European Court of Human Rights: Savenko (Limonov) v. Russia

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In a case concerning the defamation of the Mayor of Moscow, *Savenko (Limonov) v. Russia*, the European Court of Human Rights (ECtHR) found that the Russian Federation has violated the applicant's freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The (alleged) defamatory statements where uttered during a debate on radio and published on the radio station's website. The ECtHR disagreed with the assessment by the Moscow courts that in a case of defamation the suffering of the elected head of the executive had a much greater value than that of an ordinary citizen. Instead, the ECtHR found that prominent political figures, such as the Mayor of Moscow, should be prepared to accept strongly worded criticism and may not claim the same level of protection as a private individual unknown to the public, especially when the statement did not concern their private life or intrude on their intimacy.

The applicant in this case was Eduard Veniaminovich Savenko, better known in Russia under his writer's name Eduard Limonov. At the material time, he was a founding member of the National Bolshevik Party and one of the leaders of Another Russia, an umbrella coalition which was organising opposition rallies against the government under the name of Dissenters' March. In April 2007, Radio Free Europe/Radio Liberty (RFE/RL) hosted a debate in the wake of the Moscow court's decision upholding the Moscow Government's refusal to authorise the Dissenters' March in 2006. Savenko took part in that debate and stated that it was certainly to be expected that the Moscow court would issue a negative decision, as all Moscow courts were controlled by the Mayor of Moscow, Mr. Luzhkov. He added: 'You cannot expect a miracle [...]. Generally speaking, Moscow courts have never ruled against Luzhkov. Anyone in our position would have insisted on a lawful decision, knowing full well that unlawfulness was to be expected'. The transcript of the debate was also published on the radio station's website. A few weeks later, the Mayor of Moscow lodged a defamation claim against Savenko and RFE/RL. He claimed that the sentence 'Moscow courts are controlled by Luzhkov' was false and also damaging to his honour, dignity and professional reputation, and sought RUB 500 000 (EUR 28 000) in respect of non-pecuniary damage. The Moscow District Court found that Savenko had not produced any evidence proving the truth of the statement. The district court ordered Savenko and RFE/RL to broadcast a rectification and publish it on the website, and to pay RUB 500 000 each to the Mayor of Moscow. After

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unsuccessfully exhausting all national remedies, Savenko lodged an application with the ECtHR, complaining that the judgments in the defamation claim and the excessive award against him had violated his right to freedom of expression under Article 10 ECHR. The Russian Government argued before the ECtHR that the defamatory allegations by Savenko had not been founded on verified or verifiable information and that the domestic courts had regard to the fact that the statement had undermined public trust in the authorities, that it had been broadcast to the unlimited audience of the radio station and been published on the website, and that the mayor had suffered extraordinary anguish in that connection.

The ECtHR agreed with the Russian Government that the interference with Savenko's right to freedom of expression had a lawful basis and pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 §2. Hence, it remained to be established whether the interference was 'necessary in a democratic society', taking the following elements into account: the position of the applicant, the position of the person against whom his criticism was directed, the context and object of the impugned statement, its characterisation by the domestic courts, and the sanction imposed. The ECtHR refers to Savenko as one of the leaders of a broad coalition of opposition groups which sought to vindicate the right to freedom of assembly in Moscow by holding rallies and demonstrations known as Dissenters' Marches. His statements during the radio debate were made in the general context of a discussion about restrictions imposed by the government and the judiciary on the citizens' right to freedom of peaceful assembly. The ECtHR clarified that 'both the exercise of political rights and the functioning of the justice system constitute matters of public interest, which are accorded the high level of protection under Article 10, leaving the State authorities a particularly narrow margin of appreciation for suppressing such speech.' While the requirements of the protection of a politician's reputation have to be weighed against the interests of the open discussion of political issues, the ECtHR observed that the domestic courts did not perform any such balancing exercise in the case at hand. As regards the form and contents of the statement, the Court noted that Savenko's reaction was uttered in the context of an oral exchange during a live radio broadcast, so that he had no possibility of reformulating, refining or retracting it before it was made public. Such forms of expression allow for a greater degree of exaggeration and cannot be held to the same standard of accuracy as written assertions. The ECtHR also found that Savenko's statement reflected his own experience of unsuccessful attempts to vindicate the right to freedom of peaceful assembly in Moscow as well as the experience of others who had lost judicial proceedings involving the Mayor of Moscow . As the information produced by the Russian Government, at the request of the ECtHR, showed that the Moscow courts indeed had not found against the Mayor of Moscow in any of the defamation claims, the ECtHR was of the opinion that there was a certain factual basis to Savenko's strong reaction.

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This led to the ECtHR concluding that Savenko was entitled to state his opinion in a public forum on a matter of public interest, and that the district and city courts in Moscow did not carry out a balancing exercise or taken into account the mayor's position as a professional politician. Hence, the standards according to which the national authorities examined the defamation claim against Savenko were not in conformity with the principles embodied in Article 10 ECHR.

The ECtHR also found the amount of damages awarded disproportionate, reiterating that unpredictably large awards in defamation cases are capable of having a chilling effect on the freedom of expression and therefore require the most careful scrutiny, and that an award of damages must also have a reasonable relationship of proportionality to the injury to reputation suffered. The ECtHR subsequently assessed the impact of the award on Savenko, referring to the fact that he struggled to pay it in full because it represented many years' income for him. The Moscow courts denied his request to pay by instalments, which resulted in a further punitive sanction being imposed on him in the form of a permanent restriction on his right to leave Russia. The severity of that additional sanction, which must have considerably affected Savenko's life, further reinforces the Court's view that the award of damages in the present case was disproportionate to the legitimate aim pursued and was not necessary in a democratic society. Having regard to the Moscow courts' failure to apply the principles embodied in Article 10 ECHR and the excessive amount of the award, the Third Section of the ECtHR, sitting as a Committee composed of three judges, came to the conclusion that Article 10 ECHR has been violated.

ECtHR Third Section (Committee), Savenko (Limonov) v. Russia, Application no. 29088/08, 26 November 2019

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