

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

THIRD SECTION

CASE OF TERENTYEV v. RUSSIA

(Application no. 25147/09)

JUDGMENT

STRASBOURG

26 January 2017

FINAL

29/05/2017

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



In the case of Terentyev v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 5 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 25147/09) 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 Sergey Alekseyevich Terentyev ("the applicant"), on 23 April 2009.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged a violation of his right to freedom of expression.

4. On 6 November 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Syktyvkar, the Komi Republic. He is a musician and a jazz critic.

6. On 31 December 2007 the applicant published an article on his personal website about a local jazz festival and its president, Mr Y. The article contained a detailed description of the event and scathing criticism of Mr Y. Using various derivatives of Mr Y.'s surname, the article mocked his professional qualities. The jazz festival was described as being "a shoddy piece of work" and Mr Y.'s delivery "crappy".

7. Mr Y. sued the applicant in defamation, arguing that the article was insulting and harmful to his reputation.

8. On 14 August 2008 the Syktyvkar Town Court found the applicant liable in defamation. The judgment consisted of the text of the article, a summary of the relevant domestic law, a two-page reproduction of the extracts from the article which had been mentioned in the statement of claim and two paragraphs of conclusions. They stated:

> "Using a distorted form of the plaintiff's patronymic and last name ... breaches the plaintiff's right to a name and to a good name, which is unacceptable under the law. Since the defendant committed a breach of the plaintiff's intangible assets by way of distorting his patronymic and last name in a negative way, the latter shall have the right to compensation in accordance with Article 152 of the Civil Code.
>
> [The contested extracts] undermine the honour and dignity of the plaintiff as a person, pedagogue and musician because they contain negative information about the plaintiff presented in an affirmative form. Pursuant to Article 152 § 1 of the Civil Code, the burden to prove the truth of the allegations is on the defendant, who did not submit any evidence to the court showing that the impugned statements were true."

The Town Court awarded the plaintiff 5,000 Russian roubles (RUB) in damages and directed the applicant to publish a retraction on his website.

9. On 23 October 2008 the Supreme Court of the Komi Republic dismissed an appeal by the applicant. It endorsed the findings of the lower court in a summary judgment. It held that Article 10 of the Convention had not been breached because "the defendant published statements on the Internet which undermined the honour and dignity of the plaintiff as a person, pedagogue and musician and which contained negative information about him".

II. RELEVANT DOMESTIC LAW

10. Article 152 of the Civil Code provides that an individual may apply to a court with a request for the rectification of statements (*svedeniya*) that are damaging to his or her honour, dignity or professional reputation if the person who disseminated such statements does not prove their truthfulness. The aggrieved person may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such statements.

11. Resolution no. 3 of 24 February 2005 of the Plenary Supreme Court of the Russian Federation requires that courts hearing defamation claims are to distinguish between statements of fact which can be verified and value judgments, opinions and convictions, which are not actionable under Article 152 of the Civil Code because they are an expression of a defendant's subjective opinion and views that cannot be verified.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

12. The applicant complained of a violation of his right to 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 ..
>
> 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

13. The Government submitted that the complaint was too late as it had been lodged on 8 July 2009, that is to say more than six months after the final domestic decision of 23 October 2008.

14. The Court notes that the applicant set out his complaint in his first letter to the Court dispatched on 22 April 2009 and gave more details in the main application form sent on 8 July 2009. Having regard to the regulations applicable at the time, namely Rule 47 § 5 of the Rules of Court and paragraph 4 of the Practice Direction on Institution of Proceedings, the Court finds that the date of lodging the application lies within six months of the final decision in his case. The Government's objection should therefore be dismissed.

15. The Court further notes that this complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

16. The Government submitted that the article had not been of great public interest and that its subject matter had not warranted recourse to offensive and intemperate language. Mr Y. was not a public figure and was not expected to display a greater degree of tolerance to the applicant's insulting remarks. The domestic courts had taken into account all the relevant circumstances and had made a clear distinction between value judgments and statements of fact.

17. The applicant submitted that the domestic courts had not appreciated that art criticism involved a certain degree of exaggeration, and that artists

and musicians were inevitably exposed to criticism and expected to display a fair degree of tolerance. The applicant had not sought to insult Mr Y. but had only wished to highlight his lack of talent and severe shortcomings in the organisation of the jazz festival. The applicant argued in particular that the courts had not distinguished between value judgments and statements of fact.

2. The Court's assessment

18. It is common ground between the parties that the Town Court's judgment in the defamation proceedings against the applicant amounted to an "interference" with his right to freedom of expression and that it was "prescribed by law" under Article 152 of the Civil Code. The parties also agreed that the interference pursued the legitimate aim of the protection of the rights of others, namely the reputation of Mr Y. What remains to be established is whether the interference was "necessary in a democratic society".

19. The fundamental principles concerning the question whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows (see, most recently, *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 48, 13 July 2012, and *Animal Defenders International v. the United Kingdom* (GC], no. 48876/08, § 100, ECHR 2013:

> "(i) 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. 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 ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10**.**
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether

> the reasons adduced by the national authorities to justify it are 'relevant and sufficient'.... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

20. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8. As a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 138-139, ECHR 2015, with further references).

21. Domestic courts hearing defamation claims are expected to perform a balancing exercise between the right to freedom of expression and the right to maintenance of reputation (see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 198-199, ECHR 2015 (extracts)). In so doing, they are required to carefully examine the context of the dispute (see *Stankiewicz and Others v. Poland (no. 2)*, no. 48053/11, § 45, 3 November 2015), the nature of the impugned remarks (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI) and the criteria laid down in the Court's case-law (*see Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 90-95, 7 February 2012). In *Aksu v. Turkey* ([GC], nos. 4149/04 and 41029/04, § 67, ECHR 2012), the Court elaborated further on this latter requirement, holding that if the balance struck by the national authorities was unsatisfactory, in particular because the importance or scope of one of the rights at stake was not duly considered, the margin of appreciation would be a narrow one.

22. Turning to the present case, the Court observes that the judgments of the courts at both levels of jurisdiction offer no insight into the context of the dispute. The courts did not discuss whether the article had contributed to a debate on a matter of public interest or whether it had been a form of art criticism. They did not explain why they believed Mr Y.'s reputation had to be afforded greater protection on account of his being "a person, pedagogue

and musician". The lack of reasoning in the judgments can be seen particularly in how they approached the contents of the article. Apart from a restatement of the applicable legal provisions, general remarks about the impermissibility of distorting Mr Y.'s name and the "negative character" of the information, the judgments were remarkably laconic and contain nothing that would help the Court to grasp the rationale behind the interference. In particular, the courts did not specify which elements of the impugned publication were problematic (see *Kommersant Moldovy v. Moldova*, no. 41827/02, § 36, 9 January 2007).

23. Contrary to the Government's assertion, which is not borne out by the text of the judgments, neither the District Court nor the Town Court made any genuine attempt to distinguish between statements of fact and value judgments; rather, they reprinted the impugned extracts of the article in their entirety, without subjecting them to meaningful scrutiny (see *OOO Ivpress and Others v. Russia*, nos. 33501/04, 38608/04, 35258/05 and 35618/05, § 73, 22 January 2013). The Court has on many occasions pointed to the deficiency in the Russian law on defamation whereby it refers uniformly to "statements" and posits the assumption – as the present case illustrates – that any such "statement" is amenable to proof in civil proceedings (see *Novaya Gazeta v Voronezhe v. Russia*, no. 27570/03, § 52, 21 December 2010; *Andrushko v. Russia*, no. 4260/04, §§ 50-52, 14 October 2010; *Fedchenko v. Russia*, no. 33333/04, §§ 36-41, 11 February 2010; *Dyuldin and Kislov v. Russia*, no. 25968/02, § 47, 31 July 2007; *Karman v. Russia*, no. 29372/02, § 38, 14 December 2006; *Zakharov v. Russia*, no. 14881/03, § 29, 5 October 2006; and *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005).

24. Both parties asked the Court to re-examine the necessity of the interference: the Government submitted that Mr Y. could not be considered a public figure and that the applicant's article had not contributed to any issue of public interest; the applicant argued that the domestic courts should have taken into consideration the particular features of art criticism, where exaggerations and borderline remarks were arguably more admissible than in the general press. The Court reiterates in this regard that it is not its task to substitute its own view for that of the domestic courts, which have the advantage of possessing direct knowledge of the situation and have all the evidence before them (see *Bédat v. Switzerland* [GC], no. 56925/08, § 54, ECHR 2016; *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 54, ECHR 2011; and *Saygılı and Seyman v. Turkey*, no. 51041/99, §§ 24-25, 27 June 2006). Faced with the domestic courts' failure to give relevant and sufficient reasons to justify the interference, the Court finds that the domestic courts cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10" or to have "based themselves on an acceptable assessment of the relevant facts" (see *Ringier Axel Springer Slovakia, a.s.*

v. Slovakia (no. 2), no. 21666/09, § 54, 7 January 2014; *Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, §§ 67-69, 8 October 2013; *OOO Ivpress and Others*, cited above, § 71; and *Lombardi Vallauri v. Italy*, no. 39128/05, §§ 47-49, 20 October 2009).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 2,500 euros (EUR) in respect of non-pecuniary damage and a refund of EUR 144 paid to Mr Y. under the domestic judgment.

28. The Government submitted that that the claim was excessive and uncorroborated by any evidence of distress to the applicant.

29. The Court reiterates that the applicant is entitled to recover the sum that he paid in damages, by reason of its direct link with the national courts' judgments which the Court has found to be in breach of his right to freedom of expression (see *Stankiewicz and Others v. Poland*, no. 48723/07, § 87, 14 October 2014; *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 78, 2 October 2012; and *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 50, ECHR 2003-XI). It awards the applicant the amounts claimed in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

30. The applicant claimed EUR 19,125 for costs and expenses, representing 76.5 hours of work by Mr Mezak in the domestic and Strasbourg proceedings at an hourly rate of EUR 250. He submitted an agency contract with Mr Mezak dated 30 December 2015, which shows that the applicant undertook to reimburse Mr Mezak for the time spent in the domestic proceedings and for the preparation of the original application within three months of the Court's judgment in the instant case.

31. The Government considered the claim to be excessive.

32. The Court notes that Mr Mezak did not seek leave to represent the applicant after the notification of the case to the Government, as he should

have done in accordance with Rule 36 §§ 2 and 4 (a) of the Rules of Court. The applicant, for his part, does not appear to have incurred any expenses for the preparation of his application or his submissions to the Court. Accordingly, the Court rejects the claim for costs and expenses.

C. Default interest

33. 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* that the respondent State is
   (a) 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 144 (one hundred and forty-four euros) in respect of pecuniary damage and EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 26 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President