



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

FIRST SECTION

CASE OF OBUKHOVA v. RUSSIA

(Application no. 34736/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Obukhova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 34736/03) 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 two Russian nationals, Ms Yelena Mikhaylovna Obukhova and Mr Aleksey Mikhaylovich Nevinit syn, on 6 October 2003.

2. Ms Obukhova and Mr Nevinit syn were represented before the Court by Ms V. Fomina, counsel for the Zolotoye Koltso newspaper. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. Ms Obukhova and Mr Nevinit syn alleged a violation of the right to freedom of expression.

4. By a decision of 1 December 2005, the Court declared the complaint by Mr Nevinit syn inadmissible and the complaint by Ms Obukhova (“the applicant”) admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Yaroslavl. She is a journalist on the *Zolotoye Koltso* newspaper.

7. On 17 January 2003 the newspaper published an article by the applicant under the headline “A year later they impounded the car” («*Через год арестовали автомобиль*»). The article was prompted by the following letter written by a Ms P. and reproduced in italics in the opening passage of the article:

“On 22 September 2001 my husband... had a traffic accident. Ms Galina Borisovna Baskova, a judge of the [Yaroslavl] regional court, crashed into his car... The traffic police officers did not find us responsible and we calmed down. But the following year we received by registered mail a statement of claim, requesting that Ms Baskova be compensated for damage in the amount of 75,000 roubles, and an order for a charge on our property and our car issued by a judge. We had not been informed of the hearing and we consider that our civil rights were violated as we were convicted in our absence. We feel that Ms Galina Borisovna Baskova is taking advantage of her office and connections in the judiciary”.

8. The article related the versions of the traffic accident by Judge Baskova (as described in her statement of claim), by traffic police officers, by Mr and Ms P. and by eyewitnesses. It concluded as follows:

“So far the Zavolzhskiy District Court [of Yaroslavl] has held three hearings... The date of the next hearing is not fixed yet. Mr and Ms P. remember menacing words that Galina Borisovna [Baskova] uttered immediately after the traffic accident ‘You will buy me a new car anyway!’; they shudder but they will defend themselves to the very end.”

9. On 7 March 2003 Judge Baskova sued the newspaper, the applicant and Ms P. for defamation and refutation of untrue information contained in the statement “Baskova is taking advantage of her office and connections in the judiciary”.

10. On the same day Judge Baskova requested the court to order interim measures, and notably an interlocutory injunction on the newspaper to prevent publication of “any articles, letters or materials about the factual circumstances of the traffic accident of 22 September 2001, as well as about the court proceedings concerning that accident until they [had] finished”.

11. On the same day a judge of the Kirovskiy District Court of Yaroslavl issued a decision to indicate interim measures (*определение об обеспечении иска*). The decision endorsed the arguments put forward by Judge Baskova and read, in its entirety, as follows:

“The plaintiff has referred to the following circumstances. The article ‘A year later they impounded the car’ (*Zolotoye Koltso*, no. 9, 17 January 2003) was published before a decision on the merits of her claim for damages against Mr P. had been

issued, after the Zavolzhskiy District Court of Yaroslavl had suspended the proceedings on 9 December 2003 and commissioned a technical study at the defendant's request. The article ends with the assertion that Mr and Ms P. 'will defend themselves to the very end'. The plaintiff considers that further developments in the judicial proceedings – upon their resumption – may also be reported by the newspaper in such a manner as to confirm the damaging information and conclusion already disseminated by the author.

[The plaintiff] considers that under these circumstances a failure to indicate interim measures can impede the enforcement of the judgment [in the defamation claim]: otherwise, alongside with publication of a rectification of the information damaging to her, the newspaper would be entitled to continue publications stating the opposite view, which would undermine the judicial protection of her impaired rights.

Pursuant to Article 139 of the Civil [Procedure] Code of the Russian Federation, a court may, at a request of a party to the case, indicate interim measures if a failure to indicate them could impede the enforcement of a court judgment.

Having regard to the above, I consider that Ms Baskova's request is to be granted."

12. The District Court issued – with immediate effect – an interlocutory injunction worded as follows:

"To enjoin the editor's office of the Zolotoye Koltso newspaper from publishing any articles, letters or other materials written by anyone, which relate the factual circumstances of the traffic accident on 22 September 2001 with the participation of Ms Galina Baskova, Mr P. and Mr K., or the circumstances of the judicial proceedings on Ms Galina Baskova's claim for damages against Mr P. until such time as the present dispute has been resolved.

To serve a copy of the injunction on the bailiffs' service of the Kirov District of Yaroslavl, Ms P., the editor's office of the Zolotoye Koltso newspaper, the newspaper's reporter Ms Yelena Obukhova, and Mrs Galina Baskova."

13. On 7 April 2003 the Yaroslavl Regional Court dismissed the appeal against the injunction, finding as follows:

"The regional court considers that in the instant case a failure to indicate interim measures would impede not only the enforcement of the court judgment but also the examination of the [defamation] action.

The arguments in the appeal to the effect that the [injunction] violated the defendant's constitutional right to impart information cannot be taken into account as the prohibition only covers publication of materials concerning one specific traffic accident... Publication of materials about these facts before the judgment has been made would be contrary to the interests of the justice. The interim measures indicated by the court are proportionate".

14. On 29 April 2003 the Kirovskiy District Court gave judgment in the defamation claim. It did not accept the argument by the newspaper's lawyer that the contested statement was Ms P.'s subjective opinion which was evident from the introductory expression "we feel that". The court considered it to be "the author's allegation... about Ms Baskova's using her office and connections... in the framework of lodging her claim and

obtaining interim measures”. As the defendants could not prove the truthfulness of that statement, the court ordered publication of a rectification in the newspaper. On 26 June 2003 the Yaroslavl Regional Court upheld that judgment.

II. RELEVANT DOMESTIC LAW

15. The Code of Civil Procedure provides as follows:

Article 139. Grounds for application of interim measures

“At the request of a party to the case, a judge or a court may indicate interim measures. Such measures may be indicated at any stage of the proceedings if a failure to indicate them could impede or make impossible the enforcement of the court judgment.”

Article 140. Interim measures

“1. Interim measures may include:

...

(2) an injunction restraining the defendant from carrying out specific actions;

...

When necessary, a judge or a court may indicate any other interim measures that correspond to the purposes described in Article 139 of the Code...

...

3. Interim measures must be proportionate to the plaintiff’s claims.”

Article 144. Revocation of interim measures

“3. ...If the claim has been granted, interim measures remain effective until the judgment has been enforced.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

16. The applicant complained that the restriction on her right to publish materials concerning the traffic accident involving Ms Baskova was incompatible with 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Submissions by the parties

17. The applicant submitted that there had been no need to afford special protection to Judge Baskova, who had sued in her personal capacity. In both the defamation and compensation proceedings she had acted as an ordinary plaintiff rather than in her judicial capacity and the injunction had therefore not been required for maintaining the authority and impartiality of the judiciary. The authority of the judiciary would have been better served if proceedings had been transparent and the general public had been able to form an opinion on them. Furthermore, the scope of the interlocutory injunction had been greater than that of the defamation claim. Judge Baskova had only challenged the statement that she had used her office to her advantage, the remainder of the publication had not been contested. However, the injunction had prohibited any mention of the traffic accident or of the proceedings in which Judge Baskova had been involved. This created a paradoxical situation where the applicant had been prevented from reporting on ongoing civil proceedings which had been conducted in public and had been open to anyone. Obviously, such a broad prohibition had not been “necessary in a democratic society”.

18. The Government submitted that an interference with the applicant’s right to freedom of expression had been required for maintaining the authority of the judiciary, since it had been alleged that Judge Baskova had used her office to secure undue advantage in the civil proceedings. The domestic courts had determined that the reputation of Judge Baskova required heightened protection and thus the interference had pursued a “pressing social need”. The interim measure had been proportionate to the legitimate aim as it had been strictly limited in its scope and time. Having regard to the accusatory nature of the allegation contained in the publication, a failure to indicate interim measures could have led to further publications and greater damage to Judge Baskova’s reputation. Accordingly, the application of such interim measures had been of greater public importance than affording the applicant the possibility of “endless

stirring-up of doubts about circumstances which were simultaneously being examined in judicial proceedings”. Contrary to the applicant’s claim, the injunction had not affected the publicity of civil proceedings because they had been open to anyone wishing to attend them and also because the applicant had had a vested interest in their outcome. Furthermore, the Government referred to the Court’s finding to the effect that “the limits of permissible comment on pending ... proceedings may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of justice” (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 56, ECHR 2000-I). In the present case the Government considered that the purpose of the injunction had been the prevention of damage to Judge Baskova’s right to a fair trial and to her authority as a judge. The applicant could have unreasonably undermined the judge’s authority through her continued reporting on a dispute to which she had been a party and which was being considered by courts. If she had had doubts about the conduct of the judge, she could have applied to the judges’ qualification panel with a complaint.

B. The Court’s assessment

19. 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). Subject to paragraph 2, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. Given the essential role played by the press in a democratic society, its duty is to impart – in a manner consistent with its duties and responsibilities – information and ideas on all matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them (see, among many other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III, and *Colombani and Others v. France*, no. 51279/99, § 55, ECHR 2002-V).

20. As to the existence of an interference with the applicant’s right to freedom of expression, the Court reiterates that, in so far as the preliminary injunction has the effect of preventing journalists from engaging in research and publications on the subject to which it applied, the journalists may claim to be “victims” of that measure (see, as a classic authority, *Times Newspaper Ltd., The Sunday Times, Harold Evans v. the United Kingdom*, no. 6538/74, Commission decision of 21 March 1975, Decisions and

Reports 2, p. 90; and *Observer and Guardian v. the United Kingdom*, 26 November 1991, §§ 9 and 49, Series A no. 216). In the instant case the interlocutory injunction was issued in the framework of the proceedings, to which the applicant was a party as a co-defendant. It prohibited the editor's office from publishing any materials by any person, including the applicant, in so far as they concerned the road accident and the claim for damages (see paragraph 12 above). It follows that the applicant was directly affected by the impugned injunction of 7 March 2003 which constituted an interference with her right to freedom of expression within the meaning of Article 10 § 1 of the Convention.

21. It is not contested that the interference was "prescribed by law", namely the provisions of the Code of Civil Procedure governing application of interim measures. As regards the legitimate aim of the interference, the parties agreed that one of them was the protection of the reputation of others. The Government further advanced that the interference had also pursued the aim of the maintaining of the authority of the judiciary. The applicant contested this argument. The Court, for its part, is prepared to accept that the injunction envisaged "maintaining the authority of the judiciary" as one of its legitimate aims, since this phrase includes the protection of the rights of litigants and since the purpose of the injunction was to enable the defamation action to be heard without the plaintiff's rights in the meantime being prejudiced by the commission of the very act which it was the purpose of the action to prevent (compare *Observer and Guardian*, cited above, § 56). The remaining issue is thus whether the interference was "necessary in a democratic society".

22. In the instant case the contested measure concerned the publication of "any articles, letters or other materials" about the traffic accident which had involved Judge Baskova or about the court proceedings relating to that accident. Although Article 10 does not prohibit prior restraints on publication or bans on distribution as such, the Court emphasises that the dangers which restrictions of that kind pose for a democratic society are such that they call for the most careful scrutiny, which it will apply in its examination of the instant case (see *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV; *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII; and *Observer and Guardian*, cited above, § 60). As the freedom of the press was at stake, the Russian authorities had only a limited margin of appreciation to decide whether there was a "pressing social need" to take the measures in question (see *Editions Plon*, cited above, § 44).

23. On the facts, the Court observes that two civil procedures were simultaneously pending. Both had been instituted by Judge Baskova. The first one concerned her civil claim for damages against Mr P. in connection with the traffic accident. In the second proceedings Judge Baskova sued the newspaper, the applicant and Ms P. for defamation in connection with the article relating the circumstances of the accident and the institution of the proceedings for damages. The interim injunction complained about was

issued in the framework of the second proceedings but prohibited the press coverage of the first set of proceedings or the accident itself. The injunction remained effective throughout the entire duration of the defamation proceedings.

24. The Court reiterates that the test as to whether the impugned measure was “necessary in a democratic society” involves showing that the action taken was in pursuit of the legitimate aim, and that the interference with the rights protected was no greater than was necessary to achieve it (see *Bartik v. Russia*, no. 55565/00, § 46, ECHR 2006-...).

25. Although the domestic courts have held the prohibition to be justified as a means of protecting the reputation of others and maintaining the authority of the judiciary, the reasons given by way of justification do not appear sufficient to the Court. It will now examine in turn the two prongs of the injunction, one relating to the prohibition to publish information on the road accident and the other enjoining publications on the civil claim for damages.

26. As regards the prohibition on information about the factual circumstances of the traffic accident in which Mrs Baskova had been involved, the Court notes at the outset that the applicant did not put forward any specific version of the incident as the true or the only possible one but rather presented several possible sequences of events as related by Mr and Ms P., by Mrs Baskova in her statement of claim, by the traffic police and by eyewitnesses. Not one of these versions was contested as untrue or inaccurate in the defamation proceedings, the scope of which was limited to the statement about Judge Baskova’s connections in the judiciary (see paragraph 9 above). In issuing the injunction in the defamation proceedings, the District Court merely referred to the fact that a technical study had been commissioned, without explaining why it considered that further research into, or publications on, the factual circumstances of the road accident would be prejudicial for the outcome of the proceedings. Moreover, since Mrs Baskova was involved in the accident as a private person, the Court finds that the injunction on further publications about the accident could not have been relevant for the purpose of maintaining the authority of the judiciary.

27. As regards the prohibition on reporting on the pending claim for damages, the Court accepts that the allegation contained in Ms P.’s letter – that Judge Baskova had taken advantage of her office and connections in the judiciary – could indeed be damaging to Judge Baskova’s reputation and to the authority of the judicial system. Nevertheless, although the injunction corresponded to the legitimate aim it sought to achieve, in the Court’s view, its scope was excessively broad and disproportionate to that aim. It must be noted that the Russian legal system has no equivalent of the *sub judice* rule and the right to report on proceedings in open court is not in principle restricted. The Government’s argument that, the injunction notwithstanding, the proceedings on the claim for damages had retained their public character

is irrelevant because the applicant alleged a violation of the right to impart information rather than a violation of the right to a public hearing. The Court reiterates in this connection that the duty of the press to impart information and ideas on all matters of public interest extends to the reporting and commenting on court proceedings which contribute to their publicity and are thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public (see *News Verlags GmbH & Co. KG*, cited above, § 56). It is relevant for the Court's assessment that the scope of the injunction was not limited to the specific statement about Judge Baskova's attempt to secure undue advantage in the proceedings, but rather restricted, in a general and unqualified manner, the possibility of printing any material whatsoever relating to these proceedings. The Court is unable to accept that such a sweeping prohibition was "necessary in a democratic society". It agrees with the applicant that the injunction at issue was a disservice to the authority of the judiciary because it reduced transparency of the proceedings and may have given rise to doubts about the court's impartiality, for "justice must not only be done; it must also be seen to be done" (see *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 14, § 26). It is also a matter of particular concern for the Court that the injunction listed as one of its purposes the necessity to prevent the newspaper from publishing materials "stating the opposite view". It reiterates that the possibility of expressing different views is the very essence of pluralism, without which there is no "democratic society".

28. Having regard to the above, the Court finds that by issuing an injunction on the applicant which was excessively broad vis-à-vis the legitimate aims it sought to achieve, the domestic authorities overstepped the limited margin of appreciation afforded to them in the cases, in which prior restraints on publications are at issue (see *Editions Plon*, cited above).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 1,000 euros (EUR) in respect of compensation for non-pecuniary damage.

32. The Government considered that the claim was excessive and unsubstantiated.

33. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation alone. Making its assessment on an equitable basis, the Court accepts the applicant's claim in the amount of EUR 1,000, plus any tax that may be chargeable on it.

B. Costs and expenses

34. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

35. 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. *Holds* that there has been a violation of Article 10 of the Convention;
2. *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 1,000 (one thousand 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.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President