



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

THIRD SECTION

CASE OF DYUNDIN v. RUSSIA

(Application no. 37406/03)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Dyundin v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Anatoly Kovler,

Alvina Gyulumyan,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 37406/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vyacheslav Alekseyevich Dyundin (“the applicant”), on 18 October 2003.

2. The applicant was represented by Ms A. Soboleva and Mr V. Monakhov, lawyers practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of his right to freedom of expression.

4. On 13 December 2005 the Court decided to communicate the complaint to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1952 and lives in the town of Orsk in the Orenburg Region. He is a journalist.

A. The publication

6. On 21 August 2002 the applicant published an article in issue no. 128\382 of the *Orskiy Vestnik* newspaper. The article appeared under the headline ‘Tortured suspects confessed to the theft they had not committed’ (*“Под пыткой подозреваемые сознались в краже, которой не совершали”*). It concerned an investigation into the theft of property of a private company. The company director had identified three of his former employees as prime suspects. Mr S., one of those three, had gone to the Leninskiy District police station of his own will to clear himself of suspicion. The story then switched to a first-person narrative by Mr S., which was preceded by the author’s statement, in bold and in italics: “I switched on the dictaphone recording of S[.]’s story”.

7. Mr S. said that he had been detained overnight at the Leninskiy District police station. The following morning he had been brought to an office where five police officers had been present; Mr G. had been among them. Mr S. continued as follows:

“It was a Saturday. **They [the police officers] planned to go to a wedding party after lunch; they reeked of fresh alcohol, it looked like they had already been drinking.** They discussed how to torture me - using a crow-bar or otherwise? They tied me to a chair, my legs fastened to the chair legs and my arms cuffed behind the chair back. At first they punched me in the chest with their fists, it hurt. I was in a state of shock. Then, **a sudden, stunning blow to the neck...** I could not see who delivered the blow and with what object. Someone said: ‘What now? The crow-bar?’ **G[.] says: ‘Well, but do not stain my table’.** And he took all the magazines off the table. One of them, who squinted a bit, took out a tool that looked like a tyre lever. I do not know how they wanted to torture me. **G[.] says: ‘No, let’s try a gas mask first’. They put a gas mask on me...** I could not breathe in or out, I felt faint and my head shook...” (emphasis added, see below).

8. The article further continued to relate Mr S.’s story as told by him. After a while Mr S. had signalled his readiness to confess. He had been taken to the office next door, where a young man in civilian clothes had written down his statements. Thereafter, Mr S. had been locked in the basement cell of the police station.

Switching back to author’s speech, the applicant introduced Mr M., a friend of Mr S., who had gone to the police station to confirm Mr S.’s alibi. With the words “Let us give [M.] the floor”, the story continued as narrated by Mr M.:

“At the Leninskiy District police station they took me into office no. 18 on the second floor. The interview was conducted by the investigator G[.], a tall athletic man with red hair.

– Where is the snatch?

– What snatch?

– ...Your friends have already confessed. You are the ‘weak link’. **You are an ‘MDP’ – a morally degraded person...**

He began beating me. Every word was followed by a blow...

– Where is the loot? You will tell me! **I am a paratrooper.** I used to crush people like you and I will do the same to you! **Ever heard about disappearances? You will be one of them if you do not give back the loot!**

...I heard that if the police accidentally break the leg or arm [of a detainee], operational officers have to finish the victim off and secretly bury him so as to hide the traces of torture...

G[.] says: ‘Stop talking like a parrot. Counsel, counsel... Counsel will be at trial, but now you are under pre-trial investigation. **Take him to the cell where the faggots are!** They are hungry, let them explain to him what he is.’ But he did not hit me. Just banged his fist on the table. As if they started to realise that they had made a mistake and were at a loss what to do next.” (emphasis added, see below).

9. In the conclusion the applicant quoted from a medical report which noted multiple bruises and abrasions on Mr S.’s body. He criticised the passive attitude of supervising prosecutors who had refused to initiate a criminal case against Mr G. and the other police officers, and noted that the prosecutors’ refusals were being appealed against to a court. The real perpetrator had later been identified and convicted of the theft.

B. Civil action for defamation

10. The senior operational officer of the Leninskiy District police station, Mr G. sued the applicant and the newspaper’s founder for defamation before the Leninskiy District Court of Orsk. Considering that the extracts in bold above were untrue and damaging to his honour, dignity and professional reputation, he sought compensation for non-pecuniary damage and legal costs. He denied that he had ever used violence against Mr S. or Mr M.

11. The applicant maintained that the contested extracts had been a verbatim reproduction of the personal stories of Mr S. and Mr M. and represented their value judgments on these events. He had acted in good faith and verified that neither Mr S. nor Mr M. had a reason to slander or denigrate Mr G. The extracts either did not refer to Mr G. personally (such as “they reeked of fresh alcohol...”) or did not contain any information damaging to his reputation (such as the statement about him being a paratrooper). The applicant produced in evidence a dictaphone recording of his conversation with Mr S., when Mr M. had been also present. He also relied on the medical report noting Mr S.’s injuries, on the records of the confessions made by Mr S. and Mr M. at the Leninskiy District police station, and on their complaints about ill-treatment lodged with the prosecutor’s office.

12. The District Court took oral evidence from Mr S. and Mr M. Mr S. confirmed the accuracy of the story as reproduced in the article. Responding to questions from both parties, he testified that police officers but not Mr G. had reeked of alcohol, that he had been tied to a chair, that Mr G. had indeed warned them against staining his table, that Mr G. had not used violence against him but had been “merely present”. Mr M. also confirmed his story as narrated in the article.

13. On 29 April 2003 the Leninskiy District Court of Orsk granted Mr G.’s action in part. It noted firstly that the applicant and the newspaper could not claim an exemption from liability for defamation on the ground that they had merely reproduced statements made by others, because no such exemption was provided for in the Mass Media Act. Accordingly, they were required to prove the accuracy of the contested statements. However, in the District Court’s view, neither the medical reports noting injuries on Mr M.’s and Mr S.’s bodies, nor their interview records, nor their oral testimony could be considered relevant evidence or proof of the truthfulness of the allegations that Mr G. had tortured them or made intimidating remarks.

Furthermore,

“...it follows from S[.]’s oral testimony that G[.] had not been in an inebriated state during the interview, that he had not suggested using a gas mask, that he had not resorted to physical violence and that S[.] had not told [the applicant] about that. A comparison of the dictaphone recording of S[.]’s story with the narrative in the article leads to the conclusion that the events were retold in the article in a different chronological order and that the author creatively rewrote S.’s statements, increasing the emotional intensity and emphasising G[.]’s leading part in the use of violence towards the detainees.”

14. The District Court, however, accepted that the statement about Mr G.’s being a paratrooper was not damaging to his reputation and that Mr M.’s statement about the victims being “finished off” by the police did not concern Mr G. personally. The remaining extracts were found damaging to his reputation and liable to rectification.

15. The District Court awarded Mr G. 2,000 Russian roubles (about 70 euros) and legal costs against the applicant.

16. On 31 July 2003 the Orenburg Regional Court, on an appeal by the applicant and the newspaper, upheld the judgment.

II. RELEVANT DOMESTIC LAW

17. Article 152 of the Civil Code provides that an individual may apply to a court with a request for the rectification of “statements” (“сведения”) that are damaging to his or her honour, dignity or professional reputation if the person who disseminated such statements does not prove their truthfulness. The aggrieved person may also claim compensation for losses

and non-pecuniary damage sustained as a result of the dissemination of such statements.

18. Article 1100 provides that compensation for non-pecuniary damage is payable irrespective of the tortfeasor's fault if damages were sustained through dissemination of information damaging dignity, honour or reputation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicant complained of a violation of his right to freedom of expression provided in 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

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

21. The Government submitted that the applicant had been found civilly liable for deliberately imparting false information damaging another person's dignity, honour and reputation. In particular, he had written and

published an article accusing police officer Mr G. of serious criminal offences, namely abuse of power and ill-treatment of detainees. The prosecutor's office had conducted an inquiry and had refused to initiate criminal proceedings against Mr G. The domestic courts had therefore correctly concluded that the information imparted by the applicant had been false.

22. Referring to the decision in the case of *Chernysheva v. Russia* (no. 77062/01, 10 June 2004), the Government argued that Article 10 of the Convention did not guarantee wholly unrestricted freedom of expression. The exercise of that freedom carried with it "duties and responsibilities", which also applied to the press. Those "duties and responsibilities" were liable to assume significance when, as in the present case, there was a question of attacking the reputation of a named individual. The applicant had failed in his duty to verify the veracity of the imparted information. Accordingly, the interference with his right to freedom of expression had been justified. The fine imposed on the applicant had been reasonable and proportionate to the legitimate aim of protecting Mr G.'s reputation.

23. The applicant insisted that he had checked the accuracy of facts with a reasonable degree of care, as might be required from a journalist. He had obtained and submitted to the domestic courts medical reports noting Mr S.'s injuries, the records of the confessions made by Mr S. and Mr M. at the police station and copies of Mr S.'s and Mr M.'s complaints about ill-treatment. Mr S. and Mr M. had confirmed the accuracy of the information contained in the article. However, the domestic courts had dismissed that evidence as untrustworthy without explaining the reasons for that finding. The fact that the authorities had refused to initiate criminal proceedings in respect of the allegations of ill-treatment had not, in itself, proved that the information published by the applicant had been untrue. The applicant had mentioned in his article that the authorities had refused to initiate criminal proceedings and had criticised them for that. The purpose of the article had been to denounce the authorities' failure to investigate the allegations of police brutality. The applicant maintained that there existed a sufficient factual basis for his statement. Although he had failed to prove in court that his description of the events at the police station had been true in all its particulars, he was still under the protection of Article 10 of the Convention. Even harsh criticism in strong, polemical language published "on a slim factual basis" was protected under Article 10 (see *Dichand and Others v. Austria*, no. 29271/95, § 52, 26 February 2002).

24. The applicant submitted that strict liability established by domestic law in cases of disseminating information damaging dignity, honour or reputation (see paragraph 18 above) was contrary to Article 10 of the Convention. In the applicant's opinion a journalist was liable to pay compensation in respect of non-pecuniary damage only if he had acted with malice and his fault had been established by a court. In cases where a journalist had defamed a public official unintentionally, only rectification

and pecuniary damages should be available to the plaintiff. The applicant further argued that a journalist could not be required to prove the veracity of his every allegation according to the “beyond reasonable doubt” standard applied in criminal law. A journalist who published an article about police brutality might not be reasonably required to act as a prosecutor and collect the evidence of guilt in a criminal case. His role was to urge the prosecution authorities to initiate criminal proceedings by making public the facts of ill-treatment and by drawing attention to them.

2. *The Court’s assessment*

(a) **General principles**

25. According to the Court’s well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and 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” (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, p. 26, § 37).

26. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debates on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). Moreover, although it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent politicians do, civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals (see *Thoma v. Luxembourg*, no. 38432/97, § 47, ECHR 2001-III).

27. The press fulfils an essential function in a democratic society. Although it must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-34, § 37, and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III). Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog” (see *Thorgeir Thorgeirson v. Iceland*, judgment of

25 June 1992, Series A no. 239, p. 28, § 63). Journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria (no. 1)*, judgment of 26 April 1995, Series A no. 313, p. 19, § 38). This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly. The need for any restrictions must be established convincingly.

28. 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. Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. Moreover, these "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 67, ECHR 2007-..., and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI).

29. In cases of publications based on interviews a distinction needs to be made according to whether the statements emanate from the journalist or are quotations from others, since punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the 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 *Pedersen and Baadsgaard*, cited above, § 77; *Thorgeir Thorgeirson*, cited above, § 65; and *Jersild*, cited above, § 35).

(b) Application to the present case

30. The Court notes the applicant was found civilly liable for publishing an interview with two former suspects in a theft case who alleged that the police had beaten them to extract confessions. The interview was followed by the applicant's comment denouncing the authorities' failure to investigate the allegations of ill-treatment and bring those responsible to justice.

31. It is common ground between the parties that the judgments pronounced in the defamation action constituted an "interference" with the applicant's right to freedom of expression as protected by Article 10 § 1. It

is not contested that the interference was “prescribed by law”, notably Article 152 of the Civil Code, and “pursued a legitimate aim”, that of protecting the reputation or rights of others, for the purposes of Article 10 § 2. The dispute in the case relates to whether the interference was “necessary in a democratic society”.

32. The test of necessity in a democratic society requires the Court to determine whether the “interference” complained of corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This margin of appreciation is not however unlimited, but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court’s task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, 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 based their decisions on an acceptable assessment of the relevant facts (see, among many others, *Krasulya v. Russia*, no. 12365/03, § 34, 22 February 2007, and *Grinberg v. Russia*, no. 23472/03, § 27, 21 July 2005).

33. In the present case the applicant expressed his views by having them published in a newspaper. He was found civilly liable for his publication, therefore the impugned interference must be seen in the context of the essential role of the press in ensuring the proper functioning of a democratic society (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, § 41, and *Sürek (no. 1)*, cited above, § 59). The allegations of police brutality were obviously a matter of great public concern and the applicant was entitled to bring them to the public’s attention through the press. However, there is no evidence in the domestic judgments that the courts performed a balancing exercise between the need to protect the policemen’s reputation and journalists’ right to divulge information on issues of general interest. They confined their analysis to the discussion of the damage to the plaintiff’s reputation without giving any consideration to the applicant’s journalistic freedom or to the fact that the plaintiff was a civil servant acting in an official capacity and was accordingly subject to wider limits of acceptable criticism than private individuals (see case-law cited in paragraph 26 above). The Court therefore considers that the Russian courts failed to recognise that the present case involved a conflict between the right to freedom of expression and the protection of reputation (see, for similar reasoning, *Kwiecień v. Poland*, no. 51744/99, § 52, ECHR 2007-...).

34. Turning now to the contents of the article published by the applicant, the Court notes that a prominent feature of it was the interview with two alleged victims of police brutality, Mr S. and Mr M. Parts of the interview were found to have been defamatory by the domestic courts. In so finding, the Russian courts failed to distinguish between the author's own speech and his quotation of others, treating as irrelevant the fact that the impugned statements did not emanate from the applicant but were clearly identified as those proffered by other persons (see paragraph 13 above). The domestic courts did not advance any justification for punishment of the applicant for assisting in the dissemination of statements made by another person in an interview, although they were required to give particularly strong reasons for doing so (see case-law cited in paragraph 29 above).

35. The Court further observes that the Russian courts characterised the contested extracts as statements of fact and found the applicant liable for his failure to show their veracity. The Court accepts that the article contained serious factual allegations against the police and that those allegations were susceptible of proof. However, the Court considers that in the context of the balancing exercise under Article 10, in particular where the reporting by a journalist of statements made by third parties is concerned, the relevant test is not whether the journalist can prove the veracity of the statements but whether a sufficiently accurate and reliable factual basis proportionate to the nature and degree of the allegation can be established (see *Pedersen and Baadsgaard*, cited above, § 78). In that respect, it notes that the applicant submitted documentary evidence, including a dictaphone recording of his conversation with Mr S. and Mr M., the medical report noting Mr S.'s injuries, the records of the confessions made by Mr S. and Mr M. at the police station and copies of their complaints of ill-treatment. He also called Mr S. and Mr M. to the witness stand to confirm that the article reproduced their statements accurately without distorting or exaggerating them. The evidence produced by the applicant showed that Mr M. and Mr S. had been indeed questioned by the police officers of the Leninskiy District police station and confessed to the theft, that they had sustained injuries while in police custody, and had complained to the domestic authorities that they had been ill-treated. It also demonstrated that despite their confessions Mr M. and Mr S. had never been charged and that another person had ultimately been convicted of the theft.

36. The domestic courts found that the materials submitted by the applicant were not relevant evidence of ill-treatment, without explaining the reasons for that finding (see paragraph 13 above). It transpires from the Government's submissions that the courts attached such preponderant weight to the findings of the prosecutor's inquiry into Mr S.'s and Mr M.'s allegations of ill-treatment and the refusal to initiate criminal proceedings against the policemen that no evidence produced by the applicant could have convinced them of the veracity of the statements published by him. The Court recalls in this respect that the standard of proof for establishing

the well-foundedness of a criminal charge by a competent authority can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern (see *Karman v. Russia*, no. 29372/02, § 42, 14 December 2006, and *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, § 46, ECHR 2002-I). The Court is therefore not satisfied that the Russian courts gave relevant and sufficient reasons for dismissing the evidence produced by the applicant or based their decisions on an acceptable assessment of relevant facts. In the Court's view, the body of evidence available provided sufficient factual basis for the allegation of police brutality. The Court is also unable to accept the Government's argument that it was not permissible for the applicant to publish the allegations of ill-treatment after the authorities had refused to initiate criminal proceedings against the police officers. The applicant mentioned in his article that the prosecutor's office had refused to open an investigation into the claims of ill-treatment made by Mr S. and Mr M. He criticised the authorities for their passive attitude to the credible allegations of mistreatment of criminal suspects, thereby expressing his opinion on a matter of public concern.

37. Finally, the domestic courts found fault with the applicant for creatively rewriting Mr S.'s statements, increasing the emotional intensity and emphasising certain aspects. The Court observes that in their oral submissions at the hearing Mr S. and Mr M. confirmed the accuracy of the story as reproduced in the article. The Court is therefore convinced that the applicant recounted the facts faithfully without distorting them. Although it is true that the applicant did not publish the interview in its entirety, omitting some parts and laying emphasis on the others with the aim of intensifying the emotional impact of the publication, there is no indication that he went beyond the generally acceptable degree of exaggeration or provocation (see the case-law cited in paragraph 27 above).

38. In the light of the above considerations and taking into account the role of journalists and the press in imparting information and ideas on matters of public concern, the Court finds that the applicant's publication was fair comment on a matter of public concern resting on a sufficient factual basis and that it did not exceed the acceptable limits of criticism. The judgments in the defamation action against the applicant gave rise to a breach of his right to freedom of expression since, by omitting to perform a balancing exercise between the need to protect the plaintiff's reputation and the applicant's right to divulge information on issues of general interests, by refusing to distinguish between the applicant's own speech and his quotation of statements made by others during an interview, and by failing to make an acceptable assessment of the relevant facts, the Russian courts did not apply standards which were in conformity with the principles embodied in Article 10 and did not adduce "relevant" and "sufficient" reasons justifying the interference at issue. The Court therefore considers that the domestic courts overstepped the narrow margin of appreciation

afforded to them with regard to restrictions on debates on matters of public interest and that the interference was not “necessary in a democratic society”.

There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

39. The applicant complained that the defamation proceedings had been unfair. He relied on Article 6 of the Convention, the relevant part of which reads as follows:

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

40. It is not the Court’s function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *Čekić and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003). Having regard to the facts as submitted, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

42. The applicant claimed 59 euros (EUR) in respect of pecuniary damage, representing the amount paid by him to the plaintiff in the defamation action. He also claimed EUR 1,000 in respect of non-pecuniary damage.

43. The Government accepted the claim in respect of pecuniary damage. They considered that the claim in respect of non-pecuniary damage was excessive. In their view, a finding of a violation would constitute sufficient just satisfaction.

44. The Court reiterates that under its case-law a sum paid as reparation for damage is only recoverable if a causal link between the violation of the Convention and the damage sustained is established. Thus, in the present

case, the sums which the applicant had to pay to the plaintiff in the defamation action may be taken into account (compare *Thoma*, cited above, § 71). The Court therefore awards EUR 59 to the applicant in respect of pecuniary damage, plus any tax that may be chargeable.

45. As regards non-pecuniary damage, the Court considers that the applicant has suffered non-pecuniary damage as a result of the domestic courts' judgments, which were incompatible with the Convention principles. The damage cannot be sufficiently compensated by a finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

46. Relying on the lawyers' timesheets, the applicant claimed EUR 1,100 for his representation. His representatives had spent 22 hours in the preparation of the observations and just satisfaction claims. It was agreed between the applicant and his representatives that their work would be remunerated at the rate of EUR 50 per hour.

47. The Government considered the costs and expenses claimed by the applicant to be unnecessary and unreasonable as to quantum. The case was not complicated and it was not necessary to retain two lawyers. Moreover, the applicant had not produced the legal fee agreement or documents showing that he had indeed paid the legal fee.

48. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and were 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 1,100, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

49. 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 UNANIMOUSLY

1. *Declares* the complaint concerning the alleged unjustified interference with the right to freedom of expression admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 59 (fifty-nine euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 1,100 (one thousand one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President