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

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The European Court of Human Rights found no violation of Article 10 of the Convention in the highly controversial case of Pasko v. Russia. The case concerns Grigoriy Pasko, a Russian national who at the time of the events was a naval officer and worked as a military journalist on the Russian Pacific Fleet's Newspaper "Boyevaya Vakhta". Mr Pasko had been reporting on problems of environmental pollution, accidents with nuclear submarines, transport of military nuclear waste and other issues related to the activities of the Russian Pacific Fleet. Mr Pasko had also been in contact on a free-lance basis with a Japanese TV station and a newspaper and had supplied them with openly available information and video footage. These contacts with Japanese journalists and a Japanese TV station and newspaper were pursued by Mr Pasko of his own volition and were not reported to his superiors.

In November 1997, Mr Pasko was searched at the Vladivostok airport before flying to Japan. A number of his papers were confiscated with the explanation that they contained classified information. He was arrested upon his return from Japan and charged with treason through espionage for having collected secret information with the intention of transferring it to a foreign national. Mr Pasko was sentenced in December 2001 to four years' imprisonment by the Pacific Military Fleet Court, as he was found guilty of treason through espionage for having collected secret and classified information containing actual names of highly critical and secure military formations and units, with the intention of transferring this information to a foreign national. He was released on parole in January 2003.

Relying on Articles 7 (no punishment without law) and 10 of the European Convention of Human Rights, Mr Pasko complained that the Russian authorities had applied criminal legislation retrospectively and had subjected him to an overly broad and politically motivated criminal persecution as a reprisal for his critical publications. The Court considered that the essence of the case was the alleged violation of Article 10, since Mr Pasko's complaints under Article 7 concerned the same facts as those related to Article 10. The Court therefore decided to examine the complaints under Article 10 only.

After having accepted that the Russian authorities acted on a proper legal basis, the Court observed that, as a serving military officer, the applicant had been bound by an obligation of discretion in relation to anything concerned with the

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performance of his duties. The domestic courts had carefully scrutinised each of his arguments. The courts had found that he had collected and kept, with the intention of transferring to a foreign national, information of a military nature that had been classified as a State secret and which had been capable of causing considerable damage to national security. Finally, the applicant had been convicted of treason through espionage as a serving military officer and not as a journalist. According to the European Court, there was nothing in the materials of the case to support the applicant's allegations that his conviction had been overly broad or politically motivated or that he had been sanctioned for any of his publications. The Court found that the domestic courts had struck the right balance of proportionality between the aim of protecting national security and the means used to achieve that purpose, namely the sentencing of the applicant to a "lenient sentence", much less severe than the minimum stipulated in law. Accordingly, the Court held by six votes to one that there had not been a violation of Article 10.

Judgment by the European Court of Human Rights (First Section), case of Pasko v. Russia, Application. no. 69519/01 of 22 October 2009

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