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. 23472/03
by Isaak GRINBERG
against Russia

The European Court of Human Rights (First Section), sitting on 28 October 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 23 June 2003,

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 Isaak Pavlovich Grinberg, is a Russian national who was born in 1937 and lives in Ulyanovsk. He is represented before the Court by Ms L. Yemelyanenkova, a lawyer practising in Ulyanovsk. 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.

On 6 September 2002 the newspaper *Guberniya* published in issue 19 a note written and signed by the applicant. The entire text of the note under the heading "[My] statement" («*Заявление*») read as follows:

> "The voting ballots were still being counted, but it was already clear that General V.A. Shamanov was elected Governor of the Ulyanovsk Region. That very night he said precisely the following: 'Let me tell you bluntly and frankly – the local press has to be dealt with thoroughly'.
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> During his electoral campaign General [Shamanov] made many promises to the Ulyanovsk residents. But, in my opinion, he kept only one: [he is] 'waging war' against the independent press, against journalists. The judicial proceedings in Shamanov's action against a most talented Ulyanovsk journalist Dyomochkin are still pending. But criminal prosecution of a journalist is a unique situation. Yulia Shelamydova, editor-in-chief of newspaper *Simbirskiye Izvestia*, is sentenced to one year of correctional work. Let us leave aside the legal aspects of that case: the full text of the court judgment has not been published yet and I hope there would be many more judicial proceedings, not only in Ulyanovsk, but also in Moscow. But there is a moral dimension to that case. How can three robust men, of which two are Generals and one is the Hero of Russia, wage a battle against a woman who is still a young girl! This brings to my memory Shamanov's support for Colonel Budanov who had killed a 18-year-old [Chechen] girl. No shame and no scruples!"
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> ["Еще шел подсчет голосов, но было уже ясно: губернатором Ульяновской области избран генерал Шаманов В.А. Этой же ночью он заявил буквально следующее: «С местной прессой, прямо и откровенно скажу, предстоит детально разобраться».
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> Во время избирательной кампании генерал обещал ульяновцам много. Но выполнил, с моей точки зрения, только одно: «воюет» с независимой прессой, с журналистами. Еще продолжаются суды по иску Шаманова В.А. к талантливейшему журналисту – ульяновцу Демочкину Г.А. Но преследование журналиста в уголовном порядке – это уникальный случай. Юлия Шеламыдова – главный редактор газеты «Симбирские известия» - осуждена на год исправительно-трудовых работ. Оставим пока в стороне юридический аспект этого дела: еще не опубликован полный текст решения суда, по этому поводу будет, надеюсь, еще много судов, причем не только в Ульяновске, но и в Москве. Но есть моральный аспект в этом деле. Как могут три здоровых мужика, из которых два – генерала, в том числе один – даже герой России, «воевать» с женщиной, более того – с молоденькой девчонкой! Почему-то вспоминается поддержка Шамановым В.А. полковника Буданова, убившего 18-летнюю девушку. Ни стыда, ни совести!"]

On 10 September 2002 General Shamanov brought a civil defamation action against the applicant, the editor's office and the newspaper's founder – the Fund for Assistance to Disenfranchised Communities *Goryachev-Fond* ("the Fund"). He claimed that the information contained in the last sentence of the note was inaccurate and damaged his honour and reputation.

He sought compensation for non-pecuniary damage of 500,000 Russian roubles ("RUR", approximately EUR 20,000).

On 14 November 2002 the Leninskiy District Court of Ulyanovsk granted the defamation action. The court held as follows:

> "In the article the author asserts that the Ulyanovsk Region Governor Shamanov has no shame and no scruples. The very tenor of the article confirms that the challenged information contains precisely such an assertion. [The applicant's] assertion in this article that the plaintiff has no shame and no scruples is clearly damaging because it impairs his honour, dignity and professional reputation... The plaintiff did not produce before the court any evidence showing the truthfulness of that information about the plaintiff..."

The court pronounced:

> "To declare the information about the plaintiff's having no shame and no scruples published in [the applicant's] note... to be untruthful and damaging to Shamanov's honour and dignity and professional reputation".

The court ordered the Fund to pay RUR 5,000 (EUR 200), and the applicant to pay RUR 2,500 (EUR 100), as compensation for non-pecuniary damage. The Fund was also told to publish, by way of refutation, the above-quoted pronouncement of the court.

The applicant and the Fund appealed against the judgment. The applicant pointed out that the district court failed to distinguish "opinions" and "information". He submitted that his right to hold and impart opinions was guaranteed by Article 29 of the Russian Constitution and the contested statement was his personal assessment of Shamanov's actions. Furthermore, he contended that in the Russian language the contested expression was an idiom commonly used to give an ethical appraisal of a person's deeds.

On 24 December 2002 the Civil Section of the Ulyanovsk Regional Court upheld the judgment of 14 November 2002. The court upheld the conclusions of the first instance court and added:

> "The arguments... about the court's confusion of the term 'opinions' and the term 'information' cannot be taken into account because [the applicant's] opinion was printed in a public media and from the moment of its publication it has become information."

The applicant's subsequent attempts to initiate supervisory review proceedings proved to be unsuccessful. On 22 August 2003 Judge Makarov of the Supreme Court of the Russian Federation refused his request for lodging a supervisory-review application.

B. Relevant domestic law

Article 29 of the Constitution of the Russian Federation guarantees freedom of ideas and expression, as well as freedom of mass media.

Article 152 of the Civil Code of the Russian Federation 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 establishes its truth. The aggrieved individual may also claim compensation for losses and non-pecuniary damage sustained as a result of dissemination of such information.

COMPLAINT

The applicant complains under Article 10 of the Convention about a violation of his right to express his opinion. He submits that the domestic courts failed to draw a distinction between statements of facts and value-judgments and held him responsible for the failure to prove the truthfulness of a value-judgment.

THE LAW

The applicant complained under Article 10 of the Convention about a violation of his right to impart information and ideas. Article 10 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..."

The Government submit that, pursuant to Article 152 of the Civil Code it was incumbent on the applicant to show that the information had been true, and he failed to satisfy the burden of proof. They concede that there was an interference with the applicant's right to freedom of expression and that the article concerned the governor's relations with the press which subject could be considered a political debate. However, they maintain that the contested statement referred to Shamanov's personality rather than his political activities and that the applicant could have couched his criticism in different terms, without resorting to the defamatory assertion that Shamanov had "no shame and no scruples". The Government consider that the interference was justified and "undoubtedly necessary" in a democratic society for "the protection of the reputation and rights of others".

The applicant agrees with the Government in that the article at issue was a part of the on-going political debate. He notes that Shamanov did not attempt to challenge the facts on which the article was based and that the final sentence referred precisely to his deeds and not to his personality. Furthermore, he submits that the Russian idiom in question was a typical value-judgment not susceptible of proof or refutation. It was an ethical appraisal and one person's opinion about the deeds of the other, universally perceived as a value-judgment and not as a statement of fact.

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.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President