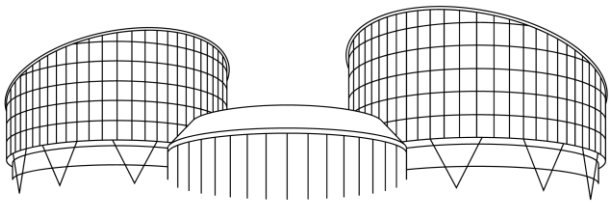

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF ALEKSANDR KRUTOV v. RUSSIA

(Application no. 15469/04)

JUDGMENT

STRASBOURG

3 December 2009

FINAL

03/03/2010

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 Aleksandr Krutov v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 15469/04) 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 Nikolayevich Krutov ("the applicant"), on 23 March 2004.

2. The applicant, who had been granted legal aid, was represented by Mr M. Rachkovskiy, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been found liable for expressing his opinion.

4. On 14 October 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Saratov.

6. On 9 January 2003 the applicant published an article under the headline "The Political Scene in 2002: Old Faces and New Times"

(*Политические расклады 2002 года: старые лица и новые времена*) in issue no. 1 (10) of the *Nedelya Oblasti* newspaper. The article examined the interplay of political groups in the Saratov Region and, in particular, the part played by the prosecutor's office of the Saratov Region and B., the Saratov Regional Prosecutor.

7. B. sued the applicant and the editorial board for defamation before the Kirovskiy District Court of Saratov. He claimed that the following extract from the article had damaged his honour, dignity and professional reputation:

> "Probably, only this [the political union between the town hall and the regional prosecutor's office] can account for the regional prosecutor's office's perseverance in instigating criminal proceedings against members of the regional government..., while at the same time shielding the serving officials of the town hall and the town legislature from criminal prosecution. For example, in the corruption-ridden case of the "Town Charity Fund for Health Care Support", charges had been brought against only one member of the town legislature, Mr K[.], but shortly thereafter he was acquitted. And the mayor's close circle, headed by Mr A[.] in person, was spared responsibility. In gratitude for support the town hall started supplying the prosecutor's offices with 'gifts' in the form of foreign-made cars and furniture. As to the regional prosecutor Mr B[.], the town hall allocated to him under a 49-year lease agreement (!) a plot of land in the courtyard of the block of flats where he lives (allegedly for development)."

8. The District Court commissioned a linguistic examination of the impugned extract by four experts from Saratov State University.

9. On 12 September 2003 the panel of four experts returned their unanimous findings. In their assessment, the article did not give an appraisal of B.'s character, nor did it damage his honour or professional reputation. The publication might create the impression that the prosecutor's actions had been unseemly and cast doubt on the lawfulness of a lease agreement for such a long term and the validity of its purpose. However, these issues called for a legal rather than a linguistic examination. The experts concurred that the words "probably", "only this can account for..." and "in gratitude for support" were expressions of the journalist's personal opinion rather than statements of fact. The author did not allege that prosecutor B. had received any benefits for his support of the town hall. The journalist merely supposed that the prosecutor had not been impartial and that criminal charges against officials had been brought selectively.

10. On 14 November 2003 the Kirovskiy District Court of Saratov gave judgment, finding against the applicant for the following reasons:

> "Taking into account the factual circumstances of the case, the court considers that in the [applicant's article] the plaintiff Mr B. cannot be viewed as a private individual because in the public perception – having regard to the fact that the plaintiff is a public figure – the plaintiff is Mr B., the citizen who holds the office of the Saratov Regional Prosecutor and must observe higher standards in his personal and professional image and his daily actions.

> The court further considers that the term 'prosecutor's offices' employed in the article also referred to the plaintiff because, by virtue of his office, he is responsible for the operation of all the prosecutor's offices in the entire Saratov region.
>
> Having regard to the above, the court considers that the excerpt from the article at issue is nothing but statements (*сведения*) disseminated about the plaintiff that are damaging to his honour, dignity and professional reputation...
>
> The court does not consider proven the defendants' argument that they disseminated a journalist's opinion based on facts, because the author's opinion must not only be founded on specific statements, but must also not damage the plaintiff's reputation or honour and must not contain statements about the plaintiff's unlawful conduct.
>
> Since the purpose of expressing an opinion is to convey it to third parties, the form of its expression must exclude the possibility of misleading a reasonable third party as to whether such information is an opinion or a statement of fact.
>
> The court considers that in the present case the defendants have failed to meet these requirements and the statements contained in the article are statements of fact amenable to proof in judicial proceedings..."

11. The District Court noted that the underlying facts in the impugned excerpt were not disputed. Thus, criminal proceedings were indeed brought against certain members of the regional government, including the member of the town legislature K. Mr B. had received a plot of land under the conditions indicated by the applicant, and the Saratov town hall had put at the disposal of the prosecutor's offices, free of charge, a Hyundai car, six tables and nine filing cabinets.

12. However, in the District Court's view, the applicant had failed to show that the mayor's close circle had been "spared responsibility" and that furniture, a foreign-made car or a land plot had been offered "in gratitude for support".

13. The District Court held that the entire extract had been defamatory, ordered the newspaper to publish a rectification, and recovered 5,000 Russian roubles each from the applicant and the newspaper.

14. On 19 December 2003 the Saratov Regional Court, on an appeal by the applicant, upheld the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

15. Article 29 guarantees freedom of thought and expression, together with freedom of the mass media.

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. Resolution no. 11 of the Plenary Supreme Court of the Russian Federation of 18 August 1992 (amended on 25 April 1995)

17. The Resolution (in force at the material time) provided that, in order to be considered damaging, statements (*сведения*) had to be untrue and contain allegations of a breach, by a person or legal entity, of laws or moral principles (commission of a dishonest act, improper behaviour in the workplace or in everyday life, etc.). Dissemination of statements was understood to mean the publication of statements or their broadcasting, inclusion in professional references, public speeches or applications to State officials, and communication in other forms, including oral, to at least one other person (section 2).

18. Section 7 of the Resolution governed the distribution of the burden of proof in defamation cases. The plaintiff had to show that the statements had indeed been disseminated by the defendant. The defendant had to prove that the disseminated statements were true and accurate.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicant complained that there had been a violation of his right to freedom of expression as set forth in Article 10 of the Convention, which 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 and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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. Admissibility

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

21. The Government submitted that the interference with the applicant's right to freedom of expression had been prescribed by law, notably Article 152 of the Civil Code. It had pursued the legitimate aim of protecting the reputation of others, namely Regional Prosecutor B., and was necessary in a democratic society. They referred to the judgment of the District Court, which had established that the applicant had failed to show that his allegations were true. The penalty imposed on the applicant had not been severe.

22. The applicant maintained his complaint. He submitted that the excerpt from the article in question was merely an expression of his personal opinion based on facts known to him concerning the political scene in the region. When deciding on B.'s defamation claims, the District Court had failed to distinguish between a statement of fact and a value judgment. The court had disregarded the findings of the panel of experts, which had come to the conclusion that the excerpt in question had constituted the applicant's personal opinion, and had given an unfair judgment when resolving the dispute. In line with the provisions of Article 10 § 2 of the Convention, in his article the applicant had discussed issues of public interest concerning the interaction of political groups in the region and criticised the actions of the regional prosecutor. The domestic courts had not substantiated the preference they had given to the protection of the personal rights of the regional prosecutor over the applicant's right to freedom of expression and the interest of the public in receiving information. Nor had it been shown that the applicant's statements had had a negative impact on B.'s professional career. On the contrary, B. had since been promoted and appointed deputy general prosecutor of the Far East (Dalnevostochniy) Region. In sum, the applicant argued that the interference of the Russian authorities with his freedom of expression had not pursued a legitimate aim and had not been necessary in a democratic society, in contravention of Article 10 § 2 of the Convention.

2. The Court's assessment

23. The Court notes that it is common ground between the parties that the judgments given in the defamation action constituted an interference with the applicant's right to freedom of expression as protected by Article 10 § 1. It is not contested that the interference was prescribed by law, notably Article 152 of the Civil Code. The Court also accepts the Government's argument that the interference pursued the legitimate aim of protecting the reputation and rights of Regional Prosecutor B. with a view to permitting him to exercise his duties without undue disturbance. It remains, accordingly to ascertain whether the interference was "necessary in a democratic society".

24. The fundamental principles relating to this question are well established in the Court's case-law and have been summarised as follows (see, for example, *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports* 1998-VI):

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient' ... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

25. In examining the particular circumstances of the case, the Court must weigh a number of factors in the balance when reviewing the proportionality of the measure complained of. First, it notes that the applicant was a journalist. The Court reiterates in this connection that the

press fulfils an essential function in a democratic society. Although it must not overstep certain bounds, particularly as regards the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports* 1997-I, and Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III). Journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria (no. 1)*, 26 April 1995, § 38, Series A no. 313).

26. The Court also takes into account the fact that the impugned article was published in early 2003 and contained an overview of the political scene in the region, summing up the political events of the preceding year. It provided comments on the interplay between the political forces and referred to the roles played by prominent politicians and public servants. In the Court's opinion, the article raised important issues and the applicant was entitled to bring them to the attention of the public through the press.

27. The Court further notes that the thrust of the applicant's criticism in the excerpt under consideration was directed against Regional Prosecutor B. who, being a public servant with the task of contributing to the proper administration of justice, should have enjoyed public confidence and was to be protected by the State from unfounded accusations (see *Lešník v. Slovakia*, no. 35640/97, §§ 54-55 *in fine*, ECHR 2003-IV). However, the Court reiterates that the limits of acceptable criticism in respect of civil servants exercising their power are wider than in relation to private individuals and the national margin of appreciation with regard to the protection of their reputation is circumscribed by the interest of a democratic society in ensuring and maintaining a free press.

28. Accordingly, it was the task of the national authorities to strike a fair balance between the journalist's right to freedom of expression on the one hand and the public prosecutor's right to the protection of his reputation on the other. However, in the text of the judgments adopted by the domestic courts the Court does not discern any evidence that they performed such a balancing exercise. They confined their analysis to the importance of the protection of the public prosecutor's interests without giving any consideration to the Convention standard which requires very strong reasons for justifying restrictions on debates on questions of public interest initiated by members of the press (see, among other authorities, *Godlevskiy v. Russia*, no. 14888/03, § 41, 23 October 2008). The Court therefore finds that the domestic courts failed to recognise that the present case involved a conflict between the right to freedom of expression and the right to protection of a reputation.

29. As regards the reasons adduced by the domestic courts to justify the interference with the applicant's freedom of expression, the Court observes that they did not accept the applicant's argument that the impugned excerpt

was a value judgment, but considered it to be a statement of fact by the applicant, insinuating that B. had behaved unlawfully, which the applicant had failed to prove. When rejecting the applicant's argument, the domestic authorities did not examine the question whether the excerpt could be considered a value judgment. Nor did they specify what objective evidence could be used to prove whether the impugned excerpt was true or false. The Court notes in this respect that the assessment of whether a certain statement constitutes a value judgment or a statement of fact might in many cases be difficult. However, under the Court's case-law even a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10 (see, for example, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 40 *in fine*, ECHR 2003-XI).

30. In the excerpt under consideration, the applicant suggested that a political union existed between the town hall and the regional prosecutor's office. He drew this inference from a number of facts, such as the institution and outcome of criminal proceedings against certain politicians, the allocation of furniture and vehicles to the prosecutor's offices, and a long-term land lease for the regional prosecutor on favourable conditions. The Court notes that the truthfulness of all the premises on which the applicant had based his allegation was confirmed in the domestic proceedings. Criminal proceedings were indeed brought against certain members of the regional government, the member of the town legislature K. B. did receive a plot of land under the conditions indicated by the applicant, and the Saratov town hall did put at the disposal of the prosecutor's offices a Hyundai car, six tables and nine filing cabinets (see paragraph 11). Accordingly, the Court is satisfied that the applicant's assumption that the “perks” for the prosecutor's office and the regional prosecutor himself were not incidental had a sufficient factual basis. There is nothing to suggest that it was made otherwise than in good faith and in pursuit of the legitimate aim of promoting public awareness of the political situation in the region and the part played by the regional prosecutor in it.

31. The Court finds that, by alluding to the town hall's “gratitude” towards the regional prosecutor the applicant made a value judgment the truthfulness of which was not susceptible of being proved true or false. Accordingly, the domestic courts placed an excessive burden on him when imposing a requirement to prove its veracity.

32. Lastly, the Court notes that the applicant did not resort in the excerpt under consideration to abusive, strong or intemperate language; it might be said that the expressions used verged on exaggeration and provocation, but, having regard to the purpose of the publication and the impact it was designed to have, the Court is of the opinion that the language used cannot be regarded as excessive.

33. In the light of the foregoing, the Court considers that the domestic authorities overstepped their margin of appreciation when finding the

applicant liable for defamation. They did not adduce "sufficient" reasons justifying the interference at issue. The fact that the proceedings were civil rather than criminal in nature and that the final award was relatively small does not detract from the fact that the standards applied by the Russian courts were not compatible with the principles embodied in Article 10. Accordingly, the interference with the applicant's freedom of expression was disproportionate to the aim pursued and not "necessary in a democratic society".

34. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

35. The applicant complained under Article 6 § 1 of the Convention that the District Court had gone beyond the scope of B.'s claims and failed to resolve the defamation dispute in accordance with the fairness guarantees set out in Article 6 of the Convention.

36. However, having regard to all the material in its possession, the Court finds that there is no appearance of a violation of the provision invoked. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 150 euros (EUR) in respect of pecuniary damage, representing the amount he had paid to B. pursuant to the domestic judgments, and EUR 5,000 in respect of non-pecuniary damage.

39. The Government considered the applicant's claim in respect of pecuniary damage reasonable. They noted, however, that this amount could be awarded to the applicant subject to proof that he had actually paid the said amount to B. As for the applicant's claim in respect of non-pecuniary damage, they considered it excessive and proposed that a finding of a violation would constitute sufficient just satisfaction.

40. The Court notes that the applicant's claim in respect of pecuniary damage is directly related to the judgments issued by the domestic courts, which it found to have been incompatible with Article 10 of the Convention.

It therefore accepts the applicant's claim in respect of pecuniary damage in the amount of EUR 150. It further considers that the non-pecuniary damage suffered by the applicant cannot be sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, the Court awards him EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

42. 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. *Declares* the complaint concerning the interference with the applicant's right to freedom of expression admissible and the remainder of the application inadmissible;

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

3. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 150 (one hundred and fifty euros) in respect of pecuniary damage;
      (ii) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
      (iii) any tax that may be chargeable to the applicant on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 3 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President