



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

FIRST SECTION

Application no. 22652/07
Anton Alekseyevich BAKOV
against Russia
lodged on 21 April 2007

STATEMENT OF FACTS

The applicant, Mr Anton Alekseyevich Bakov, is a Russian national, who was born in 1965 and lives in Yekaterinburg, Sverdlovsk Region. He is represented before the Court by Mr A. Yablonskiy, a lawyer practising in Yekaterinburg.

The circumstances of the case

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

In November 2005 the director of a joint stock company “Ural Hardware Plant” (*ОАО «Уральский завод бытовой техники»*) (hereinafter – the company) complained to the applicant, at the time a member of the Russian State Duma, about actions of the Main Department of the Federal Registration Service in the Sverdlovsk Region (hereinafter – the Service). According to the director, the Service had unlawfully registered the transfer of title to seventeen buildings from his company to another private entity. The director insisted that having accidentally learned about a possible transfer, he had warned the head of the Service, Mr Z., that the buildings had belonged to his company and that the company had had no intention to sell them or give them away. However, despite that notification, the Service went on with the registration of the sale-purchase agreement in respect of the company’s property.

The applicant, acting as an MP, asked various law-enforcement officials to open a criminal-law inquiry into the actions of the Service officials.

On 13 December 2005 the applicant held a press conference attended by many representatives of federal and local mass media. In the aftermath of the conference, on 14 December 2006 a local newspaper “Komsomolskaya Pravda – Ural” published an article by Mr B. The article entitled “Redistribution of property is a too delicate expression” contained the reporter’s view on the situation around the company’s property based on the applicant’s statements made during the press conference.

The head of the Service, Mr Z., lodged a defamation action against the applicant, the reporter and the newspaper. He claimed that the following expressions were untrue and damaging to his reputation:

“Recently the head of the [Service] Mr Z. found himself mired in a scandal pertaining to an unlawful registration of a sale of immovable property with the use of a forged power of authority. The investigating unit of the town Interior Department opened a case under Article 159 § 4 – ‘fraud’”;

“... and when it happens that such a person is mired in a corruption scandal, it means that a wolf perched in a sheep barn”;

“Due to the fact that I consider his actions to be a particularly dangerous crime for the society, criminal case no. 66108 on suspicion of fraud has been opened upon my request. And I hope that even a person with two general stars on his shoulder straps will be held liable in accordance with the gravity of his actions”.

On 10 August 2006 the Oktyabrskiy District Court of Yekaterinburg accepted the plaintiff’s claims in full. It held:

“In support of his claims the plaintiff stated that the disputed statements contain information about his connection to the unlawful registration of the sale of the immovable property and accusations against him of crimes – a fraud, as well as of corruption.

Having asked [the court] to dismiss the action, the defendants explained that the article contained a personal opinion of [the applicant] and did not contain a statement of facts; moreover, the information in the article is not directed against a specific person, therefore it is impossible to say that the disputed statements concern the plaintiff, Mr Z.; at the same time, the statements that concern Mr Z. do not defame him and are true.

The court cannot take into account the arguments by the defendant’s representative that [the applicant] merely expressed his opinion about the past events as [the applicant’s] statements that ‘Mr Z. was mired in a scandal’, ‘in a corruption scandal’, that upon [the applicant’s] request the investigating unit of the town Interior Department opened criminal case no. 66108 under Article 159 § 4 – fraud, have a very concrete affirmative character.

The court also does not accept the defendants’ argument that the information laid down in the article and disputed by the plaintiff is not directed against a particular person because the statement ‘Recently the head of the [Service] Mr Z. found himself mired in a scandal pertaining to an unlawful registration of a sale of immovable property with the use of a forged power of authority’ has direct relation to the plaintiff. The ending of the statement ‘The investigating unit of the town Interior Department opened a case under Article 159 § 4 – ‘fraud’ cannot be interpreted in any other manner but as a statement about Mr Z.’s involvement in the fraud, given that the first part of that statement relates to Mr Z. The following phrase in the article again talks about Mr Z. with the indication of his last name and therefore, the statement ‘... and when it happens that such a person is mired in a corruption scandal, it means that a wolf perched in a sheep barn’ is no more than the continuation of the previous statement and should be taken as information about Mr Z., and not about any

other person. In this connection, the subsequent phrase ‘Due to the fact that I consider his actions to be a crime of particularly dangerous for the society, criminal case no. 66108 on suspicion of fraud has been opened upon my request. And I hope that even a person with two general stars on his shoulder straps will be held liable in accordance with the gravity of his actions’ is only interpreted as the statement about the plaintiff.

The disputed phrases are damaging to the honour and reputation of Mr Z. as they contain statements concerning his bad faith in performance of his official function (‘Recently the head of the [Service] Mr Z. found himself mired in a scandal pertaining to an unlawful registration of a sale of immovable property with the use of a forged power of authority’), his participation in a crime of fraud (‘The investigating unit of the town Interior Department opened a case under Article 159 § 4 – ‘fraud’’, ‘Due to the fact that I consider his actions to be a crime of particularly dangerous for the society, criminal case no. 66108 on suspicion of fraud has been opened upon my request. And I hope that even a person with two general stars on his shoulder straps will be held liable in accordance with the gravity of his actions’). The plaintiff is compared to a wolf which perched in a sheep barn. According to report no. 6/77 of a linguistic expert examination, the expression ‘a wolf perched in a sheep barn’ in the context of the present article has the following meaning ‘Mr Z. is a carnivorous animal (a wolf) who perched in such a state agency where he can easily commit criminal acts with immovable property belonging to owners of the Sverdlovsk Region’. It follows that that expression is damaging to the honour and dignity of the plaintiff, diminishes his reputation as it accused the plaintiff of a crime, and also characterises Mr Z. as a person who creates arbitrariness in the work of a state body.”

The District Court also noted that while criminal proceedings on a fraud charge had been instituted as described in the article, no procedural actions had been taken within those proceedings against Mr Z. It concluded that there was no evidence that any criminal investigation was pending against Mr Z. The fact that the director had warned Mr Z. of an unlawful nature of the sale-purchase agreement in respect of his company’s property and that the registration of the property rights had, nevertheless, been performed could not, in the court’s view, be taken as evidence of unlawful or criminal actions on Mr Z.’s part.

The court held the applicant liable for 50,000 Russian roubles (RUB) in respect of non-pecuniary damage sustained by the claimant. The applicant appealed.

On 24 October 2006 the Sverdlovsk Regional Court upheld the judgment on appeal, having endorsed the District Court’s reasoning.

The applicant submitted that in 2006 and 2007 commercial courts had annulled the transfer of the property rights and its registration, having upheld the company’s title to the buildings. In particular, the courts had acknowledged that the Service had registered the transfer of the property rights on the basis of false documents, including a forged power of authority, and in disregard of the warnings by the company’s directory. The applicant provided the Court with copies of those judgments.

COMPLAINT

The applicant complained under Article 10 of the Convention about a violation of his right of freedom of expression.

QUESTION TO THE PARTIES

In respect of the decisions by the Russian court to hold the applicant civilly liable for statements he had made during the press conference as reproduced in an article by a local newspaper, was the interference with the applicant's freedom of expression, in particular his right to impart information, justified under Article 10 § 2 of the Convention?