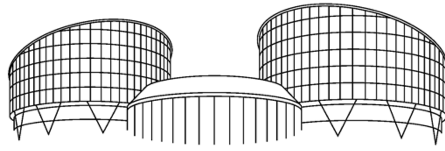

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SAVENKO (LIMONOV) v. RUSSIA

(Application no. 29088/08)

JUDGMENT

STRASBOURG

26 November 2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Savenko (Limonov) 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 5 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 29088/08) 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 Eduard Veniaminovich Savenko ("the applicant"), on 2 June 2008.

2. The applicant was represented by Mr D. Agranovskiy, a lawyer practising in the Moscow Region. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, a violation of his right to freedom of expression.

4. On 27 May 2010 the Government were given notice of the above complaint.

5. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court has rejected it.

THE FACTS

6. The applicant was born in 1943 and lives in Moscow. He has published books and articles under the name of Eduard Limonov. At the material time he was a founding member of the National Bolshevik Party and one of the leaders of Another Russia («*Другая Россия*»), an umbrella coalition known for organising opposition rallies under the name of Dissenters' March («*Марш несогласных*»).

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

A. Defamation proceedings against the applicant

8. On 4 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. The applicant took part in the debate and stated:

> "We certainly expected that the Tverskoy court [in Moscow] would issue a negative decision. Moscow courts are controlled by [the Moscow mayor] Luzhkov. 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 published on the station's web-site.

9. On 18 May 2007 the Moscow mayor lodged a defamation claim against the applicant and the RFE/RL station. He claimed that the sentence "Moscow courts are controlled by Luzhkov" was false and also damaging to his honour, dignity and the professional reputation, and sought 500,000 Russian roubles (RUB) in respect of non-pecuniary damage.

10. On 14 November 2007 the Babushkinsky District Court in Moscow granted the defamation claim in full. It heard counsel for the plaintiff and the defendants and took evidence from witnesses for the applicant who stated that they had had a personal experience of unsuccessful litigation against the Moscow Government in Moscow courts. The court found:

> "The defendant Savenko (Limonov) and his counsel did not produce any evidence showing the truth of the statement [that Moscow courts were controlled by Mayor Luzhkov].
>
> The expert ... from the Vinogradov Russian Language Institute ... explained that for the average man – rather than for a specialist – the statement meant that courts were actually controlled by Mayor Luzhkov, that they were not independent and watched carefully for his reaction, that any application to the courts was meaningless because they would never find against Luzhkov. The expert's position finds corroboration in the testimony of citizens who had spontaneously appeared in court and were listed as witnesses for the defendants. They actually believed that the courts in Moscow were controlled by the Moscow Government and by Mayor Luzhkov and they gave testimony to that effect ...
>
> [Mr Savenko (Limonov)] did not accept the claim ... and stated that the amount claimed was a significant one, that he did not have that kind of money because he was the father of a small child ... As regards compensation in respect of non-pecuniary damage, the court finds that the claim should be granted in full because the defendant Savenko (Limonov) did not produce his income statement, whereas the defendant RFE/RL submitted that it had an amount of RUB 58,656.35 in its current account ..."

The District Court ordered that the applicant and the radio station broadcast a rectification and publish it on the web-site, and pay RUB 500,000 each to the Moscow mayor.

11. On 7 February 2008 the Moscow City Court rejected the appeals by the applicant and the radio station and upheld the District Court's judgment. It pointed out in particular that –

> "... in determining the amount of award in respect of non-pecuniary damage, the court had regard to the extent of liability of each defendant, the nature of the statement, the manner and extent of its dissemination, and the nature of moral suffering caused to the plaintiff. In particular, the court found that the disseminated information about the plaintiff undermined public confidence in the authorities ... that the information had been disseminated on the radio and in the internet ... and that the ... information unlawfully and undeservedly discredited the plaintiff in the eyes of a large audience as the head of the executive branch in the city of Moscow and caused him moral suffering which was immesurably greater than the ordinary (*нравственные страдания, которые несоизмеримо выше обычных*)".

12. On 25 April 2008 the court bailiffs opened enforcement proceedings against the applicant and asked him to pay the entire amount within three days. On 26 August 2008 the bailiffs searched his flat and removed his personal belongings, including a typewriter, chairs, desk lamps, mobile phones and books.

13. Unable to pay the award, the applicant asked the Babushkinskiy District Court to be allowed to pay by instalments. He submitted that he had no fixed income, except for his retirement pension, that he had not published any new books, and that he had to provide for his wife and two children. On 8 October 2008 the District Court refused his request on the grounds that the proposed amount of monthly instalments was negligible. In its view, payment by instalments would stretch the enforcement proceedings over more than forty years with the result that "the judgment would not actually be enforced". On 20 November 2008 the Moscow City Court upheld the District Court's decision on appeal.

14. On 15 December 2008 a bailiff issued a decision restricting the applicant's right to leave Russia for a period of six months on the grounds that he had failed to pay the amount awarded to the mayor. On 15 October 2009 another bailiff issued a permanent restriction on the applicant's right to leave Russia that would be valid until full payment of the award.

B. Factual information submitted by the Government

15. The Court requested the Government to submit the information: (i) on all the defamation claims lodged by the Moscow mayor, their parties, outcomes and amounts awarded, and (ii) on any other defamation claims lodged by individuals, whether private persons, State officials or politicians, in which comparable amounts were awarded.

16. On the first point, the Government submitted information covering only the period from 1 January 2007 to April 2010. According to them, in that period the Moscow mayor had introduced sixteen defamation claims before the Moscow courts. The list produced by the Government only

contained information in respect of fourteen such claims, all of which had been granted. In twelve cases the mayor was awarded compensation in respect of non-pecuniary damage in the amount ranging from RUB 30,000 to RUB 50,000, in two cases – judgments of 30 November 2009 and 28 April 2010 – the amount of compensation was RUB 500,000.

17. On the second point, the Government cited five judgments over a ten-year period, in which the amounts of compensation in respect of non-pecuniary damage in defamation claims ranged from RUB 270,000 (judgment of 4 April 2007) to RUB 4,000,000 (judgment of 1 October 2002). Four of them were issued against publishing houses, and one judgment concerned a defamation claim lodged by the Agriculture and Food Minister of a Russian region against a private individual.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained that the judgments in the defamation claim and an excessive award against him had violated his right to freedom of expression under 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Submissions by the parties

19. The Government submitted that the Russian courts had held the phrase "Moscow courts are controlled by Luzhkov" to be a statement of fact. It had been "undoubtedly damaging" for the mayor's reputation, as under the Constitution, Russian judges were independent and submitted only to the Constitution and federal law. The applicant's allegation had been a serious accusation against the Moscow mayor that he had exercised pressure on the Moscow courts. It could be understood as accusing him of criminal offences under Articles 285 (abuse of office), 286 (excess of powers) or 294 (interference with the justice) of the Criminal Code. The Anti-Corruption Act also established responsibility for corruption-related offences which could be sanctioned in particular with a ban on holding public office. The Government concluded that the applicant had "alleged, in

essence, that the mayor was unfit for his position and was a criminal". Those allegations had not been founded on verified or verifiable information and had been capable of causing actual damage to the mayor's professional activities, undermining his professional integrity or qualification in the eyes of the public. As to the proportionality of the award, the courts had been guided by the relevant provisions of the Civil Code and had regard to the fact that the statement had undermined public trust in the authorities, that it had been broadcast to an unlimited audience of the radio station and published on the web-site and that the mayor had suffered extraordinary anguish in that connection. In the Government's opinion, the amount of the award had not exceeded the average in that category of defamation claims. The objective of making that award had been "to prevent individuals who make public statements about facts, from drawing ill-considered and unsubstantiated conclusions".

20. The applicant pointed out that the Government had been unable to produce a single judicial decision finding against Mayor Luzhkov. His phrase had not accused him of any offence; it had been a conclusion at which an ordinary citizen would have arrived upon reviewing the findings of Moscow courts on the claims lodged by Mayor Luzhkov. The phrase had been his personal opinion which was not actionable in defamation. He had sought to attract public attention to the existing case-law and to the way in which the courts functioned in Moscow. The amount of award had been grossly disproportionate in relation to both the nature of the statement and the existing case-law, as well as in relation to his financial situation as a father of two minor children, and his political status as one of the leaders of the opposition movement. An excessively large award had the stifling effect on the criticism of public authorities in Russia and on the activities of the opposition movement.

B. Admissibility

21. The Court notes that this complaint 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.

C. Merits

22. The Court accepts that the finding of the applicant's liability for defamation and an order to pay damages to the mayor constituted interference with his right to freedom of expression. The interference had a lawful basis, notably Article 152 of the Civil Code, which allowed an aggrieved party to seek the judicial protection of his reputation and claim compensation in respect of non-pecuniary damages. It also pursued a

legitimate aim, that of protecting the reputation or rights of others, within the meaning of Article 10 § 2. It remains to be established whether the interference was "necessary in a democratic society". In reviewing under Article 10 the domestic courts' decisions, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Dichand and Others v. Austria*, no. 29271/95, § 38, 26 February 2002, with further references). The Court will take 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 (see *Krasulya v. Russia*, no. 12365/03, § 35, 22 February 2007, with further references).

23. At the material time the applicant was 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 (see *Kasparov and Others v. Russia*, no. 21613/07, § 7 et seq., 3 October 2013). The city authorities denied permission for the Dissenters' March on 16 December 2006 and the organisers unsuccessfully challenged that decision in courts. During a live radio debate in which the Moscow court's decision to uphold the ban on the Dissenters' March was discussed the applicant stated his view that the Moscow courts were controlled by the Moscow mayor.

24. The statement was made in the general context of a discussion about restrictions which the Moscow authorities imposed on the citizens' right to freedom of peaceful assembly. More specifically, the applicant's statement could be understood as a suggestion that the regional judiciary showed excessive deference to the executive or even lacked the requisite degree of independence. 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 (see *Morice v. France* [GC], no. 29369/10, § 125, ECHR 2015).

25. Although the statement appeared to have targeted the insufficiently independent standing of the Moscow judiciary, it was the Moscow mayor who took issue with it and sued the applicant for defamation. The mayor was a professional politician and the elected head of the city government. The Court reiterates that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. The requirements of the protection of a politician's reputation have to be

weighed against the interests of open discussion of political issues (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 59, Series A no. 204) but the domestic courts did not perform any such balancing exercise in the instant case.

26. As regards the form and contents of the statement, the Court notes that it was the applicant's reaction 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 (compare *Fuentes Bobo v. Spain*, no. 39293/98, § 46, 29 February 2000, and *Ottan v. France*, no. 41841/12, § 69, 19 April 2018). Such forms of expression allow for a greater degree of exaggeration and cannot be held to the same standard of accuracy as written assertions (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 73, ECHR 2011). The statement conveyed the applicant's indignation at what he perceived as yet another rejection of lawful demands against the Moscow government. It reflected his own experience of unsuccessful attempts to vindicate the right to freedom of peaceful assembly in Moscow, but also on the experience of others who had lost judicial proceedings involving the Moscow mayor. The Court considers that those elements, taken together with the Government's factual information showing that the courts had not found against the Moscow mayor in any of the defamation claims (see paragraph 16 above), were sufficient to lend a certain factual basis to the applicant's strong reaction. The Court accordingly finds that the applicant was entitled to state his opinion in a public forum on a matter of public interest. The District and City Courts in Moscow did not carry out a balancing exercise or take into account the Moscow mayor's position as a professional politician. Those failings call for the conclusion that the standrds according to which the national authorities examined the defamation claim against the applicant were not in conformity with the principles embodied in Article 10.

27. In addition to the above finding, the Court will separately address the applicant's argument about an excessive award of damages in favour of the Moscow mayor. It reiterates that unpredictably large awards in defamation cases are considered capable of having a chilling effect on the freedom of expression and therefore require the most careful scrutiny (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III, and *Kasabova v. Bulgaria*, no. 22385/03, § 71, 19 April 2011). An award of damages must be "necessary in a democratic society" in the sense that it must bear a reasonable relationship of proportionality to the injury to reputation suffered. It falls to the Court to assess whether the compensatory response to a defamation claim was a proportionate one by finding where the appropriate balance lies between the conflicting Convention rights involved. Accordingly, the essential question to be answered is whether, having regard to the size of the award, there were adequate and effective domestic safeguards, at first instance and on appeal, against

disproportionate awards which assured a reasonable relationship of proportionality between the award and the injury to reputation (see *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland*, no. 55120/00, §§ 110-113, ECHR 2005-V (extracts), and *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, §§ 48-51, Series A no. 316-B).

28. The Moscow mayor was awarded the full amount he had claimed in respect of non-pecuniary damage, RUB 500,000 from each of the two defendants which came to a total of approximately EUR 28,000 at the material time. The Court reiterates that awards of that magnitude will trigger a heightened scrutiny of their proportionality (see *Pakdemirli v. Turkey*, no. 35839/97, § 59, 22 February 2005, and *Gouveia Gomes Fernandes and Freitas e Costa v. Portugal*, no. 1529/08, § 54, 29 March 2011). That award was unusually high in absolute terms but also much higher in relation to awards in comparable defamation cases that have come before the Court (see, for example, *Grinberg v. Russia*, no. 23472/03, § 12, 21 July 2005 – RUB 2,500 to the Governor of the Ulyanovsk Region out of the RUB 500,000 he had claimed; *Fedchenko v. Russia*, no. 33333/04, § 15, 11 February 2010 – RUB 5,000 to a member of Parliament out of the RUB 500,000 he had claimed; *Novaya Gazeta and Borodyanskiy v. Russia*, no. 14087/08, § 15, 28 March 2013 – RUB 60,000 to the Governor of Omsk out of the RUB 500,000 he had claimed). The Government were able to identify only five cases over a ten-year period in which comparable or higher awards had been made. By contrast, in the three-year period from 2007 to 2010, the Moscow mayor was granted the full amount he had claimed in at least two other cases (see paragraphs 16 and 17 above).

29. The Court further notes that, when making the pecuniary award against the applicant, the District Court failed to provide any reasons to justify the granting of the full amount sought by the Moscow mayor or to carry out a serious assessment of proportionality (compare *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007). It held the applicant responsible for the failure to produce his statement of income but did not adjourn the proceedings to obtain documents relating to his financial situation. In any event, even though the other defendant, the radio station, did submit a statement of accounts, that did not prevent the District Court from making an award exceeding the amount of available funds by a factor of ten.

30. The Court also disagrees with the City Court's assessment that the suffering of the elected head of the executive had a much greater value than that of an ordinary citizen. This finding is incompatible with the Convention-compliant approach which establishes that prominent political figures, such as the Moscow mayor, 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 (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 84 and 123, ECHR 2015 (extracts)). In these circumstances, the Court finds that a high award of damages to the Moscow mayor did not pursue a "pressing social need" (compare *I Avgi Publishing and Press Agency S.A. and Karis v. Greece*, no. 15909/06, § 35, 5 June 2008).

31. Finally, as regards the impact of such an award on the applicant, the evidence shows that he struggled to pay it in full because it represented his many years' income (compare *Kasabova*, cited above, § 71, and *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 65, 11 February 2014). The 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 disrupted the applicant'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 not "necessary in a democratic society".

32. Having regard to the Moscow courts' failure to apply the principles embodied in Article 10 of the Convention and the excessive amount of the award, the Court finds a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant also complained under Article 6 of the Convention that the domestic courts had misrepresented the statements by the expert in linguistics and had not carried out an adequate assessment of the damage caused to the mayor which had resulted in an excessive award.

34. Having regard to the facts of the case and its finding of a violation of Article 10, the Court considers that it has examined the main legal question raised in the present application. It therefore concludes that it is not necessary to examine the admissibility or merits of the above-mentioned complaints (see, for example, *Pakdemirli*, cited above, § 63, and *Mustafa Erdoğan and Others v. Turkey*, nos. 346/04 and 39779/04, § 48, 27 May 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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."

36. The applicant claimed, in respect of pecuniary damage, the amount payable under the impugned judgment, which was equivalent to

11,700 euros (EUR) on the date of submission of claims, and an additional amount of EUR 91,900, comprising the following elements: EUR 36,000 for renting a substitute flat as he had been asked to leave the old one after the search; EUR 43,000 for the value of property he should have inherited after his parents in Ukraine but had not been able to take possession of because of the restriction on leaving Russia, and EUR 12,900 for the loss of income from publications which had ceased working with him fearing reprisals. He also claimed EUR 50,000 in respect of non-pecuniary damage.

37. The Government submitted that the applicant had only paid a tiny fraction of the total award, that his rental contact or employment situation had in no way been connected with his application to the Court and that he was still able to claim his inheritance in Ukraine. The claim in respect of non-pecuniary damage was excessive and not corroborated with any evidence of the applicant's distress.

38. The Court observes that the judicial award against the applicant has remained enforceable under domestic law and that the applicant's freedom of movement has been restricted on the grounds that it has not been paid in full. In these circumstances, it awards the applicant the full amount payable under the domestic judgment, which it found to have been in breach of the Convention requirements, plus any tax that may be chargeable.

39. The Court finds no indication that the Russian authorities put pressure on either the applicant's former landlord or the magazine publishers to end their relationship with him. The applicant was not prevented from having a Russian notary public certify his signature on the application for inheritance or from hiring a Ukrainian lawyer to represent him before the competent authorities. In these circumstances, the remainder of the applicant's claim in respect of pecuniary damage must be rejected.

40. In the Court's view, the applicant suffered non-pecuniary damage as a result of the domestic courts' judgments which were incompatible with the Convention requirements. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

41. 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.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the interference with the applicant's right to freedom of expression admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the applicant's other complaints;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) 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 26 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paulo Pinto de Albuquerque
President