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. 12365/03
by Vasiliy KRASULYA
against Russia

The European Court of Human Rights (First Section), sitting on 9 December 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 4 April 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 Vasiliy Aleksandrovich Krasulya, is a Russian national, who was born in 1952 and lives in Stavropol. The applicant is the editor-in-chief of the *Novyy Grazhdanskiy Mir* newspaper ("*Новый гражданскій миръ*"). 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. *The publication in the applicant's newspaper*

On 4 January 2002 the applicant published an editorial article under the heading "Chernogorov stealthily approaches Stavropol. Thoughts about one decision of the town legislature." ("*Черногоров подбирается к Ставрополю. Размышления по поводу одного решения городской думы*"). Mr Chernogorov was the governor of the Stavropol region and the applicant's competitor in the elections to that office in 2000.

The article lamented the decision made by a majority of members of the Stavropol town legislative body to change the procedure of appointment of the town mayor: the mayor would no longer be elected by town residents, but appointed by the town legislature. The publication alleged that the decision had been taken under pressure of Mr Chernogorov:

> "[Members of the legislature] were requested [to make the decision] by the governor himself who attended the session, accompanied by many of his advisors, to try to persuade those in attendance...
>
> From that moment on, each member of the legislature has been caught in a web of sale-and-purchase transactions. We can only speculate what wonders he will be promised by Chernogorov's representatives...
>
> Each member of the legislature will get his share and consume it on the sly."

The article concluded with a critical appraisal of the governor as politician and manager:

> "Having miraculously escaped a defeat in the governor's elections – only because the regional elites failed to reach an agreement and nominate a passable candidate – and having avoided, for the same reason, formation of a powerful opposition in the regional legislature, our loud and ambitious, but completely incapable governor is about to lay his hands on [the town of Stavropol]."

### 2. *Criminal prosecution of the applicant*

On 5 February 2002 the prosecutor's office of the Stavropol Region granted the request of the governor Chernogorov and initiated criminal proceedings against the applicant for criminal libel disseminated in the mass-media (Article 129 § 2 of the Criminal Code).

On 6 March 2002 an investigator ordered a linguistic examination of the publication. The examination was performed on 18 March 2002 by Mr Buslenko, Ph.D., LL.M., a professional journalist with degrees in language studies and law, teaching at the Language Studies and Journalism

Department of the Rostov State University. The expert came to the following results:

> "General conclusion: The text of the article submitted for the examination... conveys in a rather harsh and emotional form the author's opinion and his judgments on the role of the Stavropol Region's governor Chernogorov in the forthcoming elections of the Stavropol town mayor. The text does not contain any words or expressions insulting for the governor, with the exception of the controversial description 'incapable'."

The expert admitted that certain sentences conveyed a negative attitude towards the managerial abilities of the governor; however, he asserted, the publication did not contain any allegations about violations of laws, including electoral laws, by the governor or any statements damaging his professional reputation. The expert also pointed out, referring to an academic article written by the Krasnodar town prosecutor, that ideas, opinions and value-judgments were not subject to a court-ordered refutation for being untrue, and the aggrieved person should instead exercise his right to a reply in the same media.

On an unspecified date the applicant was charged with criminal libel involving an allegation about commission of a serious or especially serious crime (Article 129 § 3 of the Criminal Code) and with public insult of a State official in connection with performance of his duties (Article 319 of the Criminal Code). The case was sent to a court.

### *3. Criminal conviction of the applicant*

Before the court the applicant pleaded not guilty. He maintained that the publication in question did not contain any statements of facts, which could be declared untrue.

Mr Chernogorov asserted that the statements in the publication about his having obtained a decision from the town legislature through bribes, his having had a narrow escape at the 2000 elections, as well as a reference to him as "completely incapable" were libellous and damaging for his honour, dignity and professional reputation.

The court heard three members of the Stavropol town legislature who vehemently denied that they had been offered any goods or benefits by the governor in exchange to their consent to the mayor's appointment. The governor's advisors testified in the same vein.

On 12 September 2002 the Oktyabrskiy District Court of Stavropol delivered a judgment in the applicant's case. In the judgment the court rejected the conclusions of the linguistic examination of 18 March 2002 on the ground that the report was a "subjective appraisal" of the publication by Mr Buslenko and, in addition, that it was not shown that the Rostov State University or Mr Buslenko had had a licence to carry out linguistic examinations. The court substituted its own assessment of the contents of the article:

> "The court considers that the article contains not judgments and assumptions, as asserted by the defence, but precisely statements of facts... because the article specifies when, where, under what circumstances the decision on amendments to the charter of the Stavropol town was made and what the result of voting was. The use of the future tense and infinitives in the text of the article is the author's way of writing and it does not indicate that the discourse is about hypothetical future events..."

The court found the applicant guilty of dissemination of information known to be untrue, damaging to honour and dignity of the Stavropol Region governor and undermining his professional reputation, which information was printed in the mass-media and contained an accusation of the governor of a serious crime (bribery). However, the applicant was acquitted of a public insult of a State official because, in the court's opinion, the publication did not contain cynical or obscene language in respect of the governor.

The applicant was sentenced to one year's imprisonment with six months' probation.

The applicant and his lawyer appealed against the conviction to the Stavropol Regional Court. Their grounds of appeal invoked, in particular, Article 10 of the Convention and referred to the special place of the journalistic freedom in a democratic society and wider limits of criticism in respect of public figures, which the Stavropol Region governor undeniably was. The applicant's lawyer also complained about the first instance court's refusal to accept the report of the linguistic examination on the pretext that the expert had no required licence, while the domestic law did not provide for such a requirement.

On 31 October 2002 the Criminal Section of the Stavropol Regional Court upheld the judgment of 12 September 2002. The Regional Court did not address the applicability of Article 10 of the Convention or the first instance court's decision not to admit the linguistic examination report in evidence.

## B. Relevant domestic law

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

Article 129 § 1 of the Criminal Code of the Russian Federation defines libel as dissemination of the information known to be untrue that damages honour and dignity of another person or undermine the person's reputation. Article 129 § 2 provides that libel disseminated in a public statement, publicly displayed work of art or in the mass-media shall be punishable by a fine and/or correctional works for a period of up to two years. Article 129 § 3 penalises libel, involving an accusation of a person of commission of a serious or especially serious crime, with up to three years' imprisonment.

# COMPLAINTS

1. The applicant complains under Article 10 of the Convention about a violation of his right to impart information.

2. The applicant complains under Article 6 § 1 of the Convention about a violation of the equality-of-arms principle in that the first instance court rejected the linguistic examination report and the appeal court did not make good this alleged violation and failed to address this issue.

# THE LAW

1. The applicant complained under Article 10 of the Convention about a violation of his right to freedom of expression and under Article 6 § 1 of the Convention about the trial court's allegedly arbitrary refusal to admit the report by a linguistics expert in evidence. The relevant parts of the invoked provisions read as follows:

**Article 6**

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

**Article 10**

"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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government submit that the applicant was convicted of having deliberately imparted false information damaging another person's dignity, honour and reputation because he was the editor-in-chief and co-founder of the newspaper where the article had been published. The applicant failed in his duty, established in section 49 of the Russian law on mass-media, to verify the truthfulness of the imparted information or to obtain consent from the person concerned. As regards the admission of the linguistic report in evidence, the Government claim that it only touched upon the charge of proffering insults, of which the applicant was acquitted.

The applicant responds that criminal proceedings in retaliation for his publication were disproportionate to the purported aim of the protection of honour and reputation and, in any event, they were not "necessary in a democratic society". His subject was a professional politician and the limits of acceptable criticism are wider as regards politicians than those in the case of a private individual. He exercised his journalistic freedom, which covers possible recourse to a degree of exaggeration, or even provocation. As regards the linguistic report, the applicant challenges the Government's claims as factually inaccurate and rebutted by the contents of the report itself. He emphasises that the main conclusion of the report was that the article had contained opinions and value-judgments concerning the role of Governor Chernogorov in the forthcoming mayoral elections. Had the domestic courts agreed to examine the report, he would have been acquitted of libel because the article included no statements of fact, whilst the truth of value-judgments is not suspectible of proof.

The Court considers, in the light of the parties' submissions, that the application 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 the application 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.

Søren NIELSEN
Registrar

Christos ROZAKIS
President