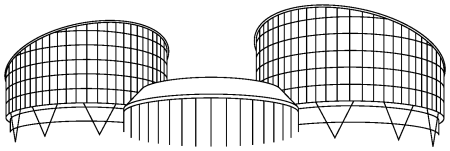

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 41123/10
Yevgeniy Yakovlevich DZHUGASHVILI
against Russia

The European Court of Human Rights (First Section), sitting on 9 December 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*

Having regard to the above application lodged on 4 June 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Yevgeniy Yakovlevich Dzhugashvili, is a Russian national, who was born in 1936 and lives in Moscow. He was represented before the Court by Mr L.N. Zhura, a lawyer practising in Moscow.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant is a grandson of the former Soviet leader, Joseph Stalin.

4. On 22 April 2009 *Novaya Gazeta*, an opposition newspaper, published in its feature supplement, *Pravda Gulaga*, an article entitled "Beria pronounced guilty" ("*Виновным назначен Берия*"), which dealt with the shooting of Polish prisoners in Katyń in 1940. The article was

written by Mr Ya., a former investigator of the Russian Chief Military Prosecutor's Office whose duty had been to deal with the rehabilitation of victims of political persecution.

5. The article was written in accusatory terms in respect of the former USSR government and included, among others, the following statements:

> "Stalin and the Chekists are bound by much blood, by the extremely serious crimes they committed, first of all, against their own nation";
>
> "Stalin and the members of the Politburo of the VKP(b) who took a legally binding decision to shoot the Poles evaded moral responsibility for the extremely serious crime";
>
> "[T]he former father of nations and, as a matter of fact, a bloodthirsty cannibal is recognised to have been an effective manager";
>
> "Secret protocols to the Molotov-Ribbentrop Pact envisaged that the USSR, despite the legally binding non-aggression treaty with Poland, ought to attack Poland together with Germany. After Germany had started the war against Poland on 1 September 1939, the USSR fulfilled its obligations to Germany and on 17 September 1939 marched into Polish territory".

6. The article also contained the author's vision of the role of the USSR and the Politburo of the Central Committee of the USSR Communist Party in the historical events of that era, which, in the applicant's view, was false, fanciful and completely unsubstantiated.

7. Having considered that the article slandered his grandfather, the applicant sued the publishing house, *Novaya Gazeta*, and the author, Mr Ya., for defamation, seeking a disclaimer and non-pecuniary damages in the amount of 9.5 million roubles (RUB) from the *Novaya Gazeta* and RUB 0.5 million from the author.

8. On 13 October 2009 the Basmanniy District Court of Moscow held for the journalists and dismissed the claim.

9. Considering the first and the third of the contested fragments ("bound by much blood", "bloodthirsty cannibal") the district court reasoned as follows:

> "[T]he contested fragments are not statements of fact as they present the author's ... judgment of complex and contradictory events in the Soviet history differently interpreted by the parties.
>
> The author's judgment is his subjective and personal assessment of Stalin as a historic figure, the role he played in the politics of the 1930–50s, materials of the criminal investigation into the Katyn tragedy of Polish prisoners of war and of other persons in April-May 1940, and cases of other persecuted persons about which he had learned as an investigator of the Chief Military Prosecutor's Office involved in the investigation of the aforementioned criminal case and as a member of the Chief Military Prosecutor's Office's department of rehabilitation of victims of political persecution. ...
>
> [T]he present dispute represents an irreconcilable and fiery but subjective debate of persons whose views on the above issue and on the historic role of Joseph Stalin

differ. Thus, [the applicant] considers that Joseph Stalin's accomplishments were positive for the society whereas [the journalists] consider them negative.

The court deems it unacceptable to find whose views – [the applicant's or the journalists'] – are more important or better reasoned.

The present-day discussion in the media of Stalin's personality causes exceptional public interest and requires additional reflections and a profound historical study, and that is why it cannot be restricted as it lies beyond the sphere of law as a manifestation of the elements of the civil society in the Russian Federation.

The phrases "bound by much blood" and "bloodthirsty cannibal" in the context of the article are solely metaphorical and, as figures of speech, cannot have their truthfulness checked against the objective reality."

10. In connection with the second of the contested statements ("evaded moral responsibility for the extremely serious crime") the district court emphasised, with reference to the Court's case-law and Article 10 of the Convention, as follows:

"[F]reedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. ... It is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock, or disturb. Such are the demands of pluralism, tolerance, and broadmindedness, without which there is no 'democratic society' ...

[P]oliticians, unlike private persons, have to have a higher tolerance of acceptable criticism. The press plays a pre-eminent role in a democratic society. It is incumbent on it to impart information and ideas of serious public concern, and the public has a right to receive the above information. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation ...

[In the present article the author] enjoyed the journalist's freedom of expression ...

The issues touched upon [in the contested fragment] presented significant interest for the society, and that is why [the author] had the right to draw the public attention to them by means of the press, and his judgment does not upset a fair balance – necessary in a democratic society – between the dignity of a political figure and the journalist's right to impart information of public interest, as it does not appear that the author has exceeded the limits of acceptable criticism, exaggeration or provocation creatively presenting his views and beliefs of a highly emotional colouring ...

[F]reedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention. The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former must display a greater degree of tolerance to close scrutiny of his every word and deed by both journalists and the public at large."

11. In addition, the district court dismissed the applicant's allegations that the contested statements were abusive:

> "[N]othing reasonably suggests that [the author's] opinion, to which he furnished clear and precise explanations in the article, was expressed with a view of insulting Joseph Stalin in an obscene or indecent form ..."

12. Regarding the remainder of the contested statements the district court found that they did not relate to Joseph Stalin personally.

13. The judgment became final on 10 December 2009 having been upheld on appeal by the Moscow City Court.

14. Following the first-instance court's judgment in the above case, on 16 October 2009 *Novaya Gazeta* published another article entitled "Historical trial" ("*Исторический процесс*") in which its author, Mr Kh., gave a brief overview of the above-mentioned defamation dispute and expressed his opinion on its outcome. He alleged, in particular, that the district court had "acknowledged the right to consider Joseph Stalin as a criminal" and that "[t]henceforth no one was forbidden to call him [Joseph Stalin] a 'bloodthirsty cannibal'". The applicant sued again, but to no effect.

15. By the judgment of 25 December 2009 the Basmanniy District Court of Moscow found, in particular, as follows:

> "[T]he expression 'a Moscow district court has acknowledged the right to consider Joseph Stalin a criminal' does not constitute a statement of fact as it represents an expression of [the author's] view on the outcome of the first-instance trial ..."

16. By a final judgment of 16 March 2010 the Moscow City Court upheld the above decision.

B. Relevant domestic law and practice

17. Article 152 of the Civil Code of the Russian Federation, in force at the material time, provided as follows:

> "Protection of honour, dignity and business reputation.
>
> 1. An individual has the right to refute in court information damaging his/her honour, dignity or business reputation, save in the event that those who disseminated such information have proven its veracity.
>
> The honour and dignity of a deceased individual shall be granted protection upon the request of persons concerned.
>
> 2. If damaging statements ... were disseminated in the media, they should be retracted in the same media ...
>
> 5. An individual aggrieved by the dissemination of damaging information ... has, along with the right to request rectification of such information, the right to claim damages and compensation for non-pecuniary damage sustained as a result of its dissemination.
>
> 6. In the event that it is impossible to identify the person responsible for the dissemination of the [defamatory information], the individual concerned has the right to apply to court seeking to have the information in question declared untrue."

18. By Decree no. 3 of 24 February 2005 the Plenary of the Supreme Court clarified to the lower courts that a defamation action could be granted only if the statements about the plaintiff had been both disseminated by the respondent and were discrediting and false. It required the courts hearing defamation claims to distinguish between statements of fact, which could be checked for veracity, and value judgments, opinions and convictions, which were not actionable under Article 152 of the Civil Code since they were an expression of an individual's subjective opinion and views, and could not be assessed as true or false.

COMPLAINT

19. The applicant referred to Articles 6, 10 and 14 of the Convention, complaining in substance that the Basmanniy District Court of Moscow by its judgments of 13 October and 25 December 2009, and the Moscow City Court by its final judgments of 10 December 2009 and 16 March 2010 respectively had failed to protect his well-known ancestor from attacks on his reputation.

THE LAW

20. The applicant complained under Articles 6, 10 and 14 that the domestic courts had approved of his ancestor's slander. The Court, being the master of the characterisation to be given in law to the facts of the case, does not consider itself bound by the legal characterisation given by the applicant (see *Guerra and Others v. Italy*, no. 14967/89, § 44, 19 February 1998). It finds that the applicant's allegations should be examined as in essence relating to an alleged breach of his rights under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

21. The complaint is twofold. In so far as the applicant can be understood to be complaining of a violation of the Convention rights of his grandfather, the Court will first examine the applicant's *locus standi* in this respect.

22. In the case of *Sanles Sanles v. Spain* ((dec.), no. 48335/99, ECHR 2000-XI) the applicant, as the heir of a deceased person, was complaining on behalf of the latter in respect of his claims for recognition of the right to die in dignity. The Court considered that the right claimed under Article 8 of the Convention, even assuming that such a right existed, was of an eminently personal nature and belonged to the category of non-transferable rights.

23. The Court confirmed the principle that Article 8 rights were non-transferable when it refused a universal legatee to pursue an application lodged by the immediate victim in the case of *Thevenon v. France* ((dec.), no. 2476/02, 28 June 2006).

24. The Court does not find sufficient reasons to depart from its established case-law in the instant case. It follows that the applicant does not have the legal standing to rely on his grandfather's rights under Article 8 of the Convention because of their non-transferable nature.

25. It follows that this part of the complaint is to be rejected under Article 34 as being incompatible *ratione personae* with the provisions of the Convention.

26. As to whether the applicant's own right to respect for his private and family life are at stake in the instant case, the Court will proceed with the examination of whether the two above-mentioned disputes and the way in which they were resolved by the domestic courts affected the applicant's own private and family life and, if so, whether the State took such measures as to secure effective respect of the latter.

27. In its recent case-law the Court has accepted that the reputation of a deceased member of a person's family may, in certain circumstances, affect that person's private life and identity, and thus come within the scope of Article 8 (see *Putistin v. Ukraine*, no. 16882/03, §§ 33, 39, 21 November 2013, where a publication in the mass media allegedly provoked the presupposition that the applicant's father had been a Gestapo collaborator).

28. Turning to the facts of the present case, the Court notes at the outset that both publications did, in the end, relate to the applicant's grandfather either directly or indirectly. However, the Court is not ready to draw a parallel with the *Putistin* case for the following reasons.

29. Unlike the present case, which is to a certain extent focused on the reputation of a world-famed public figure, the *Putistin* case dealt with the reputation of a private person – a former football player and by fate a participant in the so-called "Death Match" of 1942 (see the historical background in *Putistin v. Ukraine*, cited above, § 7), whose role in the relevant events was not the leading one but rather one of an ordinary participant. Moreover, his involvement was not a direct consequence of his political, military or other public career.

30. The Court therefore deems it appropriate to distinguish between defamatory attacks on private persons, whose reputation as part and parcel

of their families' reputation remains within the scope of Article 8, and legitimate criticism of public figures who, by taking up leadership roles, expose themselves to outside scrutiny.

31. The first publication contributed to a historical debate over the Katyń events and dealt, among other things, with the role which the former Soviet leaders had presumably played therein. The second publication contained, as a matter of fact, the author's interpretations of the domestic court's findings in connection with the first dispute and hence, in a way, can be seen as a continuation of the same discussion.

32. The Court notes that historical events of great importance which affected the destinies of multitudes of people, as well as the historical figures involved therein and responsible for them, inevitably remain open to public historical scrutiny and criticism, as they present a matter of general interest for society.

33. Given that cases such as the present one require the right to respect for private life to be balanced against the right to freedom of expression, the Court reiterates that it is an integral part of freedom of expression, guaranteed under Article 10 of the Convention, to seek historical truth. It is not the Court's role to arbitrate the underlying historical issues, which are part of a continuing debate between historians (see *Chauvy and Others v. France*, no. 64915/01, § 69, ECHR 2004-VI). A contrary finding would open the way to a judicial intervention in historical debate and inevitably shift the respective historical discussions from public forums to courtrooms.

34. The Court also recalls that where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012, with further references).

35. The criteria relevant for the balancing exercise laid down in the case-law and recently summarised in the case *Von Hannover v. Germany (no. 2)* (cited above, §§ 108-13*)* are, in the Court's view, *mutatis mutandis* applicable in the present case.

The Court notes that the domestic courts considered the contribution made by the disputed publications to the debate of general interest, the role of the person concerned as well as the subject, the content, the form and the information value of the publications. Firstly, they based their reasoning on the premise that the publications contributed to the factual debate over the events of exceptional public interest and importance. Secondly, they found that the historic role of the applicant's ancestor called for a higher degree of tolerance to public scrutiny and criticism of his personality and his deeds. Finally, turning to the content and the form, the national courts noted the highly emotional character of some statements but found them within the limits of acceptable criticism.

The Court also observes that the national courts explicitly took account of the Court's relevant case-law, including the general distinction between statements of facts and value judgments, see, for instance, *Lingens v. Austria* (judgment of 8 July 1986, p. 28, § 46, Series A no. 103).

Accordingly the Court considers that the domestic courts have struck a fair balance, required in the context of the State's positive obligations, between the journalist's freedom of expression under Article 10 and the applicant's right under Article 8.

36. Having regard to the above, the Court considers that the applicant's complaint under Article 8 of the Convention in this part is to be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President