CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 2283/02
by Yuriy TUPIKIN
against Russia

The European Court of Human Rights (First Section), sitting on 2 September 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
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 lodged on 28 November 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Yuriy Yegorovich Tupikin, is a Russian national, who was born in 1969 and lives in Ulyanovsk. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

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

1. Defamation action against the applicant

On 21 November 2000 the *Ulyanovsk Segodnya* newspaper published an interview with the applicant who at that time was standing as a candidate in

elections to the Ulyanovsk town administration and in elections of the governor of the Ulyanovsk Region. In the interview the applicant sharply criticised General Shamanov who was the applicant's competitor in the governor's elections. On 8 December 2000 General Shamanov lodged an action against the applicant for the protection of his honour, dignity and professional reputation. General Shamanov was later elected the head of administration of the Ulyanovsk Region.

On 22 March 2001 the Zasviyazhskiy District Court of Ulyanovsk delivered a judgment. The court established that the publication had damaged the honour, dignity and the professional reputation of General Shamanov as a person and as a candidate in the elections. The court found that the applicant had failed to prove the factual basis of his allegations and ordered him to pay RUR 1,000 in damages and also publish a refutation.

On 29 May 2001 the Civil Chamber of the Ulyanovsk Regional Court upheld the judgment of 22 March 2001.

2. Defamation actions lodged by the applicant

(a) The first action concerning a newspaper article

On 12 January 2001 the *Vestnik* newspaper printed an interview with the newly elected governor Shamanov.

On 18 April 2001 the applicant filed an action against Mr Shamanov for the protection of his honour, dignity and the professional reputation and compensation for non-pecuniary damage. The applicant argued, in particular, that Shamanov's interview might have had a negative impact on the opinion of the electorate about him.

On 8 May 2001 the Leninskiy District Court dismissed the applicant's action. On 19 June 2001 the Civil Chamber of the Ulyanovsk Regional Court upheld the judgment of 8 May 2001.

(b) The second action concerning a press conference

On 24 December 2000 Mr Shamanov participated in a television show aired on the same and the following days by a local television channel *Simbirsk Yefir Plus*. On 26 December 2000 the transcript of the show was published in the newspaper *Komsomolskaya Pravda v Ulyanovske*. Responding to the moderator's question about his team, Mr Shamanov said, in particular, the following:

> "...As to the people who attempt to upset the situation... The thing is that they do not criticise, in the positive sense, they engage in fault-finding... Today there are a number of people who are doing it on a professional basis. Tupikin initiates a new set of judicial proceedings, in fact he does it to earn money... Tupikins will definitely have no place on the land of Ulyanovsk, I am talking about their doings... I plan on

guaranteeing the order in the society and the functioning of economic and other laws so that eventually the society would benefit from it and not some rogues..."[1]

On 7 May 2001 the applicant filed an action against Mr Shamanov for the protection of his honour, dignity and the professional reputation and compensation for non-pecuniary damage.

On 22 June 2001 the Leninskiy District Court gave its judgment. At the outset the court found that some sentences in the quoted extract did not refer to the applicant. The remaining part of the extract, in the court's opinion, did not contain any information damaging the applicant's honour or reputation because the statements did not allege that the applicant committed any disorderly or immoral acts. On this ground the court dismissed the applicant's action in full.

On 28 August 2001 the Civil Chamber of the Ulyanovsk Regional Court upheld on the applicant's appeal the judgment of 22 June 2001.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that he was denied a fair trial by an independent and impartial tribunal. He also complains under Article 10 of the Convention that his right to freedom of expression was violated.

THE LAW

On 11 June 2003 the application was communicated to the respondent Government.

On 20 October 2003 the Government's observations on the admissibility and merits of the application were received and the applicant was invited to submit his written observations in reply by 22 December 2003.

On 20 November 2003 the English version of the Government's observations was forwarded to the applicant. The time-limit for the submission of the applicant's observations remained unaffected.

On 26 January 2004 an additional copy of the Government's observations was sent to the applicant's fax number.

As the applicant's observations on the admissibility and merits had not been received by the indicated time-limit, on 9 February 2004 the applicant was advised by registered mail that the failure to submit his observations might result in the strike-out of his application. As it appears from the

[1] The English text reflects the broken and incoherent pattern of speech of Mr Shamanov in the original.

acknowledgement-of-receipt card, the letter was delivered on 25 February 2004.

To date the applicant has not replied.

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 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 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