



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

FIRST SECTION

Application no. 46998/08
Valentina Nikolayevna MIKHAYLOVA
against Russia
lodged on 10 September 2008

STATEMENT OF FACTS

The applicant, Ms Valentina Nikolayevna Mikhaylova, is a Russian national, who was born in 1949 and lives in St Petersburg. She is represented before the Court by Mr A. Burkov, a lawyer practising in Yekaterinburg.

A. The circumstances of the case

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

In November 2007 the applicant took part in a march. She was then accused of disobeying the police order to end up this march, which was considered to be a non-authorized public gathering.

The applicant was charged under Article 19.3 of the Code of Administrative Offences (CAO), which punishes (by a fine or detention) disobedience to a lawful order by a public official. The applicant's case was set to be examined by a peace justice.

Referring to the Court's case-law under Article 6 of the Convention, the applicant sought free legal assistance in these proceedings. The peace justice dismissed this request as not prescribed by law.

By a judgment of 19 December 2007 the applicant was found guilty of the administrative offence and sentenced to a fine of 500 Russian roubles (RUB, aprx. 14 euros).

On the same date, the applicant was also found guilty of breaching the requirements of the Public Gatherings Act, which is an administrative offence under Article 20.2 of the CAO. The applicant was ordered to pay a fine of RUB 500.

The applicant appealed and sought free legal assistance. On 17 March 2008 the Dzerzhinskiy District Court of St Petersburg upheld the judgments

of the peace justice. The appeal court stated that the CAO did not authorise or require appointment of counsel at public expense.

The applicant sought further review of the above court decisions. By a letter of 25 September 2008 the Deputy President of the Supreme Court of Russia dismissed her complaint concerning the case under Article 20.2 of the CAO, stating that the CAO did not provide for a possibility of free legal assistance in administrative offence proceedings.

B. Relevant domestic law

The offence under Article 19.3 of the CAO is punishable by administrative detention; the offence under Article 20.2 of the CAO is punishable by a fine.

The person's omission to pay the fine within a time-limit entails a monetary penalty or administrative detention up to fifteen days (Article 20.25 of the CAO).

Article 20.25 constituted a separate administrative offence. The related case should be opened and brought before a court without delay (Ruling of the Presidium of the Supreme Court of Russia of 7 March 2007, point 11).

COMPLAINTS

The applicant complains under Article 6 of the Convention about the refusal of free legal assistance in the administrative offence proceedings and the courts' failure to examine this issue under the Convention.

QUESTIONS TO THE PARTIES

1. Does the present case fall within the scope of Article 35 § 3 (b) of the Convention? In particular, did the applicant suffer any "significant disadvantage"?

2. (a) Was Article 6 of the Convention applicable to the domestic proceedings in the present case? Was it applicable, under its criminal or civil limb, to the case under Article 19.3 of the Code of Administrative Offences (CAO)? As regards the case under Article 20.2 of the CAO:

– Was Article 6 of the Convention applicable under its civil limb (see, for comparison, *Lutz v. Germany*, 25 August 1987, §§ 51-57, Series A no. 123; *Malige v. France*, 23 September 1998, §§ 31-40, *Reports of Judgments and Decisions* 1998-VII; *Schmautzer v. Austria*, 23 October 1995, §§ 26-28, Series A no. 328-A; and *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005)?

– Does it matter that non-payment of a fine imposed in a case under Article 20.2 may entail conviction and detention under Article 20.25 (see, for comparison, *Weber v. Switzerland*, no. 11034/84, § 34, 22 May

1990; see *Ravnsborg v. Sweden*, no. 14220/88, § 35, 23 March 1994; and *Schmautzer v. Austria*, no. 15523/89, § 28, 23 October 1995)?

(b) If Article 6 of the Convention was applicable, was the applicant afforded an adequate opportunity to defend herself in person? Was she afforded an opportunity to receive legal assistance before and/or during the trial and/or on appeal before the District Court? Having regard to various relevant factors (for instance, the seriousness of the offences, the severity of the possible sentences, the complexity of the cases and the personal situation of the accused), did the interests of justice require that legal assistance be provided free of charge? If yes, was there a violation of Article 6 of the Convention (cf. *Pakelli v. Germany*, 25 April 1983, § 31, Series A no. 64; *Benham v. the United Kingdom*, 10 June 1996, § 61, *Reports of Judgments and Decisions* 1996-III), and *Gutfreund v. France* (dec.), no. 45681/99, 25 April 2002)?