

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

THIRD SECTION

CASE OF SHELEG v. RUSSIA

(Application no. 27494/06)

JUDGMENT

STRASBOURG

26 July 2022

This judgment is final but it may be subject to editorial revision.



In the case of Sheleg v. Russia,

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

Georgios A. Serghides, *President,*
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 27494/06) 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") on 7 June 2006 by a Russian national, Ms Natalya Petrovna Sheleg, born in 1964 and living in Kaliningrad ("the applicant") who was represented by Mr Sheleg, a lawyer practising in Kaliningrad;

the decision to give notice of the application to the Russian Government ("the Government"), initially represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov;

the parties' observations;

Having deliberated in private on 5 July 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's dismissal from her judicial office in accordance with the decision of the Regional Judicial Qualifications Board based on interception of her telephone conversations by unknown persons, the publication of their transcripts in the press and the storage, use and dissemination of the recordings by the domestic authorities in the disciplinary and judicial review proceedings against her.

2. On 14 April 1989 the applicant was appointed as a judge of the Leninskiy District Court of Kaliningrad. On 17 January 2003 she became its president.

3. In November 2004 R., a member of the Kaliningrad Regional Council and the founder and editor-in-chief of a local newspaper, found two audio tapes in his letterbox from an anonymous sender. The audio tapes contained recordings of telephone conversations of a businessman, K., with several people, supposedly including the applicant and her husband, the K.'s counsel. Later in December 2004 and May 2005, the extracts from the K.'s telephone conversations with the applicant were published by regional and national newspapers. The publications, *inter alia*, accused the applicant of corruption.

4. On 28 October 2005 the Regional Judicial Qualifications Board in disciplinary proceedings against the applicant ordered the early termination of her judicial office as a judge and president of the Leninskiy District Court.

The decision referred to the extracts from the recorded telephone conversations as the decisive evidence justifying the applicant's dismissal for a breach of judicial ethics.

5. The applicant appealed arguing that that decision was based on evidence obtained without prior judicial authorisation and admitted in breach of procedural rules. On 3 February 2006 the transcripts of the telephone recordings were read out in open court notwithstanding the applicant's objections. On 6 February 2006 the Kaliningrad Regional Court upheld the Judicial Qualifications Board's decision, stating that the information about the breach of judicial ethics by the applicant reported in the press and the telephone recordings received confirmation. On 12 April 2006 the Supreme Court of Russia upheld the judgment on appeal.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. Admissibility

6. The Government submitted that Article 6 was not applicable to the disciplinary proceedings against the applicant. The applicant complained that Russian law did not exclude access to a court for judges. She also stated that Article 6 was therefore applicable to the proceedings in question (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007 II).

7. Referring to the general principles summarised in *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 44-46, 25 September 2018), the Court reiterates that the civil limb of Article 6 of the Convention is applicable to the disciplinary proceedings against the applicant. It therefore rejects the Government's argument.

8. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

9. The applicant complained that the Judicial Qualifications Board, the Regional Court and the Supreme Court had admitted the recordings of her telephone conversation in evidence, even though they had been obtained unlawfully. The applicant further complains that the domestic courts at all level failed to address her arguments regarding admissibility of the telephone recordings.

10. The Government argued that disciplinary liability could be established on the basis of any information about a breach of law or judicial ethics by a

judge, such as the recordings, as in the present case, attached to a complaint lodged by a private person. They further pointed out that they had not been the only evidence against the applicant, referring to different articles available on the Internet. As regards the judicial review proceedings, the Government noted that it was open to the applicant to request a hearing in camera and that the recordings had not been played at the hearing, only a transcript had been read out. Lastly, the Government argued that it was not the Court's role to assess the admissibility of evidence (*Bykov v. Russia* ([GC], no. 4378/02, §§ 88-93, 10 March 2009).

2. The Court's assessment

11. The general principles for assessing the fairness of proceedings, including questions concerning the admissibility of evidence are summarised in *García Ruiz v. Spain* [GC] (no. 30544/96, § 28, ECHR 1999 I); *Bykov v. Russia* (cited above, §§ 88-93); *Gäfgen v. Germany* [GC] (no. 22978/05, § 163, ECHR 2010); *López Ribalda and Others v. Spain* [GC] (nos. 1874/13 and 8567/13, §§ 151-52, 17 October 2019); and *Moreira Ferreira v. Portugal (no. 2)* [GC] (no. 19867/12, § 84, 11 July 2017, with further references). In particular the Court reiterates that, when assessing the admissibility of evidence, it must be examined whether the applicant was given an opportunity to challenge the authenticity of the evidence and oppose its use. In addition, the quality of the evidence must be taken into consideration, as must the question whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *López Ribalda and Others*, cited above, § 151).

12. Turning to the present case, the Court will first examine the quality of the evidence in question. It notes that the recordings of the applicant's telephone conversations initially came from an anonymous source, making their authenticity and reliability open to question (compare and contrast *López Ribalda and Others*, cited above, § 156).

13. As regards the importance of the impugned evidence, the recordings of the applicant's telephone conversations were decisive evidence against her. It results from the case file available to the Court that the other evidence was either (i) derived from the recordings, such as press articles containing their transcripts or witness statements confirming that one of the voices on the tape belonged to the applicant; or (ii) indirect evidence which established collateral facts, such as a friendly relationship between the applicant and K., rather than the fact that she had committed a breach of ethics. Indeed, the concluding paragraph of the Judicial Qualifications Board's decision summing up its reasoning does not refer to any other evidence except to the recordings as the decisive evidence justifying the finding that the applicant

had committed a breach of judicial ethics (compare and contrast *Schenk v. Switzerland*, 12 July 1988, § 48, Series A no. 140, or *Bykov,* cited above, §§ 96-98).

14. Given the importance of the evidence in question, the serious doubts as to its quality and the fact that that evidence encroached on the applicant's private life, the Court will subject the proceedings to thorough scrutiny.

15. The Court observes that the applicant made detailed and specific submissions on the issue of admissibility of the recordings as evidence, their authenticity and reliability, and opposed their use (see paragraph 5 above). It does not appear from the text of the domestic decisions that all her arguments had been properly addressed by the Judicial Qualifications Board. The latter limited itself to observing that it had been established, notably on the basis of the witness testimonies, that one of the voices on the tape belonged to her. No answer however was given to her arguments regarding the origin of the recordings or the possibility that they could have been edited. Similarly, these arguments crucial for the assessment of the authenticity and reliability of the recordings as evidence were addressed neither by the Regional Court nor by the Supreme Court.

16. The Court finds no indication in the domestic decisions that the judges approached the evidence in question with caution, given the circumstances in which it had been obtained. In particular, they did not provide detailed reasoning as to why they considered that evidence to be admissible, authentic and reliable or give a specific and explicit reply to the applicant's arguments in relation to that evidence, which was decisive for the outcome of the proceedings. It follows that the applicant's right to a fair hearing was not respected because she was not given a meaningful and effective opportunity to challenge the admissibility, authenticity and reliability of the evidence and to oppose its use.

17. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER COMPLAINTS

18. The applicant further complained under Articles 8 and 13 of the Convention in relation to the same facts. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 6 § 1 of the Convention, the Court considers that it has examined the main legal question raised in the present case, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaint (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government submitted that the claim was excessive.

21. The Court awards the applicant 6,000 EUR plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Articles 8 and 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amount at the rate applicable at the date of settlement:
   EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President