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. 14881/03
by Aleksandr ZAKHAROV
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,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 23 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 Aleksandr Vasilyevich Zakharov, is a Russian national, who was born in 1947 and lives in the town of Iksha in the Moscow Region. 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 17 July 2002 the applicant privately sent a complaint to a deputy Governor of the Moscow Region where he reported the usurpation of a piece of communal land, adjacent to a public street in Iksha, by a private person Ms V. The applicant alleged that Ms Afonina, head of Iksha town administration, not only had failed to stand up for the rights of other residents of Iksha, but also she had actively contributed to make the usurpation possible. In particular, Ms Afonina had allegedly brought about the forced retirement of a land surveyor who had objected to the usurpation; she had interfered with the activities of court bailiffs who had come to reclaim the usurped land; she had assisted V. to obtain title to the land by adverse possession; and she had ostensibly made an exemption for V. from regulations prohibiting the planting of vegetables in the "protected areas". The complaint concluded as follows:

> "Such outrageous conduct of the appointed (not elected!) head of the town administration *vis-à-vis* the town population, – for all of us to see – discredits the power that appointed Afonina and sets an example of breaking the law with impunity provided that you can 'make a deal' with the head of the administration.
>
> I request you to give your appraisal of Afonina's anti-social conduct and assist [us] to return the land plot into communal use, notwithstanding her opposition..."

On 27 September 2002 Ms Afonina lodged a civil action against the applicant for refutation of information damaging to her honour and dignity and compensation for non-pecuniary damage. She maintained that the applicant's letter had contained untrue facts and insulting value-judgments, which could have damaged her reputation in the eyes of her hierarchical superiors, thus causing her non-pecuniary damage.

On 27 January 2003 the Dmitrov Town Court of the Moscow Region granted Ms Afonina's defamation action, finding that the applicant had failed to prove the truthfulness of his allegations contained in the letter of 17 July 2002. Assessing the allegedly insulting value-judgments in the penultimate paragraph of the letter, the court held as follows:

> "In addition to failing to substantiate the said allegations with any proof, [the applicant] used expressions which, in their form and contents, are not appropriate in respect of an official, which the plaintiff is...
>
> Also, the court considers that the judgments used by the [applicant] in his letter – such as '...ostensibly makes an exemption', 'such outrageous conduct... discredits the power that appointed Afonina and sets an example of breaking the law with impunity provided that you can 'make a deal' with the head of administration', 'Afonina's anti-social conduct' – not only are untrue because the [applicant] failed to prove that these facts had taken place, but also they insult the Head of Administration; this information, worded as insults, damages dignity and honour of the plaintiff, and it was

sent to a deputy Governor of the Moscow Region, which might have led to an impairment of the plaintiff's authority before the regional managers...”

The court ordered the applicant to refute the information contained in the letter of 17 July 2002 and to pay 300 Russian roubles (EUR 10) to Ms Afonina in respect of non-pecuniary damage.

On 4 March 2003 the Civil Section of the Moscow Regional Court upheld, on the applicant's appeal, the judgment of 27 January 2003. It did not analyse the truthfulness of the factual allegations and only grounded its judgments on the three extracts quoted in the last paragraph of the judgment of 27 January 2003 above. The appeal court also excluded the requirement to refute the information, but confirmed the award in respect of non-pecuniary damage.

B. Relevant domestic law

Constitution of the Russian Federation (of 12 December 1993)

Article 29 guarantees freedom of ideas and expression.

Article 33 provides that Russian citizens shall have the right to petition in person, as well as to submit individual and collective appeals to, State authorities and local self-government bodies.

Civil Code of the Russian Federation (of 30 November 1994)

Article 152. Protection of honour, dignity and professional reputation

“1. An individual shall be entitled to claim, before a court, a refutation of information damaging his honour, dignity and professional reputation unless the person who disseminated the information proves that it is true...

5. The individual about whom the information damaging his honour, dignity and professional reputation was disseminated shall be entitled to claim, in addition to the refutation, compensation for pecuniary and non-pecuniary damage caused by the perpetrator.”

Supreme Court's case-law

Ruling of the Plenary Session of the Supreme Court of the Russian Federation no. 11 of 18 August 1992 “on certain issues that have arisen in the course of judicial examination of claims for the protection of honour and dignity of individuals, and professional reputation of individuals and legal entities” (as amended on 25 April 1995) established that the notion “dissemination of information” employed in Article 152 of the Civil Code was to encompass publishing and broadcasting of information, its inclusion in professional references, public discourses, applications to State officials,

as well as communication of information in any other form to at least one another person. It further specified that "communication of such information to the person whom it concerns could not be considered as its dissemination".

COMPLAINTS

The applicant complains under Article 10 of the Convention about a violation of his right to impart information. He submits, in particular, that he was found liable for dissemination of his opinions in respect of a public figure, which Ms Afonina was. He indicated that the decision of the appeal court was exclusively based on his value-judgments (*высказывания*) and not on factual statements.

THE LAW

The applicant complained about a violation of his right to freedom of expression under Article 10 of the Convention, which provides 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 submit that the interference with the applicant's right to freedom of expression was justified because it was prescribed by Article 152 of the Civil Code of the Russian Federation and because the applicant failed to prove the truthfulness of the information.

The applicant maintains his claims. He points out that the Moscow Regional Court quashed the judgment in the part concerning the refutation which removed the legal basis for the application of Article 152 of the Civil Code. He also indicates that the final judgment of the Moscow Regional Court was based not on his allegations verifiable by facts, as the Government submitted, but rather on his appraisal of Ms Afonina's behaviour.

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 prejudicing the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President