



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

THIRD SECTION

**CASE OF TOLMACHEV v. RUSSIA**

*(Application no. 42182/11)*

JUDGMENT

Art 10 • Freedom of expression • Domestic courts' failure to apply the relevant Convention standards in two sets of defamation proceedings following the publication of articles written by a journalist in a local newspaper criticizing two judges • Domestic courts' omission to consider certain essential elements • No careful consideration of the applicant's expression of value judgments not susceptible of proof • Failure to balance competing interests at stake • Very substantial amount awarded to the claimants without ensuring a reasonable relationship of proportionality to the injury to reputation suffered • Relevant but not sufficient reasons • Failure to demonstrate reasonable relationship of proportionality between interference and legitimate aim pursued

STRASBOURG

2 June 2020

**FINAL**

**16/11/2020**

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



**In the case of Tolmachev v. Russia,**

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Helen Keller,

Dmitry Dedov,

María Elósegui,

Gilberto Felici,

Erik Wennerström, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application 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 Aleksandr Mikhaylovich Tolmachev (“the applicant”), on 10 June 2011;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Articles 6 and 10 of the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 12 May 2020,

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

## INTRODUCTION

Judgments were given against the applicant, a journalist, in two sets of defamation proceedings following the publication of articles written by him in a local newspaper concerning two district court judges in Rostov. In the applicant’s view, the domestic courts examining the defamation claims did not apply the Convention standards pertaining to the right to freedom of expression.

## THE FACTS

1. The applicant was born in 1955. At the material time he lived in Rostov-on-Don. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer admitted to practice in Ukraine.

2. The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

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

4. The applicant is a journalist. At the material time he was the sole owner of Informatsionno-pravovoy Tsentr Aleksandra Tolmacheva (“IPT”),

a legal entity responsible for editing the *Argumenty Nedeli Yug* newspaper (“the newspaper”).

#### I. DEFAMATION PROCEEDINGS INITIATED BY Ms M.

5. On 27 May 2010 the newspaper published an article entitled “An Incident Involving the Judiciary” (*ЧП судейского масштаба*). The article was an editorial that followed on from a series of articles that had criticised certain judges in Rostov-on-Don – in particular, Ms M., President of the S. District Court. One of the earlier articles had reported allegations that Ms M. had usurped part of the communal space in a block of flats, to the detriment of her neighbours. The article of 27 May 2010 addressed a court hearing in that case.

6. On 22 June 2010 Ms M. brought civil proceedings for defamation against the applicant, IPT, the newspaper and another legal entity involved in the newspaper’s activities. She demanded a retraction of the following parts of the article:

“Many a man came to see how this lawless person in a judge’s robe could protect her tainted honour and dignity with the help of her colleagues ...

**‘Ms M.’s unlawful position’**

... I would like to know how the case pending before the Z. Court is related to the defamation claim of Ms M., president of the S. District Court, who has disgraced herself in front of the whole country. ... It is high time that Ms M. begged the ... members of the condominium [that she robbed] for forgiveness [and] apologises for her actions, yet she has taken an “offensive” position, having gained support from other lawless people just like herself. After all that has been done by the judges to discredit our newspaper I am persuaded that people like [name redacted] and Ms M. should not be vested with judicial powers. [Such people] use the [judicial powers] for their personal gain and are a disgrace to the Russian judiciary.”

7. Ms M. subsequently modified her statement of claim, asking that the following extract from another article by the applicant – entitled “Moscow ‘Teachers’ of Ethics” (*Московские «учителя» этики*) and published in the newspaper on 15 July 2010 – be declared defamatory:

“Even Mr O. himself could not say anything of essence. He ... covered up for the President of the S. District Court, Ms M., who had usurped communal space in the block of flats ...”

8. On 4 October 2010 the Oktyabrskiy District Court of Rostov-on-Don (“the District Court”) allowed Ms M.’s defamation claim in part. It reasoned that the article of 27 May 2010 had contained negative information about Ms M., both as a private individual and as the holder of a public office. The District Court dismissed the claim in so far as it concerned the phrase “Ms M.’s unlawful position”, which had served as a subheading, and the phrase “I am persuaded that people like ... and Ms M. should not be vested with judicial powers”, which, in the District Court’s view, had constituted a

value judgment. It described the remainder of the impugned extracts from the article as allegations that Ms M.'s had behaved unlawfully and engaged in immoral actions – that is to say as statements of fact. The applicant insisted that the article had contained his personal opinion regarding (i) Ms M., which had been supported by an official document confirming that some residents of the block of flats had unlawfully commandeered parts of the communal space in the building by installing partitions and (ii) Mr E., the owner of a flat in the building, who had appeared as a witness before the District Court to testify that Ms M. had installed a partition, cutting off other residents' access to the communal space. The District Court summarily dismissed the applicant's argument that those allegations had constituted value judgments and observed that (i) the official document confirming the installation of additional partitions had not named Ms M., and (ii) Mr E. had not been a reliable witness, as he had previously complained about Ms M. It accordingly found that the defendants had not submitted proof of the veracity of the impugned statements, and ordered that those statements be retracted. It furthermore ordered that the applicant and IPT each pay Ms M. 500,000 Russian roubles (RUB) in respect of non-pecuniary damage, together with RUB 7,500 as compensation for the fees incurred by the claimant in the course of the defamation proceedings – that is to say a total of RUB 1,015,000 (approximately 24,360 euros (EUR)).<sup>1</sup> The District Court did not consider the applicant's financial situation when making the award but did take into account the fact that the claimant had been a judge, which meant that the allegations of her improper conduct had been particularly cynical.

9. The applicant appealed. On 13 December 2010 the Rostov Regional Court ("the Regional Court") dismissed the applicant's appeal in its substantive part. However, it noted as follows:

"... the amount to be recovered [from the defendant] must be proportionate to the damage caused and should not infringe on the freedom of information or impose an excessive burden on mass media. Therefore, on the basis of Article 361 of the Civil Procedure Code, the appeal tribunal considers it necessary to lower the amount of compensation in respect of non-pecuniary damage [to be paid by] each defendant from RUB 500,000 to RUB 100,000."

The amounts awarded as compensation for the fees to be paid by each defendant remained unchanged. As a result, the applicant, the sole owner of IPT, was held liable to pay the total of RUB 215,000 (RUB 107,500 in his own name and RUB 107,500 in the name of IPT; approximately EUR 5,250). At the material time the monthly minimum wage under the domestic law was RUB 4,330 (approximately EUR 105).

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<sup>1</sup> Hereinafter the amount awarded by the domestic courts in roubles is converted to euros using the conversion rate applicable on the date of a judgment.

10. The case material available to the Court contained no information indicating that the judgment in Ms M.'s favour was actually enforced.

## II. DEFAMATION PROCEEDINGS INITIATED ON BEHALF OF Mr A.

11. On 11 July 2008 a judge of the L. District Court of Rostov-on-Don, Ms A., resigned from office. Around that time, the investigative authorities began a pre-investigation inquiry into acts of bribery allegedly committed by Ms. A.

12. On 31 July 2008 the newspaper published an article by the applicant entitled "A Judge's Multiplication Table" (*Судейская таблица умножения*) covering, in particular, Ms A.'s resignation. The article read, in so far as relevant, as follows:

"Deputy Head of the L. District Court Ms A. was caught taking a bribe. For almost a year this guardian of the law could not be removed from her office. It has just become known that she has been deprived of her powers and that a criminal case against her will finally be opened."

13. In September 2008 the newspaper and *ProRostov* magazine published an article by the applicant entitled "What does the bitch have to do with it?" (*А сука здесь причем?*), which contained the following passage:

"The experience of the former judge of the L. District Court Ms A., who was caught taking bribes, has been standard practice among judges for a long time ..."

14. On 16 September 2008 Ms A. lodged a defamation claim against, among others, the applicant and IPT claiming that the two aforementioned articles were defamatory.

15. On 6 November 2008 the District Court allowed Ms A.'s claim in part, ordered a retraction of the impugned statements and made an award in respect of non-pecuniary damage.

16. However, after the applicant appealed, Ms A. withdrew her claim. On 29 December 2008 the Regional Court accepted her refusal to pursue her claim further, quashed the judgment of 6 November 2008 and discontinued the proceedings.

17. On 30 November 2009 it was decided not to initiate criminal proceedings against Ms A. in respect of alleged bribery and forgery of official documents.

18. On 10 June 2010 the newspaper published another article by the applicant entitled "Heirs to the Judiciary" (*Наследники судебной власти*), which read, in so far as relevant, as follows:

"We covered this issue in the articles in which we shone the spotlight on the former judge of the L. District Court and bribe-taker, Ms A."

19. On 21 June 2010 Ms A. lodged a defamation claim against the applicant and IPT in respect of the article of 10 June 2010.

20. On 13 July 2010 Ms A. died.

21. On 13 September 2010 the District Court terminated the proceedings in respect of Ms A.'s defamation claim in view of the fact that the claimant had died. It reasoned that her heirs could not pursue the defamation proceedings in Ms A.'s stead as the right to reputation was not transferrable.

22. On 9 November 2010 a claim for defamation in relation to the three articles concerning Ms A. were brought in the name of her minor son, Mr A., who was born in 1995. The applicant, ITP, and the newspaper's publishing house, Glas (*Глас*) were listed as defendants. Mr A. argued that his late mother had suffered immensely because of the three articles, which had also caused profound suffering to him.

23. The District Court accepted the statement of claim and commenced the proceedings. It initially scheduled a hearing for 14 December 2010. Subsequently it rescheduled it twice – for 27 January and 28 February 2011. The applicant informed the court that he could not attend the hearing of 28 February 2011 because of a business trip and lodged a request for a postponement.

24. On 28 February 2011 the District Court, having dismissed the applicant's request for postponement as unsubstantiated, examined the case in his absence. It found in the claimant's favour. Briefly touching upon the issue of whether Mr A. had had standing to lodge a defamation claim in his own name following his mother's death, the District Court emphasised that although the decision of 29 December 2008 remained *res judicata*, Mr A. was entitled to protect his right to reputation and dignity, as "dissemination of untruthful defamatory information regarding the deceased person defames to a certain extent [Ms A.'s] son as well." The District Court furthermore asserted, without providing its reasons for doing so, that the impugned statements in the three articles constituted statements of facts, not value judgments, and that the applicant had submitted no proof of their veracity. The court did not refer to the fact that the applicant was a journalist or to the context in which the articles had been published, but it did emphasise that the impugned statements had suggested that Ms A. had committed unlawful acts. The District Court ordered that the allegations be retracted and ordered that the applicant and IPT each pay Mr A. RUB 500,000 (approximately EUR 12,500) – that is to say a total of RUB 1,000,000 (approximately EUR 25,000); it also ordered that the publishing house pay Mr A. RUB 250,000 (approximately EUR 6,250). The District Court did not explain what method it had employed to calculate the award. It noted that it had considered "the financial situation of each defendant", but without providing any description of that financial situation. It also referred to Mr A. witnessing his mother's psychological suffering after the publication of the impugned articles and the negative attention from classmates and their parents that the article must have drawn to him as a pupil at his school.

25. Following an appeal by the defendants, on 5 May 2011 the Regional Court summarily upheld the judgment in full. As regards the amount awarded, it reproduced the District Court's reasoning word by word.

26. The case material before the Court contained no information regarding whether the judgment in Mr A.'s favour was actually enforced.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

27. For the relevant domestic framework and practice concerning defamation proceedings see *Cheltsova v. Russia* (no. 44294/06, §§ 32-34, 13 June 2017).

28. Under Article 133 of the Labour Code of 2001, the level of the monthly minimum wage is set by federal law simultaneously for the entire territory of the Russian Federation and cannot be lower than the monthly subsistence minimum.

29. At the time of the two sets of defamation proceedings described above the monthly minimum wage in the Russian Federation set by Federal Law N 82-FZ of 19 June 2000, with amendments of 24 July 2009 (the Monthly Minimum Wage Act), was RUB 4,330 (approximately EUR 105).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant complained that the two sets of defamation proceedings against him that had ended with the Regional Court's judgments of 13 December 2010 and 5 May 2011 had amounted to a disproportionate interference with his right to freedom of expression, as guaranteed by Article 10 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

#### A. Submissions by the parties

##### 1. *The Government*

31. The Government contested that argument.



32. Accepting that the defamation proceedings against the applicant had amounted to an interference with his right to freedom of expression, the Government submitted that the interference had been “prescribed by law” – namely, by Article 152 of the Civil Code – and had pursued the legitimate aim of protecting the reputation of the two judges.

33. The Government submitted that judges deserved that their reputations be protected to a high degree, while the press should not overstep certain boundaries. The applicant, however, had used his position as a journalist to disseminate “legal nihilism” and to cause “irreparable damage” to the foundations of the judiciary. He had alleged that Ms M. and Ms A. had committed crimes while serving as judges, in spite of the absence of any proof regarding the truth of those allegations.

34. When examining Ms M.’s and Mr A.’s claims, the domestic courts had taken into account the manner in which the information concerning the claimants had been presented in the articles and had concluded that the impugned statements had constituted statements of fact, not value judgments. They had also concluded that the applicant had not proved that the disseminated information was true.

35. The domestic courts had drawn a distinction between statements of fact and value judgments and had concluded that the impugned statements had been devoid of any factual basis.

36. Referring to the “special role of the judiciary in society”, the Government submitted that the Court’s case-law accorded the highest degree of protection to judges’ reputation. The interference with the applicant’s right to freedom of expression had been based on relevant and sufficient grounds and had pursued a pressing social need because the applicant’s “far-fetched and offensive allegations against the judicial system of the Rostov Region in general and individual judges [in particular] ... ha[d] eroded the authority of the judiciary and seriously undermined the prestige of the judicial profession”. They concluded that the interference had been proportionate to the aim pursued.

37. The Government furthermore submitted that it was not the Court’s task to act as an appeal court of “fourth instance” by calling into question the outcome of the domestic proceedings.

38. The Government also noted that the amounts awarded by the domestic courts had not been excessive. They presented a list of twelve sets of defamation proceedings against the applicant that had taken place in the Rostov Region in the period 2008-13, in respect of eleven of which the applicant had lost and been ordered to pay claimants sums ranging from RUB 50,000 to RUB 300,000. The Government submitted that list in order to demonstrate that the applicant had been “used to” being a defendant in a defamation case and thus should have had “legitimate expectations regarding the impact of the spread of information discrediting [a person’s] honour, dignity and business reputation”. The amounts to be awarded had

been determined by professional judges, not members of a jury. The Government referred to four examples from the practice of the domestic courts of general jurisdiction and of the commercial courts in which the amounts awarded had ranged from RUB 100,000 to RUB 500,000. Moreover, the Regional Court had reduced on appeal the award in the proceedings instituted by Ms M.

*2. The applicant*

39. The applicant maintained his complaint. Accepting that the interference with his right to freedom of expression had been prescribed by law and had pursued the legitimate aim of protecting the reputation of third parties, he insisted that it had not been “necessary in a democratic society”.

40. The applicant emphasised that at the material time, as an investigative journalist, he had published, in the interests of transparency, several articles critical of some judges of the Rostov Region with a view to unveiling abuses and excesses on the part of the judiciary. However, he had never used offensive or vulgar language or sought to “undermine the prestige” of the judiciary. The impugned articles concerning Ms M. and Ms A. had to be seen within the wider context of the applicant’s endeavours to expose judicial corruption. The applicant had been a defendant in a series of defamation proceedings that had ended in sizeable awards against him in respect of non-pecuniary damage, which, in his view, had been capable of hampering the contribution of the press to the discussion of matters of public interest.

41. The impugned statements regarding Ms M. and Ms A. had constituted value judgments on the part of the applicant, and they had had a sufficient factual basis. As regards Ms M., the applicant had relied on a copy of Ms M.’s request to be granted exclusive use of a part of the communal space in the above-mentioned block of flats, a copy of the Fire Inspectorate’s report on the state of the building, and other documents. As regards Ms A. – against whom a pre-investigation inquiry in respect of suspected bribery had been opened – the applicant had relied on the conclusions of the judicial disciplinary commission and on the preliminary consent of the Supreme Court of Russia regarding her being dismissed from her office. Nevertheless, the domestic courts had failed to distinguish statements of fact from value judgments and had refused to take any steps to assess whether there had been a sufficient factual basis for the impugned statements. When finding that in the absence of a criminal conviction there had been no factual basis for the applicant’s allegations regarding Ms M. and Ms A., they had adopted an unreasonably high standard of proof. The applicant concluded that the domestic courts had not adduced relevant and sufficient reasons capable of justifying the interference in question.

42. The amounts awarded to Ms M. and Mr A. had been perceived as significant by the applicant: he had viewed them as a punishment, designed

to silence him, and this had had a chilling effect on him. The domestic courts had not taken into account the applicant's financial situation and had not considered the extent of the damage suffered by the claimants or the proportionality of the awards to the damage that the claimants had suffered. Under Russian law, when deciding on the amount to be awarded in civil proceedings, judges were guided only by their inner convictions, and judgments contained no reference to the method of calculation or elements to be taken into account. In the applicant's view, that explained the practice of domestic courts awarding in defamation proceedings disproportionately large amounts to politicians and civil servants, which he considered a means employed by those in authority to silence their opponents.

## **B. The Court's assessment**

### *1. Admissibility*

43. The Court notes that this 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.

### *2. Merits*

44. The Court notes at the outset that the following elements are not disputed between the parties: that the District Court's judgments of 4 October 2010 and 28 February 2011, as upheld by the Regional Court on 13 December 2010 and 5 May 2011, respectively (see paragraphs 8, 24, 9 and 25 above), constituted an interference with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention; that the interference in question was "prescribed by law" – specifically Article 152 of the Civil Code; and that it "pursued a legitimate aim" – that is to say "the protection of the reputation or rights of others", within the meaning of Article 10 § 2 of the Convention. It thus remains to be examined whether the interference was "necessary in a democratic society"; this requires the Court to ascertain whether it was proportionate to the legitimate aim pursued and whether the grounds given by the domestic courts were relevant and sufficient (see *Morice v. France* ([GC], no. 29369/10, § 144, ECHR 2015). The Court furthermore notes that the interference must be seen within the context of the essential role of a free press in ensuring the proper functioning of a democratic society (see, among many other authorities, *Skudayeva v. Russia*, no. 24014/07, § 30, 5 March 2019).

45. The general principles concerning the necessity of an interference with the right to freedom of expression have been summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016), among many other authorities. The general principles concerning Article 10 and the freedom of the press have been summarised in *Satakunnan Markkinapörssi Oy and*

*Satamedia Oy v. Finland* ([GC], no. 931/13, §§ 124-28, 27 June 2017). The standards established in the Court's case-law, which an interference with the exercise of press freedom must meet in order to satisfy the necessity requirement of Article 10 § 2 of the Convention, were recently summarised in *Skudayeva* (cited above, §§ 33-34). General principles concerning the margin of appreciation and balancing the right to freedom of expression against the right to respect for private life laid down in the Court's case-law were summarised in *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 85-95, 7 February 2012); *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)); and *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 77, 27 June 2017).

46. Turning to the circumstances of the present case, the Court points out that the common element in the two sets of defamation proceedings under consideration is that they stemmed from the above-mentioned newspaper articles that had criticised judges. It reiterates that questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest. In that 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 (see, with further references, *Morice*, cited above, § 128). Nevertheless (save in the case of gravely damaging attacks that are essentially unfounded), bearing in mind the fact 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.*, § 131).

47. The Court has already found a violation of Article 10 of the Convention in a number of cases against Russia because the domestic courts did not apply standards that were in conformity with the standards of its case-law concerning press freedom (see *OOO Ipress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *Kunitsyna v. Russia*, no. 9406/05, §§ 46-48, 13 December 2016; *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *OOO Izdatelskiy Tsentri Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; *Cheltsova*, cited above, § 100; *Skudayeva*, cited above, §§ 36-39; and *Novaya Gazeta and Milashina v. Russia*, no. 4097/06, §§ 66-73, 2 July 2019).

48. The Court notes, at the outset, the striking similarities in the District and Regional Courts' respective approaches to the two distinct sets of

defamation proceedings involving the applicant. In both of those sets of proceedings, the District and Regional Courts limited themselves to (i) establishing the fact that statements that they regarded as tarnishing the honour, dignity and business reputation of the two judges had been disseminated and (ii) observing that the defendants had not proved the truthfulness of the statements; the courts then made very sizeable awards as compensation for non-pecuniary damage.

49. The Court observes that in both sets of defamation proceedings the domestic courts omitted to consider certain essential elements. To begin with, they made no attempt to give equal weight to the respective positions of the parties to the proceedings. On the contrary, they attached weight to the presumably heightened vulnerability of Ms M. and Ms A. as judges and of Mr A. as a judge's son, while ignoring the fact that the applicant was a journalist. The Court reiterates its long-established view concerning the special – indeed, pivotal – role that the judiciary plays in a democratic society, and emphasises that such a role could not be effectively performed without a measure of tolerance regarding journalistic criticism. Shielding a judge from every critical remark on the part of the press – irrespective of its well-foundedness, pertinence, or choice of words – could hardly be seen as constituting a measure promoting the rule of law. Furthermore, the District and Regional Courts did not take account of: the presence or absence of good faith on the applicant's part (in particular, in view of the documentary and witness testimony produced in the course of the defamation proceedings brought by Ms M.); the aim pursued by the applicant in publishing the articles; the existence of a matter of public interest or general concern in the impugned articles; or the relevance of the information regarding the judges' allegedly corrupt practices. By omitting any analysis of such elements, the domestic courts failed to pay heed to the essential function that the press fulfils in a democratic society (see *Skudayeva*, cited above, § 36).

50. Reiterating that a careful distinction needs to be drawn between facts and value judgments given that the existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI, and *Margulev v. Russia*, no. 15449/09, § 48, 8 October 2019), the Court observes that the District Court drew such a distinction in its judgment of 4 October 2010 in respect of one of the impugned statements. However, the domestic courts did not consider carefully the applicant's arguments regarding the remaining statements that, in his submission, had expressed his personal, subjective, opinion not susceptible of proof (see paragraphs 8, 9, 24 and 25 above). Accordingly, the Court cannot but note that the domestic courts did not apply rigorously one of the key standards established in its practice regarding the right to freedom of expression.

51. As to the need to perform a balancing exercise between the judges' (or their heirs') right to reputation and journalistic freedom of expression, the Court notes that the domestic courts merely declared that the impugned statements had tarnished the claimants' honour, dignity and business reputation, without providing any reasons to support such findings. The District and Regional Courts did not deem it necessary to examine whether the impugned statements could be regarded as constituting an actual attack capable of causing prejudice to the claimants' respective honour or business reputation – let alone their dignity. Their reasoning appears to have been based on the tacit assumption that interests relating to the protection of the honour and dignity of others (in particular of those vested with public powers) prevail over freedom of expression in all circumstances. By failing to weigh the two competing interests against each other, the domestic courts failed to perform the requisite balancing exercise (see *Skudayeva*, cited above, § 38).

52. The Court furthermore points out that the applicant has specifically complained to it of the disproportionately large amounts awarded to claimants (see paragraph 42 above). According to the Court's consistent case-law regarding defamation claims against journalists, the nature and severity of the penalties imposed are factors to be taken into account 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. Within 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 a purveyor of information and as a public watchdog (see *Bédat*, cited above, § 79). Accordingly, the Court considers it appropriate in the circumstances of the present case to assess whether the domestic courts applied the standards established in its case-law relating to the proportionality of an award in a defamation case against a member of the press when determining the amounts to be awarded to Ms M. and Mr A. To do so, it will begin with an overview of its practice.

53. While the Court has consistently held that an award of damages in respect of defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (see, among other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B, and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 96, ECHR 2005-II), it has not established a pre-determined formula to decide whether that requirement has been met. In some cases, the Court considered the amount to be so high in absolute terms or in comparison with awards in other defamation cases as to trigger a heightened scrutiny of its proportionality (see *Tolstoy Miloslavsky*, cited above, § 49 *in fine*; *Pakdemirli v. Turkey*, no. 35839/97, § 59, 22 February 2005; *I Avgi*

*Publishing and Press Agency S.A. and Karis v. Greece*, no. 15909/06, § 35, 5 June 2008; *Público-Comunicação Social, S.A. and Others v. Portugal*, no. 39324/07, § 55, 7 December 2010; *Gouveia Gomes Fernandes and Freitas e Costa v. Portugal*, no. 1529/08, § 54, 29 March 2011; *Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*, no. 31566/13, § 77, 17 January 2017; and *Ghiulfer Predescu v. Romania*, no. 29751/09, § 60, 27 June 2017). In others, the Court has used a reference amount to put the award made in a particular defamation case into perspective – for example: an applicant’s monthly income (see *Steel and Morris*, cited above, § 96; *Koprivica v. Montenegro*, no. 41158/09, §§ 72-73, 22 November 2011; *Kasabova v. Bulgaria*, no. 22385/03, § 71, 19 April 2011; *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 65, 11 February 2014; and *Cheltsova*, cited above, § 85); a minimum monthly salary (see *Bozhkov v. Bulgaria*, no. 3316/04, § 55, 19 April 2011); an average monthly wage (see *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007, and *Morar v. Romania*, no. 25217/06, § 70, 7 July 2015); the average income in a certain professional field (see *Sorguç v. Turkey*, no. 17089/03, § 37, 23 June 2009); or domestic courts’ awards in other types of proceedings (see *Narodni List D.D. v. Croatia*, no. 2782/12, § 70, 8 November 2018).

54. Turning to the circumstances of the present case, the Court notes that neither of the parties has informed it of the applicant’s monthly income and the resources available to him in general at the material time. Be that as it may, the Court considers it appropriate, in order to put the court awards to Ms M. and Mr A. into perspective, to use as a reference amount the monthly minimum wage (“MPOT”) set and regularly reviewed by the Russian Federal Assembly. The monthly minimum wage applicable on the dates of the domestic courts’ judgments under consideration was RUB 4,330 (see paragraph 29 above). It follows that, in the case of Ms M. the applicant, in his capacity both as an individual and as the sole owner of IPT, was held liable to pay the claimant forty-nine times the amount of the monthly minimum wage, and in the case of Mr A. 230 times that amount. The Court thus considers that the amounts awarded to the claimants were very substantial (see, for similar reasoning, the above-cited cases of *Sorguç*, § 37, and *Koprivica*, § 73).

55. Yet the domestic courts paid surprisingly little, if any, attention to the issue of the proportionality of the award. When awarding Ms M. RUB 500,000 to be paid by the applicant and IPT, each (that is, a total of RUB 1,000,000; 230 times the monthly minimum wage), not only did the District Court omit any reference to the applicant’s financial situation, it emphasised the fact that the claimant was a judge, giving preponderant weight to the claimant’s position (see paragraph 8 above). Even though the Regional Court reduced the award to Ms M. on appeal, it did not assess whether the sum of RUB 215,000 to be paid to Ms M. by the applicant as a natural person and as the sole owner of IPT was proportionate, in view of

the applicant's financial situation (see paragraph 9 above). As to the award of RUB 500,000 to be paid by each of the applicant and IPT to Mr A., the domestic courts at two instances focused on the fact that the claimant must have profoundly suffered because of the attack on his deceased mother's reputation. The District Court noted in passing that it had taken into account "the financial situation of each defendant", but failed to provide any details regarding that situation (see paragraph 24 above). The Regional Court merely reiterated the lower court's reasoning (see paragraph 25 above). Accordingly, the Court considers that the District and Regional Courts, when deciding on the compensation for non-pecuniary damage to be paid by the applicant in the two sets of defamation proceedings, failed to ensure that there was a reasonable relationship of proportionality to the injury to reputation suffered by the claimants, as required by the standards established by the Court's case-law (see paragraph 53 above).

56. The Court considers that the reasons given by the domestic courts in justifying the two instances of interference with the applicant's right to freedom of expression, although relevant, cannot be regarded as sufficient. In assessing the circumstances submitted for their assessment, the domestic courts did not give due consideration to the principles and criteria as laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression (see paragraph 45 above). They thus exceeded the margin of appreciation afforded to them and failed to demonstrate that there was a reasonable relationship of proportionality between the two instances of interference in question and the legitimate aim pursued (see, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés* cited above, § 153; *Ólafsson v. Iceland*, no. 58493/13, § 62, 16 March 2017; and *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, no. 18597/13, § 79, 9 January 2018; see also *Skudayeva*, cited above, § 39, and *Nadtoka v. Russia (no. 2)*, no. 29097/08, § 50, 8 October 2019). The Court thus concludes that it has not been shown that the interference was "necessary in a democratic society".

57. Accordingly, there has been a violation of Article 10 of the Convention as regards the two sets of defamation proceedings against the applicant.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

58. The applicant complained that that the District Court had held the hearing of 28 February 2011 in his absence. He furthermore complained that the domestic courts had wrongly, in breach of the *res judicata* principle, allowed the claim lodged on behalf of Mr A., a person whose name had not appeared in the impugned articles, despite the fact that defamation proceedings challenging the same articles instituted by Ms A. had been



discontinued. He relied on Article 6 § 1 of the Convention, which reads in so far as relevant as follows:

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

59. Having regard to the facts of the case and its finding of a violation of Article 10 of the Convention on account of the domestic courts’ failure to apply the relevant Convention standards in the course of the two sets of defamation proceedings against the applicant (see paragraph 56 above), and in the interests of brevity, the Court considers that there is no need to give a separate ruling on the admissibility or the merits of the applicant’s complaints under Article 6 § 1 and 13 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; see also, within the context of Articles 6 and 10 of the Convention, *Fatih Taş v. Turkey (no. 2)*, no. 6813/09, § 21, 10 October 2017; *Lacroix v. France*, no. 41519/12, § 53, 7 September 2017; and *Redaktsiya Gazety Zemlyaki v. Russia*, no. 16224/05, § 52, 21 November 2017).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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.”

61. The applicant claimed 17,700 euros (EUR) (that is to say the amounts awarded to Ms M. (approximately EUR 5,200, see paragraph 9 above) and Mr A. (approximately EUR 12,500, see paragraph 24 above)) in respect of pecuniary damage. Furthermore, he claimed EUR 15,000 in respect of non-pecuniary damage. The applicant also claimed EUR 200 for the postal fees incurred before the Court by him personally; that claim was not supported by documents. In addition, the applicant claimed EUR 3,650 for the fees incurred before the Court by his representative (including fees for thirty hours of legal work at a rate of EUR 120 per hour and EUR 50 for administrative fees) and asked that that amount be paid directly into his representative’s bank account. The applicant submitted an itemised schedule regarding the hours of legal work undertaken by his legal representative but did not produce any documents regarding the amount claimed as administrative fees.

62. The Government submitted that the applicant had not paid the amounts awarded by the domestic courts to Ms M. and Mr A. and concluded that his claim in respect of pecuniary damage should be dismissed. They also submitted that no award should be made in respect of

non-pecuniary damage in the absence of a violation of Convention provisions; in any event, the amount claimed was in their view excessive. As regards the claim for costs and expenses, the Government submitted that the claim for EUR 200 had not been supported by any evidence and the claim for EUR 3,650 was based on the agreement between the applicant and his representative, which they considered void.

63. The Court notes that the applicant did not submit any evidence to confirm that he had complied, in part or in full, with the judgments of 4 October 2010 and 28 February 2011 (upheld on appeal on 13 December 2010 and 5 May 2011, respectively). Nevertheless, it observes that the judicial awards against the applicant have remained enforceable under domestic law. Accordingly, it awards the applicant the amount claimed under the head of pecuniary damage representing the amount payable under the domestic judgments found above to have been in breach of the Convention requirements, plus any tax that may be chargeable. It also awards the applicant EUR 9,750 in respect of non-pecuniary damage. Furthermore, the Court rejects the claim regarding postal fees and, taking into account the fact that the applicant was granted legal aid, considers it reasonable to award the sum of EUR 650 for the proceedings before the Court, to be paid directly into the bank account of the applicant's representative.

64. 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 complaint concerning the right to freedom of expression admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention as regards the two sets of defamation proceedings against the applicant;
3. *Holds* that there is no need to examine the admissibility or the merits of the complaints under Article 6 § 1 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 17,700 (seventeen thousand seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

- (ii) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (iii) EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative;
  - (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 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Registrar

Paul Lemmens  
President