European Court of Human Rights: Rebechenko v. Russia

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The European Court of Human Rights (ECtHR) delivered an interesting judgment on the freedom of expression of a blogger (see also Egill Einarsson v. Iceland (No. 2), IRIS 2018-9/2 and Savva Terentyev v. Russia, IRIS 2018-9/3). The ECtHR values the statements of the blogger as those of a "public watchdog" and finds that his conviction for defamation violated Article 10 of the European Convention on Human Rights (ECHR).

In 2015 Mr Maksim Sergeyevich Rebechenko published on YouTube a video with the title "Kolkhoz TV on Ukrainian crisis". In the video he made a series of critical comments about a speech by Ms F, the head of the Ust-Labinsky District and of the non-governmental organisation Human Rights Defender. In that speech on television Ms F had commented on the situation in the eastern region of Ukraine and relations between Russia and Ukraine. On the basis of Article 152 of the Russian Civil Code Ms F brought an action against Rebechenko, stating that he had offended her and had harmed her reputation. The Russian courts found that Rebechenko in an abusive and obscene language had disseminated untrue statements about Ms F which damaged her honour, dignity and reputation. The courts found that Ms F has sustained damage of a non-pecuniary nature due to emotional distress caused by the defamatory and discrediting statements and allusions to her unethical conduct. In accordance with the principle of reasonableness, taking into account the seriousness of the wrongful acts, the nature of the offence, and the contents of the publication, the degree of suffering involved, and that the information concerned a public activist and was available for the general public, Ms F was awarded 50,000 roubles (about 714 EUR) for non-pecuniary damages. Rebechenko was also ordered to delete the video from the Internet and to publish a retraction. After exhaustion of all national remedies, Rebechenko lodged an application before the ECtHR, complaining about a violation of his right to impart information under Article 10 ECHR.

The ECtHR first reiterates that freedom of expression has paramount importance as an essential foundation of a democratic society and a basic condition for its progress and the development of every person. It also confirms that this right applies 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 the State or any sector of the population. The ECtHR refers to its practice recognising the essential role played by the press in a democratic society, while it has previously established that the press, as well as NGOs,

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exercise watchdog functions, and that the function of bloggers and popular users of social media may be also assimilated to that of “public watchdogs” as far as the protection afforded by Article 10 is concerned. As it was not disputed that the interference Rebechenko complained of was prescribed by law and pursued a legitimate aim to protect the reputation or rights of others, the ECtHR examines whether the interference was necessary in a democratic society, and specifically whether it was proportionate to the aim pursued. In this regard the ECtHR recalls that whether an interference is necessary in a democratic society will depend on who spoke, about whom, on what subject of debate, whether the expressions used were facts or value judgments, and on procedural guarantees in the domestic courts, including reasoning of decisions and the nature and seriousness of penalties. The ECtHR emphasises that in the present case, the applicant was a blogger who uploaded his video to a YouTube channel with more than 2,000 subscribers, while more than 80,000 visitors viewed the video. In such circumstances the interference must be examined on the basis of the same principles applied when assessing the role of a free press in ensuring the proper functioning of a democratic society. The ECtHR observes that Ms F had a profile similar to that of professional politicians, who should be prepared to tolerate a more demanding public scrutiny, while the issues raised in the video were undeniably part of a political debate on a matter of general and public concern: relations between Russia and Ukraine, Russia’s position in the international arena, and the impact of its foreign policy. The ECtHR reiterates in this connection that its approach has been consistently to require very strong reasons for justifying restrictions on political speech. Furthermore, Rebechenko has acted in good faith and in pursuit of the legitimate aim of protecting the democratic development of, and contributing to free political debate, while his statements were value judgments, the truth of which cannot be proven. Moreover, as far as the reasoning of the domestic decisions is concerned, the ECtHR notes that the Russian courts failed to analyse the contents of the video; they did not even use any extracts from the video to support their position on the case and did not perform a balancing exercise between the need to protect Ms F’s reputation and Rebechenko’s right to impart information on issues of general interest. As to the sanctions imposed, the order to delete the video, publish a retraction, and pay about EUR 714 in non-pecuniary damages, the ECtHR notes that these sanctions could discourage the participation of the press in debates on matters of legitimate public concern. The ECtHR concludes that the domestic courts failed to strike a fair balance between the relevant interests and to establish a “pressing social need” for putting the protection of Ms F’s reputation above Rebechenko’s right to freedom of expression. Therefore, the Court considers that the domestic courts overstepped the narrow margin of appreciation afforded to them in matters of debate of public interest and that the interference was not necessary in a democratic society. Accordingly there has been a violation of Article 10 ECHR. Russia is ordered to pay Rebechenko EUR 714 in respect of pecuniary damage; EUR 500 in respect of non-pecuniary damages; and EUR 71 in respect of costs and

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expenses.

Judgment by the European Court of Human Rights, Third Section, sitting as a Committee of three judges, case of Rebechenko v. Russia, Application no. 10257/17, 16 April 2019

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