



In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

Decriminalisation of defamation

Grigor Avetisyan, Lawyer, EHRAC-Memorial

On 4 October 2007, the Parliamentary Assembly of the Council of Europe (PACE) called for states to apply defamation laws "with the utmost restraint" and to abolish prison sentences for defamation and set reasonable limits to damages awards.¹

Freedom of expression is regarded as a fundamental right in a democratic society. However it is often said that individuals whose reputations have been harmed as a result of false and damaging statements, should have the right to redress through civil courts. Criminal libel, by contrast, seems a legacy of autocratic or colonial states, which often serves the purpose of providing officials with the power to suppress and discourage the expression of critical views.²

While a 2005 resolution of the

Russian Supreme Court³ was regarded as an attempt to bring Russian practice into line with ECHR standards,⁴ according to the NGO, ARTICLE 19, defamation in Russia has emerged in recent years as one of the most serious constraints on freedom of expression.

In accordance with Art. 10(2), of the ECHR, state interference can be justified if it is lawful and in the public interest. On several occasions the ECtHR has effectively overturned criminal libel convictions stating that politicians, who open themselves to scrutiny by journalists and the public, must accept harsher criticism,⁵ and accepting that the limits of permissible criticism would be even wider for the government than for politicians.⁶

However, the ECtHR does not invariably rule that all criminal libel

convictions violate Art. 10. Other decisions have indicated that judges do not have to tolerate the same degree of criticism as the government or political figures.⁷ This may be explained by the nature of the ECHR, and in turn the ECtHR, which struggles to balance legitimate national interests with establishing uniform and universal human rights standards for all signatories. It should be noted that the ECtHR on many occasions has reiterated the duty of the press to provide accurate and reliable information.⁸

Nevertheless, the rulings of the ECtHR have cemented the principle that journalists have wider scope to report on public officials and matters of public concern and the recent PACE resolution has given this even stronger political impetus.

1 PACE Resolution 1577(2007) [Online]. Available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1577.htm>.

2 According to ARTICLE 19, Albanian defamation laws act as a serious deterrent to independent journalism. See: ARTICLE 19, 2004. *Memorandum on Albanian Defamation Law* [Online]. Available at: <http://www.article19.org/pdfs/analysis/albania-defamation-law-sept-2004.pdf>.

3 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' of 24 February 2005.

4 ARTICLE 19, 2007. *The cost of reputation: Defamation Law and practice in Russia*. [Online]. Available at: <http://www.article19.org/pdfs/publications/russia-defamation-rpt.pdf>.

5 *Lingens v Austria* (No. 9815/82) 8/7/86.

6 *Castells v Spain* (No. 11798/85) 23/4/92.

7 See e.g. *Barford v Denmark* (No. 11508/85) 22/1/89.

8 *Lambardo v Malta* (No. 7333/06) 24/4/07, para. 53 and PACE Resolution 1003(1993).