



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

THIRD SECTION

CASE OF SKUDAYEVA v. RUSSIA

(Application no. 24014/07)

JUDGMENT

STRASBOURG

5 March 2019

FINAL

05/06/2019

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

In the case of Skudayeva v. Russia,

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

Vincent A. De Gaetano, *President*,

Branko Lubarda,

Helen Keller,

Dmitry Dedov,

Georgios A. Serghides,

Jolien Schukking,

María Elósegui, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 5 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 24014/07) 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, Ms Anna Aleksandrovna Skudayeva (“the applicant”), on 14 April 2007.

2. The applicant was represented by Ms G. Arapova, a lawyer practising in Voronezh. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the 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 a violation of her right to freedom of expression.

4. On 3 April 2013 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. Impugned article**

5. The applicant is a journalist.

6. On 18 July 2006 a local daily newspaper, the *Kostroma Chronometer* (*Хронометр-Кострома*) published in issue no. 29 an article by the

applicant entitled “An Unfunny Film” (*Несмешное кино*). The article read, in so far as relevant, as follows:

“In the midst of the corruption scandals rocking the region, ‘The Red House’ is trying to save face at all costs.

For the sake of the ‘honour of the regiment’.

For several years residents of the Kostroma Region have been forced to watch endless ‘soap operas’ featuring major corruption scandals involving the region’s authorities.

The first episode of the series, ‘*There is no corruption in the regional administration*’ was released in 2002, when a criminal investigation was initiated against D.S., the Deputy Governor of the Region. The investigation was opened on suspicion of his having inflicted moderately grave bodily injuries, as well as – under Article 201 of the Criminal Code a corruption-related provision – suspected embezzlement constituting abuse of public office.

In spite of the serious nature of the criminal charges brought against his deputy, Governor V.Sh. tried to shield his subordinate at all costs, attempting to uphold ‘the honour of the regiment’ (*честь мундира*). But whilst the scandal-ridden deputy languished in his remand prison cell and sat in the court room during the trial, a comfortable chair was quietly awaiting its owner back at ‘The Red House’ (*красный дом*).

In February 2003 the Governor sent to judge M. petition no. 134/gl on a piece of stationery carrying the coat of arms of the Kostroma Region, in which he made a remarkably simple demand: ‘If the court finds that the actions with which D.S. has been charged are of a criminal nature, I ask you to examine the possibility of terminating the criminal proceedings against him.’ It is curious that even after the delivery of the verdict finding D.S. guilty, Governor V.Sh. persisted and for a long time refused to dismiss from office the civil servant who had tainted his reputation. He was able to part with such a ‘promising’ employee only after the prosecutor of the region had made an official request to this end...”

B. Defamation proceedings against the applicant

7. On 28 July 2006 the Administration of the Kostroma Region and V.Sh., Governor of the Kostroma Region, lodged defamation claims with the Leninskiy District Court of Kostroma (“the District Court”) against the publisher of the *Kostroma Chronometer* and the applicant, seeking retraction of certain statements and claiming compensation in respect of non-pecuniary damage. The claimants challenged, in particular, the following statements: “In the midst of the corruption scandals rocking the region, ‘The Red House’ is trying to save face at all costs” and “[i]n spite of the serious nature of the criminal charges brought against his deputy, the Governor tried to shield his subordinate at all costs, attempting to uphold the honour of the regiment”.

8. On 5 October 2006 the District Court partially allowed the defamation claims, finding that one of the impugned statements was untruthful and ordering that a retraction be published and that the applicant and the

newspaper pay 500 Russian roubles (RUB) (approximately 15 euros (EUR) at the exchange rate applicable at the time) and RUB 1,000 (approximately EUR 30), respectively, in compensation for non-pecuniary damage. The judgment read, in so far as relevant, as follows:

“Analysing the article’s contents as a whole and the information therein disputed by the claimants, the court concludes that ... the expression ‘to save face’ referring to the corruption scandals in the region and endeavours of the administration of the Kostroma Region is not defamatory for the reason that the criminal prosecution of the heads of the region’s executive bodies and unitary enterprises was a known fact. All these events attracted public attention and drew wide public response in the region, regardless of articles in the press.

The claim of the article’s author that the Administration of the Kostroma Region was trying to ‘save face’ in the midst of corruption scandals does not imply a statement that this State agency is trying to justify, especially by any unlawful means, any of its actions or those of its employees.

In view of the foregoing, the court finds no grounds to allow the claims brought by the Administration of the Kostroma Region.

The statements published in the newspaper concerning Governor V.Sh.’s attempts to shield, at all costs, the actions of his subordinate D.S., who was facing criminal charges, have not been confirmed [as truthful] in the course of the court hearing.

The court has established that on 9 February 2003 Governor V.Sh. sent to federal judge M. a petition seeking termination of the criminal proceedings against D.S. ... The Governor requested that the court examine the possible termination of criminal proceedings against D.S., taking into account legal norms in force.

‘Shielding’ [*выгораживание*] is defined in the dictionary ... as proving that someone is not involved in something, with a view to escaping responsibility.

‘At all costs’ [*всеми силами*] means [according to the dictionary] by all means and in every manner.

The Governor’s petition does not contain any indications that Governor V.Sh. was trying to prove to the court that [his deputy] D.S. had not been involved in the crimes he had been accused of and that he was trying to help him escape criminal responsibility at all costs. The Governor’s request meant that, taking into account the legal norms in force, that is to say in accordance with the law, the court [be invited to] examine the possibility of terminating the criminal case, taking into account the time that had elapsed since the commission of the offences by D.S. and the information concerning the latter’s personal character.

Consequently, the information contained in the article in the part impugned by the claimant does not reflect the truth.

In the court’s opinion, the statements disseminated concerning the Governor are of a damaging nature because they lead a reader to the opinion that he has broken moral and ethical norms, behaved improperly towards society, [and] ignored the requirements of the criminal procedure laws.

Moreover, according to the dictionary ..., ‘the honour of the regiment’ implies an ironical attitude to apparent decency and a falsely impeccable reputation. This expression describes a person who, for the sake of personal or narrowly interpreted

institutional interests, does not want to wash his dirty linen in public [and] wishes to maintain decency and a good reputation by any means possible.

The defendants failed to provide evidence that would objectively demonstrate that, when sending the petition concerning the termination of the criminal case against D.S., the Governor was pursuing his private interests or those of the Administration of the Kostroma Region.

Accordingly, the [defamation] claims of the Governor of the Kostroma Region regarding the protection of his honour, dignity and business reputation are well-founded in law and should be granted.”

9. The applicant and the editor-in-chief of the newspaper appealed against the judgment to the Kostroma Regional Court (“the Regional Court”) referring, *inter alia*, to the fact that the impugned statements represented value judgments which had a strong factual basis in the form of the Governor’s petition to judge M. The Administration of the Kostroma Region also appealed.

10. On 11 December 2006 the Regional Court rejected the applicant’s appeal and upheld the judgment of 5 October 2006 in full. Its reasoning included the following:

“When deciding on the claims brought by the Governor of the Kostroma Region, the [District] court reasonably concluded that the defendants had not proven in the course of the hearing that the Governor had tried to shield his subordinate by all means and in every manner, that is, at all costs, in order to uphold ‘the honour of the regiment’. The [District] court therefore reached the correct conclusion that the statement in question was untruthful and damaging for the Governor. This finding by the [District] court is well-reasoned, corresponds to the requirements of law and to the case materials, [and] there are no grounds for declaring it erroneous.

Ms Skudayeva’s argument that an author has the right to express her own opinion – value judgments which are not susceptible of proof – cannot serve as grounds for quashing the judgment [of 5 October 2006]. Indeed, Ms Skudayeva, just like any other individual, has a right to express her personal opinion, judgment and appraisal (*суждение*). However, if personal opinions, judgments or appraisements contain statements which tarnish a person’s honour, dignity and reputation, they must be truthful. Under Article 17 § 3 of the Constitution of Russia, the realisation of human rights and freedoms cannot breach the rights and freedoms of others.

Furthermore, the statements in question include the statement of fact that ‘[i]n spite of the serious nature of the criminal charges brought against his deputy, Governor V.Sh. tried to shield his subordinate at all costs, attempting to uphold ‘the honour of the regiment’, and proof of that [statement] is given later’.”

11. According to the applicant, the bailiffs’ service received RUB 500 from her in V.Sh.’s favour on 17 January 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. For a summary of relevant domestic law and practice see *Cheltsova v. Russia* (no. 44294/06, §§ 32-34, 13 June 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

13. The applicant complained that the domestic courts' judgments in the defamation proceedings against her had unduly restricted her right to freedom of expression guaranteed by Article 10 of the Convention, which reads, in so far as relevant, 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. The parties' submissions

1. The Government

(a) Observations of 29 July 2013

14. The Government accepted that there had been an interference with the applicant's right to freedom of expression which, in their view, had been prescribed by law, necessary in a democratic society and proportionate to the legitimate aim of protecting the reputation of V.Sh.

15. The Government insisted that the right to disseminate information was not absolute and may be restricted in accordance with the law with a view to protecting the reputation of third parties, in particular. They pointed out that Russian law – namely Article 23 of the Constitution, Article 152 of the Civil Code, and Resolution no. 3 of the Plenary Supreme Court – was in full compliance with the Convention standards and was based on the assumption that it was not permissible to disseminate statements that tarnish a person's honour, dignity or business reputation.

16. They argued that the impugned statements regarding Governor V.Sh. had no factual basis. The domestic courts had correctly found that the Governor's petition to judge M. had not contained any indication that Governor V.Sh. had tried to convince the judge of D.S.'s innocence or had tried to help the latter to escape criminal responsibility at all costs. The petition had requested that the judge consider, in accordance with the law, whether it would be possible to terminate the criminal proceedings against D.S. in view of the time that had elapsed since the date when D.S. had

committed the offences and taking into account both his character and in particular his professional qualities. The domestic courts had also analysed the expression “the honour of the regiment” and had correctly concluded that the defendants, including the applicant, had not proven the veracity of the impugned statements in the course of the defamation proceedings.

17. The domestic courts had correctly interpreted the impugned statement concerning Governor V.Sh. as an alleged statement of fact that was devoid of any factual basis, not a value judgment. The article had not mentioned the fact that it included value judgments by the journalist. It had been written in an affirmative style, not as an appraisal.

18. The Government further submitted that it was primarily for the national courts to establish factual circumstances of a case. In sum, they invited the Court to declare the application manifestly ill-founded.

(b) Additional observations of 28 November 2013

19. The Government argued that the domestic courts had established the requisite balance between two competing values, having weighed the applicants’ right to freedom of expression against V.Sh.’s right to reputation.

20. The District Court had distributed the burden of proof in accordance with Russian law, meaning that it had been incumbent on the claimant to prove the fact of dissemination of the information and on the defendant to prove the veracity of the disseminated statements. The defendants had failed to prove that the impugned statement concerning V.Sh. had been true. The Kostroma Court had correctly rejected as unsubstantiated the applicant’s argument that an author had a right to express opinions and value judgments not susceptible of proof.

21. The Government insisted that “a value judgment without any factual basis to support it may be excessive” (see *Novaya Gazeta and Borodyanskiy v. Russia*, no. 14087/08, § 40, 28 March 2013). The interference with the applicant’s right to freedom of expression had been “necessary in a democratic society” to protect V.Sh.’s reputation because the impugned statement could potentially be perceived by readers as an allegation of V.Sh.’s involvement in corruption-related activities and his unlawful interference with the administration of justice.

22. The Government further insisted that the domestic courts had duly taken into account V.Sh.’s status as a public person. As a high-ranking civil servant, a governor could be expected to possess exemplary moral qualities. Civil servants must enjoy public confidence and, under Russian bylaws, should comply with rigorous ethical standards. A journalist must carefully verify any information to be published. The Government concluded that, “having considered the content of the impugned statements, the negative subjective appraisal of the personality of the Governor of the Kostroma Region, and the offensive nature of these statements containing personal

remarks about the claimant”, the applicant had overstepped the limits of acceptable criticism. Criticism, in the Government’s view, is one’s personal opinion concerning a third party’s activities, whereas the impugned statements had been statements of fact susceptible of proof.

23. The Government further argued that the applicant had not suffered a significant disadvantage because the compensation order imposed on her had been a very modest one.

2. The applicant

24. The applicant maintained her complaint. She insisted that the domestic courts had failed to perform a balancing exercise between her right to freedom of expression and V.Sh.’s right to reputation as they had failed to take into account the respective positions of Governor V.Sh. and the journalist, as well as the fact that the article had dealt with a matter of public interest, namely, the problem of corruption in the Kostroma Region.

25. The impugned statement had represented a value judgment on the part of the applicant, namely her subjective appraisal of the fact that Governor V.Sh. had requested that a judge terminate criminal proceedings against his deputy. The applicant had provided evidence before the domestic courts that V.Sh. had indeed sent the petition in question, and her value judgment had therefore had sufficient factual basis and had been made in good faith. The impugned expressions “to shield at all costs” and “honour of the regiment” had been employed as rhetorical devices, which had exemplified the journalistic freedom to use exaggeration or even provocation. The applicant, as a journalist, had had a duty to inform the public of the Governor’s attempt to influence a member of judiciary in breach of the principle of separation of powers.

26. The applicant concluded that the domestic courts had interpreted her journalistic value judgment regarding the moral dimension of Governor V.Sh.’s behaviour in his official capacity as a statement of fact, thus imposing an impossible burden on her as a journalist to prove the veracity of words used as rhetoric devices. She also argued that they had failed to provide relevant and sufficient reasons to justify the interference.

B. The Court’s assessment

1. Admissibility

27. Regarding the Government’s objection that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention – which was raised for the first time on 28 November 2013 (see paragraph 23 above) – the Court observes that it concerns a question of admissibility in the narrow sense of that term rather than a matter which goes to the Court’s jurisdiction (see, by contrast, *Blečić*

v. Croatia [GC], no. 59532/00, § 67, ECHR 2006-III, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, ECHR 2017 (extracts)). It reiterates in this connection that, under Rule 55 of the Rules of Court, any plea of inadmissibility must have been raised by the respondent Contracting Party – in so far as the nature of the objection and the circumstances so allowed – in its written or oral observations on the admissibility of the application (see *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). The Government did not provide any explanation as to why they had omitted to raise their *de minimis* objection in their observations of 29 July 2013, and there are not any exceptional circumstances which would exempt them from their obligation to raise any objection to admissibility in a timely manner (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 52, ECHR 2016 (extracts)). It follows that the Government are thereby estopped from raising a *de minimis* objection.

28. 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.

2. Merits

29. The Court notes that it is common ground between the parties that the District Court's judgment of 5 October 2006, as upheld by the Regional Court on 11 December 2006 (see paragraphs 8 and 10 above), constituted an interference with the applicant's right to freedom of expression guaranteed by Article 10 § 1 of the Convention. The Court is further satisfied that the interference in question was "prescribed by law", in particular Article 152 of the Civil Code, and "pursued a legitimate aim", namely "the protection of the reputation or rights of others", within the meaning of Article 10 § 2 of the Convention. It therefore remains to be examined whether the interference was "necessary in a democratic society"; this requires the Court to ascertain whether it was proportionate to the legitimate aim pursued and whether the grounds given by the domestic courts were relevant and sufficient (see *Morice v. France* ([GC], no. 29369/10, § 144, ECHR 2015).

30. The Court emphasises at the outset that the applicant, who is a journalist, was held civilly liable for an article published in a newspaper. The interference must therefore be seen in the context of the essential role of a free press in ensuring the proper functioning of a democratic society (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 62, ECHR 2007-IV).

31. The general principles concerning the necessity of an interference with freedom of expression frequently reiterated by the Court have been summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016), among many other authorities. The general principles

concerning Article 10 and press freedom have recently been summarised in *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, §§ 124-28).

32. The Court considers that the following standards established in its case-law – which an interference with the exercise of press freedom must meet in order to satisfy the necessity requirement of Article 10 § 2 of the Convention – are pertinent in the present case.

33. By virtue of the essential function the press fulfils in a democracy (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 132, ECHR 2015), Article 10 of the Convention affords journalists protection, subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015). A high level of protection of freedom of expression, with the authorities therefore having a particularly narrow margin of appreciation, is normally accorded where the remarks concern a matter of public interest (see *Bédat*, cited above, § 49). Politicians and civil servants acting in an official capacity are subject to wider limits of acceptable criticism than private individuals (see *Thoma v. Luxembourg*, no. 38432/97, § 47, ECHR 2001-III, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 80, ECHR 2004-XI). A careful distinction needs to be drawn between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI, and *Morice*, cited above, § 126). When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of “protecting the reputation ... of others”, domestic authorities must strike a fair balance when protecting two conflicting values that are guaranteed by the Convention, namely, on the one hand, the right to freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see, among many other authorities, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], nos. 17224/11, § 77, 27 June 2017). In order for Article 8 of the Convention to come into play, however, an attack on a person’s reputation must attain a certain level of seriousness and its manner must cause prejudice to the personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

34. The Court further reiterates that, when analysing an interference with the right to freedom of expression, it must, *inter alia*, determine whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts)).

35. The Court has already found a violation of Article 10 of the Convention in a number of cases against Russia because the domestic courts did not apply standards that were in conformity with the standards of its case-law concerning press freedom (see *OOO Iypress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *Kunitsyna v. Russia*, no. 9406/05, §§ 46-48, 13 December 2016; *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; and *Cheltsova*, cited above, § 100). It now has to satisfy itself whether the relevant standards summarised in paragraph 33 above were applied in the defamation proceedings against the applicant.

36. The domestic courts limited themselves to finding that the impugned statement had tarnished V.Sh.'s honour, dignity and business reputation, and that the applicant had not proved its truthfulness (see paragraphs 8 and 10 above). They did not take account of: the applicant's position as a journalist and the presence or absence of good faith on her part; the position of the claimant as a politician and civil servant; the aim pursued by the applicant in publishing the article; the existence of a matter of public interest or general concern in the impugned article; or the relevance of information regarding the Governor's alleged attempts to influence the judiciary in the context of the fight against corruption (see, *mutatis mutandis*, *Kunitsyna*, cited above, § 46). By omitting any analysis of such elements, the domestic courts failed to pay heed to the essential function that the press fulfils in a democratic society.

37. Neither did the domestic courts draw a clear distinction between statements of fact and value judgments. The District Court failed to consider altogether whether the statement impugned by V.Sh. amounted to a value judgment, with complete disregard for the requirements of section 9 of Resolution no. 3 of the Plenary Supreme Court of the Russian Federation of 24 February 2005, under which value judgments are not actionable under Article 152 of the Civil Code since they are an expression of the defendant's subjective opinion and views and cannot be checked for their veracity (see *Cheltsova*, cited above, § 32). At the applicant's insistence, the Regional Court addressed the issue, but only briefly. Without providing any in-depth analysis of the nature of the impugned statement, it merely concluded that the latter had been a statement of fact susceptible of proof.

38. As to the need to perform a balancing exercise between the Governor's right to reputation and the journalist's right to freedom of expression, the Court notes that the domestic courts merely declared that the impugned statement had tarnished V.Sh.'s honour, dignity and business reputation without providing any reasons to support such a finding. The District and Regional Courts did not deem it necessary to examine whether the impugned statement, which concerned V.Sh.'s behaviour in the public sphere as a governor, not his personal qualities or private life, could be

regarded as an actual attack capable of causing any prejudice to the claimant's honour or business reputation, let alone his dignity. Their reasoning appears to be based on the tacit assumption that interests relating to the protection of "the honour and dignity of others", in particular of those vested with public powers, prevail over freedom of expression in all circumstances. By failing to weigh the two competing interests against each other, the domestic courts failed to perform the requisite balancing exercise.

39. The above elements lead the Court to conclude that the reasons that the domestic courts adduced to justify the interference with the applicant's Article 10 rights were not "relevant and sufficient". The Court is mindful of the fundamentally subsidiary role of the Convention system (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). Faced, however, with the domestic courts' failure to provide relevant and sufficient reasons to justify the interference in question, the Court finds that they cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10 of the Convention" or to have "based themselves on an acceptable assessment of the relevant facts" (see, with further references, *Terentyev*, cited above, § 24). The Court concludes that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

40. Accordingly, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant argued that the interference had had a chilling effect on her journalistic freedom of expression and claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government submitted that no award should be made in the absence of a violation of the applicant's Article 10 rights. In any event, the amount claimed was excessive.

44. The Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant claimed EUR 1,675 in legal fees incurred before the Court (33.5 hours at the hourly rate of EUR 50). She submitted the retainer agreement indicating the hourly rate at EUR 40 and the final invoice indicating the hourly rate at EUR 50. She further claimed EUR 12¹ that she had paid to the claimant in execution of the District Court's judgment without providing a copy of proof of payment.

46. The Government submitted that no compensation should be awarded for the costs resulting from the payment of "fair compensation for non-pecuniary damage by the applicant to V.Sh." As regards the claim of EUR 1,675, the Government argued that it was excessive as the applicant's case had not been particularly complex. Furthermore, they observed that the retainer agreement between the applicant and her representative had fixed an hourly rate of EUR 40 while the itemised schedule had been based on an hourly rate of EUR 50. The Government concluded that these claims had not been supported by appropriate documents.

47. 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, the applicant did not enclose any document as evidence of payment of the judicial award. Accordingly, the Court rejects this part of the claim. As to the remainder of the claims, the Court notes the discrepancy between the hourly rate stipulated in the retainer agreement and the one appearing in the final invoice. This discrepancy, in its view, may be attributed to a clerical error or may be the result of a change in the agreement. In any event, regard being had to the documents in its possession and the above criteria, while satisfied that the applicant incurred certain legal costs in connection with her application, the Court considers it reasonable not to award the amount claimed in full. It thus awards the sum of EUR 850 for the proceedings before the Court.

C. Default interest

48. 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.

1. The euro equivalent of the amount awarded to V.Sh. calculated at the exchange rate applicable on the date of submitting the applicant's just satisfaction claims.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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.

Done in English, and notified in writing on 5 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President