

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

THIRD SECTION

CASE OF ALEKSANDROV v. RUSSIA

(Application no. 44414/12)

JUDGMENT

STRASBOURG

9 November 2021

This judgment is final but it may be subject to editorial revision.



In the case of Aleksandrov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

María Elósegui, *President,*
Darian Pavli,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 44414/12) 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 Artem Romanovich Aleksandrov ("the applicant"), on 21 June 2012;

the decision to give notice to the Russian Government ("the Government") of the complaint concerning the applicant's right to freedom of expression;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 12 October 2021,

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

INTRODUCTION

1. This case concerns civil defamation proceedings instituted against the applicant, a member of a municipal council, by the chair of an electoral commission following the applicant's interview in which he remarked that he felt offended by the chair's lack of concern regarding serious and arguable allegations of electoral fraud.

THE FACTS

2. The applicant was born in 1991 and lives in Tambov.

3. The Government were represented by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, as well as by their successor in that office, Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. At the material time the applicant was a member of the Tambov City Duma (a municipal council).

I. ELECTION OF 13 MARCH 2011

6. On 13 March 2011 an election to the Tambov Regional Duma, the legislative assembly of the Tambov Region, was held. Irregularities which allegedly took place during the election were widely discussed in the media.

II. COMPLAINT TO THE AUTHORITIES AND ENSUING PRE-INVESTIGATION INQUIRY

7. On 16 March 2011 the Tambov City branch of the Investigative Committee of the Prosecutor General's Office of Russia ("the city investigative committee") received a complaint by the applicant. The latter alleged that on the date of the election he had seen near a university building a group of persons distributing among young passers-by voting ballots for the election to the Tambov Regional Duma that had already been filled in in favour of the Yedinaya Rossiya ("United Russia") party and its member standing for the election. The applicant furnished the investigators with a batch of such ballots that he had received from the persons in question.

8. On an unspecified date the Tambov Region branch of the Investigative Committee of the Prosecutor General's Office of Russia ("the regional investigative committee") launched a pre-investigation inquiry into the applicant's allegations of electoral fraud.

9. The regional investigative committee ordered an expert examination of the ballots furnished by the applicant which established that they had borne original stamps of the local precinct electoral commissions (PECs) and that the signatures by members of the PECs had been authentic. Nevertheless, the regional investigative committee considered that even though the ballots in question had been authentic there had been no "objective data" to confirm that such ballots had been "thrown into" ballot boxes *(«вброшены»)*. They interviewed, in particular, a guard on duty on the day of the election next to the University building who submitted that no ballots had been distributed on his watch, and a secretary to one of the PECs according to whom the ballots had been distributed by unknown persons with a view to provoking political opponents and to promoting the party of which the applicant was a member. The regional investigative committee concluded that the ballots supplied by the applicant could have been taken from the polling stations by voters: as the Russian laws did not provide for obligatory exercise of the active right to vote, citizens had ample opportunity to take a ballot out of a polling station unnoticed.

10. On 17 October 2011 the regional investigative committee refused to institute a criminal investigation on the basis of the applicant's complaint owing to the lack of the event of a crime.

11. On 26 October 2011 the deputy prosecutor of the Tambov Region overruled the decision of 17 October 2011 as unlawful thus reopening a pre-investigation inquiry.

12. On 5 December 2011 the regional investigative committee again refused to open a criminal investigation into the events complained of owing to the lack of the event of a crime.

III. THE APPLICANT'S INTERVIEW

13. On 30 June 2011 the *Nash Golos* newspaper (*«Наш Голос»*, hereinafter "the newspaper") published an interview with the applicant in which he discussed the election to the Tambov Regional Duma and remarked on the Chair of the Regional Electoral Commission (Mr A.P.)'s lack of concern regarding serious and arguable allegations of electoral fraud.

IV. DEFAMATION PROCEEDINGS

14. On 7 July 2011 A.P. brought civil proceedings for defamation against the applicant and the newspaper's editorial board claiming that the following extract from the interview was damaging to his honour and reputation:

> "I feel offended that the Chairman of the Regional Electoral Commission publicly stated that there had been no irregularities, thereby trying (deliberately or not) to conceal the facts of falsification during the election."

15. The Oktyabrskiy District Court of Tambov ("the District Court") held several hearings between August and September 2011. At the hearing of 13 October 2011 the applicant asked the District Court to adjourn examination of the case until the regional investigative committee had completed the inquiry into the alleged irregularities. The request was granted.

16. On 24 October 2011 the District Court, having been informed of the regional investigative committee's decision of 17 October 2011, resumed the defamation proceedings and scheduled a new hearing on 7 November 2011.

17. On 7 November 2011 the District Court held a hearing. It did not summon the witnesses requested by the applicant. During an adjournment of the hearing the applicant called one of them, who lived nearby. He was able to go to the court and testify at the hearing. The other witnesses were not examined.

18. On the same date the District Court granted A.P.'s defamation claim. It emphasised that the three elements to be established when examining the claims brought under Article 152 of the Civil Code were the fact of dissemination by a defendant of statements concerning a claimant, the tarnishing nature of such

statements, and their untruthfulness. The District Court then proclaimed that it had established that the election results had not been falsified because the Investigative Committee had held an inquiry and found no elements of a crime. The District Court concluded that the defendants' allegations of concealment (deliberate or not) by the claimant of the facts of falsification during the election had been false.

19. The District Court found in the claimant's favour and ordered the applicant and the newspaper to publish a retraction in the next issue and awarded the claimant compensation of non-pecuniary damage in the amount of 1,000 Russian roubles.

20. The applicant appealed.

21. On 21 December 2011 the Tambov Regional Court ("the Regional Court") dismissed the appeal and upheld the judgment summarily reaffirming the District Court's findings.

22. The applicant's cassation appeal was unsuccessful.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

23. For the summary of the relevant domestic framework and practice concerning civil defamation proceedings see *Cheltsova v. Russia* (no. 44294/06, §§ 32-34, 13 June 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant complained that the judgments of the District and Regional Courts violated his right to freedom of expression guaranteed by 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. ...
>
> 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. Admissibility

25. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

26. The applicant maintained his complaint, noting, in particular, that the District Court had failed to establish correctly the circumstances of the case by overlooking the fact that the pre-investigation inquiry had been resumed by 7 November 2011 and by failing to ensure that witnesses named by the applicant attend a hearing. He also noted that the domestic courts had failed to draw a distinction between statements of fact and value judgments or to pay heed to the Council of Europe's standards regarding political figures and public officials.

27. The Government argued that the interference with the applicant's right to freedom of expression had been "prescribed by law", had pursued a legitimate aim of protecting the reputation of others, and had been "necessary in a democratic society". Reiterating the District Court's reasoning, they emphasised that, under Article 152 of the Russian Civil Code, three elements are relevant in the assessment whether a statement tarnished one's dignity, honour and business reputation: the tarnishing nature of the statements; the fact of their dissemination; and their untruthfulness. Referring to the decision of 5 December 2011, they noted that there had been no evidence of the event of a crime in the applicant's allegations of electoral fraud.

2. The Court's assessment

28. The Court accepts that the interference complained of was "prescribed by law", namely Article 152 of the Russian Civil Code, and pursued a legitimate aim of protecting the reputation of others. It now has to satisfy itself whether the interference was "necessary in a democratic society".

29. The Court reiterates the general principles regarding the right to freedom of expression summarised in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, § 126, 27 June 2017). The Court further observes that the present case concerns the election to the legislative assembly of a constituent entity of the Russian Federation that falls under the definition of "legislature" within the meaning of Article 3 of Protocol No. 1 to the Convention (see *Davydov and Others v. Russia*, no. 75947/11, § 279, 30 May 2017). Given that the "choice of the legislature" was at stake (see *Orlovskaya Iskra v. Russia*, no. 42911/08, § 102, 21 February 2017), it is appropriate to consider the applicant's right to freedom of expression under Article 10 of the Convention in the light of this provision, which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

30. The following principles settled in the Court's case-law are particularly relevant in the context of the present case. By virtue of the essential function the press fulfils in a democracy, Article 10 of the Convention affords journalists protection, subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. A high level of protection of freedom of expression, with the authorities therefore having a particularly narrow margin of appreciation, is normally accorded where the remarks concern a matter of public interest. Politicians and civil servants acting in an official capacity are subject to wider limits of acceptable criticism than private individuals. A careful distinction needs to be drawn between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of "protecting the reputation ... of others", domestic authorities must strike a fair balance when protecting two conflicting values that are guaranteed by the Convention, namely, on the one hand, the right to freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8. In order for Article 8 of the Convention to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and its manner must cause prejudice to the personal enjoyment of the right to respect for private life. When analysing an interference with the right to freedom of expression, the Court must, *inter alia*, determine whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (see, with further references, *Skudayeva v. Russia*, no. 24014/07, §§ 33-34, 5 March 2019).

31. The Court notes that the District Court limited itself to establishing three elements only (see paragraph 18 above): (i) whether the defendants had disseminated impugned statements; (ii) whether the statements had been of tarnishing nature; and (iii) whether the statements had been untruthful. In view of the limited scope of their reasoning in this respect, the Court is not persuaded by their approach (see *Monica Macovei v. Romania*, no. 53028/14, § 88, 28 July 2020) as the first-instance court omitted to consider certain essential elements: it disregarded the fact that the pre-investigation inquiry had been resumed by the date of the delivery of its judgment in the defamation proceedings (see paragraph 16 above) thus failing to base itself on an acceptable assessment of the relevant facts (see

Nadtoka v. Russia (no. 2), no. 29097/08, § 50, 8 October 2019); it did not assess whether it represented a value judgment not susceptible of proof rather than statements of fact (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI); it did not take into account the claimant's position as a chair of an electoral commission (see *Redaktsiya Gazety Zemlyaki v. Russia*, no. 16224/05, § 42, 21 November 2017) or of the applicant's position as a member of the Tambov City Duma and thus an elected representative of the people (see *Rashkin v. Russia*, no. 69575/10, § 15, 7 July 2020); and it did not consider that the interview had touched upon a matter of public interest (see *Fedchenko v. Russia (no. 3)*, no. 7972/09, § 47, 2 October 2018) even though the claimant's conduct in his capacity of the chair of an electoral commission was clearly of legitimate concern to the general public (compare *Monica Macovei*, cited above, § 86).

32. It is noteworthy that the Regional Court sitting on appeal did nothing to offset any of the above defects (see paragraph 21 above).

33. The Court has previously found a violation of Article 10 of the Convention in a large number of cases concerning freedom of the media in Russia for the reason that the domestic courts had failed to apply the Convention standards when deciding on a defamation dispute (see, among many others, *OOO Ivpress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *Kunitsyna v. Russia*, no. 9406/05, §§ 46-48, 13 December 2016; *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; *Skudayeva*, cited above, § 39; *Novaya Gazeta and Milashina v. Russia*, no. 4097/06, §§ 66-73, 2 July 2019; *Nadtoka (no. 2)*, cited above, § 50; *Tolmachev v. Russia*, no. 42182/11, § 47, 2 June 2020; and *Rashkin*, cited above, § 18).

34. Having carefully examined the case materials and the parties' submissions, the Court concludes that the domestic courts did not give due consideration to the principles and criteria as laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. They thus exceeded the margin of appreciation afforded to them and failed to demonstrate that there was a reasonable relationship of proportionality between the instances of interference in question and the legitimate aim pursued (see, with further references, *Tolmachev*, cited above, § 56, and *Timakov and OOO ID Rubezh v. Russia*, nos. 46232/10 et 74770/10, § 71, 8 September 2020). Nothing in the Government's submissions indicates otherwise. The Court thus concludes that it has not been shown that the interference complained of was "necessary in a democratic society".

35. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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."

37. The applicant claimed compensation for non-pecuniary damage sustained as a result of the alleged violation of Article 10 of the Convention in an amount to be determined by the Court.

38. The Government considered that the applicant had failed to submit claims for just satisfaction.

39. The Court awards the applicant 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on the applicant.

40. The Court considers it appropriate that the default interest rate 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, EUR 7,500 (seven thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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 9 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	María Elósegui
Deputy Registrar	President