CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 73219/01
by Aleksandr FILATENKO
against Russia

The European Court of Human Rights (First Section), sitting on 3 June 2004 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application introduced on 21 February 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Aleksandr Grigoryevich Filatenko, is a Russian national, who was born in 1961 and lives in the town of Kyzyl in the Tyva Republic of the Russian Federation. The applicant is a journalist who works for the state television and radio broadcasting company Tyva (*ГТРК «Тыва»*). The respondent Government are represented by Mr P. Laptev,

Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Incident at the electoral show

On 15 December 1999 the television channel Tyva broadcast a live show *Elections-99* with the participation of candidates standing for elections to the legislature of the Tyva Republic, namely Messrs A., M. and S. The applicant was the show host. The editor took a question from a viewer by phone, wrote it on a piece of paper and handed it to the applicant who read the question to the participants. According to the applicant, the question was:

> "Why did they tear the flag of the Tyva Republic off the car with loud-speakers campaigning in support of G. Salchak? This happens for the first time in our republic!"
>
> ["Почему сорвали флаг Республики Тыва с радиомашины в поддержку Г. Салчак? Это впервые такое в нашей республике!"]

The participants gave their answers to the question.

2. Civil defamation action against the applicant and his employer

On 16 December 1999 the electoral bloc of the Unity movement brought a civil action against the applicant and his employer for the protection of its honour, dignity and professional reputation and for compensation for non-pecuniary damage. The applicant submits that the question was repeated in the complaint as follows:

> "What is your attitude [to the fact] that on 15 December 1999 employees of the headquarters of the Unity movement tore the flag of the Tyva Republic off the campaigning car and stamped on it?"
>
> ["Как вы относитесь к тому, что 15 декабря 1999 г. члены штаба межрегионального движения 'Единство' сорвали флаг Республики Тыва с агитационной машины и растоптали его?"]

The applicant points out that the wording of the question was not identical to the text on the piece of paper that had been given to him during the show.

On 20 January 2000 the applicant and his employer filed their observations with the court. They submitted that only physical persons could sustain moral damage and, therefore, a legal entity (such as a political

movement) should not be entitled to compensation for non-pecuniary damage.

On an unspecified date the party to the civil action was changed: five physical persons, employees of the Unity headquarters at the time of the events, were substituted for the Unity movement as plaintiffs.

The case was heard by the Kyzyl District Court of the Tyva Republic. Before the court the applicant maintained that he had read out the question exactly as it had been recorded on the piece of paper which was produced for the court's examination. The applicant also added that at first the participants had not understood the meaning of the question and he had had to clarify that the incident in question had taken place earlier on that day in front of the headquarters of the Unity movement.

The witnesses for the defence, including four of the applicant's co-workers, Mr A. and Mr M. (the show participants), as well as Ms G. (head of the regional department for registration and supervision of press and mass media), testified that the applicant had worded the question in a neutral way and that he had not implied that employees of the Unity headquarters had been the authors of the incident.

On 19 July 2000 the court gave its judgment. It found that no video recording of the show was available, and it relied on witness statements to establish the exact wording of what the applicant had said. The court discarded testimonies of the witnesses for the defence, *inter alia*, as they were not impartial. As to Ms G.'s statement, it was rejected because it allegedly contradicted other witnesses.

On the other hand, the court relied on the testimonies of Mr S. (the show participant who was also the assistant to the regional head of the Unity movement), as well as on statements of a lawyer in the Unity headquarters, an advisor in the Unity headquarters and another unidentified person. These witnesses asserted that the applicant had explicitly indicated that the flag had been torn down and stamped on by the employees of the Unity headquarters.

The court had regard to the conclusions of an inquiry carried out by the local police department. On 21 March 2000 the police refused to initiate criminal proceedings, having established that no desecration of the flag had taken place. This led the court to conclude that the information imparted by the applicant had been untrue.

The court went on to state that the reputation of plaintiffs had sustained damage, notwithstanding the fact that they had not been named in the question. The court accepted the plaintiffs' argument that only nine people had worked in the Unity headquarters and all of them had been easily identifiable by the local population, therefore, even though they were only vaguely referred to as employees of the Unity headquarters, such information about them – especially since it had been disseminated in prime

time on the republic-wide television channel – had greatly harmed their reputation.

The court granted the action and ordered the applicant to pay RUR 2,500 (EUR 90) to each plaintiff as compensation for non-pecuniary damage. It also ordered the television channel to broadcast a retraction in the same time slot as the original show had been.

The applicant appealed against the judgment.

On 22 August 2000 the Supreme Court of the Tyva Republic upheld the judgment of 19 June 2000. The court followed the reasoning of the first-instance court.

Subsequently, the applicant applied to the prosecutor's office, to the Presidium of the Supreme Court of the Tyva Republic and to the Supreme Court of the Russian Federation for supervisory review. All of his applications were refused.

On 1 October 2000 the enforcement proceedings were opened against the applicant to recover the award made on 19 June 2000.

B. Relevant domestic law

Constitution of the Russian Federation

Article 29 guarantees freedom of ideas and expression, as well as freedom of mass media.

Civil Code of the Russian Federation of 30 November 1994

Article 152 provides that an individual may seize a court with a request for refutation of information (*сведения*) damaging his or her honour, dignity or professional reputation unless the person who disseminated such information proves its accuracy. The individual may also claim compensation for losses and non-pecuniary damage sustained as a result of dissemination of such information. The rules governing the protection of the professional reputation of a physical person are likewise applicable to the protection of the professional reputation of legal entities.

COMPLAINTS

The applicant complains under Articles 9 and 10 of the Convention about a violation of his right to hold opinions and impart information. The applicant emphasises the fact that he performed his professional duty as a journalist when he read out the question.

The applicant complains under Article 6 of the Convention that the courts were not impartial in that they discarded the testimonies of his co-

workers on the sole ground that they had a work relationship with the applicant.

THE LAW

1. The applicant complains under Articles 9 and 10 of the Convention that the judgments of the domestic courts in the civil defamation action against him violated his right to impart information and impaired his journalistic freedom. The Court considers that this complaint falls to be examined under Article 10 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."

The Government submit that the interference with the applicant's freedom of expression was prescribed by law (Article 152 of the Civil Code of the Russian Federation) and pursued a legitimate aim of the protection of the reputation of the plaintiffs in the defamation action. They submit that the applicant was lawfully found liable for dissemination of untrue information. The witnesses before the court and an inquiry carried out by the Ministry of the Interior on 18 December 1999 confirmed that the information had been untrue. They consider that there was no violation of the applicant's rights.

The applicant disagrees. He considers that the interference was not necessary because the question he had put to the show guests did not refer to any plaintiffs by name and he had only clarified that the incident had taken place in front of the Unity headquarters. The clarification was based on the information that had been aired earlier on that day. The applicant claims that a question is, by definition, not a statement of fact and any value-judgments contained therein are not and cannot be considered "incontrovertible information". In his opinion, a question is an inquiry that is used to obtain information or opinions. He believes therefore that the domestic courts' findings were misplaced.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court

concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complains under Article 6 § 1 about the refusal of the domestic courts to accept the statements by witnesses on his behalf. Article 6, in the relevant part, provides as follows:

> "In the determination of his civil rights and obligations... everyone is entitled to a fair... hearing ... by [a]... tribunal established by law..."

Insofar as the applicant's complaint may be understood to concern the assessment of evidence, including statements by witnesses, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *e.g.*, *Cekic and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

Turning to the facts of the present case, the Court finds that there is nothing to indicate that the domestic courts' evaluation of the facts and evidence presented in the applicant's case was contrary to Article 6 of the Convention. The applicant was fully able to present his defence and challenge the evidence; all essential evidence was produced; there had been a public hearing at first instance and the courts' decisions were satisfactorily reasoned. Having regard to the facts, as submitted, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint about a violation of his right to impart information;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President