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

THIRD SECTION

DECISION

Application no. 13114/05
Nikolay Ivanovich ZAKHAROV
against Russia

The European Court of Human Rights (Third Section), sitting on 23 May 2017 as a Committee composed of:

Helen Keller, *President,*
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 February 2005,

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 Nikolay Ivanovich Zakharov, is a Russian national, who was born in 1954 and lives in Velikiy Novgorod. He was represented before the Court by Ms M. Isayeva and Ms M. Suchkova, lawyers practising in Moscow.

The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

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

In 2003 the applicant ran for governor of the Novgorod Region. On 27 and 29 August 2003 he appeared, together with another candidate S., in an election debate hosted by the Slavia television channel. The debate touched upon the procurement of coal for the needs of the region. The applicant said:

> "[27 August] Thirdly and most importantly: why our region is the only one in the North-West to buy the most expensive coal. Do you see? Yes, the tenders are being organised but for some reason the coal is always from Kuzbass-Ugol. We do not buy from the Rostov coal mine, or from Novosibirsk, or from Ukrainian brothers. Even though they offer cheaper coal of the same quality ...
>
> [29 August] We do not have a continuous market competition in the region. Indeed, the monopolists we have, regional monopolists, like for instance D[.] who became anxious when he heard that the coal had finally come into the limelight, that we buy the most expensive coal ..."

Mr S. seconded what the applicant said, adding that the inflated coal price was the result of a fraudulent organisation of coal tenders.

The Novgorod Coal and Fuel Company, a successor company to Kuzbass-Ugol, and its director Mr D. sued the applicant, Mr S., and the television channel for defamation. They sought a refutation of the claims that their coal was more expensive than that of the competitors, that its price was not real and that the tenders had been organised fraudulently. They had initially sought compensation in respect of non-pecuniary damage but subsequently withdrew that part of the claim.

On 2 August 2004 the Novgorod Town Court granted the defamation claim in part. It pointed out that certain statements were not actionable in defamation: thus, the applicant did not claim that the coal price was not real and a comparison of coal suppliers did not refer specifically to the Novgorod Coal and Fuel Company or Mr D. By contrast, the allegations that the Novgorod Coal and Fuel Company under the management of Mr D. sold the most expensive coal in the North-West and that the coal price was exaggerated affected the business reputation of both plaintiffs in breach of Article 152 of the Civil Code. Those allegations amounted, to a reasonable observer, to an accusation that the plaintiffs had acted in an immoral and anti-social manner to the detriment of the budget of the Novgorod Region. The Town Court further noted that the defendants did not submit any evidence in support of their allegations, whereas it appeared from the statistical certificates that the price of the coal supplied by the Novgorod Coal and Fuel Company was equivalent or even lower than that of coal suppliers in other regions. The applicant, Mr S. and the television channel were ordered to broadcast a refutation and to reimburse the court fees of 505 Russian roubles (14 euros) to the Novgorod Coal and Fuel Company and Mr D.

On 6 October 2004 the Novgorod Regional Court upheld the judgment on appeal.

COMPLAINTS

The applicant complained under Article 10 of the Convention about a breach of his right to freedom of expression. He also complained under

Article 6 of the Convention that the defamation proceedings had been unfair and excessively long.

THE LAW

The applicant's first complaint relates to an allegedly unjustified restriction on his right to freedom of expression guaranteed by Article 10 of the Convention which reads:

> "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 ..."

The Government argued that the complaint was manifestly ill-founded. The interference had had a basis in Russian law and protected the reputation of Mr D. and his company whom the applicant had falsely accused of overcharging for coal. At the material time Mr D. had been a businessman rather than a politician and the unfounded accusation had affected his and his company's reputation in an equal measure. The applicant had never endeavoured to prove the truth of his allegations or to establish a sufficient factual basis for them. It follows that he had disseminated defamatory information about the company and its director which had been likely to lower them in public esteem and which had been put forward without any supporting evidence (here they referred to *Barfod v. Denmark*, 22 February 1989, § 35, Series A no. 149). The sanction – a retraction – had not been disproportionate to the legitimate aim of the protection of the reputation.

The applicant claimed that he had been punished for statements he had never technically made because the courts had confused his words with those of his co-defendant S. The interference had not pursued a legitimate aim but instead sought to stifle a criticism of the regional administration's approach to managing coal supply in the region. Nor had it been necessary in a democratic society because the issues relating to management of public resources were matters of public concern and because the remarks had been made in the electoral context. As a former politician and a public figure, D. should have shown greater tolerance to criticism. The domestic courts had not carried out a balancing exercise or weighted his right to freedom of expression against the need to protect the plaintiffs' reputation. The requirement to retract his words had undermined public confidence in him as a politician and had therefore been excessive.

It is common ground between the parties that the judgments in the defamation proceedings constituted an interference with the applicant's right to freedom of expression guaranteed by Article 10 § 1.

The interference had a lawful basis, notably Article 152 of the Civil Code, which allowed the injured party to seek the judicial protection of the reputation. The same rules were applicable to the protection of the business reputation of persons and legal entities under domestic law and the Court has previously acknowledged that companies have a right to defend themselves against defamatory allegations (see *Romanenko and Others v. Russia*, no. 11751/03, §§ 21 and 38, 8 October 2009, and *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011). The interference also pursued a legitimate aim, that of protecting the reputation or rights of others, within the meaning of Article 10 § 2. What remains to be established is whether the interference was "necessary in a democratic society".

During two television debates the applicant asserted that Kuzbass-Ugol – the old name of the Novgorod Coal and Fuel Company – was a monopolist supplier of coal for the needs of the region at a price higher than that offered by its competitors and that a mention of that fact had made its director D. anxious. The domestic courts established that ordinary viewers could reasonably interpret certain statements as reflecting on the company and its director and rejected others which did not target them. The Court is therefore satisfied that there existed an objective link between the impugned statements and the persons suing in defamation which is a requisite element for an interference with the right to freedom of expression to be proportionate to the legitimate aim of the protection of the reputation of others (see, by contrast, *Dyuldin and Kislov v. Russia*, no. 25968/02, § 44, 31 July 2007; *Godlevskiy v. Russia*, no. 14888/03, § 44, 23 October 2008, and *Reznik v. Russia*, no. 4977/05, § 45, 4 April 2013).

The statements which gave rise to the defamation action were made by the applicant in a live television debate. The Court has previously acknowledged that the format of a live broadcast makes it impossible for the speaker to reformulate or refine his words before they are made public (see *Reznik*, cited above, §§ 43-44). However, the present case must be distinguished from that of Mr Reznik because the applicant had a second opportunity, two days after the first one, to speak on the same subject. He could have used it to attenuate or clarify his allegations if he believed that they had been misunderstood or misinterpreted during the first debate. Instead, he chose to reaffirm his charges with a greater force, alleging that the mention of the inflated coal price had made Mr D. anxious.

The claim that the Novgorod region purchased the most expensive coal in North-Western Russia was not a value judgment but a statement of fact which, moreover, was not particularly difficult to verify on the basis of the publicly available statistical information. It does not appear, however, that the applicant had in his possession any evidence to back up his claim either at the time of the debates or during the ensuing defamation proceedings. In

this connection the Court reiterates that, in addition to the public interest in open debate about business practices, there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. The State therefore enjoys a margin of appreciation as to the means it provides under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming its reputation (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II; *Kuliś and Różycki v. Poland*, no. 27209/03, § 35, 6 October 2009; and *Uj*, cited above, § 22). By contrast with *Uj*, the subject matter of the present case was not a value judgment or opinion but a statement of fact which was shown to have been untrue. The Court accordingly finds that the domestic courts gave "relevant and sufficient" reasons for the interference.

As regards the sanction imposed on the applicant, the Court observes that no award was made against him because the company and its director had withdrawn their claim for compensation in respect of non-pecuniary damage. The small amount of court fees he was required to reimburse to them was neither dissuasive nor disproportionate in the light of the fact that he had put forward unsubstantiated allegations (see, by contrast, *Reznik*, cited above, § 50).

Accordingly, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

The applicant's second complaint relates to alleged procedural irregularities in the defamation proceedings and their excessive duration. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and must also be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2017.

Fatoş Aracı
Deputy Registrar

Helen Keller
President