



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

FIRST SECTION

CASE OF IGOR KABANOV v. RUSSIA

(Application no. 8921/05)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

20/06/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Igor Kabanov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 8921/05) 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 Igor Gennadyevich Kabanov (“the applicant”), on 12 February 2005.

2. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, Mr A. Savenkov, First Deputy Minister of Justice of the Russian Federation, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his disbarment had amounted to an infringement of his right to freedom of expression and that the domestic court which had considered his case on appeal had not been impartial.

4. On 22 April 2008 the President of the First Section decided to give notice of the application to the Government. Under the provisions of former Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lives in Arkhangelsk.

7. The applicant, an advocate at the time, acted as defence counsel for a Mr R.

8. On 5 August 2003 the Primorskiy District Court of Arkhangelsk, chaired by judge V., removed the applicant from his position as Mr R.'s counsel. The District Court found that the applicant had acted contrary to the Code of Criminal Procedure and the Advocate's Code of Ethics. The court noted, in particular:

“Persistent and repeated voluntary statements made by [the applicant] that he provided legal advice to witnesses N. and S. and at the same time acted as counsel for defendant R. ... show that [the applicant], in violation of the formal requirements of the Russian Code of Criminal Procedure, provided legal advice and acted as counsel in respect of persons whose interests were in conflict. Therefore, it is not possible for [the applicant] to continue to participate in the trial as legal counsel for defendant R. or to provide legal advice to N. and S.”

9. On 26 September 2003 the District Court found Mr R. guilty as charged.

10. On 16 December 2003 the Arkhangelsk Regional Court quashed Mr R.'s conviction and remitted the matter for fresh consideration. The court also upheld on appeal the decision of 5 August 2003.

11. On 22 December 2003 the applicant asked the Presidium of the Regional Court for supervisory review of the judicial decisions to remove him from being Mr R.'s representative.

12. On 2 February 2004 judge A. of the Regional Court dismissed the above complaint. In particular, the judge noted as follows:

“I hereby return your complaint against ... the decisions ... of 5 August 2003 and 16 December 2003 without having considered it on the merits. [The reason for this is that] the Primorskiy District Court of the Arkhangelsk Region opened R.'s trial on 22 January 2004 and it is impossible to verify the lawfulness and inconsistency of the decisions in question.”

13. On 9 February 2004 the applicant filed a complaint against the judges who had participated in the proceedings for the determination of the criminal charge against Mr R., alleging that they had acted in violation of the rules of criminal procedure by refusing to consider his application for supervisory review in respect of the decision of 5 August 2003. The complaint was addressed to the President of the Supreme Court of the Russian Federation with a copy to the President of the Arkhangelsk Regional Court. The applicant asked for the President's intervention which

would prompt, in his opinion, the Arkhangelsk Regional Court to respond to his application for supervisory review.

14. In particular, the applicant made the following comments in the complaint:

“... Judges A. and V. used to “plough the fields of justice together” at the Arkhangelsk Regional Prosecutor's Office, and, apparently, they “continue their joint efforts now” at the Arkhangelsk Regional Court ...

... In my opinion, either judge A. is not quite familiar with the law, which is sad, or judge A. wilfully and knowingly restricts my access to court, which is twice as sad ...

... On 2 February 2004 I received an absolutely unlawful “brush-off” reply from judge A ...

... [Judge A.] could have unglued his posterior from [his] seat and brought it to the premises of the Primorskiy District Court ...

... Otherwise, why would judge A. receive such a salary which I, as a tax payer, contribute to? ...

... But judge A. simply pushed away my [request for] supervisory review and, by doing so, he seriously violated the rules of criminal procedure and my constitutional rights ...

... I believe that one telephone call from the Supreme Court of the Russian Federation will be enough to make the Arkhangelsk Regional Court consider my complaint on the merits ...”

15. The President of the Supreme Court forwarded the applicant's complaint to the Arkhangelsk Regional Court for further action. The President of the Arkhangelsk Regional Court lodged a complaint with the Council of the Arkhangelsk Region Bar Association (the “Council”) alleging that the above comments were offensive and incompatible with the Advocate's Code of Professional Conduct. He stated as follows:

“In our opinion, [the applicant's complaint] contains remarks which are offensive and tactless vis-à-vis certain judges of the Arkhangelsk Regional Court.

We believe that the content and the style of the complaint are impermissible.

In our view, the reference made by [the applicant] in his complaint addressed to the President of the Supreme Court of Russia that ... a decision could be made in response to his application for supervisory review through a telephone call ... shows that he is lacking the qualities appropriate to his profession.

[A]dvocates should, under any circumstances, be tactful and correct vis-à-vis their counterparts and public officers, including judges. [They] should demonstrate respect towards the court and challenge [judicial] acts correctly and in accordance with the law.

Having regard to the above ... I hereby request that you follow up on the applicant's conduct and inform the Arkhangelsk Regional Court of the measures taken.”

16. On 21 April 2004 the Council held a disciplinary hearing. The applicant did not challenge the offensive character of the comments. He submitted that he had been, in a way, provoked by the judges' allegedly unlawful decisions. The Council granted the complaint and terminated the applicant's bar membership as of 22 April 2004. In particular, the Council noted as follows:

“[The applicant's complaint] addressed to the President of the Supreme Court of Russia contains tactless remarks in respect of certain judges of the Arkhangelsk Regional Court, which amounts to a violation of the Advocate's Code of Professional Conduct ...

The content and the style of the [applicant's] complaint addressed to the President of the Supreme Court of Russia are impermissible.

The reference made by [the applicant] in his complaint addressed to the President of the Supreme Court of Russia that ... a decision could be made in response to his application for supervisory review through a telephone call ... shows that he is lacking the qualities appropriate to his profession.

[A]dvocates should, under any circumstances, be tactful and correct vis-à-vis ... judges. [They] should demonstrate respect towards the court and challenge [judicial] acts correctly and in accordance with the law.”

17. The applicant appealed to the court. He claimed that he was disliked by the members of the Council and their decision had been retaliation against him for his personal views and convictions. He also alleged that the disciplinary hearing had been carried out with certain procedural irregularities.

18. On 22 June 2004 the Oktyabrskiy District Court of Arkhangelsk dismissed the claim brought by the applicant against the Bar Association seeking reinstatement of his membership. The applicant appealed.

19. On 9 August 2004 the applicant asked the Arkhangelsk Regional Court to transfer the case to another jurisdiction for consideration. The applicant alleged that any judge of the Regional Court would be biased against him because the original complaint which had prompted the disciplinary proceedings against him had been lodged by the President of the said court. On the same day judge M. of the Regional Court refused to consider the applicant's request and returned the relevant documents to him. In particular, the judge informed the applicant as follows:

“I hereby return your application stating the challenge to the whole composition of ... the Arkhangelsk Regional Court and advise you that, pursuant to the rules of civil procedure, it is only possible to challenge the specific judges who are appointed to consider your case and not the whole composition of [the court].”

20. On 16 August 2004 the Arkhangelsk Regional Court upheld the judgment of 22 June 2004 on appeal. The court dismissed as unsubstantiated the applicant's allegations of the Council's partiality. Nor did it discern any procedural irregularities in the applicant's disbarment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Advocate's disciplinary liability

21. The Advocate's Code of Professional Conduct (Article 18 § 1) establishes that an advocate may be subject to disciplinary proceedings for a failure to abide by legislation concerning advocates' activities and advocacy and for failure to abide by the Code itself. Any impropriety discrediting an advocate's professional integrity or the legal profession, a breach of the care of duty vis-à-vis his or her client, or a failure to abide by the decisions of the qualifications committee and council of the advocates' chamber gives rise to disciplinary liability (Article 19 § 1).

22. The disciplinary sanctions available are: reprimand; warning; disbarment; or other sanctions as determined by the conference of the advocates' chamber (Article 18 § 2).

B. Status of the president of a court

23. The Judges' Status Act stipulates in section 6.2 that, in addition to the performance of judicial functions, the president of a court:

“(1) organises the work of the court;

(2) determines the court's internal regulations on the basis of the model regulations adopted by the Council of the Judges of the Russian Federation and supervises compliance therewith;

(3) distributes the workload between the deputy presidents and ... judges;

(4) organises the judges' training;

(5) carries out the general management of the court's office as follows: hires and dismisses the court's employees; distributes the workload between them; decides on [their] performance awards and disciplinary liability; organises training for the court's employees;

(6) informs on a regular basis the judges and the court's employees of his [or her] activities and [the] activities of the court; and

(7) performs other functions pertaining to the organisation of the court's work.”

C. Challenge to a judge of a Regional Court and change of jurisdiction in a civil case

24. The Russian Code of Civil Procedure (Article 21) provides that, should a challenge against a judge or panel of the judges be granted, the matter should be transferred to another judge or judicial panel within the same Regional Court. If the challenge to a judge or a judicial panel is granted and it is no longer possible to form a new judicial panel to consider the case, it should be transferred to the Supreme Court of Russia which will reassign it to another court.

25. The court should transfer the case to another court if, following a challenge to one or several judges or due to other reasons, it cannot consider the case. The transfer of the case is carried out by the relevant superior court (Article 33 § 2 (4) of the Russian Code of Civil Procedure).

26. Pursuant to decision no. 72-G03-6 of the Supreme Court of Russia of 1 April 2003, the Supreme Court of Russia granted a request lodged by the Chita Regional Court to transfer a case concerning a defamation action lodged by a judge of the Chita Regional Court. The case was transferred to the Irkutsk Regional Court. In particular, the Supreme Court of Russia noted as follows:

“... [I]n these circumstances, the matter cannot be considered in accordance with the rules of jurisdiction due to objective reasons. Given that the action was lodged by K.I.V., a judge of the Chita Regional Court, [that court] upheld ... the challenge to the whole panel of the Chita Regional Court and, pursuant to Article 21 § 4 of the Russian Code of Civil Procedure, forwarded the case to the Supreme Court of Russia for determination of its jurisdiction.

The Constitutional Court of Russia has noted in its ruling ... of 16 March 1998 that “under certain circumstances (for example, if a civil action is lodged against a judge or by a judge of the same court, and if the court which has jurisdiction over the matter does not function for one reason or another), the change of the jurisdiction of the matter is not only possible, but is sometimes necessary.

Pursuant to [Article 33 § 2 (4) of the Russian Code of Civil Procedure], the court transfers the case to another court if, following the challenge to one or several judges or due to other reasons, the replacement of the judge or consideration of the case by the court becomes impossible. The transfer of the case is effected by a superior court.”

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO THE ABUSE OF THE RIGHT OF APPLICATION

27. The Government claimed that the applicant had used abusive language in his submissions to the Court. They had contained serious allegations against the authorities of the Russian Federation. In particular, the applicant had characterised the Government's memorandum as “a fairy tale told by civil servants about the independent judiciary in the Russian Federation”. He further referred to “Putin's KGB regime” and “the Kremlin thieves”. The Government asserted that this was an abuse of the right of application within the meaning of Article 35 § 3 of the Convention.

28. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). Furthermore, the persistent use of insulting or provocative language by an applicant may be considered an abuse of the right of application within the meaning of Article 35 § 3 of the Convention (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002; *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II (extracts); *Stamoulakatos v. the United Kingdom*, no. 27567/95, Commission decision of 9 April 1997).

29. Turning to the present case, the Court notes that the statements made by the applicant, quoted by the Government, reflect his emotional attitude towards the behaviour of the authorities in his case. Those statements are value judgments, and, as such, they cannot be regarded as “untrue”. As to their form, they are not, in the eyes of the Court, such as to lead it to the conclusion that the statements quoted above amounted to an abuse of the right of petition. Accordingly the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that the disbarment proceedings which ended with the judgment of the Arkhangelsk Regional Court on 16 August 2004 had been unfair. In particular, he claimed that any judge in the Arkhangelsk Region would have been biased against him on the basis that the disciplinary proceedings against him had been initiated by the President of the said court. He referred to Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

31. The Government contested the applicant's allegations. In their view, the proceedings in question had been fair. The decision of the Council of the Regional Bar Association had been subjected to review by impartial domestic courts at two levels of jurisdiction. The proceedings had been adversarial and in compliance with the principle of equality of arms and other procedural safeguards within the notion of a fair hearing. The fact that the initial complaint against the applicant had been brought by the President of the Regional Court was of no relevance. The President had been responsible for the organisation of the work of the court only and had been in no position to influence the decisions delivered by the judges of the court. They further pointed out that the applicant had failed to provide any evidence in support of his allegations that the President of the Regional Court had exerted any pressure on the judges involved in the proceedings in question. Nor had the President exercised any function in the said proceedings. It had been open to the applicant to challenge the composition of the court which had considered his case. However, he had not done so before the District Court. As regards the hearing in the Regional Court, it had not been open to the applicant to challenge the partiality of the whole court. He should have challenged only the judges appointed to consider his case.

32. The applicant maintained his complaint.

A. Admissibility

33. In so far as the Government may be understood to suggest that the applicant failed to exhaust domestic remedies in respect of the complaint, the Court notes that the applicant challenged the composition of the Regional Court in accordance with the rules of domestic civil procedure and established practice. He lodged a request in writing with the Regional Court asking for the transfer of the appeal hearing to a different court, arguing that the judges of the Regional Court might be biased against him (see paragraphs 24 – 26 above).

34. In this connection, the Court finds without merit the Government's assertion that the domestic rules of civil procedure did not provide for the possibility to challenge the composition of the court in full and that the applicant's should have challenged each and every judge of the tribunal.

35. The Court therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

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

B. Merits

37. The Court reiterates that there are two aspects to the requirement of impartiality in Article 6 § 1 of the Convention. First, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary. Secondly, the tribunal must also be impartial from an objective viewpoint, meaning it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see, among numerous authorities, *Daktaras v. Lithuania*, no. 42095/98, § 30, ECHR 2000-X).

38. As to the subjective test, the Court notes that no evidence has been produced in the present case which might suggest personal bias on the part of the individual judges of the Regional Court.

39. Under the objective test, it must be determined whether there are ascertainable facts which may nevertheless raise doubts as to those judges' impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings (*ibid.*, § 32).

40. Turning to the facts of the present case, the Court notes that the disciplinary proceedings against the applicant were initiated by the Council of the Regional Bar Association in response to the complaint lodged by the President of the Regional Court who alleged, *inter alia*, that “[the applicant] lacked [the] qualities appropriate to an advocate” (see paragraph 15 above). In such circumstances, the Court, accordingly, is unable to conclude that the President's position was neutral vis-à-vis the applicant. By asking the Council to initiate disciplinary proceedings against the applicant and implying that the applicant's conduct was incompatible with the status of advocate, the President became his opponent (see, by contrast, *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 90, 22 December 2009, where the President of the court whose impartiality was challenged by the applicant played no role in the civil proceedings against the applicant).

41. Admittedly, the President did not sit as a member of the tribunals at either level of jurisdiction which considered the applicant's appeal against the Council's decision to disbar him. Nevertheless, the Court cannot accept the Government's argument that the fact that the President chose the members of the tribunal and assigned the case to them was of no importance.

42. On the contrary, given that the President *de facto* initiated the disciplinary proceedings against the applicant and, in addition to his organisational and managerial functions, also determined the composition of the court and assigned the case to it, the Court cannot conclude that, from an objective standpoint, there were sufficient guarantees to exclude any legitimate doubt as to the impartiality on the part of the tribunal.

43. Lastly, the Court notes that the Regional Court did not address the applicant's request for the transfer of the case due to the possibility of the judges' bias. Instead of putting the applicant's mind at rest as to any doubts he had about the perceived lack of impartiality on the part of the judges of the Regional Court, the court dismissed the request without consideration.

44. In the light of these circumstances, the Court finds that the applicant's doubts as to the impartiality of the Regional Court may be said to have been objectively justified. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

45. The applicant complained that he had been disbarred for having expressed his opinion. He relied on Article 10 of the Convention, which in so far as relevant, 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 and regardless of frontiers ...

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. Admissibility

46. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

47. The Government submitted that the interference with the applicant's right to freedom of expression had been prescribed by law. They referred to the Advocacy Act and the Advocate's Code of Professional Conduct. It had pursued the legitimate aim of protecting the reputation of the judiciary and had been necessary in a democratic society. The penalty imposed on the

applicant had not been severe. It had been proportionate to the disciplinary offence committed by the applicant.

48. In particular the Government noted that “the applicant did not only criticize the procedural decisions rendered by the judge, he made critical and impermissible statements about the judge's professional qualities which were tantamount to personal[ly] insult[ing] the judiciary”. The Government further submitted that the unethical and groundless insulting remarks which the applicant had made in a letter to the President of the Supreme Court of the Russian Federation could have damaged the reputation of the judges of the Arkhangelsk Regional Court. He had also asked the President to resort to so-called “telephone justice”.

49. As for the manner in which the disciplinary penalty had been imposed, the Government argued that the applicant had had a fair hearing on the matter. His conduct had been reviewed by his counterparts, a regional bar association. The principles of equality of arms and the adversarial nature of proceedings had been fully complied with. The association's findings had been subject to judicial review. The disciplinary sanction had been commensurate with the applicant's behaviour. Lastly, the applicant had not been permanently disbarred. It remained open to him to pass the bar exam anew. In any event, he could act as a legal representative of a party to proceedings even without being a member of the bar.

50. The applicant maintained his complaint. He further submitted that his letter addressed to the President of the Supreme Court of the Russian Federation had been of a private character. Its content had not been disclosed in the course of judicial proceedings or through any other public domain. The disciplinary penalty imposed on him had been too severe.

2. The Court's assessment

51. The Court notes that it is common ground between the parties that the applicant's disbarment constituted an interference with his right to freedom of expression as protected by Article 10 § 1. It is not contested that the interference was prescribed by law, notably the Advocacy Act and the Advocate's Code of Professional Conduct. The Court also accepts the Government's argument that the interference pursued the legitimate aim of maintaining the authority of the judiciary within the meaning of Article 10 § 2 of the Convention. Accordingly, it remains to be ascertained whether the interference was “necessary in a democratic society”.

52. The fundamental principles relating to this question are well established in the Court's case-law and have been summarised as follows (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 171-75, ECHR 2005-XIII):

“170. The test of “necessity in a democratic society” requires the Court to determine whether the interference complained of corresponded to a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing

whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III; *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 88, ECHR 2004-XI; and *Nikula v. Finland*, no. 31611/96, § 46, ECHR 2002-II).

171. In particular, the Court must determine whether the measure taken was “proportionate to the legitimate aims pursued” (see *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, p. 38, § 62, Series A no. 30, and *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, judgment of 25 November 1997, *Reports* 1997-VII, pp. 2547-48, § 51). In addition, the fairness of the proceedings, the procedural guarantees afforded (see, *mutatis mutandis*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II) and the nature and severity of the penalties imposed (see *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV; *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I; *Skalka*, no. 43425/98, §§ 41-42, 27 May 2003; and *Lešník v. Slovakia*, no. 35640/97, §§ 63-64, ECHR 2003-IV) are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10.

172. The phrase “authority of the judiciary” includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge (see *Worm v. Austria*, judgment of 29 August 1997, *Reports* 1997-V, p. 1549, § 40). What is at stake as regards protection of the authority of the judiciary is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal proceedings are concerned, and also in the public at large (see, *mutatis mutandis*, among many other authorities, *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255-A, p. 12, § 30).

173. The special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar. Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein (see *Amihalachioaie v. Moldova*, no. 60115/00, § 27, ECHR 2004-III; *Nikula*, cited above, § 45; and *Schöpfer*, cited above, pp. 1052-53, §§ 29-30, with further references).

174. Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed. While lawyers too are certainly entitled to comment in public on the administration of justice, their criticism must not overstep certain bounds. Moreover, a lawyer's freedom of expression in the courtroom is not unlimited and certain interests, such as the authority of the judiciary, are important enough to justify restrictions on this right ... [T]he Court refers to its case-law to the effect that it is only in exceptional circumstances that restriction – even by way of a lenient criminal penalty – of defence counsel's freedom of expression can be accepted as necessary in a democratic society (see *Nikula*, cited above, §§ 54-55)."

53. Turning to the circumstances of the present case, the Court observes that the applicant was subjected to disciplinary liability for having made offensive comments in respect of two judges of the Regional Court. The Council of the Regional Bar Association and subsequently the courts found the applicant's behaviour to be incompatible with the Advocate's Code of Professional Conduct.

54. In such circumstances, the Court must ascertain whether a fair balance was struck between, on the one hand, the need to protect the authority of the judiciary and, on the other hand, the protection of the applicant's freedom of expression in his capacity as a lawyer (see, *Kyprianou*, cited above, § 177).

55. The Court notes that the domestic authorities decided to disbar the applicant. This cannot but be regarded as a harsh sanction. The applicant's conduct reflects a lack of respect for the judges of the Regional Court. Nonetheless, whilst they were discourteous, his comments were aimed at and limited to the manner in which the judges were trying the case, in particular as regards his removal from the position of legal counsel representing Mr R. in the course of the criminal proceedings and the judges' refusal to act on his request for supervisory review.

56. Having regard to the above, the Court is not persuaded by the Government's argument that the applicant's disbarment was commensurate with the seriousness of the offence, considering the alternatives available.

57. Accordingly, it is the Court's assessment that such a penalty was disproportionately severe for the applicant and was capable of having a chilling effect on the performance by lawyers of their duties as defence counsel. The Court's earlier finding of the procedural unfairness in the disbarment proceedings (see para. 40 – 44) serves to compound this lack of proportionality.

58. This being so, the Court considers that the domestic authorities failed to strike the right balance between the need to protect the authority of the judiciary and the need to protect the applicant's right to freedom of expression.

59. The Court accordingly holds that Article 10 of the Convention has been breached by reason of the disproportionate sanction imposed on the applicant.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. Lastly, the applicant complained under Article 6 of the Convention that he had been denied a right to call several witnesses on his behalf; and under Article 9 of the Convention that he had been penalised for his thoughts. He also referred to Articles 13 and 14 of the Convention.

61. However, having regard to all the material in its possession, the Court finds that there is no appearance of a violation of the rights and

freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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.”

A. Damage

63. The applicant claimed 1,000,000 Russian roubles (RUB) in respect of non-pecuniary damage.

64. The Government contended that, given that the applicant's rights under the Convention had not been infringed, his claims for damages should be rejected in full. Alternatively, they proposed that a finding of a violation would constitute sufficient just satisfaction for any such violation. In any event, they considered the applicant's claims to be excessive, unsubstantiated and unreasonable.

65. The Court accepts that the violation of the applicant's rights under Articles 6 § 1 and 10 of the Convention caused him distress and frustration – resulting from the lack of impartiality of the tribunal and the infringement of his right to freedom of expression – which cannot be compensated solely by the findings of violations. Making its assessment on an equitable basis, the Court awards the applicant EUR 11,700 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

66. The applicant also claimed RUB 65.00 for costs and expenses incurred before the domestic courts, RUB 198.05 for dispatch of the letters addressed to the President of Russia and other state bodies, RUB 733.60 for costs and expenses incurred in the proceedings before the Court, and RUB 700.00 for translation services.

67. The Government contended that none of the costs and expenses the applicant claimed should be reimbursed.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 40.00 covering costs under all heads.

C. Default interest

69. The Court considers it appropriate that default interest 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 complaints concerning the alleged partiality of the appeal court and the alleged breach of the applicant's freedom of expression admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 11,700 (eleven thousand and seven hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 40 (forty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to the applicant on the above amounts;
 - (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 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President