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. 11751/03
by Tatyana ROMANENKO and Others
against Russia

The European Court of Human Rights (First Section), sitting on 17 November 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 26 February 2003,

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

Having regard to the third-party submissions,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Tatyana Gavriilovna Romanenko, Ms Irina Georgievna Grebneva and Mr Vladimir Fedorovich Trubitsyn, are Russian nationals, who were born in 1946, 1943 and 1949, respectively, and live in Vladivostok and Arsenyev in the Primorskiy Region. The applicants are founders of the *Arsenyevskie Vesti* independent weekly newspaper. They are represented before the Court by Ms A. Soboleva and Mr V. Monakhov,

lawyers of the Moscow-based non-governmental organisation Jurists for Constitutional Rights (JURIX).

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 first article and the department's defamation action

The first applicant published an article under the title "All the Power Comes from the Forest" ("*Вся власть из леса*") in issue no. 4 of the applicants' newspaper, dated 24-30 January 2002. The article commented on the on-going regional discussion about the rational use and protection of forests. The discussion was centred around unlawful felling of trees and undocumented sale of wood to wholesale purchasing companies in the town of Dalnerechensk for onward sale. The article cited, in particular, the following extract from a letter approved by the participants in the regional conference on the rational use and protection of forests:

> "All these irregularities have been clearly on the rise since the town police department (wood purchasing quota of 4,500 cubic metres) and the courts' administration department of the Supreme Court of the Russian Federation (wood purchasing quota of 3,000 cubic metres) became the forest operators."

The letter bore seventeen signatures, including those by the head of Dalnerechensk municipal council and his first deputy, the deputy head of the town police, the deputy head of the local department of the Federal Security Service, the deputy head of the tax police, a senior State tax inspector, the deputy head of the department for environmental resources, and two directors of regional forest operators. The letter was sent on behalf of the Dalnerechensk municipal council to the Presidential Envoy in the Far Eastern Federal Region and also made public at a press-conference held in the premises of the Press Development Institute.

The quotation was bold-faced and the source was clearly identified.

On 28 March 2002 the courts' administration department of the Primorskiy Region (*Управление судебного департамента при Верховном Суде РФ в Приморском крае*) brought a civil action against the applicants for the protection of its professional reputation and compensation for non-pecuniary damage. The plaintiff submitted that the quoted extract impaired the professional reputation of the department and undermined the authority of the courts' administration of the Primorskiy Region and that of the judicial system as a whole.

2. Publication of the refutation and Mr Shulga's defamation action

Following the institution of the civil action, the applicants printed the letter in full in issue no. 17 of the newspaper, dated 25 April – 1 May 2002, under the headline "Ghost Companies and Courts' Administration Department as Wood Purchasers" ("*Фирмы-призраки и Управление судебного департамента на лесозаготовках*"). The letter was followed by an editor's note under the headline "It was not about you. Refutation" ("*Вас тут не стояло. Опровержение*"). The note emphasised that the quoted letter did not specify which courts' administration department had purchased wood. It went on as follows:

> "It is certainly easier for the head of the Department, Mr V.A. Shulga, who lodged the [defamation] action, to tell who[se department], in addition to its principal functions, has been a forest operator and whose professional reputation has been impaired when a newspaper brought this fact into the limelight...
>
> This is why the editor's office decided not to wait for a court decision and considered it necessary to refute conjectures that readers might have made about the Department of the Primorskiy Region. Having regard to potential adverse consequences of the publication, we officially announce -
>
> THAT WE DID NOT MEAN THE COURTS' ADMINISTRATION DEPARTMENT OF THE PRIMORSKIY REGION."

On an unspecified date Mr Shulga, the director of the courts' administration department of the Primorskiy Region, filed a civil action in his own name for the protection of his honour, dignity and professional reputation and compensation for non-pecuniary damage. He alleged that the refutation had not been valid because it had been clear for a reasonable reader that his department had been targeted in the publication. He contended that he was personally responsible for his department and that the publication had caused substantial non-pecuniary damage to his reputation.

3. Courts' decisions on Mr Shulga's defamation action

On 14 June 2002 the Arsenyev Town Court of the Primorskiy Region (*Арсеньевский городской суд Приморского края*) granted Mr Shulga's action against the applicants. The court found that the publication had targeted Mr Shulga's department because it had been the only courts' administration department in the region that had been allocated a wood purchasing quota of 3,000 cubic metres for the construction of a new courthouse. On the other hand, the applicants had failed to show that the inclusion of the department in the number of forest operators had given rise to "irregularities". The court held that the disseminated information was not the applicants' opinion or value-judgment because they had disseminated it without verifying its truthfulness.

Finally, the court rebutted the applicants' reliance on the grounds for exemption from liability set out in Section 57 §§ 3 and 4 of the Mass-Media

Act. In the court's view, these provisions were not applicable because the Press Development Institute that had circulated the letter was an "autonomous non-commercial organisation" rather than a public association, as provided in Section 57 § 3, and the head of the municipal council who had signed the letter was a municipal employee rather than an official of a State authority, as required by the same section.

The court ordered the applicants to publish a refutation and each of them to pay 10,000 Russian roubles (approximately EUR 350) to Mr Shulga.

On 28 August 2002 the Primorskiy Regional Court upheld, on an appeal by the applicants, the judgment of 14 June 2002.

4. Courts' decisions on the department's defamation action

On 11 October 2002 the Arsenyev Town Court of the Primorskiy Region granted the defamation action lodged by the courts' administration department. The court held that the contested information had originated from a letter approved by the participants in a regional conference, which was not a State authority, organisation or a public association. Therefore, in the court's opinion, it was incumbent on the applicants to verify the truthfulness of the information before publishing it. Since the applicants failed to do so and also failed to prove before the court that the information had been true, they were at fault for the dissemination of information damaging the reputation of the courts' administration department. The court ordered the applicants to publish a refutation and each of them to pay 15,000 Russian roubles (approximately EUR 500) to the department and also bear the legal costs and expenses.

On 15 January 2003 the Primorskiy Regional Court upheld, on an appeal by the applicants, the judgment of 11 October 2002.

B. Relevant domestic law

The editor's office and journalists may not be held liable for dissemination of information which is untrue and damages honour or reputation of citizens and organisations or harms their rights and lawful interests, if such information originated in press-releases of State authorities, organisations, agencies, companies or public associations (Section 57 § 3 of the Mass-Media Act, Federal Law no. 2124-I of 27 December 1991) or if such information is a verbatim reproduction of statements by officials of State authorities, organisations or public associations (Section 57 § 4).

Article 152 of the Civil Code provides that an individual may apply to a court with a request for the rectification of "statements" ("*сведения*") 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.

C. Relevant Council of Europe documents

Report on the honouring of obligations and commitments by the Russian Federation, presented by co-rapporteurs of the Monitoring Committee to the Parliamentary Assembly of the Council of Europe (doc. 10568, 3 June 2005), noted as follows:

> "*Libel lawsuits*
>
> 389. We are concerned by the current defamation legislation and its application by the Russian judiciary and executive powers. Journalists are often prosecuted through libel suits (approximately 8-10,000 lawsuits a year)...
>
> 392. Also the legislation concerned should not grant any special protection against criticism to public officials... Finally, the possibility of filing lawsuits against media and journalists by public authorities should be abolished as the latter *per se* cannot possess any dignity, honour, or reputation.
>
> 393. Therefore, we urge the Russian authorities to reform its defamation legislation, *inter alia*: ... to introduce a clear ban on public bodies to institute civil proceedings in order to protect their 'reputation' (without hindrance to the right of public officials to litigate in their private capacity), to clearly establish that no one should be liable under defamation law for the expression of an opinion ('value judgements')..."

COMPLAINT

The applicants complained about a violation of their right to impart information and ideas. Their complaint related to both sets of the domestic proceedings.

THE LAW

The applicants complained about a violation of their right to freedom of expression. This complaint falls to be examined 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government submitted that the interference with the applicants' right to freedom of expression had been prescribed by law, notably Article 152 of the Civil Code which governed the protection of professional reputation of both citizens and legal entities. The domestic courts found that the facts set out in the publications were not shown to have been true and that there were no grounds to relieve the applicants from responsibility by virtue of section 57 of the Mass-Media Act.

The applicants contested the Government's submissions. They pointed out that, by virtue of section 57 of the Mass-Media Act, journalists were exempted from the duty to verify the truthfulness of published statements if such statements reproduced verbatim official speeches by State officials. The first publication contained an exact quotation from a letter to the Presidential Envoy signed by officials of the Dalnerechensk District and distributed for publication by the head of the district council at a press-conference organised in the Press Development Institute. The second publication reproduced the letter in its entirety. The domestic courts drew an artificial distinction between a "municipal employee" and "a State official". At the time the Mass-Media Act was adopted, no such distinction existed. In any event, the letter was also signed by other persons who had been the State officials proper. As both publications had cited to an official document, the applicants believed that the obligation to show the truthfulness of that information should have rested with the authors of the letter rather than with the journalists who reprinted it in good faith. Furthermore, the publications covered a matter of great public concern and contained value-judgments rather than statements of fact.

The Open Society Justice Initiative and the Moscow Media Law and Policy Institute, which had been given leave to intervene in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court), presented comments on the legal principles applicable to the present case.

They submitted, firstly, that Government agencies were fully equipped, and should be expected, to defend their reputation before the court of public opinion rather than a court of law. The PACE Report urged Russia to introduce a clear ban on the ability of public authorities to institute civil proceedings in order to protect their "reputation" (cited above, § 393). If public authorities were to be included within the meaning of "others" whose reputation or rights Article 10 § 2 was designed to protect, it would subject journalists to a constant risk of harassment through lawsuits and frustrate the media's ability to act as a watchdog of public administration. Mindful of that danger, courts of many established jurisdictions barred public authorities from suing in defamation because of the public interest that such authorities must be open to uninhibited public criticism (United Kingdom:

Derbyshire County Council v. Times Newspapers Ltd [1993] AC 534; India: *Rajagopal v. State of Tamil Nadu* (1994) 6 SCC 632; United States: *City of Chicago v. Tribune Co.*, 307 Ill. 595 (1923); South Africa: *Die Spoorbond v. South African Railways* [1946] AD 999). Some new European democracies have also taken steps to bar government bodies from claiming defamation damages.

Secondly, they indicated that Article 10 would be hollowed out if public officials could substitute themselves for their respective bodies in taking legal action. Here, the relevant test for entertaining a defamation action against the media would be whether the statement at issue was unequivocally "of and concerning" that official. The "group defamation" doctrine has deep roots in the common-law legal tradition (*King v. Alme & Nott*, 91 Eng. Rep. 790 (1700) (per curiam); *Eastwood v. Holmes*, 1 F. & F. 347, 175 Eng. Rep. 758 (1858); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). Defamation laws in the continental legal system have similar identification requirements; a plaintiff must be identifiable by name or image or otherwise, in order to have standing to sue for defamation.

Finally, they pointed out that journalists should not be held liable for defamation for accurately publishing statements contained in non-confidential government documents. The Court has constantly held the view that the press "should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the content of official reports without having to undertake independent research" (*Colombani and Others v. France*, no. 51279/99, § 47, ECHR 2002-V; also *Selistö v. Finland*, no. 56767/00, § 60, 16 November 2004). A similar well-developed legal doctrine known as the "fair report privilege" has long been entrenched in the United States jurisprudence (*Restatement (Second) Torts*, § 611 (1977)). It follows that journalists have a right under Article 10 to publish accurately statements from a non-confidential document without being liable for the content of such statements.

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 of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President