



Defamation finding breached the rights of an NGO chief who criticised restoration work at a heritage site near Moscow

In today's **Chamber judgment**¹ in the case of **Margulev v. Russia** (application no. 15449/09) 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 head of a conservation NGO whose comments in a newspaper article were found to have defamed Moscow City Council.

The Court first found that although the applicant was a third-party to the dispute rather than the direct object of the defamation proceedings, he could still claim to be a victim of an alleged violation of his right to freedom of expression.

The domestic courts had failed to weigh up each party's rights, involving questions such as the good faith or otherwise of the defendant or whether the statements had been value judgments or statements of fact, or whether there had been a direct link between what the article had said and the alleged infringement to the council's right to reputation.

The courts had failed to provide a proper justification for the interference with the applicant's right to freedom of expression and there had been a violation of Article 10.

Principal facts

The applicant, Andrey Igorevich Margulev, is a Stateless national who was born in 1953 and lives in Moscow.

Mr Margulev was the head of a non-governmental organisation (NGO) which was created to help preserve the 18th century Tsaritsyno complex outside Moscow.

In October 2007 he was quoted by the newspaper *Moskovskiy Korrespondent* as criticising restoration works at the complex, being funded by Moscow City Council. The article suggested that the work had affected the old English landscaped garden on the grounds of the complex. It included a quote by the applicant describing the works as "the desecration of a historical monument".

The Council took the newspaper's editorial board to court for defamation and Mr Margulev joined the proceedings as a third party. In July 2008 the court found for the council on the grounds that the defendant had not provided proof for the statements.

The applicant and the newspaper's editorial board appealed, arguing that Mr Margulev's statements had been value judgments that were not susceptible of proof. Moscow City Court upheld the decision in September 2008. The newspaper's editorial board was ordered to pay for a retraction in another newspaper of similar size and circulation.

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), the applicant complained that the defamation finding was a disproportionate interference with his freedom of expression.

The application was lodged with the European Court of Human Rights on 3 March 2009.

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

Vincent A. **De Gaetano** (Malta), *President*,
Georgios A. **Serghides** (Cyprus),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),

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

Decision of the Court

Admissibility

The Government argued in particular that Mr Margulev did not have the status of a victim of a violation of his rights as he was not the defendant in the proceedings, just a third party.

Mr Margulev submitted that when he had applied to act as a third party he had specifically stated that his aim was to protect his freedom of expression, something the first-instance court had accepted by admitting him to the proceedings. The defamation finding had also had a chilling effect on him as he had had to reduce his activities, such as giving interviews critical of the restoration.

The Court reiterated that the term “victim” used in the Convention referred to someone who had been directly affected by the act or omission at issue.

It noted that the courts had admitted Mr Margulev as a third party and had thus tacitly accepted that his rights were at stake – the Court accepted this interpretation too. It was thus satisfied that his rights and obligations had been at issue and that his freedom of expression had been affected.

It also held that he had been expressing his opinion on a matter of public interest, which he had been restricted from doing after the defamation verdict. It thus held that there had been an interference with his rights.

The government had also objected that Mr Margulev had not suffered a “significant disadvantage”, another of the Convention’s admissibility rules. However, the Court noted that Mr Margulev’s subjective view was that he had suffered a chilling effect from the verdict in a case which, in its view, had concerned important questions of principle. It was thus satisfied that he had suffered a significant disadvantage from the defamation proceedings.

Merits

The main issue for the Court was whether the interference had been justified, or “necessary in a democratic society”. It took account of the fact that Mr Margulev was the head of an NGO and that when such bodies drew attention to matters of public interest they were performing “watchdog roles” similar to the press. It therefore applied its standards for press protection to the case.

Among other factors, that involved an examination of whether a party had acted in good faith; the high level of protection given to freedom of expression on matters of public interest; the wider limits of public criticism which politicians and civil servants acting in their official capacity had to accept;

and the careful distinction to be made between facts, which could be proved, and value judgments, which could not.

Examining the Russian courts' judgment that the statements had tarnished Moscow City Council's business reputation, it noted that they had failed to take account of a number of such key factors.

Nor had the courts carried out a balancing exercise, failing for instance to recognise that Moscow City Council was a constituent entity of the Russian Federation and the wider limits of permissible criticism when it came to public authorities. In addition, they had rejected the defendant's argument that the council had not been named in the article, going against an important Convention consideration that there had to be an objective link between an impugned statement and the party bringing a defamation claim.

The first-instance court's reasoning, endorsed on appeal, appeared to be based on the tacit assumption that protection of reputation prevailed in all circumstances over freedom of expression.

Overall, the domestic courts had not carried out the necessary exercise to balance the parties' rights, had not provided relevant and sufficient reasons to justify the interference with his rights and had not applied standards that were in conformity with the Convention. The interference had thus not been necessary in a democratic society and there had been a violation of Article 10.

[Just satisfaction \(Article 41\)](#)

The Court held that Russia was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 957 in respect of costs and expenses.

The judgment is available only in English.

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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.