



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

FIRST SECTION

Application no. 27447/07
Vladimir Fedorovich KHARLAMOV
against Russia
lodged on 7 May 2007

STATEMENT OF FACTS

The applicant, Mr Vladimir Fedorovich Kharlamov, is a Russian national, who was born in 1948 and lives in Orel. He is represented before the Court by Mr V. Suchkov, a lawyer practising in Orel.

At the time of the events the applicant, who is a Ph.D. in Physics and Mathematics, was a tenured professor in the physics department of the Orel State Technical University.

By Order no. 383 of 14 December 2006, the president (ректор) of the Orel State Technical University convened a university-wide conference for the election of the university's academic senate (ученый совет), its standing governing body. The date of the conference was fixed for 26 December 2006. According to the Regulation on the Composition of the Academic Senate of the Orel University, candidates to the senate were to be nominated at staff meetings in structural entities by open majority vote (section 3 of the Regulation of 12 December 2006).

Unhappy about the fact that neither he nor his colleagues in the physics department had been consulted or informed about the nomination and discussion of candidates to the academic senate, the applicant took the floor at the conference and spoke as follows:

“...the elected academic senate may not be considered a legitimate body and its decisions likewise cannot be considered legitimate. All of them can be challenged in courts. The problem is that the staff or departments did not know anything about the candidates to the academic senate or of their academic achievements; no one nominated those candidates. This is some kind of a private party that is going on, some people have gathered and elected themselves. My rights have been violated: I, as a member of the faculty, have been excluded from the procedure which is of great importance both for me and for the university as a whole – the election of the

academic senate. My rights have been breached, and I will complain to courts about the breaches of my rights. The rights of ordinary university employees, ordinary lecturers, have been breached, too: they were removed from the election to the academic senate, this is discrimination. Any discrimination is a form of war; you have declared war to the people, and sooner or later you will get the results of this war in some way or another, in your own families.”

The Orel University sued the applicant in defamation, claiming that his speech had undermined the professional reputation of the university and of its academic senate. The statement of claim was signed by the university president.

The Sovietskiy District Court of Orel reviewed the university statutes and regulations on the procedure for the election of the academic senate and took oral evidence from witnesses. Four witnesses testified that the physics department had not held a meeting for the election of delegates to the conference or nomination of candidates to the senate because the delegates and candidates had been elected and nominated at the meeting between the heads of departments. The staff had been informed about the meeting several days in advance and anyone could attend it.

By judgment of 27 February 2007, the District Court found the applicant liable for defamation of the Orel University and its academic senate. According to the judgment, the applicant “publicly accused [them] of a violation of applicable laws [and] commission of a dishonest act”. It also held as follows:

“The court cannot agree with the respondent party’s argument that the statements [he had] disseminated at the conference were an expression of an opinion. The statements were made in the affirmative form which is apparent from the minutes of the conference of 26 December 2006, the audio recording of the conference, and testimony by witnesses. The witnesses K. and Sh. who had attended the conference on 26 December 2006 explained that they understood the statements as an affirmation which produced a negative impression on them...”

Every legal entity has the right to require that a public appraisal of its activities reflect the real state of affairs. Any negative appraisal of the activities of a legal entity affects its reputation and undermines it. The activity of a legal entity can only be potentially successful if its business reputation in the eyes of other organisations and ordinary citizens is maintained at a certain level, especially in a market economy.”

The District Court awarded the Orel University 20,000 Russian roubles (RUB) in damages and RUB 2,000 in court fees and directed that the applicant read the refutation at the following university conference.

The applicant filed an appeal, relying in particular on Article 10 of the Convention. He also pointed out that the award in respect of damages exceeded his monthly salary.

On 11 April 2007 the Orel Regional Court upheld the District Court’s judgment on the merits but partly amended it. Firstly, it considered that the sentences “All of them can be challenged in courts... All of them can be challenged in courts... Any discrimination is a form of war; you have declared war to the people, and sooner or later you will get the results of this war in some way or another, in your own families.” did not contain any statements about the plaintiffs and could not therefore be damaging for its reputation. Secondly, it noted that the sentence “no one nominated those candidates [in the departments]” was actually true because candidates had

been nominated at the meetings of department heads. Thirdly, the Regional Court considered it appropriate that the operative part of the District Court's judgment be read out at the following conference by the president rather than by the applicant. Finally, it offered a more nuanced characterisation of the disputed phrases as a statement of fact:

“Mr Kharlamov's speech contained a statement of fact: the elected academic senate may not be considered a legitimate body and all of its decisions are likewise illegitimate, in other words, the academic senate was unlawfully elected and its decisions are unlawful. This is a verifiable statement. Accordingly, this information is not a subjective opinion of the defendant but a factual allegation.”

COMPLAINT

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

QUESTION TO THE PARTIES

Was there a violation of Article 10 of the Convention in the instant case?