



Defamation proceedings against newspaper for critical article about use of public funds unjustified

In today's Chamber judgment in the case **Novaya Gazeta V Voronezhe v. Russia** (application no. 27570/03), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned defamation proceedings against the newspaper's editorial board for an article concerning alleged abuses by public officials.

Principal facts

The applicant is the editorial board of the *Novaya Gazeta v Voronezhe* newspaper, a limited liability company under Russian law registered in Voronezh (Russia). In April 2002, the newspaper published an article which concerned abuses and irregularities allegedly committed by the mayor of Novovoronezh and other municipal officials. It also made references to services supplied by a local businessman. The article relied on and quoted from a town administration audit report.

The mayor, two of the municipal officials and the businessman lodged an action for defamation against the newspaper before the district court, claiming that the article contained untrue information which was damaging their reputation. Since the newspaper had at its disposal only ordinary copies of the audit report, having no evidentiary value, the editorial board asked the court to obtain the originals, which the court refused. The editorial board thus sought itself to obtain the originals from a number of authorities, without success. Its second request for a court injunction requiring the relevant authorities to submit the original documents was equally refused.

In its October 2002 judgment, the court allowed the plaintiffs' action, holding in particular that the article implied the embezzlement of funds by the mayor and the businessman, of which the newspaper had failed to adduce any proof. The court pointed out that no criminal proceedings against the plaintiffs in connection with the audit of some of the financial matters in question had been opened and that the article thus lacked a factual basis. It further held that the article's allegation that the mayor had discontinued his membership in the Communist party was not true. The court ordered the editorial board to pay compensation to the plaintiffs and to publish an apology. In February 2003, the regional court upheld the judgment, and the editorial board subsequently paid the required compensation and published an apology in the *Novaya Gazeta v Voronezhe*.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

The editorial board complained that its rights under Article 10 had been violated.

The application was lodged with the European Court of Human Rights on 26 July 2003.

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

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), *Judges*,

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

Decision of the Court

Article 10

It was not disputed between the parties that the civil proceedings for defamation constituted an interference with the newspaper's freedom of expression, that this interference was in accordance with Russian law, and that it pursued the legitimate aim of protecting the plaintiffs' reputation.

As regards the question whether that interference was "necessary in a democratic society" for the purpose of Article 10, the Court underlined that, as a politician acting in his public capacity, the mayor inevitably and knowingly laid himself open to close scrutiny by journalists and the public at large. That also applied, although to a lesser extent, to the other municipal officials and it applied to the businessman where the proper use of public funds was concerned. Given that the article mainly concerned the management of those funds, indisputably a matter of general interest about which the local population had the right to be informed, the plaintiffs thus ought to have shown a greater degree of tolerance to criticism in a public debate than a private individual.

The Court was not persuaded that the impugned allegation that the mayor had discontinued his membership of the Communist Party, while clearly being a contestable factual statement, could be capable of damaging his reputation, given that neither adherence to the Communist Party nor resigning from it constituted an offence under Russian law.

The remainder of the impugned statements mostly reflected the journalist's perception of the distribution of the town's funds. Certain expressions used in the article might be considered provocative, but they did not overstep the permissible degree of exaggeration. Given that they were comments on a matter of public interest, they had to be regarded as value judgments rather than statements of fact. However, the domestic courts had failed to make that distinction in their analysis, which was attributable to the fact that the Russian law on defamation at the time did not differentiate between the two, as the Court had found in previous cases.

The Court was struck by the fact that neither of the two domestic courts tried to assess whether the information presented in the article had any factual basis by obtaining the original or a certified copy of the audit report. In requiring the editorial board to prove the truth of the statements made in the article while at the same time depriving it of an effective opportunity to adduce evidence to support those statements, the domestic

courts had overstepped their margin of appreciation. The Court could further not follow the logic implied in their reasoning that, in the absence of criminal prosecution of the public officials, no media could have published an article linking them to instances of alleged misuse of public funds without running the risk of being successfully sued for defamation.

The Court concluded that the interference with the newspaper's freedom of expression had been disproportionate to the aim pursued and had thus not been "necessary in a democratic society", in violation of Article 10.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Russia was to pay the applicant 866 euros in respect of pecuniary damage.

The judgment is available only in English.

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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.