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

FIRST SECTION

CASE OF ZAKHAROV v. RUSSIA

(Application no. 14881/03)

JUDGMENT

STRASBOURG

5 October 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zakharov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*

Having deliberated in private on 14 September 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14881/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Vasilyevich Zakharov ("the applicant"), on 23 April 2003.

2. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged a violation of his right to impart information.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 9 December 2004, the Court declared the application admissible.

6. The Government but not the applicant filed further written observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1947 and lives in the Moscow Region.

8. On 17 July 2002 the applicant privately sent a complaint to the deputy Governor of the Moscow Region. He reported on usurpation of a plot of communal land, adjacent to a public street in Iksha, by the private person Ms V. The applicant alleged that Ms A., the head of the Iksha town council, not only had failed to stand up for the rights of other Iksha residents but actively contributed to making the usurpation possible. In particular, Ms A. had allegedly brought about premature retirement of a land surveyor who had objected to the usurpation; she had interfered with the activities of court bailiffs who had come to reclaim the usurped land; she had assisted V. in obtaining title to the land by adverse possession; and she had ostensibly made an exemption for V. from regulations prohibiting planting of vegetables in the protected areas. The letter concluded as follows:

> "Such outrageous conduct of the appointed (not elected!) head of the town council *vis-à-vis* the town residents, – in full view of everyone – discredits the power that appointed A. and sets an example of breaking the law with impunity provided that you can 'make a deal' with the council head.
>
> I ask you to state your opinion on A.'s anti-social behaviour and assist [us] in returning the land plot into communal use, notwithstanding her opposition..."

9. On 27 September 2002 Ms A. lodged a civil action against the applicant for refutation of information damaging to her honour and dignity and compensation for non-pecuniary damage. She maintained that the applicant's letter had contained untrue facts and insulting value-judgments, which could have damaged her reputation in the eyes of her hierarchical superiors, thereby causing her non-pecuniary damage.

10. On 27 January 2003 the Dmitrov Town Court of the Moscow Region granted Ms A.'s defamation action, finding that the applicant had failed to prove the truthfulness of his allegations contained in the letter of 17 July 2002. Assessing the allegedly insulting value-judgments in the concluding paragraphs of the letter, the court held as follows:

> "In addition to failing to substantiate the said allegations with any proof, [the applicant] used expressions which, in their form and contents, are not appropriate in respect of an official, which the plaintiff is...
>
> Also, the court considers that the judgments used by the [applicant] in his letter – such as 'A. knows that by law protected areas may not be occupied, but ostensibly makes an exemption for V.', 'such outrageous conduct... discredits the power that appointed A. and sets an example of breaking the law with impunity provided that you can 'make a deal' with the council head', 'A.'s anti-social behaviour' – are not only

> untrue because the [applicant] failed to prove that these facts had occurred, but also insulting for the Town Council Head; this information, phrased as insults, damages dignity and honour of the plaintiff, and it was sent to a deputy Governor of the Moscow Region, which might have led to belittlement of the plaintiff's authority in the eyes of regional managers...”

11. The court bound the applicant to make a rectification by way of a letter to the deputy Governor of the Moscow Region and to pay 300 Russian roubles (EUR 10) to Ms A. for non-pecuniary damage.

12. The applicant lodged a statement of appeal, maintaining that his letter had stated his subjective view on the existing problem.

13. On 4 March 2003 the Moscow Regional Court partly upheld, on the applicant's appeal, the judgment of 27 January 2003. It did not analyse the truthfulness of the factual allegations and grounded its judgment on the three expressions quoted above in the last paragraph of the judgment of 27 January 2003. The appeal court struck down the obligation to send a rectification, but upheld the award in respect of non-pecuniary damage.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation (of 12 December 1993)

14. Article 29 guarantees freedom of ideas and expression.

15. Article 33 provides that Russian citizens shall have the right to petition in person, as well as to submit individual and collective appeals to, State authorities and local self-government bodies.

B. Civil Code of the Russian Federation (of 30 November 1994)

16. Article 152 provides that an individual may apply to a court with a request for the rectification of “statements” (“*сведения*”) that are damaging to his or her honour, dignity or professional reputation if the person who disseminated such statements does not prove their truthfulness. The aggrieved person may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such statements.

C. Supreme Court's Resolution

17. Resolution no. 11 of the Plenary Supreme Court of 18 August 1992 “on certain issues that have arisen in the course of judicial examination of claims for the protection of honour and dignity of individuals, and professional reputation of individuals and legal entities” (as amended on 25 April 1995, in force at the material time) established that the notion

"dissemination of information" employed in Article 152 of the Civil Code was understood as the publication of statements or their broadcasting, inclusion in professional references, public speeches, applications to State officials and communication in other forms, including oral, to at least one another person. It specified, however, that "communication of such information to the person whom it concerned could not be treated as dissemination".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained under Article 10 of the Convention about a violation of his right to impart information, in that he had been found liable for dissemination of his opinions about a public figure. Article 10 reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Arguments by the parties

19. The Government submitted that the interference with the applicant's right to freedom of expression had been justified because it had been prescribed by Article 152 of the Civil Code and because the applicant had failed to prove the truthfulness of the information.

20. The applicant pointed out that the Moscow Regional Court had quashed the judgment in the part concerning the refutation which had removed the legal basis for application of Article 152 of the Civil Code. He indicated that the final judgment of the Moscow Regional Court had been founded not on his allegations verifiable by facts, as the Government submitted, but rather on his subjective appraisal of Ms A.'s behaviour.

B. The Court's assessment

21. It is common ground between the parties that the judgments pronounced in the defamation action constituted an "interference" with the applicant's right to freedom of expression protected by Article 10 § 1. It is not contested that the interference was "prescribed by law", notably Article 152 of the Civil Code, and "pursued a legitimate aim", that of protecting the reputation or rights of others. The Court's task is to determine whether the restriction on the applicant's freedom of expression met a "pressing social need" and was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities in justification of it were "relevant and sufficient".

22. The Court observes that the defamation claim was born out of the applicant's correspondence with State authorities rather than out of a publication in the media. The applicant wrote to the deputy regional governor, complaining that the conduct of a town council head had not been even-handed and at times unlawful. The letter was sent privately, the applicant did not publish or otherwise make his allegations available to the outside world, instead he acted within the framework established by law for making complaints. He brought his grievance solely to the attention of the direct hierarchical superior of the official against whom the complaint was directed. It is not clear how the head of the town council, who was the plaintiff in the defamation action, obtained a copy of the applicant's letter.

23. The Court has in several cases observed that it may be necessary to protect public servants from offensive, abusive and defamatory attacks which are calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I; and *Lešník v. Slovakia*, no. 35640/97, § 53, 11 March 2003). The extent to which such protection might be deemed necessary depends on the particular circumstances of the case. In the present case the applicant's grievances were set out in private correspondence and were not made public. Accordingly, the requirements of such protection have to be weighed not in relation to the interests of the freedom of the press or of open discussion of matters of public concern but rather against the applicant's right to report irregularities in the conduct of State officials to a body competent to deal with such complaints.

24. The Court recalls that it has found no violation of Article 10 in the *Lešník* case where the applicant was held criminally responsible for setting out allegations against a prosecutor public in a letter to his hierarchical superior (cited above). The present case, however, should be distinguished for the following reasons.

25. Firstly, the affected official in the *Lešník* case was a prosecutor public and the necessity to fend off abusive criticism against him was regarded as contributing to the maintenance of the authority of the judiciary

in a broader sense. In the present case the criticism was directed against a town council head whose standing is closer to that of professional politicians, and who should be prepared to tolerate a more demanding public scrutiny. As the Court has had an opportunity to remark, it would go too far if the protection afforded to law-enforcement officials were extended to all persons who are employed by the State (see *Busuioc v. Moldova*, no. 61513/00, § 64, 21 December 2004). Secondly, whereas Mr Lešník's aspersions on the prosecutor P. were leaked to a newspaper – whether intentionally or otherwise, the applicant's grievances remained a matter strictly between him and the deputy regional governor, the hierarchical superior of the town council head.

26. The Court considers that, in the circumstances of the present case, the fact that the applicant addressed his complaint by way of private correspondence to the State official competent to examine the matter, is of crucial importance for its assessment of proportionality of the interference. That the citizens should be able to notify competent State officials about the conduct of civil servants which to them appears irregular or unlawful, is one of the precepts of the rule of law. In this connection the Court notes the express provision of the Russian Supreme Court's resolution that "communication of information to the person whom it concerned" was not considered its dissemination and therefore not actionable as defamation (see paragraph 17 above). It appears that the applicant raised this argument in substance, but it was not addressed by the domestic courts. The domestic courts did not identify any "pressing social need" for putting the protection of the civil servant's personality rights above the applicant's right to impart information and the general interest in having irregular conduct of civil servants examined by competent authorities.

27. The Court further notes that the applicant did not resort in his letter to abusive, strong or intemperate language, albeit it might be said to have contained a certain number of emotional expressions verging on exaggeration or provocation (cf. *Prager and Oberschlick v. Austria (no. 1)*, judgment of 26 April 1995, Series A no. 313, § 38). Assessing the text of the letter as a whole, the Court finds that its contents did not go beyond the limits of acceptable criticism, especially since these limits are wider in respect of civil servants than in relation to private individuals (see, e.g., *Lešník*, cited above, § 53). Furthermore, as the fact of usurpation of land by V. had not been denied or refuted in the domestic proceedings, it appears that the applicant's factual allegations rested on what he believed to have been sufficient grounds.

28. A further aspect relevant for the Court's determination in the present case is the distinction between statements of fact and value judgments. The applicant's letter contained both factual allegations of irregular conduct of the town council head and value-judgments about her unethical behaviour. The first-instance court had premised its finding of liability on inaccuracy of

factual statements and the insulting character of value-judgments, but the final judgment by the Moscow Regional Court maintained the finding of liability by reference to solely three expressions in the last paragraph of the letter (see paragraph 13 above). The Regional Court held that the applicant failed to show their truthfulness.

29. The Court notes that the Russian law on defamation, as it stood at the material time, made no distinction between value judgments and statements of fact, as it referred uniformly to "statements" and proceeded from the assumption that any such statement was amenable to proof in civil proceedings (see *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005). Irrespective of the actual character of the "statements", the person who disseminated the "statements" had to satisfy the courts as to their truthfulness. Having regard to these legislative provisions, the domestic courts did not embark on an analysis of whether the applicant's utterances could have been a value judgment not susceptible of proof.

30. However, it has been the Court's constant view that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Grinberg*, cited above § 30, with further references). In the present case the Court considers that the expressions used by the applicant, such as "outrageous conduct", "anti-social behaviour", "ostensibly makes an exemption", were value judgments that represented the applicant's subjective appraisal of the moral dimension of the town council head's behaviour. The burden of proof in respect of these expressions was obviously impossible to satisfy.

31. Having regard to the above considerations, the Court finds that the Russian authorities did not adduce "relevant and sufficient" grounds for the interference with the applicant's right to impart information. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

33. The applicant claimed 12,250 euros (EUR) in respect of compensation for the pecuniary damage incurred through the loss of

employment in 2003. He further claimed EUR 137,200 in respect of compensation for non-pecuniary damage.

34. The Government considered the applicant's claim "ill-founded and fabulous". There was no causal link between the violation and the loss of employment.

35. The Court notes that the applicant did not produce any information showing that his loss of employment in 2003 was somehow connected to the defamation proceedings against him. It considers that the applicant has not proven the existence of a causal link between the violation of his right to impart information and the alleged pecuniary damage. It rejects his claim for the pecuniary damage but accepts, however, that the applicant must have suffered non-pecuniary damage – such as distress and frustration resulting from the judicial decisions incompatible with Article 10 – which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant claimed EUR 280 in respect of costs and expenses, representing his travel and postal expenses in the domestic proceedings, legal fees and costs of unspecified medical services.

37. The Government pointed out that only real and necessary expenses should be reimbursed.

38. The Court observes that the applicant did not submit any documents in support of his claim for costs and expenses. Accordingly, it makes no award under this head.

C. Default interest

39. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;

2. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President