

Press release issued by the Registrar

**CHAMBER JUDGMENT
GRINBERG v. RUSSIA**

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Grinberg v. Russia* (application no. 23472/03).

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 the applicant 120 euros (EUR) for pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Isaak Pavlovich Grinberg, is a Russian national who was born in 1937 and lives in Ulyanovsk, Russia.

On 6 September 2002 the *Guberniya* newspaper published an article by the applicant about General V.A. Shamanov, who had been elected Governor of the Ulyanovsk Region, claiming that he was “waging war” against the independent press and journalists. In the article he also referred to Mr Shamanov’s support for a colonel who had killed a 18-year-old Chechen girl and concluded the piece with the words “no shame and no scruples!”.

On 10 September 2002 Mr Shamanov brought a civil defamation action against the applicant, the editor’s office and the newspaper’s founder – the Fund for Assistance to Disenfranchised Communities *Goryachev-Fond*. He claimed that the assertion alleging that he had “no shame and no scruples” was untrue and damaging to his honour and reputation.

On 14 November 2002, Leninskiy District Court of Ulyanovsk found that the assertion that Mr Shamanov had no shame and no scruples impaired his honour, dignity and professional reputation and that the applicant had not proved the truthfulness of his claim. The court held the fund liable for RUR 5,000 (EUR 200) and the applicant liable for RUR 2,500 (EUR 100) in respect of non-pecuniary damage to Mr Shamanov. The fund was also ordered to publish, by way of rectification, the operative part of the judgment.

¹ Under Article 43 of the European Convention on Human Rights, 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.

The applicant appealed, pointing out that the district court had failed to distinguish opinions from statements. He submitted that his right to hold and impart opinions was guaranteed by Article 29 of the Russian Constitution and that the contested statement was his personal opinion and a commonly-used Russian idiom.

On 24 December 2002 Ulyanovsk Regional Court upheld the judgment of 14 November 2002, finding that: “The arguments... about the court’s confusion of the term ‘opinions’ and the term ‘statements’ (*сведения*) cannot be taken into account because [the applicant’s] opinion had been printed in a public medium and from the moment of publication it became a statement”.

The applicant’s subsequent attempts to initiate supervisory review proceedings proved unsuccessful.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 June 2003 and declared admissible on 28 October 2004.

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

Christos **Rozakis** (Greek), *President*,
Peer **Lorenzen** (Danish),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Anatoli **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani), *judges*,

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

3. Summary of the judgment¹

Complaint

The applicant complained of a violation of his right to impart information and ideas, relying on Article 10 of the Convention.

Decision of the Court

The Court noted that it was common ground between the parties that the judgments pronounced in the defamation action constituted an “interference” with the applicant’s right to freedom of expression. Neither was it contested that the interference was “prescribed by law” – notably Article 152 of the Civil Code – and “pursued a legitimate aim”, that of protecting the reputation or rights of others. The dispute in the case related to whether the interference was “necessary in a democratic society”, this is, whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the

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

legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient.

One factor of particular importance for the Court's determination in the applicant's case was the distinction between statements of fact and value judgments. The domestic courts held the applicant liable for his failure to prove the truthfulness of his assertion that Mr Shamanov had "no shame and no scruples".

The Court noted that the Russian law on defamation, as it stood at the material time, made no distinction between value judgments and statements of fact, as it referred uniformly to "statements" («сведения») and proceeded from the assumption that any such statement were amenable to proof in civil proceedings. Irrespective of the actual contents of the "statements", the person who disseminated them had to satisfy the courts as to their truthfulness. Having regard to those legislative provisions, the domestic courts did not embark on an analysis of whether the applicant's contested statement could have been a value judgment not susceptible of proof.

However, the Court reiterated that, while the existence of facts could be demonstrated, the truth of value judgments was not susceptible of proof. The requirement to prove the truth of a value judgment was impossible to fulfil and an infringement of freedom of opinion, a fundamental part of the right secured by Article 10.

The Court considered the contested comment a quintessential example of a value judgment. The finding of the applicant's liability for the pretended damage to Mr Shamanov's reputation was solely based on his failure to show that Mr Shamanov had indeed lacked "shame and scruples", which was impossible to prove.

It was also relevant for the Court's assessment that the contested statement was made in the context of an article concerning an issue of public interest, that of freedom of the media in the Ulyanovsk region. It criticised the conduct of the regional governor, elected by a popular vote; in other words, a professional politician in respect of whom the limits of acceptable criticism were wider than in the case of a private individual. The facts which gave rise to the criticism were not contested and the applicant expressed his view in an inoffensive manner.

The domestic courts did not convincingly establish any pressing social need for putting the protection of the politician's reputation above the applicant's right to freedom of expression and the general interest in promoting that freedom where issues of public interest were concerned. In particular, it did not appear from the domestic courts' judgments that the applicant's statement affected Mr Shamanov's political career or his professional life.

In conclusion, the Court found that the interference complained of was not "necessary in a democratic society" and that there had therefore 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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.