



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

FIFTH SECTION

CASE OF SHABANOV AND TREN v. RUSSIA

(Application no. 5433/02)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shabanov and Tren v. Russia,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr R. MARUSTE,

Mr A. KOVLER,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 5433/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Sergey Mikhaylovich Shabanov and Mr Sergey Alimovich Tren (“the applicants”), on 10 August 2001.

2. The Russian Government (“the Government”) were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, a violation of their right to freedom of expression and a violation of their right to a hearing by a tribunal established by law.

4. By a decision of 23 November 2004, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1959 and 1963 and live in the town of Chernyakhovsk in the Kaliningrad Region. They are businessmen and founders of the *Pravo Znat* newspaper (“*The Right to Know*”).

A. Defamation action by Ms P.

6. On 27 April 2001 the applicants' newspaper published an article under the headline "What power costs: part 2" ("*Сколько стоит власть-2*"). The article gave a detailed account of the wages and benefits received by mid-range employees in the town council. The relevant extract read as follows:

"For the sake of clarity, let us look at the elements that make up the wages. Let's take, for example, those of the head of the legal department...

In total... 5,805 roubles.

Not bad for a twenty-year-old professional who recently graduated from a teachers' college."

7. Ms P., the head of the legal department, brought a defamation action against the applicants. She submitted that she possessed higher legal education and more than three years of relevant experience, and that the article had harmed her authority in that it had sown doubts as to her professional qualifications.

8. On 13 June 2001 the Chernyakhovsk Town Court of the Kaliningrad Region heard the claim and gave judgment. It found that the applicants had been aware of the identity of the head of the legal department and they had intended to expose a specific person, namely Ms P. The court established that Ms P. had been appointed to her position in September 2000 after having completed a course of higher legal education. It found as follows:

"Having indicated in the article the salary of the head of the legal department and having referred to a twenty-year-old professional just out of college, the [applicants] related inaccurate information, given that Ms P., whom the [applicants] described as having graduated from a teachers' college four years previously, was at the material time the head of the legal department and had higher legal education.

The article 'What power costs: part 2' implies that municipal employees receive high wages, paid out of the budget, and cites as an example a young professional with college-level education and no work experience.

The court considers that such information damages Ms P.'s professional reputation and honour, in that it was disseminated to a large readership and begs the conclusion that the position of head of the legal department is occupied by an employee who lacks the requisite qualifications and work experience, which undermines the authority of the local administration and of Ms P."

The court ordered the applicants to publish a rectification and pay 300 roubles (RUR, 12 euros (EUR)) each to Ms P.

9. On 20 June 2001 both applicants appealed against the judgment of 13 June 2001. They submitted that the information had not been proven to be untrue and that it had not undermined Ms P.'s authority. They also alleged a procedural violation, in that the case had been examined by a formation consisting of one professional judge and two lay judges, one of

whom, lay judge Ms Kr., had participated in a previous hearing on 5 February 2001, whereas lay judges could only sit in court once a year and for no longer than fourteen days.

10. On 18 July 2001 the Kaliningrad Regional Court confirmed the judgment of 13 June 2001. It upheld the District Court's findings that Ms P. had graduated from a teachers' college, but noted that this had occurred in 1997 and that, by the time of her appointment, she had also completed higher legal education. The court concluded that the article had been intended to cast a shadow of doubt on Ms P.'s professional fitness and had thus damaged her reputation. As to the alleged procedural violation, the court held that the applicants had not proved that the lay judge in question had sat for more than fourteen days and stated that their allegations had been based on an erroneous interpretation of the Lay Judges Act.

B. Defamation action by Mr K.

11. On 19 January 2001 the applicants' newspaper published an article by Mr V. under the headline "The army with wet feet" (*"Армия с мокрыми ногами"*). The article related the living conditions of soldiers in a military unit where almost two hundred men had fallen ill because Mr K., the unit commander, had not provided them with dry footwraps or arranged for a place to dry their boots.

12. Mr K. sued the applicants and Mr V. for the protection of his honour, dignity and professional reputation and claimed compensation for non-pecuniary damage. As evidence of the non-pecuniary damage sustained, Mr K. enclosed a medical certificate issued by a psychiatrist. The certificate was made available to the applicants in their capacity as defendants.

13. On 13 July 2001 the newspaper published a follow-up article "There are different kinds of syndromes. But still no footwraps" (*"Синдром синдрому рознь. И без портянок"*). The article commented on various aspects of Mr K.'s statement of claim. The relevant part read as follows:

"So, our character '*...had to visit a psychiatrist on 13 February 2001...*'. 'Intellect with no peculiarities', noted the doctor, [who] found that K. had ... moderately pronounced asthenia syndrome and prescribed treatment. Asthenia means impotence, a kind of disease. It means that the commander of the regiment is not quite healthy. Or quite unhealthy?"

14. Mr K. subsequently supplemented his original statement of claim with a complaint about the publication of information on his state of health, which, in his opinion, was an unjustified interference with his right to respect for private life.

15. On 25 September 2001 the Chernyakhovsk Town Court of the Kaliningrad Region gave its judgment. The court established that the facts concerning the mass outbreak of illness among soldiers, described in the article of 19 January 2001, were accurate and dismissed Mr K.'s action in

this part. However, it established that Mr K. had referred to his visit to a psychiatrist in his statement of claim, that only a limited number of people had access to the case file, and that Mr K. had not consented to having his diagnosis published in a newspaper. The court concluded that the article of 13 July 2001 violated Mr K.'s personal non-pecuniary rights, namely the right to inviolability of one's private life and personal and family secrets, which was protected by the Constitution. Relying on Article 151 of the Civil Code, it awarded him RUR 1,500 (EUR 55) and RUR 1,000 (EUR 37) against the first and second applicants respectively.

16. On 24 October 2001 the Kaliningrad Regional Court upheld on appeal the judgment of 13 July 2001. The court dismissed the applicants' argument that the public should have been informed of Mr K.'s state of health because he was the commander of a military unit.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

17. Article 29 of the Constitution of the Russian Federation guarantees freedom of ideas and expression, as well as freedom of the mass media.

B. Civil Code of the Russian Federation (of 30 November 1994)

18. The relevant provisions of the Civil Code read as follows:

Article 150. Incorporeal assets

“1. An individual's life and health, dignity, personal integrity, honour and goodwill, professional reputation, the inviolability of one's private life, personal and family secrets, the right to liberty of movement and to choose one's place of temporary and permanent residence, the right to a name, copyright, other personal non-property rights and other incorporeal assets which a person possesses by virtue of birth or by operation of law shall be inalienable and untransferable by any means...”

Article 151. Compensation for non-pecuniary damage

“If certain actions impairing an individual's personal non-property rights or encroaching on other incorporeal assets caused him or her non-pecuniary damage (physical or mental suffering)... the court may impose on the perpetrator an obligation to pay pecuniary compensation for that damage...”

Article 152. Protection of honour, dignity and professional reputation

“1. An individual shall be entitled to claim, before a court, a rectification of information damaging his honour, dignity and professional reputation, unless the person who disseminated the information proves that it was true...

5. The individual about whom information damaging to his or her honour, dignity and professional reputation was disseminated shall be entitled to claim, in addition to rectification, compensation for pecuniary and non-pecuniary damage caused by the perpetrator.”

C. Lay Judges Act

19. On 10 January 2000 the Federal Law on Lay Judges of Federal Courts of General Jurisdiction in the Russian Federation (“the Lay Judges Act” or “the Act”) came into effect. By section 1 (2) of the Act, lay judges are persons authorised to sit in civil and criminal cases as non-professional judges.

20. Section 2 provides that lists of lay judges must be compiled for every district court by local self-government bodies, such lists being subject to confirmation by the regional legislature. Section 5 determines the procedure for the selection of lay judges. It provides that the president of a district court is to draw random lots from a list of lay judges assigned to that court. The number of lay judges assigned to every professional judge should be at least three times as many as that needed for a hearing.

21. By section 9, lay judges are to be called to serve in a district court for a period of fourteen days, or as long as the proceedings in a particular case last. Lay judges may only be called for service once a year.

D. The RSFSR Code of Civil Procedure

22. Civil cases may be examined by a formation comprising two lay assessors and a professional judge. In the administration of justice lay assessors enjoy the same rights as professional judges (Article 6).

23. Civil proceedings are public in all cases, except where a hearing in private is necessary for the protection of information concerning State secrets, intimate details of parties' lives or the confidentiality of adoption (Article 9).

24. Written evidence is read out in open court and made available to the parties and their representatives (Article 175).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

25. The applicants complained under Article 6 of the Convention that on 13 June 2001 the Chernyakhovsk Town Court of the Kaliningrad Region had not been composed in accordance with the law. The relevant parts of Article 6 § 1 read:

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

A. Submissions by the parties

26. The applicants indicated that the lay judge Kr. had not been drawn by lot as required by section 5 § 5 of the Lay Judges Act and that the general list of lay judges of the Chernyakhovsk Town Court had not been ratified by the regional legislature (section 2 of the Act). They considered therefore that lay judge Kr. lacked a legal basis to sit on the formation.

27. The Government submitted that there had been no procedural irregularities in the proceedings because it was not shown that lay judge Kr. had served in the district court for more than fourteen days in breach of section 9 of the Lay Judges Act.

B. The Court's assessment

28. The Court reiterates that the phrase “established by law” covers not only the legal basis for the very existence of a “tribunal” but also the composition of the formation in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000). The Court is therefore required to examine allegations such as those made in the present case concerning a breach of the domestic rules for appointment of judicial officers. The fact that the allegation in the present case concerned lay judges does not make it any less important since, pursuant to Article 6 of the Code of Civil Procedure then in force, in their judicial capacity lay judges enjoyed the same rights as professional judges (see paragraph 22 above).

29. The Court recalls that it has found a violation of Article 6 § 1 of the Convention in a similar case (see *Posokhov v. Russia*, no. 63486/00, §§ 40-44, ECHR 2003-IV). The finding of a violation was made against the background of “the apparent failure to observe the requirements of the Lay Judges Act regarding the drawing of random lots and two weeks' service per year” and the domestic authorities' admission that there had been no lists of lay judges before the Regional Legislature approved a list of lay judges. The

combination of these circumstances led the Court to conclude that the district court which heard the applicant's case had not been a tribunal "established by law".

30. The Court notes that substantially similar circumstances were also present in the instant case. In their statement of appeal the applicants submitted that lay judge Kr., who was in the court's formation on 13 June 2001, had previously participated in the hearing of another civil case on 5 February 2001. That submission, which was not disputed by the appeal court or by the respondent Government, begs the conclusion either that the maximum permitted fourteen-day period of service had been significantly exceeded or that lay judge Kr. had been called for service more than once in the same year. In either case this amounted to a breach of the rules for the selection of lay judges established in section 9 of the Lay Judges Act (see paragraph 21 above). Furthermore, the Government failed to show that the requirements of the Lay Judges Act had been complied with as regards the drawing of judges' names by lot and the mandatory ratification of the subsequent list by the regional legislature. In fact, the Government did not produce any document setting out the legal grounds for her participation in the administration of justice.

31. The above considerations do not permit the Court to conclude that the Chernyakhovsk Town Court that issued the judgment of 13 June 2001 could be regarded as a "tribunal established by law". The Kaliningrad Regional Court, in its review of the matter on appeal, did nothing to eliminate the above-mentioned defects.

32. There has been therefore a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

33. The applicants complained that the judgments of 13 June and 25 September 2001 violated their right to impart ideas and information under Article 10 of the Convention, which provides 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...

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. Submissions by the parties

34. The applicants maintained that the information in both articles had been true and accurate to the best of their knowledge and had not impaired the plaintiffs' honour or reputation.

35. The Government submitted, without specifying to which judgment their submissions referred, that the domestic courts had been guided by Article 152 of the Civil Code. The Government also referred to Article 17 of the Russian Constitution, according to which the exercise of rights and freedoms must not encroach on other persons' rights. In the present case, the applicants' articles encroached on Ms P.'s and Mr K.'s right to be protected from the dissemination of information damaging to their honour, dignity and professional reputation.

B. The Court's assessment

1. Proceedings instituted by Ms P.

36. In the proceedings instituted by Ms P., an award of damages was made against the applicants for creating the impression that Ms P. was not qualified for her job. In particular, the applicants wrote that Ms P. occupied the position of head of the legal department although she had only recently graduated from a teachers' college. The domestic courts found that Ms P. had in fact completed a course of higher legal education.

37. It is undisputed that the award of damages represented an interference with the applicants' freedom of expression which pursued the legitimate aim of the protection of the reputation of others.

38. The applicants disagreed that the interference was "prescribed by law" because their liability under Article 152 of the Civil Code could only be engaged in the case of publication of inaccurate statements. As the facts mentioned in the article – such as Ms P.'s age and her graduation from a teachers' college – were not found to have been untrue, they could not have been held responsible.

39. The Court is not convinced by the applicants' contention. It reiterates that it is primarily the task of national authorities to apply and interpret domestic law (see, for example, *Tammer v. Estonia*, no. 41205/98, § 38, ECHR 2001-I). The application of the domestic law on defamation in the present case does not appear unreasonable or unforeseeable. The aim of legal provisions on defamation is the protection of individuals against falsehoods liable to tarnish their reputation. A falsehood may be communicated by stating untrue facts, but also by leaving out true facts which, had they been stated, could have significantly altered the perception of the matter. The applicants in the present case incurred liability for having

failed to inform the readership about Ms P.'s legal education. The Court accordingly considers that the interference was “prescribed by law”.

40. As to whether the interference was “necessary in a democratic society”, the Court recalls that Article 10 of the Convention protects journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; *Schwabe v. Austria*, judgment of 28 August 1992, Series A no. 242-B, § 34; and *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, § 37). The applicants' publication discussed the adequacy of remuneration of civil servants, which was undeniably a matter of general interest.

41. By their publication, the applicants sought to convey the view that Ms P., head of the legal department, earned a high salary which was not justified by her educational background and age. The Court reiterates that even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II). In the present case it appears that the applicants did not approach Ms P. for comments before publication and did not verify the information about her education. They presented an incomplete factual account to their readership, suggesting that Ms P. was insufficiently qualified for her post. In these circumstances, the Court considers that the applicants' article, in so far as it concerned Ms P., was not a fair comment on a topic of general interest but rather a gratuitous attack on Ms P.'s reputation. In these circumstances, the amount of the award for damages does not appear excessive.

42. In view of the above considerations and having regard to the margin of appreciation afforded to the national authorities, the Court takes the view that the interference complained of was proportionate to the legitimate aim pursued and that the reasons advanced by the domestic courts were sufficient and relevant to justify it.

There has therefore been no violation of Article 10 of the Convention in the proceedings instituted by Ms P.

2. Proceedings instituted by Mr K.

43. Mr K., a military officer, had initially sued the applicants for disseminating untrue information about conditions of service in the military unit under his command. He then added a claim for damages incurred through publication of his diagnosis by the applicants. Whereas the courts rejected the defamation claim, finding that the information had been true,

they ordered the applicants to pay damages to Mr K. for an interference in his private life.

44. This interference with the applicants' freedom of expression was prescribed by law, notably Article 151 of the Civil Code, governing judicial protection of "personal non-pecuniary rights", including a right to the inviolability of one's private life, and pursued the legitimate aim of the protection of the rights of others. In the domestic courts' view, it was also necessary in order to prevent the disclosure of information received in confidence. Had it not been for the applicants' publication, Mr K.'s medical information would have remained in the case file, to which few people had access.

45. Assessing the proportionality of the interference to the legitimate aim pursued, the Court observes at the outset that Mr K. voluntarily produced the medical certificate in the defamation proceedings as evidence of the moral damage caused to him by the applicants' first publication. These proceedings were conducted in public, as required by Article 6 of the Convention and Article 9 of the RSFSR Code of Civil Procedure, and Mr K. did not ask that hearings be held in private. The present case is therefore distinguishable from the cases concerning disclosure of medical information for reasons beyond the interested party's control (see, among others, *Editions Plon v. France*, no. 58148/00, ECHR 2004-IV; *Z v. Finland*, judgment of 25 February 1997, *Reports* 1997-I; and *M.S. v. Sweden*, judgment of 27 August 1997, *Reports* 1997-IV).

46. The Court has therefore to determine whether the domestic courts struck the right balance between the need to protect Mr K.'s private life and the applicants' right to freedom of expression. It has been the Convention organs' constant approach that the claim to respect for private life is automatically reduced to the extent that an individual brings his private life into contact with public life. Thus, communication of statements made during public proceedings was not considered as giving rise to an interference with private life (see *X. v. the United Kingdom*, no. 3868/68, Commission decision of 25 May 1970, 34 Coll. 10; and, more generally, *Friedl v. Austria*, no. 15225/89, Commission's report of 19 May 1994, § 44). When people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor. It is also relevant whether the individual voluntarily supplied the information and whether he could reasonably anticipate the later use made of the material (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 57, ECHR 2001-IX; *Lupker v. the Netherlands*, no. 18395/91, Commission decision of 7 December 1992; *Peck v. the United Kingdom*, no. 44647/98, § 62, ECHR 2003-I; and *Perry v. the United Kingdom*, no. 63737/00, § 42, ECHR 2003-IX (extracts)).

47. In the present case Mr K. submitted the medical certificate in the proceedings concerning his defamation claim. He did so on his own initiative with a view to corroborating his claim for non-pecuniary damage. The document was made available to the applicants in their capacity as defendants and it must be assumed that it was read out in court as part of the written evidence, in accordance with the procedural requirements stipulated in the RSFSR Code of Civil Procedure. Thus, the information was accessible not only to the parties to the case but also to those members of the general public present in the courtroom. Admittedly, Mr K. could not have reasonably expected that the information in the medical certificate would be afforded the same degree of protection in the public judicial proceedings as that enjoyed by confidential medical material held in private files. However, its publication and dissemination by the applicants in a newspaper had the result of attracting the attention of the public at large, prior even to the court hearing in the pending case. The domestic courts reached the conclusion that, notwithstanding the fact that the plaintiff (Mr K.) had himself filed the medical certificate, the applicants were required to pay compensation to Mr K. for a breach of his right to private life and to personal and family secrets (see paragraph 15 above). The Court notes the differing contexts of “public” statements made before a domestic court and the publicity which results from publication in a newspaper. Further, the importance and significance of facts can vary, depending on the circumstances. It would underline that the domestic courts are better placed to assess the impact of contextual differences in a given case (see *Lešník v. Slovakia*, no. 35640/97, §§ 51, 52, 55, ECHR 2003-IV).

48. As to the aim of the applicants' article, the Court does not doubt the importance of public debate on the way in which the armed services function. It is also true that the Kaliningrad Regional Court (see paragraph 16 above) did not accept the applicants' contentions that the public should be informed of the state of Mr K.'s health. Moreover, it is clear from the text of the article in *Pravo Znat* that, when commenting on Mr. K.'s health, the applicants were making a gratuitous attack on Mr K. rather than trying to raise a legitimate issue of public concern. Having regard to all the circumstances of the case, the Court finds nothing inherently untenable in the first-instance court's assessment that the article has breached Mr K.'s rights.

49. Finally, it is noteworthy that the domestic courts' orders of compensation (RUR 1,500 and 1,000 against the first and second applicants respectively) were relatively modest.

50. In the light of these considerations, it cannot be said that the decisions of the domestic courts overstepped the margin of appreciation afforded to them. Thus, the Court accepts that the interference complained of was not disproportionate to the legitimate aim pursued and can therefore

be considered “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention.

Accordingly, there has been no violation of Article 10 of the Convention in the proceedings instituted by Mr K.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicants claimed 2,000 euros (EUR) in respect of compensation for non-pecuniary damage. Mr Tren also claimed EUR 1,940, representing the value of his share in the newspaper, which he had allegedly been forced to sell in July 2004.

53. The Government pointed out that there was no causal link between the alleged violation and the sale of Mr Tren's share and that the amounts claimed were excessive.

54. The Court is not convinced that there existed a causal link between the violation found and the sale of Mr Tren's share. Accordingly, it rejects the claim in respect of pecuniary damage. On the other hand, it considers that the applicants must have incurred non-pecuniary damage which is not sufficiently compensated by a finding of a violation. Making an assessment on an equitable basis, it awards each applicant EUR 500 as compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

55. The applicants did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 of the Convention;
2. *Holds* unanimously that there has been no violation of Article 10 of the Convention in the proceedings instituted by Ms P.;
3. *Holds*, by four votes to three, that there has been no violation of Article 10 of the Convention in the proceedings instituted by Mr K.;
4. *Holds* unanimously
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Mr P. Lorenzen, Mr R. Maruste and Mr J. Borrego Borrego, is annexed to this judgment.

P.L.
C.W.

JOINT PARTLY DISSENTING OPINION OF JUDGES LORENZEN, MARUSTE AND BORREGO BORREGO

We disagree with the majority's assessment of the defamation action brought by Mr K.

We accept that Mr K. was under no legal obligation to submit information about his visit to a psychiatrist during the defamation proceedings. He did so on his own initiative, apparently seeking to convince the court that the applicants' first publication had perturbed him and caused him damage. However, as the majority rightly stressed, the document was made available to the applicants in their standing as defendants and it must be assumed that it was read out in court as part of the written evidence, in accordance with the procedural requirements of the RSFSR Code of Civil Procedure. Thus, the information was accessible not only to the parties to the case but also to those members of the general public present in the courtroom. Although the applicants' publication of it undeniably contributed to wider dissemination of the information in question, Mr K. could not reasonably have expected that it would be afforded the same degree of protection as that enjoyed by confidential medical material held in private files. For that reason we cannot subscribe to the domestic courts' finding that the applicants should be liable for the disclosure of information received in confidence.

Admittedly, the applicants commented on Mr K.'s visit to a psychiatrist in a jesting way, implying that he might be not fit for military command. In this connection the Court has reiterated that journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, § 38). We are of the opinion that the impugned publication did not resort to offensive or intemperate language and did not go beyond a generally acceptable degree of exaggeration or provocation. Granted, the commanding officer of a regiment is not a politician. However, he is certainly a public figure, who has authority over 200 soldiers and is responsible for their wellbeing. Consequently, he is also subject to closer than usual public scrutiny and criticism.

Further, we would note that the problems faced by the military command and the professional aptitude of military personnel are issues of general interest, on which journalists have the task of informing the general public (see, *mutatis mutandis*, *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, § 63). We recall that, in this particular case, that interest was further aroused by the fact that a very large number of soldiers had fallen ill. The mental health problems of a military officer with more than two hundred conscripts under his command was undeniably a matter of general and particular public concern. We consider that public

concern about the facts involved in this case overweighs the individual interests.

In these circumstances, we find that the domestic courts did not convincingly establish any “relevant and sufficient” reasons for giving priority to the protection of Mr K.'s personality rights, rather than to the applicants' right to freedom of expression and to the general interest in promoting that freedom. Accordingly, the interference complained of was not “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention. There has therefore been a violation of Article 10 of the Convention in connection with the proceedings instituted by Mr K.