



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

FIRST SECTION

Application no. 1585/09
by Yekaterina Sergeyevna AVILKINA and Others
against Russia
lodged on 19 December 2008

STATEMENT OF FACTS

THE FACTS

The first applicant, Ms Yekaterina Sergeyevna Avilkina, is a Russian national who was born in 2006 and lives in Nalchik. The second applicant, Ms Nina Nikolayevna Dubinina, is a Russian national who was born in 1959 and lives in Murmansk. The third applicant is Ms Valentina Alekseyevna Zhukova, a Russian national who was born in 1956 and lives in the Leningrad Region. The fourth applicant is a religious organisation, the Administrative Centre of Jehovah's Witnesses in Russia ("the applicant organisation"). They are represented before the Court by Mr J. Andrik, Mr A. Chimirov, and Mr R. Daniel, lawyers practising in USA, Russia and United Kingdom, respectively.

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

A. Case of the first applicant

On 1 June 2007 a deputy St Petersburg City Prosecutor asked the St Petersburg Public Health Committee to instruct all medical institutions of the city to report every refusal of transfusion of blood or its components by Jehovah's Witnesses. The report were to be subsequently forwarded to the prosecutor's office.

The first applicant underwent a chemotherapy following the treatment plan of non-blood management in a public hospital. The doctors informed the Public Health Committee and the prosecutor's office of her case.

B. Case of the second applicant

On 26 March 2007 the second applicant was admitted to a public hospital. She chose to have non-blood management for her condition.

On 18 April 2007 she was discharged from hospital following the prosecutor's intervention. She was then admitted to a private hospital for a surgical intervention.

C. Case of the third applicant

From 2 February to 5 April 2006 the third applicant underwent surgical treatment without the use of foreign blood or blood components in a state hospital.

On 25 January 2007 the district prosecutor's office asked the hospital to submit the applicant's medical record.

On 26 July 2007 the applicant learnt that the prosecutor's office had reviewed earlier her medical documents and information on the treatment methods and their results.

D. Case of the applicant organisation

On 16 November 2004 the Committee for Salvation of Youth from Destructive Cults (“the Committee”) lodged a complaint against the activities of the applicant organisation with the prosecutor's office in St Petersburg. The ensuing inquiry disclosed no unlawfulness in the applicant organisation's activities.

On 28 March 2005 the Committee lodged another complaint against the applicant organisation. It was rejected on 4 April 2005. Subsequently the Committee introduced six more complaints. All of them were rejected following an inquiry.

On 5 December 2006 a prosecutor issued a letter in which he allegedly expressed the view that there had been “violations” committed by the applicant organisation.

During the period between 7 March 2005 and 3 May 2007 the applicant organisation addressed five letters to the authorities asking about the results of the inquiries. The prosecutor's office responded that no violations in the applicant organisation's activities had been revealed. The applicant organisation's request to review the relevant file was refused.

Within the framework of the inquiry the prosecutor's office interacted with other State agencies, submitted religious literature for expert examination, studied medical files of the members of the applicant organisation, intervened in a school matter without parental consent and examined repetitive complaints from organisations and individuals.

On 4 June 2007 the prosecutor's office dismissed the applicant organisation's request for access to the materials compiled by the former in the course of the inquiries.

E. Domestic litigation

On an unspecified date the applicants lodged a complaint against the prosecutor's office whereby they asked the court (1) to declare unlawful the inquiries carried out by the prosecutor's office in connection with the applicant organisation's activities; (2) to obligate the authorities to cease their interference with the rights and lawful interests of the first applicant and to discontinue the investigation into its activities; (3) to declare unlawful the decision of the prosecutor's office of 4 June 2007 refusing access to the investigative materials; (4) to obligate the prosecutor's office to return to the relevant owners their medical documents and to require the destruction of the relevant materials, if any, held by the authorities; (5) to obligate the prosecutor's office to return the religious literature to the applicant organisation in its entirety and undamaged; (6) to obligate the prosecutor's office to provide the applicant organisation with the findings of the expert study of the applicant organisation's religious literature; (7) to obligate the prosecutor's office to restrain the Committee and other similar organisations from their attacks against the applicant organisation; (8) to obligate the prosecutor's office to take appropriate measures regarding malicious and unfounded allegations made against the applicant organisation in the event any such allegations contain slander, defamatory statements, or signs of extremism or were untrustworthy.

On 27 March 2008 the Oktyabrskiy District Court of St Petersburg granted the applicants' claims in part. It pronounced unlawful the prosecutor's office decision of 4 June 2007 and obligated it to grant the applicant organisation's representatives access to the materials of the inquiries. The remainder of the claims were dismissed.

As regards the second applicant's allegedly premature discharge from the hospital, the court noted that this issue was beyond the scope of the applicants' complaint against the prosecutor's office.

On 2 July 2008 the St Petersburg City Court upheld the judgment of 27 March 2008 on appeal.

According to the applicant organisation, the prosecutor's office failed to comply with the judgment of 27 March 2008 ordering the latter to allow the applicant organisation to review the materials of the inquiry. The applicant organisation's representatives were allowed to review only ten per cent of the materials in question.

COMPLAINTS

The applicant organisation complains under Article 6 of the Convention that the criminal proceedings against it were not adversarial. In particular, the applicant organisation alleges that the prosecutor's office failed to disclose a significant part of the investigative materials to the applicant organisation's representatives. In the submissions of 26 February 2009 the applicant organisation complains that the civil proceedings which ended with the judgment of 2 July 2008 were unfair. In particular, the applicant organisation alleges that the judge refused to allow the applicant organisation's representatives to see the documents produced by the

prosecutor's office and that the judgment of 27 March 2008 was not properly reasoned. Lastly, the applicant organisation complains about the open ended and repetitive nature of the prosecutor's inquiries into its activities.

The applicant organisation complains under Article 6 § 2 of the Convention that the prosecutor's office had considered that the Jehovah's Witnesses engage in religious extremism. In particular, the applicant organisation refers to the letter of 5 December 2006.

The first, second and third applicants complain under Articles 8 and 14 of the Convention that the prosecutor's office forced the doctors to disclose the information contained in their medical files without the applicants' consent and in the absence of any criminal investigation warranting such a disclosure.

The third applicant complains under Articles 8 and 14 of the Convention that, because of her religious beliefs, she had been refused treatment in a public hospital and had to seek it in a private clinic.

The applicant organisation complains under Articles 9 and 11 of the Convention about an abusive and excessive manner with which the public authorities have conducted the investigation into the activities of the Administrative Centre of Jehovah's Witnesses in Russia. They further allege that the investigation was focused on the legitimacy of the Centre's religious beliefs and/or means used to express such beliefs.

The applicant organisation complains under Articles 9 and 14 of the Convention that other religions, such as the Orthodox Church, Judaism and Islam had not been submitted to comparable abusive, extensive and intrusive investigation by the prosecutor's office and that the sole aim of the investigation was to find a reason to close down the Centre.

The first, second and third applicants complain under Article 13 of the Convention that they did not have any effective judicial means to seek redress for the breach of medical confidentiality and the third applicant's discharge from a state hospital.

The applicant organisation complains that the numerous investigations against the Centre amount to a breach of Article 4 of Protocol No. 7.

QUESTIONS TO THE PARTIES

1. As regards the disclosure of the first, second and third applicants' medical records to the prosecutor's office, has there been an interference with the applicants' rights to respect for their private life, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

2. Does the fact that the first, second and third applicants' medical records have been disclosed to the prosecutor's office amount to discrimination against them in the enjoyment of their Convention rights, contrary to Article 14 of the Convention read in conjunction with Article 8?