



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

FIRST SECTION

DECISION

Application no. 37267/04
Olga Filippovna SMIRNOVA
against Russia

The European Court of Human Rights (First Section), sitting on 8 July 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 14 September 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Olga Filippovna Smirnova, is a Russian national, who was born in 1947 and lives in the town of Tyumen.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

1. Background to the case

3. The applicant is a retired person who is in receipt of an old-age pension. She is an active supporter of various local NGOs.

4. On 14 November 2003 the Trade Union Centre of the Tyumen Region (*«Тюменский областной профсоюзный центр»*), the Trade Union of the Elevator Operators of the Town of Tyumen “SOTSPROF” (*«Тюменский городской профсоюз лифтеров СОЦПРОФ»*) and the Tyumen Regional Fund for the protection of civil rights “Resonance” (*«Тюменский региональный общественный фонд по защите гражданских прав «Резонанс»*) submitted notification of a public demonstration against alleged violations of rights of students and employees of the Commercial and Financial College of the Town of Tyumen (“the College”). It indicated that the demonstration would be carried out in the form of a “picket” to be held at noon on 24 November 2003 outside the college building. The action was to end at 1 p.m. The organisers estimated that about twenty people would take part in this event. They undertook not to hinder the circulation of people and vehicles and not to disturb the peace.

5. On 20 November 2003 the Tyumen town council informed the organisers that their request had been accepted.

2. Events of 24 November 2003

6. The picket started at noon as planned. It was attended mostly by old-age pensioners who gathered at the college entrance carrying their placards. The event was supervised by the police, who registered no disturbances of public order. Most of the demonstrators and the police left the location at 12.45 p.m.

7. At around 1 p.m. the applicant and five other persons of the picket entered the college building with a view to handing a petition over to the college administration.

8. This group spontaneously asked an assistant to the head of the college to let them meet the head. The assistant informed the head of this request, who, in response, called the police.

9. Shortly afterwards three police officers arrived at the place of the incident and forced the group into a police van. They were then brought to the Kalininskiy District Department of the Interior of the Town of Tyumen (hereafter referred to as “the District Department”), where they were invited to explain their actions in writing.

10. The applicant and the other members of the group were held in the corridor of the District Department. According to the applicant, she was allowed neither to contact her lawyer nor to call her family. She was then taken to an investigator’s office where she explained the circumstances

surrounding this incident. The applicant was released at 4.16 p.m. It appears that no record of detention was drawn up.

3. Proceedings against the applicant

11. On 24 November 2003 the head of the college submitted a request that the police prosecute the picketers for disturbing lessons at the college.

12. On the same day one of the police officers involved in the events of 24 November 2003 issued a report which read:

“... On 24 November 2003 at 12.30 p.m. following a telephone call I arrived at [the college]. Upon arrival I found that the police had been called by [the head of the college], who stated that unknown people had burst into her office and interfered with her work. These people were taken to the [District Department] ... for further investigation of these events...”

13. On 3 December 2003 a senior investigator of the District Department rejected the request of 24 November 2003 as unfounded.

14. On 4 December 2003 the head of the college repeated her request.

15. On 14 December 2003 the authorities again refused to institute criminal proceedings.

16. On 15 April 2004 the prosecutor's office of the Tyumen Region quashed the decision of 14 December 2003 and remitted the case to the authorities for an additional investigation. Without noting any specific defects in the investigation, the prosecutor concluded that it had not been thorough.

17. On 14 May 2003 the investigating authorities refused to institute criminal proceedings. The decision read as follows:

“... [The investigating authority] established that on 24 November 2003 the non-governmental organisation the Trade Union Centre of the Tyumen Region, acting with official authorisation of the town council dated 20 November 2003, staged a public picket near the [college]. This event took place from noon to 1 p.m. The demonstrators were demanding that college the authorities put an end to violations of the rights of its employees and students. After the picket [the applicant and five other persons of the movement] entered the college building and went to the office of the head of the college to hand over their petition. [The head of the college] refused to meet them and called the police. The police officers, who arrived at the place of the incident, escorted the demonstrators to the [District Department] to collect their explanations in writing.

... [In the context of the present investigation the applicant] has refused to give any explanations to the police, noting that she had already given her statements in respect to these events to the Prosecutor's Office.

[The applicant's and other protestors' actions] did not amount to a criminal offence.”

18. In the above proceedings, the applicant did not complain of the police actions of 24 November 2003.

4. The applicant's complaints concerning the lawfulness of the police actions

(a) Police investigation

19. On 2 December 2003 one of the leaders of the picketers, Mr Kh, and three other demonstrators including the applicant requested that a criminal investigation be instituted in respect of their arrest and detention on 24 November 2003. The applicant also brought complaints against the police officers, seeking to prosecute them for her allegedly unlawful arrest and detention. It seems that the proceedings regarding their complaints were joined together in one case.

20. The investigating authorities conducted an internal investigation and drafted a report dated 28 December 2003, which read:

“The Trade Union Centre of the Tyumen Region, the Trade Union of the Elevator Operators of the Town of Tyumen SOTSPROF, and the Tyumen Regional Fund for the protection of civil rights ‘Resonance’ informed the local administration about the picket of 24 November 2003, which would be held from noon to 1 p.m., Mr [Kh.] having been named as a person responsible for it.

The picket was supervised by [five police officers], who were present at its location from 11.45 a.m. to 12.45 p.m. The picketers did not disturb the peace. The police officers did not speak to them. By 12.45 p.m. the crowd had dispersed. At 12.50 p.m. the police officers returned to [the District Department].

On 24 November 2003 [a police officer on duty] received a telephone call from [the college]. Following this call [a group of three police officers on duty and a driver] arrived at [the college]. On their arrival they found out that the call had been made by the [head of the college], who explained that several unknown persons had burst into her office and interfered with the activities of the college. She stated that she would request the prosecution of these people. Later the police officers realised that those people were the participants in the picket. [The group] was taken to [the District Department].

In the District Department the police collected the statements from the [head of the college], who requested that [the group] be prosecuted. [Two police officers] collected written statements from the detained parties and then let them go home. None of the detained persons was put in a special cell. Consequently, they were not deprived of their liberty.

On 3 December 2003 [the police] refused to institute criminal proceedings at the request of the [head of the college].

On the grounds given above, I would conclude that ... the [police officers] acted lawfully”.

21. On 29 December 2003 the group was notified of this decision. Neither the applicant nor other participants challenged it in court.

(b) The prosecutor's decision of 26 February 2004

22. On an unspecified date Mr Kh. informed the Tyumen Region prosecutor's office of the allegedly unlawful police actions which had been performed in connection with the picket of 24 November 2003.

23. The prosecutor's office examined the case in parallel with the proceedings instituted by the police and held that the rights of the picketers had been violated. It issued notice of violation no. 7-75-04 dated 26 February 2004 which read:

"The prosecutor's office has examined [Mr Kh's] request. The examination has indicated numerous violations of law in the actions of the police.

The Trade Union Centre of the Tyumen Region, the Trade Union of the Elevator Operators of the Town of Tyumen SOTSPROF and the Tyumen Regional Fund for the protection of civil rights 'Resonance' informed the administration about the picket of 24 November 2003, which was to be held from noon to 1 p.m. Initially, the picketers stood outside the entrance to the [college]. Later they entered the ante-room of the office of the head of the [college].

Following the telephone call which was made by [the head of the college], police officers arrived at the scene of the incident. The police officers took the picketers to [the District Department] ...

Pursuant to [the provisions of the Police Act], the police should have escorted the picketers in accordance with the provisions of either administrative or criminal law.

[The police officer] who escorted the picketers to the Kalininskiy District Department of the Interior of the Town of Tyumen drew up a report without examining the circumstances surrounding their arrest. The report is unclear as to the commission of precisely which offence the actions of the group could have amounted to.

Simultaneously [another police officer] received an oral request for the institution of criminal proceedings against the persons who had organised the unlawful picket near the [college] and disturbed the peace. This request was submitted by [the head of the college].

Subsequently, the investigating authorities instituted a preliminary criminal investigation...

In the present case the police should have conducted a preliminary investigation in accordance with administrative law procedure...

Article 27.1 of the Code of Administrative Offences of Russia entitles [police officers] to employ a variety of measures aimed at ensuring the conduct of administrative proceedings. In particular it gives them a right to escort persons and detain them. This power may be exercised in order to stop an administrative offence, to identify an offender, and to draw up an administrative offence record in cases where such a record cannot be drawn up at the place of the incident. Article 27.2 of the Code of Administrative Offences of Russia requires the police to note the execution of an escort operation in an administrative arrest record or to make a special note in an administrative offence record. The act of escorting an individual may be also indicated in an escort operation record. This indicates that administrative proceedings have been instituted. Administrative proceedings should be finalised with a procedural decision.

The inappropriate organisation and conduct of the investigation has resulted in the violation of [the picketer's rights].

Moreover, following the inquiry conducted under Article 145 of the CCrP of Russia, the police officers did not decide whether or not the demonstrators' actions had amounted to an administrative offence. The deadline for bringing administrative proceedings as provided by Article 4.5 § 4 of the Code of Administrative Offences of Russia has since expired. In accordance with Article 24.5 § 6 of the Code of Administrative Offences of Russia, the administrative proceedings should be discontinued.

In the light of the above circumstances, taking into account Article 24 of the Federal Law On Prosecutor's Office of Russia, I recommend [to the Head of the police]:

That the present recommendations be examined.

That an internal inquiry be carried out to decide whether a disciplinary punishment should be imposed on the police officers.

That it be ensured that all police officers study the administrative legislation ..."

24. On an unspecified date the police authority notified the picketers of this decision.

25. On 30 March 2004, in response to the prosecutor's notice of violation of 26 February 2004, the police – having conducted an internal inquiry – fully endorsed its own previous findings and the conclusions of the report of 28 December 2003 (see paragraph 20 above).

26. The applicant and the group of the protesters did not further pursue the institution of proceedings through either the police or the prosecutor's office.

(c) Court proceedings

27. In February 2004 the applicant lodged a civil complaint against the police authorities before the Kalininskiy District Court of the Town of Tyumen ("District Court"). She sought a declaration that the actions of the police on 24 November 2003 had been unlawful because they had breached her freedom of expression, freedom of assembly and right to liberty.

28. On 25 February 2004 the District Court informed the applicant that she should substantiate her claim by providing more evidence concerning the events in question and specifying the names of the policemen involved. She should also be specific as to which actions she considered to have been unlawful. The applicant was given until 5 March 2004 to correct these shortcomings in her application to the court.

29. On 22 March 2004 the Tyumen Regional Court, at the applicant's request, quashed the decision of 25 February 2004.

30. On 29 March 2004 the District Court refused to examine the applicant's case on the merits. It stated that it had no competence to deal with the applicant's complaints within the context of civil proceedings, since a criminal investigation in respect of the police officers had been instituted at her request. It concluded that the normal remedy for exhaustion

purposes would be to appeal under Chapter 16 of the Code of the Criminal Procedure of Russia (CCrP) against the police's decision not to prosecute the police officers. Since the applicant had failed to seek recourse through this remedy, the merits of her claim were left unexamined. The relevant part of this judgment read:

"The court has established that [the prosecutor's office] conducted a preliminary investigation into [the applicant's] arrest and her detention on the premises of the Kalininskiy District Department of the Interior of the Town of Tyumen on 24 November 2003. This investigation resulted in the decision not to institute criminal proceedings. All of the participants in the picket were advised of their right to challenge this decision.

Chapter 16 of the CCrP sets out special rules governing appeals against the decisions of the police.

In accordance with Article 134 § 1 of the Code of Civil Procedure of Russia, a court must refuse to examine a claim on the merits if it cannot be examined in civil proceedings.

From the foregoing, the court concludes that it must refuse to examine [the applicant's] claim on the merits..."

31. On 2 June 2004 the Tyumen Regional Court upheld the judgment of the District Court on appeal, essentially endorsing the reasoning of the lower court. It pointed out that the picketers had been informed of the outcome of their proceedings by the police and the prosecutor's office. This gave them an opportunity to challenge the relevant decisions in court under Chapter 16 of the CCrP. According to the court, they had brought a civil claim falling outside the civil courts' jurisdiction.

32. The applicant did not follow the courts' recommendations and did not institute proceedings under Chapter 16 of the CCrP.

B. Relevant domestic law

1. Public assemblies

33. The Constitution guarantees the right to freedom of peaceful assembly and the right to hold meetings, demonstrations, marches and pickets (Article 31).

34. Decree of the Presidium of the USSR Supreme Council no. 9306-XI of 28 July 1988 (in force at the material time pursuant to Russian Presidential Decree no. 524 of 25 May 1992) provided that organisers of an assembly were to submit written notification to the municipal authorities no later than ten days before the planned assembly (§ 2). The authority was to give its response no later than five days before the assembly (§ 3). An assembly could be banned if its purpose was contrary to the Constitution or threatened public order or the security of citizens.

2. Escorting of individuals

35. Article 27.2 of the Code of Administrative Offences of Russia of 30 December 2001 (CAO) states that the escorting or transfer by force of an individual for the purpose of drawing up an administrative offence report – if this cannot be done at the place where the offence was discovered and if the drawing-up of a report is mandatory – is to be carried out by the police. The escort operation must be carried out as quickly as possible and it must be recorded in an escort operation report, an administrative offence report or an administrative detention report. The escorted person must be given a copy of the escort operation report if he or she so requests.

3. Administrative arrest

36. Article 27.3 of the CAO provides that administrative arrest, that is to say a temporary restriction of liberty of an individual, may be ordered in exceptional circumstances where it is necessary for a correct and prompt examination of the administrative case.

37. In accordance with Article 27.4 of the CAO the administrative arrest must be recorded in a report

38. Article 27.5 of the CAO provides that the duration of administrative arrest must not exceed three hours, except for situations involving persons subject to administrative proceedings concerning an offence punishable by administrative detention, who may be placed under administrative arrest for a period not exceeding forty-eight hours.

4. Appeal against police actions

39. Chapter 16 of the CCrP lays down the procedure by which acts or decisions of a court or public official involved in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of the inquiry, an investigator, a prosecutor or a court may be challenged by “parties to criminal proceedings” or by “other persons in so far as the acts and decisions [in question] touch upon those persons’ interests” (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of “parties to criminal proceedings” or of “hindering an individual’s access to court” may be subject to judicial review (Article 125).

COMPLAINTS

40. The applicant claimed under Articles 10 and 11 of the Convention that the authorities had prevented them from handing their petition over to the head of the college.

41. Under Articles 5 and 6 of the Convention the applicant complained that she had been forcefully escorted to the police station and detained there. She was also dissatisfied with her subsequent inability to contest the lawfulness of the arrest.

THE LAW

42. Under Articles 5, 6, 10 and 11 of the Convention the applicant complained about the events of 24 November 2003 and argued that her arrest and detention by the police officers had been unlawful and disproportionate and that she had been unable to contest the lawfulness of the actions of the policemen.

A. The parties' submissions

43. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. They stated that the applicant had not exhausted domestic remedies in respect of her arrest and detention of 24 November 2003. In their view, it remained open to her to complain to the domestic judicial authorities with regard to the alleged unlawful acts on the part of the police under Chapter 16 of the CCrP, or to challenge the investigator's refusal to prosecute the police officers. In addition the Government noted that there was no interference with the applicant's rights, set forth in Articles 10 and 11 of the Convention, and that the applicant's detention was not in breach of Article 5 of the Convention.

44. The applicant did not answer the Government's non-exhaustion plea. She maintained her complaints concerning the alleged violation of her freedom of expression, freedom of assembly and right to liberty.

B. The Court's assessment

45. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, States are exempted from answering for their acts before an international body until they have had an opportunity to put matters right through their own legal system. The

rule is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief. It thus represents an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI; *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24 and *Vučković and Others v. Serbia* [GC], no. 17153/11, §§ 69-77, 25 March 2014).

46. Turning to the circumstances of the present case, the Court observes that on 24 November 2003 the police officers apprehended the applicant, along with other protesters, during their attempt to have a meeting with the head of the College (see paragraph 9 above). The applicant was taken to the District Department, where she gave her written statements in respect of the incident, and then released. The events of 24 November 2003 gave rise to a criminal complaint against the applicant and a criminal complaint against the actions of the police officers. Both sets of the proceedings resulted in the decisions not to prosecute the alleged perpetrators, dated 14 May 2003 and 28 December 2003 respectively (see paragraphs 17 and 20 above), with the police essentially confirming the events of the case on both occasions. In its decision of 28 December 2003 the police concluded that the applicant had not been deprived of her liberty within the meaning of the domestic law and that the police officers had acted lawfully. This conclusion was later questioned by the prosecutor’s office, which in its notice of 26 February 2004 concluded that during the events the police had detained the applicant and had acted in breach of the applicable administrative law and the rights of the protesters (see paragraph 23 above). In its decision of 30 March 2004 the police disregarded the prosecutor’s arguments and upheld its previous conclusions. The applicant abandoned these proceedings and did not complain about the decisions of 28 December 2003 and 30 March 2004 in court.

47. Thereafter she brought a civil claim against the police authorities in which she sought to declare the actions of the policemen unlawful and unjustified (see paragraph 27 above). The courts refused to examine this claim on the merits, stating that they had no competence to deal with such issues for lack of jurisdiction, as the applicant essentially complained about the lawfulness of the actions of the policemen and did not make any claims under the applicable civil law. They further noted that the applicant’s demands should have been made in respect of the decision dated 28 December 2003 under Chapter 16 of the CCrP, which provides specifically for an opportunity to challenge the decisions of the police in so far as such decision may have affected the interests of the persons involved (see paragraphs 30 and 31 above).

48. The Court observes that the applicant did not follow these recommendations, having neither challenged the police actions under Chapter 16 of the CCrP nor put forth any reasons explaining this failure. In her arguments before the Court she also failed to produce any arguments capable of raising doubts as to the effectiveness of the remedy suggested to the applicant by the domestic courts. Having observed the wording of the relevant provisions of Chapter 16 of the CCrP (see paragraph 39 above) and the arguments set out in the notice of the prosecutor's office dated 26 February 2004, the Court finds that arguably in the circumstances of the case this remedy was capable of affording the applicant the opportunity to have her claims examined in substance and to obtain the declaratory relief that she had sought before the civil courts.

49. In light of the foregoing, the Court concludes that the domestic authorities were not afforded an opportunity to put right the alleged violation of the applicant's rights. Accordingly, the Court accepts the Government's objection of non-exhaustion of domestic remedies by the applicant and finds that this application must be rejected under Article 35 §§ 1 and 4 of the Convention on the grounds of failure to exhaust domestic remedies.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President