



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

FIRST SECTION

Application no. 10099/10
Darya Aleksandrovna ISAYEVA
against Russia
lodged on 29 December 2009

STATEMENT OF FACTS

THE FACTS

The applicant, Ms Darya Aleksandrovna Isayeva, is a Russian national who was born in 1985 and lives in Moscow. Her application was lodged on 29 December 2009. She was represented before the Court by Mr D. Agranovski, a lawyer practising in Elektrostal.

A. The circumstances of the case

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

The applicant is a former member of the National Bolshevik Party (hereinafter “NBP”), a political association which was declared “extremist” by the Moscow City Court in 2007 and dissolved. According to the applicant, she did not participate in the activities of NBP since then. Nevertheless, she remained in contact with some of her friends, also former members of NBP, and, together with them, took part in certain political manifestations and “direct actions”. As from 19 April 2007 the applicant joined another opposition movement, the “United Civic Front” (UCF).

On 29 July 2008 the applicant took part in a political action in a restaurant in Moscow. A dozen of participants of that action gathered in the restaurant and placed an order with a waiter. When it was the time to pay, they started to throw leaflets and shout political slogans. The leaflets blamed the Russian authorities for extreme poverty of the Russian population and

high prices, whereas the State received considerable benefits from selling oil abroad. The leaflets asserted that government abandoned its people, so the people should take care of themselves. The leaflets called everybody to eat in expensive restaurants and refuse to pay. It ended with a slogan “Eat for free!” and was signed “Nazbols” (which was a common names for the members of NBP).

The waiter called security; the participants of the action tried to run away, but two of them were apprehended, handed to the police, and arrested. The applicant was one of those who had been arrested. According to the restaurant staff, she ordered food worth of 16 euro.

At the first questioning she did not deny her participation in the action. Nevertheless, she insisted that she participated in this action in her personal capacity, and that she broke away from NBP long time ago. She informed the court that she belonged to another opposition movement, UCF, which was not declared “extremist” by the court.

On 7 August 2008 a search was carried out in the applicant’s flat, where a large number of items (such as flags, photographs and leaflets), clothes and literature allegedly related to NBP and its leader, Mr E. Limonov, were discovered.

On 20 September 2008 the applicant was charged with belonging to a prohibited organisation (NBP), a crime provided by Article 282/2 of the Criminal Code. She was also charged, in respect of the unpaid bill, for causing pecuniary damage to the restaurant by abuse of confidence under Article 165 (2) of the Code. On 30 September 2008 the case with the bill of accusation was submitted to the court.

On 20 February 2009 the applicant was found guilty as charged and sentenced to two years’ imprisonment, suspended for the trial period of three years. The sentence was imposed as a combination of two sentences – one year’s imprisonment for belonging to a prohibited organisation (Article 282-2 § 2 of the CC), and one year and a half for causing pecuniary damage to the restaurant by abuse of confidence (Article 165 § 2 of the CC).

As a proof of the applicant’s membership in NBP the court referred to (1) the circumstances of her apprehension of 29 July 2008, (2) the objects and literature found in her flat, (3) information from the nazbol.ru web-site where the applicant was described as a member of NBP and a participant of other actions of that organisation, in particular the action of 29 July 2008. In addition, the court referred to the reports by the Murmansk and Moscow police departments about the applicant’s membership in NBP, her participation in various political actions of NBP and multiple arrests, her movements within the country, and role in the NBP and her connections to other members of NBP. The applicant claims that the information about her previous involvement with NBP concerned the period when NBP was still operating lawfully, and that it could not have served as a proof that she remained

On 1 July 2009 the applicant’s conviction was fully confirmed by the Moscow City Court, sitting as a court of appeal.

B. Relevant domestic law

The Suppression of Extremism Act (Federal Law no. 114-FZ of 25 July 2002, in force at the material time) defines “extremist activities”, and provides for dissolution of organisations involved in such activities by a court decision.

Article 282-2 § 2 of the Criminal Code of the Russian Federation provides criminal liability for “participation in the activities of a public organisation ..., which was, by a final court decision, liquidated for extremist activities, or forbidden to continue its activities”. It is punishable by a fine of up to 200,000 Russian roubles or an amount equivalent to the convicted person’s wages or other income for a period of up to 18 months, or by arrest for up to four months, or by imprisonment of up to two years with or without withdrawal of the right to hold certain posts or engage in certain activities for a period of up to five years, and with or without restriction of personal liberty for up to one year.

Article 282-2 has a footnote which reads as follows: “A person, who voluntarily ceased to participate in the activities of the [extremist organisation] cannot be held liable [under this Article] unless another crime is committed by that person”.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the criminal proceedings in her case were not fair. Thus, under the law the applicant could not be held liable since she ceased to be a member of NBP as soon as she learned about its dissolution, and long before the action in the restaurant. The court strongly relied on her participation in the action, but that was not tantamount to membership in NBP.

The applicant complains that her criminal conviction was an unjustified interference with her rights under Articles 10 and 11 of the Convention. She also referred to Articles 9, 14 and 18 in this respect.

QUESTION TO THE PARTIES

As regards the applicant’s conviction, was there an interference with her freedom of expression under Article 10 and freedom of assembly under Article 11 of the Convention? If so, was that interference justified in terms of Articles 10 § 2 and 11 § 2 thereof? In particular, what level of involvement in the activities of a prohibited organisation was required to amount to “participation” within the meaning of Article 282-2 § 2 of the Criminal Code? Was the law applied in the applicant’s case sufficiently clear, foreseeable and specific? Was the sanction, applied to the applicant, proportionate to the legitimate aim pursued, and what was that aim?