



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

FIFTH SECTION

CASE OF ANATOLIY YEREMENKO v. UKRAINE

(Application no. 22287/08)

JUDGMENT

*This version was rectified on 10 November 2022
under Rule 81 of the Rules of Court*

Art 10 • Freedom of expression • Failure of domestic courts to conduct balancing exercise between conflicting interests in defamation proceedings brought by judges and holding journalist civilly liable for published newspaper article written on alleged judicial corruption • Absence of relevant and sufficient reasons • Failure to apply standards in conformity with principles embodied in Art 10 or to base decisions on an acceptable assessment of the relevant facts • Interim injunction, limited to ordering the removal of an article from the newspaper's website pending the examination of the defamation case, did not hamper the applicant's ability to disseminate information and ideas or undermine the very essence of the public debate

STRASBOURG

15 September 2022

FINAL

15/12/2022

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

In the case of Anatoliy Yeremenko v. Ukraine,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lado Chanturia,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 22287/08) 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, Mr Anatoliy Vasylyovych Yeremenko (“the applicant”), on 26 April 2008;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaint concerning the alleged breach of Article 10 of the Convention;

the parties’ observations;

Having deliberated in private on 31 August 2021 and on 21 June 2022,

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

INTRODUCTION

1. The case concerns defamation proceedings against the applicant following the publication of an article he had written on alleged judicial corruption and an injunction ordering to take down the publication in question from the newspaper’s website pending the examination of the defamation case. The applicant complains under Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1949 and lives in Kyiv. He was represented by Ms L.L. Pankratova, a lawyer practising in the same city.

3. The Government were represented by their Agent, most recently, Mr I. Lishchyna.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

BACKGROUND TO THE CASE

A. The article of 12 March 2005

5. The applicant is a journalist. At the material time he was working for the national weekly analytical newspaper *Dzerkalo Tyzhnya*, which had a circulation of approximately 57,000 copies.

6. On 12 March 2005 in a series of publications written by the applicant, an article entitled “Black triad: nothing else matters in the case” (“Чорна трійка: все інше справи не стосується”) was published in the above newspaper. On 18 March 2005 it was published on the newspaper’s website.

7. In the article the author referred to a previous publication of his and noted that in a certain case (no. 27/37), which had been pending for some time before the courts and had at least twice been remitted to the lower courts, a judgment had been taken on the basis of a forged copy of a document, the original of which was part of the materials in the case file in a certain set of criminal proceedings. The Donetsk Commercial Court of Appeal had, nevertheless, delivered its judgment on the basis of the forged copy. The applicant went on, describing what he called a “system for obtaining a required result”. In order to get the result, a particular law firm had been contacted. The law firm had been paid a substantial fee by the plaintiff but had then “surprisingly” taken no further part in the proceedings, in which the plaintiff (a State enterprise) had been represented by its own lawyers. As for the courts, they had “carefully referred the case” up to the Higher Commercial Court which, in turn, had taken an excessively long time over the proceedings before finally remitting the case to a lower court “for the absence of a copy of the decision complained of”. In the meantime, the plaintiff had been liquidated, which, according to the applicant, had allowed numerous wrongdoings to be hidden.

8. The full text of the article reads as follows:

“In May last year, DT [*Dzerkalo Tyzhnya*] (no. 21, 29 May 2004) published an article entitled ‘How the court validated the copy of the document while the original document was missing’ [*“Як суд ‘легалізував’ ‘копію’ при відсутності оригіналу”*]. It discussed an unprecedented legal incident in the history of Ukrainian justice that occurred when, based on a highly doubtful copy (in terms of the quality of the print and even more in terms of the content) of a certain document [a guarantee letter], the court delivered a judgment that has been challenged by the respondent for four years now. Incidentally, it was challenged at the same time as the presidential decree on the formation of appellate courts in Ukraine was issued for one simple reason: according to the respondent, they have never issued a document with such a [registration] number to the plaintiff and have not provided any guarantees. Nevertheless, since there are many different methods to make any conflict of interest palatable for Themis, the case has become a kind of symbol of dignity and a fetish of the shortcomings of the very structural judicial system adopted from the developed democracies which was based on

a system tainted with ‘sovietness’ [совковостью] and ‘telephone law’ formation of the principles of independence of the third branch of power in our State. [paragraph 1]

DT has repeatedly described the vicissitudes of the litigation and mutual claims of the parties in the dispute. In the three years before the publication of the [above-mentioned] article, case no. 27/37 underwent two rounds of court proceedings – from the court of first instance to the judgment of the Supreme Court of Ukraine. There was also a third round – under newly discovered circumstances. In the scope of criminal proceedings instigated against the limited liability company N., which stole from a State transport shipping enterprise, Intertrans, [something, it was not specified what] worth more than 8.2 million hryvnias (UAH) and then vanished without a trace, the prosecutor’s office discovered the original of the controversial guarantee letter. It turned out that the guarantee letter, referred to by the plaintiff (Intertrans), had been provided by the defendant to a completely different enterprise, which had initially been stated by the party at all the court hearings. However, for some reason, that was never taken into account. The Donetsk Commercial Court of Appeal could have set the record straight, but instead, having established the existence of the guarantee letter in the criminal case file, it delivered a decision based on a ‘copy’ [of that letter]. Accordingly, this author naturally asked the question: ‘I wonder what the commercial justice system will come up with this time in order to protect the State enterprise/structure that caused substantial pecuniary damage to the State?’ [paragraph 2]

Reality has surpassed the most daring expectations. Further immersion in the twilight of this dark and shady subject of how commercial disputes in the Donetsk region are resolved gives you the impression that a system exists that is quite primitive in terms of the scheme and reliable in terms of efficiency for obtaining the desired result in almost any case. At the same time, one gets the impression that the essence of the problem does not matter at all to its facilitators. What is important is that the customer (usually the plaintiff) comes to the right place at the right time. [paragraph 3]

As a rule, this is a law firm to which large amounts are legally transferred for ‘legal services’. Subsequently, it is difficult to follow what active role the law firm takes in the court proceedings. Instead, the representatives appear, or, as in the case of Intertrans, which for some unknown reason paid a fee of UAH 400,000 to the mysterious I., are content with the participation of their own lawyers in the court proceedings. Throughout the entire process, the case is considered by a host of servants of commercial justice in the Donetsk region, who pass it on with care and concern up to the Higher Commercial Court of Ukraine. [paragraph 4]

So, when the original ‘copy’, and then an additional document proving the forgery of the ‘copy’ were discovered, it became clear that it was no longer necessary to discuss the adversarial nature of the arguments, but the falsification and intent, which is not the subject matter of commercial disputes, but of criminal investigations. And again, just the facts. The Higher Commercial Court of Ukraine (HCCU) made its mark once again. Contrary to Part 3 of Article 114 of the Commercial Procedural Code of Ukraine, which provides for a one-month period for examining a request for review of a court decision due to newly discovered circumstances, the HCCU delayed examining the case for nine months. [paragraph 5]

First, the HCCU received all the necessary materials from the Donetsk Court of Appeal and appointed the day of the hearing. But when the parties arrived at 6 Kopylenka St. in Kyiv, they discovered that nothing was going to happen. Apparently, the document was missing. Accordingly, the HCCU immediately established ‘as it can be seen from the content of the cassation appeal, the defendant challenged the ruling of the Donetsk Commercial Court of Appeal of 30 June 2004. However, the case file does

not contain the contested ruling or any mentions thereof, therefore case no. 27/37 must be remitted to the Donetsk Regional Commercial Court for proper registration in accordance with the requirements of the law in force.’ So, a new date was set and the Donetsk Regional Commercial Court was assigned with a task, although it’s clear that it was meant for the Donetsk Commercial Court of Appeal. But these are different State institutions, aren’t they? Or maybe it has been a single structure for a long time, a fact the judiciary of the largest commercial court of first instance in Ukraine still does not even suspect, but which is clear to Kyiv, and that’s why they wrote it? [paragraph 6]

In short, so far no one has bothered to answer where the ruling was and where it suddenly came from in the materials of case no. 27/37. They quietly sweep it under the carpet, although most likely it wasn’t an accident and they were achieving a specific task: to delay consideration of the case until 1 February 2005. Indeed, on that very day, in accordance with order no. 797 of 1 September 2004 of the Ministry of Transport ‘in order to increase the efficiency of the use of State property’, the liquidation of Intertrans was completed and it was removed from the United State Register of Enterprises and Organisations of Ukraine. Everything turned out as planned. The court hearing took place after the specified date, and the case file has not yet been returned from Kyiv to Donetsk. Note, this is only a part of the State problem, inherited from the previous leadership of the Ministry of Transport. Informed sources claim that the liquidation of Intertrans made it possible to bury amounts much larger than the unjustly recovered funds from I.-Bank based on the ‘copy’. However, this is yet another topic worthy of journalistic attention.” [paragraph 7]

9. The article ended with the following paragraphs (the eighth and ninth paragraphs):

“By the way, [Ch.], the managing director of joint-stock company [D.], conducted an investigation and came to the conclusion that there was an organised group operating in the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal. In a letter to the head of the parliamentary sub-committee on combating organised crime and corruption in law-enforcement bodies and courts, he set out the names of the members of the group and the detailed mode of operation of the whole scheme. As proof, [Ch.] cited case no. 8/55, in which he had been a defendant against the State enterprise Ugolnaya kompaniya ‘Krasnolimanskaya’, concerning the invalidation of a contract, as well as a number of other similar disputes, which were subsequently quashed by the Supreme Court of Ukraine. The judges, well known from case no. 27/37, appear everywhere. [paragraph 8]

The reason for my address to the *Verkhovna Rada* – said [Ch.] – was case no. 8/55. While the case was going through all the [judicial] instances, I felt the pressure of the system. Let’s say an interested client comes knocking and asks for assistance with a case that will clearly lose. They recommend that he goes to law firm [L.]. Then the contract is concluded with the client, the money is transferred, and the claim is prepared. Then, in spite of [any] existing procedure, the case is ‘distributed’ to the right judge. After that, the case is always decided in the client’s favour. If another party lodges an appeal, a so-called ‘black triad’ exists, which embraces the principle [that] ‘nothing else matters in the case’. Most people who have been through these two [judicial] instances give up. They lose their faith in justice and do not apply anywhere else. They say to themselves, ‘they are all tarred with the same brush’.” [paragraph 9]

B. Interim injunction proceedings

10. On 7 April 2005 judges A., C., D., E., B., and F. applied to the Voroshylovsky District Court of Donetsk City (hereinafter the “District Court”) for the application of “preventive measures and securing of evidence” (*заява про вжиття запобіжних заходів та про забезпечення доказів*). They argued that the article of 12 March 2005 “Black triad: nothing else matters in the case” contained a negative evaluation of the activity of the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal and was not based on any facts. The style of the article was extremely negative. In particular, the claimants indicated that the following statements did not correspond to reality: “an organised group”, “the detailed mode of operation of the whole scheme”, “the pressure of the system”, “assistance with a case that will clearly lose”, “in spite of [any] existing procedure, the case is distributed to the right judge”, about existence of a “black triad” and the principle of “nothing else matters in the case”. The applicant “had not verified the information in question” and had thus failed to comply with his professional duties. According to the claimants, the publication in question breached the honour, dignity, and professional reputation of the above-mentioned courts, their management, and the judges. In particular, it was noted that judges E., C., D. and F. had examined case no. 8/55, which was mentioned in the publication, and therefore the article had caused them non-pecuniary damage. Similar damage had been caused to A., the Head of the Donetsk Commercial Court of Appeal who “was responsible for the organisational management of the court” and B., the Deputy Head of the Donetsk Regional Commercial Court who “according to distribution of duties, performed management of the structural unit that included the judges who had examined case no. 8/55”.

11. The claimants stated that they would lodge a defamation claim for damages against the newspaper, the applicant and Ch. (they eventually did so on 18 April and 18 August 2005 (see paragraph 23 below)) as the article in question contained “elements of an interview, i.e. the last paragraph containing eventually the majority of the untrustful information”. Referring, *inter alia*, to Articles 277 and 278 of the Civil Code of Ukraine (“the CCU” – see paragraph 34 below), they argued that their rights were being infringed while the article was still available online and requested its removal under Article 62-1 of the Code of Civil Procedure (“the CCP” – see paragraph 35 below).

12. The claimants’ request was for an order against the editorial board of the newspaper to remove the article from the newspaper’s website. In addition, they also asked for the attachment of the newspaper’s property, the property of the applicant and that of Ch. in order to secure their claims. Finally, they asked that the newspaper provide the documents their editorial

board and the applicant had used to verify the information published in the article.

13. On 8 April 2005 the District Court ordered the editorial board of *Dzerkalo Tyzhnya* to remove the article from the newspaper's website. In its one-and-a-half-page decision the court merely reiterated the content of the claimants' request. The court then referred to Article 152 § 2 of the CCP, which set out the possible injunction measures for securing a claim, and noted that the request should be granted in part, providing no reasoning or assessment of the claimants' position.

14. The applicant, the newspaper and Ch. appealed against this decision, noting, *inter alia*, that an interim injunction such as taking an article down from a website was not prescribed under domestic law, and furthermore, that the court had referred to Article 152 § 2 of the CCP which provided for interim measures after lodging a claim and not before. They further noted that the court had failed to provide any reasoning. In particular, they argued that the article had not named a single judge and that therefore the claimants had failed to prove that their rights had been breached.

15. On 26 August 2005 the Donetsk Regional Court of Appeal upheld the District Court's decision. Having reiterated the claimants' request and quoted Article 278 § 2 of the CCU, the court noted the following:

"The challenged article carries information which is disseminated on the Internet. Since such information is accessible to the general public and is difficult to control, the removal of the article from the website (similar to a property attachment under paragraph 2 of Article 62-2 of the CCP) is the only measure that would ensure protection of the individual right pending examination of the case on the merits. [The first-instance] court relied on Article 152 of the CCP which provides for securing a claim by prohibiting certain actions. Such reference is erroneous since no claim had been lodged at the time when the ruling was delivered. However, this shortcoming cannot serve as a ground for quashing the court's ruling, as the request had been examined on the merits correctly".

16. The applicant appealed in cassation, arguing that Article 62-2 of the CCP did not prescribe any interim measure such as removing an article from a website. He further stated that the court had failed to provide any reasoning for its decision and that the claimants had not provided any evidence to support their argument that their rights had been infringed.

17. Some two and a half years later, on 15 January 2008, the Kyiv Court of Appeal, sitting as a cassation court, rejected the applicant's appeal against the decisions of 8 April and 26 August 2005 for lack of evidence of breaches of the law.

18. The above judicial decisions were enforced, and the impugned article was removed from the newspaper's website on an unspecified date, but no later than 18 August 2005.

C. Subsequent publication

19. On 28 March 2005 A., the Head of the Donetsk Commercial Court of Appeal, and B., a former Deputy Head of the Donetsk Regional Commercial¹ Court, sent a letter to the chief editor of *Dzerkalo Tyzhnya* demanding a retraction of the information published in the article of 12 March 2005. They provided a text to be published for that purpose. The letter was received at the office of the newspaper on 31 March 2005.

20. On 23 April 2005, following the interim injunction issued by the Voroshylosky District Court of Donetsk (see paragraphs 10-13 above), *Dzerkalo Tyzhnya* published an article entitled “Black triad: to be continued” (“Чорна трійка: далі буде”) indicating A. and B. as the authors of the letter requesting the retraction. The article, which apparently was a summary of the text of their letter of 28 March 2005, reads as follows:

“Every court case is a complicated tangle of antagonistic interests of the parties, and its settlement, irrespective of [the outcome] ... will always leave one of the parties unsatisfied. Even when a party understands the lack of grounds for its appeal against the court decision, very often only the requirement of paying the court and legal fees would stop it from lodging such an appeal. Most people naturally consider all decisions in their favour as lawful and fair, and vice versa. Everyone who has acted as a judge in any dispute knows: the loser will, most probably, regard the decision as unfair and biased.

On 12 March 2005 DT [*Dzerkalo Tyzhnya*] published an article by Anatoliy Yeremenko [entitled] ‘Black triad: nothing else matters in the case’. The article raised very important and relevant problems for modern Ukrainian society. It cites the story of the managing director of [joint-stock company D.], [Ch.], who allegedly discovered unlawful activity [on the part] of judges of the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal.

However, many were surprised by [Ch.’s] hard feelings towards the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal. Indeed, given the number of cases won by [joint-stock company D.] and the ‘strength’ of those cases, it should have been more likely for his opponents in those cases to have had reasons [to feel that way]. Take, for example, the decision in case no. 38/251, according to which the claimant [joint-stock company D.] was awarded UAH 262,776.32 ...

However, another case – no. 8/55 – is cited as an example in the article. For some unknown reason, the request of [D.’s] managing director under Articles 4 to 6 of the Code of Commercial Procedure of Ukraine to [have] his case examined by a bench of judges being disregarded [was not mentioned in the newspaper article]. We shall explain for those who are not lawyers that these Articles provide for the examination of cases by a bench of judges in a local commercial court where their category and complexity so requires. However, [Ch.] based his request exclusively on the necessity to avoid any pressure on the court by the opposite party (which is not a ground for allowing the examination of the case by a bench of judges). Therefore, if we follow the letter of the law, the court should have rejected [Ch.’s] request as unlawful. However, having taken into consideration the category of the case and the extensive number of circumstances to be examined, the court allowed his request. It follows that the claimant

¹ Rectified on 10 November 2022: the text was “Administrative Court”.

is either unable to understand the text of the law (but takes the liberty to criticise court decisions), or he consciously provoked the court to reject the request in order to have an excuse to complain later about the court's bias.

But, despite the positive decision about the composition of the court in case no. 8/55, [Ch.] asserts that 'then, in spite of [any] existing procedure, the case is "distributed" to the right judge'. It is easy to remark that such a conclusion contradicts the facts, as well as [the conclusion] that 'the case is always decided in the client's favour', and that there is a so-called 'black triad' in the court of appeal. Even more offensive is his final conclusion that 'they are all tarred with the same brush'.

The only lawful way to receive a decision in your favour is to act within the law and to provide sufficient arguments and valid evidence. But some (it is unlikely that they could be called law-abiding citizens) stop at nothing. If the end justifies the means, why not try all of them? The easiest (from a practical point of view, but – we emphasise – not effective and the least ethical) way to convince the court to adopt the 'required' decision is to issue a warning in a manner akin to: it is better not to mess with me. By manipulating public opinion, such people try to influence the decisions of public servants, including judges. Indeed, hardly anybody would wish to be associated with the 'black triad'.

Currently the Donetsk Regional Commercial Court is examining the case in which [D.] is one of the parties. So, is the tragical farce of [Ch.] not an attempt to scare the court and to influence its future judgment? Suggesting [that] the 'black triad' article could be continued with the family names of all the judges with firm beliefs, and they could later try to prove their integrity publicly. It is well known: the higher a person's social status, the more society is inclined towards believing in the most absurd gossip about them, so they have to prove their innocence.

Therefore, the negative evaluation of the functioning of the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal was given, in the absence of any merit. In particular, there is no reason to believe that there is an organised group involved in unlawful activity operating in the above-mentioned courts. There is no practice of assisting interested clients in [obtaining] 'positive decision[s]' in 'case[s] that will clearly lose' in the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal. Furthermore, the employees of these courts never recommend particular law firms. It is also untrue that, despite any existing procedure, the cases are given to the 'right judge' in order to deliver a decision in the case in favour of the client. The court does not and cannot have 'clients', and decisions in the cases mentioned in the articles were taken after impartial examination of all the circumstances of the cases and the evidence submitted by the parties.

There are no grounds to conclude that most people who went through the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal gave up and lost their faith in justice, and that they do not apply anywhere else."

21. On 12 May 2005 the claimants sent another letter to the chief editor of *Dzerkalo Tyzhnya* demanding that the newspaper print a retraction, stressing that their previous request had not been addressed adequately since the publication had been printed without a mention in the title of the word "retraction" and that it had contained only summarised elements of their letter of 28 March 2005.

22. On 23 May 2005 the chief editor of *Dzerkalo Tyzhnya* replied that the above demand was groundless before the examination of the respective claim by the courts and the pronouncement of the respective judgment.

D. Defamation proceedings

23. On 18 April and 18 August 2005, the same claimants (see paragraph 10 above) lodged defamation claims against the applicant, Ch. and the editorial board of *Dzerkalo Tyzhnya*. They claimed that their professional reputation, honour and dignity had been damaged by the article in question. According to them, the statements contained in the article had undermined the authority of the judiciary. In their updated claim, the judges asked the court to recognise the following statements as defamatory:

- “there was an organised group operating in the Donetsk Regional Commercial Court and in the Donetsk Commercial Court of Appeal”;
- that Ch. had discovered “a detailed mode of operation of the whole scheme”;
- “the pressure of the system”;
- “an interested client comes knocking and asks for assistance with a case that will clearly lose. They recommend that he goes to law firm [L.]. Then the contract is concluded with the client, the money is transferred, and the claim is prepared. Then, despite [any] existing procedure, the case is ‘distributed’ to the right judge. After that, the case is always decided in the client’s favour”;
- “If another party lodges an appeal, a so-called ‘black triad’ exists, which embraces the principle [that] ‘nothing else matters in the case’”; and
- “they are all tarred with the same brush”.

They further asked the court to order the editorial board of *Dzerkalo Tyzhnya* to publish a retraction of the above statements, and to order the applicant and Ch. to pay 10,000 Ukrainian hryvnias (UAH) in respect of non-pecuniary damage to each claimant.

They noted that the newspaper had partly restored their rights by allowing them to exercise their right to reply to the allegations in the impugned article and by removing the article from their website.

24. In his response to the claim, the applicant insisted that the statements concerned contained information important to the general public and the sources of the information were Ch. and Ch.’s letter to the parliamentary sub-committee. He further noted that he had duly verified that the letter had indeed been submitted to Parliament, and that it was a ground for a related inquiry by the law-enforcement services. At the same time, he stated that Ch.’s remarks were in line with the results of his own journalistic investigations in respect of cases nos. 27/37 and 8/55, which were based on the case files of those cases. The applicant considered that, since he had received the information from “an official” of an organisation, he was relieved from liability for published material by virtue of section 42(2) of the

Press Act. Lastly, the applicant noted that the claimants' names had never been mentioned in the article and that there were at least twelve other judges who had examined the case in issue in the Donetsk Regional Commercial Court, but who had not lodged a defamation claim. He also referred to his previous article of 29 May 2004 in which A. and C. had been named, but against which they had never initiated defamation proceedings. In support of his arguments, the applicant attached, *inter alia*, Ch.'s letter to the parliamentary sub-committee, the case files of several cases he had examined in the context of his investigation, including case no. 27/37, and his previous articles on the topic in question.

25. On an unspecified date, the applicant and Ch. also lodged counterclaims. The applicant stated that before initiating defamation proceedings and requesting the interim injunction, A., C., D., E., B., and F. had illegally obtained his personal information, including his name and contact details. He asked the court to find such actions unlawful. Ch. asked the court to determine that the information contained in the judges' letter to the newspaper, published on 23 April 2005 (see paragraph 20 above), was untrue.

26. On 20 October 2005 the Petrovskyy Local Court examined the case on the merits. Having analysed the eighth and ninth paragraphs of the article in question, the court allowed the judges' claim in part. The court concluded that the statements contained in those paragraphs were defamatory ("had presented a distorted view of reality and were not based on actual facts") and their publication had resulted in non-pecuniary damage being inflicted on all the claimants.

27. The relevant parts of the court's judgment read as follows:

"[T]he information contained in the relevant paragraphs of the article did not correspond to reality and tarnished the honour, dignity and reputation of the claimants in view of the following.

...

At the court hearing the [applicant] confirmed that in the eighth and ninth paragraphs of the article he had used information provided by Ch., including the letter to the parliamentary sub-committee, along with [Ch's] succinct commentary which disclosed elements of an interview.²

The respondent Ch. confirmed that the author had used the information provided by him in the eighth and ninth paragraphs of the impugned article.

Upon analysis of the ninth paragraph of the article, it is established that it was published in the form of an interview.

Pursuant to section 13 of the Copyright and Related Rights Act, the copyright of a recorded interview is to be regarded as co-authorship. The interviewee and the interviewer are co-authors of the interview.

² Rectified on 10 November 2022: the text "Ch. also confirmed that in those paragraphs [the applicant] had used information provided by him" was deleted.

The court considers that [the applicant] and Ch. are co-authors of the article ...

[In the letter addressed to the head of the parliamentary sub-commission on combating organised crime and corruption] Ch. stated that an organised criminal group was operating in the Donetsk Regional Commercial Court and the Donetsk Regional Court of Appeal which, on demand, provided judgments and rulings required by clients. [He] named the members of the group and described how it operated.

...

Ch. also sent this letter to the State Security Service and was informed that his allegations were being verified.

...

In response to an enquiry of the Donetsk Commercial Court of Appeal, [on 22 April 2005] the Administration of the Security Service of Ukraine in the Donetsk Region reported that upon examination [перевірки] of Ch.'s allegations, no proof of the existence and activities of such an organised criminal group in the [above-mentioned courts] had been found.

Therefore, [the relevant statements] published in the eighth paragraph of the article had not been proved and, accordingly, [they] were untrue.

...

The article referred to Ch.'s letter to ..., in which he directly mentioned a criminal organisation that existed in the [above-mentioned] courts. Even though the article did not reproduce the content of that letter, the statements in the eighth and ninth paragraphs suggested to the reader that the existence of a 'criminal group' was being discussed.

In their description of the procedure for distributing and examining cases, the co-authors of the article accused the [judges] of the above courts not only of violating bylaws, but also of what could be interpreted as abuse of office and a miscarriage of justice, both being criminal offences. ... the expression 'organised group' was used in the article in the criminal sense and was associated with a criminal offence committed by an organised group.

Pursuant to Article 62 of the Constitution of Ukraine a person is presumed innocent of committing a crime until their guilt is proved in accordance with the law and established by a verdict of a court.

No such verdict has been delivered in respect of the claimants by any domestic court and therefore [those statements] were defamatory.

At the same time the court cannot take into consideration the defendants' arguments according to which at the court hearing they had provided evidence in support of their statement as to the existence of a special procedure for examining cases in view of the following.

As noted above, the statements as to the existence of a special procedure for examining cases in the above-mentioned courts constitute an accusation that a crime has been committed, which ... must be proved by certain means. In view of Article 62 of the Constitution as to the presumption of innocence, the above statements can be proved only by a verdict of a court, which does not exist in respect of the claimants.

...

Section 42 of the Press Act provides that a journalist is exempted from liability for the publication of material that is untrue, defames the honour and dignity of citizens

and organisations, infringes the rights and lawful interests of citizens, or constitutes abuse of the freedom of the printed mass media and the rights of journalists if the information is contained in a reply to a request for access to official documents and to a request for written or oral information, provided in accordance with the Information Act.

Section 32 of the Information Act provides that a request for access to official documents is a request addressed to relevant State authorities or its officials in order to examine the official documents.

Since joint-stock company D. was not a State body and its managing director, Ch., was not an official of a State authority, his letter could not be considered an official document within the meaning of section 42 of the Press Act and section 32 of the Information Act.

Under section 47-1 of the Information Act ...value judgments are not subject to retraction or proof of veracity.

...

The information in the eighth and ninth paragraphs of the article, particularly the following statements, can be interpreted as containing factual information and thus they are not value judgments: 'Ch. came to the conclusion that there was an organised group operating in the Donetsk Regional Commercial Court and in the Donetsk Commercial Court of Appeal', 'an interested client comes knocking and asks for assistance with a case that will clearly lose. They recommend that he goes to the law firm [L.] Then the contract is concluded with the client, the money is transferred, and the statement of claim is prepared. Then, in spite of [any] existing procedure, the case is "distributed" to the right judge. After that, the case is always decided in the client's favour'; 'If another party lodges an appeal, a so-called "black triad" exists, which embraces the principle [that] "nothing else matters in the case"'.

...

By virtue of Article 277 of the CCU one of the elements of the offence is dissemination of information about a person which would enable an observer to deduce that it concerns a specific identifiable individual or, at least, that the person belongs to a group of people to whom such information pertains. Indication of the person's name is not obligatory: for information to be considered as concerning a specific person if he or she is identifiable on the basis of other elements.

The claimants A., C., D. and E. are judges at the Donetsk Commercial Court of Appeal, and B. and F. - at the Donetsk Regional Commercial Court. In addition, A. is a Head of the Donetsk Commercial Court of Appeal and B. used to be a Deputy Head of the Donetsk Regional Commercial Court.

In the article the authors assert the existence of an organised group in the [above-mentioned] courts, which has been found by this court to be inaccurate/false.

This fact alone tarnishes the dignity, honour and reputation of the managing officials of such courts, namely A. and B.

As proof of the existence of an organised group in the above-mentioned courts the authors refer to case no. 8/55.

Having examined the case file of the above case, the court established that B. assigned F. to examine case no. 8/55; F. was a presiding judge at the first-instance court's examination of this case; and E., C. and D. further examined this case in the court of appeal.

Thus, as a result of the publication of untrue information, all of the above judges sustained non-pecuniary damage, including B., who at the material time was Deputy Head of the Donetsk Regional Commercial Court and was managing the court division comprising the judges who had examined the case at first instance. A., the Head of Donetsk Commercial Court of Appeal, who ... is responsible for the organisational management of the court where the case in issue was examined on appeal, also sustained non-pecuniary damage.

The court dismisses the respondents' arguments concerning the fact that the names of the claimants had not been mentioned, since the co-authors of the article provided sufficient information to identify them. In addition, the information on judges examining the domestic cases was not restricted, the copies of the court decisions had been sent to the parties, and information about these judges could be known to an unlimited/unrestricted number of persons."

28. When setting a compensation to be paid to the claimants by the applicant and Ch., the court noted that the applicant was guilty to a lesser degree since it was Ch. who had provided him with the information. However, the applicant had failed to verify the information, and had thus failed in his professional duties as set out in section 26 of the Press Act.

29. The court ordered the editorial board of *Dzerkalo Tyzhnya* to publish a retraction of the statements contained in the eighth and ninth paragraphs of the article, and the applicant to pay UAH 333 in respect of non-pecuniary damage to each of the claimants, plus their legal (UAH 333 per claimant) and court fees (UAH 100 per claimant). In total, the applicant was ordered to pay the equivalent of 331 euros (EUR) in respect of non-pecuniary damage and EUR 430.51 in respect of legal and court fees. Ch. was ordered to pay UAH 1,000 in respect of non-pecuniary damage per claimant, plus legal and court fees.

Finally, the court dismissed the applicant's and Ch.'s counterclaims as unsubstantiated.

30. The applicant appealed against the judgment of 20 October 2005 of the Petrovskyy Local Court, relying on the following arguments: (i) the court had failed to substantiate the existence of the non-pecuniary damage by not giving concrete reasons for the effect the article had had on the claimants and their psychological health; (ii) the court had failed to make a distinction between the facts and "value judgments". In this respect the applicant noted that the phrase "tarred with the same brush" was clearly a "value judgment", yet it had not been examined by the court separately and had been found defamatory as a part of the whole text; (iii) the material in the case files of case no. 8/55 and a number of other cases were sufficient to conclude that the statements published in the article were true; (iv) the court had failed to examine the existence of *mens rea* in the applicant's actions; (v) the court had gone beyond what had been claimed in the complaints and had found defamatory the wider content of the statements published in the article; he referred to the fact that the court had relied on the full text of the eighth and ninth paragraphs instead of only the particular statements quoted by the

claimants in their complaints (for example, the phrases “Ch. concluded ...” and “most of the people ...”); and (vi) the amount of the court fees he had been ordered to pay to the claimants was excessive.

31. On 27 January 2006 the Donetsk Regional Court of Appeal upheld the first-instance court’s judgment on the merits and modified it concerning legal and court fees, reducing the court fees imposed on the applicant to the equivalent of EUR 244.08.

The relevant parts of the appellate court’s judgment read as follows:

“It follows from the content of the impugned article that the respondent Ch. had conducted his own investigation and concluded that there was an organised group in the Donetsk Regional Commercial Court and Donetsk Regional Court of Appeal, with reference to the letter of the head of the sub-committee of *Verkhovna Rada* ... naming the members of the group and the detailed mode of operation of the whole scheme. There are references to cases no. 8/55 and 27/37. The ninth paragraph contains a direct speech and it discusses, on behalf of Ch., case no. 8/55 ...

At the court hearing the respondents maintained that the information published as to the existence of an organised group in the courts in question ... was true. They insisted that case no. 8/55, as well as other cases, had been allocated by B. and A. to ‘their’ judges, in violation of the orders on specialisation of the courts’ composition. They submitted the orders [allocating the cases], noting the breaches allegedly committed during the allocation of case no. 8/55 and others.

The court reasonably rejected the respondents’ arguments. The allocation of cases in the courts in question is an internal matter for the court and such circumstances cannot point to the existence of an organised group or functioning of a ‘scheme’ with interested clients.

At the time the article was published, the claimants had not been convicted or found liable of acts of corruption ...

...

It follows from the certificates in the case files, that all the claimants serve as judges at the courts in question. In the article the claimants were accused of violating the law during the examination of commercial cases, however such circumstances were not proved at the court hearing.

In support of their arguments ... the respondents referred to the allocation of the cases in violation of specialisation orders, but they did not provide any factual data to prove the information published in the article.”

32. In his cassation appeal the applicant reiterated his previous arguments and also noted that after reading Ch.’s letter he had conducted his own investigation and, relying on the materials in the case files, he considered that he had verified the respective information with due diligence.

33. By a final decision of 5 November 2007, the Kyiv Court of Appeal, acting as a court of cassation, rejected the applicant’s cassation appeal against the decisions of 20 October 2005 and 27 January 2006. The court did not provide any reasoning apart from the standard conclusion that the applicant’s cassation appeal gave no grounds for believing that the lower courts had violated a material or procedural law in their decisions.

RELEVANT LEGAL FRAMEWORK

I. THE 2003 CIVIL CODE

34. The relevant extracts from the Civil Code read as follows:

Article 16

Protection of civil rights and interests by the court

“Civil rights and interests remedies shall include:

...

3. termination of the action violating the right;

...”

Article 23

Compensation for non-pecuniary damage

“1. A person shall have the right to compensation for non-pecuniary damage in the event of an infringement of his or her rights.

2. Non-pecuniary damage is defined as:

...

(4) humiliation of the honour and dignity of a physical person, as well as the professional reputation of a physical or legal person ... [defamation] ...”

Article 277

Retraction of untrue information

“1. A physical person whose personality rights are breached as a result of untrue information being disseminated about him or her shall be entitled to a response as well as to a correction of this information.

...

3. Negative information disseminated about a person shall be considered as untrue unless a person who has disseminated it proves the opposite.

...

6. A person whose rights are infringed ... shall have the right to a response and rectification of the information in the same mass-media source and in accordance with the procedure established by law.

... Rectification of untrue information shall not depend on the actual guilt of the person that disseminated it.

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

Article 278 § 2
**Prohibition against spreading information which
breaches personal non-property rights**

“If a personal non-property right is breached in a newspaper, book, film, television programme, etc., which has been already released, a court may ban (stop) its dissemination until the breach is rectified ...”

Article 302
Right to information

“...

2. A person disseminating information is obliged to verify its authenticity/veracity.

3. Information provided by public officials in the performance of their professional duties ... is considered authentic.

A person disseminating such information is not obliged to verify its authenticity and shall not be held liable if such information is disproven.”

**II. THE 1963 CODE OF CIVIL PROCEDURE (AS IN FORCE BEFORE
1 SEPTEMBER 2005)**

35. The relevant provisions of the Code read as follows:

Article 62-1
Grounds for ordering preventive measures (interim injunctions)

“A person who has grounds to believe that their rights have been violated or there is a real threat of them being violated, has the right to apply to a court to request an interim measure before lodging a claim.”

Article 62-2
Types of preventive measures

“1. Inspection of premises relating to the violation of rights;

2. Attachment of property belonging to a person in respect of whom measures have been taken and property in the possession of such a person or others.”

Article 62-3
Request for preventive measures

“...

The claimant is required to lodge a respective claim within ten days after the court has delivered a ruling on the application of a preventive measure. Upon lodging a claim, the preventive measure remains in force as a means to secure a claim or evidence.”

Article 62-4.

Order for consideration of a request for preventive measures

“... ”

If the claimant’s request is well-reasoned, a request for preventive measures shall be considered exclusively in his/her presence, without notification of the person in respect of whom preventive measures are requested.

...”

Article 62-9

Challenging a ruling on the application of a preventive measure

“... ”

Lodging an appeal against a ruling on the application of a preventive measure does not suspend its enforcement.”

Article 152

Means of securing claims

“1. The claim shall be secured by:

(1) attachment of property or funds belonging to the defendant and which is in his or her or other persons’ possession;

(2) prohibition on performing some specific actions;

...”

III. THE INFORMATION ACT OF 2 OCTOBER 1992

36. 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, 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 [such as], in particular, criticism, the evaluation of actions, and 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 ...”

Section 49
Compensation for pecuniary and non-pecuniary damage

“If physical or legal persons have suffered pecuniary or non-pecuniary damage caused by an offence committed by an entity engaged in informational activities, those responsible [for the offence] shall compensate [for the damage] voluntarily or pursuant to a court decision. Governmental authorities, local and regional authorities acting as plaintiffs in cases concerning the protection of honour, dignity and good name, shall be entitled to compensation in respect of non-pecuniary damage. This shall not exempt an official of governmental authority or local governmental authority from the right to the protection of his or her dignity and good name in a court.”

IV. THE PRINTED MASS MEDIA (PRESS) ACT OF 16 NOVEMBER 1992

37. The relevant extracts from the Press Act provide as follows:

Section 4
Language of the printed mass media

“...

2. The style and vocabulary of the printed mass media must comply with generally accepted ethical and moral standards.”

Section 26
Rights and obligations of staff journalists

“In accordance with the principles of professional independence, journalists shall exercise rights and perform obligations established by the Information Act (no. 2657-12) and this Act.

...

A journalist shall:

(1) adhere to the operational programme of the print media outlet where he or she is employed or bound by other contractual arrangements, and comply with the editorial charter;

(2) provide objective and reliable information for publication;

...

(6) perform obligations of a participant of information relations;

Journalists shall be liable for abuse of powers and failure to perform their obligations as established by the applicable laws.”

Section 37
Retraction of information

“Citizens, legal entities and State organs, and their legal representatives, shall have the right to demand that the editorial board of [any] printed mass media [publication] publish a retraction of information disseminated about them which is untrue or defames their honour and dignity.

If the editorial board does not have any evidence that the content published by it is true, it must, if requested by the claimant, publish a retraction of such information in the next issue of the printed mass media [publication] or publish the retraction on its own initiative. ...”

Section 42 **Exemption from liability**

“The editorial board and journalists are not liable for the publication of material that is untrue, defames the honour and dignity of citizens and organisations, infringes the rights and lawful interests of citizens, or constitutes abuse of the freedom of the printed mass media and the rights of journalists if:

...

(2) the information is contained in a reply given in accordance with the Information Act to a request for access to official documents and to a request for written or oral information;

(3) the information is a verbatim reproduction of official speeches of the officials of State organs, organisations and associations of citizens;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

38. The applicant complained that the court decisions ordering the removal of the article from the website pending the examination of the defamation case and holding him liable for the publication of the impugned article had been in breach of 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

39. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. General principles

(a) Media and journalistic freedom of expression

40. The general principles were reiterated in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016) and, more recently, in *Editorial Board of Grivna Newspaper v. Ukraine* (nos. 41214/08 and 49440/08, § 84, 16 April 2019):

“(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. ...

(iii) The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was ‘proportionate to the legitimate aim pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient’... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ...”

41. The Court has consistently emphasised that the press plays an essential role in a democratic society. Although it must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, including those relating to justice. Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Article 10 of the Convention protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, with further references).

42. The Court has observed that the protection afforded by Article 10 of the Convention to journalists, however, is 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, *Bédat*, cited above, § 50). The concept of responsible journalism is not confined to the contents of information which is collected and/or disseminated by journalistic means; this concept also embraces the lawfulness of the conduct of a journalist (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015).

(b) Judges as the subjects of publications and the limits of acceptable criticism

43. The general principles relating to maintaining the authority of the judiciary were summarised in *Morice v. France* ([GC], no. 29369/10, §§ 128-131, ECHR 2015):

“Questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest. In this connection, regard must be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a State governed by the rule of law, it must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying.

The phrase “authority of the judiciary” includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the resolution of legal disputes; further, that the public at large have respect for and confidence in the courts’ capacity to fulfil that function.

What is at stake is the confidence which the courts in a democratic society must inspire not only in the accused, as far as criminal proceedings are concerned, but also in the public at large.

Nevertheless – save in the case of gravely damaging attacks that are essentially unfounded – bearing in mind that judges form part of a fundamental institution of the State, they may as such be subject to personal criticism within the permissible limits, and not only in a theoretical and general manner. When acting in their official capacity they may thus be subject to wider limits of acceptable criticism than ordinary citizens (*ibid.*).”

44. As regards the level of protection of freedom of expression, there is little scope under Article 10 § 2 of the Convention for restrictions on debate on matters of public interest. Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest, as is the case, in particular, for remarks on the functioning of the judiciary, even in the context of proceedings that are still pending in respect of other defendants. A degree of hostility and the potential seriousness of certain remarks do not obviate the right to a high level of protection of freedom of expression, given the existence of a matter of public

interest (see *Paturel v. France*, no. 54968/00, § 42, 22 December 2005, and *Morice*, cited above, § 125).

2. *Application of those principles regarding the injunction proceedings*

(a) **The parties' submissions**

(i) *The applicant*

45. The applicant did not dispute the legitimate aim of the removal of the article from the website but submitted that the measure had not been prescribed by domestic law or necessary in a democratic society. He stated that the domestic courts had failed to conduct any preliminary analysis as to whether the published information was true and based on facts, or whether it had violated the rights of the judges who had requested the measure.

(ii) *The Government*

46. The Government did not contest that there had been an interference with the applicant's right to freedom of expression. They maintained that the measure had been based on law, namely Articles 277 and 278 § 2 of the CCU, section 47 of the Information Act and section 4 of the Press Act, and that those provisions had been sufficiently accessible and clear. They added that the interference had served the legitimate aim of protecting the rights and reputation of the judges and preserving the authority of the judiciary. The Government noted that the article in question had included expressions which, after being analysed by the court in the main proceedings, had been found to contain "untrue information". Therefore, given the public access to the article on the newspaper's website, the measure had served as the only way of protecting the rights of others before examination of the defamation case. In view of the above, the domestic court had been "forced to interfere with the applicant's right to freedom of expression" by partially allowing the claimants' request and the interference had been necessary in order to protect the rights and the reputation of others.

(b) **The Court's assessment**

(i) *Whether there has been an interference*

47. The Court notes that it is not in dispute between the parties that the decisions of the domestic courts ordering the removal of the article in question from the newspaper's website constituted an interference with the applicant's right to freedom of expression.

(ii) *Whether the interference was "prescribed by law"*

48. 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 right to freedom of expression should be lawful: the first sentence of the second paragraph essentially envisages that any restriction on expression must be “prescribed by law”. In order to comply with this requirement, interference does not merely have to have a basis in domestic law. The law itself must correspond to certain requirements of “quality”. 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. Those consequences need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, for example, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV).

49. Turning to the circumstances of the present case, the Court observes that the applicant challenged the lawfulness of the interference, being of the view that an interim measure such as the removal of an article from a website had not been prescribed by the law at the material time.

50. The Court notes at the outset that the interim injunction request had been lodged at least ten days before the defamation claim that followed and that the legal provisions expressly provided for a situation where an injunction request is lodged before the court in the absence of a pending case. As to the domestic provisions on which the Court of Appeal relied when upholding the interim measure, the Court notes that it interpreted Article 62-2 of the CCP, which relates to property attachment, as encompassing an order to remove content from a website. Having regard to the broad terms in which that provision is framed, it would appear capable of encompassing both print and digital content. The Court of Appeal explicitly overruled the District Court’s reliance on Article 152 of the CCP, which it considered erroneous. Furthermore, Article 62-1 of the CCP explicitly provides for the possibility of requesting and ordering an interim injunction before the main claim is lodged.

51. Having regard to the fact that the national courts are best placed for interpreting and applying rules of substantive and procedural law, the Court observes that it has no reason to call into question the interpretation and application of domestic law by the Court of Appeal in the present case. The Court also notes that the “foreseeability” requirement does not exclude the law from being partly left to the interpretation of the judges (see, for example, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 108-110 and 114, ECHR 2015). An individual cannot argue that a legal provision lacks foreseeability simply because it is applied for the first time in his case (see

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], no. 931/13, § 150, 27 June 2017). The mere fact that a legal provision is capable of more than one construction does not mean that it does not meet the requirement of foreseeability (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 135, ECHR 2015 (extracts)).

52. Therefore, while it would have been preferable for the Government to provide further information on the relevant case-law of the domestic courts concerning the interpretation and application of the provisions in question, particularly Article 62 of the CCP, the Court can proceed on the premise that the interference had a basis in domestic law.

(iii) Whether the interference pursued a “legitimate aim”

53. The Court is satisfied that the interference in question pursued the legitimate aim of protecting the reputation of others and most importantly – maintaining the authority of the judiciary.

(iv) Whether the interference was necessary in a democratic society

54. The Court notes that interim injunctions, by their very nature, are temporary measures which merely aim to provide provisional protection to the party concerned pending the examination of the claim on its merits, in cases where the postponement of such measure until after a final decision on the merits would risk causing irreparable harm to the person seeking the injunction or where the judicial examination of the claim would otherwise be impeded (see *Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, § 60, 8 October 2013).

55. While Article 10 of the Convention does not prohibit interim injunctions, even where they entail prior restraints on publication, the apparent dangers inherent in such measures call for the most careful scrutiny by the Court (see *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV). The Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see, among many others, *Zana v. Turkey*, no. 18954/91, 25 November 1997, § 51, Reports of Judgments and Decisions 1997-VII). In addition, the fairness of the proceedings and the procedural guarantees afforded are factors to be taken into account when assessing the proportionality of an interference with respect to the right to freedom of expression guaranteed by Article 10 of the Convention, including a close examination of the procedural safeguards embedded in the system to prevent arbitrary encroachments upon the freedom of expression (see *Association Ekin v. France*, no. 39288/98, § 61, ECHR 2001-VIII; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II;

Lombardi Vallauri v. Italy, no. 39128/05, §§ 45-46, 20 October 2009; and *Igor Kabanov v. Russia*, no. 8921/05, § 52, 3 February 2011).

56. In the present case the claimants, considering that the publication in question encroached on their dignity, honour and reputation, lodged a request for it to be removed from the newspaper's website and also sought the attachment of the newspaper's property (see paragraph 10 above).

57. The Court notes, firstly, that the domestic court granted the request only insofar as it concerned the removal of the publication from the newspaper's website and that no measures were sought or imposed in respect of the printed copies of the newspaper which contained the same publication and which could remain in circulation (see paragraphs 10-13 above). In this regard, it can be considered that the injunction did not put an end to the dissemination of the publication in all forms and was not of a sweeping nature (see, in contrast, *Obukhova v. Russia*, no. 34736/03, § 27, 8 January 2009). Therefore, the fact that the publication was not available on the newspaper's website pending the examination of the defamation case did not totally hamper the applicant's ability to disseminate information and ideas. The interference with the applicant's freedom of expression was not therefore of a significant magnitude.

58. The Court further notes that the request for interim measures was submitted on 7 April 2005, nearly a month after the publication of the article on 12 March 2005 in print and roughly three weeks after it was published on the newspaper's website on 18 March 2005 (see paragraphs 6 and 10 above). While it is true that there is no information about the exact date on which the claimants learned about the publication, this must have happened before 28 March 2005, the date on which they demanded its retraction and publication of their response. Therefore, the article in question had already been freely available to the public for nearly a month. News is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see, for example, *Observer and Guardian v. the United Kingdom*, 26 November 1991, §§ 60, Series A no. 216; *The Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, § 51, Series A no. 217; and *Association Ekin*, cited above, § 56). In the present case, being available to the public for nearly a month before being removed, and that only from the Internet site and not from the free circulation, it could be concluded that such removal did not undermine the very essence of the public debate.

59. The Court is particularly conscious of the fact that issues covered by the article in question concerned the functioning of the justice system. While those issues definitely constitute questions of public interest, the debate on which enjoys the protection of Article 10 of the Convention, the Court has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties. It

may therefore prove necessary to protect that confidence against destructive attacks which are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 34, Series A no. 313).

60. The Court finds it a matter of concern that the court of first instance limited its reasoning in respect of the injunction to citing exhibits from the claimants' request while the Court of Appeal looked to the dissemination of the information on the internet and considered that its temporary removal was the only measure which would protect the applicants' interests pending examination of the case on the merits (see paragraphs 13 and 15 above). When reasoning is succinct it can make it difficult for the Court to assess whether the national authorities duly balanced the parties' interests at stake (see *Cumhuriyet Vakfı and Others*, cited above, § 69). At the same time, the Court is conscious of the fact that, by their very nature, rulings on interim measures are issued as a matter of urgency and cannot always contain finely calibrated and detailed reasoning equivalent to that required in the main defamation proceedings.

61. The Court finally points out that the interim injunction concerned the whole article despite the fact that the alleged damaging statements had been only in two paragraphs. However, the applicant never raised before the court of appeal and the cassation court the argument that the injunction could have been limited to two paragraphs of the publication.

62. In view of the above, the Court concludes that in the particular circumstances of the present case the "necessary in a democratic society" requirement contained in the second paragraph of Article 10 of the Convention was met and the interim injunction cannot be said to have constituted a disproportionate interference with the applicant's right to freedom of expression.

Accordingly, there has been no violation of Article 10 of the Convention on account of the domestic courts' decisions in the injunction proceedings.

3. *Application of those principles regarding the defamation proceedings*

(a) **The parties' submissions**

(i) *The applicant*

63. The applicant argued that he had thoroughly and diligently verified all the facts provided by Ch. and that the latter had supported those facts in the court proceedings. He further noted that he had simply quoted Ch.'s statements containing the latter's own evaluation of the situation in the courts in question and reported that Ch. had sent a letter regarding that situation to the head of the parliamentary sub-committee. Thus, he had been held liable for the verbatim reproduction of a third party's opinion. The applicant further stated that the burden of proving that Ch.'s statements were true was

incompatible with exercising the right to freedom of expression, referring to *Thorgeir Thorgeirson v. Iceland* (25 June 1992, § 65, Series A no. 239), *Lyashko v. Ukraine* (no. 21040/02, § 54, 10 August 2006), *Gazeta Ukraina-Tsentr v. Ukraine* (no. 16695/04, 15 July 2010), and *Thoma v. Luxembourg* (no. 38432/97, § 58, ECHR 2001-III).

64. The applicant further argued that by virtue of section 42 of the Press Act he was exempted from civil liability for reproducing verbatim official statements of the officials of State authorities, organisations and associations of citizens. He referred to Article 302 of the CCU, according to which information provided by an official while on official duty was considered authentic and a person disseminating such information was not obliged to verify its authenticity and would not be held liable if such information was disproven (see paragraph 34 above). The applicant considered that the above provisions were vague and their consequences had not been foreseeable to him since they did not clearly prescribe that the official in question could only be an official of a State body, as the domestic courts held in his case (see paragraph 27 above).

65. He stated that, as concerned the defamation proceedings, there had been no legitimate aim for the interference with his rights under Article 10 of the Convention since the true aim of the claimants had been to intimidate him as a journalist.

66. The applicant argued that the domestic courts had never examined the issue of the necessity and had not taken into account the public interest of the information published in the article. The domestic courts had failed to examine the article as a whole and as part of a series of articles disclosing a miscarriage of justice by the commercial courts.

67. The applicant stated that at the time when the article had been published, he had been unaware of the results of the examination conducted by the State Security Service, which he had only found out about on 22 April 2005. He had therefore had a sufficient factual basis for the critical evaluation of the facts in the impugned article.

68. The applicant observed that at the time of the publication of the impugned article, there had been no public register of court decisions and that the parties to the proceedings who had received copies of the relevant decisions or who had known the judges examining the case formed a fairly limited circle of persons. Furthermore, the case mentioned in the article had been examined by many more judges throughout all the rounds of proceedings, however only six of them had lodged a defamation claim. He therefore considered that the statement as to the information about the claimants being accessible to an unlimited number of people had been greatly exaggerated.

69. He maintained that the penalty of retraction ordered by the courts in the defamation proceedings had been disproportionate, as the newspaper had already printed a refutation by publication of the letter of A. and B., and had

taken down the impugned article from their website in compliance with the interim injunction.

70. The applicant reiterated that the press was one of the means by which politicians and public opinion could verify that judges were discharging their heavy responsibilities in a manner that was in conformity with the aim which was the basis of the task entrusted to them (citing *Prager and Oberschlick*, § 34).

(ii) *The Government*

71. The Government did not contest that there had been an interference with the applicant's right to freedom of expression. They submitted, however, that it had been prescribed by law, namely by sections 4, 26 and 37 of the Press Act, sections 47 and 49 of the Information Act, and Article 23 of the CCU. They further stated that this lawful interference had pursued the legitimate aims of the protection of the "reputation or rights of others" and of the "authority and impartiality of the judiciary".

72. As to whether it had been "necessary in a democratic society", the Government noted that the applicant had clearly been of the opinion that the statements published in the eighth and ninth paragraphs of the article had been facts, and not "value judgments". This had been proved by the applicant's stance in the domestic proceedings, in which he had argued that the court should have examined the evidence in support provided by Ch., and in his application to the Court, in which he had maintained that he had "thoroughly and diligently verified all the facts provided by Ch.". In addition, in his appeal of 17 November 2005, the applicant had stated that the information provided by Ch. was true/accurate since it had been provided by an "official".

73. The Government further considered that by virtue of Article 277 of the CCU (see paragraph 34 above) one of the elements of the offence was dissemination of information about a person which would enable an observer to deduce that it concerned a specific identifiable individual or, at least, that the person belonged to a group of people to whom such information pertained. Indication of the person's name was not obligatory: for information to be considered as concerning a specific person if he or she was identifiable on the basis of other elements. In that respect they noted that the claimants worked as judges in the domestic courts explicitly mentioned in the article, that the information about judges examining cases had not been restricted and copies had been sent to the parties in the dispute, and thus an unrestricted number of people could have been aware of it.

74. The Government reiterated that the courts – the guarantors of justice, whose role was fundamental in a State based on the rule of law – had to enjoy public confidence. They had accordingly to be protected from destructive attacks that were unfounded, especially in view of the fact that judges were subject to a duty of discretion that precluded them from replying to criticism

(citing *De Haes and Gijssels v. Belgium*, 24 February 1997, § 37, Reports 1997-I).

75. The Government then referred to the domestic courts' findings that the specific terms and statements used by the authors in the eighth and ninth paragraphs of the article had suggested criminal activity at the courts in question. The Government also referred to the case of *Vitrenko and Others v. Ukraine* ((dec.), no. 23510/02, 16 December 2008), in which the Court had concluded that the term "thief" was not a mere value judgment but an untrue statement of fact since it ordinarily suggested involvement in criminal activities and, therefore, it was most likely that this would be the meaning understood by the public.

76. They also briefly referred to the Petrovskyy Local Court's finding that the relevant paragraphs of the article contained elements of an interview and thus, pursuant to section 13 of the Copyright and Related Rights Act, the applicant and Ch., as an interviewer and interviewee, had co-authored the article in question.

77. They further noted, without providing any further details or referring to any document, that the local administration of the State Security Service of Ukraine, "upon revision of information contained in the Ch.'s letter", had later found no proof of the Ch.'s allegations as to the existence and activities of an organised criminal group in the courts in question. Therefore, the factual statements had not been proved and, accordingly, they were untrue.

78. The Government also noted that there were no grounds for exempting the applicant from liability under section 42 of the Press Act, since Ch. was not an official of a State body.

79. Finally, the Government maintained that the above interference had also been proportionate, as the domestic courts had allowed the claims only in part. Furthermore, they had reduced the fine in respect of the court fees and fees for legal aid. In addition, the applicant had never challenged the amount of the damages awarded before the domestic courts. They also submitted that the retraction penalty had been proportionate, since providing an opportunity to rebut the accusations in the same forum where they had been made could reasonably be considered to be in line with the principles established in the Court's case-law (they referred to *Vitrenko and Others*, cited above).

(b) The Court's assessment

(i) Whether there has been an interference

80. The Court finds that holding the applicant liable for the publication of the impugned article constituted an interference with his right to freedom of expression. It is also not in dispute between the parties.

81. The Court further notes that the applicant, 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*, cited above, § 62).

(ii) *Whether the interference was “prescribed by law”*

82. The Court notes that the Government and the domestic courts in their decisions in the defamation proceedings relied on sections 26, 37 and 42 of the Press Act, sections 47 and 49 of the Information Act, and Article 277 of the CCU (see paragraphs 34, 36 and 37 above). Those provisions envisaged both the penalty of retraction of inaccurate information and compensation in respect of damage caused thereby.

83. The Court considers, therefore, that the interference at issue was prescribed by law, namely the relevant provisions of the Press Act and Information Act (see paragraphs 36 and 37 above) and that the applicant’s submissions regarding alleged lack of clarity on some of the relevant points (see paragraph 64 above) concern questions which may arise in the analysis of the interference’s necessity in a democratic society.

(iii) *Whether the interference pursued a “legitimate aim”*

84. The domestic courts, deciding on claims that the publication of the relevant excerpts of the article had infringed the claimants’ reputation, as well as the authority and impartiality of the judiciary at large, relied on the law protecting individuals from defamation and prescribing liability for defamation of the honour and dignity of others.

85. The Court accepts that the interference with the applicant’s right to freedom of expression pursued the legitimate aims of protection of the reputation or the rights of others and maintaining the authority of the judiciary (see paragraph 53 above).

86. It remains to be determined whether that interference was “necessary in a democratic society”.

(iv) *“Necessary in a democratic society”*

(α) Relevant case-law principles regarding the defamation proceedings

87. In order to determine whether the interference was “necessary in a democratic society”, the Court must ascertain whether it met a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10 of the Convention (see *Perinçek*, cited above, § 196, and *Peruzzi v. Italy*, no. 39294/09, § 45, 30 June 2015).

88. The Court’s task, in exercising its supervisory jurisdiction, is not, however, to take the place of the competent national authorities, but rather to

review under Article 10 of the Convention the decisions they have delivered pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference are “relevant and sufficient” and whether the interference was “proportionate to the legitimate aims pursued” (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI) and in so doing, the Court has to satisfy itself that the national authorities, basing their decisions on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see *Perinçek*, cited above, § 196, *Peruzzi*, cited above, §§ 46-47, and the references therein).

89. The Court reiterates that, in assessing the proportionality of the interference, the nature and severity of the sanctions imposed are also factors to be taken into account. As the Court has previously pointed out, interference with freedom of expression may have a chilling effect on the exercise of that freedom. The relatively moderate nature of a criminal fine (see *Mor v. France*, no. 28198/09, § 61, 15 December 2011) does not suffice to negate the risk of a chilling effect on the exercise of freedom of expression. Generally speaking, while it is legitimate for the institutions of the State, as guarantors of the institutional public order, to be protected by the competent authorities, the dominant position occupied by those institutions requires the authorities to display restraint in resorting to criminal proceedings (see *Morice*, cited above, § 127, with further references).

- (β) Criteria relevant for the balancing exercise between the applicant’s right to freedom of expression and the necessity to maintain the authority of the judiciary

90. The Court has previously identified a number of criteria which are relevant when balancing the right to freedom of expression against the necessity to maintain the authority of the judiciary (see, for instance, *Benitez Moriana and Iñigo Fernandez v. Spain*, nos. 36537/15 and 36539/15, §§ 44-45 and 47-49, 9 March 2021) and which are to be applied by the domestic courts (see *Goryaynova v. Ukraine*, no. 41752/09, § 52, 8 October 2020).

91. The Court considers the following criteria relevant to the examination of the particular circumstances of the present case: (i) contribution to a debate on a matter of public interest; (ii) nature of the impugned publication and reasoning of the domestic courts; (iii) nature and severity of the penalty imposed.

92. Accordingly, the Court will now proceed to analyse the above-mentioned criteria in the light of reasoning provided by the domestic courts in their decisions.

– *Contribution to a debate on a matter of public interest*

93. The Court first observes that the article in question, including the statements in paragraphs 8 and 9, discussed alleged practices of bribery at the domestic courts, a topic which was clearly of legitimate interest to the general public but at the same time, if treated in a defamatory manner, was capable of undermining the authority of the judiciary.

94. The Court reiterates that questions concerning the functioning of the judiciary fall within the public interest, so a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded; on the other hand, judges must be protected from destructive attacks and the authority of the judiciary should be maintained (see paragraphs 43 and 44 above).

95. The Court notes that in the present case the domestic courts did not examine at all whether the publication concerned an issue of public interest, concentrating solely on the veracity of the impugned statements and the harm to the judges' reputation. In this respect, the Court observes that paragraphs 8 and 9 specifically mentioned two courts – the Donetsk Regional Commercial Court and the Donetsk Commercial Court of Appeal – where all of the claimants worked as judges. The Court agrees that the statements used by the authors in paragraphs 8 and 9 suggested the existence of illegal practices in the afore-mentioned courts which could constitute criminal offences. Given the seriousness of the allegation, those statements were capable of undermining the authority of the judiciary. However, by omitting to analyse the importance of the issue of public interest in the dispute, the domestic courts failed to take into consideration the essential function that the press fulfils in a democratic society (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July*, cited above, § 62) and engage in a balancing exercise regarding the need to maintain the authority of the judiciary. Such analysis was of particular importance given the subject matter of the publication – alleged illegal judicial conduct and, hence, the authority of the judiciary.

– *Nature of the impugned publication and reasoning of the domestic courts*

96. The Court observes that the applicant, a journalist, was held civilly liable for an article published in a newspaper, in particular, the claimants stressed that the statements contained in paragraphs 8 and 9 of the article had undermined the authority of the judiciary. Thus, in their decisions the domestic courts relied heavily on the finding that the impugned statements were not value judgments but consisted of factual information. While mindful of the need to make a careful distinction between statements of facts and value judgments (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI), the Court considers that the thrust of the present case is not the distinction between statements of facts and value judgments as such, but

the fact that the applicant was found liable for having reported the opinion of a third party, namely Ch. (see *Novaya Gazeta and Milashina v. Russia*, no. 45083/06, §§ 70, 73, 3 October 2017).

97. The Court takes note that paragraph 8 of the article began with the phrase “by the way, ... [Ch.] conducted an investigation and came to the conclusion that ...” It continued with the phrases “in a letter to the ... [Ch.] set out ...” and “as proof, [Ch.] cited ...” framing the very statements that constituted the subject matter of the defamation proceedings. The Court therefore concludes that the above paragraph consisted of the applicant’s reporting on Ch.’s actions and opinions.

98. As to paragraph 9 of the article, the Court attaches importance to the fact that it was published, as was indeed established by the domestic courts (see paragraph 27 above), in the form of an interview. Given that the paragraph in issue started with a direct quote of Ch. (“The reason for my address to the *Verkhovna Rada* – said [Ch.] – was case no. 8/55”) and, taking note of the wording that follows, the author simply reproduced the statements made by Ch. Indeed, at the court hearing Ch. confirmed that the statements were based on information provided by him (see paragraph 27 above).

99. The Court reiterates that the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper a contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

100. The Court further notes that news reporting based on interviews or reproducing the statements of others, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of “public watchdog” (see, for instance, *Observer and Guardian*, cited above, § 59). In such cases, a distinction needs to be made according to whether the statements emanate from the journalist or are quotations from others (see *Thorgeir Thorgeirson*, cited above, § 65; *Jersild*, cited above, § 35; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 77, ECHR 2004-XI).

101. Taking note of the above case-law, the Court observes that in the present case the domestic courts failed to distinguish between the statements made by Ch. and the reporting of such statements by the applicant by not having elaborated on whether the applicant could be held responsible under the relevant law for relaying that person’s statements while making it clear who the author was (see paragraph 27 above). As a result, the applicant was held liable for the statements that did not emanate from him but were clearly identified as proffered by another person (see *Gazeta Ukraina-Tsentr*, cited above, § 52).

102. The Court further notes that the concept of responsible journalism requires that journalists check the accuracy and reliability of information

provided to the public to a reasonable extent as well as comply with the law while carrying out their professional activities (see paragraph 42 above).

103. The Court points out that it was not alleged that the applicant had obtained the information in question by unlawful means. The domestic courts concluded that the applicant had failed to verify the information contained in the impugned statements before its publication and had thus failed to comply with his journalistic duties (see paragraph 28 above). However, in both his written submissions and at the hearings before the domestic courts, the applicant submitted that before publication of the article he had checked that the letter containing the statements and opinions expressed by Ch. had indeed been sent by the latter to the competent State authorities (see paragraphs 24, 27 above). In addition, Ch.'s allegations were corroborated with the case file materials of several cases examined by the courts mentioned in the article, and the applicant had discovered this in the context of his own journalistic investigation, publishing a series of analytical articles on the subject (see paragraphs 24, 27 above). The applicant submitted copies of these materials to the courts examining the defamation claim. Nonetheless, the domestic courts failed to provide adequate reasoning while dismissing, in a very formalistic manner, the applicant's arguments in this regard (see paragraphs 27, 31 above). The domestic courts referred to the fact that upon examination of Ch.'s allegations by the State Security Service, no proof of the existence of criminal activities in the courts in question had been found (see paragraph 27 above); however, they did not provide any important details as to the scope of such examination, did not rely on any documents and, importantly, did not clarify the relevance of the examination of Ch.'s allegations by the State Security Service, which post-dated the impugned publication, to the applicant's liability for defamation for having reported Ch.'s statements.

104. The Court notes that in view of the applicant's submissions before the domestic courts, it could be concluded that, since in paragraphs 8 and 9 of the impugned publication he had reported on the Ch's allegations brought before the domestic authorities, the applicant had duly verified the fact that Ch. had indeed made such allegations. The Court finds that the domestic courts did not provide relevant and sufficient reasoning demonstrating that the applicant had not acted with the due diligence expected of a responsible journalist reporting on a matter of public interest (see *Erla Hlynisdóttir v. Iceland*, no. 43380/10, § 72, 10 July 2012, and *Björk Eiðsdóttir v. Iceland*, no. 46443/09, § 81, 10 July 2012) or specified any actions that had been expected from the applicant as a journalist in such circumstances.

– *Nature and severity of the penalty imposed*

105. The Court observes that the nature and severity of the penalties imposed are further factors to be considered when assessing the proportionality of an interference. Furthermore, the Court must be satisfied

that the penalty does not amount to a form of censorship intended to discourage the press from expressing criticism. In the context of a debate on a topic of public interest, such a sanction is likely to deter journalists from contributing to public discussion of issues affecting the life of the community. By the same token, it is liable to hamper the press in performing its task as purveyor of information and public watchdog (see *Bédat*, cited above, § 79).

106. The Court observes that in the present case the applicant was ordered to pay EUR 331 in respect of non-pecuniary damage. While this amount undoubtedly was not unusually high, it was not symbolic or insignificant in Ukraine at the relevant time. Furthermore, the domestic courts ordered the removal of the article from the website and the publication of a retraction.

107. The Court reiterates that where fines are concerned, the relatively moderate nature of this type of sanction would not suffice to negate the risk of a chilling effect on the exercise of the right to freedom of expression (see *Morice*, cited above, § 176). In these circumstances the fact that the proceedings were civil rather than criminal in nature, and that the amount of compensation which the applicant was ordered to pay was relatively moderate, does not diminish the importance of the failure by the domestic courts to base their decisions “on an acceptable assessment of the relevant facts” and to adduce “relevant and sufficient” reasons that brings the Court to the conclusion that the interference complained of was not “necessary in a democratic society” (see, for a similar finding, *Godlevskiy v. Russia*, no. 14888/03, § 48, 23 October 2008).

– *Conclusion*

108. The afore mentioned leads the Court to conclude that the reasons that the domestic courts adduced to justify the interference with the applicant’s rights were not “relevant and sufficient”, in particular, due to their failure to address key elements of the case. The Court further finds that the domestic courts cannot be said to have “applied standards which were in conformity with the principles embodied in Article 10” or to have “based themselves on an acceptable assessment of the relevant facts” (see *Cumhuriyet Vakfi and Others*, cited above, §§ 67-69, and *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 2)*, no. 21666/09, § 54, 7 January 2014). The Court is therefore not satisfied that the domestic courts performed a balancing exercise between the conflicting interests in the light of the above-mentioned factors.

109. It follows that the interference with the applicant’s right to freedom of expression was not “necessary in a democratic society”. Accordingly, there has been a violation of Article 10 of the Convention on account of the domestic courts’ decisions in the defamation proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. The applicant also complained under Article 6 § 1 and Article 14 of the Convention and Article 1 of Protocol No. 1 to the Convention of the unfairness of the court proceedings, of a violation of his intellectual property rights and of professional discrimination.

111. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the materials in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

112. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage. He stated that considerable harm had been done to his journalistic reputation as a result of the decisions of the domestic courts and he had been ostracised and discredited in professional circles, and that the newspaper had terminated its working relationship with him and he had been unable to get offers from other employers. He stated that he had been in a state of “depression and psychological stress”. He relied on the income he would have received from the newspaper had they not terminated his contract between 2005 and 2011.

115. The Government contested those claims, considering them unsubstantiated and exorbitant. They noted that the applicant had failed to demonstrate a direct causal link between the termination of his employment and the domestic proceedings in question, or with the loss of future income. Referring to the Court's decision in *Ilhan v. Turkey* ([GC], no. 22277/93, § 109, ECHR 2000-VII), they considered that the applicant's claims were of a largely speculative nature. They also considered the rest of his claims in this respect unsubstantiated.

116. The Court, ruling on an equitable basis, awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

117. The applicant also claimed 2,886.00 Ukrainian hryvnias (the equivalent of EUR 478.23 at the material time) in respect of his expenses for legal assistance, translation and postage.

118. The Government contested those claims, noting that the applicant had failed to provide any documents in respect of legal assistance he had allegedly received, such as a power of attorney or a contract for legal assistance. As to translation expenses, the Government noted that the receipts provided by the applicant did not prove that the respective amounts had been paid for translation services in the context of the proceedings before the Court. Lastly, the Government noted that the applicant had submitted supporting documents only in respect of part of the postal expenses claimed by him.

119. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 147 in respect of postal and translation expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

120. 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. *Declares* the complaints under Article 10 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 10 of the Convention on account of the domestic courts' decisions in the injunction proceedings;
3. *Holds* that there has been a violation of Article 10 of the Convention on account of the domestic courts' decisions in the defamation proceedings;
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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 147 (one hundred and forty-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 15 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President