



PRESS RELEASE

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RUSSIA: ARTICLE 19 Report Shows Defamation still Used to Shield Public Officials from Criticism

A new report released today by ARTICLE 19, *The Cost of Reputation: Defamation Law and Practice in Russia*, shows that defamation law has been used in Russia to repress criticism of public figures and powerful individuals, through the instigation of multiple civil and criminal proceedings against the media. At the same time, although the application of the European Convention on Human Rights in Russian courts remains relatively rare, some progress has been recorded.

Russia retains and applies criminal defamation, which can lead to imprisonment, as demonstrated by three cases in 2005-2006. A development of particular concern has been the adoption of extremism legislation which provides an additional layer of protection to public officials - a move that runs counter to international standards on freedom of expression.

High awards for damages and disproportionate sentences are at times imposed. In some cases, penalties achieve ends other than protecting someone's reputation, for example, stifling public debate on sensitive issues or protecting a reputation that is not deserved. This has to be seen in the context of a generally deteriorating freedom of expression situation in Russia, where journalism is a dangerous profession. The resulting chilling effect can discourage even the most motivated journalists.

Judges and plaintiffs have at times deemed non-punitive measures, such as the right of reply, as insufficient to satisfy defamation claims. Self-regulatory mechanisms are a novelty and still lack legitimacy, although there are some positive exceptions.

On a positive note, in 2005, the Supreme Court adopted a resolution (the 2005 Resolution) (1) that clarified the need for courts to apply the principles of the European Convention of Human Rights (ECHR) in Russian courts. From the monitoring of defamation judgements (2), carried out by the Russian organisation Mass Media Defence Centre, one can observe an increase in the number of cases with reference to international standards since the 2005 Resolution. Other decisions and resolutions have also been issued by higher courts, instructing lower courts to apply international standards. These legal instruments have had a positive - albeit slow - cumulative effect.

However, some defamation issues remain unresolved: the 2005 Resolution does not address the lack of a defence for reasonable publication in Russian law; and in less than one fifth of the cases examined did the courts apply the ECHR principle that public officials should tolerate a higher level of criticism than ordinary people.

The report provides an analysis of judges' views on the obstacles they face in applying international standards. These were gathered from interviews in Central Russia and include:

- lack of experience, particularly in the application of legal precedents;
- lack of training opportunities and materials, including translations of the European Court's jurisprudence;
- the feeling that Russian law "is enough" (combined with the belief that Russian law is already fully in line with international standards);
- lack of detailed and clear guidelines to apply international standards;
- the sense that international principles are remote and non-applicable in the Russian context.

Dr Agnès Callamard, Executive Director of ARTICLE 19 said today: *"The positive effects of the 2005 Resolution and of the commitment of some judges to apply the ECHR are encouraging. However, there is an urgent need for more training and resources"*.

She added:

"To eradicate the abuse of defamation legislation and ensure its correct application, it is vital to stop it being used to protect people from statements they do not like. Defamation law should be applied only when its genuine purpose and demonstrable effect is to protect someone's reputation. The full acceptance of criticism, or even provocation, of public officials and politicians, requires long-term awareness-raising efforts that challenge current attitudes".

Recommendations include:

- Training for judges on the ECHR should be intensified;
- A reasonable publication defence should be introduced in Russian law;
- In ruling in defamation cases, judges should take into consideration the chilling effect the judgement is likely to have on freedom of expression;
- Extra-judicial measures, such as the right of reply and the setting up of self-regulatory mechanisms, should be further explored and increasingly relied upon;
- Higher courts should continue to issue resolutions that serve as positive precedents and guidance to lower courts;
- General awareness-raising activities should be implemented to modify the widespread view that high-ranking public officials should not be criticised.

NOTES TO EDITORS

- (1) Resolution of the Plenary of the Supreme Court of the Russian Federation *On Judicial Practice in Cases on Protection of Honour and Dignity and Business Reputation of Natural and Legal Persons*, 24 February 2005, No. 3.
 - (2) Issued between 2003 and 2006, and gathered in selected Russian regions. the *oblasts* of Voronezh, Lipetsk, Belgorod, Kursk, Ryazan, Tambov, Tula, Moscow, Nizhniy Novgorod, Yekaterinburg, Kirov, Ivanovo, Vladimir; the Republics of Komi, Tatarstan and Chuvashiya; and the city of Moscow. The cases were collected by the Mass Media Defence Center and a group of lawyers from Nizhniy Novgorod, Yekaterinburg and Moscow. They represent a sample of cases from the selected regions.
- **The report is available at:** <http://www.article19.org/pdfs/publications/russia-defamation-rpt.pdf>
 - **For more information**, please contact Federica Prina, Senior Programme Officer (Europe Programme), federica@article19.org, +44 20 7278 9292.
 - ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression.