The Court notes, however, that the main thrust of the applicant’s grievance before the Court essentially relates to insufficient legal protection against an arbitrary interference as regards both the authorisation and carrying out of the intrusive measures (for a summary of the relevant principles, see paragraphs 73-74 above). In the Court’s view and for the reasons presented below, the safeguards provided by Russian law have not been demonstrated as constituting an adequate framework for the wide powers afforded to the executive which could offer individuals adequate protection against arbitrary interference.

-  Administrative procedure

82.  The Court accepts the Government’s submission that the powers to carry out the inspection and sampling procedures were, indeed, confined to the specific context of customs controls and were limited to people crossing the border of the Russian Federation. The Court has also taken note of the Government’s submission that it was the chief officer of the customs unit who was empowered to authorise an examining officer to carry out an inspection and sampling. However, the Court is not satisfied that there was a clear requirement at the authorisation stage that the inspection and, first and foremost, the copying be subjected to a requirement of any assessment of the proportionality of the measure (compare *Gillan and Quinton*, cited above, § 80, where stop-and-search powers were additionally subject to prompt confirmation by the Secretary of State and judicial review).

83.  Referring to the risk-profiling approach adopted by Russian customs and the related 2008 Instruction (see paragraphs 30 and 37 above), the Government may be understood to be suggesting that that approach furnished safeguards against arbitrary “interference” on the part of the customs officers. For its part, the Court refers in this connection to the appeal court’s finding in the applicant’s case that the customs control had to be based on the principle of selectiveness and, as a rule, had to be limited to such forms of control as were sufficient for ensuring compliance with customs legislation. It was also stated that when carrying out a customs check, the customs authority was allowed to take samples of goods which were needed for further assessment. However, both the domestic court decisions and the Government’s submissions before the Court are limited to general assertions about the risk-profiling approach and do not specify how it was applied to the applicant. In fact, when carrying out their review of the customs officers’ actions, the courts did not even refer to the above‑mentioned Instruction. Moreover, the reference to risk management (including risk profiling) does not address the matter of the extensive copying of the data from the applicant’s laptop, which is at the heart of the present complaint. The Court does not overlook that the domestic courts pointed out that extensive copying was “needed” because of the diverse nature of the “goods” to be sampled, which was electronic data in the present case. In the Court’s view, it is usual for an electronic device to contain various types of electronic files (text, photographs, videos and others) and that the contents may vary even within the same type of file. In addition to the above‑mentioned considerations relating to the legal basis in this case, it is evident that the usual approach to the sampling by customs of “goods” was not adequate as regards electronic data (see also paragraph 80 above).

84.  Next, it is noted that the applicant pointed out that the “interference” had been unjustified since he had not been subject to any ongoing criminal investigation or any measures under the Operational-Search Activities Act. However, the Court is not convinced that in order to avoid arbitrariness it was indispensable for the customs officer to have a reasonable suspicion of criminal activity *stricto sensu* (as being in breach of the Criminal Code of the Russian Federation), that is some objective basis for suspecting the particular person of “criminal” activity in the particular circumstances of a given situation taken as a whole. By way of comparison, the Court reiterates that it is also possible to envisage a justified interference with Article 8 rights by way of search-and-seizure or comparable measures in contexts other than those of a criminal investigation, in relation to unlawful conduct punishable under other procedures (see, for instance, *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, §§ 80-83, 2 October 2014).

85.  However, it does not appear that the comprehensive measure used in the present case had to be based on some notion of a reasonable suspicion that someone making a customs declaration has committed an offence, namely one arising from the anti-extremist legislation pertinent to the present case. Indeed, the Russian Customs Code linked its various procedures to the need for “ensuring compliance with customs legislation”. The present case concerns one specific context where imputed “non‑compliance” is related to the ban set out in Presidential Decree no. 310 of 23 March 1995 read together with the Federal Customs Authority’s order no. 677 of 10 November 1995 and Article 13 of the Customs Code of 2003 (see paragraphs 29, 35-36 above). The apparent lack of any need for a reasonable suspicion relating to an offence was exacerbated by the fact that the domestic authorities, ultimately the courts on judicial review, did not attempt to define and apply such notions as “propaganda for fascism”, “social, racial, ethnic or religious enmity” to any of the ascertained facts. It is also noted that the presidential decree seems to relate to measures such as the “arrest and bringing to liability” of persons “who [were] disseminating” material with the above content. It has not been suggested that any separate instructions or guidance was made available to customs officers in relation to dealing with situations involving potential prima facie “extremist material” and for dealing with electronic data in that context.

86.  In the context of the present case the Court is not convinced by the Government’s submission that the fact that the applicant was returning from a disputed area constituted in itself a sufficient basis for proceeding with the extensive examination and copying of his electronic data on account of possible “extremist” content.

87.  In situations when a person is at customs after *arriving* in the country (*a fortiori*, through such ports of entry as customs points for vehicles or those arriving on foot, as in the present case), bearing in mind the margin of appreciation afforded to the respondent State in the customs context, it is particularly pertinent to ascertain whether *post factum* judicial remedies were available and provided adequate safeguards.

-  Judicial review

88.  Although the exercise of the powers to inspect and sample was amenable to judicial review under Chapter 25 of the Russian CCP, the width of those powers was such that the applicant faced formidable obstacles in showing that the customs officers’ actions were unlawful, unjustified or otherwise in breach of Russian law (compare *Gillan and Quinton*, cited above, § 80).

89.  The Court refers to its findings under Article 13 of the Convention in conjunction with Article 11 in *Lashmankin and Others* (cited above, § 356), which also concerned the judicial review procedure under Chapter 25 of the CCP. In particular, the Court stated as follows:

(a)  The scope of judicial review was limited to examining the lawfulness of the impugned administrative act or measure. In accordance with Chapter 25 of the CCP, the sole relevant issue before the domestic courts was whether the contested act or measure was lawful. “Lawfulness” was understood as compliance with the rules of competence, procedure and contents. The Supreme Court expressly stated that the courts had no competence to assess the reasonableness of the authorities’ acts or decisions made within their discretionary powers. It followed that the courts were not required by law to examine the issues of “proportionality” and “necessity in a democratic society”, in particular whether the contested decision answered a pressing social need and was proportionate to any legitimate aims pursued, principles which lie at the heart of the analysis of complaints relating to Article 11 of the Convention.

(b)  The analysis of the judicial decisions made in the case of *Lashmankin and Others* showed that they failed to recognise that the cases involved a conflict between the right to freedom of assembly and other legitimate interests and to perform a balancing exercise. The balance appeared to be set in favour of protection of other interests, such as rights and freedoms of non-participants, in a way that made it difficult to turn the balance in favour of the freedom of assembly. The Court concluded that in practice Russian courts had not applied standards which were in conformity with the principles embodied in Article 11 and did not apply the “proportionality” and “necessary in a democratic society” tests.

90.  In the Court’s view, that assessment is applicable to the context of the adverse decisions and actions taken by the customs authorities in relation to the copying of electronic data, as challenged by the applicant in the judicial review proceedings. After examining the parties’ submissions, the Court finds no reason to depart from the above assessment (see, in the same vein, *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, §§ 110-14, 7 March 2017 as regards judicial review challenges in relation to family visits to convicted prisoners; and *Ustinova*, cited above, §§ 51-52 in relation to an exclusion order in respect of a foreign national). In particular, the Court notes that in addition to having different subject matter from the present case, several examples of the favourable domestic judgments supplied by the Government (see paragraph 58 above) were confined to findings of formal unlawfulness relating to non-observance of certain formal requirements of domestic law, for instance relating to the competence of a customs authority, compliance with certain procedures and time-limits. The decisions contain no particular reasoning corresponding to the matters examined above in the context of Article 8 of the Convention as regards respect for the applicant’s “private life”.

91.  In addition, the Court observes that the Chapter 25 review in the present case was carried out in the light of the applicable substantive legislation such as the Customs Code, which served as the basis for the “interference”. The respondent Government has not demonstrated that that legislation added anything to provide the courts with a legal framework for ascertaining whether the “interference” was “necessary in a democratic society”.

92.  The Court is of the view that the circumstances of the present case highlight certain deficiencies in the domestic regulatory framework. The domestic authorities, including the courts, were not required to give – and did not give – relevant and sufficient reasons for justifying the “interference” in the present case. In particular, it was not considered pertinent by the domestic authorities to ascertain whether the impugned measures were in pursuance of any actual legitimate aim, for instance the ones referred to by the Government. It was merely assumed that the identification of possible “extremist material” was required by the 1995 Presidential decree. It was not considered relevant, at any stage and in any manner, that the applicant was carrying journalistic material (see also below under Article 10 of the Convention).

(γ)  Conclusion

93.  In sum, the Court concludes in addition to the findings under the heading of formal legality in paragraph 80 above that the respondent Government has not convincingly demonstrated that the relevant legislation and practice afforded adequate and effective safeguards against abuse in a situation of applying the sampling procedure in respect of electronic data contained in an electronic device (compare *Gillan and Quinton*, cited above, § 87).

94.  They are not, therefore, “in accordance with the law” and it follows that there has accordingly been a violation of Article 8 of the Convention.

95.  The above findings dispense the Court from having to examine whether the other requirements of the second paragraph of Article 8 have been complied with.

III.  ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

96.  The applicant argued that the situation complained of had also resulted in a separate breach of his freedom of expression, namely his freedom to receive and impart information and ideas.

97.  Article 10 of the Convention reads in the relevant parts as follows:

“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 and regardless of frontiers ...

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 ...”

A.  The parties’ submissions

1.  The applicant

98.  The applicant argued that the customs authority’s actions had amounted to “interference by public authority” with his freedom of expression, including his freedom to receive and impart information and ideas “regardless of frontiers”. The applicant submitted that when crossing the border he had presented his passport and press card. By copying the data from the laptop, the authorities had also copied his “FTP access passwords” to several professional servers, such as Agency.Photographer.ru.

99.  The impugned “interference” had pursued no legitimate aim and had not been “necessary in a democratic society”. The applicant had acted as a journalist and had expressed his opinion by way of taking photographs and preparing texts for publication in print and Internet media outlets. In particular, the applicant had at the time been working on a photo report concerning the life of ordinary people in Abkhazia and the prospects for economic development in the area. That was a matter of considerable public interest, in particular on account of Russia’s financial and military assistance. The national courts had not carried out any proportionality assessment.

2.  The Government

100.  The Government argued that there had been no “interference by public authority” under Article 10 of the Convention because at no point on 27 August 2009 or later had the applicant been found liable for any offence or otherwise; he had not been prohibited from publishing material; the material that had been copied had not been subjected to a confiscation measure; and there had been no disclosure of any confidential sources. The customs officers’ actions had been limited to the inspection and copying of some data on account of a reasonable suspicion that it might contain extremist material. Their actions had had no “chilling effect” *vis-à-vis* the journalistic freedom to hold and express opinions. It could not be decisive in the present case and had not been decisive for the customs officers that the applicant was a photojournalist. The applicant had not been approached or threatened because of his professional status. The “regardless of frontiers” phrase in Article 10 had no import in the present case.

101.  Even it was accepted that there had been “interference by public authority”, such interference had been relatively insignificant. It had been lawful and had pursued the aims listed in Article 10 § 2 of the Convention. The “interference” had been proportionate to those aims, in particular, for the same reasons as regards Article 8 of the Convention. The Government submitted that the Court’s case-law relating to the protection of journalistic sources was inapplicable in the present case.

B.  The Court’s assessment

102.  The Court considers that the complaint under Article 10 of the Convention is linked to the complaint under Article 8 and that it is admissible. However, having regard to the applicant’s specific allegations and the nature and scope of the Court’s findings under Article 8 of the Convention (see also *Gillan and Quinton*, § 90, and *Lashmankin and Others,* §§ 350-60, both cited above), the Court considers that it is not necessary to examine it separately on the merits.

IV.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 8 AND 10

103.  Lastly, the applicant complained in substance about the manner in which the judicial review in the present case was carried out. The parties have been invited to make submissions under Article 13 of the Convention, which reads as follows:

“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.”

104.  The applicant argued that the public officials’ actions could be and actually had been challenged by way of a judicial review under Chapter 25 of the CCP. However, the domestic courts had not proceeded to an adequate assessment of the adverse impact that the officials’ actions had had on his right to respect for his private life and correspondence or his right to freedom of expression. In particular, they had not carried out an assessment of whether the officials’ actions had been proportionate to any particular legitimate aim.

105.  The Government submitted that the applicant had had access to effective remedies in respect of his complaints. The judicial review procedure under Chapter 25 of the CCP was capable of remedying violations of individual rights. The applicant’s case had been examined by the courts on the merits. They had dealt with matters relating to legality and had concluded that the customs officials’ actions had not breached his rights. The applicant could also have lodged a civil claim under Article 1070 of the Civil Code.

106.  Having regard to the applicant’s specific allegations and, first and foremost, the nature and scope of the Court’s findings under Article 8 of the Convention (see also *Lashmankin and Others,* cited above, §§ 350-60), the Court considers that the complaint under Article 13 of the Convention is admissible but that it is not necessary to examine it separately on the merits.

V.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

107.  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.”

A.  Damage

108.  The applicant claimed 3,000 euros (EUR) in respect of non‑pecuniary damage.

109.  The Government submitted that the applicant had not substantiated a causal link between the alleged suffering and the violations of the Convention.

110.  The Court awards the applicant EUR 3,000, plus any tax that may be chargeable.

B.  Costs and expenses

111.  The applicant also claimed EUR 2,805 for the costs and expenses incurred before the domestic courts and the Court.

112.  The Government expressed doubts about the authenticity of the contract between the applicant and his representative, in particular as regards the services allegedly provided at the domestic level. The Government also considered that the fees claimed were excessive and that the postal expenses had been substantiated only in part.

113.  In accordance with the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,700 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C.  Default interest

114.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the complaints under Articles 8, 10 and 13 of the Convention admissible;

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

3.  *Holds* that it is not necessary to examine separately the merits of the complaint under Article 10 of the Convention;

4.  *Holds* that it is not necessary to examine separately the merits of the complaint under Article 13 of the Convention;

5.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

6.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 13 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Helena Jäderblom
 Registrar President

1. *Russian Reporter* magazine [↑](#footnote-ref-1)
2. File Transfer Protocol [↑](#footnote-ref-2)
3. Article 20 of the Customs Code of 18 June 1993 provided that it was admissible to prohibit entry of certain goods into Russia, in view of the considerations of national security, protection of public order, morality, human life and health, or other interests of the Russian Federation, on the basis of Russian legislation or international treaties of the Russian Federation. [↑](#footnote-ref-3)