



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

27 January 2009

THIRD SECTION

Application no. 47938/07
by Lilija TALMANE against Latvia
lodged on 10 October 2007

STATEMENT OF FACTS

THE FACTS

The applicant, Ms Lilija Talmane, is a Russian national who was born in 1966 and lives in Cēsvaīne, Latvia.

A. The circumstances of the case

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

On 17 November 2006 the Madona District Court found the applicant guilty of having violated traffic regulations, causing moderate bodily injury to a victim. The court ordered the applicant to perform 100 hours of community service and suspended her driving licence for a year. In establishing the applicant's guilt, the court relied on the incriminating statements of the victim and two witnesses and other evidence, including a medical expert opinion on the bodily injuries caused to the victim.

The applicant appealed against the judgment of the Madona District Court to the Criminal Chamber of the Vidzeme Regional Court, stating, *inter alia*, that the first instance court had failed to order an inspection and a technical examination of her vehicle, although she had requested that during the proceedings.

On 13 February 2007 the Criminal Chamber of the Vidzeme Regional Court examined the applicant's appeal. The court upheld the judgment of the first instance court, without suspending the applicant's driving licence for a year.

On 8 March 2007 the applicant submitted a cassation appeal to the Senate of the Supreme Court. She contested the judgment of the Criminal

Chamber of the Vidzeme Regional Court as unfounded, alleging that the court had breached procedural requirements. According to her, the Vidzeme Regional Court had, *inter alia*, failed to:

- carry out a confrontation, although there were discrepancies in the witness' statements forming the only evidence in the case (Article 157 of the Criminal Procedure Law);
- order an inspection of her vehicle (Article 159 of the Law on Criminal Procedure);
- order an investigative experiment (Article 171 of the Law on Criminal Procedure); and
- order a technical examination of her vehicle (Article 193 of the Law on Criminal Procedure).

The applicant maintained that the evidence in the case was not sufficient to establish her liability and thus the appeal court had acted contrary to Articles 19 §§ 2 and 3, 520 § 1, 157, 159, 163, 171 and 193 of the Law on Criminal Procedure.

On 11 April 2007 the Senate of the Supreme Court dismissed the applicant's cassation appeal, pursuant to Article 573 of the Law on Criminal Procedure, since, according to the court, "[it] was not substantiated by any fundamental infringement of the Criminal Law or the Law on Criminal Procedure". The court also stated that it was not within its tasks to re-examine evidence, obtain evidence or explain the factual circumstances of the case.

B. Relevant domestic law

Pursuant to Article 19 §§ 2 and 3 of the Law on Criminal Procedure (*Kriminālprocesa likums*), an accused is not under an obligation to prove his innocence and all reasonable doubts as to his guilt have to be evaluated in his favour.

Article 157

(1) Confrontation is the simultaneous examination of two or more persons who have been previously examined and which is carried out if there are substantial contradictions in the previous testimonies of such persons.

(2) Any persons previously examined may be confronted, regardless of the procedural status of such persons.

Article 159

(1) An inspection is an investigative action during the course of which the performer of the investigative action directly detects, determines, and records the features of an object, if the possibility exists that such object is related to the criminal offence being investigated.

(2) In order to find traces of a criminal offence, and to ascertain other significant conditions, a visual inspection may be performed of the site of the event, the terrain, the premises, vehicle, item, document, corpse, animal, or another object.

Article 163

(1) If terrain, premises, a vehicle, or an object are related to a committed criminal offence, an inspection of such terrain, premises, vehicle, or object may be performed.

Article 171

An investigative experiment is an investigative action whose content is the conducting of special tests in order to ascertain whether an event or activity could have occurred under certain conditions or in a certain way, and also in order to acquire new information, and examine previously acquired information, regarding the conditions that have or may have significance in a case.

Article 193

An expert examination is an investigative action performed by one or several experts under the assignment of a person directing the proceedings, and the content of which is the study of objects submitted to the expert examination for the purpose of ascertaining facts and circumstances significant to criminal proceedings, regarding which the conclusion of the expert is provided.

Article 520

(1) A court shall render a judgment of conviction if the guilt of the accused in the criminal offence has been proven during the course of the trial.

Article 573

The legality of an adjudication shall be examined in accordance with cassation procedures only in the case where the action expressed in the cassation complaint or protest has been substantiated with reference to a violation of the Criminal Law or a substantive violation of this Law.

Article 575

(1) The following are substantial violations of the Law on Criminal Procedure that bring about the revocation of a court adjudication:

- 1) a court has adjudicated a case in an unlawful composition;
- 2) circumstances have not been complied with that exclude the participation of a judge in the adjudication of a criminal case;
- 3) a case has been adjudicated in the absence of the accused or persons involved in the proceedings, if the participation of the accused and such persons is mandatory in accordance with this Law;
- 4) the right of the accused to use a language that he or she understands, and to have the assistance of an interpreter, has been violated;
- 5) the accused was not given the opportunity to make a defence speech or was not given the opportunity to have the last word;
- 6) a case does not have the minutes of a court session, if such minutes are mandatory;
- 7) in rendering a judgment, the secrecy of court deliberations has been violated.

(2) The expulsion of an accused or victim from a courtroom may be recognised as a substantial violation of this Law, if the expulsion was unjustified, and such expulsion

has substantially restricted the procedural rights of such persons, and, therefore, led to the unlawful adjudication.

(3) Other violations of this Law that led to an unlawful adjudication may also be recognised as substantial violations of this Law.

COMPLAINT

The applicant complains under Article 6 §§ 1 and 2 of the Convention that the refusal of the Senate of the Supreme Court to examine her cassation appeal on its merits infringed her right to a fair hearing and the presumption of innocence.

QUESTIONS TO THE PARTIES

1. Was the refusal of the Senate of the Supreme Court to examine the applicant's cassation appeal on its merits sufficiently reasoned in the circumstances of the present case, as required by Article 6 § 1 of the Convention?

2. Does the Supreme Court draw a distinction in its practice between inadmissible appeals and those that do not disclose a fundamental breach of procedure? If so, how is that distinction operated?