

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

THIRD SECTION

CASE OF VINNIK v. RUSSIA

(Application no. 79310/13)

JUDGMENT

STRASBOURG

11 January 2022

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



In the case of Vinnik 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. 79310/13) 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") on 28 November 2013 by a Russian national, Mr Nikolay Vasilyevich Vinnik, born in 1972 and living in Moscow ("the applicant") who was represented by Ms S. Kuzevanova, a lawyer practising in Voronezh;

the decision to give notice of the application to the Russian Government ("the Government"), represented initially by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and lately by his successor in that office, Mr M. Vinogradov;

the parties' observations;

Having deliberated in private on 7 December 2021,

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

SUBJECT-MATTER OF THE CASE

1. In May 2011 the applicant, a private person, published on his website, www.demagogy.ru, a platform for publications on topical political and social issues, an article where he criticised an open letter by cultural figures and artists, including Mr N.B., to the Russian President and Prime Minister. In this letter they suggested to establish a public council to monitor the respect of morals in mass media, create a code of ethics for journalists and to increase broadcasting of the events with participation of the Russian Orthodox Church on a State channel. He also posted a photo of Mr N.B. and his curriculum vitae.

2. In January 2012 Mr N.B. filed a lawsuit against the applicant arguing that the latter could not have posted his photo and his curriculum vitae on his website. He alleged that by making this publication on the website called "demagogy", the applicant implied that Mr N.B. was a demagogue.

3. Meanwhile, the applicant deleted the publication from his website.

4. In February-May 2013 the domestic courts allowed Mr N.B.'s claim. They held that the applicant had published Mr N.B.'s photo and curriculum vitae without the latter' consent and this had not been justified by any public interest and ordered the applicant to pay him non-pecuniary damage.

5. In June 2013 the applicant took down his website demagogy.ru on his own initiative.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

6. The applicant's complaint about violation of his right to impart information concerning a famous artist involved in discussions relating to important issues of general interest in breach of Article 10 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

7. The general principles concerning publication of photos and information relating to public figures have been summarized in *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78 and 95, 7 February 2012; *Hachette Filipacchi Associés v. France*, no. 71111/01, §§ 39-44, 14 June 2007; and *MGN Limited v. the United Kingdom,* no. 39401/04, §§ 141-143, 18 January 2011.

8. The judicial decisions given in the present case constituted an interference with the applicant's right to freedom of expression as guaranteed by Article 10 of the Convention.

9. The interference was prescribed by the Civil Code. It pursued a legitimate aim – namely, the protection of the rights of others – within the meaning of Article 10 § 2 of the Convention. The Court must now examine whether the interference was "necessary in a democratic society". In reviewing under Article 10 the domestic courts' decisions, the Court has to satisfy itself that the national 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 *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts)). The following elements need to be taken into account: the position of the applicant, the position of the person against whom the criticism was directed, the subject matter of the publication, the characterisation of the contested statement by the domestic courts, the wording used by the applicant, and the penalty imposed (see *Krasulya v. Russia*, no. 12365/03, § 35, 22 February 2007).

10. The Court is satisfied that the matter was of public interest, in so far as it concerned the letter regarding censorship, clericalism and social morals, a subject of general interest, addressed to senior State authorities and signed by Mr N.B. (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 171, 27 June 2017). The public might have had an interest to know more details about the background of those who had signed the above open letter. Moreover, Mr N.B. was a famous filmmaker. The Court has already recognised the existence of such an interest where a publication concerned performing artists (see *Sapan v. Turkey*, no. 44102/04, § 34, 8 June 2010).

11. When considering the claim, the domestic courts did not take into account either the context, form or contents of the publication. They did not note that Mr N.B. was a public figure who actively participated in discussions of matters of public concern. The publication contained a "passport style" photo of Mr N.B., which did not disclose any details of his private life, and his curriculum vitae which represented a brief and neutral description of his career and did not carry any offensive or defamatory connotation (see, by contrast, *Tammer v. Estonia*, no. 41205/98, § 67, ECHR 2001-I). The courts failed to recognise that the instant case was one where the margin of appreciation available to the authorities in establishing the necessity for the impugned measure was particularly narrow. Nor did they attempt to perform a balancing exercise between the need to protect the plaintiff's reputation and private life and the applicant's right to freedom of expression.

12. The conduct of the person concerned prior to publication or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration (see *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, §§ 52-53, 23 July 2009, and *Sapan*, cited above, § 34). The domestic courts failed to take into account that the applicant had obtained information about Mr N.B. from open online sources. Mr N.B.'s curriculum vitae could be easily found on the internet and information about his life appeared in his many interviews posted online (see *Krone Verlag GmbH & Co. KG v. Austria*, no. 34315/96, § 37, 26 February 2002).

13. The domestic courts based their decision mainly on the fact that Mr N.B. had not provided his consent for publication of his photo and curriculum vitae. They 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 reputation and private life and the right to freedom of expression.

14. Regarding, lastly, the severity of the sanction imposed on the applicant, although the amount of the fine could seem insignificant, it might have a chilling effect on the applicant, taking into account that he had to take down his website. In any event, it was not justified in the light of the factors set out above. The fact that the proceedings were civil rather than criminal in nature and that the final award was relatively small does not detract from the fact that the standards applied by the domestic courts were not compatible with the principles embodied in Article 10 (see *Fedchenko v. Russia*, no. 33333/04, § 42, 11 February 2010). Therefore, the interference was disproportionate to the aim pursued and not "necessary in a democratic society".

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed 133 euros (EUR) in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage, EUR 1,600 and EUR 150 in respect of legal and translation costs.

17. The Government submitted that the sums claimed by the applicant were unreasonable and translation costs were not supported by any documents.

18. The Court awards the applicant EUR 133 in respect of pecuniary damage, EUR 4,000 in respect of non-pecuniary damage and EUR 1,600 in respect of costs and expenses, plus any tax that may be chargeable on the applicant.

19. The Court further 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 133 (one hundred and thirty-three euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President