European Court of Human Rights: Case of Grinberg v. Russia

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In a judgment of 21 July 2005, the European Court of Human Rights has come to the conclusion that the Russian authorities overstepped the margin of appreciation afforded to member states by convicting a Russian citizen because of a defamatory statement in a press article criticizing a politician. It is the first judgment in which the European Court finds a violation of freedom of expression by the Russian authorities since the Russian Federation became a member of the Council of Europe and subscribed to the European Convention on Human Rights in 1996. The Strasbourg Court emphasizes the distinction that is to be made between statements of fact and value judgments and considers it unacceptable that the Russian law on defamation, as it stood at the material time, made no distinction between these notions, referring uniformly to statements and assuming that any statement was amenable of proof in civil proceedings. The case goes back to an article in the *Guberniya* newspaper written by Isaak Pavlovich Grinberg in 2002. The article criticised the elected Governor of the Ulyanovsk Region, the former General V.A. Shamanov for “waging war” against the independent press and journalists. The article also referred to the support by Mr. Shamanov for a colonel who had killed an 18-year-old Chechen girl, considering that Mr. Shamanov had “no shame and no scruples”. On 14 November 2002, the Leninskiy District Court of Ulyanovsk found that the assertion that Mr. Shamanov had no shame and no scruples impaired his honour, dignity and professional reputation and that Mr. Grinberg had not proved the truthfulness of this statement. The judgment was later confirmed by the Regional Court, while the Supreme Court, on 22 August 2003, dismissed Mr. Grinberg's application for the institution of supervisory-review proceedings.

Grinberg's complaint, under Article 10 of the Convention, that his right to impart information and ideas had been violated, turned out to be successful before the European Court in Strasbourg. The Court refers to its well-established case law considering freedom of expression as one of the essential foundations of a democratic society, emphasizing the essential function of the press to play its vital role of “public watchdog”, the fact that there is little scope under Article 10 para. 2 for restrictions on political speech and especially the distinction that is to be made in defamation cases between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The Court considers that the contested comment was a clear example of a value judgment that represented Mr. Grinberg's subjective

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appraisal of the moral dimension of Mr. Shamanov's behaviour who, in his eyes, only kept one promise after being elected as Governor, that of waging war against the independent press and journalists. The Court takes into account that the contested press article concerned an issue of public interest relating to the freedom of the media in the Ulyanovsk region and that it criticised an elected, professional politician in respect of whom the limits of acceptable criticism are wider than in the case of a private individual. The facts which gave rise to the criticism were not contested and Mr. Grinberg had after all expressed his views in an inoffensive manner. Nor did Mr. Grinberg's statements affect Mr. Shamanov's political career or his professional life. For these reasons the Strasbourg Court unanimously came to the conclusion that the domestic courts did not convincingly establish any pressing social need for putting the protection of the politician's personality rights above the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest are concerned. Accordingly, the Court came to the conclusion that there has been a violation of Article 10 of the Convention.

Judgment of the European Court of Human Rights (First Section), case of Grinberg v. Russia, Application no. 23472/03 of 21 July 2005

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