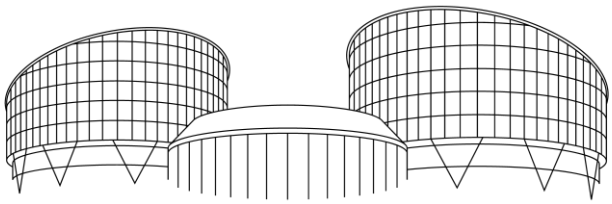

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OOO IVPRESS AND OTHERS v. RUSSIA

(Applications nos. 33501/04, 38608/04, 35258/05 and 35618/05)

JUDGMENT

STRASBOURG

22 January 2013

FINAL

22/04/2013

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

In the case of OOO Ivpress and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 December 2012,

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

PROCEDURE

1. The case originated in four applications (nos. 33501/04, 38608/04, 35258/05 and 35618/05) 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 OOO Ivpress, a Russian limited-liability company with the registered office in Ivanovo ("the applicant company"), and two Russian nationals, Mr Valeriy Alekseyevich Smetanin and Mr Aleksey Yurievich Ovchinnikov ("the individual applicants"), on 12 August 2004 and 16 September 2005.

2. The applicants were represented by Ms N. Murashchenko, a lawyer practising in the Ivanovo Region. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, a violation of their right to freedom of expression.

4. On 25 September 2008, 12 February, 9 March and 19 June 2009 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company publishes a weekly newspaper *Ivanovo-Press*. The two individual applicants are journalists writing for the newspaper.

A. Application no. 33501/04 ("the K. proceedings")

6. On 12 August 2003 the *Ivanovo-press* newspaper published in issue no. 32 an article by Ms L. headlined "You can see it – and you can have it" («И око видит, и зуб имет») about a conflict between Mr K., director of the local State gas-supply company "Rodnikiraygas", and his neighbours, the S. family. The article had the following subtitles: "The Director of Rodnikiraygas has declared war on a poverty-stricken family, not a single member of which is healthy", "Boss in Law", "Gas Racket". It also stated that Mr K. had "ordered that the S. family not be supplied with gas", and that "even when all the notified defects had been eradicated ... [Mr K.] did not lift the unofficial ban". Finally, in the article Mr K. was described as "a parochial boss".

7. Mr K. instituted defamation proceedings before the Leninskiy District Court of Ivanovo against the applicant company and Ms L. He requested the court to order a rectification of the above statements, all the subtitles and the headline of the article.

8. On 18 December 2003 the District Court found in part against the applicant company. In particular, it established that the S. family had not been supplied with gas on account of defects in their compressed gas equipment, and that the gas supply had been restored as soon as these defects were rectified. Thus, the statements that Mr K. had "ordered that the S. family not be supplied with gas", and that "even when all the notified defects had been eradicated ... [Mr K.] did not lift the unofficial ban" were untrue.

9. With regard to the subtitle "The Director of Rodnikiraygas has declared war on a poverty-stricken family ..." the District Court found that "the fact that Mr K. [had] lodged a civil claim against Ms S. does not constitute evidence of a declaration of war", and the plaintiff's claim in this part was allowed.

10. The District Court further rejected the defendant's argument that the subtitles "Boss in Law" and "Gas Racket" were value-judgments, not susceptible of proof. It stated that the expression "boss in law" («начальник в законе») was analogous to the Russian slang expression "thief in law" and could not have any other meaning. The word "racket" («рэкет») meant an outrageous extortion, and, used together with the word "gas" in a subtitle

to the article about Mr K., who was the director of a gas supply company, implied, in the court's view, that the plaintiff was extorting a property by threats and blackmail.

11. The court rejected the remainder of the claim, finding that the headline of the article was merely a rephrased Russian proverb which did not contain any information about Mr K. It found that the expression "a parochial boss" could not be regarded as defamatory.

12. The court held the applicant company liable to pay 3,000 Russian roubles (RUB) in compensation to Mr K. and RUB 515 in legal aid.

13. On 17 March 2004 the Ivanovo Regional Court upheld that judgment in a summary fashion.

B. Application no. 38608/04 ("the V. proceedings")

14. In 2003, a series of articles critical of Mr V., who was the head of the Ivanovo Regional Highways Department and of the Executive Committee of the Ivanovo Regional Branch of the United Russia party, appeared in the *Ivanovo-Press* newspaper.

15. On 15 July 2003 the newspaper published an interview with Mr Ku., the former general director of a public company. Mr Ku. stated that in 1996 Mr V. had tricked him into signing a contract with a private company which had subsequently defaulted on its obligations. Mr Ku. stated in particular that Mr V. "was capable of violating moral principles for the sake of money and [his] career".

16. On 29 July 2003 the newspaper published an article under the headline "V. wants a market, WE NEED VICTORY Sq." («В-у нужен базар, НАМ – пл. ПОБЕДЫ») followed by a subheading "The head of the Executive Committee of the Ivanovo Regional Branch of the United Russia party, V., is ready to convert Victory Square into a market place". The article criticised the authorities' neglectful attitude towards the veterans of the Second World War, as exemplified by the attempts of some officials to build a shopping centre and car park in Victory Square. The article continued as follows:

> "Cynically, loudly, shamelessly and in disregard of public opinion, Mr V., the head of [the Ivanovo Regional Highways Department] and of the Executive Committee of the Ivanovo Regional Branch of the United Russia Party, has been lobbying town officials for the building of a shopping centre, parking places, etc. in one of the town's central squares (Victory Square, the name so dear to the majority of its inhabitants) ...
>
> For the sake of transient personal interests of gluttonous *nouveaux riches* some officials from the town administration are ready to sacrifice (supposedly for a fee) the glory and pride of generations and to devalue and belittle such notions as 'Patriotism', 'Victory' and 'Faith'. Mr V.'s unscrupulousness, the dubious origins of his wealth and financial resources, and his readiness to transgress all moral laws to secure his wealth have been known for a long time. His attempts to persuade the town administration to build a shopping centre in the central square seem even more suspicious ... People like

> V. have so far created nothing, done nothing for their fellow townsmen. Not only that, the activity of the above-mentioned official has brought nothing but harm. He worked in the position of general director of the Polet company and the company lost eighteen billion [Russian roubles]. He became the head of [the Ivanovo Regional Highways Department] and got money for serious commercial projects ... The leaders of [the United Russia party] (V. is one of them) lack wisdom, will, aspiration to promote unity in society by renouncing, at least temporarily, their ambitions and passion for wealth ...” (underlining added, see below).

17. Mr V. sued the applicant company and the author of the article in defamation before the Leninskiy District Court. Considering that the article’s headline, subheading and the extracts underlined above were untrue and damaging to his dignity and professional reputation, he sought rectification.

18. The applicant company maintained that all the statements of fact contained in the article were true as proved by witness testimony. The other statements were value judgements and could not be proved.

19. On 23 December 2003 the District Court granted Mr V.’s action in part. It found that the underlined extracts were damaging to Mr V.’s honour, dignity and reputation as they contained allegations that Mr V. had breached moral and ethical norms, had behaved unscrupulously, cynically and in disregard of public opinion, and that his activity had been harmful. The defendants had not proved the veracity of those statements.

20. In respect of Mr V.’s allegedly dishonest dealings with Mr Ku.’s public company, the District Court found that the testimony of Mr Ku., who was hostile towards Mr V., was insufficient to prove the truthfulness of the allegation that Mr V. had acted unscrupulously in that matter or that his activity had been harmful.

21. With regard to Mr V.’s alleged intention to convert Victory Square into a market place, the District Court noted that the fact that he had repeatedly attempted to obtain building permission had been confirmed by Mr G.’s testimony. However, no evidence had been adduced to suggest that he had done so cynically or in disregard of public opinion.

22. The District Court accordingly found that the underlined extracts were untrue, damaging to Mr V.’s honour, dignity and professional reputation and were liable to rectification. It accepted, however, that the statements which are not underlined were the author’s subjective opinion and not susceptible of proof.

23. Both the applicant company and Mr V. appealed.

24. On 17 March 2004 the Ivanovo Regional Court upheld part of the judgment and quashed the remainder. The Regional Court agreed with the District Court’s findings that the underlined statements were untrue and damaging to the plaintiff’s honour and reputation. The Regional Court noted in addition:

> “The defendants failed to prove the truthfulness of their allegation that V. had lobbied for the development of Victory Square. The testimony by witness G[.] that the

> plaintiff had twice discussed with him the issue of building a car park in front of the Polet company does not confirm [the truthfulness of that allegation]. Judging by the meaning of the word 'to lobby' (to apply pressure in order to obtain a certain decision), an application to a competent official cannot be regarded as lobbying for the building of a shopping centre in Victory Square."

Accordingly, the Regional Court upheld the part of the judgment concerning the underlined statements. That part of the judgment became final.

25. It quashed the part of the judgment concerning the statements which are not underlined and remitted the case to the Leninskiy District Court for re-examination for the following reasons:

> "The court considers that the arguments by the plaintiff's counsel about the defamatory character of the phrase 'V. wants a market, WE WANT VICTORY Sq.' and other phrases are well-founded. These phrases contain statements about the facts which have allegedly taken place: 'attempted to persuade', 'is ready to convert the square', 'V. wants a market'. In these circumstances the court cannot agree with the [District] Court's finding that these statements are value judgements of the author of the publication."

26. On 13 April 2004 the Leninskiy District Court re-examined the outstanding part of the case. If found that the headline and subheading of the article and the statement that "his attempts to persuade the town administration to build a shopping centre in the central square seem ... more suspicious" were damaging to Mr V.'s honour, dignity and professional reputation as they contained allegations that he had breached moral and ethical norms and had belittled the memory of the veterans of the Second World War.

27. Mr V. then sued the applicant company and Ms L. for compensation in respect of non-pecuniary damage and legal costs. On 16 June 2004 the Leninskiy District Court allowed the claims in part and ordered the applicant company to pay Mr V. RUB 4,000 in respect of non-pecuniary damage, plus legal costs. On 26 July 2004 the Ivanovo Regional Court upheld that judgment on appeal.

C. Application no. 35258/05 ("the T. proceedings")

28. On 11 January 2005 the *Ivanovo-Press* newspaper printed an article by the applicant Mr Smetanin under the headline "Five pairs of underwear for three years" («Пять трусов на три года»). He expressed his dissatisfaction with the existing level of salaries and social security in the Ivanovo Region and precariousness of the job market. The applicant criticised the governor of the Ivanovo Region for a lack of attention to those issues, writing as follows:

> "In the meantime, at the children's new year party the governor talked about his cherished dream to find a life companion in 2005. He does not think about the people but solely about himself. He was married twice and is now searching yet again. The

> entire region is gossiping about him and Ms D. but he does not care. He continues to turn us into zombies ...
>
> When electing him, [we] expected that a Communist would care about the people. But he turned out to be a simple demagogue! ...
>
> The governor now claims that he is certain to be re-appointed for a second term with a probability of 67 per cent. Did you ask the people's opinion? The people have faith in the president but, in my view, if he decides to re-appoint the individuals who brought discredit upon themselves, the residents of the Ivanovo region would not appreciate it!"

29. The article was accompanied by a photograph showing two men, one of whom appears to be the governor of the Ivanovo Region. The photograph carried the following caption: "In my view, these men do not give a damn about anyone as long as [their] pockets are full of money and [they have] a cute babe close by."

30. The governor Mr T. and the deputy head of the governor's administration Ms D. sued the first and second applicants for defamation. They claimed that the above-cited extracts and the caption under the photograph damaged their dignity, honour and reputation.

31. On 31 March 2005 the Leninskiy District Court gave judgment and granted the claim in part.

32. The District Court found, firstly, that the applicants failed to prove the allegation that the governor was an individual who "brought discredit upon [himself]". It held as follows:

> "The respondents did not produce any evidence showing the veracity of the said statements. A copy of the Ivanovskaya Zemlya newspaper of 17 March 2005, in which the campaign 'For the Ivanovo Region without [governor] T.!' was launched and the signatures collected against the re-appointment of Mr T. for a second term may not be such evidence, similarly to any other newspaper publications. The veracity of the statements printed in the newspaper and participation of the listed organisation in the campaign has not been established by anyone. The publication in the Ivanovskaya Zemlya newspaper of 17 March 2005 only demonstrates the existence of political struggle for the governor's position."

33. The District Court further considered that the extract concerning the governor's personal relationships – starting from "He does not think ..." and to the end of the paragraph – contained the assertions that he had favoured his private life to the detriment of the social and economic development of the region, neglected his professional duties, engaged in an extra-marital relationship with Ms D. and also attempted to turn the people of the region into "zombies". The District Court pointed out that the applicants failed to produce any evidence in support of those allegations which were damaging to the reputation of both the governor and Ms D.

34. Referring to Resolution no. 3 of the Plenary Supreme Court (cited in paragraph 54 below), the District Court also found that the caption of the

photograph was not actionable in defamation because it expressed the author's personal opinion and because it did not refer directly to Ms D.

35. The District Court held that the applicant company should pay RUB 20,000 to the governor and RUB 15,000 to Ms D. and the applicant Mr Smetanin RUB 5,000 and RUB 3,000, respectively. It also ordered publication of the entire judgment by way of rectification.

36. On 11 May 2005 the Ivanovo Regional Court upheld the judgment on appeal, in a summary fashion.

D. Application no. 35618/05 ("the S. proceedings")

37. Between September 2004 and January 2005 the *Ivanovo-Press* newspaper published a series of articles which criticised the management of the Ivanovo Regional Social Security Fund by its director Ms S. In connection with those publications Ms S. lodged two defamation claims before the Leninskiy District Court of Ivanovo.

1. First defamation claim

38. On 4 March 2005 the Leninskiy District Court issued judgment in the first defamation claim, in which the applicant company and the applicant Mr Smetanin were the defendants.

39. The District Court found, firstly, that the headline of the article by the applicant Mr Smetanin entitled "Shady organisations stand up for S." («За С-ву заступаются теневые структуры») printed in issue no. 39 of 28 September 2004, was damaging for her reputation. The article concerned a visit that the director of the Zabota foundation Mr L. had paid to the newspaper's office to express his discontent about the negative coverage of Ms S.'s activities in previous publications. Examined in the witness stand, Mr L. testified that the Zabota foundation had been set up to assist orphaned children, the disabled and rehabilitated criminals and that one half of the foundation's employees were former convicts. He stated that he had had professional contacts with Ms S. and had sought her assistance in obtaining holiday vouchers for orphaned children. Exasperated by the aspersions the newspaper had cast on Ms S., he had come to the office and had spoken to the editor-in-chief. The District Court determined that, in the absence of any evidence of the Zabota foundation's involvement in criminal or illegal activities, the allegation contained in the article's headline was untrue.

40. Secondly, the District Court considered the assertions made by the applicant Mr Smetanin in the article "Sports, children's holidays and corruption" («Спорт, детский отдых и коррупция») printed in issue no. 40 of 5 October 2004. The article alleged in particular that Ms S. had "earned a fortune by simply siphoning off a large part of funds through an acquaintance of hers" and that "for a long time those amounts [had been] used to feed bandits and double-faced policemen who cover[ed] up for her".

The District Court examined Ms U., who was Ms S.'s "acquaintance" mentioned in the article, and two employees of the social-security fund, but found no evidence of any misappropriations or unlawful transfer of funds. Accordingly, it concluded that the allegations were untrue and damaging for Ms S.'s reputation.

41. Thirdly, the District Court examined two extracts from an article by the applicant Mr Smetanin published in issue no. 42 of 19 October 2004 and found as follows:

> "The assertions that S. had made fun of [President] Putin and that S. hides her real face from public are also damaging to the plaintiff's reputation ...
>
> The sentence 'T. S. hides her real face from the public' contains in fact an assertion that the plaintiff is double-faced and has a different, genuine face which she hides from the public. This conclusion finds corroboration in the submissions by the representative of the defendants who stated in court that the purpose of that figure of speech was to inform the readers that there were not just positive but also negative aspects to the plaintiff's reputation. According to [the authoritative dictionary of Russian language], the word 'two-faced' means something that presents two contradictory aspects, hypocritical, insincere. No evidence showing the veracity of those statements was submitted to the court. The prosecutor's office discontinued criminal case no. 3025 against Ms S. for lack of indications of the criminal offences under Article 285 and 160 of the Criminal Code. The reports by [the auditing authorities] do not contain any such evidence, either.
>
> According to the same dictionary, the expression 'make fun' of someone (the same as 'laugh at') means to ridicule or scorn something or somebody; the article concerns the disrespect of legal requirements and incompliance with the Presidential Decree [which required State officials to render assistance to journalists in obtaining exact and truthful information]. ... The plaintiff clarified in court that her refusal to give out information about the employees of the social security fund had been prompted by written petitions from the fund employees who had objected to having the information on their place of work released to the media. For that reason [the court considers that] the refusal to communicate such information to the media does not demonstrate that Ms S. had made fun of the President of the Russian Federation."

42. The District Court awarded Ms S. RUB 20,000 from the applicant company and RUB 3,000 from the applicant Mr Smetanin in respect of non-pecuniary damages, RUB 2,500 and RUB 1,000 respectively for legal fees, and RUB 30 and RUB 10 respectively for court fees.

43. On 6 April 2005 the Ivanovo Regional Court upheld the judgment in a summary fashion.

2. Second defamation claim

44. On 11 May 2005 the Leninskiy District Court gave judgment in a second defamation claim lodged by Ms S. against the applicant company, Mr Smetanin and Mr Ovchinnikov.

45. Analysing the article by the individual applicants which appeared in issue no. 48 of 30 November 2004 under the headline "S. is cheating ..."

(«С-ва обманывает»), the District Court determined that the headline itself did not contain information about concrete facts or events because it did not specify "what the nature of the cheating had been and whom and when the plaintiff had cheated".

46. The District Court further examined the following extract from the same article:

> "... in 2002, the regional control and audit department checked the accounts of the fund relating to the organisation of summer holidays and discovered an overexpenditure of 11 million roubles. We think that such a considerable amount was transferred by Ms S.'s fund to Ms U[.]'s company. According to our sources, the law-enforcement authorities took an interest in that transaction, but someone quickly cooled their interest down."

47. The District Court considered that the sentence about the transfer of a large amount of money to Ms U.'s company was not actionable in defamation since it was phrased as the authors' supposition. On the other hand, it held that the final sentence about the sudden loss of interest by the law-enforcement authorities was damaging to the plaintiff's reputation as it contained "an assertion of Ms S.'s involvement in unlawful distribution of the assets of the social-security fund".

48. In respect of the article entitled "S.'s case" («Дело С-вой») in issue no. 1 of 11 January 2005, the District Court found that it contained untruthful and damaging allegations that Ms S. had renovated her flat at the expense of the social-security fund and that she had lent the fund's money to private companies almost for free.

49. The final element of the defamation claim was the article which appeared in issue no. 4 of 1 February 2005. It concerned a possible replacement of Ms S. as the director of the Ivanovo social-security fund with another person and contained the following statement:

> "This fact cannot give rise to optimism because, instead of one dubious individual with a criminal past, the fund will be managed by another individual who, in our opinion, should have no place in the executive power."

In respect of this sentence the District Court found as follows:

> "There is no doubt that the sentence contains an allegation of the plaintiff's criminal past ... whereas the defendants did not produce evidence of any such past. The fact that a criminal case was opened against Ms S. cannot attest to her criminal past as it was subsequently discontinued for lack of indications of a criminal offence. There is no doubt that the allegation of criminal past is damaging to her honour, dignity and reputation. At the same time, the adjective 'dubious'... is a value-judgment which does not contain any statement of fact and is not amenable to rectification."

50. The District Court awarded Ms S. RUB 20,000 from the applicant company and RUB 5,000 from each of the individual applicants in respect of non-pecuniary damages, RUB 2,000 and RUB 500 respectively for legal fees, and RUB 200 and RUB 50 respectively for court fees.

51. On 15 June 2005 the Ivanovo Regional Court upheld the judgment on appeal, in a summary fashion.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

52. Article 29 guarantees freedom of thought and expression, together with freedom of the mass media.

B. Civil Code of the Russian Federation

53. Article 152 provides that an individual may apply to a court with a request for the rectification of statements ("*svedeniya*") 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.

C. Resolution no. 3 of 24 February 2005 issued by the Plenary Supreme Court of the Russian Federation

54. The Resolution requires the courts hearing defamation claims to distinguish between the statements of facts which can be checked for veracity and evaluative judgments, opinions and convictions which are not actionable under Article 152 of the Civil Code since they are an expression of the defendant's subjective opinion and views and cannot be checked for veracity (paragraph 9).

III. RELEVANT COUNCIL OF EUROPE MATERIAL

55. On 12 February 2004 the Committee of Ministers of the Council of Europe adopted, at the 872nd meeting of the Ministers' Deputies, the Declaration on freedom of political debate in the media which read in particular as follows:

> The Committee of Ministers of the Council of Europe,
>
> ...
>
> Reaffirming the pre-eminent importance of freedom of expression and information, in particular through free and independent media, for guaranteeing the right of the public to be informed on matters of public concern and to exercise public scrutiny

over public and political affairs, as well as for ensuring accountability and transparency of political bodies and public authorities, which are necessary in a democratic society, without prejudice to the domestic rules of member states concerning the status and liability of public officials ...

Conscious that natural persons who are candidates for, or have been elected to, or have retired from political bodies, hold a political function at local, regional, national or international level or exercise political influence, hereinafter referred to as "political figures", as well as natural persons who hold a public office or exercise public authority at those levels, hereinafter referred to as "public officials", enjoy fundamental rights which might be infringed by the dissemination of information and opinions about them in the media;

Conscious that some domestic legal systems still grant legal privileges to political figures or public officials against the dissemination of information and opinions about them in the media, which is not compatible with the right to freedom of expression and information as guaranteed by Article 10 of the Convention;

Draws particular attention to the following principles concerning the dissemination of information and opinions in the media about political figures and public officials:

...

III. Public debate and scrutiny over political figures

Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.

IV. Public scrutiny over public officials

Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions."

THE LAW

I. JOINDER OF THE APPLICATIONS

56. The Court observes that the central issue in the above applications was the applicants' right to freedom of expression and that they had originated in the same region and involved the same newspaper and the same domestic courts. Having regard to the similarity of the circumstances which are common to all four applications, the Court is of the view that, in

the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

57. The applicants complained that the judgments of the Russian courts pronounced in the defamation claims had been in breach of Article 10 of the Convention, which reads as follows:

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

58. The Government accepted that the domestic judgments constituted an interference with the applicants' right to freedom of expression. That interference had a lawful basis in Article 152 of the Civil Code and pursued a legitimate aim of the protection of the reputation of others.

59. According to the Government, the Russian courts drew a clear distinction between value judgments and statements of fact. Thus, in the K. proceedings, they correctly considered that the expressions "boss in law" and "gas racket" were not value judgments because the latter expression amounted to an assertion that K. had extorted others' property by threats, blackmail and violence. With regard to the V. proceedings, the Government claimed that Mr V.'s repeated applications for permission to build a parking lot could not be described as "cynical" and "shameless" lobbying of a construction project; rather, his actions should have been viewed as an attempt to arrange an "orderly placement of visitors' vehicles". In the Government's view, the article about Mr V. had been a "provocation", written in a pompous style and full of "high-impact statements", which created an ambiguous impression about Mr V., portraying him as someone who disrespected moral requirements and desecrated the memory of the Great Patriotic War. The Government acknowledged that the domestic courts did not examine whether the contested statements could have been

value judgments because the then effective law did not require them to do so.

60. The Government further submitted that the statements about Mr T. did not have a solid factual basis and were not a fair comment on his private life or on the private life of Ms D. Since both plaintiffs held high positions in the local municipal service, a refutation of the applicants' accusations against them had been necessary for the protection of their untarnished reputations. With regard to the S. proceedings, the Government stated that the domestic courts had drawn a clear distinction between value judgments and statements of fact and had correctly established that the publications contained serious allegations against Ms S. They claimed that the applicants had used the report by the Ivanovo Region Control and Audit Department of the Ministry of Finance and the information about criminal proceedings against her, to relate their "speculations and conjectures" about Ms S. and "to link her with the criminal underworld".

61. Commenting on the proportionality of the interference, the Government pointed out that the proceedings against the applicants were civil rather than criminal in nature and that the awards against them were small in amount.

2. The applicants

62. The applicants did not dispute that the interference was lawful and pursued a legitimate aim – the protection of the reputation of named individuals.

63. They emphasised that their publications touched upon issues of considerable public interest: the protection of the rights of a family of three disabled members in the case of the K. proceedings; denunciation of private lobbying efforts undertaken by a high-ranking State official Mr V.; a critical review of social and economic policy of the governor Mr T.; and misallocation of resources in the social-security fund, of which Ms S. had been the director.

64. The applicants maintained that the Russian courts failed to distinguish between statements of fact and value judgments, on the one hand, and between facts and their opinions or comments on those facts, on the other hand. That the courts had to supply their own interpretation of the disputed extracts by describing the feelings which they evoked suggested that the extracts in questions were value judgments not amenable to proof. The applicants pointed out that the Government's observations did not refer to the actual wording of the publications but rather to the impression which the contested publication conveyed.

65. In conclusion, the applicants submitted that the amounts of the domestic awards were rather substantial for a small regional newspaper with a limited circulation.

B. Admissibility

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

C. Merits

67. The Court notes that it is common ground between the parties that the judgments adopted by domestic courts in the defamation proceedings constituted an interference with the applicants' right to freedom of expression guaranteed by Article 10 § 1. It is not contested that the interference was prescribed by law, notably Article 152 of the Civil Code (see paragraph 54 above), and pursued a legitimate aim, that of protecting the reputation or rights of others, within the meaning of Article 10 § 2. What remains to be established is whether the interference was "necessary in a democratic society".

68. The test of necessity requires the Court to determine whether the interference 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 (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV). 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. In cases concerning the press, it is circumscribed by the interest of a democratic society in ensuring and maintaining a free press (see, for instance, *Dalban v. Romania* [GC], no. 28114/95, § 49, ECHR 1999-VI). 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 *Dichand and Others v. Austria*, no. 29271/95, § 38, 26 February 2002, with further references).

69. In the present case the applicants expressed their views by having them published in a newspaper run by the applicant company. They were found civilly liable for their 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 *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 59, ECHR 1999-IV, and *Lingens v. Austria*,

8 July 1986, § 41, Series A no. 103). In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicants, the position of the persons against whom their criticism was directed, the subject matter of the publications, characterisation of the contested statement by the domestic courts, the wording used by the applicants, and the penalty imposed (see *Krasulya v. Russia*, no. 12365/03, § 35, 22 February 2007, with further references).

70. The plaintiffs in all four defamation claims were State officials or employees, including the Ivanovo Region governor Mr T., the head of a department of the regional government and the leader of the incumbent party Mr V., the director of the regional social-security fund Ms S., and the director of a State company Mr K. The main thrust of the applicants' criticism was not directed at their private activities but rather at their conduct in professional capacity and the manner in which they discharged the public functions which had been entrusted to them. Moreover, Mr T. and Mr V. were an elected public official and a career politician, respectively, who occupied positions of a certain prominence and visibility. The Court reiterates in this connection its constant position – which is also reflected in the Committee of Ministers Declaration on freedom of political debate in the media – that, in a democratic society, public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions. It has been the Court's constant position that the limits of permissible criticism are wider with regard to a government official in the course of performance of his or her functions than in relation to a private citizen (see *Novaya Gazeta v Voronezhe v. Russia*, no. 27570/03, § 47, 21 December 2010, *Dyuldin and Kislov v. Russia*, no. 25968/02, § 45, 31 July 2007, and, as a classic authority, *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236).

71. However, there is no evidence in the domestic judgments that the courts performed a balancing exercise between the need to protect the plaintiffs' reputation and journalists' right to divulge information on issues of general interest. They confined their analysis to the discussion of the damage to the plaintiffs' reputation without giving any consideration to the applicants' journalistic freedom or to the plaintiffs' status as public officials acting in an official capacity. In the Court's view, the Russian courts did not seem to recognise that the proceedings in the present case involved a conflict between the right to freedom of expression and the protection of reputation (see *Dyundin v. Russia*, no. 37406/03, § 33, 14 October 2008). It does not appear that the domestic courts carried out an analysis of whether or not the contested publications sought to make a contribution to a debate on matters of general interest or public concern. The Court reiterates in this respect that there is little scope under Article 10 § 2 of the Convention for

restrictions on debate on questions of public interest and that very strong reasons are required for justifying such restrictions (see *Godlevskiy v. Russia*, no. 14888/03, § 41, 23 October 2008, *Krasulya*, cited above, § 38, and *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001-VIII).

72. Turning next to the qualification of the contested statements by the Russian courts, the Court reiterates that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103; *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 63, Series A no. 204, and paragraph 77 below). The Court has on many occasions pinpointed the structural deficiency of the Russian law on defamation which made no distinction between value judgments and statements of fact, referring uniformly to "statements" ("*svedeniya*"), and proceeded from the assumption that any such "statement" was amenable to proof in civil proceedings (see *Novaya Gazeta v Voronezhe*, cited above, § 52; *Andrushko v. Russia*, no. 4260/04, §§ 50-52, 14 October 2010; *Fedchenko v. Russia*, no. 33333/04, §§ 36-41, 11 February 2010; *Dyuldin and Kislov*, cited above, § 47; *Karman v. Russia*, no. 29372/02, § 38, 14 December 2006; *Zakharov v. Russia*, no. 14881/03, § 29, 5 October 2006, and *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005).

73. The failure of the domestic courts to draw a clear distinction between value judgments and statements of fact was particularly salient in the proceedings instituted by Mr V. in 2003 (see paragraphs 14-27 above). The Ivanovo Region courts held that the applicants failed to prove that Mr V. had acted "cynically, loudly, shamelessly", that he had "created nothing, done nothing for [his] fellow townsmen", that his professional activity as a State official had "brought nothing but harm", or that he had lacked "wisdom, will, aspiration to promote unity in society by renouncing, at least temporarily, [his] ambitions and passion for wealth" (see paragraph 16 above). Likewise, in the contemporaneous proceedings instituted by Mr K. (see paragraphs 6-13 above), the District Court insisted on a factual and literal reading of the applicants' phrase that Mr K. had "declared war" on an indebted family and held this sentence to be untrue in the absence of an actual declaration of war (see paragraph 9 above). In the Court's view, those expressions were examples of value judgments that represented the applicants' subjective appraisal of the moral dimension of Mr V.'s and Mr K.'s activities. In that sense they were no different from the claim about the governor having no "shame or scruples", which the Russian courts, in other proceedings, held to be a statement of fact whose veracity the journalist had failed to prove (see *Grinberg*, cited above, § 31, and also compare with *Krasulya*, cited above, § 42). In their submissions, the Government expressly acknowledged that the courts did not distinguish between value

judgments and statements of fact because the then effective law, as interpreted and applied at the material time, did not require them to draw such a distinction (see paragraph 59 above).

74. By contrast, the hearings on the defamation claims lodged by Mr T. and Ms S. took place in March and May 2005, that is after the Plenary Supreme Court of the Russian Federation had issued its resolution of 24 February 2005. In particular, paragraph 9 of the resolution required the Russian courts to distinguish between statements of fact, on the one hand, and "evaluative judgments, opinions and convictions", on the other hand, which were to be seen as an expression of the author's subjective view not actionable in defamation (see paragraph 54 above). The Court notes with satisfaction this evolution of the domestic practice which transposed the Convention standards in national defamation law. It will therefore examine in detail the effect that the resolution may have had on the decision-making process of the Russian courts in the T. and S. proceedings.

75. It is noted, firstly, that the District Court applied the requirements of the resolution in respect of certain turns of speech which it characterised as value judgements. In the T. proceedings, it referred to the resolution to establish that the caption of the photograph accompanying the contested publication expressed the author's personal opinion and was not actionable in defamation (see paragraphs 29 and 34 above). In the S. proceedings, it acknowledged that the adjective "dubious" used to describe Ms S. was a value judgment which did not contain any factual allegations and was not therefore amenable to a rectification (see paragraphs 49 and 50 above).

76. Further, the District Court identified a number of instances in which the applicants made specific factual allegations which could be tested for truthfulness. Those included the accusations against Ms S. who had allegedly liaised with criminal structures (see paragraph 39 above), misappropriated money from the social security fund (see paragraph 40 above) or renovated her flat at the public expense (see paragraph 48 above). The Court agrees with the domestic courts that those expressions must be considered statements of fact. Noting that the applicants were unable to adduce sufficient evidence in support of those allegations, it sees no reason to disagree with their assessment that the accusations were of such a nature and gravity as to be capable of causing considerable harm to the reputation of Ms S.

77. In the T. proceedings, the District Court held the applicants responsible for disseminating unverified information about the governor's alleged involvement in an extramarital affair. The applicants presented the matter as common knowledge ("the entire region is gossiping", see paragraph 28 above), without attempting to verify the rumours. Although the applicants only cited the affair as an illustration of their thesis that the governor cared more about his private life than he did about his official duties – which could have been taken as a value judgment – the Court

reiterates that even a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10 and that the difference between a value judgment and a statement of fact finally lies in the degree of factual proof which has to be established (see *Dyuldin and Kislov*, cited above, § 48, and *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 40, ECHR 2003-XI). Although the journalists must be afforded some degree of exaggeration or even provocation, especially when it comes to critical reporting about politicians or public figures, the Court accepts the findings of the Russian courts in this connection and considers that the frivolous and unverified statements about Mr T. private life must be taken to have gone beyond the limits of responsible journalism (compare *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 92, 1 March 2007).

78. That being said, the Court is bound to recognise that the requirement to distinguish between value judgments and statements of facts contained in the Supreme Court's resolution was a legal novelty at the material time. The T. and S. proceedings indicate that its application in practice by Russian courts was not immediately unproblematic. Thus, the domestic courts did not examine whether the statements about the governor Mr T. "bringing discredit upon himself" or turning people into "zombies" (see paragraphs 32 and 33 above) or the statements about Ms S. "hiding her real face from public" and "making fun of President Putin" (see paragraph 41 above) could have been value judgments not amenable to proof in civil proceedings. The Court considers that those statements did not contain any factual allegations and were value judgments rather than statements of fact. Moreover, it notes that the applicants did produce in the domestic proceedings some evidence capable of showing that their evaluation of Mr T.'s unimpressive performance in the governor's position or Ms S.'s incomplete compliance with the disclosure requirements was not unjustified (see paragraphs 32 and 41 above). In these circumstances, the Court finds that the requirement to prove their truth was incompatible with the applicants' right to freedom of expression which includes possible recourse to a degree of exaggeration or provocation.

79. Finally, the Court observes that in all sets of proceedings the applicants were ordered to pay damages ranging from RUB 3,000 to RUB 20,000 (approximately 85 to 575 euros). These amounts are not significant even by the regional standard of living. Nevertheless, the Court does not consider it decisive that the proceedings were civil rather than criminal in nature and that the final awards were relatively small. What is important in the instant case is that the domestic courts in all four sets of proceedings – albeit to a varying degree – held the applicants responsible for failing to prove the truthfulness of value judgments, that they did not assess the issue whether or not the publications contributed to a debate on a matter of public interest or general concern, and that they failed to recognise the wider limits of permissible criticism in respect of State officials and employees. Those

failings call for the conclusion that the standards, according to which the national authorities examined the defamation claims against the applicants, were not in conformity with the principles embodied in Article 10.

80. There has therefore been a violation of Article 10 of the Convention in all sets of proceedings.

III. OTHER VIOLATIONS OF THE CONVENTION

81. The applicants also raised additional complaints with reference to Article 10 of the Convention.

82. In light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that those complaints do not disclose any appearance of violations of the rights and fundamental freedoms set out in the Convention and its Protocols.

83. It follows that the case in this part must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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 and costs

85. The applicants claimed the following amounts:

– in respect of the K. proceedings: 100.20 euros (EUR) for pecuniary damage representing the amounts disbursed in the domestic proceedings, EUR 1,500 for non-pecuniary damage, and EUR 2,217.48 for translation costs;

– in respect of the V. proceedings: EUR 994.86 for pecuniary damage representing the amounts paid to Mr V. and court fees, EUR 2,000 for non-pecuniary damage, and EUR 1,611.61 for legal fees, postal and translation expenses;

– in respect of the T. proceedings: EUR 1,207.48 for pecuniary damage representing the amounts paid to the plaintiffs and court fees, EUR 1,000 for non-pecuniary damage, and EUR 627.46 for postal and translation expenses;

– in respect of the S. proceedings: EUR 1,207.48 for pecuniary damage representing the amounts paid to the plaintiffs and court fees, EUR 2,000

for non-pecuniary damage, and EUR 2,611.61 for legal fees, postal and translation expenses.

86. The Government submitted that no compensation in respect of the pecuniary damage should be awarded because there was no violation of the applicants' rights. Their claim in respect of non-pecuniary damage was excessive in comparison with the awards made by the Court in similar cases (here they referred to *Godlevskiy* and *Zakharov*, both cited above, in which the award amounted to EUR 1,000, and to *Marônek v. Slovakia*, no. 32686/96, ECHR 2001-III, in which the Court considered that the finding of a violation would be sufficient just satisfaction). Finally, they argued that the costs and expenses were not shown to have been actually incurred.

87. The Court notes that the applicants' claim in respect of pecuniary damage covered the court fees in the domestic proceedings and the amounts of judicial awards against them in those proceedings. Noting that the evidence of payment of fees and awards was provided, it accepts the claim under this head and awards the applicants jointly EUR 3,510 in respect of pecuniary damage plus any tax that may be chargeable on that amount.

88. The Court further considers that in the circumstances of the case a finding of a violation of Article 10 will constitute sufficient just satisfaction for the applicants in respect of non-pecuniary damage.

89. Finally, the Court is satisfied that the claim for costs and expenses was corroborated with documentary evidence and was reasonable as to quantum. However, one of the complaints turned out to be inadmissible and a small reduction must be applied on that account. In these circumstances, it awards the applicants jointly EUR 6,000 under this head, plus any tax that may be chargeable to them.

B. Default interest

90. 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. *Decides* to join the applications;

2. *Declares* the complaints concerning the defamation proceedings in which the applicants were the defendants admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 10 of the Convention in respect of all four sets of proceedings;

4. *Holds* that the finding of violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicants;

5. *Holds*

(a) that the respondent State is to pay the applicants jointly, 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 3,510 (three thousand five hundred and ten euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicants, 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President