



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

FIRST SECTION

Application no. 27494/06
Natalya Petrovna SHELEG
against Russia
lodged on 7 June 2006

STATEMENT OF FACTS

The applicant, Ms Natalya Petrovna Sheleg, is a Russian national, who was born in 1964 and lives in the town of Kaliningrad.

A. The circumstances of the case

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

1. Background to the case

On 14 April 1989 the applicant was appointed to the post of judge of the Leninskiy District Court of Kaliningrad. In April 1990 she was elected Deputy President of that court and on 17 January 2003 became its President.

Sometime in 2004 an unknown person intercepted and recoded the applicant's telephone conversations with K, a businessman who apparently supervised the renovation works in the court building and was also an interested party in a recently discontinued criminal investigation, the outcome of which was challenged by a third party before that court.

2. Newspaper publications

In November 2004 R, a shareholder of a local newspaper "The new wheels of Kaliningrad" («Калининградские новые колёса») obtained two audio tapes with records of telephone conversations between the applicant, K and other persons.

On 11 November 2004 "New wheels of Kaliningrad" published an article under the headline "Corruption in skirt" («Коррупция в юбке»). It began as follows:

"What is common between the President of Court Natalya Sheleg, and shady dealers who had robbed the Kaliningrad Region?"

Editorial board of the newspaper told a story of allegedly premeditated bankruptcy of a private company, established by K. It was noted that the criminal case on this account had been discontinued by investigative authorities and this decision had been upheld by the Leningradskiy District Court of Kaliningrad. It then read as follows:

“Perhaps it is the end of this story ... However the editorial board of “The new wheels of Kaliningrad” obtained interesting audio records of telephone conversations. Listening of them will make your hair rise!

There are endless, easy conversations full of suggestions, many hours of intimate talks between different persons. Here are only several episodes:

Woman’s voice [the applicant]: “Eduard Nikolaevich, it’s me, Sheleg... (by a strange coincidence a surname of the President of the Leningradskiy District Court of Kaliningrad is also Sheleg... and the voice is painfully similar to her). Where are you?”

Eduard Nikolaevich [K]: “I’m in the downtown” (it is impossible to make a difference between the voice of a mysterious Eduard Nikolaevich and [K], owner of a private company “Baltik-OPT” which sells production of “TPK Baltptitseprom”).

[The applicant]: “In the city? Our case did not go as planned. It did not go as planned. Probably you know it. Yes?”

[Newspapers’ comment]: Further there is a conversation on account of construction works in a court building which strengthen the allegation that the recorded voice belongs to [the applicant] (the Leningradskiy District Court of Kaliningrad has been under construction works for two years).

After a moment there is a new conversation between [the applicant] and [K]...

[The applicant]: “I am calling to tell you that everything is completed. It has been completed in a positive way”

[K]: (with a relief): “Good. Thank you.”

...

You might ask why [the applicant] helped [K]? The answer is simple. In accordance with one of the records, [K] considered buying an elite flat in a block of flats for [the applicant]. This conversation took place with the next person – Oleg Valeryevich (who, apparently lived together with [the applicant] as they talked one after another).

The flat in question is elite. The price is EUR 850 per a square metre. For this apartment (the following is a quotation): “30% should be paid at once, the remaining sum – during one year”.

V.I. Faleyev, the President of the Kaliningrad Regional Court, in his interview given to “The new wheels of Kaliningrad” in 2003 told: “Show me a corrupt judge!” (He meant that judges’ corps should not be accused without reference to concrete facts).

Now Viktor Ivanovich has a rich food for meditation and a basis for careful investigation in respect of his subordinate, [the applicant], only if he would want it. In 2001 he persistently recommended [the applicant] to a post of the President of the Leninskiy District Court of Kaliningrad. She is not an unfamiliar person for him. Many years she worked as his secretary. A good secretary sometimes is closer then a wife.”

On 11 May 2005 another newspaper “The Russian news” (*“Российские вести”*) published an article under the headline “Enclave which is free of laws” (*“Анклав, свободный от закона”*).

An author presented his version of fraud manipulations performed by owners of “Baltik OPT” and “TPK Baltptitseprom”. The article contained five pages of quotations of the telephone conversations to which the applicant had allegedly been a party. In particular, it read as follows:

“[The applicant]: Hello, Eduard Nikolaevich, it is Sheleg. Do you sleep? ...

[K]: No, hello

[The applicant]: I made a call yesterday. That advocate S requested to transmit the case to a different court, because O had represented prosecution party before our judges.

[K]: Yep.

[The applicant]: In addition S came to me yesterday and requested a written answer.

[K]: Does it mean that this will be examined tomorrow?

[The applicant]: Yes, tomorrow it will be examined. He will withdraw this request because it had been made within the scope of criminal proceedings. In my opinion S is absolutely inadequate.

[K]: So it goes as it goes ... yes?

[The applicant]: It goes.

[K]: Did O.V. tell you? I will visit you ...”

On 19 June 2005 “The new wheels of Kaliningrad” published another article under the headline “Corruption in skirt 2” (*“Коррупция в юбке 2”*). An author reproduced dialogs which had been previously published in “The Russian news”. The final comment of this article read as follows:

“It is terrible to think about a lesson which is being given to other judges who has not been corrupted yet. “Nothing is forbidden” – this conclusion could be made by other bearers of a judge’s gown.”

From the submitted documents it does not appear that the applicant brought any civil proceedings in regard to the aforementioned publications.

3. Criminal proceedings

In November 2004 R requested the General Prosecutor’s Office to institute criminal proceedings against the applicant.

On 28 January 2005 the General Prosecutor’s Office dismissed R’s request, having found as follows:

“... examination of the telephone records shows that they occurred between K, [the applicant] and [the applicant’s husband]. However nothing in these records could confirm the allegation that [the applicant] was bribed...”

4. Proceedings before the Judges' Qualifications Board

On 17 November 2004 another private person lodged request with the President of the Supreme Court of Russia, asking to investigate the incident. The relevant telephone tapping records were attached to this request.

Thereafter the President of the Kaliningrad Regional Court referring to the aforementioned publications and to the telephone tapping records requested the Judges' Qualifications Board of the Kaliningrad Region ("the Qualifications Board") to dismiss the applicant from her post.

The Qualifications Board sitting in a formation which included members, representing civil society, examined the request and the telephone tapping records. Throughout the proceedings the applicant denied her involvement in the alleged bribery. According to her, she did not take part in the telephone conversations in issue. She also emphasised that the records were inadmissible evidence because the interception had not carried out in conformity with the law and the relevant procedures. The applicant also noted that the Qualifications Board had no right to hear this evidence as it violated her constitution rights.

On 28 October 2005 the Qualifications Board dismissed the applicant from her post. It ruled as follows:

"From December 2004 to June 2005 articles concerning relationship between [the applicant] and [K] were published in mass media... Examination of these publications and the audio records allows the Qualifications Board to conclude that these sources contain information not only on account of business communications [between them] ... but also on account of communications concerning course of proceedings in certain cases pending before the court...

[The applicant] informed [K] that [in context of court proceedings] she had received certain request [from S] and that she had an appointment with S. This conclusion follows from the content of their telephone communications which had been recorded and attached to the application [of the President of the Kaliningrad Regional Court]...

As can be seen from the above, the content of the audio records gives the Qualifications Board a basis to conclude that the President of the Leningradskiy District Court of Kaliningrad violated requirements of judges' ethics. It also shows that judicial authority was dishonoured [by the applicant's behaviour]."

5. Proceedings before domestic courts

The applicant challenged the decision of the Qualifications Board in court. She claimed that the telephone records in question were obtained unlawfully without court's authorisation and in breach of her right to a private life and correspondence.

The representative of the Qualifications Board raised objections. She observed that the rules of civil and criminal proceedings were not applicable to the proceedings before the Qualifications Board. Consequently nothing prevented it to admit these telephone records as evidence against the applicant.

On 3 February 2006 despite the applicant's objections, transcripts of the telephone tapping records were read out in the open court.

On 6 February 2006 the Kaliningradskiy Regional Court upheld the decision of the Qualifications Board.

On 12 April 2006 the Supreme Court of Russia upheld the decisions which had been given in the context of this case. As to the applicant's contentions based on breach of privacy and confidentiality it noted:

"The argument of [the applicant's] appeal statements concerning use of inadmissible evidence could not be accepted taking into account that the applicant's offence which disgraced the reputation of judge and dishonoured the judicial office was the subject of the Qualifications Board's examination."

B. Relevant domestic law and practice

1. Domestic law relating to protection of a private life and correspondence

1. Article 138 of the Criminal Code: Breach of secrecy of correspondence, telephone conversations, postal, telegraphic and other communications

"1. Breach of secrecy of correspondence, telephone conversations, postal, telegraphic and other communications shall be punished by a fine in amount to RUR 80,000, or in amount equal to salary, or other income of the convicted person for a period of six months, or by obligatory works for a period of 120 – 180 hours, or by correctional works for a period to one year."

2. Article 150 of the Civil Code: Intangible assets

"1. An individual's life and health, dignity, personal integrity, honour and goodwill, professional reputation, the inviolability of his or her private life, personal and family secrets, the right to liberty of movement and to choose his or her place of temporary and permanent residence, the right to a name, copyright, other personal non-property rights and other incorporeal assets which a person possesses by virtue of birth or by operation of law shall be inalienable and shall not be transferable by any means..."

3. Article 151 of the Civil Code: Compensation for non-pecuniary damage

"If certain actions impairing an individual's personal non-property rights or encroaching on other incorporeal assets have caused him or her non-pecuniary damage (physical or mental suffering) ... the court may require the perpetrator to pay pecuniary compensation for that damage..."

4. Article 11 of the Federal law No. 24-FZ of 20 February 1995 "On information, informatization and protection of information": Information about citizens (personal data)

"It is forbidden to gather, to store, to use and to distribute information about private life as well as information which obtained in breach of ... secrecy of telephone conversations ... of a person without his consent except as on a basis of a court's decision."

2. Domestic law relating to authorisation of operational-search activities against a judge

1. Article 16 of the Federal Law No. 3132-I of 26 June 1992 “On the Status of Judges in the Russian Federation”: Immunity of judges

“1. A judge has immunity. Immunity of a judge includes personal immunity, inviolability of home and office, immunity of personal and business vehicles, immunity of documents, luggage and other property, privacy of letters and other correspondence (telephone conversations, postal, telegraphic and communications which are sent or received by a judge).

7. Performance of operational-search activities and investigative measures against a judge (if the criminal proceedings have not been instituted and he was not officially charged with a criminal offence) involving interference with his civil rights or in breach of his immunity, provided by the Constitution of Russia, by Federal Constitution Laws and by Federal Laws, shall be carried out pursuant to an order issued by

- a board of three judges of the Supreme Court of Russia in regard to a judge of the Constitution Court of Russia, the Supreme Court of Russia, the Supreme Commercial Court of Russia, Supreme Courts of the Republics, Regional Courts, Courts of Cities of Federal Significance, Courts of Autonomous Regions, Military (navy) Courts, Commercial courts.

- a board of three judges of the Supreme Court of the relevant Republic, or of the relevant Regional Court, or of the relevant Court of a City of Federal Significance, or of the relevant Court of the Autonomous Region in regard to other judges...”

3. Domestic law relating to disciplinary proceedings against a judge

1. Article 12.1 of the Federal Law No. 3132-I of 26 June 1992 “On the Status of Judges in the Russian Federation”: Disciplinary Liability of a Judge

“1. For committing a disciplinary offence (violation of law or violation of the Ethic Code of Judge which had been approved by the All-Russian Conference of Judges) the following disciplinary penalties may be imposed on a judge, excluding a judge of the Constitution Court of Russia:

- reprimand;
- early termination of office.”

2. Article 22 of the Federal law no.30-FZ of 14 March 2002 on Judicial Authorities

“Application ... concerning disqualification of a judge in connection with a disciplinary offence could be examined by the Judges’ Qualifications Board only if relevant information confirms circumstances of committed offence and a judge’s character evidence is submitted by the applicant.

The Judges’ Qualifications Board within its competence may perform further investigation or request further information in regard to submitted materials and hear testimony given in connection with circumstances of a committed disciplinary offence.”

3. Article 26 of the Federal law no.30-FZ of 14 March 2002 on Judicial Authorities

“.. a decision taken by a regional Judges’ Qualifications Board ... on account of disqualification of a judge ... could be reviewed by a regional court ...”

COMPLAINTS

1. Without relying on Article 6 of the Convention, the applicant complained that the records of her telephone conversations which had been obtained in breach of domestic law were used as evidence against her.

2. Relying on Article 8 of the Convention the applicant claimed that records of her telephone communications were examined in the hearings before the Qualifications Board and in the open hearings before the courts. She claimed that officials who examined her case failed to perform investigation in connection with her telephone tapping. She was also dissatisfied with quotation of her telephone communications in press.

3. Without relying on Article 13 of the Convention, the applicant complained about the lack of effective remedy in her case.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant’s right to respect for her private life and correspondence in the meaning of Article 8 § 1 of the Convention as a result of the proceedings against the applicant? If so, was that interference in accordance with the law and necessary in a democratic society, as required by that provision?

2. Did the applicable provisions of Russian law, including regulation of the proceedings before the Judges’ Qualifications Board, meet the “quality of law” requirements of Article 8 § 2 of the Convention? Was the use of unauthorised telephone records in the proceedings compatible with Judicial Authorities Act and Federal Law No. 3132-I “On the Status of Judges in the Russian Federation” and thus lawful domestically?

3. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case? Did the applicant have a fair hearing in the determination of her civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, was the admission of the records of the applicant’s telephone calls as evidence compatible with her right to a fair trial?

4. Did the applicant have at her disposal an effective domestic remedy for her complaints under Article 8 of the Convention, as required by Article 13 of the Convention?