



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

THIRD SECTION

CASE OF MARGULEV v. RUSSIA

(Application no. 15449/09)

JUDGMENT

STRASBOURG

8 October 2019

FINAL

08/01/2020

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

In the case of Margulev v. Russia,

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

Vincent A. De Gaetano, *President*,

Georgios A. Serghides,

Helen Keller,

Dmitry Dedov,

María Elósegui,

Gilberto Felici,

Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 15449/09) 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 Stateless person, Mr Andrey Igorevich Margulev (“the applicant”), on 3 March 2009.

2. The applicant was represented by Ms K. Kostromina, a lawyer practising in Moscow. 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. On 18 June 2013 notice of the complaint concerning the applicant’s right to freedom of expression was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Moscow.

A. The article

5. At the material time the applicant was the head of a community-based non-governmental organisation, Tsaritsyno for Everyone (*Царицыно для всех*), which was created to help preserve Tsaritsyno, an architectural complex of the late eighteenth century comprising an English landscape garden in the south of Moscow that has the status of a museum.

6. On 23 October 2007 the *Moskovskiy Korrespondent* newspaper (hereinafter “the newspaper”) published an article “Tsaritsyno is not going to survive the winter” (hereinafter “the article”) written by Ms G. The article reported in a critical tone on the restoration works at the Tsaritsyno museum complex that were being funded by Moscow City Council (*Правительство Москвы*). In particular, it suggested that the works had adversely affected the old English landscape garden on the Tsaritsyno grounds. The article contained attributed quotes by the applicant, whom Ms G. had interviewed, and included the following statements:

“... People have been deprived of their historical and cultural heritage. ... The restoration of Tsaritsyno is the desecration of a historical monument ...”

B. Defamation proceedings

7. On 21 December 2007 Moscow City Council lodged a statement of claims for defamation against the newspaper’s editorial board and Ms G. with the Khamovnicheskiy District Court of Moscow (“the Khamovnicheskiy Court”). Alleging that the statements “[p]eople have been deprived of their historical and cultural heritage” and “[t]he restoration of Tsaritsyno is the desecration of a historical monument” had tarnished their business reputation, they sought their retraction.

8. On 18 March 2008 the Khamovnicheskiy Court transferred the case in accordance with the territorial jurisdiction rules to the Basmannyy District Court of Moscow (“the District Court”).

9. The applicant applied to the District Court to be admitted to the proceedings as a third party that had not lodged independent claims regarding the object of the dispute. The District Court allowed the application.

10. In April 2008 the production of the newspaper was suspended.

11. On 22 July 2008 the District Court heard the defamation case. Moscow City Council withdrew the claims against Ms G. The newspaper’s editorial board contested the claims, arguing that the impugned statements had in fact been value judgments not susceptible of proof. The applicant appeared before the District Court as a third party to the proceedings. He objected to the defamation claims for the reason that he had exercised his right to freedom of expression guaranteed by Article 29 of the Constitution

of the Russian Federation when criticising the renovation works of the Tsaritsyno museum complex.

12. On the same day the District Court found for the claimant for the reason that the defendant had failed to prove the truthfulness of the impugned statements. It ordered that the newspaper's editorial board publish, at their expense, a retraction in another newspaper that was distributed in the same area and had the same circulation and periodicity within ten days of the judgment's entry into force. The judgment read, in so far as relevant, as follows:

"... [T]he court finds that the article contains statements concerning the alleged breach by the claimant of the regulations in force in respect of preservation and usage of real-estate objects of historic and cultural heritage that tarnish the business reputation of Moscow City Council ...

The defendant has not presented any evidence to confirm the truthfulness of the disseminated statements regarding Moscow City Council. ...

The court dismisses the defendants' arguments that the impugned statements represent an opinion, a value judgment of their author and thus could not be subject to a retraction under Article 152 of the Civil Code as unsubstantiated. ...

... expression of an opinion on any subject by third parties, including that under the guise of criticism of a public authority, does not give grounds for absolving from liability a person who has disseminated statements where [such statements] have unlawfully brought harm to the values protected by the Constitution and the Civil Code of the Russian Federation, that is to say honour, dignity and business reputation of a natural or legal person.

The court considers that criticism is understood as a negative opinion, an assessment of something. However, having analysed the impugned statements, the court has grounds to conclude that they represent statements of fact, specifically statements regarding the actions by Moscow City Council aimed at harming the Tsaritsyno museum complex ... That the author of the article mentioned [Mr Margulev] as the source of [the impugned] information cannot in itself serve as a sufficient basis to conclude that the article provides an assessment or contains a value judgment.

The defendant's argument that the impugned statements and the article as a whole do not point at Moscow City Council and thus could not tarnish their business reputation cannot serve as grounds for dismissing the claims. ... Dissemination by the defendant of the statements regarding the harm to the ... museum complex tarnished the business reputation of Moscow City Council. ..."

13. The applicant and the newspaper's editorial board appealed to the Moscow City Court stating, in particular, that the impugned statements represented value judgments expressing the applicant's opinion on the matter and thus were not susceptible to proof.

14. On 11 September 2008 the Moscow City Court upheld the District Court's judgment on appeal, stating that the defendant had not presented proof of the truthfulness of the impugned statements and briefly noting that the arguments raised in the statement of appeal had been analysed and correctly dismissed by the District Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Article 29 of the Constitution of the Russian Federation of 12 December 1993 guarantees freedom of thought and expression, freedom to receive and impart information, and freedom of the mass media.

16. Article 152 of the Civil Code of the Russian Federation of 30 November 1994 provides that an individual may apply to a court with an application for the retraction of statements (*сведения*) that are damaging to his or her honour, dignity or business reputation unless the person who has disseminated the statements has proved them to be true. The aggrieved person may also claim compensation for loss and non-pecuniary damage sustained as a result of the dissemination of the statements.

17. Article 43 of the Code of Civil Procedure of the Russian Federation of 14 November 2002 provides that a third party to the proceedings that has not lodged independent claims regarding the object of a dispute may enter the civil proceedings on the side of either a claimant or defendant before the first-instance court delivers its judgment, where the judgment in a case may affect the third party's rights and obligations *vis-à-vis* the claimant or defendant. The scope of procedural rights and obligations of the third party that has not lodged independent claims regarding the object of a dispute is identical to that accorded to the claimant and defendant except for the right to change the grounds and the subject-matter of the claims, to increase or decrease of the amount claimed, to withdraw or accept the claims, to conclude a friendly settlement, to bring a counterclaim, and to demand enforcement of a judgment.

18. Resolution no. 3 of the Plenary Supreme Court of the Russian Federation of 24 February 2005 defines "untruthful statements" as allegations regarding facts or events which have not actually taken place by the time the statements are disseminated. Statements contained in court decisions, decisions by investigating bodies, and other official documents amenable to appeal cannot be considered untruthful. Statements alleging that a person has broken the law, committed a dishonest act, behaved unethically or broken the rules of business etiquette tarnish that person's honour, dignity and business reputation (section 7). Resolution no. 3 requires courts hearing defamation claims to distinguish between statements of fact, which can be checked for truthfulness, and value judgments, opinions and convictions, which are not actionable under Article 152 of the Civil Code since they are an expression of a defendant's subjective opinion and views and cannot be checked for truthfulness (section 9).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicant complained that the domestic courts' judgments in the defamation case brought by Moscow City Council had amounted to a disproportionate interference with his 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*

20. The Government contested the applicant's complaint. They submitted that there had been no interference with the applicant's right to freedom of expression.

21. The applicant had not been a “victim” of the alleged violation because he had not been a defendant in the defamation proceedings but merely a third party. His complaint was incompatible with the Convention *ratione personae*. The domestic courts had imposed an obligation to publish a retraction on the newspaper's editorial board only, not on the applicant. No award in respect of pecuniary or non-pecuniary damage had been made. The applicant had not suffered a significant disadvantage or experienced any repercussions as a result of the defamation proceedings and thus could not be regarded as either a direct, or an indirect, or a potential victim of the alleged violation of Article 10 of the Convention. In fact, the applicant had not suffered any legal consequences for having disseminated untruthful information. The Government invited the Court to declare the applicant's complaint inadmissible under Articles 34 and 35 §§ 3 (b) and 4 of the Convention.

22. Furthermore, the Government submitted that the District Court had distinguished between statements of fact and value judgments. Repeating the reasoning of the District Court, they argued that the impugned statements had amounted to statements of fact to the effect that Moscow

City Council had harmed the Tsaritsyno museum complex, and the attribution of the statements to the applicant had not sufficed to render them value judgments. The argument that Moscow City Council had not been named in the impugned statements had been correctly dismissed by the District Court. The impugned statements had not been based on verified facts or sources of information even though they had questioned the competence of Moscow City Council.

23. The defendant in the defamation case had not exercised the right to freedom of expression “in good faith” in accordance with the principles of responsible journalism; thus the impugned statements had fallen outside the ambit of the protection of Article 10 of the Convention.

24. The domestic courts’ judgments had been based on the provisions of domestic law and had pursued the legitimate aim of protecting the reputation and rights of Moscow City Council. Adopting the judgments had been “necessary in a democratic society”. Moscow City Council was a public authority, and the impugned statements had contained a “negative value judgment of [that organisation]”. The Government concluded that the impugned article had overstepped the acceptable limits of criticism.

2. The applicant

25. The applicant maintained his complaint.

26. Moscow City Council had applied to the domestic courts to declare the applicant’s value judgments “untrue information”. When applying to the District Court to be admitted to the defamation proceedings as a third party, the applicant had specifically stated his intention had been to protect his right to freedom of expression guaranteed by Article 29 of the Constitution of the Russian Federation. By admitting him to the proceedings, the District Court had implicitly acknowledged that the applicant’s right to disseminate his opinions had been at stake.

27. The defamation proceedings had had a chilling effect on the applicant, as expressing his critical opinions on the restoration works of the Tsaritsyno museum complex could have entailed further defamation proceedings. The applicant, as the head of the Tsaritsyno for Everyone association, had sought to disseminate criticism of the restoration works with a view to stirring up the public debate on preservation of cultural heritage. To this end, he had given interviews to various media outlets. However, after the entry into force of the District Court’s judgment, the applicant, fearing that he might experience adverse consequences as a result of disseminating value judgments wrongly regarded by the domestic courts as statements of fact, had been “forced to drastically reduce his activities” as the head of the association.

B. The Court's assessment

1. Admissibility

28. The Court notes that the Government have raised objections as to the admissibility of the applicant's complaint under Article 10 of the Convention.

29. Firstly, the Government asserted that the applicant could not be regarded as either a direct or an indirect or a potential victim of the alleged violation for the reason that he had not been a defendant in the defamation proceedings and thus had not sustained any adverse consequences. They invited the Court to reject the complaint as incompatible *ratione personae* with the provisions of the Convention.

30. Secondly, the Government claimed that the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

31. The Court considers that these objections are closely linked to the merits of the applicant's complaint under Article 10 of the Convention. It thus decides to join the objections to the merits of the complaint.

32. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Having established that no other obstacles to its admissibility exist, the Court declares it admissible.

2. Merits

(a) Whether there has been an interference

33. The Government insisted that, in the circumstances of the present case, there had been no interference with the applicant's right to freedom of expression, and that the applicant was not a "victim" of the alleged violation within the meaning of Article 34 of the Convention. The applicant disagreed.

34. The Court thus has to ascertain whether the domestic courts' judgments in the defamation proceedings brought by Moscow City Council amounted to interference with the exercise of freedom of expression, in the form, for example, of a "formality, condition, restriction or penalty" (see *Rubins v. Latvia*, no. 79040/12, § 67, 13 January 2015), and whether the applicant may claim to be a "victim" within the meaning of Article 34 of the Convention.

35. The Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is in issue. A person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party (see, with further references, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 92, ECHR 2012).

36. The Court observes that the District Court admitted the applicant to the defamation proceedings as a third party and heard his arguments pertaining to the alleged violation of his right to freedom of expression enshrined in the Constitution of the Russian Federation (see paragraph 11 above). The applicant was also allowed to lodge a statement of appeal against the District Court's judgment (see paragraph 13 above). Under domestic law, the status of a third party to the proceedings that has not lodged independent claims regarding the object of a dispute is granted, where "the judgment may affect the third party's rights and obligations *vis-à-vis* the claimant or defendant" (see paragraph 17 above). By admitting the applicant to the defamation proceedings as a third party, the domestic courts tacitly accepted that his rights may have been affected by their outcome. The Court will accept this interpretation. It is thus satisfied that the applicant's rights and obligations were at issue in the proceedings, and thus that his freedom of expression was affected by them.

37. The Court further observes that the applicant sought to express, through the medium of a newspaper interview, his opinion on the restoration works of the Tsaritsyno museum complex. It considers that this matter was clearly of importance to the general public, who have a vested interest in preserving cultural heritage. By giving an interview to Ms G., the applicant sought to "impart information and ideas" to a wider audience thus exercising his right to freedom of expression. He has claimed before the Court that the domestic courts' judgments ordering a retraction of his statements disseminated in the newspaper restricted the opportunities for sharing and spreading his published opinion regarding the restoration works (see paragraph 27 above). In the circumstances of the case, in particular the applicant's position in the domestic proceedings, the Court is satisfied that the applicant has made out a *prima facie* case of interference with his freedom of expression (contrast *Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*, no. 31566/13, § 31, 17 January 2017, and *Kasparov and Others v. Russia*, no. 21613/07, § 72, 3 October 2013). It thus accepts that the applicant could be said to have been "directly affected" by the proceedings to which he was a party, and, consequently, may claim to be a "victim" within the meaning of Article 34 of the Convention.

38. The Court concludes that the domestic courts' judgments in the defamation proceedings brought by Moscow City Council amounted to an interference with the exercise of the applicant's right to freedom of expression guaranteed by Article 10 of the Convention. It dismisses the Government's preliminary objection concerning incompatibility *ratione personae*.

39. Turning to the Government's objection that the applicant had not suffered a significant disadvantage, the Court notes that it has considered the rule contained in Article 35 § 3 (b) of the Convention to consist of three criteria. Firstly, has the applicant suffered a "significant disadvantage"?

Secondly, does respect for human rights compel the Court to examine the case? Thirdly, has the case been duly considered by a domestic tribunal (see *Smith v. the United Kingdom* (dec.), no. 54357/15, § 44, 28 March 2017)?

40. The first question of whether the applicant has suffered any “significant disadvantage” represents the main element. Inspired by the general principle *de minimis non curat praetor*, this first criterion of the rule rests on the premise that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking into account both the applicant’s subjective perceptions and what is objectively at stake in a particular case. In other words, the absence of any “significant disadvantage” can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. However, the applicant’s subjective perception cannot alone suffice to conclude that he or she has suffered a significant disadvantage. The subjective perception must be justified on objective grounds (see, with further references, *C.P. v. the United Kingdom* (dec.) no. 300/11, § 42, 6 September 2016). A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010-V).

41. The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 39, ECHR 2003-VI, and *Roșianu v. Romania*, no. 27329/06, § 56, 24 June 2014). In cases concerning freedom of expression the application of the admissibility criterion contained in Article 35 § 3 (b) of the Convention should take due account of the importance of this freedom and be subject to careful scrutiny by the Court. This scrutiny should encompass, among other things, such elements as contribution to a debate of general interest and whether a case involves the press or other news media (see, with further references, *Sylka v. Poland* (dec.), no. 19219/07, § 28, 3 June 2014).

42. Applying these principles to the case at hand, the Court notes that the applicant’s subjective perception of the alleged violation was that he had experienced a chilling effect of the defamation proceedings and had felt reluctant to further contribute to the debate on a matter of general interest (see paragraph 27 above). 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; see also paragraph 47 below), the alleged violation of Article 10 of the Convention in the present case concerns, in the Court’s view, “important questions of

principle”. The Court is thus satisfied that the applicant suffered a significant disadvantage as a result of the defamation proceedings regardless of pecuniary interests and does not deem it necessary to consider whether respect for human rights compels it to examine the case or whether it has been duly considered by a domestic tribunal (see, *mutatis mutandis*, *M.N. and Others v. San Marino*, no. 28005/12, § 39, 7 July 2015).

43. Accordingly, the Court does not find it appropriate to reject this complaint with reference to Article 35 § 3 (b) of the Convention, and dismisses the Government’s objection regarding the alleged lack of a significant disadvantage.

44. The Court reiterates that, in order to be compatible with Article 10 § 2 of the Convention, an interference with the right to freedom of expression must be “prescribed by law”, pursue one or more of the legitimate aims listed in the second paragraph of that provision and be “necessary in a democratic society” (see, among many other authorities, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 121, 17 May 2016). Having established that there has been an interference with the applicant’s right to freedom of expression (see paragraph 38 above), it will now examine whether the above criteria have been met in the circumstances of the present case.

(b) Whether the interference was “prescribed by law” and pursued a legitimate aim

45. The Court accepts that the interference in question was “prescribed by law”, notably Article 152 of the Civil Code, within the meaning of Article 10 § 2 of the Convention. As for the legitimate aim sought, the Government have referred to “the protection of the reputation and rights of Moscow City Council” (see paragraph 24 above). The Court points out in this connection that the issue of whether a legal entity could enjoy the right to reputation (including the scope of such right) is debatable (for details see *Frisk and Jensen v. Denmark*, no. 19657/12, §§ 42-50, 5 December 2017). Be that as it may, in the instant case, it is prepared to assume that this aim can be relied on. At the same time the Court considers it appropriate to emphasise that there is a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society. Whereas the latter may have repercussions on one’s dignity, the former are devoid of that moral dimension (see, *mutatis mutandis*, *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011). This difference is even more salient when it is a public authority that invokes its right to reputation. In view of that, a mere institutional interest of the Moscow City Council in protecting its “reputation” does not necessarily attract the same level of guarantees as that accorded to “the protection of the reputation ... of others” within the meaning of Article 10 § 2 of the Convention (see, *mutatis mutandis*, *Kharlamov v. Russia*, no. 27447/07, § 29, 8 October 2015).

(c) Whether the interference was “necessary in a democratic society”

46. The main issue is whether the interference was “necessary in a democratic society” (see *Lombardo and Others v. Malta*, no. 7333/06, § 50, 24 April 2007).

47. The Court observes at the outset that the applicant made the impugned statements acting in his capacity as the head of a non-governmental organisation. When an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press and may be characterised as a social “watchdog” warranting similar protection under the Convention as that afforded to the press (see, with further references, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, 8 November 2016). The Court has already noted in paragraph 42 above that the matter on which the applicant commented was clearly of interest to the general public. Accordingly, and taking into account that the applicant’s statements appeared in the newspaper’s article, 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.

48. 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). The same considerations would apply to an NGO assuming a social watchdog function (see *Magyar Helsinki Bizottság*, cited above, § 159). 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 *Bédar v. Switzerland* [GC], no. 56925/08, § 49, 29 March 2016). 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 v. France* [GC], no. 29369/10, § 126, ECHR 2015). 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], no. 17224/11, § 77, 27 June 2017). When analysing an interference with the right to freedom of expression, the Court 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)).

49. The Court notes the Government's submission that the defendant in the defamation proceedings did not act "in good faith" (see paragraph 23 above) and observes that the statements decrying the restoration works at the Tsaritsyno museum complex were presented as an opinion of a third person interviewed by Ms G. and were clearly attributed to the applicant. It thus sees no reasons to conclude that the newspaper's editorial board or Ms G. did not act in good faith in accordance with the ethics of journalism (see *Novaya Gazeta and Milashina v. Russia*, no. 45083/06, § 72, 3 October 2017).

50. The Court now points out that it has already found a violation of Article 10 of the Convention in a number of cases against Russia owing to the domestic courts' failure to apply standards in conformity with the standards of its case-law concerning freedom of the press (see, among other authorities, *OOO Ipress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *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; *Cheltsova v. Russia*, no. 44294/06, § 100, 13 June 2017; and *Skudayeva v. Russia*, no. 24014/07, § 39, 5 March 2019). It now has to satisfy itself as to whether the relevant Convention standards were applied in the defamation proceedings in the present case.

51. The Court notes that the domestic courts limited themselves to finding that the impugned statements had tarnished Moscow City Council's business reputation, and that the defendant had not proved its truthfulness (see paragraphs 12 and 14 above). They did not take account of: the defendant's position as a newspaper's editorial board and the applicant's position as a representative of an NGO; the presence or absence of good faith on their part; the position of the claimant as a public authority; the aims pursued by the defendant in publishing the article and by the applicant in making the impugned statements; whether the impugned article had addressed a matter of public interest or general concern; or the relevance of information regarding the quality of the restoration works at the Tsaritsyno museum complex in the context of preservation of cultural heritage (see,

mutatis mutandis, *Kunitsyna*, no. 9406/05, § 46, 13 December 2016, and *Skudayeva*, cited above, § 36). 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.

52. Nor did the domestic courts draw a clear distinction between statements of fact and value judgments. The District Court found that the impugned statements were statements of fact without elaborating on the reasons for doing so; the City Court upheld this finding in a summary fashion. The domestic courts disregarded the requirements of section 9 of Resolution no. 3 of the Plenary Supreme Court, under which value judgments are not actionable under Article 152 of the Civil Code (see paragraph 18 above). The Court would in any event observe that the distinction between statements of fact and value judgments is of less significance in a case such as the present, where the impugned statement is made in the course of the debate on a matter of public interest and where representatives of civil society and journalists should enjoy a wide freedom to criticise the actions of a public authority, even where the statements made may lack a clear basis in fact (see, *mutatis mutandis*, *Lombardo and Others*, cited above, § 60).

53. As to the need to perform a balancing exercise between the right to reputation and freedom of expression, the Court points out that the claimant in the defamation proceedings, Moscow City Council, is the executive body of the city of Moscow, a constituent entity of the Russian Federation. The Court reiterates that limits of permissible criticism are wider with regard to a public authority than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of a body vested with executive powers must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion (see, *mutatis mutandis*, *Şener v. Turkey*, no. 26680/95, § 40, 18 July 2000, and *Lombardo and Others*, cited above, § 54). As the executive authority of a federal constituent entity, Moscow City Council should be expected to display a high degree of tolerance to criticism. Nevertheless, not only did the domestic courts fail to consider the position of the claimant as a public authority in the context of the defamation proceedings against the newspaper's editorial board, they expressly rejected the defendant's argument that Moscow City Council had not even been named in the impugned statements (see paragraph 12 above). The Court points out in this connection that for an interference with the right to freedom of expression to be proportionate to the legitimate aim of the protection of the reputation of others, the existence of an objective link between the impugned statement and the party suing in defamation is a requisite element (see, *mutatis mutandis*, *Dyundin v. Russia*, no. 37406/03, § 44, 14 October 2008, and *Kunitsyna*, cited above, § 42). The District Court's reasoning, endorsed by the City Court, appears to be based on the tacit assumption that interests

relating to the protection of reputation prevail over freedom of expression in all circumstances (see *Novaya Gazeta and Milashina*, cited above, § 69). By failing to weigh the two competing interests against each other, the domestic courts failed to perform the requisite balancing exercise (see *Skudayeva*, cited above, § 38).

54. 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). Indeed, if the balancing exercise had been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs (see *Perinçek*, cited above, § 198). However, in the absence of such a balancing exercise at national level, it is not incumbent on the Court to perform a full proportionality analysis. Faced 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".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government submitted that no award should be made in the absence of a violation of Article 10 of the Convention. They also considered the amount claimed to be excessive.

59. The Court awards the applicant the amount claimed in respect of non-pecuniary damage.

B. Costs and expenses

60. The applicant also claimed EUR 1,500 in legal fees and EUR 200 in postal fees for the costs and expenses incurred before the Court.

61. The Government submitted that the applicant's claims for compensation of legal fees had not been supported by relevant documents, and that the claims for postal fees had been confirmed by invoices in the amount of 5,321 Russian roubles (approximately EUR 107).

62. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 957 for the proceedings before the Court.

C. Default interest

63. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's objections as to the compatibility *ratione personae* of the complaint under Article 10 of the Convention and as to the alleged lack of a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention and *rejects* them;
2. *Declares* the application admissible;
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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 957 (nine hundred and fifty-seven 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President