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Journalistic freedom in Russia – the case of Lejava v. Russia

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Everyone remembers the horrific events which occurred in Beslan on 1 September 2004. Civilized world society was shocked by the ongoing events, which was the main topic of news programmes of most leading broadcasting companies around the world. Broadcasters and news agencies sent their journalists on assignment to obtain and impart information about the events in Beslan. The incident provoked huge interest in neighbouring countries such as Georgia and one of the leading broadcasting companies in Georgia, “Rustavi 2”, sent on an assignment to Beslan its journalist, Mrs. Nana Lejava, in order to collect information for news programmes.

On 4 September 2004 an operation was carried out by Russian Special Forces, after which Georgian journalists were able to obtain interviews from hostages released as a result of the operation. As a result, Nana Lejava produced several tapes of interviews with former hostages. During this process, the Georgian journalist was arrested and deprived of her camera and tapes, with all the materials recorded. Mrs. Lejava was taken to the preliminary detention centre of the FSB in Vladikavkaz, and there she was charged with unlawfully crossing the Georgian-Russian border. Mrs. Lejava and her camera operator were deprived of their passports - with loose leaves confirming that they were registered in Kazbegi, a region of Georgia neighbouring the Russian border at northern Ossetia. Pursuant to an agreement between the Georgian and Russian authorities, citizens of Georgia residing and registered in the Kazbegi region enjoy the right of a simplified crossing of the border, at the Larsi checkpoint. While in detention, Mrs Lejava and her cameraman were entirely isolated and held completely incommunicado. Mrs. Lejava was denied access to representatives from the Georgian Consulate. Subsequently, Russian lawyers hired by her company, “Rustavi 2”, were also denied the right to visit the applicant.

On 6 September 2004, the District Court prolonged Mrs Lejava’s detention for up to 10 days. Within the isolation of the FSB, the applicant was subjected to medical research without her consent. After a series of interrogations conducted by the FSB investigators, Mrs. Lejava was given a psychotropic substance (Benzodiazepam) in her coffee in order to break her moral resistance. She remembers vaguely that after drinking her coffee she was strictly questioned by

two unknown persons who were shouting at her. Following the poisoning, the applicant slept for 25 hours and afterwards complained of feeling giddy, distemper, suffering from a dull headache and retching. On 9 September 2004 the criminal case against Mrs. Lejava was terminated and she and the cameraman were released due to lack of evidence. The FSB representatives escorted the Georgian journalists to the border.

The European Court case

As a result of these events, Mrs Lejava has lodged a complaint with the European Court of Human Rights, arguing that her rights under Articles 3, 5, 6, 10 and 13 have been violated. The case was lodged on her behalf by the Georgian Young Lawyers' Association (GYLA). The applicant submits that during her detention she was subjected to treatment contrary to Article 3, with grave negative consequences for physical and mental health. Lejava alleges that the very fact of giving her a psychotropic substance in her coffee without her consent, and poisoning her, constituted inhuman and degrading treatment. The allegations of the applicant are corroborated by the conclusion of senior Georgian professors and doctors from the Institute of Radiology and Interventional Diagnostics of the Georgian Academy of Sciences. The applicant also submits that there have been violations of several provisions of Articles 5 and 6 of the European Convention. First and foremost, the applicant emphasizes the fact that in detention she was held incommunicado. Mrs. Lejava had no opportunity even to make a telephone call to the broadcasting company or to inform any other person. Neither representatives from the Georgian Consulate, nor lawyers from the Moscow Bar Association, who had been to see the broadcasting company "Rustavi 2", were given access to the applicant. Thus, Mrs. Lejava was completely deprived of the opportunity to have adequate facilities for the preparation of her defence or the opportunity to defend herself through legal assistance of her own choosing. Several times she was questioned without having the benefit of any prior legal advice. Despite the fact that the applicant objected and requested the attendance of the lawyers hired by "Rustavi 2" before the district court, the authorities designated her a lawyer.

The applicant also submits that even after her release on 9 September 2004, she was deprived of the opportunity to stay on Russian territory to meet her Russian lawyers for the purpose of instigating proceedings against those who gave her psychotropic substances, to challenge the refusal of FSB representatives to allow access to the consulate representatives, to challenge the decision of the investigative authorities to deny her lawyers of her own choosing and to challenge the legality of her detention. Mrs Lejava therefore further alleges that there has been a violation of Article 5(4) on the basis that the applicant lacked procedural guarantees and had no possibility to undergo legal consultation with the lawyer of her own choosing and prepare argumentation for the court proceedings dealing with the question of her detention. The applicant alleges that the fact that she was denied the possibility of preparing her defence through lawyers of her own choosing meant that the judicial proceedings were not adversarial or fair and therefore violated her rights enshrined both by Articles 6(1) and 6(3)(c).

The applicant also argues that there has been a violation of Article 10, as she was prevented from obtaining information and interviews from hostages of the Beslan terrorist atrocity. She alleges that after the operation had been carried out by Russian special forces, there was no need to confiscate the recorded tapes and camera. The applicant was only obtaining interviews from hostages for the broadcasting company which sent her on the assignment. Mrs. Lejava submits that the Russian authorities were endeavoring to conceal the real and objective information on hostages and the number of people who unfortunately died during the anti-terrorist operation. Thus, the interference carried out by the Russian authorities was absolutely

disproportionate to the legitimate aim pursued and was not necessary in a democratic society.

Finally, the applicant argues that she lacked an effective remedy before the Russian courts in respect of these various breaches of the Convention, in violation of Article 13. It is suggested that she clearly had no access to an effective remedy because of the following: she was held incommunicado; she was denied access to the representatives of the consulate of her state; she was refused the right to be defended by the lawyers of her own choosing; she did not have the opportunity to meet her Russian lawyers and to obtain legal advice and challenge the conduct of the authorities even after her release, and she was forced to leave Russia on the day of her release. For these reasons the applicant has requested the European Court to declare that she was not obliged to exhaust domestic remedies, as the Russian authorities had deprived her in practice of the right and opportunity to refer to any judicial or supervisory authorities and challenge the violation of her rights guaranteed by the European Convention.

Mrs. Lejava's complaint is currently pending before the European Court of Human Rights.