European Court of Human Rights: Terentyev v. Russia

IRIS 2017-3:1/1

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In one of its first judgments in 2017 related to the right to freedom of expression, the European Court of Human Rights (ECtHR) found a violation of a blogger's right under Article 10 of the European Convention on Human Rights (ECHR). The blogger, Mr Terentyev, a musician and jazz critic, had been convicted in Russia for defamation after he had published an article on his personal website about a local jazz festival which was scathingly critical of the festival and its president, Mr Y. Mr Terentyev used various corruptions of the festival president's surname to mock his professional competence. The jazz festival was described as being "a shoddy piece of work" and Mr Y.'s performance "crappy". Mr Y. sued the blogger for defamation, arguing that the article had been insulting and harmful to his reputation. The Syktyvkar Town Court found the applicant liable in defamation, stating that "[u]sing a distorted form of the plaintiff's patronymic and last name ... breaches the plaintiff's right to his own name and to his good name, which is unacceptable under the law". The Town Court also considered that the defamatory extracts undermined the honour and dignity of the plaintiff, while Mr Terentyev did not submit any evidence to the court showing that the impugned statements were true. The Town Court awarded Mr Y. 5,000 Russian roubles (about EUR 80) in damages and ordered Mr Terentyev to publish a retraction on his website. The Supreme Court of the Komi Republic dismissed his appeal. It endorsed the findings of the lower court in a summary judgment, holding that Article 10 of the Convention had not been breached because "the defendant published statements on the Internet which undermined the honour and dignity of the plaintiff as a person, pedagogue and musician and which contained negative information about him".

Mr Terentyev lodged a complaint with the ECtHR, arguing that his conviction for defamation amounted to a violation of his right to freedom of expression under Article 10 of the Convention. As this "interference" with Mr Terentyev's right to freedom of expression was "prescribed by law" under Article 152 of the Russian Civil Code and pursued the legitimate aim of the protection of the rights of others - namely the reputation of Mr Y. - what remained to be established was whether the interference was "necessary in a democratic society". The European Court refers to its standard approach, according to which it may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention - namely freedom of expression, as protected by Article 10, and the right to respect for private life enshrined in Article 8 of the ECHR, including the right to reputation. In a balancing exercise between

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those two rights the European Court leaves a certain margin of appreciation to the national authorities of the defending state, while the Court would require strong reasons for substituting its view for that of the domestic courts. However the domestic courts are required to carefully examine the context of the dispute, the nature of the impugned remarks and the criteria laid down in the Court's case-law, as elaborated in the 2012 Grand Chamber judgment in Axel Springer AG v. Germany (see IRIS 2012-3/1). In the present case, the ECtHR observes that the judgments of the domestic courts offer no insight into the context of the dispute: they did not discuss whether the article had contributed to a debate on a matter of public interest or whether it had been a form of artistic criticism, and did not explain why Mr Y.'s reputation had to be afforded greater protection on account of his being "a person, pedagogue and musician". The judgments at the domestic level were also remarkably laconic and contained nothing that would help the European Court to grasp the rationale behind the interference. The domestic courts made no genuine attempt to distinguish between statements of fact and value judgments; rather, they reprinted the impugned extracts of the article in their entirety, without subjecting them to meaningful scrutiny. Faced with this failure to give relevant and sufficient reasons to justify the interference, the ECtHR finds that the domestic courts cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10" or to have "based themselves on an acceptable assessment of the relevant facts". Therefore the European Court concludes unanimously that there has been a violation of Article 10 of the ECHR. The Russian state is ordered to pay Mr Terentyev EUR 144 in respect of pecuniary damage and EUR 2,500 in respect of non-pecuniary damage.

Judgment by the European Court of Human Rights, Third Section, case of Terentyev v. Russia, Application no. 25147/09, 26 January 2017

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