

Press release issued by the Registrar

**CHAMBER JUDGMENT
KRASULYA v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Krasulya v. Russia* (application no. 12365/03).

The Court held unanimously that there had been:

- a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights; and,
- a **violation of Article 6 § 1** (right to a fair trial) of the Convention.

Under Article 41 (just satisfaction), the Court awarded the applicant 4,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The applicant, Vasiliy Aleksandrovich Krasulya, is a Russian national who was born in 1952 and lives in Stavropol (Russia) where he is editor-in-chief of a regional newspaper “Noviy Grazhdanskiy Mir”.

On 4 January 2002 an article was published in “Noviy Grazhdanskiy Mir” under a pseudonym lamenting the majority decision of the Stavropol town legislative body to change the appointment procedure of the town mayor, the mayor no longer being elected by the town’s residents but by the town’s legislative body. The article further alleged that that decision had been made under pressure from Mr Chernogorov, governor of the Stavropol region and the applicant’s competitor in the 2000 mayoral elections. The article referred to the governor as “loud, ambitious and completely incapable”, inferred that he had had a narrow escape at the 2000 election and that he had lobbied the town’s legislative body to change the appointment procedure.

On 5 February 2002 Governor Chernogorov brought criminal proceedings against Mr Krasulya for defamation, claiming that the article was libellous and damaged his honour, dignity and professional reputation, notably concerning what he considered to be the article’s allegation of bribery.

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.

An expert linguistic examination of the publication was carried out on 18 March 2002 which found that, although the article conveyed a negative attitude towards the governor's managerial abilities, it did not contain any allegations about the governor violating the law or make any statements damaging his professional reputation.

On 12 September 2002 Oktyabrskiy District Court of Stavropol found Mr Krasulya guilty of defamation but acquitted him of having publicly insulted a State official and gave him a one year's suspended prison sentence with six months' conditional probation. The linguistic report of 18 March was not taken into consideration on the grounds that the expert had no licence to carry out linguistic examinations. The district court further held that it was not possible to establish whether Mr Krasulya himself had written the article but that he, as editor of the newspaper, was responsible for its publication.

Mr Krasulya appealed against his conviction to Stavropol Regional Court relying on Article 10 of the Convention. He also complained about the refusal to accept the linguistic report on the pretext that the expert did not have the required licence, given that that was not required under domestic law.

Ultimately, the judgment of 12 September was upheld on appeal, the applicant's complaints concerning the linguistic report not being addressed.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 4 April 2003 and declared admissible on 9 December 2004.

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

Christos **Rozakis** (Greek), *President*,
Nina **Vajić** (Croatian),
Anatoli **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 10, the applicant complained about the criminal proceedings brought against him for defamation. He further alleged that the court of first instance had unlawfully rejected the linguistic report about the article and that the appeal court had failed to address that issue, in breach of Article 6 § 1.

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

Decision of the Court

Article 10

The Court noted that both parties agreed that the applicant's conviction amounted to an "interference" with his right to freedom of expression, was "prescribed by law" and "pursued a legitimate aim".

Concerning whether the issue was necessary in a democratic society, the Court found that, Mr Krasulya being a journalist and editor-in-chief, any restriction on his journalistic freedom had to be convincingly argued, and that, Mr Chernogorov, being a politician, knowingly and inevitably lay his words and actions open to public scrutiny and had to display a greater degree of tolerance to criticism.

The Court reiterated that there was very little scope under Article 10 for restriction of political debate on questions of public interest, and that the article's subject matter did indeed raise important issues of public concern and contributed to an on-going political debate: it concerned the decision of the town legislative body to abolish mayoral elections and the suggestion that Mr Chernogorov had unlawfully interfered in that process.

The Court further observed that the existence of facts could be proved whereas the truth of value judgments could not. The Russian courts characterised the article as containing statements of fact and rejected Mr Krasulya's argument that they were value judgments.

In that connection, the Court found that it was difficult to determine whether the statements concerning the governor's influence had been a statement of fact or a value judgment and could not agree with the domestic courts' interpretation that the article accused Mr Chernogorov of bribery, finding that it only alluded to his influence and, through the use of the future tense, had made suppositions rather than stating facts. Moreover, the Court found that it was undisputed that the governor did attend the legislative body's session and did try to persuade them to vote for the decision. Therefore the published article had a sufficient factual basis.

Further to that, the Court considered that the comments on the governor's managerial abilities and his miraculous escape from defeat in elections were subjective value judgments and could obviously not be proved.

The Court also found that the article did not resort to offensive language and did not go beyond the generally accepted degree of exaggeration or provocation.

Finally, the Court held that Mr Krasulya's suspended prison sentence was disproportionately severe because it effectively restricted his journalistic freedom through the threat hanging over him of being sent to prison if he committed any further related offence within the following six months.

The Court therefore held that there had been a violation of Article 10.

Article 6 § 1

Considering that the linguistic report had been an important piece of evidence which could have been decisive in determining the criminal nature of the statements in question, the Court held that the appeal court's silence as to the lawfulness of the report being rejected, making it impossible to ascertain whether it simply neglected to deal with Mr Krasulya's complaint or whether it intended to dismiss it and for what reasons, was inconsistent with the concept of a fair trial and, as a consequence, found that there had been a violation of Article 6 § 1.

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

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

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.