

Numéro de dossier  
*File-number*

**COUR EUROPÉENNE DES DROITS DE L'HOMME**  
**EUROPEAN COURT OF HUMAN RIGHTS**  
**ЕВРОПЕЙСКИЙ СУД ПО ПРАВАМ ЧЕЛОВЕКА**

Conseil de l'Europe - *Council of Europe*  
Strasbourg, France - *Страсбург, Франция*

**REQUÊTE**  
**APPLICATION**  
**ЖАЛОБА**

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,  
ainsi que des articles 45 et 47 du Règlement de la Cour

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

*в соответствии со статьей 34 Европейской Конвенции по правам человека  
и статьями 45 и 47 Регламента Суда*

**IMPORTANT:** La presente requete est un document juridique et peut affecter vos droits et obligations  
*This application is a formal legal document and may affect your rights and obligations.*



## 2. EXPOSÉ DES FAITS

### *STATEMENT OF THE FACTS*

### *ИЗЛОЖЕНИЕ ФАКТОВ*

1. On 8 January 2009, crews from two television channels and a number of independent journalists, including the Applicant Uriy Borisovich Basok, gathered next to the Sverdlovsk Drama Theater in Yekaterinburg to cover a protest organized by motorists against the federal law that significantly increased the tax rate imposed on foreign-made vehicles. The Applicant, working as a freelance journalist, was reporting for an online news agency, [www.Eburgnews.ru](http://www.Eburgnews.ru).

2. The Head of the Regional Traffic Police Department for the Sverdlovsk oblast region (Начальник ГИБДД ГУВД по Свердловской области), Uriy Demin, arriving at the protest to observe and maintain order, parked his car on a pedestrian crossing in clear violation of the applicable traffic rules.

3. Appreciating the newsworthiness of a traffic violation committed by the local official responsible for ensuring the public's adherence to the very rules that he himself flouted, media representatives attending the protest, including the Applicant, captured video and photographs of Mr. Demin's car parked illegally.

4. When the Applicant attempted to take a photograph of Mr. Demin's car, Mr. Demin approached the Applicant, shouting obscenities at him and demanding that he stop taking photographs. Moments later when the Applicant attempted to take a photograph of Mr. Demin himself, Mr. Demin attacked the Applicant, striking his face and breaking his camera before returning to grab him by the neck from behind to push him away violently. Five senior police officers witnessed Mr. Demin's assault on the Applicant and did nothing to stop it. The Applicant's camera was destroyed in the assault.

5. The assault was videotaped by Channel 4 of Sverdlovsk Television. As the protest drew local and regional media attention, news of the attack on the Applicant was reported and the videotape shown on regional television that day by Channel 4 and later by Channel 10 as well.

6. Due to this public exposure, a criminal case was initiated by Investigator Zaripov of the Investigating Department of Verkh-Isetskii district of Ekaterinburg on behalf of the Investigating Bureau of the Investigating Committee of the Prosecutor of the Russian Federation in Sverdlovsk oblast (следователь следственного отдела по Верх-Исетскому району г. Екатеринбурга следственного управления Следственного комитета при Прокуратуре РФ по Свердловской области). The case was investigated under Article 167(1) and Article 286(3(a)) of the Criminal Code of the Russian Federation.<sup>2</sup> Article 167 sets forth the crime of wilful destruction and damage of property; Article 286 sets forth the crime of exceeding official powers.

7. During the pre-trial investigation, Mr Basok was recognized as a victim.<sup>3</sup> The Russian Code of Criminal Procedure confers rights of participation in criminal proceedings upon persons so designated. In particular, Article 42(14) of Code establishes the victim's right "to participate in the judicial proceedings on the criminal case in the courts of the first, the second and the supervisory instances", and Article 14(20) sets out the victim's right "to know about the complaints and presentations, submitted on the criminal case, and to submit objections to them."

8. The pre-trial investigation lasted 10 months. The Applicant complained to the prosecutor responsible for the case, Prosecutor Novoseltsev, about the delays in referring the case to trial in

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See resolution of 27 January 2009 on initiating criminal case. Appendix 1.

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See resolution of 29 April 2009 on recognition of civil claimant. Appendix 2.

September 2009, but his complaint went unanswered. The case was finally transferred to the Verkh-Isetskiy District Court in October 2009 for trial before Judge Ziryanov. The first hearing was held that month. The Applicant was represented in the domestic criminal proceedings by one advocate, Vladimir Iakovich Kapustin, the accused, by two.

9. During the second hearing, the Applicant, through his representative, filed a motion to have the Prosecutor removed from the case on account of his obvious bias towards the accused.<sup>4</sup> The Applicant submitted that the Prosecutor's questioning of witnesses made it clear that his goal was to protect, not prosecute, Mr. Demin. Despite this substantiated claim of bias, the Applicant's motion was denied by Judge Ziryanov, who decided that there was no ground on which to suspect bias on the part of the Prosecutor. The Applicant immediately filed a complaint regarding Prosecutor Novoseltsev with the General Prosecutor's Office of the Russian Federation, in respect of which the Applicant never received any response.

10. During the second hearing, the situation with the Prosecutor's questioning of witnesses continued to be clear that his goal was to protect, not prosecute, Mr. Demin.

11. On 21 December 2009, during the fourth hearing and before all of the evidence had been heard, the Prosecutor withdrew the charges against Mr. Demin pursuant to Article 24(1(2)) of the Russian Code of Criminal Procedure, on the basis that it could not be proven that a crime had occurred and that, at most, Mr. Demin should face disciplinary action. The reasons given by the Prosecutor to justify renouncing the charges were the following:

- an overall lack of evidence to substantiate the criminal charges;
- the unrecoverable loss of some evidence (video recordings of the attack);
- a change in the testimony at trial of a witness, a journalist of Channel 4, as compared with his statements made during the pre-trial investigation; and
- the testimony of 2 new witnesses at trial, an ambulance driver and a doctor present at the protest, who gave statements in favor of the accused.

12. The criminal case was terminated by Judge Ziryanov on 21 December 2009 pursuant to Article 246(7) of the Code of Criminal Procedure.<sup>5</sup> Article 246(7) provides that "[t]he full . . . renunciation of the accusation on the part of the public prosecutor in the course of the judicial proceedings shall entail the termination of the criminal case or of the criminal prosecution fully . . . ." The Applicant and his representative objected to the automatic termination of the case.

13. On 27 December 2009, the Applicant appealed the Verkh-Isetskiy District Court's decision to the cassational instance.<sup>6</sup> In considering the Applicant's appeal, the Sverdlovsk Oblast Court examined only whether the District Court had followed the procedural provisions of Article 246(7) of the Code of Criminal Procedure in terminating the case, as Article 246(7) does not permit judicial review of the merits of the termination. Accordingly, the Applicant's arguments challenging the Prosecutor's reasons for renouncing the charges against Mr. Demin and his claims of violations of his rights of participation as a victim under Article 42(14) and 14(20) – in particular, that he was not given time to review the Prosecutor's decision to renounce the charges and to prepare a rebuttal — were not considered.

14. On 3 February 2010, the Sverdlovsk Oblast Court upheld the decision of the Verkh-Isetskiy

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4 See Motion to have the Prosecutor removed from the case on account of his obvious bias towards the accused dated 26 November 2009. Appendix 3-4.

5 See the decision of the Verkh-Isetskiy District Court of 21 December 2009. Appendix 5.

6 See kassation of 27 December 2009 by Kapustin. Appendix 6.

District Court of 21 December 2009 in its cassational ruling, thereby exhausting domestic remedies.<sup>7</sup>

15. Several related actions commenced by the Applicant also were dismissed or were not reviewed on the merits by the Russian courts.

16. In connection with the criminal charges brought against Mr. Demin, the Applicant commenced a related civil proceeding which would have entitled him to compensation if Mr. Demin was convicted in the criminal case brought by the Prosecutor. The District Court's judgment of 21 December 2009 confirming the withdrawal of charges against Mr. Demin also stated that the civil claims brought by the Applicant against Mr. Demin would not be reviewed.

17. The Applicant initiated a private criminal prosecution against Mr. Demin on 23 January 2009 in respect of Article 116 of Russian Criminal Code (Article 116. Battery. Battery or the commission of similar violent actions, which have caused physical pain but not involved the consequences referred to in Article 115 of this Code).<sup>8</sup> The Applicant's private prosecution was not considered by the District Court due to the public prosecution in respect of Articles 167 (wilful destruction and damage of property) and Article 286 (exceeding official powers) that was commenced in October 2009.

18. Following the Prosecutor's withdrawal of the charges against Mr. Demin, the Applicant sought to initiate a second private prosecution in respect of Article 116 and Article 130(1) (Article 130. Insult. 1. Insult, that is the denigration of the honour and dignity of another person, expressed in indecent form) on 16 April 2010.<sup>9</sup> The validity of bringing this private prosecution has not been considered on the merits by the Verkh-Issetkiy District Court. On 27 April 2010, the justice of the peace of Judicial Area No 2 of the Verkh-Issetkiy district of Yekaterinburg issued a decision refusing to consider the initiation of a private prosecution.<sup>10</sup> This decision was upheld by the Verkh-Issetkiy District Court in its decision of 28 June 2010.<sup>11</sup>

19. On 25 May 2010 the Applicant filed an application before the Constitutional Court of the Russian Federation challenging Article 246(7) of the Criminal Procedure Code of the Russian Federation.<sup>12</sup> On 16 June 2010 the Secretariat of the Constitutional Court refused to consider the application on the merits stating that this issue was considered by the Constitutional Court on 8 December 2003 in the judgment of 18-P.<sup>13</sup>

20. On 6 July 2010 Mr Masok filed a civil complaint to compensate his pecuniary and non-pecuniary damage.<sup>14</sup>

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<sup>7</sup> The Decision of 3 February 2010 by the Sverdlovsk Oblast Court which upheld the decision of the Verkh-Issetkiy District Court of 21 December 2009. Appendix 7.

<sup>8</sup> First application by Mr. Basok to the justice of the peace to initiate private criminal charges against Mr. Demin, dated 23 January 2009. Appendix 8.

<sup>9</sup> Second application by Mr. Basok to the justice of the peace to initiate private criminal charges against Mr. Demin, dated 16 April 2010. Appendix 9.

<sup>10</sup> Decision by the justice of the peace denying Mr. Basok's second application to initiate private criminal charges, dated 27 April 2010. Appendix 10.

<sup>11</sup> Decision of 28 June 2010 by the Verkh-Issetkiy District court which upheld decision of justice of the peace denying Mr. Basok's second application to initiate private criminal charges, dated 27 April 2010. Appendix 12.

<sup>12</sup> Application before the Constitutional Court of the Russian Federation challenging Article 246(7) of the Criminal Procedure Code of the Russian Federation, dated 25 May 2010. Appendix 14.

<sup>13</sup> Reply by the Secretariat of the Constitutional Court of the Russian Federation to Basok application, dated 16 June 2010. Appendix 15.

<sup>14</sup> Civil complaint by Basok, dated 6 July 2010. Appendix 16.

**3. EXPOSE DE LA OU DES VIOLATION(S) DE LA CONVENTION ET / OU DES PROTOCOLES ALLIÉ(S), AINSI QUE DES ARGUMENTS A L'APPUI**  
**STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND / OR PROTOCOLS AND OF RELEVANT ARGUMENTS**  
**ИЗЛОЖЕНИЕ ИМЕВШЕГО(ИХ) МЕСТО, ПО МНЕНИЮ ЗАЯВИТЕЛЯ, НАРУШЕНИЯ(ИЙ) КОНВЕНЦИИ И/ЛИ ПРОТОКОЛОВ К НЕЙ И ПОДТВЕРЖДАЮЩИХ АРГУМЕНТОВ**

The Government of the Russian Federation ratified the Convention on 5 May 1998, thereby recognizing the authority of this Court to accept applications from individuals concerning alleged violations of the Convention by its agencies and authorities pursuant to Article 34. The Applicant is a victim of violations of the Convention as that concept is understood in Article 34 in that he is “directly affected” by the acts or omissions at issue.<sup>15</sup> As discussed in more detail below, the Applicant is a victim of violations of his rights under Articles 6, 10 and 13 of the Convention and under Article 1 of Protocol 1.

**The Verkh-Isetskiy District Court Failure to Investigate the Applicant and The Code of Criminal Procedure Requiring the Verkh-Isetskiy District Court and the Sverdlovsk Oblast Court to Rubber-Stamp the Prosecutor’s Decision to Withdraw the Charges Against the Accused, Thereby Permitting the Unfettered and Unreviewable Exercise of Prosecutorial Discretion violated the Applicant’s rights under the Convention.**

**(1) The Attack on the Applicant by the Head of the Regional Traffic Police Constitutes an Unlawful Restriction on Press Freedom in Violation of Article 10 (Freedom of Expression)**

Article 10(1) provides that “[e]veryone has the right to freedom of expression.” In particular, “[t]his right shall include freedom . . . to receive and impart information and ideas without interference by public authority . . . .” The cardinal importance of this right is underscored by the consistent statements of the Court that interference with this right can be justified only by “imperative necessities” and that exceptions to this right must be interpreted narrowly.<sup>16</sup> The unprovoked attack on the Applicant by the Head of the Regional Traffic Police while the Applicant was reporting on a matter of public interest constitutes an interference with the right to freedom of expression under Article 10(1) to which none of the narrow exceptions of Article 10(2) applies.

According to the Court’s well-established case law, freedom of expression embodies one of the essential bases of a democratic society and one of the most important conditions for its progress as well as for each individual’s self-fulfilment. Therefore, the scope of the protection offered by Article 10 of the Convention extends “not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no 'democratic society'.”<sup>17</sup>

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*See Doğan and Others v. Turkey*, 8803-8811/02, 8813/02, 8815-8819/02 (29 June 2004) para. 93; *Groppera Radio AG and Others v. Switzerland*, 10890/84 (29 March 1990) para. 47.

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*See, e.g., Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria*, 19 December 1994, para. 37; *see also Informationsverein Lentia v. Austria*, 24 November 1993, para. 35 (“In cases such as the present one, where there has been an interference with the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10 (art. 10-1), the supervision must be strict because of the important – frequently stressed by the Court – of the rights in question. The necessity for any restriction must be convincingly established . . .”).

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*Dyundin v. Russia*, Application no. 37406/03, 1 January 2009, para. 25, *see also Handyside v. the United Kingdom*, 7 December 1976, para. 49, *Jersild v. Denmark*, 23 September 1994, para. 37.

In the present case, having appreciated the public interest in a traffic violation committed by the local official responsible for ensuring the public's adherence to the very rules that the official himself flouted, the Applicant acted in good faith and with professionalism, seeking to further the right of the public to receive information on a matter of public concern. By attempting to photograph Mr Demin's car parked on the pedestrian crossing and to photograph Mr Demin near his illegally-parked car for publication by an online news agency, the Applicant was fulfilling "the vital role of 'public watchdog.'"

Consistent with this essential role of 'public watchdog', the Court has emphasized that freedom of expression under Article 10 includes the right of the press to impart information on all matters of public interest, including the behavior of civil servants acting in an official capacity.<sup>18</sup> Mr Demin was present at the protest in his official capacity as Head of the Regional Traffic Police Department for Sverdlovsk Oblast to monitor the protest and maintain order.

Accordingly, Mr Demin's assault on the Applicant is a violation of his right, as a member of the media, to collect information of public interest — namely, the unlawful behaviour of a civil servant acting in an official capacity — with the aim of disclosing it to the online news agency. Indeed, the fact that the Applicant's camera was destroyed in the assault provides a tangible illustration of how he was prevented from imparting this information, providing further evidence of interference with the very substance of his right to freedom of expression.<sup>19</sup>

This interference with the Applicant's freedom of expression cannot be justified under Article 10(2) since it was not prescribed by law and was not necessary in a democratic society. As the Court has held, "freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any exceptions must be convincingly established... The adjective 'necessary', within the meaning of Article 10(2) implies the existence of a 'pressing social need.'"<sup>20</sup> In the present case, Mr Demin's conduct in seeking to prevent the Applicant reporting on a matter of public interest by way of an unprovoked physical attack does not and cannot fall under any of the exceptions set forth in Article 10(2)—and it bears no relation whatsoever to any pressing social need. Therefore, the interference with the Applicant's right to freedom of expression is unlawful and unjustified, constituting a violation of Article 10.

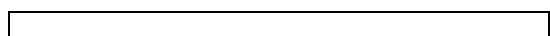
Finally, it must be noted that the Applicant's right to freedom of expression is mirrored by the public' right to receive information on matters of public interest and "that the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him."<sup>21</sup> It is therefore even more important that the violation of the

18 *Dyundin v. Russia*, Application no. 37406/03, 1 January 2009, para. 26 ("Moreover, although it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent politicians do, civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals."), see also *Thomas v. Luxembourg*, Application no. 38432/97, 2001, para. 47.

19 The violence perpetrated against the Applicant forms part of a widespread pattern of violence against journalists in Russia, which is among the world's most dangerous countries for journalists. In 2009, the media watchdog Reporters Without Borders ranked Russia 153<sup>rd</sup> out of 175 countries in media freedom, highlighting physical attacks on local media representatives and the failure to punish violence against journalists. See Reporters Without Borders, *World Press Freedom Index 2009*, 20 June 2010.

20 *Ahmed and Others v. the United Kingdom*, Application no. 65/1997/849/1056, 2 September 1998, para. 55.

21 *Leander v. Sweden*, Application no. 9248/81, 26 March 1987, para. 74.



Applicant's right to freedom of expression be recognized by the Court and the State, as the assault on the Applicant has also impaired the right of the public to receive information of public interest that the Applicant was willing to impart to him.

## **(2) The Destruction of the Applicant's Camera in the Attack Constitutes Property Damage in Violation of Article 1 of Protocol 1 (Right to Property)**

**(i) THE APPLICANT'S CAMERA IS A POSSESSION PROTECTED BY THE RIGHT TO PROPERTY IN ARTICLE 1 OF PROTOCOL 1;**

**(ii) THE DESTRUCTION OF THE CAMERA IN THE ATTACK INTERFERED THE APPLICANT'S PEACEFUL ENJOYMENT OF PROPERTY IN BREACH OF THE FIRST RULE LAID OUT BY THE COURT IN *SPORRONG*;**

**(iii) THE INTERFERENCE WAS NEITHER A VALID DEPRIVATION OF POSSESSIONS OR A VALID CONTROL OF THE USE OF PROPERTY UNDER THE SECOND AND THIRD RULES ARTICULATED BY THE COURT IN *SPORRONG*;**

**(iv) THE INTERFERENCE CONSTITUTES A VIOLATION OF ARTICLE 1, GIVING RISE TO A RIGHT TO PAYMENT OF COMPENSATION WITHIN A REASONABLE TIME PERIOD.**

**(i) THE APPLICANT'S CAMERA IS A POSSESSION PROTECTED BY THE RIGHT TO PROPERTY IN ARTICLE 1 OF PROTOCOL 1.**

The Court has established in its case law that Article 1 of Protocol 1 guarantees the right to property: "By recognizing that everyone has the right to the peaceful enjoyment of his possessions, Article 1 (P1-1) is in substance guaranteeing the right of property. This is the clear impression left by the words 'possessions' and 'use of property' (in French: 'biens', 'propriété', 'usage des biens')".<sup>22</sup>

Therefore, first and foremost, an applicant who wishes to claim a violation of his right to property must show beforehand that such a right existed,<sup>23</sup> meaning that a violation of Article 1 of Protocol 1 can be alleged "only in so far as the impugned decisions related to his 'possessions' within the meaning of this provision".<sup>24</sup> As understood in the Court's case law, the concept of 'possessions' applies to a person's 'existing possession'<sup>25</sup> and has an autonomous meaning which is not limited to, but includes the ownership

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*Marckx v. Belgium*, 13 June 1979, para. 63, see also *Sporrong and Lönnroth v. Sweden*, Applications nos. 7151/75 and 7152/75, 23 September 1982, para. 57.

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*Pistorova v. the Czech Republic*, Application no. 73578/01, 26 October 2004, para. 38, see also *Des Fours Walderode v. the Czech Republic*, Application no. 40057/98, 4 March 2003, *Jigalev v. Russia*, Application no. 54891/00, 6 July 2006, para. 131.

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*Maltzan and Others v. Germany*, Applications nos. 71916/01, 71917/01 and 10260/02, para. 74, see also *Kopecky v. Slovakia*, Application no. 44912/98, para. 35.

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*Marckx v. Belgium*, 13 June 1979, para. 50, *Anheuser-Busch Inc. v. Portugal*, Application no. 73049/01, 11 January 2007, para. 64.



of physical goods.<sup>26</sup>

In the present case, it is indisputable that Mr Basok had a right of property at the time of the destruction of his camera, a physical good that he bought on his own account and with his own money and that he has possessed since, using it on a daily basis as part of his work as a freelance journalist. Therefore, the Applicant had a substantive interest in the camera, his 'possession', as understood under Article 1 of Protocol 1 and his right to property was violated by the violent assault upon him by Mr Demin on 8 January 2009.

**(ii) THE DESTRUCTION OF THE CAMERA IN THE ATTACK INTERFERED THE APPLICANT'S PEACEFUL ENJOYMENT OF PROPERTY IN BREACH OF THE FIRST RULE LAID OUT BY THE COURT IN SPORRONG**

As defined by the Court:

*Article (P1-1) comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.*<sup>27</sup>

Mr Basok was deprived of his possession, the camera, neither in the public interest nor as prescribed by law or by principles of international law and thus the deprivation was unlawful and unjustified.

First, one must emphasize that the Convention is intended to guarantee rights that are “practical and effective”.<sup>28</sup> Hence, although the Applicant still had possession of his camera after the events, the damage that was inflicted upon it by Mr Demin's assault rendered its use impossible and thus resulted in a de facto deprivation of the Applicant's property.<sup>29</sup> As showed in Appendix 18 (the reparation receipt of the camera) and the act of 8 January 2009 of inspection of broken camera (Appendix No 17), the lens no longer worked, the camera could not display images and it was impossible to transfer the pictures to a computer to edit, print, send or use for any purpose.

**(iii) THE INTERFERENCE WAS NEITHER A VALID DEPRIVATION OF POSSESSIONS OR A VALID CONTROL OF THE USE OF PROPERTY UNDER THE SECOND AND THIRD RULES ARTICULATED BY THE COURT IN SPORRONG**

As underlined by the Court in *Pressos Compania Naviera S.A. and Others v. Belgium*, “an interference with the peaceful enjoyment of possessions must strike a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights... In particular, there must be a reasonable relationship of proportionality between the means

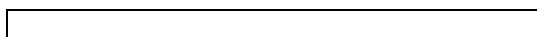
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26 *Iatridis v. Greece*, Application no. 31107/96, 1999, para. 54, *Beyeler v. Italy*, Application no. 33202/96, 2000, para. 100, *Broniowski v. Poland*, Application no. 31443/96, 2004, para. 129, *Anheuser-Busch Inc. v. Portugal*, Application no. 73049/01, 11 January 2007, para. 63.

27 *Sporrong and Lonnroth v. Sweden*, Applications nos. 7151/75 and 7152/75, 23 September 1982, para. 61.

28 *Airey v. Ireland*, Application no. 6289/73, 9 October 1979, para. 24

29 Act of inspection of broken camera, dated 8 January 2009. Appendix 17. Reparation receipt of the camera, dated 22 January 2009. Appendix 18.



employed and the aim sought to be realized by any measure depriving a person of his possessions.”<sup>30</sup>

The physical violence used by Mr Demin was absolutely disproportionate in his aim to prevent Mr Basok from taking a photograph of him, an aim to shut down media expression that absolutely is prohibited by international law and an arbitrary action that is also not prescribed by domestic law of the Russian Federation.

There is no need to address the third rule since no law is in question here and conclusively, Mr Basok was unlawfully deprived of his camera by Mr Demin, acting as a State official, which prevented him from peacefully enjoying his possession in violation of his right to property protected under Article 1 of Protocol 1.

**(iv) THE INTERFERENCE CONSTITUTES A VIOLATION OF ARTICLE 1, GIVING RISE TO A RIGHT TO PAYMENT OF COMPENSATION WITHIN A REASONABLE TIME PERIOD.**

Finally, “the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference.”<sup>31</sup> Moreover, the ECtHR's case-law provide that compensation for a violation of the right to property must be paid within a reasonable time period.<sup>32</sup> In the present case, absolutely no compensation was awarded to Mr Basok for the destruction of his camera as the criminal prosecution against Mr Demin was terminated in breach of another guarantee of the Convention. A separate civil action was filed by the Applicant on 6 July 2010.<sup>33</sup>

**(3) The Verkh-Isetskiy District Court's Failure to Investigate the Applicant's Well-Founded Allegations of Bias Against the Prosecutor Constitutes a Violation of Article 6 (Right to a Fair Trial).**

Article 6(1) of the Convention requires national courts to investigate allegations of bias so long as they do not immediately appear to be manifestly devoid of merit.<sup>34</sup> The Verkh-Isetskiy District Court's failure to investigate the Applicant's substantiated claim of bias on the part of the Prosecutor therefore violates Article 6(1).

During the second hearing, the Applicant moved to have the Prosecutor removed on the account of the Prosecutor's obvious bias towards the accused.

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*Pressos Compania Naviera S.A. and Others v. Belgium*, Application no. 17849/91, 20 November 1995, para. 38.

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*Pressos Compania Naviera S.A. and Others v. Belgium*, Application no. 17849/91, 20 November 1995, para. 38, *Lithgow and Others v. The United Kingdom*, [1986] ECHR (8 Jul. 1986) 121.

32

*Guillemin v. France*, 19632/92, [1997] ECHR (21 Feb. 1997) 54.

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Civil action by Basok, dated 6 July 2010. Appendix 16.

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*Remli v. France*, Application no. 16839/90, 23 April 1996, para. 48 (“Like the Commission, the Court considers that Article 6 para. 1 (art. 6-1) of the Convention imposes an obligation on every national court to check whether, as constituted, it is 'an impartial tribunal' within the meaning of that provision (art. 6-1) where, as in the instant case, this is disputed on a ground that does not immediately appear to be manifestly devoid of merit.”).

The Applicant's claim that the prosecution was not impartial was based on the fact that during the course of the hearings before the District Court, the Prosecutor's questioning of witnesses and the way in which he formulated his questions to the accused made it clear that his goal was not to prosecute, but to protect Mr Demin.<sup>35</sup>

Hence, since the motion was not manifestly ill-founded, the District Court had the duty to examine and thoroughly investigate the motion filed by the Applicant. However, the motion was denied without due consideration as the Judge summarily stated that there were no grounds on which to suspect bias on the part of the Prosecutor.

Indeed, as determined in *Remli v. France*:

*In the instant case, however, the Rhone Assize Court did not make any such check, thereby depriving Mr Remli of the possibility of remedying, if it proved necessary, a situation contrary to the requirements of the Convention. This finding, regard being had to the confidence which the courts must inspire in those subject to their jurisdiction, suffices for the Court to hold that there has been a breach of Article 6 para. 1 (art. 6-1).<sup>36</sup>*

Accordingly, the failure of the District Court to investigate the Applicant's well-founded allegations of bias on the part of the Prosecutor is a violation of the Applicant's right to a fair hearing by an impartial tribunal guaranteed under Article 6(1).

#### **(4) The Absence of Effective Judicial Review of the Prosecutor's Decision to Withdraw the Charges Against the Accused Constitutes a Violation of the Applicant's Right to a Fair Trial under Article 6.**

On 21 December 2009, the Prosecutor withdrew the charges against Mr Demin on the basis that it could not be proven that a crime had occurred and according to Article 24(1(2)) of the Russian Code of Criminal Procedure.

##### *Article 24. Grounds for Refusal to Institute a Criminal Case or to Terminate a Criminal Case*

*1. A criminal case cannot be instituted, and or instituted criminal case shall be subject to termination on the following grounds: 2) absence of the corpus delicti in the act;*

*2. The criminal case shall be subject to termination on the ground, envisaged by Item 2 of the first part of this Article, if the criminality and punishability of the action in question have been eliminated by the new criminal law before the sentence came into legal force.*

*3. The termination of a criminal case shall entail simultaneous cessation of the criminal prosecution.*

On the same day that the Prosecutor withdrew the charges against Mr Demin, the District Court issued a decision<sup>37</sup> dismissing the case on procedural grounds pursuant to Article 246(7) of the Russian Code of Criminal Procedure requiring the automatic termination of criminal cases by the domestic court following the withdrawal of charges by the Prosecutor.

##### *Article 246. Participation of the Public Prosecutor*

*7. If in the course of the judicial proceedings the public prosecutor arrives at the conclusion that the submitted proof does not confirm the charge brought against the defendant, he shall renounce the charge and explain to the*

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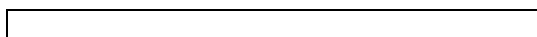
Moreover, given the availability of evidence of the assault, including on videotape and from eye witnesses, the significant delays in the pre-trial investigation appear to have been the result of the Prosecutor's unwillingness to move forward with the investigation into the assault committed by Mr. Demin.

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*Remli v. France*, Application no. 16839/90, 23 April 1996, para. 48.

37

The decision of the Verkh-Issetkiy District Court of 21 December 2009. Appendix 5.



court the motives of the renouncement. The full or a partial renunciation of the accusation on the part of the public prosecutor in the course of the judicial proceedings shall entail the termination of the criminal case or of the criminal prosecution fully or in the corresponding part thereof on the grounds, stipulated by Items 1 and 2 of the first part of Article 24 and by Items 1 and 2 of the first part of Article 27 of the present Code.

During the appeal to the Sverdlosk Oblast Court, the reviewing court only considered whether the procedural requirements of Article 246(7) had been met because, like the lower court, it had the obligation to enforce the Prosecutor's decision and could not review the merits of the decision under the Russian Code of Criminal Procedure.<sup>38</sup>

The guarantees of Article 6 of the Convention provide that a tribunal must be independent of the executive and the parties and also of the legislature or Parliament; hence, it should base its decision on its own judgment of the facts and legal grounds presented. In the present case, the Applicant claims that the District Court and the Sverdlovsk Oblast Court failed to meet the requirements of an independent tribunal because neither court had jurisdiction to review the merits of the decision of the Prosecutor to withdraw the charges against Mr Demin.

In *Kingsley v. the United Kingdom*<sup>39</sup>, the Court found that judicial review was insufficient where the Applicant complained of lack of impartiality by the Gaming Board and the High Court had no power to refer the case back for a new decision by an independent body.<sup>40</sup>

In accordance with the Court's reasoning in *Kingsley v. the United Kingdom*, *Bryan v. the United Kingdom*, the issue in the present case is whether the District Court and the Sverdlovsk Oblast Court satisfied the requirements of Article 6(1) in so far as the scope of their jurisdiction<sup>41</sup> in regards of their to review the Prosecutor's decision to withdraw the charges against Mr Demin was concerned.<sup>42</sup>

In *Bryan v. the United Kingdom*, the Court found that the following factors were relevant in assessing whether judicial review complied with the requirement of an independent tribunal prescribed by Article 6: "the subject-matter of the decision appealed against, the manner in which that decision was arrived at, and the content of the dispute, including the desired and actual grounds of appeal".<sup>43</sup>

Since both the District Court and the Sverdlovsk Oblast Court had no jurisdiction to review the withdrawal of the charges against Mr Demin by the Prosecutor and could only enforce the Prosecutor's

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The Decision of 3 February 2010 by the Sverdlovsk Oblast Court upheld the decision of the Verkh-Issetkiy District Court of 21 December 2009. Appendix 6.

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*Kingsley v. the United Kingdom*, Application no. 35605/97, 7 November 2000.

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*Kingsley v. the United Kingdom*, Application no. 35605/97, 7 November 2000.

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*Bryan v. the United Kingdom*, Application no. 19178/91, 22 November 1995, para. 40, see also *Kingsley v. the United Kingdom*, Application no. 35605/97, 7 November 2000, para. 51.

42

*Kingsley v. the United Kingdom*, Application no. 35605/97, 7 November 2000, para. 51.

43

*Bryan v. the United Kingdom*, Application no. 19178/91, 22 November 1995, para. 45, see also *Kingsley v. the United Kingdom*, Application no. 35605/97, 7 November 2000, para. 52.

decision and terminate the case, there was no effective judicial review and the requirements of Article 6(1) are not met.

In *De Cubber v. Belgium*, the Court observed that the trial at examination was classified as criminal under the Convention, as well as under Belgian law, and that the court in question was not an administrative or professional authority, but a proper court in both the formal and substantive meaning of the term. The Court stated that:

*It is true that its fundamental guarantees, including impartiality, must also be provided by any courts of appeal or courts of cassation which a Contracting State may have chosen to set up. However, even when this is the case it does not follow that the lower courts do not have to provide the required guarantees. Such a result would be at variance with the intention underlying the creation of several levels of courts, namely to reinforce the protection afforded to litigants.*<sup>44</sup>

Therefore, since the case involving the Applicant against Mr Demin was a criminal case, both the District Court and the Sverdlovsk Oblast Court had the obligation under Article 6 to comply with the requirement of an independent tribunal and their failure to do so is a violation of the Applicant's right to a fair trial.

Finally, the Applicant would like to draw attention of the Court to the following document – Recommendation No. R(85)11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure (adopted by the Committee of Ministers on 28 June 1985 at the 387<sup>th</sup> meeting of the Ministers' Deputies). Under paragraph I.B.5. there is a recommendation to the governments of member states to review their legislation in respect of prosecution in the following way: “A discretionary decision whether to prosecute the offender should not be taken without due consideration of the question of compensation of the victim, including any serious effort made to that end by the offender.”

**(5) The Fact that Article 246(7) of the Russian Code of Criminal Procedure Does Not Provide Any Legal Means to Challenge the Prosecutor's Decision to Terminate the Case Constitutes a Violation of Article 13 (Right to an Effective Remedy)**

Article 13 guarantees an “effective remedy before a national authority” to any individual who claims a violation of his rights and freedoms under the Convention.<sup>45</sup> Article 13 also expressly states that such remedy must be available even as against those acting in their official capacity. Furthermore, the guarantees of Article 13 require that the decision-maker be 'sufficiently independent'.<sup>46</sup>

As stated in *M. and E.F. v. Switzerland*, to prove a remedy ineffective it must be shown that in addition to the fact that the decision-maker to whom the appeal lies is under the authority of the body that took the decision, the appeal body also simply endorses decisions without making its own independent examination of the facts.<sup>47</sup>

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*De Cubber v. Belgium*, Application no. 9186/80, 26 October 1984, para. 32, see also *Findlay v. the United Kingdom*, Application no. 22107/93, 25 February 1997, para. 79.

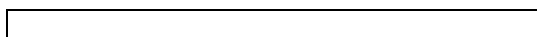
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*Klass and others v Germany*, Application no. 5029/71, 6 September 1978, para. 64.

46

*Silver and Others v. the United Kingdom*, Applications nos. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 25, March 1983, para. 116.

47



In the present case, this requirement is provided both by the law itself and by the practice of the domestic courts. Indeed, Article 246(7) obliges national courts, namely the Verkh-Issetkiy District Court and the Sverdlovsk Oblast Court, to endorse the Prosecutor's decision to drop the charges against the accused, expressly prohibiting those judicial bodies from conducting a review of the merits of the decision. Therefore, in law and in practice, they are under the authority of the Prosecutor and there is a violation of the Applicant's right to an effective remedy to challenge the withdrawal of the charges by an official not acting with impartiality as required by Article 6(1) of the Convention.

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D.J. Harris, M. O'Boyle and C. Warbrick, *Law of the European Convention on Human Rights*, Butterworths, London, 1995, p. 450 and *M. and E.F. v. Switzerland*, Application no. 12573/86, 1987, p. 290.

**EXPOSIÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35 § 1 DE LA CONVENTION**  
**STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION**  
**ЗАЯВЛЕНИЕ В СООТВЕТСТВИИ СО СТАТЬЕЙ 35§ 1 КОНВЕНЦИИ**

The Applicant has exhausted all domestic remedies and this application has been filed within six months of the final decision. This application is submitted in compliance with Article 35(1) of the Convention, which provides as follows:

The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

On March 17, 2010, the Applicant's undersigned legal representatives sent an initial complaint letter by registered mail.<sup>48</sup> The initial complaint letter was filed within six months of the final decision issued by the Criminal Chamber of the Regional Court of Sverdlovsk oblast dispensing with all legal claims of the Applicant.

The Applicant has exhausted all domestic remedies through his appeal to the Criminal Chamber of the Regional Court of Sverdlovsk oblast. The date and nature of the national legal proceedings are listed below.

- Final Decision in *Demin Case*, Cassational Ruling, Sverdlovsk oblast court (Criminal Chamber), issued on 3 February 2010 (decision by cassational court dismissing the Applicant's appeal and upholding the Verkh-Issetkiy district court of Ekaterinburg's decision).
- Judgment of the Verkh-Issetkiy district court of Ekaterinburg in *Demin Case*, issued on 21 December 2009 (upholding the Prosecutor's decision to withdraw the criminal charges against Mr. Demin and terminating the case).

Since Article 246(7) of the Criminal Procedure Code of the Russian Federation itself violates the Convention, on 25 May 2010 the Applicant filed a complaint before the Constitutional Court of the Russian Federation challenging Article 246(7) of the Criminal Procedure Code of the Russian Federation. The Secretariat of the Constitutional Court of the Russian Federation rejected the claim on 16 June 2010.

At the moment the Applicant is undergoing final exhaustion of domestic remedies regarding compensation for the broken camera. Civil action by Basok was brought before Verkh-Issetkiy district court on 6 July 2010. The proceedings are under way. Court's documents on this case will be sent to the European Court of Human Rights as soon as they are delivered.

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48 Initial complaint, dated 17 March 2010. Appendix 21.

**EXPOSÉ DE L'OBJET DE LA REQUÊTE ET PRÉTENTIONS PROVISOIRES POUR UNE SATISFACTION  
EQUITABLE**

***STATEMENT OF THE OBJECT OF THE APPLICATION AND PROVISIONAL CLAIMS FOR  
JUST SATISFACTION***

***ИЗЛОЖЕНИЕ ПРЕДМЕТА ЖАЛОБЫ И ПРЕДВАРИТЕЛЬНЫЕ ТРЕБОВАНИЯ ПО  
СПРАВЕДЛИВОМУ ВОЗМЕЩЕНИЮ***

The object of this application is a holding by the European Court of Human Rights that the Russian Government has violated the Applicant's rights under Articles 6, 10 and 13 of the Convention, as well as under Article 1 of Protocol 1. In connection with Article 41 of the Convention, the Applicant requests just compensation for pecuniary and non-pecuniary damages and for legal expenses. The Applicant will submit a detailed statement in connection with his claim for just compensation at a later date.

**AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ L'AFFAIRE  
*STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS***

***ДРУГИЕ МЕЖДУНАРОДНЫЕ ИНСТАНЦИИ, ГДЕ РАССМАТРИВАЛОСЬ ИЛИ  
РАССМАТРИВАЕТСЯ ДЕЛО***

The Applicant affirms that he has submitted no complaint to any other international procedure of investigation or settlement concerning the incidents which have given rise to this application.



**PIÈCES ANNEXÉES (PAS D'ORIGINAUX, UNIQUEMENT DES COPIES)**  
**LIST OF DOCUMENTS (NO ORIGINAL DOCUMENTS, ONLY PHOTOCOPIES)**  
**СПИСОК ПРИЛОЖЕННЫХ ДОКУМЕНТОВ (НЕ ПРИЛАГАЙТЕ ОРИГИНАЛЫ**  
**ДОКУМЕНТОВ, А ИСКЛЮЧИТЕЛЬНО ФОТОКОПИИ)**

**Official Court Documents Concerning the Procedural History of the *Demin* Case and Related Actions**

1. Resolution of 27 January 2009 on initiating criminal case.
2. Resolution of 29 April 2009 on recognition of civil claimant.
3. Motion to have the Prosecutor removed from the case on account of his obvious bias towards the accused dated 26 November 2009 (handwriting copy).
4. Motion to have the Prosecutor removed from the case on account of his obvious bias towards the accused dated 26 November 2009 (taped copy).
5. The decision of the Verkh-Issetkiy District Court of 21 December 2009.
6. Kassation of 27 December 2009 by Kapustin.
7. The Decision of 3 February 2010 by the Sverdlovsk Oblast Court upheld the decision of the Verkh-Issetkiy District Court of 21 December 2009.
8. First application by Mr. Basok to the justice of the peace to initiate private criminal charges against Mr. Demin, dated 23 January 2009.
9. Second application by Mr. Basok to the justice of the peace to initiate private criminal charges against Mr. Demin, dated 16 April 2010.
10. Decision by the justice of the peace denying Mr. Basok's second application to initiate private criminal charges, dated 27 April 2010.
11. Appeal by Basok, dated 1 June 2010.
12. Decision of 28 June 2010 by the Verkh-Issetkiy District court which upheld decision of justice of the peace denying Mr. Basok's second application to initiate private criminal charges, dated 27 April 2010.
13. Cassation by Basok, dated 5 July 2010.
14. Application before the Constitutional Court of the Russian Federation challenging Article 246(7) of the Criminal Procedure Code of the Russian Federation, dated 25 May 2010.
15. Reply by the Secretariat of the Constitutional Court of the Russian Federation to Basok application, dated 16 June 2010.
16. Civil action by Basok, dated 6 July 2010.
17. Act of inspection of broken camera, dated 8 January 2009.
18. Reparation receipt of the camera, dated 22 January 2009.
19. Power of attorney
20. Power of Attorney
21. Initial complaint, dated 17 March 2010.

***Miscellaneous***

22. Reporters Without Borders Press Freedom Index 2009.
23. Two video recording of the attack by Mr Demin are available at <http://www.sutyajnik.ru/video/demin2.mpg> <http://www.sutyajnik.ru/video/demin3.avi>

**DÉCLARATION ET SIGNATURE**  
**DECLARATION AND SIGNATURE**  
**ЗАЯВЛЕНИЕ И ПОДПИСЬ**

Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.

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

*Настоящим, исходя из моих знаний и убеждений, заявляю, что все сведения, которые я указал(а) в формуляре, являются верными.*

Lieu / Place / Место Ekaterinburg.....

Date / Date / Дата 23 July 2010.....

(Signature du / de la requérant(e) ou du / de la représentant(e))  
(Signature of the applicant or of the representative)  
(Подпись заявителя или его представителя)