



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF DZHAVADOV v. RUSSIA

(Application no. 30160/04)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of Dzhavadov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 September 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30160/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Valeriy Mamedovich Dzhavadov (“the applicant”), on 21 June 2004.

2. The applicant was represented by Ms M. Ledovskikh, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the Russian authorities had refused to register his newspaper under the title *Letters to the President*, thereby preventing him from publishing it.

4. On 1 April 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and lives in Belgorod.

7. On 23 October 2002 the applicant filed an application with the Ministry for the Press, Television and Radio Broadcasting and Mass Communications (hereafter “the Ministry”), for registration of a newspaper entitled *Letters to the President* (*Письма Президенту*).

8. By letter of 23 January 2003, the deputy head of the Ministry's Department for Registration and Licensing informed the applicant that, judging by its title, the newspaper could be perceived as an official bulletin published by a competent State authority. As that was likely to mislead potential readers, the applicant was advised to “obtain the approval of the competent authorities”.

9. The applicant replied to the deputy head and to the Minister, insisting that either the newspaper be registered or an official refusal be issued.

10. On 3 July 2003 the applicant challenged the Ministry's failure to act before the Tverskoy District Court of Moscow. He claimed that he had satisfied the legal requirement to be the founder of a newspaper and that the Ministry's procrastination was unlawful.

11. On 9 July 2003 the applicant received the Ministry's official refusal to register the newspaper, based on two grounds. First, it was said that the information in the application was “inconsistent with the real state of affairs” (*сведения, не соответствующие действительности*) because the newspaper purported to cover a broader range of subjects than its title suggested. Second, the Ministry considered that only the Administration of the President of the Russian Federation could consent to the publication of letters to the President or be a founder of a newspaper with such a title.

12. On 15 July 2003 the applicant amended his claim, seeking to have the Ministry's refusal overturned.

13. On 3 September 2003 the Tverskoy District Court of Moscow upheld the refusal on the following grounds:

“... The court considers it possible to agree with the argument [of the Ministry] that the title of a newspaper denotes its specialisation which [in this case] could be perceived by the readership as an official publication founded by a competent State body ... which prepares the President's direct answers to incoming letters from citizens.

The court considers that the above fact may give rise to incompatibility of the actual specialisation of the publication under the title *Letters to the President* with the current legislation. In this connection the court concludes that the Ministry's argument as regards the specialisation of the newspaper in question is a sufficient ground to

refuse its registration ... under section 13(1)(2) of the Mass Media Act, which does not violate [the applicant's] rights to found a newspaper and to choose its title ...”

14. On 22 December 2003 the Moscow City Court upheld the judgment of the district court, endorsing the above reasoning. The court also held:

“...the [first-instance] court rightly concluded that [the applicant] had failed to comply with the time-limit for bringing court proceedings without a valid excuse. Having received on 23 January 2003 the refusal to register his newspaper, he lodged his claim before a court only on 3 July 2003 ...

The expiry of the three-month time-limit for lodging such claim is an independent reason for rejecting the applicant's claims (Article 256 § 2 of the Code of Civil Procedure).”

II. RELEVANT DOMESTIC LAW

A. The Mass Media Act (no. 2124-I of 27 December 1991)

15. A newspaper may be founded by an adult who has not been convicted or declared legally incapable (section 7). The editor's office may begin functioning upon registration of a newspaper; an application for registration is to be examined within one month of being lodged (section 8).

16. An application for registration must specify, in particular, the title of the newspaper and an approximate list of subjects and/or specialisation (section 10(2) and (7)).

17. Registration may only be refused on the following grounds: (1) the application is lodged by an individual who cannot be a founder; (2) the information in the application is “inconsistent with the real state of affairs”; (3) the title, range of subjects and/or specialisation represent an abuse of the freedom of mass media as defined in section 4; (4) if an existing newspaper with the same title has been registered earlier (section 13).

18. Section 4 prohibits using the mass media for the commission of criminal offences, the disclosure of State secrets or protected information, for extremist activities, or for the dissemination of pornography or the promotion of violence and cruelty.

B. The Code of Civil Procedure

19. An individual may bring a complaint within three months of the date when he or she became aware of a violation of his or her rights or freedoms (Article 256 § 1). The court must examine the reasons for any failure to comply with the three-month period and may reject the complaint on that ground (Article 256 § 2).

20. If the complaint is rejected owing to failure to comply with the time-limit for lodging the complaint before a court without a valid reason, the court's reasoning must be limited to the indication of the circumstances confirming the above (Article 198 § 4).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicant complained that the refusal to register his newspaper under the title *Letters to the President* had violated his freedom of expression under Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ...”

A. Admissibility

1. Government's objection as to the date of introduction of the application

22. The Government submitted that there was no proof that this application had been introduced on 21 June 2004, the date indicated by the applicant on his application form. They contended that it should be considered as having been lodged on 13 August 2004, which was the date of its receipt by the Court's Registry. Thus, it was introduced more than six months after the date of the final decision in the applicant's case dated 22 December 2003.

23. The applicant submitted a copy of dispatch and delivery receipts indicating 21 June 2004 as the date when the application form had been sent to the Court.

24. The Court finds on the basis of the documentary evidence produced by the applicant that the date of introduction had indeed been 21 June 2004,

as indicated in the application form. As the final domestic decision had been issued on 22 December 2003, the applicant lodged the application within six months of it. The Government's objection must therefore be dismissed.

2. Government's objection as to the non-exhaustion of domestic remedies

25. The Government pointed out that the Tverskoy District Court of Moscow decided that the applicant's claims had been submitted out of time. By failing to comply with the statutory time-limit, the applicant had deprived the domestic courts of an opportunity to examine the substance of his claims.

26. The applicant explained that he had lodged a civil action challenging the Ministry's failure to issue a formal decision on the registration of the newspaper. However, he had amended his claims once the formal refusal had been issued. Therefore, he could not be said to have failed to comply with the statutory time-limit. The substance of his claims was examined in detail by the courts at two instances.

27. The Court observes that both the District and City Courts took cognisance of the merits of the applicant's claims and rejected them as unfounded. Their reasoning was not confined to the compatibility of the applicant's complaint with the formal requirements (see paragraph 20 above). The Court reiterates that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001, and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000). The Court finds that since the domestic courts have examined the substance of the applicant's complaint, he cannot be said to have failed to exhaust domestic remedies. It follows that the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

3. The Court's decision on the admissibility of the application

28. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

29. The Government accepted that the refusal to register the applicant's newspaper under the title *Letters to the President* amounted to an interference with his freedom of expression under Article 10 § 1 of the Convention. However, they contended that such title wrongly suggested that the newspaper was affiliated to the Administration of the President of the Russian Federation, the authority competent to deal with petitions from citizens. In addition to being misleading, the title did not reflect the newspaper's specialisation. They argued that the refusal to register the newspaper under such title aimed to protect the reputation or rights of others, namely those of the President and his Administration, and the rights of the population at large. In particular, such a refusal aimed to secure the public's right to receive replies to their petitions from the competent public authority. The applicant should have sought permission to use the reference to the President in the title of the newspaper. The Government conceded that the above matters were not regulated by the Mass Media Act but referred, by analogy, to the legislation on trade marks. They concluded that the applicant was, in any event, free to publish a newspaper under another title.

30. The applicant contended, first of all, that the refusal to register the newspaper under the suggested title amounted to an interference with his freedom to impart information and ideas. Such interference was not “prescribed by law” since the national law, including the Mass Media Act, did not permit refusal of registration for the reasons referred to by the Government. A newspaper title could not reasonably be defined as “true” or “false”, or be otherwise consistent with “the real state of affairs”. Furthermore, Russian law contained no clear requirement for strict coherence between the title of a newspaper and its specialisation. The applicant further argued that, even if it had been lawful, the refusal of registration was not “necessary in a democratic society”.

2. General principles

31. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 41). Article 10 protects not only the substance of information and ideas but also the means of their dissemination since any restriction on the means necessarily interferes with the right to receive and impart information (see *Öztürk v. Turkey* [GC], no. 22479/93, § 49, ECHR 1999-VI).

32. The exercise of the freedoms enshrined in paragraph 1 of Article 10, including the freedom to impart information, may be subject to certain “formalities” or “conditions” (see *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 40, ECHR 2005-I). Although Article 10 does not in terms prohibit the imposition of prior restraints on publications, the relevant law must provide a clear indication of the circumstances when such restraints are permissible, especially when they are to block publication of a periodical completely (see *Gawęda v. Poland*, no. 26229/95, § 40, ECHR 2002-II). The dangers inherent in prior restraints call for the most careful scrutiny (see *Observer and Guardian v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, p. 30, § 60).

3. Application of these principles to the instant case

33. The Court notes the parties' agreement that the refusal to register the newspaper under the suggested title constituted an “interference” with the applicant's freedom of expression as protected by Article 10 § 1. Such an interference gives rise to a breach of Article 10 unless it can be shown that it was “prescribed by law”, pursued one or more of the legitimate aims set out in paragraph 2 and was “necessary in a democratic society” to achieve such aims.

34. It must first be ascertained whether the interference complained of was “prescribed by law”.

35. The Court observes that one of the requirements flowing from the expression “prescribed by law” is the foreseeability of the measure concerned. A norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the person to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among others, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III; *Goussev and Marenk v. Finland*, no. 35083/97, § 53, 17 January 2006; and *Štefanec v. the Czech Republic*, no. 75615/01, § 44, 18 July 2006).

36. The degree of precision depends, to a considerable extent, on the content of the instrument at issue, the field it is designed to cover, and the number and status of those to whom it is addressed (see *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990, Series A no. 173, p. 26, § 68). A law which confers a discretion is not, in itself, inconsistent with the “prescribed by law” requirement, provided that the scope of the discretion and manner of its exercise are indicated with sufficient clarity to give adequate protection against arbitrariness (see *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports of Judgments and Decisions* 1996-II, pp. 496-97, § 31).

37. In the present case, the registration of newspapers was governed by the Mass Media Act. The domestic courts cited section 13 of that Act as the

legal basis for upholding the refusal to register the applicant's newspaper. That provision requires that the information in the application be consistent with "the real state of affairs". The courts found that the refusal of registration had been justified because the proposed title suggested that the newspaper was affiliated to the Administration of the Russian President, which was not true, and also because the newspaper purported to cover a broader range of subjects than its title suggested.

38. A similar situation has already been examined by the Court in the *Gawęda* case, in which it held that requiring the title of a magazine to embody truthful information is inappropriate from the standpoint of freedom of the press. The title of a periodical is not a statement as such, since its function is essentially to identify the given periodical on the press market for its actual and prospective readers (see *Gawęda*, cited above, § 43).

39. Furthermore, the Court has stressed that the requirement that the title of a newspaper reflect the "real state of affairs" should be based on a legislative provision which clearly authorised it. In the *Gawęda* case the Court found a violation of Article 10 of the Convention because the interpretation given by the courts introduced new criteria, which could not be foreseen on the basis of the text specifying situations in which the registration of a title could be refused (*ibid.*).

40. A similar situation obtains in the present case. The domestic courts inferred from the phrase "the real state of affairs" employed in section 13 of the Mass Media Act a discretion in favour of the registering authority to refuse registration where it considered that the title of a publication did not satisfy the test of truthfulness or conveyed a misleading impression. The Court considers that that extensive interpretation was not founded on any legal provision which clearly authorised it and was not reasonably foreseeable for the applicant. Therefore, the manner in which the "formalities" for registration were interpreted and applied to the applicant's exercise of his freedom of expression did not meet the "quality of law" standard under the Convention. In these circumstances, the Court finds that the interference with the applicant's rights was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention. Accordingly, it is not necessary to examine whether the other requirements laid down in paragraph 2 of Article 10 of the Convention have been met.

41. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

43. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government considered the amount claimed excessive and that the finding of a violation of Article 10 would constitute sufficient just satisfaction in the present case.

45. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards the applicant EUR 1,500, plus any tax that may be chargeable on that amount.

B. Costs and expenses

46. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court does not award anything under this head.

C. Default interest

47. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President