



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

FIRST SECTION

Application no. 34313/06
Olga Aleksandrovna KUDRINA
against Russia
lodged on 25 July 2006

STATEMENT OF FACTS

The applicant, Ms Olga Aleksandrovna Kudrina, is a Russian national, who was born in 1985 and lives in Ukraine. She is represented before the Court by Mr D. Agranovskiy, a lawyer practising in the Moscow Region.

A. The circumstances of the case

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

The applicant was a member of the National Bolsheviks Party.

1. Direct action in the Ministry of Health

On 2 August 2004 a group of about thirty members of the National Bolsheviks Party gathered in front of the Ministry of Health and Social Development (hereafter “the Ministry of Health”) to protest against the adoption of a law transforming social benefits in kind (free use of public transportation, steep discounts on residential utilities, free local telephone service, free medication, free annual treatment at sanatoriums and health resorts, free artificial limbs and wheelchairs for invalids, guaranteed employment for the disabled, and a variety of other services) received by pensioners, war veterans, the disabled, victims of Soviet-era political repression, survivors of the World War II siege of Leningrad, and Chernobyl cleanup workers (approximately 27 percent of the population) into monetary compensation ranging from 300 to 1,550 Russian roubles a month (approximately 8 to 45 euros at the exchange rate for 2004). The draft law had been prepared by the Ministry of Health and was at that time being debated in the Russian Parliament.

The National Bolsheviks were dressed in emergency services uniforms. They pushed away the guard, entered the Ministry of Health building, ran

up to the first floor and occupied several offices. They asked the employees to leave, nailed the doors from inside using nail guns and blocked them with furniture. They waved placards through the office windows, threw out leaflets and chanted slogans calling for the resignation of Mr Zurabov, the Minister of Health. They also set off firecrackers and threw President Putin's portrait out of the window. The intruders stayed in the office for about an hour until the police broke through the door and arrested them.

The applicant denied her involvement in that direct action.

On 20 December 2004 the Tverskoy District Court found seven participants to the direct action guilty of disorderly acts and intentional destruction and degradation of others' property in public places, offences under Articles 167 § 2 and 213 § 2 of the Criminal Code. Each of them was sentenced to five years' imprisonment. On 29 March 2005 the Moscow City Court upheld the conviction on appeal. It however commuted the sentences of four defendants to three years' imprisonment and the sentences of three other defendants to two years and six months' imprisonment.

2. Direct action at the Rossiya Hotel in Moscow

On 4 May 2005 the applicant and Mr L. climbed out of the window of their rented room at the Rossiya Hotel with the aid of alpinism equipment and hung an eleven-meter placard saying "Putin go away" on the hotel's outside wall. They then started to wave signal flares and throw leaflets which contained the following demands:

- "1. To dissolve the State Duma and to organise free elections with the participation of all political forces without exception;
2. To investigate impartially the resonant crimes and tragic events of the last years: fraudulent electoral practices, assaults on and murders of the activists of opposition parties, explosions in housing blocks in Moscow and Volgodonsk and attempted explosions in Ryazan, the Nord-Ost and Beslan tragedies, repeated kidnappings in Ingushetiya and ill-treatment of citizens in Bashkiria;
3. To free political prisoners and to declare ample amnesty for all prisoners;
4. To abolish detrimental law no. 122 transforming social benefits in kind into monetary compensation;
5. To stop political censorship of television".

About forty minutes later the police arrested the applicant and Mr L. who did not offer any resistance.

3. Criminal proceedings against the applicant

On 18 May 2005 the applicant and Mr L. were charged with disorderly acts and intentional destruction and degradation of others' property in public places, offences under Articles 167 § 2 and 213 § 2 of the Criminal Code, in connection with the direct action at the Rossiya Hotel.

On 31 May 2005 the applicant was charged with the same offences in connection with the direct action in the Ministry of Health.

On an unspecified date the case was submitted for trial before the Tverskoy District Court of Moscow.

Numerous employees of the Ministry of Health and police officers who had arrested the participants to the direct action in the Ministry of Health were questioned during the trial. They described the direct action and the arrest of the participants. None of them testified to having seen the applicant among the participants to the direct action in the Ministry of Health. The representative of the Ministry stated that the damage caused to the Ministry's property had been compensated in full by the participants to the action.

Pre-trial statements by Mr G.-M., a participant to the action in the Ministry of Health, were read out at the prosecutor's request. Mr G.-M. had stated to the investigator that the applicant had participated in the direct action in the Ministry of Health. However, when questioned at the trial, Mr G.-M. repudiated his pre-trial statements, claiming that they had been made under pressure. He stated that the applicant had not taken part in the action.

The trial court also examined a police report dated 2 August 2004 from which it could be seen that the applicant had been arrested on that day in connection with her participation in the direct action in the Ministry of Health. The trial court then examined the contents of the National Bolsheviks Party's Internet site mentioning the applicant's participation in that action.

At the hearing of 14 April 2006 counsel for the applicant asked that witnesses Mr G., Mr K., Mr B., Mr Ye., Mr T. and Mr Kl. be questioned at the trial. He submitted, in particular, that they had been mentioned as witnesses for the prosecution in the indictment act but the prosecution had not called them to the witness stand. Given that they had been eye-witnesses and participants to the direct action in the Ministry of Health, the applicant was entitled to have them questioned. He relied on Article 6 § 3 (d) of the Convention.

According to the applicant, the trial court rejected the request, finding that the decision as to whether it was necessary to question those witnesses would be taken once they appeared in the courtroom. It was the applicant's responsibility to ensure their attendance. The trial court refused to send summonses to them.

Finally, the employees of the Rossiya Hotel were questioned. They described the events of 4 May 2005 and stated that the damage to the hotel's property had been compensated in full by the defendants.

On 10 May 2006 the Tverskoy District Court found the applicant and Mr L. guilty of disorderly acts and intentional destruction and degradation of others' property in public places. It found that the fact of the applicant's participation in the direct action in the Ministry of Health had been established on the basis of Mr G.-M.'s statements made at the pre-trial stage. Those statements had been given and recorded in accordance with the procedure prescribed by law and were therefore admissible evidence. It further held as follows:

"The defendants' guilt in committing the offence of disorderly acts has been proved during the trial. [The defendants] ... seriously breached public order and caused significant damage to the public interest by destabilising for a long time the everyday work of the Ministry of Health and Social Development of the Russian Federation and of the Rossiya Hotel. They showed manifest disrespect for the society and state authority by chanting anti-government slogans, by turning the employees of the

Ministry out of their offices and by hanging a placard with a slogan offensive to the head of state on the walls of the Rossiya Hotel. They used nail guns ... threw firecrackers out of the windows and waved signal flares ... creating a risk of physical damage to the citizens and cars in the street.

...

The court finds it established that the defendants' actions have caused significant damage. They destabilised for a long time the normal work of the Ministry of Health and Social Development of the Russian Federation, as well as the normal functioning of the Rossiya Hotel on the eve of the celebration of the sixtieth anniversary of the victory in the Great Patriotic War of 1941-1945.

[Mr L.'s] argument that the furniture in the Rossiya Hotel's room was damaged by the police ...is unconvincing and has not been objectively substantiated.

The defence's arguments that the defendants did not use any weapons are unconvincing. It has been established that in order to commit criminal offences the defendants used nail guns, firecrackers and signal flares ... Objects used to damage property or to make signals may be equalled to weapons."

The court sentenced the applicant to three years and six months' imprisonment.

The applicant did not attend the hearing at which the conviction and sentence were pronounced. She escaped to Ukraine where she requested political asylum.

Counsel for the applicant appealed against the conviction to the Moscow City Court. He submitted, in particular, that the applicant's participation in the direct action in the Ministry of Health had not been proved. None of the witnesses questioned at the trial had testified to having seen her in the Ministry of Health. Mr G.-M. had repudiated his pre-trial statements and stated that the applicant had not participated in the action. In such circumstances it had been important to question the other eye-witnesses to the action who could have confirmed that the applicant had not taken part in it. The defence's request to have those witnesses questioned had been however rejected.

Counsel further complained that the applicant had been convicted for a peaceful protest against liquidation of social benefits in Russia. She had not shown any disrespect for the society. Nor had she used or threatened violence. The nail guns, firecrackers and signal flares could not be regarded as weapons as they had been used to nail the doors and to draw the attention of the public rather than to injure or threaten people. The Ministry's property had been damaged by the police and the applicant had not been responsible for the damage. In any event, the damage had not been significant. Finally, counsel complained about the severity of the penalty.

On 19 June 2006 the Moscow City Court upheld the conviction on appeal, finding that it had been lawful, well reasoned and justified.

In January 2008 the applicant was granted refugee status in Ukraine.

COMPLAINTS

1. The applicant complains under Article 6 §§ 1 and 3 (d) of the Convention that the courts were biased and that her request to have witnesses on her behalf questioned was rejected.

2. The applicant complains under Article 10 of the Convention that she was prosecuted and convicted for her participation in a peaceful protest against the liquidation of social benefits.

QUESTIONS TO THE PARTIES

1. The Government are requested to submit a copy of the trial record in the applicant's case.

2. Was the applicant able to obtain the attendance of Mr G., Mr K., Mr B., Mr Ye., Mr T. and Mr Kl., witnesses on her behalf, under the same conditions as witnesses against her, as required by Article 6 §§ 1 and 3 (d) of the Convention? In particular, on the basis of which evidence was the fact of the applicant's participation in the direct action in the Ministry of Health established? What were the reasons for rejecting the applicant's request to have the witnesses questioned? The Government are requested to submit a copy of the decision of the trial judge in this respect.

3. Was the applicant's prosecution and conviction compatible with Articles 10 and/or 11 of the Convention? In particular, were her protest actions essentially peaceful, considering the circumstances? Was the sentence imposed on her proportionate to the legitimate aim pursued (see *Steel and Others v. the United Kingdom*, 23 September 1998, §§ 88 to 113, *Reports of Judgments and Decisions* 1998-VII)?