



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

FIFTH SECTION

CASE OF SIRYK v. UKRAINE

(Application no. 6428/07)

JUDGMENT

STRASBOURG

31 March 2011

FINAL

30/06/2011

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

In the case of Siryk v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 6428/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Nadiya Yuriyivna Siryk (“the applicant”), on 23 January 2007.

2. The applicant was represented by Ms G. Stepanenko, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 5 October 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Irpin.

5. On 23 March 2005 the applicant sent to the State Tax Administration a letter in which she complained that the management of the Academy of the State Tax Service, which was under the authority of the State Tax Administration and at which her son had studied before being expelled in 2004, were engaging in unlawful and corrupt activities.

6. The relevant parts of the letter read as follows:

"I address you concerning the real situation at the Academy ... [This letter] will concern the flagrantly unfair attitude towards students of the Law Faculty, headed by [S.], to students' parents, with the complete ... support ... of the President of the Academy [M.]...

The reason for [addressing you] is a television report, broadcasted on 22 March 2005, concerning the student protest organised by [M.] against [his] dismissal from the post of President of the Academy. I really hope that my letter can influence the course of events.

My son, Mr Yaroslav Siryk, [who] had successfully and independently entered the Law Faculty of [the Academy], was expelled from it ... I could not even imagine that the methods described below were applied in a State educational institution ...

... My son missed the beginning of studies because of a severe infectious disease ... Subsequently, I was called [to the Law Faculty] and during a private conversation [S.] told me that [students] like my son could not study at her faculty under the normal conditions, and that if I did not want to have problems with [graduation] I had to agree to additional financial conditions, in particular, to pay her 200 [United States dollars] for every exam, and 50 [United States dollars] for every test ... After my unconditional refusal, my road of sorrows began ...

Two or three times a week I was called to the office of the Dean [of the Law Faculty] for numerous [discussions of problems], one of the first of which concerned the checking of [my son's] medical documents ... the [professors] shouted at me, called me a swindler and so on ...

Because he had been on sick leave ... and because of the enduring tense discussions with the Dean and the Deputy Dean ... my son did not have normal conditions in which to study... When I tried to enter the office of the Dean in order to discuss that matter, she ... simply ... pushed me out of the office ...

And I wrote a detailed complaint to the President [of the Academy] ... (a copy is enclosed) ... [T]he President ordered that my son be allowed additional time to take the winter exams... [H]owever, afterwards arbitrariness on a larger scale began: professors were simply receiving from [S.] and [the Deputy Dean B.] ... categorical instructions not to allow my son to take exams... Those instructions were rigorously complied with, as the staff of the Academy was hired on the basis of personal loyalty towards the management or dependency on the management [of the Academy]: numerous relatives ... close friends ... former students [of the Academy] ... about whose knowledge, competence and work experience it is not possible to speak. It is difficult for them to find another job, therefore they are ready to fulfil any assignments, obey any wishes of the management ...

... [S.] and [B.] became so impudent that together they conducted negotiations with me concerning extra-contractual payments [for my son's studies] at the office of [S.]. In a normal civilised country [people] would have already compared the earnings of the State servants and their standard of living. What [amount of] salary enables the Dean of the faculty [S.] to wear different exclusive imported clothes and diamonds every day?!

... This was the rudeness, extortion and derision which I endured during the educational year at the State institution, having paid a substantial amount of money

[for the education]. The most alarming thing in this story is that our case is not the only one ...

At the same time [as this was happening to us] ... more than twenty persons were simply kicked out of the Academy in the same way ... the teachers received from the Dean or the Deputy Dean categorical instructions not to allow a particular student to take an exam ...

The whole process of the intentional expulsion of certain [students] and the admission of others on a contractual basis is ... a system of extorting of money from the parents devised by the management of the faculty and the Academy ...

All the actions of [S.], approved by [M.], demonstrate [their] legal incompetence and ruthless abuse of power, though the old [State] regime generously appraised her 'achievements'; during its last days [the old regime] awarded [S.] the title of Distinguished Lawyer, and the President of the Academy promoted her to First Vice-President [of the Academy]

I hoped the new authorities would sort everything out, but [people like S. and M.] feel perfectly at home under any regime.

In addition to the violations described [above], I ask you to look at the following:

1. On what does [the Academy] spend the budgetary funds and the money from [students'] parents?

- why does the President of ... [the Academy, in whose possession] there is an expensive 'Mercedes', additionally buy an 'Audi A-8' for [the price of] 800,000 [Ukrainian] hryvnias?!

- what is the source of the money and what is the need for the business trips on which [M.] and [S.] constantly go?

- what are the earnings [allowing] the State servant [S.] to wear different expensive ... clothes and diamonds every day?

- how did [S.] manage to gain her doctor's degree so soon [after] having completed her higher education at the Academy ...

- what benefits does [the Academy] receive from the companies of [M's] brother and sister?

- on what grounds did the staff of the Academy obtain double salary payments at the end of 2004 ...

As regards the activities of those persons during the [Presidential] election [of 2004] ... [M.] and [S.] ... did not let students take part in meetings in support of Yushchenko ... Students were forced ... to vote in the Academy under the supervision of the professors ... According to the parents of students [wishing to enter the Academy], during the [2004] summer admission campaign [M.] ... openly stated that he was collecting money for the [Presidential] election [of 2004] ...

The only thing which I wish to try to achieve [is] that my letter helps to restore justice in our small Irpin region ...”

7. In April 2005 Ms S., who was at the time the First Vice-President of the Academy, instituted defamation proceedings against the applicant in the Kyievo-Svyatoshynskyi District Court of the Kyiv Region.

8. Ms S. alleged that by a letter of 23 March 2005 the applicant had disseminated untrue and defamatory statements about her, and asked the court to order the retraction of the statements. Ms S. also claimed compensation for non-pecuniary damage.

9. The applicant, in her turn, contended that the information contained in the impugned letter was based on facts, some of which could be confirmed by witnesses. She also argued that her statements were, for the most part, value judgments, for which she should not be held responsible pursuant to section 47 of the Information Act. The applicant, relying on the decisions of courts in similar, according to her, defamation cases, also submitted that by her letter of 23 March 2005 she had simply informed the higher authorities about irregularities at the Academy and had not disseminated the statements about Ms S. within the meaning of Article 277 of the Civil Code of 2003.

10. By a letter of 29 April 2005 the applicant requested the President of the Supreme Court to transfer the case to a district court in Kyiv, stating that Ms S's husband worked as a judge in the Irpin Town Court of the Kyiv Region and could influence the outcome of the proceedings before the Kyievo-Svyatoshynskyi District Court. By a letter of 3 June 2005 the Deputy President of the Supreme Court informed the applicant that her request had been rejected as unfounded.

11. On 25 June 2005 the Kyievo-Svyatoshynskyi District Court, relying on Articles 277 and 280 of the Civil Code of 2003, ruled in part in favour of Ms S. It found that the applicant had failed to prove her statements that the latter had treated the students and their parents unfairly; that she had demanded from the applicant a payment for every exam and test which the applicant's son had had to sit; that she had been rude or shouted at the applicant; that she had called the applicant a swindler; that she had pushed the applicant out of the office; that she had given instructions to the professors not to allow the applicant's son to take exams; that she had not allowed students to attend the meetings in support of V. A. Yushchenko during the Presidential election; that the actions of Ms S. had demonstrated that she was legally incompetent; and that she had exceeded her powers.

12. The court further held that the above statements had been publicly disseminated, as the letter had been addressed to a legal entity and the applicant could have foreseen that it would be read by more than one person. It also noted that Ms S. had acquainted herself with the text of the letter in the presence of the President of the Academy and representatives of the State Tax Administration.

13. The court declared the above statements to be untrue and defamatory and ordered the applicant to retract them by rescinding the impugned letter. The court also ordered her to pay Ms S. 1,000 Ukrainian hryvnias (UAH)¹ in compensation for non-pecuniary damage.

14. On 14 October 2005 the Kyiv Regional Court of Appeal upheld the judgment of the first-instance court in full.

15. On 25 July 2006 the Supreme Court dismissed the applicant's request for leave to appeal in cassation as unsubstantiated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine of 28 June 1996

16. The relevant extracts from the Constitution read as follows:

Article 32

“... Everyone is guaranteed judicial protection of the right to rectify incorrect information about himself or herself and members of his or her family, and of the right to demand that any type of information be rectified, and also the right to compensation for pecuniary and non-pecuniary damage inflicted by the collection, storage, use and dissemination of such incorrect information.”

Article 34

“Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.

The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crime, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or maintaining the authority and impartiality of justice.”

Article 40

“Everyone has the right to file individual or collective petitions or to personally appeal to bodies of State power, bodies of local self-government, and to officials ... of those bodies, who are obliged to consider the petitions and to give a substantiated reply within the term established by law.”

1. About 165 euros (EUR).

B. Civil Code of 1963 (repealed on 1 January 2004)

17. The relevant extracts from the Civil Code of 1963 read as follows:

Article 7**Protection of honour, dignity and reputation**

“A citizen or an organisation shall be entitled to demand in a court of law that material be retracted if it is not true or is set out untruthfully, degrades their honour and dignity or reputation, or causes damage to their interests, unless the person who disseminated the information proves that it is truthful ...

A citizen or an organisation concerning whom material that does not conform to the truth and damages their interests, honour, dignity or reputation has been disseminated shall be entitled to demand compensation for pecuniary and non-pecuniary damage as well as a retraction of such information ...”

C. Civil Code of 2003 (in force from 1 January 2004)

18. The relevant extracts from the Civil Code of 2003 read as follows:

Article 277**Retraction of untrue information**

“1. A physical person whose non-pecuniary rights have been infringed as a result of dissemination of untrue information about him or her and (or) members of his or her family, shall have the right to reply, and [the right to] the retraction of that information ...

...

3. Negative information disseminated about a person shall be considered untrue if the person who disseminated it does not prove the contrary.

4. Untrue information shall be retracted by the person who disseminated the information ...

5. If the untrue information is contained in a document which has been accepted (issued) by a legal entity, that document shall be recalled.

6. A physical person whose non-pecuniary rights have been infringed in printed or other mass media shall have the right to reply, and also [the right to] the retraction of the untrue information in the same mass media, in the manner envisaged by law ...

Untrue information shall be retracted irrespective of the guilt of the person who disseminated it.

7. Untrue information shall be retracted in the same manner as it was disseminated.”

Article 280**The right of a physical person whose non-pecuniary rights have been violated to obtain compensation for damage**

“1. If there has been pecuniary and/or non-pecuniary damage caused to a physical person as a result of a violation of his personal non-pecuniary rights, the damage shall be compensated.

D. Information Act of 2 October 1992

19. The relevant extracts from the Information Act provide as follows:

Section 47**Liability for the infringement of the legislation on information**

“...

Liability for the infringement of the legislation on information shall be borne by persons responsible for the following infringements:

...

dissemination of information that does not correspond to reality, [or] defames the honour and dignity of a person ...”

Section 47-1**Indemnity from liability**

“No one may be held liable for making value judgments.

Value judgments, excluding insults and libel, are statements which do not contain factual data, in particular, criticism, the evaluation of actions, and also statements which cannot be said to contain factual data because of the way they are worded, in particular, [with] the use of hyperbole, allegory, or satire. Value judgments are not subject to retraction and their truthfulness need not be proved ...”

E. Judgment of the Constitutional Court of 10 April 2003 in a case concerning the dissemination of information

20. Relevant extracts from the judgment read as follows:

“... The Constitutional Court of Ukraine found that:

1. A citizen, [V.A.S.], has lodged with the Constitutional Court of Ukraine a request for an official interpretation of the provision of Article 7 § 1 of the Civil Code [of 1963] containing the phrase “disseminated such information”. ... According to the applicant, the practical need for an official interpretation is justified by the lack of coherence in the application of that provision by the courts of Ukraine ...

[The applicant] maintains that the Ochyabrskyi Court of Poltava found that his petition to the Poltava Regional Tax Administration against a tax inspector for unlawful actions ... disseminated information which did not correspond to reality, and degraded the honour, dignity and reputation of the tax inspection employee. By its judgment, the court obliged [V.A.S.] to retract the information by sending a petition to the relevant department of the [Tax] administration, and to compensate that official for the damage caused.

A judicial panel of the Poltava Regional Court of Appeal and a panel of judges of the Judicial Chamber in Civil Cases of the Supreme Court of Ukraine dismissed the appeal in cassation of [V.A.S.] against the judgment of the district court.

... The Constitutional Court of Ukraine considers that petitions by citizens to a law-enforcement body which contain certain information concerning the failure of officials to comply with the laws, are submitted ... not for the purpose of notifying the community or citizens of such matters, but seeking to have it verified by competent officials. Therefore, such petitions cannot be considered to constitute dissemination of information degrading the honour, dignity or reputation of, or causing damage to, the interests of an official of a law-enforcement body, within the meaning of Article 7 § 1 of the Civil Code ...

At the same time, [if] petitions to a law-enforcement body contain knowingly untrue information, this will lead to disciplinary, civil-law, administrative, or criminal liability ...

In particular, Articles 173-1 and 212-1 of the Code of Administrative Offences of Ukraine provide for administrative liability for dissemination of untrue rumors which can provoke panic among the population or a violation of public order, and for notification to registration bodies of acts of civic status of knowingly untrue information.

The Criminal Code of Ukraine provides for criminal liability for knowingly untrue reports concerning a planned explosion, fire, or other action which may cause deaths or have other grave consequences (Article 259), knowingly untrue reports of crimes to a court, prosecutor, investigator, or body of inquiry (Article 383) etc ...

The dissemination of untrue information concerning the private (family) life of an official of a law-enforcement body in his personal or citizen's capacity may constitute a ground for the applicant's civil-law liability under Article 7 of the Civil Code.

In the light of the foregoing ... the Constitutional Court of Ukraine decides that:

1. Under Article 7 § 1 of the Civil Code ... 'disseminated such information' shall be understood, within the context of the constitutional appeal, as meaning that statements made in letters, petitions or complaints to a law-enforcement body by a person who is of the view that officials of that body have infringed his rights in the exercise of their functions cannot be considered to be dissemination of information degrading the honour, dignity or reputation of, or causing damage to, the interests of those persons.

[The inclusion of] knowingly untrue information in letters, petitions, or complaints to a law-enforcement body shall lead to the liability provided for by the current legislation of Ukraine.

2. The judgment of the Constitutional Court of Ukraine is binding on the territory of Ukraine, is final and may not be appealed against ...”

F. Resolution of the Plenary Supreme Court of Ukraine of 27 February 2009 on judicial practice in cases concerning the protection of the honour and dignity of a physical person, and of the reputation of a physical person and legal entity”

21. The relevant extracts from the Resolution provide as follows:

“... 16. According to Article 40 of the Constitution of Ukraine everyone has the right to file individual or collective petitions or to personally appeal to bodies of State power ...

The courts shall take into account that, if a person files a petition with the bodies mentioned [above] which contains certain information, and if that body is competent to verify such information and to give a reply, [the fact that] ... the information has not been confirmed as true ... may not as such constitute a ground for allowing a [defamation] claim, as in such a case the person has exercised his constitutional right under Article 40 of the Constitution, and [has not] disseminated untrue information.

If a person files a petition with the law-enforcement bodies, the courts should take into account the conclusions of the judgment of the Constitutional Court of Ukraine of 10 April 2003 ... (the case concerning dissemination of information) ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. The applicant complained that her right to hold and impart opinions had been violated and that she had been unlawfully punished by the courts for criticism of a public official. She invoked Articles 9 and 10 of the Convention.

23. The Court notes that the application falls to be examined solely 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 and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

24. The Government submitted that the applicant could not claim to be a victim of a violation of Article 10 of the Convention, as the interference with her right to freedom of expression had been based on the decisions of the domestic courts. As the applicant did not complain under Article 6 § 1 of the Convention that the impugned court proceedings were unfair, and as the Court had limited jurisdiction regarding the assessment of the facts and the application of the law by the domestic courts, the Government invited the Court to declare the application incompatible *ratione personae* with the provisions of the Convention.

25. The Court considers that the Government's objection is closely linked to the substance of the applicant's complaint under Article 10 of the Convention and that it must therefore be joined to the merits.

26. The Court further notes that the application 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.

B. Merits

1. Submissions of the parties

(a) The applicant

27. The applicant argued that the information contained in the letter she had sent to the State Tax Administration in March 2005 concerned the then current issues of corruption and violations of law in the Academy, of which the general public had been aware. She also stated that the domestic courts had wrongly established the circumstances of the case.

(b) The Government

28. The Government submitted that the interference with the applicant's right to freedom of expression had been lawful in that it had been based on clear, accessible and foreseeable provisions of domestic law, namely Articles 277 and 280 of the Civil Code of 2003 and Articles 15-1, 30, and 62 of the Code of Civil Procedure of 2004.

29. The Government further submitted that the interference had been aimed at protecting the honour, dignity and business reputation of a private

person, which was a legitimate aim within the meaning of Article 10 § 2 of the Convention. According to them, Ms S. was a well-known lawyer and a leading scholar in Ukraine and, therefore, any information about her was of great public interest and its dissemination was capable of giving rise to a particular public opinion concerning her personal and professional qualities.

30. The Government argued that the letter contained factual allegations which the applicant had failed to prove, although she had been given an opportunity to do so in the domestic proceedings. The Government also submitted that the applicant did not complain about the amount she had been ordered to pay in compensation and that it was within the competence of the domestic authorities to determine other measures necessary to remedy the situation, including ordering the applicant to retract the statements by rescinding the impugned letter. Therefore, the Government stated that the interference had been necessary in a democratic society and was proportionate.

2. The Court's assessment

(a) Whether there was an interference with the right to freedom of expression

31. The Court considers that the courts' decisions ordering the applicant to retract her statements and to pay compensation constituted an interference with her right to freedom of expression.

32. The Court reiterates that its task in exercising its supervisory function under Article 10 of the Convention is to look at the interference complained of in the light of the case as a whole and, in particular, to determine whether the reasons adduced by the national authorities to justify it are relevant and sufficient (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). This inevitably entails a review of the decisions taken by the courts at the domestic level, irrespective of whether any complaints have been raised concerning the courts' compliance with the procedural guarantees under Article 6 of the Convention. Therefore, the Court dismisses the Government's objection as to the applicant's victim status.

33. The Court will now examine whether the interference was justified under Article 10 § 2 of the Convention.

(b) Whether the interference was prescribed by law

34. The Court notes that the first and most important requirement of Article 10 of the Convention is that any interference by a public authority with the exercise of the freedom of expression should be lawful: the first sentence of the second paragraph essentially lays down that any restriction on expression must be "prescribed by law". In order to comply with this requirement, an interference does not merely have to have a basis in

domestic law; the law itself must correspond to certain 'quality' conditions. In particular, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-XI).

35. The degree of precision depends to a considerable extent on the content of the instrument at issue, the field it is designed to cover, and the number and status of those to whom it is addressed (see *Groppera Radio AG and Others v. Switzerland*, 28 March 1990, § 68, Series A no. 173). The notion of foreseeability applies not only to conduct of which an applicant should be reasonably able to foresee the consequences, but also to the "formalities, conditions, restrictions or penalties" which may be attached to such conduct if it is found to be in breach of the national laws (see, *mutatis mutandis*, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 140, ECHR 2008-...).

36. The Court observes that the interference in the present case had a basis in the domestic law; in particular, it was based on Articles 277 and 280 of the Civil Code. The Court does not doubt in the circumstances that the law was sufficiently accessible. However, the Court notes that the law was couched, in so far as it concerned the notion of information dissemination, in vague terms and its interpretation and application depended on practice.

37. In this context, the Court observes that, according to the judgment of the Constitutional Court of 10 April 2003, an appeal to a law-enforcement body about an infringement of a person's rights by officials of that body in the exercise of their functions did not constitute dissemination of defamatory information (see paragraph 20 above). Although the Constitutional Court had come to that conclusion in the context of an interpretation of the provisions of the Civil Code of 1963 (Article 7) that had been repealed before the impugned events took place, the applicant could reasonably have expected the conclusion to be equally pertinent to the provisions of the 'new' Civil Code of 2003 which were applied in her case (see paragraphs 17 and 18 above). Such a legal position is confirmed by the resolution of the Plenum of the Supreme Court of 27 February 2009 (see paragraph 21 above).

38. As the domestic courts are best placed for interpreting and applying rules of substantive and procedural law (see, among many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B), the question of the application of the relevant provisions of the Civil Code of 2003 in the light of the Constitutional Court's judgment was to be determined by the national courts dealing with the applicant's case. In the instant case, however, the courts did not address that question at all, despite the applicant's specific submissions in this regard.

39. In the light of the foregoing, the Court considers that the applicant could not foresee, to a degree that is reasonable in the circumstances, the consequences of submitting the complaint about Ms S. to the latter's hierarchical superior. While these considerations alone may serve as a basis for finding a violation of Article 10 of the Convention, the Court notes that there are certain elements of the case requiring it to continue the examination of the case and to turn to the question whether the interference pursued one or more legitimate aims and was “necessary in a democratic society” (see *Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30).

(c) Whether the interference pursued a legitimate aim and was “necessary in a democratic society”

40. The Court notes that the interference pursued a legitimate aim, which was the protection of the reputation and rights of others, specifically, Ms S. The statements in the applicant's letter included allegations of abuses of office and unethical behaviour on the part of Ms S. – who was at the time one of the top managers of the State-run educational institution and thus belonged to the category of public officials – and mainly concerned her professional activities.

41. In this connection, the Court has observed in several cases that it may be necessary to protect public servants from offensive, abusive and defamatory attacks which are calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I). The extent to which such protection might be deemed necessary depends on the particular circumstances of the case.

42. In the instant case, the applicant addressed her complaint about Ms S. by way of private correspondence to the latter's superior and did not make it public. Thus, the requirements of protection under Article 10 of the Convention have to be weighed not in relation to the interests of freedom of the press or of open discussion of matters of public concern but rather against the applicant's right to report irregularities in the conduct of an official to a body competent to deal with such complaints (see *Zakharov v. Russia*, no. 14881/03, § 23, 5 October 2006, and *Kazakov v. Russia*, no. 1758/02, § 28, 18 December 2008). In this context, the Court reiterates that it is one of the precepts of the rule of law that citizens should be able to notify competent State officials about conduct of public servants which to them appears irregular or unlawful (see *Zakharov*, cited above, § 26, and *Kazakov*, cited above, § 28).

43. The Court notes that the applicant sent her letter primarily for the purpose of having the (in her view) irregular conduct of certain public servants examined by the competent authorities. In particular, the applicant submitted her complaint to the State body responsible for overseeing the

activities of the Academy and its staff and requested it to investigate the matter. There is nothing to suggest that the applicant did not act within the framework established by law for making such complaints.

44. Moreover, the applicant did not resort in her letter to abusive, strong or intemperate language, although it did contain some emotional expressions verging on exaggeration or provocation, such as, for instance, the allegation that Ms S. “wore different expensive clothes and diamonds every day” (see paragraph 6 above).

45. The Court further notes that the letter did not pose a threat to the Academy officials' enjoyment of public confidence, as its contents were not made known to the general public and no press or other form of publicity was involved. On the whole, it may reasonably be argued that the applicant's complaint did not go beyond the limits of acceptable criticism, especially since these limits may be, in certain circumstances, wider in respect of civil servants than in relation to private individuals (see *Lešník v. Slovakia*, no. 35640/97, § 53, ECHR 2003-IV, and *Raichinov v. Bulgaria*, no. 47579/99, § 48, 20 April 2006).

46. The Court also observes that, although the applicant's letter contained serious factual allegations of corruption, misappropriation of public funds, and other abuses of office by officials of the Academy, it also contained statements which could arguably be qualified as value judgments. Specifically, these included allegations that the Vice-President of the Academy had treated the students and their parents unfairly and that she had been legally incompetent (see, *mutatis mutandis*, *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 46, 27 May 2004). Despite the fact that pursuant to Section 47-1 of the Information Act value judgments were not as such susceptible of proof (see paragraph 19 above), the courts held the applicant liable for having been unable to prove such statements despite the fact that they had made no analysis of whether the statements could have been value judgments.

47. In this connection, the Court reiterates that the requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 of the Convention (see, among many authorities, *Ukrainian Media Group v. Ukraine*, no. 72713/01, § 41, 29 March 2005).

48. In these circumstances, the Court finds that the applicant's punishment, in the context of civil liability, for raising before the State body a complaint concerning alleged violations by a public official was disproportionate to the aim pursued, namely the protection of the reputation and rights of that official. Accordingly, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

50. The applicant did not submit a claim for just satisfaction in accordance with the Court's instructions. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning the applicant's victim status and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention.

Done in English, and notified in writing on 31 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President