

ECtHR: *OOO Regnum v. Russia*

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Again, the European Court of Human Rights (ECtHR) has found a violation of the right to freedom of expression on the Internet in Russia (see also *Vladimir Kharitonov v. Russia*, *OOO Flavus and Others v. Russia*, *Bulgakov v. Russia* and *Engels v. Russia* reported in Iris 2020:8). In a defamation case, the domestic judicial authorities have failed to establish convincingly and in conformity with the principles embodied in Article 10 of the European Convention on Human Rights (ECHR) that there had been a pressing social need to impose a high amount of damages to be paid by an online news platform for its reporting on a commercial company in relation to the discovery of a potential health hazard.

The applicant in this case is OOO Regnum, an electronic news outlet based in Moscow. In several news items on its website, it reported on a case of mercury poisoning following the consumption of a branded soft drink. The news platform had based its report on information released by the local police and the state consumer protection agency that a woman had been hospitalised with mercury poisoning after drinking a *Lyubimyy Sad* juice.

One of the legal entities, Ramenskiy Molochnyy Kombinat (JSC RMK), that produced soft drinks under the *Lyubimyy Sad* brand brought a defamation claim against OOO Regnum. The lower commercial courts dismissed the claims, but the Federal Commercial Court of the Moscow Circuit (the Circuit Court), found against the media platform and ordered it to pay JSC RMK an award of 1 000 000 Russian rubles (RUB) (EUR 28 428) in compensation for non-pecuniary damage. The Circuit Court found that the news items contained untruthful statements which had tarnished JSC RMK's business reputation. It considered that the information that mercury had been found in a carton of the branded drink had not been confirmed by evidence, as no criminal proceedings had been opened against JSC RMK.

Relying on Article 10 ECHR, OOO Regnum alleged that the ruling by the Moscow District Court had amounted to a disproportionate interference with its right to freedom of expression. It argued in particular that the courts had failed to balance JSC RMK's right to reputation against its right to report on and the public's right to be informed about a potential health hazard. Hence, the core question for the ECtHR to answer was whether the Moscow Circuit Court had struck a fair balance between an electronic media outlet's right to freedom of expression and a

commercial company's right to reputation.

After reiterating the basic principles regarding freedom of expression and electronic media, and the balancing of the rights under Articles 8 and 10 ECHR, the ECtHR emphasised that there **was** a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society: an individual deserves a higher level of protection, as defamatory allegations about an individual may have repercussions on their dignity, while the reputation of a commercial company is devoid of that moral dimension. Another important factor was that the impugned news items reported on a case of mercury poisoning following the consumption of a shop-bought branded soft drink. As this clearly pertained to an important aspect of human health and raised a serious issue in terms of consumer protection, OOO Regnum had reported on information of considerable public interest. The ECtHR found that the judgment of the Moscow Circuit Court had omitted to consider this aspect of the general interest in receiving reports on the discovery of a potential health hazard.

Furthermore, the news platform had relied on information gathered from official sources, and media and journalists should be entitled to do so without having to undertake independent research. The ECtHR could not accept the argument that the news items lacked a factual basis because it was later decided not to open criminal proceedings against JSC RMK: such reasoning defies temporal logic, as at the time of the publication of the news items, OOO Regnum had no means of envisaging the events that would occur almost a month later. The ECtHR clarified that the extent to which a media outlet or journalist can reasonably regard a source of information as reliable is to be determined in the light of the situation as it presented itself to the media at the material time, rather than with the benefit of hindsight. The ECtHR also found that, when publishing the news items on its website, OOO Regnum had acted in discharge of its duty as a purveyor of accurate and reliable information and in full compliance with the tenets of responsible journalism.

Finally, the ECtHR emphasised that the most careful scrutiny is called for when measures taken or sanctions imposed by a national authority risk having a chilling effect, capable of discouraging the participation of the media in debates over matters of legitimate public concern. The Moscow Circuit Court did not advance any arguments as to why it had accorded more weight to the reputational interests of a commercial company than to the interest of the general public in being informed of a matter as serious as an instance of mercury poisoning through commercially distributed foods. Nor did the Circuit Court make any assessment, however perfunctory, of the proportionality of the sizeable amount claimed by the commercial company in respect of non-pecuniary damage to the alleged damage to its business reputation. This omission disregarded the requirement that an award of damages for defamation must bear a reasonable

relationship of proportionality to the injury to reputation suffered. Therefore, the ECtHR considered that the Circuit Court had not provided “relevant and sufficient reasons” to justify the award of one million rubles in compensation for the alleged damage to the reputation of a commercial company.

The conclusion is that the Moscow Circuit Court failed to establish convincingly and in conformity with the principles embodied in Article 10 ECHR that there had been a pressing social need for the interference complained of by OOO Regnum. The interference with the news platform’s right to freedom of expression was disproportionate and not necessary in a democratic society within the meaning of Article 10, section 2 ECHR. Accordingly, the ECtHR found, unanimously, that the Russian judicial authorities **had** violated Article 10 ECHR.

Judgment by the European Court of Human Rights, Third Section, case of OOO Regnum v. Russia, Application no. 22649/08, 8 September 2020.

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