CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 33220/02
by Irk RYSMUKHAMETOV
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*,
Mr P. LORENZEN,
Mrs F. TULKENS,
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 7 August 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Irk Zagitovich Rysmukhametov, is a Russian national, who was born in 1931 and lives in the town of Sibay of the Bashkortostan Republic. He was represented before the Court by Mr M. Kuznetsov, a lawyer practising in Moscow. 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 19 December 1999 the national elections to the lower chamber of the federal legislature, the State Duma of the Federal Assembly of the Russian Federation, took place. One candidate, Mr Barlybaev ("the member of parliament" or "MP"), received a majority of votes in Sibay single-ballot electoral district no. 6 of the Bashkortostan Republic.

On 16 June 2000 the applicant, a local voter, filed a complaint with the Central Electoral Commission of the Russian Federation ("the CEC") against the decision of the district electoral registry to approve the results of the district elections. The applicant alleged, in particular, that his son, Mr Mukhamet-Irekle who was at the material time the assistant to the future MP, had observed the future MP's failure to pay for the services provided by a local broadcasting company. The applicant also alleged that Mr Barlybaev had failed to pay for the services provided by a local publishing house and some other institutions and requested the CEC to investigate the matter and invalidate the results of elections.

On 6 July 2000 the MP lodged a civil action against the applicant for the protection of his honour, dignity and professional reputation. The MP alleged that the applicant's complaint of 16 June 2000 to the CEC had contained defamatory and damaging statements. The MP also alleged that the sole reason for the applicant's filing the complaint had been to avenge the MP's refusal to employ the applicant's son, Mr Mukhamet-Irekle.

On an unspecified date the applicant responded by lodging a counterclaim. He submitted that his complaint to the CEC had been a lawful exercise of his civil duty and that his allegations had been accurate.

On 8 November 2000 the Sibay Town Court of the Bashkortostan Republic gave its judgment. The court concluded that the applicant's allegations in his complaint of 16 June 2000 had been inaccurate and granted the MP's claim, dismissed the applicant's counterclaim and ordered the applicant to pay RUR 5,000 (approximately EUR 200) in damages.

On 28 February 2002 the Supreme Court of the Bashkortostan Republic dismissed the applicant's appeal and upheld the judgment.

COMPLAINTS

The applicant complained, without invoking specific provisions of the Convention, that the court had found him liable for communication of information to the Central Electoral Commission of the Russian Federation, notwithstanding the fact that this information had been in the public domain. Under Articles 6 and 13 of the Convention and Article 3 of

Protocol No. 1 the applicant complained that the proceedings for defamation against him had been unfair and arbitrary.

THE LAW

On 14 August 2003 Mr Artur Mukhamet-Irekle, the applicant's son, was appointed the applicant's legal guardian.

On 8 September 2003 the application was communicated to the respondent Government.

By a letter of 1 October 2003, Mr Mukhamet-Irekle informed the Court that Mr Kuznetsov was appointed to act as the applicant's representative.

On 13 January 2004 the Government's observations on the admissibility and merits of the application were received and the applicant's representative was invited to submit his written observations in reply by 10 March 2004.

On 11 February 2004 the English version of the Government's observations was forwarded to the applicant's representative. The time-limit for the submission of the applicant's observations remained unaffected.

By an undated letter received by fax on 3 March 2004, Mr Mukhamet-Irekle requested an extension of an unspecified duration of the time allowed for submission of the observations, citing the applicant's illness. The President of the Chamber granted an extension until 1 April 2004.

By a faxed letter of 11 March 2004, Mr Mukhamet-Irekle informed the Court of the applicant's death. He indicated that he was the applicant's only heir and successor and asked the Court to pursue examination of the application.

As the observations on the admissibility and merits had not been received by the indicated time-limit, on 11 May 2004 the applicant's representative was advised by registered mail that the failure to submit observations might result in the strike-out of his application. He was also informed that the Court had taken into account the statement by the applicant's heir expressing the wish to pursue the proceedings before the Court and he was therefore to provide a written statement explaining the heir's legitimate interest in having the proceedings pursued. As it appears from the acknowledgement-of-receipt card, the letter was delivered on 28 May 2004.

To date neither the observations on the admissibility and merits nor the above statement have been received.

The Court recalls Article 37 of the Convention which, in the relevant part, reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;

...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court notes that the applicant's representative was advised that he was to submit written observations on the admissibility and merits of the case. He subsequently received a reminder thereof. No response has been received to date. The Court infers therefrom that the applicant's heir does not intend to pursue his application. Furthermore, it considers that respect for human rights as defined in the Convention and its Protocols does not require it to continue the examination of the case.

In these circumstances it considers that the case should be struck out of the list in accordance with Article 37 § 1 (a) of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President