

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT DYUNDIN v. RUSSIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Dyundin v. Russia* (application no. 37406/03).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded Mr Dyundin 59 euros (EUR) in respect of pecuniary damage, EUR 1,000 in respect of non-pecuniary damage and EUR 1,100 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Vyacheslav Alekseyevich Dyundin, is a Russian national who was born in 1952 and lives in Orsk (Russia). He is a journalist.

On 21 August 2002 he published an article in issue no. 128\382 of the *Orskiy Vestnik* newspaper containing an interview with two former suspects in a theft case who alleged that the police had beaten them to extract confessions. The interview was followed by the applicant's comment denouncing the authorities' failure to investigate the allegations of ill-treatment and bring those responsible to justice.

The senior operational police officer at the police station where the ill-treatment had allegedly occurred sued the applicant and the newspaper's founder for defamation. The police officer's action was granted in part and he was awarded 2,000 Russian roubles (RUR) (about 70 EUR) and costs. This judgment was upheld on appeal.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 October 2003.

Judgment was given by a Chamber of seven judges, composed as follows:

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Josep **Casadevall** (Andorran), *President*,
Elisabet **Fura-Sandström** (Swedish),
Boštjan M. **Zupančič** (Slovenian),
Anatoly **Kovler** (Russian),
Alvina **Gyulumyan** (Armenian),
Luis **López Guerra** (Spanish),
Ann **Power** (Irish), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

Mr Dyundin complained that his freedom of expression had been infringed, in breach of Article 10.

Decision of the Court

Article 10

It had transpired from the Government's submissions that the domestic courts had attached such preponderant weight to the findings of the prosecutor's inquiry into the suspects' allegations of ill-treatment and the refusal to bring criminal proceedings against the policemen that no evidence produced by the applicant could have convinced them of the veracity of the statements published by him. The Court recalled in this respect that the standard of proof for establishing the well-foundedness of a criminal charge by a competent authority could hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern.

The Court was therefore not satisfied that the Russian courts had given relevant and sufficient reasons for dismissing the evidence produced by the applicant or had based their decisions on an acceptable assessment of relevant facts. In the Court's view, the body of evidence available provided sufficient factual basis for the allegation of police brutality. Nor was the Court able to accept the Government's argument that it was not permissible for the applicant to publish the allegations of ill-treatment after the authorities had refused to bring criminal proceedings against the police officers. The applicant had mentioned in his article that the prosecutor's office had refused to open an investigation into the claims of ill-treatment made by the two suspects. He had criticised the authorities for their passive attitude to the credible allegations of mistreatment of criminal suspects, thereby expressing his opinion on a matter of public concern.

Taking into account in particular, the role of journalists and the press in imparting information and ideas on matters of public concern, the Court found that the applicant's publication had been fair comment on a matter of public concern resting on a sufficient factual basis and that it had not exceeded the acceptable limits of criticism. The judgments in the defamation action against the applicant had given rise to a breach of his right to freedom of expression since, by omitting to perform a balancing exercise between the need to protect

¹ This summary by the Registry does not bind the Court.

the plaintiff's reputation and the applicant's right to divulge information on issues of general interest, by refusing to distinguish between the applicant's own speech and his quotation of statements made by others during an interview, and by failing to make an acceptable assessment of the relevant facts, the Russian courts had not applied standards which were in conformity with the principles embodied in Article 10 and had not adduced "relevant" and "sufficient" reasons justifying the interference at issue. The domestic courts had therefore overstepped the narrow margin of appreciation afforded to them with regard to restrictions on debates on matters of public interest and that the interference had not been "necessary in a democratic society".

There had accordingly been a violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.