



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

Communicated on 7 January 2014

FIRST SECTION

Application no. 58029/12
Mikhail Nikolayevich SUPRUN
against Russia
lodged on 16 August 2012

STATEMENT OF FACTS

1. The applicant, Mr Mikhail Nikolayevich Suprun, is a Russian national, who was born in 1955 and lives in Arkhangelsk. He is represented before the Court by Mr I. Pavlov, a lawyer practising in St Petersburg.

A. The circumstances of the case

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

3. The applicant is a history professor, Ph.D., and head of the Russian history department in the Lomonosov Northern (Arctic) Federal University (formerly the Lomonosov Pomor State University) in Arkhangelsk. He is a lecturer on Russian contemporary history and also teaches special courses, such as “Russia in the context of international relations during Second World War and the Cold War” and “History of penal servitude and exile in the Russian North”. The applicant is the author of more than 160 scholarly works, including four books on the history of the Second World War.

4. In April 2007, the Pomor State University, represented by its dean and the applicant, and the Information Centre of the Arkhangelsk Regional Police, represented by its director Mr D., on the one hand, and the German Red Cross and the Historic Research Society of Germans from Russia (*Historischer Forschungsverein der Deutschen aus Russland E.V.*), on the other hand, signed a co-operation agreement for preserving and researching archives and records concerning victims of the Second World War, as well as victims in the pre- and post-war periods, and their commemoration.

5. The subject matter of the agreement covered the “processing of up to 40,000 records in Russian archives concerning victims of internment, repression and deportation who were civilian German subjects, former USSR citizens of German ethnic origin, German Wehrmacht officers, German civil servants, and ethnic Germans who were citizens of other

Eastern European states” (Article 2.1). Their personal files were to be scanned and the data entered into a database (Article 2.2). The database included the following fields: name, date and place of birth, last known home address, profession, family members, date of death, date and place of deportation, period and place of “forced settlement”¹, grounds for release, ethnic origin, the arresting and convicting authorities, the nature of the charge, and the reference to the record number (Article 2.3 and Annex 1).

6. The German partners undertook to pay the Pomor State University 1.50 euros (EUR) for each record, up to a total of EUR 60,000.

7. The agreement also imposed restrictions on the use of personal data (Article 4). It could be solely used “for humanitarian and academic purposes”. Publication on the Internet or any commercial use were explicitly excluded, whereas a transfer of the database or parts thereof to third parties required the consent of the parties to the agreement.

8. Upon processing of the records, the Pomor State University and the Historic Research Society of Germans from Russia were to publish a memorial book, in German and in Russian.

9. Between October 2007 and December 2008 the applicant worked on the memorial book, entitled “Ethnic Russian Germans, victims of repression in the 1940s”, about the fate of forced settlers. He processed more than 8,000 records from the archives of the Information Centre of the Arkhangelsk Regional Police.

10. On 13 September 2009 an investigator for particularly important cases with the Investigations Committee of the Arkhangelsk Region instituted criminal proceedings against the applicant and Mr D., the director of the Information Centre of the Arkhangelsk Regional Police, on the basis of a complaint by the private individual Mr F. and the findings of an inquiry which the Federal Security Service of the Arkhangelsk Region had carried out. The applicant was charged as follows:

“In 2007, Mr Suprun, acting for mercenary motives with a view to selling the information, decided to organise and to perform collection and organisation into a database, of the data on USSR citizens of German and Polish ethnic origin who had been repatriated from the German territory after the end of the Second World War and exiled, in accordance with the administrative procedure, for settlement in 1945-56 in the Arkhangelsk Region, as well as the data on their family members, including their biographical details, ethnic origin, family composition, facts and grounds for resettlement in the USSR and Germany, and other information about the private life of those individuals, without their consent.

... acting in full realisation of the confidential nature of the above data that was contained in the materials of the checking filtration files in the archives of the Information Centre of the Arkhangelsk Regional Police, to which access is restricted pursuant to the State Archives Act, the Personal Data Act and joint order of the Ministry of Culture, the Ministry of the Interior and the Federal Security Service no. 375/584/352 ... [Mr Suprun], acting with premeditation, corrupted the director of the Information Centre Mr [D.] by means of persuasion, with a view to obtaining unrestricted access, for himself and other persons, to the files of special settlers and to copying their contents in their entirety ...”

1. Forced settlements, also known as “special settlements” («спецпоселения»), were the product of mass population transfers in the Soviet Union according to social or ethnic criteria. Settlers lived in houses with their families but their freedom of movement was confined to a specific area and they were required to check in with the police authorities at regular intervals.

In that way, Mr Suprun, with the assistance of Mr [D.], in breach of the constitutional right of Russian citizens to inviolability of private life, personal and family secrets, collected information on private lives of five thousand special settlers, including F.J.F., F.M.S., S.L.T., and their heirs F.I.J., S.E.L., without their consent ...”

11. On the same day the applicant’s flat was searched and a removable hard drive, DVD disks and the original of the above-mentioned agreement and some related documents were seized.

12. The charges against the applicant were brought under Article 137 § 1 of the Criminal Code (“Breach of inviolability of private life”) and also Article 286 § 1, read in conjunction with Article 33 § 1 (4), that is incitement of a public official to commit acts exceeding his official powers that lead to a substantial impairment of the citizens’ right and lawful interests.

13. Counsel for the applicant complained to a court that the criminal proceedings had been unlawfully instituted. He submitted that the investigator did not explain why the data the applicant had collected constituted personal and family secrets.

14. On 18 February 2011 the Primorskiy District Court of St Petersburg rejected the complaint, holding that the investigator had sufficient indications of a criminal offence justifying the institution of proceedings against the applicant. On 31 March 2011 the St Petersburg City Court upheld that decision on appeal.

15. The criminal case against the applicant was heard by the Oktyabrskiy District Court of Arkhangelsk which gave judgment on 8 December 2011.

16. The prosecution’s case was that the applicant “had collected, by way of copying personal records and decisions regarding special settlers, the personal data and information on private life of [twenty individuals] which was contained in personal files of special settlers”. In each of the twenty cases cited by the prosecution, the copied information comprised the following elements: the pre-war place of residence of the special settler, the year of his or her removal from the USSR or imprisonment, the year of return to the USSR, the period of forced settlement in the Arkhangelsk Region, and the information on the “rehabilitation”. The heirs of special settlers were designated as injured parties.

17. Some of the injured parties testified before the court that they had not authorised anyone to copy information from the personal files of their ancestors who had been sentenced to forced settlement. They said that that part of their lives had always been a shameful secret which they did not reveal to anyone outside the family. Nevertheless, five witnesses declared that they did not consider the information from personal files to be their personal or family secret.

18. By judgment of 8 December 2011, the District Court pronounced the applicant guilty under Article 137 § 1 of the Criminal Code of unlawful collection and unlawful transfer abroad of the information containing personal and family secrets of the injured parties, without their consent. The District Court gave the following explanation of the legal characterisation that was attributed the applicant’s acts:

“The documents which Mr Suprun copied from the personal files of special settlers concern only one person; the injured parties and their family members keep them

secret from others; it follows that they contain their personal and family secrets because they refer to a particular individual and his/her family, only concern that individual and are not subject to control on the part of society or State. In addition, Mr Suprun's actions led to a substantial impairment of the rights and lawful interests of the said individuals and their heirs ... and could also cause damage their reputation and the reputation of their families.”

19. Observing that the offence under Article 137 § 1 was one of minor gravity and that the prescription period for such offences was fixed at two years, the District Court held that the applicant should be exempted from criminal responsibility on account of the expiration of the prescription period.

20. Counsel for the applicant filed a statement of appeal. He submitted, firstly, that no Russian law defined the notion of “personal and family secrets” and that the conviction was entirely founded on the injured parties’ subjective perception of certain information as constituting their family secrets. The disposition of Article 137 had not therefore been sufficiently foreseeable in its scope and application. Secondly, counsel emphasised that the information on the settler’s removal, imprisonment, repatriation and judicial sanctions against him or her fell outside the scope of his or her private life as it concerned their contacts with public authorities. Thirdly, counsel pointed out that the judgment interchangingly used the notions of “personal data” and “personal and family secrets”, whereas collecting “personal data” only entailed administrative, rather than criminal, sanctions.

21. On 28 February 2012 the Arkhangelsk Regional Court rejected the appeal, holding as follows:

“There is no legal definition of the notion of ‘private life’ or the notion of ‘personal and family secret’ and the text of the law does not refer directly to specific types of secrets that have the protection in the federal law. However, this is not the reason for recognising that the acts of Mr Suprun did not constitute any criminally reprehensible offence.

Contrary to the arguments by the defence, the prosecution did refer to the federal law that protects the information which the defendant had unlawfully collected and disseminated. That federal law was the State Archives Act which restricts access to personal files of special settlers until the expiry of the restriction or without the consent of the interested parties ...

Article 137 § 1 carries liability for unlawful handling of information that constitutes personal and family secrets. The information on private life comprises general information of personal and family-related nature, special secrets and personal data. The *mens rea* of the offence includes the active part that the perpetrator had in performing one of the alternative actions: unlawful collection or unlawful dissemination of information about the private life of an individual that constitutes his or her personal and family secret. It is not necessary for the purposes of the criminal law to distinguish between personal and family secrets.

It follows that the argument by the defence that Mr Suprun had not committed any offence is misconceived: the unlawfulness of his conduct is corroborated by the absence of the consent by the injured parties for collecting and disseminating the information on their private lives from the archive records, and the absence of any law that could have allowed him to collect such information.”

22. On 28 June 2012 the Constitutional Court disallowed the applicant’s request to give a constitutional interpretation of Article 137 § 1 of the Criminal Code and, in particular, the notions of “personal and family secrets”.

B. Relevant domestic law and practice

1. Criminal Code of the Russian Federation

23. Article 137 § 1 (“Breach of inviolability of private life”) reads as follows:

“Unlawful collection or dissemination of information on the individual’s private life which constitutes his personal or family secret, without his consent, or dissemination of this information in a public statement, in a publicly accessible work of art or in the media carries the punishment in the form of a fine ... compulsory works ... or a deprivation of liberty for up to two years ...”

2. Rehabilitation Act (Law no. 1761-I of 18 October 1991)

24. According to the preamble, the purpose of the Rehabilitation Act is the “rehabilitation” of all victims of political repression who were prosecuted on the territory of the Russian Federation after 7 November 1917, the term “rehabilitation” being understood as “the restoration of their civil rights, the removal of any other adverse consequences of the arbitrary actions and the payment of compensation in respect of pecuniary damage”.

25. Section 1 defines “political repression” as various measures of restraint, including deprivation of life or liberty, which were imposed by the State for political motives, as well as any other restriction on rights or freedoms of those individuals who were recognised as being socially dangerous to the State or political regime on account of their class or social origin, ethnicity or religion.

26. Section 11 establishes the right of the rehabilitated individuals and their family members to be granted access to the materials of the discontinued criminal and administrative cases. Other persons can have access to these materials in accordance with the procedure that was established for accessing other documents in the State archives.

3. State Archives Act (Law no. 125-FZ of 22 October 2004)

27. Pursuant to section 25 § 3, access to the documents containing information on personal and family secrets or private life shall be restricted for a period of seventy-five years of the date of creation of the document.

4. Personal Data Act (Law no. 152-FZ of 27 July 2006)

28. “Personal data” is defined as any information that refers directly or indirectly to an identified or identifiable individual (section 3 § 1).

5. Code on Administrative Offences (Law no. 195-FZ of 30 December 2001)

29. Article 13.11 provides that a breach of the established legal procedure for collecting, keeping, using or disseminating information about individuals (personal data) is an administrative offence punishable with a fine.

30. Article 13.20 provides that a breach of the regulations on the use of documents in the archives is an administrative offence punishable with a reprimand or a fine.

6. Case-law of the Constitutional Court

31. Deciding on a complaint lodged by a convicted prisoner who was forbidden from having family visits in the first ten years of his detention, the Constitutional Court interpreted the notion of “private life” as follows:

“The right to inviolability of private life (Article 23 § 1 of the Russian Constitution) denotes the discretionary possibility, which is available to the individual and is guaranteed by the State, to have control over the information about himself and to prevent personal or intimate information from being disclosed. The notion of ‘private life’ extends to the area of daily activities which relates to the specific individual and only concerns him or her and which is not subject to control on the part of the society or the State as long as such activities comply with the law.”

7. Joint order of the Ministry of Culture, the Ministry of the Interior and the Federal Security Service (no. 375/584/352 of 25 July 2006) on the procedure for accessing materials concerning victims of political repression

32. The order approved the Regulation on the procedure for accessing materials in the State archives relating to terminated criminal and administrative proceedings against victims of political repression and checking filtration files.

33. According to section 2 (v), the Regulation applies in particular to the materials of checking filtration files concerning Russian and Soviet citizens who were taken prisoner or encircled, who found themselves in the occupied territory, who were abducted for forced labour in Germany or other European countries and repatriated during the Second World War or in the post-war period, as well as the files of returning émigrés. Section 2 (g) further extends the application of the Regulation to checking filtration files of foreign citizens and stateless persons falling into the same categories.

34. Pursuant to section 6, only the rehabilitated individuals, their heirs and legal representatives, as well as State officials, have access to the materials of their criminal and administrative cases or checking filtration files. Any other individuals may not access these materials for seventy-five years after the date of creation of the document unless they are able to produce a written form of consent and a power of attorney from the rehabilitated individual or his or her heirs.

35. Section 9 prohibits State archives from granting access to the documents that contain personal data of other individuals against whom no proceedings had been conducted but who were mentioned in the file.

36. In 2010, the non-government organisation Memorial, a Russian historical and civil rights society that keeps in particular an electronic database of the victims of political terror in the USSR, complained to the Supreme Court of the Russian Federation that sections 6 and 9 of the Regulation unlawfully restricted access to the information. By judgment of 26 January 2011, as upheld on appeal on 24 March 2011, the Supreme Court rejected the complaint, finding that the Regulation had been adopted by the competent authorities in compliance with the federal legislation and that it did not breach the rights of information users.

COMPLAINTS

37. The applicant complains under Article 10 of the Convention that he was prevented from collecting and disseminating information on victims of Soviet repression.

38. The applicant also complains under Article 7 of the Convention that the provision of the Criminal Code under which he was convicted did not define, with sufficient precision, the notion of “personal and family secrets” and that the domestic courts failed to draw a distinction between the notions of “personal and family secrets” and “personal data”.

QUESTIONS TO THE PARTIES

1. Was the applicant's conviction compatible with the requirements of Article 7 of the Convention? In particular, which statute contains a definition of the notion of "personal and family secrets" for the purposes of Article 137 of the Criminal Code of the Russian Federation (see, in particular, the findings of the Arkhangelsk Regional Court of 28 February 2012)? In the absence of a statutory definition, was there a coherent and sufficiently established domestic case-law under Article 137 of the Criminal Code? Was the interpretation of that notion, as it was applied by the Russian courts in the applicant's case, sufficiently accessible and foreseeable for the applicant?

2. Was there a violation of Article 10 of the Convention in the present case? Was the interference with the applicant's right to receive and impart information "prescribed by law" and also "necessary in a democratic society", taking into account in particular the scholarly nature of his research?