



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

FIRST SECTION

Application no. 29097/08
Yelena Mikhaylovna NADTOKA
against Russia
lodged on 16 May 2008

STATEMENT OF FACTS

THE FACTS

The applicant, Ms Yelena Mikhaylovna Nadtoka, is a Russian national, who was born in 1957 and lives in Novocherkassk.

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

The applicant, a journalist, at the material time was the editor-in-chief of a Novocherkassk newspaper *Chastnaya Lavochka* (Частная Лавочка).

A. The publication of 29 March 2007

On 29 March 2007 in the *Chastnaya Lavochka* newspaper (no. 12 (434)) the applicant published an interview with the leader of a public movement ‘Vsevelikoye Voisko Donskoye’ (Всевеликое Войско Донское) Mr N.K. under the title: “We are not the type of Kazaks who are just all talk and no walk” (Мы не те казаки, что занимаются базарами).

The interview, amongst other things, contained several lines concerning the Mayor of Novocherkassk, Mr A.V. (the Mayor). In particular, Mr N.K. stated the following:

“ [...]

Mr N.K.: [...] the moral suffering and material damages which were caused by him [the Mayor] to the Kazaks and to the entire town shall not be forgiven. The persons close to [the Mayor] Mr A.V. and members of his family have misappropriated

numerous real estate properties in Novocherkassk. The rest of what is left is being sold to people from other regions, including to those of North Caucasian origin.

We prepared a number of documents to the Prosecutor General's office, the Russian President, petitions to mass media and the Internet. Now we have additional information concerning facts of corruption and unlawful actions. On the basis of this information we prepared the materials and, I think, we shall submit them to the Deputy Prosecutor of the Southern Federal Circuit. This petition was signed by more than 250 persons - all of whom were respected citizens of Novocherkassk.

The journalist [the applicant]: - Could you share this information with our newspaper? What kind of information is it?

- Yes. For example, the privatisation of the Consumer Service Centre was carried out with obvious breaches. Piece by piece the 'Klyuch' agency sold the 'Pobeda' cinema for offices and shops; this cinema belongs to the municipal property and had not been put up for auction. The privation of the municipal part of the 'Yuzhnaya' hotel was carried out with violations: in our opinion, the auction had been botched on purpose. As the result, the lot was put up for the public bidding and in our town it means that no one other than the intended buyer would be able to purchase it. Six hundred square metres of the 'Yuzhnaya' hotel were sold at the dumping price and then resold for almost ten times more of that...

There are numerous breaches [of the law] concerning the plots of land. Without an auction the land next to houses no.97-101 in Baklanovskiy lane became destined for the construction of a commercial centre, upon the request of a highly ranking representative of the Novocherkassk town administration... The preparations of the land [for the construction], rerun of the utility lines were done at the municipality's expense. There is apparent inappropriate use of the budget funds.

Also, at laughable prices and without an action, were sold two land plots designated for construction in the town centre (Baklanovskiy and Krivopustenko lanes) ...

[...]

The journalist [the applicant]: - That is to say that it is obvious that as a result of such actions of the town officials suffers the budget?

- Absolutely right. There is not enough money in the budget. Where do they go? This has to be examined. We are going to address the control and audit commissions so they could come over and check where our taxes go... [...]"

B. The defamation proceedings

On 3 April 2007 the Mayor brought defamation proceedings against the applicant demanding that the information contained in the impugned article of 29 March 2007 be recognised as untruthful and damaging to the Mayor's honour and reputation and that the newspaper, the applicant and Mr N.K. paid 100,000 rubles (about EUR 2,500) in damages each. In addition, he demanded that the newspaper published a retraction of the information contained in the article.

On 15 August 2007 the Novocherkassk Town Court found for the claimant stating, amongst other things, that the applicant was to pay the Mayor RUB P3,000 (about EUR 100) in damages. The decision included the following:

“...These facts are damaging to the claimant’s honour and reputation as they accuse him of committing unlawful acts....

...the defendants failed to furnish the court with the evidence proving the veracity of the information which has been found defamatory...

...the court also takes into account that the defamatory information published in the newspaper damages the claimant’s reputation as a respectable citizen. The court also takes into consideration that the claimant has an important post, that he is the Mayor...”

The applicant appealed the judgement to the Rostov Regional Court. She referred to the official information obtained from the local prosecutor’s offices which confirmed that “the office had established numerous violations of the legislation concerning the distribution of land for construction by the officials of the Novocherkassk town administration...” and that on several occasions the prosecutor of Novocherkassk had demanded to “eliminate the breaches of the legislation concerning the land” discussed in the impugned article.

On 19 November 2007 the Rostov Regional Court rejected the applicant’s appeal and upheld the judgement stating, amongst other things, that the information provided in the letter of the Novocherkassk town prosecutor’s office of 17 October 2007 ‘does not prove the fact that the claimant committed unlawful acts’ (see below).

C. Information obtained by the applicant from the prosecutor’s office

On 4 April 2003 the applicant received a reply to her request from the prosecutor’s office of the Rostov Region. The letter contained the following information:

“Your collective petition concerning the breaches of the law by the Novocherkassk town administration has been examined by the regional prosecutor’s office. As a result of our inquiry the following has been established:

On 14 December 2001 ... was conducted an auction for the privatisation of non-presidential premises in Moscovskaya Street; the action was won by ‘Sfera Plus LTD’ owned by the wife and the son-in-law of the Mayor of Novocherkassk....

...the privatisation of the non-residential premises in Aleksandrovskaya Street was also conducted with breaches... by Mr A.V. who is currently holding the position of the Deputy Mayor of Novocherkassk.

As a result of the inquiry, the prosecutor’s office requested that the Mayor of Novocherkassk eliminated the breaches of the relevant legislation...

As for the breaches concerning the land, on several occasions the prosecutor’s office has demanded the administration of Novocherkassk to take measures to eliminate them...”

On 3 April 2007 the applicant received a letter from the Novocherkassk town prosecutor’s office which included the following:

“... In 2006-2007 the prosecutor’s office conducted the inquiry into the compliance with the legislation of... the distribution of the land for the construction purposes, its use and the construction work...

The inquiry established that ... a number of violations of the relevant legislation by the officials of the Novochoerkassk town administration had taken place during the sale of the land..., issuance of the construction permits and ... the construction work.

In connection with the above, the prosecutor's office demanded that the Mayor of Novochoerkassk eliminated the breaches. However, no measures have been taken by the administration..."

On 17 October 2007 the applicant received a letter from the Novochoerkassk town prosecutor's office which included the following information:

"...in 2006 the prosecutor's office conducted an inquiry as a result of which it was established that...the construction permit [for the construction of the commercial centre in Baklanovskiy lane] had been issued without the expert ecological examination and without the endorsement of the Ministry of Culture of the Rostov Region...

[...]

... in the latter case the officials of the Novochoerkassk town administration... had breached the legislation, which lead to the sale of the land in the Krivopustenko Lane at the understated price and resulted in the arrears in the town's budget..."

COMPLAINTS

The applicant complains under Article 10 of the Convention that the judgement of the Novochoerkassk Town Court of 15 August 2007, which was upheld on appeal by the Rostov Regional Court, violated her freedom of expression.

Referring to Article 6 of the Convention she alleges that the defamation proceedings ended by the judgment of 15 August 2007 were unfair.

Under Article 13 of the Convention she complains of the lack of effective domestic remedies against the alleged violations.

QUESTION

Was there a violation of the applicant's right to freedom of expression guaranteed under Article 10 of the Convention?