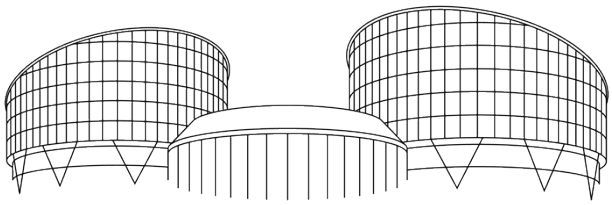

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OOO 'VESTI' AND UKHOV v. RUSSIA

(Application no. 21724/03)

JUDGMENT
(Merits)

STRASBOURG

30 May 2013

FINAL

30/08/2013

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

In the case of OOO 'Vesti' and Ukhov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 7 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 21724/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian limited liability company, The Editorial Board of the Vesti Newspaper (*ООО «Редакция газеты «Вести»»*,– "the first applicant"), and a Russian national, Mr Sergey Vladislavovich Ukhov ("the second applicant"), on 19 June 2003.

2. The applicants were represented by Mr I. Rossokhin, in-house lawyer of the first applicant. The Russian Government ("the Government") were initially represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicants alleged, in particular, a violation of their right to freedom of expression. They also claimed that the defamation proceedings brought against them had been unfair.

4. By a decision of 18 March 2010, the Court declared the application partly admissible.

5. The applicants and the Government each filed further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant had its registered office in Kirov. The second applicant was born in 1951 and lives in Kirov.

7. The first applicant was a limited liability company founded by the State Property Department of the Kirov Regional Government and registered as a legal entity in 1997.

8. On an unspecified date the Kirov Regional Legislative Assembly and the Kirov Regional Government founded the *Gubernskie Vesti, Kirov* newspaper. On 23 August 2001 it was officially registered as a regional news medium. The official address of its editorial board was the same as that of the first applicant.

9. According to the applicants, the editorial board of the *Gubernskie Vesti, Kirov* newspaper was not registered as a legal entity and did not have articles of association. The first applicant was the publisher of the *Gubernskie Vesti, Kirov* newspaper. The applicants were, however, unable to submit a publishing agreement.

10. According to its articles of association, as amended on 24 May 2002, the first applicant's main activity consisted in issuing the *Gubernskie Vesti, Kirov* newspaper. It also carried out publishing and advertising activities. The first applicant was managed by its executive body, the editor-in-chief. That position was occupied at the material time by the second applicant, who was at the same time the editor-in-chief of the *Gubernskie Vesti, Kirov* newspaper.

A. The article

11. On 16 August 2002 the *Gubernskie Vesti, Kirov* newspaper published an article under the headline "The Chief Federal Inspector has brought the media to its knees. But not the businessmen" (*«ГФИ поставил на колени прессу. Но не коммерсантов»*). The article was written by the second applicant, who signed it using his pen-name, Semyon Volkov.

12. The article concerned a joint press conference held by Mr P., the Chief Federal Inspector for the Kirov Region, and Mr K., the Mayor of Kirov. The press conference was about the media coverage of the regional project "Kirov, cultural capital of the Volga region for 2002". The article was critical of the cultural value of the events connected with the project and spoke ironically about Mr P.'s "accomplishments" in that field. Mr P. was further quoted as saying that the allotted funds were insufficient to finance the work of the project's organising committee and as criticising local businesses for their unwillingness to sponsor the project, allegedly

because the project had not received the Governor's explicit endorsement. The article then went on as follows:

> "Curiously enough, just before that meeting, I had a chance to talk to some businessmen I know. They told me that the chief federal inspector's office had literally pestered them with 'offers' for them to become sponsors. However, they do not respond to such 'offers', not because they fear the Governor, but because they do not want to give money. Some say that [Mr P.] is too deeply involved in political games, of which they want no part. Others are, for some reason, concerned that their money might be wasted on the lovers of the collector of funds rather than spent on cultural events."

B. Defamation proceedings

13. On 30 August 2002 Mr P., in his official capacity as the Chief Federal Inspector, brought an action for defamation against the editorial board of the *Gubernskie Vesti* newspaper and the author of the article, Semyon Volkov. According to his statement of claim, the final paragraph of the contested article had asserted that he was in charge of the collection and distribution of funds for the project, that he was capable of committing a crime by embezzling the funds entrusted to him, and that he had lovers, thereby violating moral and ethical norms. Considering that those statements were untrue and damaging to his honour, dignity and professional reputation, he sought a retraction and compensation for non-pecuniary damage.

14. Mr P. also enclosed the text of the retraction statement that he wished the editorial board of the *Gubernskie Vesti* newspaper to publish. It contained an apology and an acknowledgement that the last sentence of the paragraph cited above was untrue and damaging to his honour and reputation, a promise to discipline the author of the article and an undertaking to respect the domestic law on the media in the future.

15. On 9 September 2002 Mr G., deputy editor-in-chief of the first applicant, signed a power of attorney appointing Mr K. and Mr R. to act as its counsel in the defamation proceedings.

16. On 13 September 2002 Judge S. of the Leninskiy District Court of Kirov decided to sever the claim against the author of the article for adjudication in separate proceedings because the first applicant had refused to disclose his identity. The proceedings against the author were stayed.

1. Proceedings in respect of the first applicant

17. On 13 September 2002 the Leninskiy District Court of Kirov, sitting in a single-judge formation comprising Judge S., held a hearing. Counsel, Mr K. and Mr R., asked that the hearing be adjourned because the second applicant, the newspaper's editor-in-chief and the only person acquainted

with the circumstances relating to the contested publication, was on annual leave until 6 October 2002. The court refused the request.

18. Mr K. and Mr R. further submitted that the contested statements did not concern Mr P., who was not the collector of funds for the cultural project. The funds were being collected by the Kirov Town Administration.

19. Counsel for Mr P. submitted that the article had been entirely devoted to Mr P. It stated, in particular, that he had "pestered" local businessmen with requests to become sponsors of the cultural project. The last sentence of the article, which concerned the collector of funds, could easily be interpreted as directed at Mr P. Such an interpretation had indeed been made by a number of local newspapers, which had also understood the last sentence of the article as referring to Mr P.

20. On 13 September 2002 the Leninskiy District Court of Kirov granted Mr P.'s claim against the editorial board of the *Gubernskie Vesti* newspaper in full. The court found that the final paragraph of the article contained false information about the plaintiff, who it had falsely alleged was the collector of funds that might have been wasted on lovers rather than spent on cultural events. The court noted that the defendant had not produced any proof of the truthfulness of that information. It ordered the editorial board to pay the plaintiff 20,000 Russian roubles (RUR) (approximately 650 euros (EUR)) in compensation for non-pecuniary damage, and RUR 1,000 in court fees. It further ordered an immediate publication of the retraction statement as drafted by Mr P.

21. On 18 September 2002 enforcement proceedings were opened. On the same day, the first applicant applied to the Leninskiy District Court for a stay in the enforcement proceedings. It submitted that the court had ordered the enforcement of the judgment against the editorial board of the *Gubernskie Vesti* newspaper, which had no legal entity status and, accordingly, could not be a defendant in civil proceedings. Furthermore, the order for immediate enforcement was unlawful and violated the first applicant's right to know the reasons for the judgment (at that time, the full text of the judgment was unavailable) and to lodge an appeal against it.

22. On 19 September 2002 Judge S. issued two interim decisions. By the first decision he refused the first applicant's request for a stay of enforcement as unsubstantiated. No further reasons were given. The second decision rectified an error in the operative part of the judgment. It held that the defendant's name was "the limited liability company The Editorial Board of the *Vesti* Newspaper" rather than "the editorial board of the *Gubernskie Vesti* newspaper".

23. On 20 September 2002 the *Gubernskie Vesti, Kirov* newspaper published the retraction statement as drafted by Mr P. and endorsed in the judgment of 13 September 2002.

24. On 24 September 2002 the first applicant lodged an appeal against the judgment of 13 September 2002, submitting that the article had not

named the collector of funds for the project or suggested that it was Mr P. who had collected the funds. Nor had it stated that Mr P. had lovers or that he had embezzled any funds entrusted to him. It was clear from the text that the contested sentence did not concern Mr P. at all. The first applicant further complained about the District Court's unreasoned refusal to adjourn the hearing until the second applicant had returned from leave. The second applicant was the only person who knew the identity of the author of the article and who was able to give an informed response to the statement of claim.

25. The second applicant lodged a statement in support of the appeal. He disclosed that he was the author of the article and stated that the judgment of 13 September 2002 had been poorly reasoned. Although Mr P. had failed to prove that the contested sentence concerned him personally, the District Court had accepted his claim without analysing whether the impugned statements were indeed directed at him.

2. Proceedings in respect of the second applicant

26. On an unspecified date the proceedings against the author of the article were resumed and the second applicant was summoned to appear before the Leninskiy District Court as the defendant in Mr P.'s defamation case instituted on 30 August 2002. His case was heard by a bench composed of the presiding judge S. and two lay assessors. The second applicant lodged an objection against Judge S. on the ground that he had already expressed his position in the judgment against the editorial board. Lay assessors examined and rejected the objection, finding that the second applicant's fears as to Mr S.'s impartiality were not justified.

27. At the hearing on 2 October 2002 the second applicant was represented by Mr R. as counsel. The second applicant and his counsel both argued that the last sentence of the article did not concern Mr P. It concerned the collector of funds, who had not been identified in the article. The fact that other newspapers had interpreted the last sentence as directed at Mr P. was irrelevant because the second applicant could not be held responsible for the actions of other people. They further submitted that the second applicant had simply repeated the reservations expressed by businessmen with regard to the distribution of the funds collected for the project.

28. Counsel for Mr P. repeated the arguments he had advanced at the hearing of 13 September 2002, in particular the reasons why Mr P. believed that the contested statements were directed at him. He submitted, in particular, that the title and the structure of the article showed that it was entirely about Mr P. and that other people had understood the last sentence of the article as concerning Mr P., and this had been proved by articles in other newspapers.

29. On 3 October 2002 the Leninskiy District Court issued a judgment against the second applicant. The court found that the article read as a whole gave the impression that the contested statements concerned Mr P. The same interpretation had been arrived at by other newspapers, which had been unanimous in considering that the last sentence had been about Mr P. The contested statements, which accused Mr P. of spending public funds on lovers, were damaging to his honour, dignity and professional reputation. The second applicant had failed to prove the truthfulness of his statements about Mr P. The second applicant was ordered to pay RUR 2,500 (approximately 80 euros) in compensation for non-pecuniary damage, and RUR 10 in court fees.

30. The second applicant appealed. He repeated the arguments advanced in his statement in support of the first applicant's appeal. He further argued that the outcome of his case had been predetermined by the judgment against the editorial board. Judge S., who had examined the case against the editorial board, was bound to have had a preconceived opinion on his case.

3. Appeal proceedings in respect of the applicants

31. On 31 October 2002 the Kirov Regional Court adjourned the examination of the appeals. It established that the interim decision of 19 September 2002 rectifying an error in the judgment of 13 September 2002 had been issued in the absence of the interested parties. Moreover, the parties had not received a copy of that decision and had thereby been deprived of an opportunity to appeal. Until that omission had been remedied, the appeal against the judgment of 13 September 2002 could not be examined, nor could the appeal against the judgment of 3 October 2002. Because both cases were based on the same claim, the determination of one of them would prejudge the outcome of the other. On that ground, the Kirov Regional Court decided that the two cases should be joined and all appeals should be examined simultaneously.

32. On 14 November 2002 the first applicant lodged an appeal against the interim decision of 19 September 2002. It argued that that decision was unlawful for the following reasons: the rectification had been made by the District Court of its own motion; the decision had been taken in the absence of the parties; and, in substance, the decision was the disguised substitution of a defendant rather than a correction of a clerical error or an obvious mistake. The first applicant submitted that the limited liability company The Editorial Board of the *Vesti* Newspaper and the editorial board of the *Gubernskie Vesti* newspaper were two distinct entities: the first was registered as a legal entity, while the second was operating without State registration. The fact that the District Court had issued a judgment against the wrong entity demonstrated that the adjudication of the case had been superficial and the essential aspects of the case had not been examined properly.

33. On 29 November 2002 the Leninskiy District Court, by a new interim decision, confirmed its earlier decision of 19 September 2002 on the rectification of the error regarding the defendant's name. The first applicant lodged an appeal repeating the arguments advanced in the appeal statement of 14 November 2002.

34. On 24 December 2002 the Kirov Regional Court examined all the appeals. Both applicants were represented at the hearing by Mr R.

35. The Kirov Regional Court quashed the interim decision of 19 September 2002 on the ground that it had been issued in the absence of the parties, but upheld the interim decision of 29 November 2002, which, in its view, was lawful. Thus, it found that counsel who had taken part in the hearing of 13 September 2002 had represented the interests of the first applicant, the limited liability company The Editorial Board of the *Vesti* Newspaper. It was clear that the judgment of 13 September 2002 defined the rights of, and imposed obligations on, the first applicant, because no other organisation had been involved in the proceedings. The amendment of the defendant's name had therefore been no more than a rectification of a clerical error not related to the merits of the case and having no effect on the substance of the judgment.

36. The Regional Court further upheld the judgments of 13 September and 3 October 2002 in substance. In particular, it found that the District Court had addressed the applicants' arguments relating to the existence of an objective link between the contested statements and the plaintiff. It had analysed the tile, structure and contents of the impugned article and had correctly found that its last sentence concerned Mr P. Moreover, it had taken into account that Mr P. was not the only one to have understood that the sentence had been directed at him; other newspapers had also drawn the same conclusion. The District Court had therefore correctly required the defendants to prove the truthfulness of their allegations, which they had failed to do. Both applicants had been represented at hearings by counsel, and their procedural rights had therefore been respected. Finally, the Regional Court held that the severance of the claim against the second applicant from the proceedings "had not involved a substantially incorrect determination of the dispute".

37. The Regional Court found, however, that the District Court had incorrectly required the first applicant to publish the retraction statement drafted by the plaintiff. The requirement for an apology, a promise to discipline the author and an undertaking to respect domestic law contained in the retraction statement had no basis in domestic law. The order for immediate enforcement had also been unlawful. The court ordered that the first applicant publish an amended retraction statement. It also reduced the award payable by the first applicant to RUR 10,000 (approximately 325 euros).

38. On 14 January 2003 the first applicant published the amended retraction statement.

39. On 6 August 2007 the first applicant was declared insolvent and dissolved.

II. RELEVANT DOMESTIC LAW

A. Civil actions for defamation

40. Article 152 of the Civil Code provides that an individual may apply to a court with a request for the retraction 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.

41. Ruling no. 11 of the Plenary Supreme Court of the Russian Federation, adopted on 18 August 1992 (as 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 in the workplace or in everyday life). Dissemination of statements was understood as the publication of statements or their broadcasting (paragraph 2). The burden of proof was on the defendant to show that the disseminated statements were true and accurate (paragraph 7).

42. On 24 February 2005 the Plenary Supreme Court of the Russian Federation adopted Ruling no. 3, requiring courts hearing defamation claims to distinguish between statements of facts which could be checked for veracity and evaluative judgments, opinions and convictions, which were not actionable under Article 152 of the Civil Code because they were expressions of a defendant's subjective opinion and views and therefore could not be checked for veracity (paragraph 9). Furthermore, it prohibited the courts from ordering defendants to make an apology to a plaintiff, because that form of redress had no basis under Russian law, including Article 152 of the Civil Code (paragraph 18).

B. Defendants in an action for defamation

43. The Mass Media Act (Law no. 2124-I of 27 December 1991) defines an editorial board of a news medium as an organisation, citizen or group of citizens producing and issuing that news medium. An editorial board may start functioning after State registration of the news medium (section 8). An editorial board may – but is not required to – obtain legal entity status

through State registration (section 19). An editorial board must have articles of association adopted by the general assembly of journalists and approved by the founder of the news medium (section 20).

44. A publisher of a news medium is defined in the Mass Media Act as a company or business person responsible for the technical, material and logistical aspects of a production process (section 2). The editorial board or the editor-in-chief and the publisher must conclude a publishing agreement (section 22). The functions of an editorial board and a publisher may be combined in one legal entity (section 21).

45. Founders, editorial boards, publishers and distributers of mass media, as well as journalists and authors of distributed statements may be held liable for a breach of the legal provisions governing mass media (section 56 of the Mass Media Act). Ruling no. 11 of the Plenary Supreme Court of the Russian Federation (cited in paragraph 41 above) provides that in cases where articles have been published in a newspaper, the defendants in an action for defamation must be the article's author and the newspaper's editorial board. If the author is not indicated, the editorial board will be the sole defendant. If the editorial board does not have legal entity status, the founder of the newspaper will be cited as the defendant (paragraph 6).

C. Rectification of a judgment

46. The RSFSR Code of Civil Procedure (in force up to 1 February 2003) provided that after pronouncing a judgment, a court could not quash or amend it. However, the court could, of its own motion or at the request of a party, rectify clerical errors or obvious errors in calculation. In such a case the court had an obligation to hold a hearing and notify the parties of its date. The parties could appeal against the rectification order (Article 204).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

47. The applicants complained of a violation of their right to freedom of expression as provided in Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

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

48. The applicants submitted that there had been an unlawful interference with their freedom of expression. In particular, they submitted that the order to publish a retraction statement containing an apology and the order for immediate enforcement had had no basis in domestic law. Although the appeal court had acknowledged that those orders had been unlawful, it had not remedied the violation. On the contrary, the Appeal Court had aggravated the situation by requiring the first applicant to publish a second retraction statement. Thus, the first applicant had been punished twice. The applicants also argued that the first applicant, the publisher of the *Gubernskie Vesti, Kirov* newspaper, could not be cited as a defendant. Under domestic law, an action for defamation had to be brought against the editorial board. Because the editorial board of the newspaper did not have legal entity status, the action had to be brought against its founders, the Government of the Kirov Region and the Legislative Assembly of the Kirov Region, who should have been cited as the defendants (see the Supreme Court's Ruling of 18 August 1992, cited in paragraph 45 above). Therefore, there had been no legal basis for bringing an action for defamation against the publisher.

49. The applicants further argued that the interference had been disproportionate to the legitimate aim pursued. The article had denounced the administrative pressure placed on businessmen with the aim of compelling them to sponsor government projects. It had also voiced the apprehensions of those businessmen that the funds thus collected might be misappropriated. It had therefore raised questions of public concern. Moreover, the author had simply shared with his readers the opinions held by others, without stating that those opinions were true or valid. Accordingly, the interference with the applicants' freedom of expression had not corresponded to a "pressing social need".

50. The Government submitted, firstly, that the interference with the applicants' freedom of expression had been lawful. The first applicant had been cited as a defendant in the defamation proceedings in accordance with domestic law. As to the allegedly unlawful order to publish a retraction statement containing an apology, the Government submitted that that order had later been quashed on appeal.

51. The Government conceded that the contested article had raised questions of public concern and that the limits of acceptable criticism in respect of Mr P., a civil servant, were wider than in the case of a private individual. They submitted, however, that the article had not been limited to

criticism of Mr P.'s actions in an official capacity; it had also encroached on the private sphere, claiming that Mr P. had lovers. The Government disputed the applicants' arguments that there had been no objective link between those statements and Mr P. The contested article had been entirely devoted to the activities of the Chief Federal Inspector Mr P. Taking into account the article's title, structure and contents, there could be no doubt that the statements concerning the collector of funds had been directed at Mr P. Those statements had been intended as statements of fact and the applicants had failed to prove their truthfulness. Given that the statements published by the applicants were damaging to Mr P.'s honour and reputation, the interference with their freedom of expression had been justified.

52. The Court notes that it is common ground between the parties that the judgments adopted by the 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 pursued a legitimate aim, that of protecting the reputation or rights of others, within the meaning of Article 10 § 2. The dispute in the case relates to whether the interference was prescribed by law and whether it was "necessary in a democratic society".

53. The Court notes that Article 152 of the Civil Code provides a legal basis for civil liability for defamation. The applicants, however, argued, in accordance with the 1992 ruling by the Plenary Supreme Court (see paragraph 45 above), that an action for defamation had to be brought against the editorial board and that there was therefore no legal basis for holding the first applicant, the publisher of the *Gubernskie Vesti, Kirov* newspaper, liable. The Court observes that the applicants' assertion that the first applicant and the editorial board of the *Gubernskie Vesti* newspaper were separate entities is not supported by any evidence. The applicants were unable to submit any document showing that the editorial board of the *Gubernskie Vesti* newspaper existed as a distinct, though unregistered, legal entity. The Court notes that under domestic law an editorial board must have articles of association even if it has not been registered as a legal entity (see paragraph 43 above). However, the applicants did not submit a copy of the editorial board's articles of association, although they were requested to do so by the Court. Nor did they produce a copy of the compulsory publishing agreement between the editorial board or the editor-in-chief and the publisher (see paragraph 44 above).

54. Further, it is clear from the first applicant's articles of association that its activities consisted in issuing, as well as publishing, the *Gubernskie Vesti, Kirov* newspaper (see paragraph 10 above). Given that domestic law provides that the issuing of the news medium is the main function of an editorial board (see paragraph 43 above), the Court cannot but conclude that the first applicant was acting both as the newspaper's editorial board and its

publisher. This conclusion finds further confirmation in the fact that the newspaper's editorial board was registered at the first applicant's official address and that the second applicant occupied the positions of both editor-in-chief of the first applicant and editor-in-chief of the newspaper. Finally, the Court finds it significant that the applicants never claimed in the domestic proceedings that there was no legal basis for the first applicant's liability on the ground that it was the publisher rather than the editorial board of the *Gubernskie Vesti, Kirov* newspaper.

55. In view of the above, the Court concludes that the first applicant combined the functions of editorial board and publisher of the *Gubernskie Vesti, Kirov* newspaper and could be therefore held liable for defamation under domestic law.

56. Further, as regards the applicants' argument that the order to publish a retraction statement containing an apology and the order for immediate enforcement had no basis in domestic law, the Court notes that it has previously found that before the 2005 ruling of the Plenary Supreme Court (see paragraph 42 above), Russian courts could reasonably interpret Article 152 of the Civil Code as providing for an apology as part of the redress for defamation (see *Kazakov v. Russia*, no. 1758/02, §§ 23 and 24, 18 December 2008). Thus, in the circumstances of the present case, the Court is ready to accept that the interpretation of the relevant legislation by the Russian courts was not such as to render the impugned interference unlawful in Convention terms. In any event, the order to publish a retraction statement containing an apology and the order for immediate enforcement were quashed on appeal (see paragraph 37 above). The irregularity alleged was thereby expressly acknowledged and adequately redressed.

57. In view of the above, the Court finds that the interference with the applicants' freedom of expression was "prescribed by law". It remains to be determined whether it was "necessary in a democratic society".

58. The test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued, and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This margin of appreciation is not however unlimited, but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles

embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among many others, *Grinberg v. Russia*, no. 23472/03, § 27, 21 July 2005; *Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007-V; *Krasulya v. Russia*, no. 12365/03, § 34, 22 February 2007, *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 48, 13 July 2012; and, most recently, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 100, 22 April 2013).

59. In the present case the second applicant expressed his views by having them published in a newspaper edited by the first applicant. They were found civilly liable for that publication, therefore the impugned interference must be seen in the context of the essential role of the press in ensuring the proper functioning of a democratic society (see *Lingens v. Austria*, 8 July 1986, Series A no. 103, § 41, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 59, ECHR 1999-IV). It is also significant that the plaintiff Mr P., the Chief Federal Inspector of the Kirov Region, was a civil servant. 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, the allegations of misappropriation of public funds were obviously a matter of great public concern and therefore came within the scope of a public debate on a matter of general importance. 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 *Feldek v. Slovakia*, no. 9032/95, § 83, ECHR 2001-VIII, and *Sürek*, cited above, § 61).

60. That being said, the Court reiterates that Article 10 of the Convention protects journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism. 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).

61. The Court observes that the applicants were found civilly liable for disseminating a statement, which they had been unable to prove, to the effect that the collector of funds for a regional cultural project might misappropriate the collected funds and spend them on his lovers.

62. The main dispute between the parties related to whether the contested statement concerned the plaintiff. The Court has repeatedly stated that for an interference with the right to freedom of expression to be proportionate to the legitimate aim of the protection of the reputation of others, the existence of an objective link between the impugned statement and the person suing for defamation is a requisite element. Mere personal conjecture or a subjective perception of a statement as defamatory does not suffice to establish that the person was directly affected by it. There must be something in the circumstances of a particular case to make the ordinary reader feel that the statement reflected directly on the individual claimant or that he was targeted by the criticism (see *Filatenko v. Russia*, no. 73219/01, § 45, 6 December 2007, and *Dyuldin and Kislov v. Russia*, no. 25968/02, § 44, 31 July 2007).

63. The Court notes that the question whether there was an objective link between the impugned statement and the plaintiff Mr P. was extensively debated in the domestic proceedings. After hearing the parties, analysing the title, structure and contents of the impugned article, and studying how it was understood by other newspapers, the courts found that the statement was directed at Mr P. (see paragraphs 29 and 36 above). The Court does not see any reason to depart from that finding. It is true that the collector of funds was not mentioned by name and that Mr P. did not officially perform that function, as the funds were formally collected by the local administration. However, when read in context, in particular in conjunction with the article's title and such statements as "the Chief Federal Inspector's Office literally pestered them with offers to become sponsors", the contested statement might convey to an ordinary reader the impression that it was the Chief Federal Inspector Mr P. who was the collector of funds referred to in the contested statement. Indeed, that was the interpretation made by a number of the local newspapers, which also understood that the contested statement was directed at Mr P. The Court therefore accepts the finding of the domestic courts that the applicant had disseminated a statement that the plaintiff Mr P. might spend public funds on his lovers.

64. The Court considers it regrettable that the domestic courts did not express any opinion as to whether the above statement constituted a factual allegation or a value judgment before holding the applicants liable for their failure to prove its veracity. The Court finds it difficult to determine whether that statement was a statement of fact or a value judgment. The use

of the modal verb "might" suggests that it was a supposition rather than a statement of fact. Indeed, from a grammatical point of view, modality deals with uncertainties and attitudes, rather than certainties and facts. However, it is not necessary to determine this issue because, under the Court's case-law, even a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10 (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II).

65. The Court notes that the applicants never endeavoured to establish a sufficiently accurate and reliable factual basis for their allegation that Mr P. had lovers and might spend public funds on them. Although the second applicant claimed that he had obtained that information from some, unnamed, businessmen he knew (see paragraph 27 above), he never attempted to verify the rumours. The Court reiterates in this connection that even public figures may legitimately expect to be protected against the propagation of unfounded rumours relating to their private life (see *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05 § 53, 4 June 2009). Given that the applicants were unable to adduce sufficient evidence in support of their allegations, the Court considers that they disseminated unverified information about Mr P.'s alleged involvement in extramarital affairs and a gratuitous accusation of misappropriation of public funds. The Court sees no reason to disagree with the domestic courts' assessment that the contested statement was of such a nature and gravity as to be capable of causing considerable harm to the reputation of Mr P. It therefore finds the statements about Mr P.'s private life and his alleged mismanagement of public funds frivolous and unfounded. The applicants must be therefore taken to have gone beyond the limits of responsible journalism set out in paragraph 60 above.

66. Finally, in assessing the proportionality of an 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 the applicants were ordered to pay to the plaintiff does not appear excessive.

67. 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.

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

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

69. The applicants complained under Article 6 § 1 of the Convention that the courts that examined the defamation claim against them had been biased and that the principles of adversarial proceedings and equality of arms had been breached. The relevant parts of Article 6 § 1 read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

A. Impartiality of the courts

70. The applicants submitted that Judge S., the only professional judge in the formation examining the claims against the second applicant, had been biased. Firstly, he had adjudicated the claims against the first applicant and had already stated his position on the merits of the case. In the applicants' opinion, in order to maintain the appearance that his position was consistent, Judge S. had to arrive at the same conclusions in respect of the claims against the second applicant. Secondly, by resuming, of his own motion, the case against the second applicant, Judge S. had acted in the interests of the plaintiff, thereby demonstrating his prejudice against the applicants.

71. The Government argued that the claims against the author had been correctly and lawfully severed from the claims against the editorial board. The editorial board had refused to reveal the identity of the author of the impugned article and the courts had had no other choice but to sever the claims. After the name of the author had been revealed and the proceedings against him had resumed, there had been no procedural obstacles to prevent Judge S., who had adjudicated the claims against the editorial board, from examining the claims against the author. Under domestic law there were no grounds for objecting to Judge S.

72. The Court reiterates that impartiality normally denotes the absence of prejudice or bias, and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach, that is, endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is, determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see, among many other authorities, *Gautrin and Others v. France*, 20 May 1998, § 58, *Reports of Judgments and Decisions* 1998-III, and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII).

73. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Padovani v. Italy*,

26 February 1993, § 26, Series A no. 257-B). In the instant case, the judge's subjective impartiality was not disputed by the parties.

74. As to the objective test, when applied to a single judge or a body sitting as a bench, it means determining whether, quite apart from the personal conduct of the judge or of any of the members of the judicial bench, there are ascertainable facts which may raise doubts as to the judge's or the bench's impartiality. In this regard, even appearances may be of some importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular judge or judicial bench lacks impartiality, the standpoint of those claiming that the judge or the bench is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Gautrin and Others* and *Kyprianou*, both cited above, § 58 and § 118 respectively).

75. In the present case, the fears of bias stemmed principally from the fact that Judge S., one of the three judges on the bench examining the claims against the second applicant, had already stated his position that the contested statements were defamatory in the case against the first applicant. The Court accepts that that situation could raise doubts about the impartiality of Judge S. in the applicants' mind. It has thus to decide whether those doubts were objectively justified.

76. The Court has found in a number of cases that the involvement of the same judge in two sets of the proceedings concerning the same events may, under certain circumstances, cast doubts on that judge's impartiality (see, for example, *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 59, *Reports* 1996-III, and *Rojas Morales v. Italy*, no. 39676/98, § 33, 16 November 2000, where a violation of Article 6 § 1 was found because a judge sitting in a criminal case had earlier tried a co-accused; and, by contrast, *Schwarzenberger v. Germany*, no. 75737/01, §§ 37 et seq., 10 August 2006; *Martelli v. Italy* (dec.), no. 20402/03, 12 April 2007, and *Poppe v. the Netherlands*, no. 32271/04, §§ 22 et seq., 24 March 2009, where no violation of Article 6 § 1 was found in similar circumstances; see also *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 135-140, 22 April 2010, where the same judge examined questions of both civil liability and criminal liability arising from the same facts).

77. At the same time, the Court reiterates that the mere fact that the same judge adjudicated two sets of proceedings arising out of the same events is not, in itself, sufficient to undermine that judge's impartiality, and that the answer to the question whether an applicant's fears are objectively justified depends on the circumstances and the special features of each particular case (see *Schwarzenberger,* cited above, § 42; *Poppe,* cited above, § 26; see also *Delage and Magistrello v. France* (dec.), no. 40028/98, 24 January 2002; *Lindon, Otchakovsky-Laurens and July,* cited above, §§ 78-80; and

Cañas Gómez v. Spain (dec.), no. 17455/09, § 25, 4 September 2012, all concerning involvement of the same judge in two civil cases arising out of the same events).

78. Turning to the circumstances of the present case, the Court notes that the plaintiff Mr P. submitted claims simultaneously against the editorial board of the newspaper and the author of the contested article, whose identity was unknown. The case was attributed to Judge S. Given that the first applicant, the editorial board of the newspaper, refused to disclose the identity of the author, Judge S. severed the claims against the author for adjudication in separate proceedings and stayed those proceedings. After the pronouncement by Judge S., on 13 September 2002, of the judgment against the first applicant, and while the appeal against that judgment was pending, the second applicant disclosed that he was the author of the article. Immediately after that, Judge S. resumed the proceedings against the author. On 3 October 2002 Judge S., presiding over a bench of two lay assessors, issued the judgment against the second applicant. The two sets of proceedings were then joined and examined simultaneously by the appeal court.

79. In order to determine whether the involvement of Judge S. in the proceedings against the second applicant after he had participated in the proceedings against the first applicant casts objectively justified doubts on his impartiality, the Court must take into account the following circumstances: the nature and extent of Judge S.'s functions during both sets of proceedings; whether the text of the judgment against the first applicant contained any statements concerning the second applicant and created the impression that Judge S. considered the second applicant liable for defamation; and whether, in the course of the proceedings against the second applicant, Judge S. gave fresh consideration to the case, taking into account the new evidence submitted by the second applicant (see *Ferrantelli and Santangelo,* cited above, § 59*; Rojas Morales*, cited above, § 33; *Delage and Magistrello,* cited above; *Schwarzenberger,* cited above, §§ 43 and 44; *Martelli,* cited above; *Lindon, Otchakovsky-Laurens and July,* cited above, § 78; *Poppe,* cited above, §§ 27 and 28; and *Cañas Gómez,* cited above, § 26).

80. The Court notes that in the judgment of 13 September 2002 Judge S. found, on the basis of the evidence available to him at that time, that the first applicant was liable for defamation because it had failed to prove the truthfulness of the allegations published by it. He did not make any findings as to the liability of the author of the article. Nor did he use any expressions which might create the impression that he had formed any opinion as to the liability of the author (see paragraph 20 above).

81. Further, the Court observes that when examining the claims against the second applicant, Judge S. was in no way bound by his first decision, which was not yet final. Indeed, the judgment of 3 October 2002 against the

second applicant did not contain any references to the judgment of 13 September 2002. Judge S. gave fresh consideration to the entire case, in adversarial proceedings, with the benefit of the more comprehensive information obtainable from the second applicant, the author of the contested article. The second applicant was free to advance new legal arguments or submit evidence showing that the impugned statement authored by him had had a sufficient factual basis or was otherwise justified. As can be seen from the text of the judgment of 3 October 2002, the judge took such new arguments and evidence into account when deciding whether the second applicant was liable for defamation (see paragraph 29 above).

82. In view of the above, the Court does not see any reason to suspect that Judge S., a professional judge who possessed the necessary experience and training to allow him to judge a particular dispute fairly on the basis of its own circumstances (see, *mutatis mutandis*, *Craxi v. Italy (no. 1)*, no. 34896/97, § 104, 5 December 2002), was prejudiced against the second applicant because of his previous involvement in the proceedings against the first applicant. As Judge S. never made any statements implying that he had formed an unfavourable opinion of the second applicant's case before presiding over the court that had to decide it, the presumption of impartiality cannot be said to have been rebutted.

83. Finally, it is relevant that when examining the claims against the second applicant, Judge S. was not sitting in a single-judge formation but was assisted by two lay assessors whose impartiality the applicants did not question (see, *mutadis mutandis*, *Diennet v. France*, 26 September 1995, § 38, Series A no. 325-A).

84. Consequently, any doubts the applicants may have had as regards the impartiality of Judge S. cannot be held to be objectively justified.

85. There has therefore been no violation of Article 6 § 1 of the Convention as regards the impartiality of the courts.

B. Equality of arms

86. The applicants further submitted that the judgment of 13 September 2002 had been given against the editorial board of the *Gubernskie Vesti* newspaper. However, on 19 September 2002, six days after the pronouncement of the judgment, the first applicant had been made a defendant by an interim decision issued in its absence. The substitution of a defendant, disguised as the rectification of a clerical error, had resulted in a violation of the applicants' procedural rights. The applicants had been absent from the hearing of 13 September 2002 and had been given no opportunity to present their case or submit evidence to the District Court. Counsel, who had attended the hearing of 13 September 2002, had represented the interests of the editorial board of the *Gubernskie Vesti*

newspaper. That the first applicant had subsequently retained the same counsel to represent it before the Appeal Court could not remedy the disadvantage created on 13 September 2002. The fact remained that, at the crucial first-instance hearing, the applicants had been absent and unrepresented and had been deprived of an opportunity to defend their position and comment on the plaintiff's claims.

87. The Government submitted that the first applicant's representatives had participated in the defamation proceedings from the beginning and had been present at the hearing of 13 September 2002. In support of their submissions, they produced a power of attorney signed by a deputy editor-in-chief of the first applicant on 9 September 2002 appointing Mr K. and Mr R. to act as the first applicant's counsel in the defamation proceedings (see paragraph 15 above). They also produced materials from the case file showing that all written pleadings had been submitted on behalf of the first applicant rather than on behalf of the editorial board of the *Gubernskie Vesti* newspaper. They also referred to the decision of 24 December 2002 by the Regional Court which found that the judgment of 13 September 2002 had defined the rights of, and imposed obligations on, the first applicant because no other organisation had been involved in the proceedings. The naming of the editorial board of the *Gubernskie Vesti* newspaper as the defendant had been no more than a clerical mistake.

88. The Court reiterates that it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II). The principle of adversarial proceedings and equality of arms requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present its case under conditions that do not place it at a substantial disadvantage *vis-à-vis* its opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

89. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris,* cited above, § 60). Thus, given that Article 6 of the Convention does not guarantee a right to personal presence before a civil court, representation may be an appropriate solution in cases where a party cannot appear in person (see *Gryaznov v. Russia*, no. 19673/03, § 45, 12 June 2012).

90. Turning to the citcumstances of the present case, the Court notes that the applicants' assertion that the first applicant was neither present nor represented at the hearing of 13 September 2002 is refuted by the documents in the case file. It is clear from the materials in the Court's possession that from 9 September 2002, that is, from the very beginning of

the defamation proceedings, the first applicant was represented by counsel Mr K. and Mr R. (see paragraph 15 above). They submitted written pleadings on the first applicant's behalf and participated in all hearings, including the hearing of 13 September 2002 and the appeal hearings, where they made submissions on behalf of the first applicant. The applicants' allegation that Mr K. and Mr R. acted on behalf of the editorial board of the *Gubernskie Vesti* newspaper does not therefore find confirmation in the case file.

91. Moreover, the Court has already found that the first applicant and the editorial board of the *Gubernskie Vesti* newspaper were one and the same entity (see paragraphs 53 to 55 above). It is therefore not persuaded by the applicants' argument that the interim decision of 19 September 2002 was the substitution of a defendant in disguise. It is convinced by the domestic court's finding that "the judgment of 13 September 2002 defined the rights of, and imposed obligations on, the first applicant, because no other organisation had been involved in the proceedings" (see paragraph 35 above). The amendment of the defendant's name was therefore no more than a rectification of a clerical error, correcting a misspelling of the name of the first applicant, which acted as the editorial board of the *Gubernskie Vesti* newspaper and which had effectively participated as a defendant in the defamation proceedings from their beginning.

92. The Court concludes that the first applicant's representatives participated throughout the defamation proceedings and the first applicant was therefore given an effective opportunity to present its case by commenting on the plaintiff's claims, making submissions and adducing evidence.

93. As regards the second applicant's absence from the hearing of 13 September 2002, it is significant that he was informed in advance about that hearing. He was therefore given a reasonable opportunity to arrange either for his personal presence or for representation by counsel. However, he failed to act with reasonable diligence and take the necessary steps to ensure that his case was effectively presented before the court (see, for similar reasoning, *Milovanova v. Ukrain* (dec.), no. 16411/03, 2 October 2007, and *Belan v. Russia* (dec.), no. 56786/00, 2 September 2004). It is also relevant that the second applicant was personally present and represented by counsel at the hearing of 2 October 2002 and at all appeal hearings.

94. In view of the above, the Court finds that the applicants were given a reasonable opportunity to present their case effectively before the courts and were able to enjoy equality of arms with the opposing side.

95. There has been therefore no violation of Article 6 § 1 of the Convention as regards the principles of adversarial proceedings and equality of arms.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the alleged partiality of the courts;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the principles of adversarial proceedings and equality of arms.

Done in English, and notified in writing on 30 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President