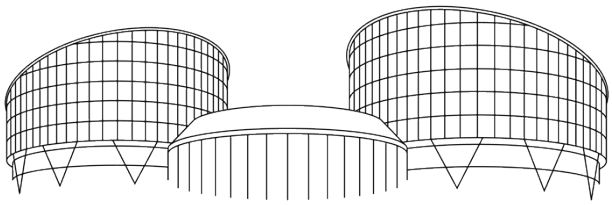

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALEKSEY OVCHINNIKOV v. RUSSIA

(Application no. 24061/04)

JUDGMENT

STRASBOURG

16 December 2010

FINAL

16/03/2011

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

In the case of Aleksey Ovchinnikov v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 24061/04) 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 Aleksey Yuryevich Ovchinnikov ("the applicant"), on 4 June 2004.

2. The applicant was represented by Ms N. Murashchenko, a lawyer practising in the Ivanovo region. 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 a violation of his right to freedom of expression.

4. On 14 March 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Ivanovo. He is a journalist writing for the *Ivanovo-Press* newspaper.

A. Publications about the events at the summer camp

6. In early July 2002 a nine-year-old boy attending the *Stroitel* summer camp complained to his parents that he had been beaten up and sexually abused by his twelve-year-old roommates. Further to a complaint by the boy's parents, the police found evidence of criminal offences which, however, were not prosecutable because the offenders were minors.

7. One of the offenders was the son of two federal judges, Mr and Mrs B. Another culprit was the stepgrandson of the deputy head of the Ivanovo Regional Traffic Police, Mr V.

8. As the offenders' parents held prominent positions in the region, the media took an intense interest in the story. The first article about the incident was published on 26 August 2002 by the *Kursiv-Ivanovo* weekly newspaper. The publication listed the names and positions of the offenders' relatives.

9. After the victim's mother had brought the police reports and the relevant medical records to the applicant's newspaper, the applicant undertook independent research into the events. In particular, he interviewed the principal of the *Stroitel* summer camp, several of its teachers, an official responsible for the supervision of summer camps in the region, a spokesman for the police department charged with the investigation and the head of the Judicial Qualifications Board.

10. On 3 September 2002 the applicant published an article about the incident at the summer camp in the *Ivanovo-Press* newspaper, under the headline "Day of reckoning" (*Час расплаты*). He wrote, in particular, as follows:

> "Any story [of battery and sexual abuse] deserves the most rapt attention. This one is particularly shameful because of the fact that the parents of one little bastard work as judges in a district court, and a close relative of another is one of the heads of the regional traffic police.
>
> It is hard to write about this matter. The case affects children, their lives, their tragedy and their future. It is hard because the guilt and its extent should be determined by a court, but the underage participants in this story are, alas, not liable to prosecution ... Their parents should be responsible for their deeds vis-à-vis society and the State. This is why we have decided to take the matter up ...
>
> I believe readers will excuse me for not providing a detailed description of the abuse to which the kid was subjected (in fact, our colleagues from the *Kursiv* newspaper have already provided one). I will say only one thing: the circumstances of those unchildlish deeds were established by evidence. They amount to assault and battery, punishable by Article 116, and sexual assault, punishable by Article 132 of [the Criminal Code]. Thus, if those moral freaks had been charged with criminal offences and committed for trial, they would have risked long terms of imprisonment.
>
> ... [After the parents of the victim had complained to the police,] an investigation was conducted by officers from the Interior Department of the Teykovskiy District,

who established that the actions of the three minor rapists indeed disclosed all the elements of criminal offences. However, no criminal proceedings were opened because the suspects were minors. Meanwhile, the press learned about the events and a scandal erupted.

It is not the first time that the attention of law-enforcement bodies has been riveted to the children of high-ranking parents. However, as a rule, such cases are abandoned at an early stage of the inquiry. Even when they are referred for trial, the general public hardly ever knows about it. Without any doubt, had the administration of the *Stroitel* summer camp paid attention to the facts and warned the parents in time, the investigators from [the Interior Department of the Teykovskiy District] would have hardly been allowed to go on with the investigation. The events were, however, left to take their course and were made public.

We must do some serious thinking here. How can it be? A kid whose parents work as JUDGES has committed a crime! Is it a coincidence or a pattern? What did his parents teach him? Perhaps they thought that the judge and the Law were one and the same thing, that the judge was not servant but master of the law, a superhuman? And that his children were superhumans, too; they could do whatever they pleased, in the knowledge that their mothers and fathers would exempt them from liability...

Another [offender] has a relative in the police force. Not an ordinary one, but a bigwig sporting star-studded epaulettes. So, is anything permitted? If something happened, would he 'cover up' and 'fix' it?

How will these people carry on working in the courts and the police force? Delivering judgments, sentencing men to prison terms for crimes for which their progeny could have been convicted? Or are they already used to doing this? After all, all these conjectures are based on real grounds and it is very likely that the case will be hushed up thanks to 'string pulling' by the rogues' parents.

We were told that pressure was being put on the victim's parents, that their physical integrity had been threatened. What is more, while our editorial board was working on that publication, we received a number of bizarre telephone calls asking us to stop the journalistic investigation and stay out of the way of the judges and their children. It is strange that none of the 'well-wishers' who called us considered the fate of the injured child, of how he will live after what happened. Nor did they consider the fate of the underage members of the 'criminal trio'. What will become of them? Could it be that, having gone unpunished once, they will resume their 'sexual experiments' in a couple of years? ...

P.S. Unfortunately, because of recent amendments to the Media Act, the newspaper may not name the young rascals or their parents and relatives ... We will carry on investigating the matter and in a future issue we will give concrete examples of how the children of judges and police officials have escaped punishment."

11. According to the applicant, subsequent publications in the *Kursiv-Ivanovo* and *Rabochiy Kray* newspapers and on the Internet gave the names and official positions of the offenders' parents and relative.

12. On 17 September 2002 the applicant published a follow-up article, under the headline "Chocolate Kids. High-ranking parents of minor rapists seek to hush up the scandal" ("*Шоколадные детишки.*

Высокопоставленные родители малолетних насильников пытаются замять скандал"). He wrote as follows:

> "The case developed into a scandal because the parents of one suspect were the spouses [Mr and Mrs B.], judges in a district court of Ivanovo, and a close relative of another, [Mr V.], was deputy head of the regional traffic police.
>
> Quite naturally, these high-ranking parents were not prepared to put up with the course of events. In addition to the ethical dimension, the scandal was a potential threat to their careers and financial well being. In the beginning they attempted to portray the events as an ordinary fist fight! With that purpose, and with the complicity of the regional administration, the prosecutor's office ordered an additional inquiry ...
>
> Judging from the diligence with which all that has been done, as well as from the fact that the official newspapers were suddenly full of lengthy articles about this year's wonderfully organised summer holidays for children, attempts are being made to exert pressure on the course of the resumed investigation.
>
> Most likely, this inquiry will establish that all the suspects are 'warm and fuzzy'. Yet, the fact that the abuse did indeed take place is confirmed by the fact that, precisely because of those scandalous events, one of the little scoundrels has been placed in a detention centre for juvenile offenders pursuant to an order of the Oktyabrskiy District Court. It follows that the son of simple factory workers is segregated from society, while his accomplices, the children of judges and bigwigs from the police, are at liberty! ...
>
> Our journalistic inquiry uncovered sensational information about [Mr V.] It turns out that this criminal scandal is not the first one in his family. His eldest son, Valeriy, has been on the list of fugitives from justice since 1995: he was suspected of assault with intent to rob. His youngest son, also a traffic police officer, caused a road accident a few years ago, in which a young woman was seriously injured ... But he managed to escape responsibility. And now this gloomy story involving [Mr V.'s] stepgrandson. It begs a question for the management of the regional police, who are certainly aware of these facts: how can such a person still work in the field of law enforcement in a position of leadership in the traffic police?
>
> This week the [judicial] qualification board will decide on the destiny of the judges [Mr and Mrs B]. If they carry on working as judges, this again begs a question: how will these people sentence others if they were unable to bring up their own child [properly]? ..."

B. Civil actions for defamation

1. Civil action by Mr and Mrs B.

13. Mr and Mrs B. brought a civil action for defamation and disclosure of private information on their own behalf and on behalf of their minor son. They named as defendants the founders of the *Kursiv-Ivanovo* newspaper and its journalists, as well as the applicant and the company that owned his newspaper. They sought a retraction and compensation for non-pecuniary

damage. They enclosed the text of the retraction, containing an apology that they wished the applicant's newspaper to publish.

14. On 12 March 2003 the Sovetskiy District Court of Ivanovo gave judgment. It noted that the statements accusing Mr and Mrs B.'s son of violent acts were true because the police had found evidence of a criminal offence. The allegedly insulting statements ("little bastards", "young rascals" and the like) were not actionable because they constituted value judgments not amenable to verification. The alleged breach of the duties of a journalist arising out of the Media Act, namely, disclosure of confidential or private information, was not actionable in civil proceedings because the Media Act provided for criminal or disciplinary, rather than civil, sanctions for such breaches. On the other hand, relying on Article 152 of the Civil Code, the court granted the claimants' request for a retraction of the allegation that they "had attempted to interfere with the investigation" because the journalists had not produced any proof of such interference. It ordered that the newspaper and the applicant publish a retraction containing an apology to Mr and Mrs B. It further ordered that the applicant pay Mr and Mrs B compensation in respect of non-pecuniary damage in the amount of 3,000 Russian roubles (RUB, approximately 85 euros (EUR)).

15. The applicant appealed. He submitted, in particular, that the articles authored by him did not contain any statements accusing Mr and Mrs B. of interfering with the investigation. He further complained that the order to publish a retraction containing an apology had had no basis in domestic law.

16. On 16 April 2003 the Ivanovo Regional Court upheld the judgment on appeal, finding that it had been lawful, well-reasoned and justified. As regards the order to publish an apology, the Regional Court found that it was for the District Court to determine the contents of the retraction.

2. Civil action by Mr V.

17. Mr V., on his own behalf, and his daughter-in-law, on behalf of her son, brought a civil claim against the same defendants for defamation and disclosure of information about their private life. They sought compensation for non-pecuniary damage under Article 152 of the Civil Code. They also sought a retraction and submitted a draft retraction containing an apology.

18. On 19 February 2004 the Sovetskiy District Court granted the claim in part. It found that the journalists had failed to prove the allegation that Mr V. "had interfered with the investigation", as required by Article 152 of the Civil Code. It rejected as unsubstantiated, without further reasoning, the applicant's argument that his articles had not contained any such statements. It also held the journalists liable for a violation of the claimants' constitutional right to the inviolability of their private lives, finding as follows:

> "Under Article 151 of the Russian Civil Code, if a citizen has incurred non-pecuniary damage through actions impairing his personal non-pecuniary rights ... the court may order the person responsible to compensate for the damage.
>
> In accordance with Articles 23 § 1 and 24 § 1 of the Russian Constitution, everyone has the right to the inviolability of his private life, to personal and family secrets, [and] to the protection of his honour and goodwill; it is an offence to collect, keep, use or disseminate information about a person's private life without that person's consent.
>
> The court has not seen any proof that the authors of the articles published in the *Kursiv-Ivanovo* and *Ivanovo-Press* newspapers obtained consent to the dissemination of information about the private lives of [Mr V. and his minor stepgrandson]. Accordingly, [their] constitutional right to the inviolability of their private lives has been breached."

19. The court ordered that the newspaper and the applicant publish a retraction containing an apology to Mr V. and his family. It further ordered that the applicant pay compensation to Mr V. and his daughter-in-law in the amount of RUB 2,000 (approximately EUR 55).

20. In his grounds of appeal the applicant complained about the District Court's inconsistent approach to the issue of whether disclosure of private information was actionable in the civil proceedings. In holding the applicant responsible for dissemination of personal information, the District Court had disregarded the fact that the information had been first published by another newspaper, *Kursiv-Ivanovo*, and that from that moment it had entered the public domain. Furthermore, the District Court had not identified any statements which could be construed as implying that Mr V. had interfered with the investigation.

21. On 19 April 2004 the Ivanovo Regional Court upheld the judgment, finding that disclosure of personal information was actionable under Article 151 of the Civil Code.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

22. Article 24 prohibits collecting, storing, using or disseminating information about a person's private life without that person's consent.

23. Article 29 guarantees freedom of thought and expression and freedom of the mass media.

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

24. Article 151 provides that a court may award compensation for non-pecuniary damage to an individual who has incurred such damage as a

consequence of acts that have violated his personal non-pecuniary rights. Article 150 lists, among other personal non-pecuniary rights, the inviolability of a person's private life, and personal and family secrets.

25. Article 152 provides that an individual may apply to a court with a request for a retraction of "statements" (*сведения*) that are damaging to his or her honour, dignity or professional reputation if the person who disseminated the 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 the statements.

C. The Mass Media Act

26. The Mass Media Act (Law no. 2124-I of 27 December 1991) provides that the mass media may not publish information which permits a minor who has committed a criminal or an administrative offence or is suspected of such an offence to be identified, directly or indirectly, unless the minor concerned and his or her guardian has consented to the publication (section 41(3)).

27. An individual or an organisation is entitled to require that the editorial board of a mass medium publish a retraction of untrue statements that are damaging to his/her/its honour, dignity or professional reputation. If the editorial board is unable to prove the truthfulness of the contested statements, it must publish a retraction in the same mass medium. If the individual or the organisation submits a draft text of the retraction, the editorial board must publish the submitted text, provided that it is compatible with the Act (section 43). A retraction must specify which statements are untrue, as well as where and when they were published (section 44(1)).

28. A journalist is entitled to express his personal opinions and value-judgments in the publications bearing his name (section 47 (9)).

29. A journalist must check the truthfulness of the information he publishes. Before publishing information about an individual's private life, a journalist must obtain the consent of the individual concerned or his or her guardian, except in cases where the publication of such information serves the public interest (section 49(2) and (5). A journalist who has not complied with these duties may be held criminally, administratively or disciplinarily liable in accordance with the law (section 59(2)).

30. Editorial boards, editors-in-chief and journalists are not liable for untrue statements damaging the honour and dignity of individuals or organisations, or for statements infringing the rights and lawful interests of citizens, if such statements are a verbatim reproduction of statements or materials, or extracts of them, that have been published earlier by another mass medium that may be identified and held liable (section 57(6)).

D. Resolutions of the Plenary Supreme Court

31. Resolution of the Plenary Supreme Court of the Russian Federation no. 11 of 18 August 1992 (amended on 25 April 1995 and in force at the material time) provided that, in order to be considered damaging, statements had to be untrue and contain allegations of a breach of laws or moral principles (for example, the commission of a dishonest act, or improper behaviour at the workplace or in everyday life). "Dissemination of statements" was understood to be the publication of statements or their broadcasting (section 2). The burden of proof was on the defendant to show that the disseminated statements were true and accurate (section 7).

32. On 24 February 2005 the Plenary Supreme Court of the Russian Federation adopted Resolution no. 3, which required the courts examining defamation claims to distinguish between statements of facts which can be checked for veracity, and value judgments, opinions and convictions which are not actionable under Article 152 of the Civil Code because they are expressions of a defendant's subjective opinion and views and cannot be checked for veracity (paragraph 9). Furthermore, it prohibited the courts from ordering defendants to extend an apology to a claimant, because that form of redress had no basis under Russian law, including Article 152 of the Civil Code (paragraph 18).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

33. The applicant complained of a violation of his right to freedom of expression, provided for 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

34. The Court notes that the application 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

35. The applicant submitted that the domestic courts had held him liable for the allegation that the claimants had interfered with the investigation into the incident at the *Stroitel* summer camp. However, the articles published by him had not contained any such allegation. The articles had indeed mentioned that some interference with the investigation might be possible. That statement had been a supposition rather than a statement of fact. It had not been amenable to proof. The perpetrators of the possible interference with the investigation had not been identified in the articles. The claimants had therefore had no reason to allege that the statement had been directed against them.

36. Further, as regards liability for dissemination of information about a person's private life, the applicant argued that the domestic courts had not applied section 49(5) of the Mass Media Act, which provided that in cases where the publication of information about a person's private life served the public interest, it was not necessary to obtain the prior consent of the individual concerned. Moreover, the applicant had not in fact disclosed any confidential information about the claimants' private lives. By the time he had published his articles, the information about the incident at the *Stroitel* summer camp and the names of those involved had already entered the public domain through publication in other newspapers.

37. Finally, the applicant submitted that the order to publish a retraction containing an apology had had no basis in domestic law. He argued that only a voluntary apology might be acceptable under the Convention. It was clearly excessive to compel someone to make an apology, thereby forcing him to express an opinion that did not correspond to his personal convictions.

38. The Government submitted that the interference with the applicant's right to freedom of expression had been “prescribed by law”, notably Article 152 of the Civil Code, and had pursued the legitimate aim of protecting the reputation and rights of others. It had also been “necessary in a democratic society”, given that the applicant had published false information about the claimants. The courts had drawn a distinction between value judgments and statements of fact and had held the applicant

liable only in respect of the statements of fact that he had been unable to prove. The applicant had also been held liable for disseminating information about the claimants' private lives without their explicit consent. The applicant had been ordered to pay a purely symbolic amount of compensation to the claimants. The courts had not required that the applicant extend a personal apology to the claimants; rather, in accordance with section 43 of the Mass Media Act, they had ordered that the applicant and his newspaper publish a retraction drafted by the claimants.

2. The Court's assessment

(a) General principles

39. 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. 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*, 7 December 1976, § 49, Series A no. 24, and *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298).

40. 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).

41. 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 Gijsels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and Decisions* 1997-I, 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*, 25 June 1992, § 63, Series A no. 239). Journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria (no. 1)*, 26 April 1995, § 38, Series A no. 313). 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.

42. 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).

43. 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). Further, as regards criticism directed against judges, the Court has found that the work of the courts, which are the guarantors of justice and which have a fundamental role in a State governed by the rule of law, needs to enjoy public confidence. It should therefore be protected against unfounded attacks. The courts are however not immune from criticism and scrutiny. It is important that a clear distinction is made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would not, in principle, constitute a violation of Article 10 § 2 of the Convention (see *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003).

(b) Application to the present case

44. It is common ground between the parties that the judgments pronounced against the applicant constituted an "interference" with his right to freedom of expression as protected by Article 10 § 1. The Court's task is to determine whether the interference was justified within the meaning of paragraph 2 of that Article, that is, whether it was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society".

45. The Court accepts that the interference was based on Articles 151 and 152 of the Civil Code and pursued the legitimate aim of protecting the reputation and rights of others. As regards the applicant's argument that the

judicial order to extend an apology had no legal basis in domestic law, the Court has already found that at the material time, that is, before the adoption in 2005 of Resolution no. 3 by the Plenary Supreme Court (see paragraph 32 above), the domestic courts reasonably interpreted the notion of retraction as possibly including an apology. The Court has accepted that that interpretation of the relevant legislation by the Russian courts was not such as to render the impugned interference unlawful in Convention terms (see *Kazakov v. Russia*, no. 1758/02, §§ 21-24, 18 December 2008). The Court sees no reason to reach a different conclusion in the present case. Accordingly, it remains to be examined whether the interference was "necessary in a democratic society".

46. The Court reiterates that the test of "necessity in a democratic society" requires it 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).

47. Turning to the facts of the present case, the Court notes that the applicant, a journalist at a local newspaper, published two articles about a violent incident at a summer camp where minor children of high-ranking officials had assaulted their younger roommate. It is significant that the domestic courts found that all the information published about the assault was based on the results of the official investigation and was accordingly true. They nevertheless found the applicant liable for disclosing private information about the offenders and their relatives and for disseminating a statement, which he had been unable to prove, to the effect that the offenders' relatives had attempted to interfere with the investigation. The Court will examine those two aspects in turn.

48. As to the first aspect, the Court observes that the applicant was found civilly liable for disclosing information about the private life of

Mr V., a high-ranking traffic police official. A similar claim lodged by the judges Mr and Mrs B. was dismissed by the domestic courts. The Court will therefore focus its assessment on the applicant's statements about Mr V.

49. It is important to note that in his first publication of 3 September 2002 the applicant outlined the violent incident at the summer camp in general terms without naming its participants or describing them in an identifiable manner. It was only in his second publication of 17 September 2002 that the applicant mentioned the names of the juvenile offenders, including the name of Mr V.'s stepgrandson, and the official positions of their relatives. However, before that date that information had already been disclosed by another newspaper and the incident in all its details had been widely discussed in the press and on the Internet (see paragraph 11 above). It has not been submitted in the domestic proceeding or before the Court that the applicant's publications introduced any new personal details previously unknown to the public. It follows that by the time of the second publication the offenders' personal information had ceased to be confidential and was already in the public domain. Thus, the interest in protecting the identity of the juvenile offenders and their relatives had been substantially diminished, so that the preservation of confidentiality in this matter could no longer constitute an overriding requirement (see *Editions Plon v. France*, no. 58148/00, § 53, ECHR 2004-IV; *Sürek v. Turkey (no. 2)* [GC], no. 24122/94, § 40, 8 July 1999, and, *mutatis mutandis*, *Weber v. Switzerland*, 22 May 1990, §§ 49 and 51, Series A no. 177; *Observer and Guardian v. the United Kingdom*, 26 November 1991, §§ 68 and 69, Series A no. 216; *Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, §§ 54 and 55, Series A no. 217; and *Vereniging Weekblad* Bluf! *v. the Netherlands*, 9 February 1995, §§ 43 and 44, Series A no. 306-A).

50. That being said, the Court considers that in certain circumstances a restriction on reproducing information that has already entered the public domain may be justified, for example to prevent further airing of the details of an individual's private life which do not come within the scope of any political or public debate on a matter of general importance. The Court reiterates in this connection that in cases of publications relating the details of an individual's private life with the sole purpose of satisfying the curiosity of a particular readership, the individual's right to the effective protection of his or her private life prevails over the journalist's freedom of expression (see *Von Hannover v. Germany*, no. 59320/00, § 65, ECHR 2004-VI; *Campmany y Diez de Revenga and López Galiacho Perona v. Spain* (dec.), no. 54224/00, ECHR 2000-XII; *Société Prisma Presse v. France* (dec.), nos. 66910/01 and 71612/01, 1 July 2003; and *Bou Gibert and El Hogar y La Moda J.A. v. Spain* (dec.), no. 14929/02, 13 May 2003). The Court must therefore determine whether the articles authored by the applicant made a contribution to a debate of general interest to society.

51. The Court considers that information about the involvement of Mr V.'s minor stepgrandson in a violent incident made no such contribution. The public did not have a legitimate interest in knowing about Mr V.'s family affairs, which were not in any way related to his official functions. The Court reiterates that it is unacceptable that an official should be exposed to opprobrium because of matters concerning a member of his family (see *De Haes and Gijsels v. Belgium*, 24 February 1997, § 45, *Reports of Judgments and Decisions* 1997-I). It is also of significance that Mr V.'s stepgrandson was a minor, and for that reason his deeds were not prosecutable under Russian law. He was never charged with a criminal offence and no criminal proceedings were opened against him. The instant case is therefore distinguishable from those cases in which journalists have reported on ongoing criminal proceedings, thereby exercising their right and duty to impart information on a matter of public concern (see, for example, *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, §§ 55 and 56, ECHR 2000-I). In the Court's view, in cases such as the present one where an offence has been committed by a minor who has not reached the statutory age of criminal responsibility and who is not considered responsible for his actions, a journalist's right to impart information on a serious criminal offence must yield to the minor's right to the effective protection of his private life. There can be little doubt that his repeated naming in the press in connection with the reprehensible summer camp incident was particularly harmful to Mr V.'s stepgrandson's moral and psychological development and to his private life.

52. The Court concludes from the above that publication by the applicant of the names of the juvenile offenders and the official positions of their relatives did not make any contribution to a discussion of a matter of legitimate public concern. Although that information had been previously published by other newspapers, the civil liability imposed on the applicant was justified in the circumstances by the need to prevent further airing in the press of the details of the claimants' private lives.

53. As to the second aspect of the case against the applicant, the Court notes that he was found liable for disseminating the statement that "[Mr and Mrs B. and Mr V. had] attempted to interfere with the investigation". The Court notes that that wording was not actually contained in the articles authored by the applicant. The article of 17 September 2002, however, mentioned that "attempts are being made to exert pressure on the course of the resumed investigation". It is true that that statement is impersonal and the individuals who allegedly exercised such pressure are not referred to by name. However, when read in context, in particular in conjunction with such statements as "high-ranking parents of minor rapists seek to hush up the scandal", that statement might convey to an ordinary reader the impression that it had been the claimants, Mr and Mrs B and Mr V., who had made the attempts to influence the investigation referred to in the article. The Court

therefore accepts the finding of the domestic courts that the applicant had disseminated a statement accusing the claimants of interfering with the investigation.

54. The Court further observes that the Russian courts characterised the statement about the attempted exertion of influence on the investigation as a statement of fact and found the applicant liable for his failure to show its veracity. The Court agrees that the applicant published a serious factual allegation against the claimants and that that allegation was susceptible of proof. The applicant, however, never endeavoured to prove that allegation or establish a sufficiently accurate and reliable factual basis for it. It follows that the applicant disseminated a defamatory accusation against the judges Mr and Mrs B. and the traffic police officer Mr V., which was likely to lower them in public esteem and was put forward without any supporting evidence (see *Barfod v. Denmark*, 22 February 1989, § 35, Series A no. 149).

55. Finally, in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Skałka v. Poland*, no. 43425/98, § 38, 27 May 2003). In this connection, the Court notes that the amount of damages that the applicant was ordered to pay to the claimants does not appear excessive.

56. 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.

57. Accordingly, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 16 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Kovler is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE KOVLER

Not without some hesitation, I have joined the conclusions of the Chamber that there has been no violation of Article 10 of the Convention in this particular case.

Nevertheless, I would like to express my opinion about the fact that the applicant was ordered not only to publish a retraction and to pay the claimants a symbolic amount of damages, but also to issue an apology. Firstly, the Court has already found that "an apology" cannot be considered "necessary" under Article 10 (see *Kazakov v. Russia*, no. 1758/02, § 30, 18 December 2008); thus, the domestic courts overstepped to a certain extent the narrow margin of appreciation afforded to them for restrictions on debates of public interest. Secondly, the judicial order to extend an apology had no clear legal basis in domestic law: at the material time (2003-2004) the domestic courts interpreted the notion of retraction as possibly including an apology. And only Resolution no. 3 of 24 February 2005 of the Plenary Supreme Court of the Russian Federation prohibited the courts from ordering defendants to extend an apology to a claimant, because that form of redress had no basis under Russian law, including Article 152 of the Civil Code (see paragraph 32 of the judgment).

Only the fact that this clarification was issued after the adoption of the judgments by the domestic courts in the present case swayed my position to finding no violation of Article 10 of the Convention.