THIRD SECTION

CASE OF BYCHKOV v. RUSSIA

(Application no. 48741/11)

JUDGMENT

STRASBOURG

29 October 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Bychkov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Paulo Pinto de Albuquerque, *President,* Helen Keller, María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 8 October 2019,

Delivers the following judgment, which was adopted on that date:

1. PROCEDURE

1.  The case originated in an application (no. 48741/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yevgeniy Anatolyevich Bychkov (“the applicant”), on 20 July 2011.

2.  The applicant was represented before the Court by Mr S. Batyuk who had been his representative in the domestic proceedings. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 8 March 2017 the Government were given notice of the application.

4.  The Government objected to the examination of the application by a Committee. Having considered the Government’s objection, the Court rejects it.

1. THE FACTS

5.  The applicant was born in 1989. At the material time he was a student at the Taganrog branch campus of the Russian New University (*РосНОУ*), a private higher-education institution.

6.  The facts of the case, as submitted by the parties, may be summarised as follows.

7.  On 24 June 2009 the applicant, together with twenty students from his class, complained to the director of the Taganrog campus and to the central administration about the conduct of Mr A., a lecturer in computer science:

“Pursuant to paragraph 5.2 of the contract [for the provision of educational services], a student has the right to make comments or suggestions relating to the education. When students make comments, lecturers respond with threats against the student or the entire class. This happened at the computer science lecture on 16 June 2009. The lecturer A[.] told [the student] Z[.] in front of the class: ‘Because I see you for the first time, I will not let you take the exam. You need not come to the exam,

you won’t pass it’. After the class reacted with indignation, he said: ‘You are such bold talkers; we shall see what you will have to say at the exam’.

The educational process leaves much to be desired; lecturers do not address appropriately the students’ concerns relating to the subject being studied; they do not provide assistance to students preparing for practical exercises; they are rude and intimidating; they mark the exams chiefly by reference to how often the student attended their lectures in the previous term, even though it is a distance learning programme and out-of-town students cannot attend. The lecturer in computer science Mr A[.] is a prime example [of such conduct].

It has become known from a trustworthy source that the university administration is doing everything possible to expel the entire ES308/1 class, of which the failing outcome of the exam in computer science is proof. Also, the conduct of the lecturer in computer science Mr A[.] during the exam was less than adequate. He would mark the student’s response before hearing him out or claim that the student’s reply to additional questions was wrong even when it was correct; as a result, the entire class failed the exam with the exception of the student K[.] who did not come to the exam. It has also become known from a trustworthy source that A[.] takes bribes for passing marks which may also be interpreted as meaning that he extorts money.”

8.  The students did not receive a reply to their letter. Mr A. brought a claim for defamation in which he designated the applicant and another student Mr P. as co-defendants.

9.  On 21 January 2010 the Neklinovskiy District Court in the Rostov Region dismissed the claim. It had taken oral evidence from eight students, co-signatories to the letter, who had corroborated its contents. The District Court held that the incidents described in the letter had indeed taken place and that students could reasonably interpret A.’s conduct as threatening. The students had lawfully exercised their right to complain to the university administration which had been required to make a decision and to give a reply. The last sentence in the letter did not accuse A. of corruption but communicated the information which needed to be checked. On 12 April 2010 the Rostov Regional Court quashed the judgment on procedural grounds, finding in particular that the District Court should have determined whether all co-signatories should have joined the proceedings as co‑defendants.

10.  On 9 September 2010 the District Court again dismissed the claim against all twenty signatories of the letter. It took further oral evidence from students Mr P. and Ms K. Mr P. told the court that he had failed the exam in computer science. Mr A. had mistakenly entered his fail mark next to the applicant’s name. When P. had drawn his attention to the error, A. had replied that it did not matter because the applicant “would get a fail mark anyway”. Ms K. stated in particular that the students had complained orally to the university rector who had refused to intervene. The District Court held that the facts had been established and the students had exercised their legitimate right to make complaints. On 15 November 2010 the Regional Court quashed the judgment and instructed the District Court to verify whether or not the information in the letter had been truthful.

11.  On 21 February 2011 the District Court granted A.’s claim against twelve students; in respect of the eight others, counsel for A. had withdrawn the claims. The District Court held that the allegations had not been shown to be true and that the oral evidence from students had no probative value since they had signed the letter and had a vested interest in the outcome of the proceedings. Moreover, they had not addressed the allegations of corruption to the police or law-enforcement authorities. Each student was ordered to pay 1,000 Russian roubles (RUB) to A. in respect of non‑pecuniary damage. The applicant and Ms K. – who had respectively printed and posted the letter – were ordered to pay RUB 1,500 each (38 euros). On 19 May 2011 the Regional Court upheld the judgment on appeal.

1. THE LAW
	1. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

12.  The applicant alleged a violation of Article 10 of the Convention which reads as follows:

“1.  Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2.  The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ...”

* + 1. Submissions by the parties

13.  The Government submitted that the domestic courts had correctly established that the information in the letter had been unsupported with any evidence. The university lecturer was not known to the general public and his standing could not be compared to that of a politician or a public figure in respect of which wider limits of criticism were acceptable. The students had sought to have him replaced by another lecturer rather than to communicate any information on a matter of public interest. The Government concluded that the interference with the freedom of expression had been lawful and justified and pursued a legitimate aim of the protection of A.’s reputation.

14.  The applicant pointed out that the case had been born out of a conflict involving a lecturer and a group of students. The students had signed a collective letter to convey their grievances to the university administration and expected that the information would be checked. Instead, they had been called to court to show the truth of the statements. The letter had not concerned the lecturer’s private life but solely the manner in which he was discharging his professional duties. It had been sent in the context of the exercise of the students’ right to make comments and suggestions relating to the quality of education, which right had been explicitly mentioned in their education contract.

* + 1. Admissibility

15.  The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

* + 1. Merits

16.  The Court finds that the finding of the applicant’s liability for defamation and an order to pay compensation to A. constituted interference with his right to freedom of expression. The interference was based on the defamation provisions of the Civil Code and pursued the legitimate aim of protecting the reputation of A. It remains to be seen whether it was necessary in a democratic society.

17.  The letter which the applicant had prepared and printed on behalf of a group of students was submitted to the local and central university administration by way of private correspondence; it was not made public. The Court will therefore apply its well-established case-law concerning an applicant’s right to report irregular or unlawful conduct of an official to a body competent to deal with such complaints (see *Zakharov v. Russia*, no. 14881/03, § 23, 5 October 2006; *Kazakov v. Russia*, no. 1758/02, § 28, 18 December 2008; *Bezymyannyy v. Russia*, no. 10941/03, § 41, 8 April 2010; *Sofranschi v. Moldova*, no. 34690/05, § 29, 21 December 2010; *Siryk v. Ukraine*, no. 6428/07, § 42, 31 March 2011). In such cases the Court has been prepared to assess an applicant’s good faith and efforts to ascertain the truth according to a more subjective and lenient approach than in other types of cases (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 82, 27 June 2017).

18.  The circumstances in the above-cited cases are similar to those obtaining the instant case. The applicant and his fellow students acted within the framework established for making such complaints; they explicitly referred to the provisions of the educational contract relating to making comments or suggestions addressed to the administration. They did not resort to abusive, strong or intemperate language capable of insulting or humiliating the lecturer Mr A. Nor did the letter undermine the confidence and respect that Mr A. enjoyed in the eyes of fellow lecturers or students, as its contents were not made known to the general public and no press or other form of publicity was involved. The fact that the students were reporting irregular conduct occurring in a private institution is not decisive (compare *Siryk*, cited above, in which the applicant reported alleged corruption in a public tax academy). The relevant element is that the grievances should be submitted to the authority which is competent to deal with them, which the director of the regional campus and the central administration of the university undeniably were in the circumstances of the instant case.

19.  Furthermore, the Court is not satisfied that, in adjudicating the defamation claim, the Russian courts applied standards which were in conformity with the principles embodied in Article 10 or that they relied on an acceptable assessment of the relevant facts. First, in the final round of proceedings, they pronounced the three above-cited paragraphs to be defamatory in their entirety, without attempting to draw a distinction between value judgments and statements of fact. The Court points out that the statement about the “rude and intimidating” conduct was but one example of a value judgment, reflecting, as it did, the students’ subjective appreciation of the lecturers’ manner of communication. It was not amenable to proof and the requirement to prove the truth of a value judgment infringes freedom of opinion itself (compare *Siryk*, cited above, §§ 46-47).

20.  Second, the letter described two incidents to which the students who signed it had been eye-witnesses. In the first and second rounds of proceedings, the courts deemed their oral evidence sufficient to establish that the events had indeed occurred as described. In the third round, their evidence was rejected on the presumption that, as parties to the proceedings, they could not be truthful about the events related in the letter. That re‑assessment of evidence does not appear convincing to the Court. There does not appear to be any case-law authority or principle of Russian law that would call for excluding all evidence from parties to the proceedings as unreliable. The District Court did not refer to any indication of insincerity or dishonesty capable of casting doubt on their testimony. In fact, it does not appear that anyone, including Mr A., had ever called into question the description of the two incidents mentioned in the letter. In these circumstances, the Court cannot find that the Russian courts relied on “an acceptable assessment of relevant facts”.

21.  The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 10 of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

23.  The applicant claimed 20,000 euros (EUR) in respect of non‑pecuniary damage and EUR 1,212 for his representation in the domestic proceedings and before the Court.

24.  The Government submitted that the claims were unsubstantiated and excessive.

25.  The Court awards the applicant EUR 5,200 in respect of non‑pecuniary damage and the amount claimed in respect of costs and expenses, plus any tax that may be chargeable to the applicant.

26.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
	1. that the respondent State is to pay the applicant, within three months, the following amounts,to be converted into the currency of the respondent Stateat the rate applicable at the date of settlement:
		1. EUR 5,200 (five thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
		2. EUR 1,212 (one thousand two hundred and twelve euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
	2. that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 29 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Paulo Pinto de Albuquerque
 Registrar President