



Court rules that civil defamation proceedings by State bodies should only be permitted exceptionally

In today's Chamber judgment¹ in the case of [OOO Memo v. Russia](#) (application no. 2840/10) 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 a civil defamation suit brought by the Volgograd Region Authority against a media company which OOO Memo owned.

The Court found in particular that although civil defamation proceedings were open to private or public companies to protect their reputation in the marketplace, this could not be the case for a large, taxpayer-funded, executive body like the plaintiff in this case. The proceedings and the consequent interference had therefore not had a "legitimate aim" under the Convention.

Principal facts

The applicant, OOO Memo, is a Russian company. It is the owner of *Kavkazskiy Uzel* (*Кавказский узел* – "The Knot of the Caucasus"), a registered online media outlet which is devoted to the political and human-rights situation in the south of Russia, including Volgograd Region.

In July 2008 *Kavkazskiy Uzel* published an article in the context of the suspension of the transfer of 5,294,000 Russian roubles in subsidies from Volgograd Region to Volgograd City. It was entitled "[Mr S]: the Mayor's Office of Volgograd fell out with the Volgograd Region Authority over a bus factory".

In October Volgograd Region commenced civil defamation proceedings against the applicant company and the editorial board of *Kavkazskiy Uzel*, seeking a retraction of the following statements:

(a) "... there are two main reasons for the financial conflict that stemmed from the order of the Volgograd Region Authority to suspend allocation of subsidies from the regional budget to the City of Volgograd. ... Undoubtedly, the first reason is a political one. It is linked to the [results] of the regional elections [of 2 March 2008]. The second reason is not widely known. It is of a purely economic character."

(b) "Recently the Mayor's Office held an open call for tender to buy buses ... Volgograd Region lobbied on behalf of Volzhanin's to help it win the tender, but it was won by another company."

(c) "The officials of the Authority heavily criticised the Mayor's Office, saying, 'How come you did not support the local producer!' It appears to me that the Mayor's Office's refusal to do business with the Volzhanin factory was one of the main reasons of the regional officials' anger."

(d) "... the suspension of allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tender."

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.

The applicant company argued that the excerpts had been value judgments and that the plaintiff – a public body – should, in any case, expect a higher degree of criticism than a private individual. The first-instance court disagreed, holding that the statements were false and tarnished the Volgograd Region Authority’s reputation, and ordering that a retraction to that effect be published, with the operative part of the judgment being published on the company’s website. That judgment and the reasoning were upheld by the Moscow City Court on appeal.

A number of other applications are pending before the Court concerning civil defamation proceedings taken by State authorities in Russia.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant company complained of an interference with its right to freedom of expression.

The application was lodged with the European Court of Human Rights on 24 December 2009.

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

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),
Frédéric **Krenc** (Belgium),
Mikhail **Lobov** (Russia),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 10

The Court was satisfied that the Volgograd Region Authority – which had legal personality – had been entitled under the law to institute civil defamation proceedings.

Concerning whether the interference with the applicant company’s right to free speech had pursued a “legitimate aim”, the Court firstly noted that the Volgograd Region Authority is the executive authority of a constituent entity of the Russian Federation. For the Government, the legitimate aim had been “the protection of the reputation and rights of others”. The applicant company argued that such an authority could not claim to have a “business reputation”.

Although protection of reputation was a right under Article 8 (right to respect for private and family life), the Court noted that an attack on reputation had to be serious enough to warrant protection under that Article. The Court pointed out that protection of a company’s reputation – in the interests of shareholders, employees, and the economy – had also found protection in the Court’s case-law.

Regarding public bodies, the Court highlighted that it had found that only in exceptional circumstances could a measure proscribing statements criticising the acts or omissions of an elected body be justified. State executive bodies were essentially different from State-owned companies or other legal entities, as the latter had to compete in the marketplace. Reputation was consequently important for them to attract and retain customers. Executive authorities, on the other hand, were funded by taxpayers. The Court reiterated that allowing State executive bodies to bring defamation proceedings against the media placed a disproportionate burden on the media.

In the current case, the Court held that there could not have been an interest in protecting the Volgograd Region Authority's commercial success which would have potentially justified the legal action; nor were the employees of the organisation harmed by the allegations. The defamation proceedings had thus not pursued a legitimate aim, leading to a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The applicant company did not make any claims for just satisfaction.

Separate opinion

Judges Ravarani, Serghides and Lobov expressed a joint concurring opinion, which is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Neil Connolly (tel : + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Jane Swift (tel : + 33 3 88 41 29 04)

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.