



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

FIRST SECTION

Application no. 42113/09  
NOVAYA GAZETA and Georgiy Emilyevich BORODYANSKIY  
against Russia  
lodged on 12 September 2008

**STATEMENT OF FACTS**

The applicants are ANO “Redaktionno-Izdatelskiy Dom ‘Novaya Gazeta’”, a legal entity registered in Moscow under the Russian laws (hereinafter – “the applicant company”) and Mr Georgiy Emilyevich Borodyanskiy, a Russian national born in 1959 who lives in Omsk.

**The circumstances of the case**

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

The second applicant is a journalist writing for the Novaya Gazeta newspaper edited and published by the applicant company (hereinafter – “the newspaper”).

On 25 August 2005 the newspaper published an article by the second applicant entitled “The Pope of Omsk, or a Masked Bell” (*«Папа Омский, или колокол в маске»*) (hereinafter – “the article”). The article concerned Mr L. Polezhayev, the then Governor of the Omsk Region.

The article read, in so far as relevant, as follows:

[1] “The Governor of Omsk, Mr Polezhayev, is a typical representative of those in power for who acting is a norm of life. He even received a Golden Mask award<sup>1</sup> ...”

[2] “Few believed that the Governor possessed nothing else. They call him the Pope for a reason – his hand outspreads over the region with two million inhabitants and feels the pulp of every serious business enterprise in it. It [the hand] can pat on a head or beat. Our everyman, as they do elsewhere, would better believe a rumour than official sources. A rumour spread over the town [Omsk] in 2003 started by the singer Ms Pugacheva who made a slip in an interview broadcast on a radio saying that her villa in Miami was next to the villa of the Governor of Omsk.”

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<sup>1</sup> The Russian National Theatre Award “Golden Mask”

[3] “He [Mr Polezhayev] also knows a thing or two about car makes. He prefers to travel on service-related business in a BMW-750 SUV, he is also partial to Land Rover cars. At the same time a car corresponding to his rank, a Lexus, is parked in his private garage.”

On an unspecified date in 2007 Mr Polezhayev lodged a civil claim for defamation against the applicants and requested non-pecuniary damages in the amount of 150,000 Russian roubles (RUB) (approximately 4,245 euros (EUR)). He argued that as the Governor of the Omsk Region he was a civil servant and that the article pictured him in the eyes of the general public as a person having committed unlawful and unethical acts influencing inappropriately State agencies, officials and citizens.

On 12 October 2007 the Kuybyshevskiy District Court of Omsk acknowledged that the information contained in paragraphs 1 – 3 of the article cited above was libellous, hold the applicants liable to publish a refutation and to pay the plaintiff RUB 150,000 (approximately EUR 4,245). The court reasoned that an obligation to prove veracity of the information disseminated in mass media lied with the respondents while the plaintiff only had to prove the fact of dissemination of the information. It found that the applicants had failed to submit evidence showing that the information contained in the article was true and established that it was damaging to Mr Polezhayev’s honour, dignity and business reputation. The applicants were also ordered to pay a stamp tax in the amount of RUB 100 (approximately three euros).

On an unspecified date the applicant company lodged an appeal. It is unclear whether the second applicant lodged a separate appeal claim, however, the heading of the appeal statement read that the second applicant was a co-defendant and his representative pleaded before the appeal court.

On 12 March 2008 the Omsk Regional Court upheld the first-instance judgment but reduced the non-pecuniary award to RUB 50,000 (approximately EUR 1,370). The appeal court agreed with the first-instance court’s reasoning that the applicants had failed to prove the veracity of the information contained in the article and found that the text of the article had served to form negative public opinion about Mr Polezhayev and distrust of the general public towards the policies adopted and implemented by the head of the Omsk Region. The judgment became final on the same date.

## COMPLAINT

The applicants complain under Article 10 of the Convention that their freedom of expression was restricted as the domestic courts failed to distinguish between the statements of facts and value judgments.

## QUESTIONS TO THE PARTIES

1. Was there an interference with the applicants’ rights under Article 10 of the Convention as a result of the defamation proceedings instituted by Mr Polezhayev before the domestic courts?

2. If so, did it comply with the requirements of the second paragraph of that Convention provision? In particular, can it be said that the domestic courts respected the distinction between statements of facts and value judgment?