



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

FIRST SECTION

CASE OF BEZMYANNYY v. RUSSIA

(Application no. 10941/03)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bezmyannyy v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 10941/03) 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 a Russian national, Mr Vladimir Mikhaylovich Bezmyannyy (“the applicant”), on 8 March 2003.

2. The applicant was represented by Mr I. Skripnichenko, a lawyer practising in Belgorod. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant indicated that he possessed Ukrainian nationality as well. The Government of Ukraine have been notified of the application (Rule 44 § 1 of the Rules of Court). They did not submit any written comments under Article 36 § 1 of the Convention.

4. On 13 September 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Belgorod.

A. The background of the case

6. The applicant is a businessman and a former controlling shareholder of a private company OAO “Restoran Belgorod”. According to the applicant, in 1997 a number of third persons produced a fake sales contract in respect of his shares in the company, as well as a fake register of the shareholders. They then tried to gain control over the company. Thereafter the matter was brought before the domestic courts.

7. On 27 April 1998 the Oktyabrskiy District Court of Belgorod, presided by judge B., dismissed the applicant's action to have the sale annulled and the register of shareholders declared fake and illegal. The court refused to order a forensic examination of the evidence, including a copy of the register of shareholders and the registrar's book of records, which the applicant had claimed were fake, and having admitted and considered them, rejected the applicant's action as groundless.

8. On 10 September 1998 that judgment was upheld on appeal by the Belgorod Regional Court.

9. On 18 September 1998, at the applicant's request, a police investigator initiated criminal proceedings for fraud against a number of third persons. On 28 October 1998 the investigator ordered an expert examination of the documents which the applicant had claimed were fake in the proceedings presided over by judge B.

10. On 4 and 12 November 1998 the respective examinations were completed. They confirmed that the copy of the register of shareholders and the registrar's book of records had been tampered with and that some of the entries had been fraudulently deleted or altered.

11. It appears that on 22 November 2001 the criminal investigation was discontinued.

12. Thereafter the case was repeatedly suspended and resumed.

13. The latest decision to resume the proceedings was taken on 5 September 2002. The outcome of the investigation is unclear.

B. The applicant's letter of 23 March 2000 and ensuing events

14. On 23 March 2000 the applicant wrote a letter to the Prosecutor of the Belgorod Region with a copy to the Prosecutor General of Russia, alleging that in the course of the proceedings in his case in 1998 judge B., “acting in the exercise of her duties, had committed a crime by delivering a deliberately unjust decision knowingly based on incorrect and sometimes even openly forged documentary evidence”. The letter set out the applicant's views on the circumstances of his case, referred to the outcome of forensic examinations carried out by the investigator in the criminal case and requested the responsible officials to bring criminal proceedings against judge B.

15. Identical letters were sent to the President of the Belgorod Regional Court and the head of the Judiciary Qualification Board on 12 May 2000.

16. In response to the letter of 23 March 2000, on an unspecified date the President of the Belgorod Regional Court and judge B. requested the Regional Prosecutor's office to bring criminal proceedings against the applicant for libel.

17. By decision of 6 April 2000 an investigator instituted proceedings against the applicant for libel.

18. On 27 September 2000 the applicant was questioned as a witness and stated that judge B. had received bribes.

19. On 18 May 2001 those proceedings were discontinued because of an amnesty law.

20. On an unspecified date judge B. sued the applicant for defamation, claiming 75,000 roubles (RUB - approximately 3,000 euros (EUR)) in damages and seeking an order for the retraction of the impugned statements.

21. By judgment of 7 June 2002 the Sverdlovskiy District Court of Belgorod granted the claims in full. The court noted that the judicial decision taken by judge B. remained in force and that the applicant had used all possible remedies against it by instituting appeal proceedings. Without examining the form or accuracy of the statements made by the applicant in his letter and having refused his requests for the admission of evidence, the court concluded that the applicant had defamed judge B. It ordered the applicant to send the Prosecutor General of Russia, the Prosecutors of Belgorod and the Belgorod Region, the President of the Belgorod Regional Court and the Judiciary Qualification Board of the Belgorod Region a letter retracting his previous allegations against judge B. The court also awarded judge B. RUB 75,000 (approximately EUR 3,000) in non-pecuniary damages.

22. On appeal, the applicant argued that the court had failed to examine whether his letter to the relevant authorities could constitute dissemination of information within the meaning of the applicable law, that the inaccuracy of his allegations had been presumed and he had been refused a chance to prove them and that the first instance court had failed to require from judge B. any proof of actual harm resulting from the letter. The applicant also objected to the use of the statements which he had made during the interview with the investigator of the libel case.

23. On appeal the Belgorod Regional Court reduced the award of damages to RUB 20,000 (approximately EUR 800) and upheld the rest of the judgment on 10 September 2002.

C. Other sets of proceedings

24. By a final decision of 18 November 2003 the Belgorod Regional Court rejected the applicant's action to annul the transfer of his property to a number of third persons.

25. By a judgment of 4 February 2003 the Oktyabrskiy District Court rejected his application to annul a lease agreement between the applicant and a certain commercial entity.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. Article 33 of the Constitution of the Russian Federation provides that citizens of the Russian Federation have the right to apply in person, as well as to submit individual and collective applications, to state bodies and local government institutions.

27. Article 152 of the Civil Code of the Russian Federation provides that a citizen may apply to a court to have information damaging his or her honour, dignity or professional reputation retracted unless the person who disseminated such information proves its accuracy. In addition to retraction, the citizen may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such information.

28. Section 2 of Resolution no. 11 of the Plenary Session of the Supreme Court of the Russian Federation of 18 August 1992 (as amended on 25 April 1995) "On certain issues arising during the examination by courts of action for the protection of the honour and dignity of citizens, and also the professional reputation of citizens and legal entities" defines damaging information as information which is inaccurate and contains assertions that a citizen has broken the law or transgressed moral principles as well as impairing the honour or dignity of a citizen or the professional reputation of a citizen or a legal entity. The dissemination of such information is understood as the publication or broadcasting of such statements or their inclusion in professional references, public speeches, applications to State officials or communication in other forms, including oral, to at least one another person. The communication of such information to the person whom it concerns cannot be considered as its dissemination.

29. Section 7 of the Resolution lays the burden of proof on the defendant to show that the information disseminated was accurate; the plaintiff must prove only that the defendant disseminated the information.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant complained, relying on Articles 6 and 10 of the Convention, about the defamation proceedings brought by judge B., alleging that the proceedings had been unfair, that his letter to the relevant authorities could not be regarded as disseminating defamatory information, and that the award in the case had been disproportionate and arbitrary. The Court considers that the complaint falls to be examined under Article 10 of the Convention, which reads, in so far as relevant, 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. ...

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.”

31. The Government contested the applicant's argument and submitted that when examining the defamation case brought by judge B. the domestic court had sought to protect the judiciary against gratuitous attacks and that there had therefore been no interference with the applicant's freedom of expression. They concluded that there had been no violation of Article 10 of the Convention.

32. The applicant maintained his complaint.

A. Admissibility

33. The Court notes that this complaint 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

34. The Court finds it indisputable that the civil proceedings for defamation against the applicant constituted interference with his freedom of expression and that this interference was in accordance with the law and pursued the legitimate aim of protecting the plaintiff's reputation. It remains

to be determined whether the interference was “necessary in a democratic society”.

35. According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for individual self-fulfilment. Subject to paragraph 2 of Article 10, 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 pluralism, tolerance and broadmindedness, without which there is no “democratic society”. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

36. The test of “necessity in a democratic society” requires the Court to determine whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see *Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, § 62, Series A no. 30). In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

37. The Court considers that, unlike in the vast majority of cases that have been examined by the Court, the defamation claim in the present case was born out of the applicant's request to institute criminal proceedings against judge B. rather than out of publication in the media (see, by contrast, *Dyuldin and Kislov v. Russia*, no. 25968/02, §§ 40-41, 31 July 2007). When writing his letters of 23 March and 12 May 2000, the applicant was acting in his personal capacity as a private individual, not as a journalist.

38. As regards judge B.'s personal situation, the Court reiterates that it may be necessary to protect public servants from offensive, abusive and defamatory attacks which are calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I). It is even more important when it comes to judges since allegations of unlawful behaviour accusing judges of having broken the law or of having breached their professional obligations may not only damage those judges'

reputations, but also undermine public confidence in the integrity of the judiciary as a whole (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 36, Series A no. 313).

39. The Court notes at the same time that the applicant did not disseminate the information attacking judge B.'s integrity via the media. He merely reported the acts which he believed to be unlawful to a body empowered to institute criminal proceedings, using wording that was not abusive or offensive. In the Court's view, by doing so the applicant acted within the framework established by law for making complaints (see, in a similar context, *Zakharov v. Russia*, no. 14881/03, § 22, 5 October 2006).

40. The Court reiterates in that connection that it is one of the precepts of the rule of law that citizens should be able to notify competent State officials about conduct of civil servants which to them appears irregular or unlawful (see *Zakharov*, cited above, § 26). The important role that the judiciary plays in a democratic society cannot in itself immunise judges from being targets of citizens' complaints.

41. As the applicant set out his grievances in correspondence submitted in his private capacity, the requirements of protection under Article 10 of the Convention have to be weighed not in relation to the interests of freedom of the press or of open discussion of matters of public concern but rather against the applicant's right to report irregularities in the conduct of an official to a body competent to deal with such complaints (see *Kazakov v. Russia*, no. 1758/02, § 28, 18 December 2008).

42. It is true that, unlike politicians, judge B. could not be said to have laid herself open to public scrutiny, and she thus needed to enjoy public confidence in conditions free of undue perturbation when on duty (see *Janowski*, cited above, § 33). However, the need to ensure that civil servants benefit from public confidence in such conditions can justify interference with freedom of expression only where there is a real threat in this respect (see *Raichinov v. Bulgaria*, no. 47579/99, § 48, 20 April 2006). The applicant's letters obviously did not pose such a threat. Furthermore, their contents were not made known to the general public; thus no press or other form of publicity was involved (see, by contrast, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 79, ECHR 2004-XI). The negative impact, if any, of the applicant's words on Judge B.'s reputation was therefore quite limited.

43. Lastly, the Court has to consider whether the sanction imposed on the applicant was appropriate in the circumstances of the case. In its view an award of damages of RUB 20,000 imposed for filing a request to institute criminal proceedings against a judge appears to be disproportionately severe.

44. In view of the foregoing considerations and assessing the text of the letter as a whole and the context in which it was written, the Court finds that the defamation proceedings resulted in an excessive and disproportionate

burden being placed on the applicant. There has therefore been a violation of Article 10 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. Relying on Article 6 of the Convention, the applicant claimed that he had been a victim of racketeers who had used the assistance of some public officials and judges to defraud him. According to the applicant, the court proceedings against the racketeers had been in breach of the requirement of Article 6 and generally unfair.

46. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicant's submissions disclose no appearance of violations of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant submitted that as a result of racketeers' actions in the 1990s he had sustained pecuniary damage amounting to a total of 267,821,348 euros (EUR). He did not support his claims by any documents. The applicant also claimed EUR 100,000,000 for non-pecuniary damage.

49. The Government submitted that there had been no causal link between the alleged violation of Article 10 of the Convention and the pecuniary damage claimed. They further stated that the amount claimed as non-pecuniary damage was excessive.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed around 30,000 Russian roubles (RUB) or EUR 833 for postal expenses incurred before the domestic authorities and the Court. He submitted invoices the majority of which stipulated that the applicant had sent letters to the Russian President, the Oktyabrskiy District Court, the Belgorod Regional Court, the State Duma and the prosecutors' offices at different levels. A few invoices confirmed that letters had been sent to the Court. Some invoices mentioned or confirmed that the applicant had spent sums of money at the Belgorod post office.

52. The Government made no comments on these claims.

53. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that it does not necessarily follow from the invoices submitted by the applicant that all the postal expenses claims were incurred in relation to the present application. It thus considers it reasonable to award the sum of EUR 100 covering costs under all heads.

C. Default interest

54. 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 complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;
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, the following amounts to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage; and

(ii) EUR 100 (one hundred euros) in respect of costs and expenses;
(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 18 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President