



Criminal conviction of an editor-in-chief of a newspaper for insult amounted to a violation of freedom of expression

In today's **Chamber** judgment¹ in the case of **Nadtoka v. Russia** (application no. 38010/05) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the criminal conviction, for insult, of a journalist and the editor-in-chief of the newspaper in which the offending article had been published.

The Court found in particular that the offending article had sought to complain of corruption on the part of the mayor of Novocherkassk. A subject of that type was a matter of public concern and discussion of it contributed to political debate.

With regard to the proceedings, the Court noted that the domestic courts had not at any stage weighed the right to respect for his reputation of M.V., mayor of Novocherkassk, who had been targeted by the article, against the right to freedom of expression of Ms Nadtoka, the editor-in-chief. In the Court's view, that was a problematical omission. The Court pointed out that the authorities had enjoyed only particularly limited room for manoeuvre, and concluded that the interference complained of by Ms Nadtoka had not been "necessary in a democratic society" for the protection of the reputation and rights of others.

Principal facts

The applicant, Yelena Mikhaylovna Nadtoka, is a Russian national who was born in 1957 and lives in Novocherkassk (Russia).

In January 2004, when Ms Nadtoka was acting editor-in-chief, the newspaper *Vecherniy Novocherkassk* published an article which included the phrase "some thievish man from Altay who had taken up a comfortably high position" to refer to M.V., who was then the mayor of Novocherkassk. M.V. brought a private prosecution for insult against the journalist who wrote the article and against Ms Nadtoka.

On 1 November 2004 the Justice of the Peace found the journalist guilty of insult and fined her 10,000 roubles (RUB). Ms Nadtoka was fined RUB 50,000 (about 1,364 euros (EUR)), as the judge found her to be an accessory to the offence.

Ms Nadtoka appealed but the Novocherkassk Town Court upheld the judgment, finding that the offending phrase, considered on the basis of the circumstances of the case in their entirety, was definitely an insult. The Rostov Regional Court upheld the conviction on a further appeal.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Ms Nadtoka complained about her criminal conviction, which, in her view, had entailed a breach of her right to freedom of expression as guaranteed by that provision.

The application was lodged with the European Court of Human Rights on 3 October 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Johannes **Silvis** (the Netherlands),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 10

The Court found that the article in question had sought to complain of corruption on the part of the mayor of Novochoerkassk. A subject of that type was a matter of public concern and discussion of it contributed to political debate.

The Court observed that M.V. had not complained of the content of the offending comments but of their form and that the judge had confined himself to determining whether the comments were “indecent” within the meaning of Article 130 of the Criminal Code. The point had not been addressed in the domestic proceedings as to whether or not there had been a sufficient factual basis for the journalist’s criticism of M.V. The only question submitted for examination by the Court was therefore whether the judge had exceeded his room for manoeuvre (“margin of appreciation”) by convicting Ms Nadtoka on the grounds that the terms used in the article were “indecent”.

The Court reiterated that anyone taking part in a public debate on a matter of general concern was required to respect the reputation and rights of others, but was allowed to have recourse to a degree of exaggeration or even provocation. Moreover, it was noteworthy that M.V., as mayor, had necessarily been exposed to close scrutiny of his words and deeds and to criticism. He had therefore been required to exercise particular tolerance in that respect, including towards the form of criticism used.

With regard to the proceedings, the Court noted that the domestic courts had not at any stage weighed M.V.’s right to respect for his reputation against Ms Nadtoka’s right to freedom of expression. The Court found that omission problematical from the point of view of Article 10 of the Convention.

The Court observed that Ms Nadtoka had been convicted as an accessory to the offence and ordered to pay a fine, so in that respect alone the measure imposed on her was already very serious. However moderate, a criminal sanction was still a penalty and was liable to have a chilling effect on the exercise of freedom of expression. Furthermore, the Court noted that the amount of the fine imposed on Ms Nadtoka was far from being insignificant.

The Court pointed out that the authorities had enjoyed only particularly limited room for manoeuvre, and concluded that the interference complained of by Ms Nadtoka had not been “necessary in a democratic society” for the protection of the reputation and rights of others.

There had therefore been a violation of Article 10 of the Convention.

Article 41 (just satisfaction)

The Court held that Russia was to pay Ms Nadtoka 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,992 for costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.