

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

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

In the year 2000, the journalist Aleksandr Grigoryevich Filatenko was convicted of defamation. The reason behind the defamation proceedings was a critical question he formulated during a broadcast live show he was presenting as a journalist working for Tyva, the regional state television and radio broadcasting company in the Tyva Republic of the Russian Federation. The controversial question, based on a question raised by a viewer phoning in, referred to an incident during which the Tyva Republic flag had been torn off a car, which was campaigning in support of the Otechestvo Party candidate. It was a matter of disagreement as to how Filatenko had worded that question during the programme. The opinion of the plaintiff was that Filatenko had presented the incident as if the Tyva flag had been torn down and stamped on by people from the Edinstvo Campaign Headquarters. Filatenko denied having made any such allegation: he only admitted to having specified that the incident had taken place near the Edinstvo Campaign Headquarters. In the defamation proceedings brought against Filatenko and the broadcasting company by members of the Edinstvo Movement, the Kyzyl District Court accepted the plaintiff's version as to how the question had been worded. As the video recording of the show had been lost, the district court relied solely on witness testimonies confirming the plaintiff's version of Filatenko's wording of the question. Filatenko was found guilty of defamation and ordered to pay approximately EUR 347 compensation for damages. Tyva was ordered to broadcast a rectification in the same time slot as the original show.

In a judgment of 6 December 2007, the European Court of Human Rights was of the opinion that this conviction and court order violate Article 10 of the European Convention on Human Rights. The Court reiterated that, as a general rule, any opinions and information aired during an electoral campaign should be considered part of a debate on questions of public interest and that there is little scope under Article 10 for restrictions on such debate. Similarly, punishing a journalist for having worded a question in a certain way, thus seriously hampering the contribution of the press to a matter of public interest, should not be envisaged unless there is a particularly strong justification. Therefore, the timing (just before elections) and format of the show (live and aimed at encouraging lively political debate), required very good reasons for any kind of restriction on its participants' freedom of expression. The European Court found that the Russian courts have failed to make an acceptable assessment of the relevant facts and have not given

sufficient reasons for finding that Filatenko's wording of the question had been defamatory. Furthermore, there was no indication that the assumed allegation contained in Filatenko's question had represented an attack on anyone's personal reputation. The Court was also of the opinion that there could be no serious doubts about Filatenko's good faith. He had merely requested a reaction from the show's participants on an event of major public concern, without making any affirmations. According to the European Court Filatenko could not be criticised for having failed to verify facts, given the obvious constraints of a live television show, while a representative of the Edinstvo political movement had been present and invited to respond to the question. The Court therefore concluded that the interference with Filatenko's freedom of expression had not been sufficiently justified, and hence violated Article 10 of the Convention.

Judgment of the European Court of Human Rights, case of Filatenko v. Russia, Application no. 73219/01 of 6 December 2007

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