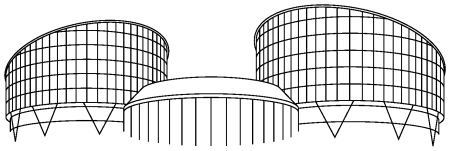

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KUNITSYNA v. RUSSIA

(Application no. 9406/05)

JUDGMENT

STRASBOURG

13 December 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kunitsyna v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 22 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 9406/05) 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 a Russian national, Ms Zinaida Dmitriyevna Kunitsyna ("the applicant"), on 31 January 2005.

2. The applicant was granted leave to represent herself. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant complained under Article 10 of the Convention of a violation of her journalistic freedom of expression.

4. On 1 April 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Tomsk.

6. At the material time the applicant, a freelance journalist, was working for a newspaper, Tomskaya Nedelya (*«Томская неделя»*), with a circulation of 66,585. The newspaper is published and distributed in the Tomsk Region.

A. The applicant's article

7. On 9 December 1999, in its "Social Aspect" section, the newspaper published an article by the applicant headlined "[S.'s] mother was dying here" («Здесь умирала мать [С.]»). The article described everyday life in a State-owned care home for the elderly, Lesnaya Dacha, giving examples of various residents who were or had been living there. It exposed practical difficulties encountered by the personnel in taking care of the residents in the absence of necessary equipment, and also mentioned that quite a few residents had been abandoned in the care home by their relatives.

8. The article then mentioned the mother of Mr S. (his full surname was given in the headline and in the article), a former deputy of the national parliament (the State Duma), who at that time was standing in elections to the State Duma. The article stated:

> "... Quite a few respectable people bring their ill relatives to the care home in an attempt to escape unnecessary troubles."

That sentence was followed by text in bold letters:

> "There is, for example, a room in which the mother of Deputy [S.] died. It is now named after him. It is a single room, however small and narrow. The ill and massively corpulent woman lay here for four months. Nurses remember that it was very hard to lift and turn her ..."

9. The article also referred to the care home's chief medical officer, Mr M., as having stated that empathy – mercy – towards the patients was a necessary quality for the personnel in order to work in that institution, and that it was a particularly rare quality at that time which should be revived. The article then quoted Mr M. as follows (the paragraph below was also printed in bold letters):

> "... It is for lack of mercy for their next of kin that their relatives bring them here, in order to avoid troubles, as if they themselves are not within God's power. Sometimes ordinary nurses happen to be more merciful than people in authority ..."

10. The above-mentioned two paragraphs were the only ones printed in bold in the whole article.

B. First round of proceedings against the applicant

11. On 31 January 2000 Mr S.S., Mr A.S. and Ms O.K.-S., who were respectively Mr S.'s father, brother and sister, brought defamation proceedings against the applicant. They claimed that the above-mentioned extracts contained statements aiming to create negative feeling on the part of readers towards the S. family and influence them as voters during the elections. They argued in particular that those statements made readers think that the S. family had had no mercy for their closest relative – their wife and mother – that they had taken her to Lesnaya Dacha to get rid of her, and that

they had not paid her any visits and had not taken care of her. The claimants insisted that those statements were untrue and damaging to their honour and dignity, and sought compensation in respect of non-pecuniary damage. They also referred to Article 24 of the Russian Constitution, which prohibited the dissemination of information about an individual without his or her consent.

12. On 17 April 2000 the Leninskiy District Court of Tomsk delivered its judgment. It rejected as unfounded the claimants' argument concerning a breach of their right to respect for their private life, noting that, by placing their relative, Mrs S., in a State-owned medical institution for the elderly, the claimants had stepped out of the private sphere and into the public domain, and therefore the constitutional principle of the inviolability of private life was inapplicable in the circumstances. The court, having examined certain witnesses, also considered that Mrs S. had indeed caused the claimants inconvenience and complicated their life, and that they had therefore decided to place her in a medical institution. The court thus concluded that the sentence stating "...quite a few respectable people bring their ill relatives to the care home in an attempt to escape unnecessary troubles..." could not be said to be untrue, whether it was the applicant's generalisation or a sentence relating to the claimants, as alleged by them. The court further found, with reference to relevant evidence adduced by the applicant, that the information concerning Mrs S.'s living conditions in Lesnaya Dacha was also accurate. It also rejected as unfounded the claimants' argument that the disputed publication had been propagandistic and had aimed to influence voters' opinions; in this respect, it noted that the text of the article was socially oriented and contained general argument concerning the problems affecting ill and elderly people, with the specific example of the Lesnaya Dacha care home. The court also noted that the general statements of the care home's chief medical officer concerning a lack of mercy for next of kin had had no link to the claimants or other members of the S. family.

13. On 30 June 2000 the Tomsk Regional Court upheld the above judgment on appeal.

14. On 30 May 2001 the Presidium of the Tomsk Regional Court, in supervisory review proceedings, dismissed an extraordinary appeal against the judgment of 17 April 2000 and the appeal decision of 30 June 2000, thus upholding those decisions.

C. Second round of proceedings against the applicant

15. On 28 June 2002, in supervisory review proceedings, the Supreme Court of Russia quashed the judgment of 17 April 2000 and the decisions of 30 June 2000 and 30 May 2001, and sent the case back to the first-instance court for fresh examination.

16. In a judgment of 20 May 2003 the Leninskiy District Court of Tomsk again dismissed the claims against the applicant, employing reasoning similar to that of the judgment of 17 April 2000.

17. On 17 October 2003 the Tomsk Regional Court examined the case, on appeal by the claimants. They maintained their claim, stating that the relevant part of the impugned publication had interfered with their private life, and had contained statements damaging to their honour and dignity.

18. The appellate court set aside the judgment of 20 May 2003 on the grounds of incorrect application by the first-instance court of the substantive law, and delivered a new decision. It noted that, according to Resolution no. 11 of the Supreme Court of Russia (see paragraph 27 below), a claimant was under an obligation to prove the fact of the dissemination of information, whereas a defendant was under an obligation to prove that such information corresponded to reality. The appellate court found that the claimants in the present case had discharged that obligation.

19. In relation to the sentence stating "...quite a few respectable people bring their ill relatives to the care home in an attempt to escape unnecessary troubles...", the Tomsk Regional Court disagreed with the first-instance court's view that the sentence was true and was not damaging to the claimants' honour and dignity. In particular, the regional court noted that the headline of the article and the sequence of its sentences made it clear that the statement, along with the reference to the lack of mercy for next of kin, although generalised, related to the claimants. In support of this conclusion, the appellate court referred to the statements of two witnesses who had confirmed that they had perceived the extracts to relate to the claimants.

20. The appellate court went on to examine evidence confirming the poor physical and mental condition of Mrs S., and noted the claimants' argument that they had placed her in Lesnaya Dacha because of the need to ensure proper medical assistance and care, rather than for lack of mercy. It stated that the applicant had not submitted any evidence capable of refuting that argument, whereas by virtue of Article 152 of the Russian Civil Code, she, as a defendant, was under an obligation to prove the accuracy of her statements. The appellate court also referred to the statement of a witness who had "explained that information disseminated in respect of the claimants, to the effect that Mrs S.'s relatives had not taken care of her, had not corresponded to reality". The court thus concluded that the disputed information was untrue.

21. It further found that the disputed information, namely that the claimants had placed their seriously ill close relative in the care home for the elderly because of a lack of mercy, and in order to avoid unnecessary troubles, was a statement that the claimants had breached their moral principles, and was therefore damaging to their honour and dignity, according to the resolution of the Supreme Court. The Tomsk Regional

Court thus concluded that the information in the publication that "...quite a few respectable people bring their ill relatives to the care home in an attempt to escape unnecessary troubles because of lack of mercy for their next of kin..." was untrue and damaging to the claimants' honour and dignity, and ordered the applicant to pay 10,000 Russian roubles (RUB – approximately 285 euros (EUR)) to each of the three claimants as compensation for non-pecuniary damage.

22. The appellate court's decision remained silent as regards the claimants' argument that the impugned article had interfered with their private life.

23. By a decision of 4 March 2004 a judge of the Tomsk Regional Court declined the applicant's application to institute supervisory review proceedings in respect of the appellate court's decision.

24. On 13 October 2004 the Presidium of the Tomsk Regional Court, in supervisory review proceedings, upheld the decision of 17 October 2003, endorsing its reasoning, but reducing the amount of the award in respect of non-pecuniary damage. The applicant was ordered to pay RUB 4,000 (approximately EUR 110) to each of the three claimants.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. Article 24 of the Russian Constitution establishes that the collection, retention, use and dissemination of information about the private life of an individual shall not be allowed without his or her consent.

26. Article 152 of the Russian Civil Code provides that an individual may apply to a court with a request for the rectification of information (*сведения*) damaging to his or her honour, dignity or professional reputation, unless the person who disseminated such information proves its truthfulness. The aggrieved person may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such information.

27. Resolution no. 11 of the Plenary Supreme Court of Russia of 18 August 1992, as amended on 21 December 1993, "On certain issues that have arisen in the course of the judicial examination of claims for the protection of the honour and dignity of individuals, and the professional reputation of individuals and legal entities" established that the notion of "the dissemination of information" employed in Article 152 of the Russian Civil Code was understood to be the publication or broadcast of such information. The resolution also provided that untrue statements alleging a breach by an individual or a legal entity of the legislation in force or of moral principles (dishonest acts, incorrect behaviour at work or in everyday life, or other statements damaging to business or public activities, professional reputation, and so on) could constitute damage to one's honour, dignity and professional reputation, among other things.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

28. The applicant complained that her right to freedom of expression had been violated. She insisted that she was free to express her opinion as a journalist, and that, by ruling against her, the domestic courts had criticised her for her professional activity and had unjustifiably limited her freedom of speech. The applicant relied on Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Arguments by the parties

1. The applicant

29. The applicant argued that the interference with her freedom of expression had fallen short of the "necessity" requirement.

30. The applicant pointed out in particular that her article had been socially oriented, and had addressed an important issue of public interest, the lack of specialist care facilities for elderly people in the region. She further argued that the phrase "...quite a few respectable people bring their ill relatives to the care home in an attempt to escape unnecessary troubles...", found by the domestic court to be untrue and damaging to the claimants' reputation, had in fact been a quote from Mr M., the chief medical officer of the care home, and should not have been attributed to her. The applicant argued that, in any event, the sentence had been a generalisation rather than a statement directly relevant to the S. family, and that it had been a value judgment not susceptible of proof. She also pointed out that she had not said anything about whether the claimants had come to see Mrs S. in the care home or not, as she had only mentioned Mr S., who, however, had not been a party to the defamation proceedings.

31. The applicant also argued that the penalty imposed on her had been disproportionate, as, in view of her income, it had been very burdensome

financially. In addition, it had limited the freedom of the press and had had a serious "chilling" effect on the other journalists in the region.

2. The Government

32. The Government acknowledged that there had been an interference with the applicant's right to freedom of expression, but argued that it had been justified under Article 10 § 2 of the Convention. In particular, they pointed out that the interference had been based on Article 152 of the Russian Civil Code, and had pursued the aim of the protection of the reputation and private life of the S. family members.

33. The Government further insisted that the interference complained of had been necessary in a democratic society. They submitted that the impugned paragraphs of the applicant's article had clearly referred to the S. family; in particular, both paragraphs had been accentuated by bold letters, which had given a clear impression that they had been linked between themselves and to the headline of the article. Moreover, the paragraphs in question had revealed specific details of the S. family's private life. In this respect, the Government pointed out that the impugned information had related not only to Mrs S.'s son, Mr S., who at that time had been standing as a candidate for the State Duma, and had therefore been a public figure, but also to other members of the S. family, including Mrs S.'s husband and daughter (respectively, Mr S.'s father and sister), who were not.

34. The Government went on to argue that the domestic courts had distinguished between statements of fact and value judgments, having found that the impugned extracts, including the phrase "...quite a few respectable people bring their ill relatives to the care home in an attempt to escape unnecessary troubles..." had been statements of fact, and therefore the applicant had been under an obligation to prove the accuracy of those statements. The Government submitted that, after a full examination of the circumstances of the case, the national courts had established the absence of any factual basis for the applicant's relevant statements. In particular, the appellate court had established that the S. family had placed Mrs S. in the institution for the elderly with a view to ensuring her necessary medical treatment and care, rather than in an attempt to "escape troubles". The court had furthermore established that the institution referred to in the article had had a very good reputation, and that was why the S. family had chosen it for Mrs S.; moreover, they had regularly come to see her, as had been confirmed by witnesses. In her article, the applicant had thus distorted reality, which could have provoked negative feeling toward Mrs S.'s relatives, including Mr S. In the Government's view, the aim of the impugned publication had not been to attract public attention to the problems of elderly people, but to discredit Mr S. in the eyes of the voters.

35. The Government also argued that the measure complained of had been proportionate to the aim sought to be achieved. In particular, the applicant had been held liable in a civil defamation case, and had been ordered to pay compensation for non-pecuniary damage to the members of the S. family. The domestic courts had taken into account a number of relevant factors when deciding on the sanction against the applicant. In particular, the courts had observed that the impugned article had been published in a newspaper with a circulation of 66,585, and that the publication had taken place three years after Mrs S.'s death, during the campaign for election to the national parliament in which her son, Mr S., had been standing as a candidate, which had undoubtedly attracted wide public attention. Moreover, the domestic courts had taken into account the fact that the information in question had concerned Mrs S.'s illness and death, and had been particularly sensitive for her family members. This had caused them, and in particular Mrs S.'s eighty-year-old husband, great emotional distress, as the information had been used to defame them. At the same time, the domestic courts had had due regard to the applicant's income, and had ordered her to pay quite a modest amount to the claimants.

36. The Government further argued that the domestic courts had duly balanced the applicant's right to freedom of expression and the S. family's right to reputation, and had taken well-reasoned decisions; the applicant's case had not had any chilling effect on other journalists in the region, contrary to the applicant's allegation in that respect.

B. Admissibility

37. The Court notes that the application 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

38. The Court notes that it is common ground between the parties that the decision of the Tomsk Regional Court dated 17 October 2003, as reviewed on 13 October 2004 by the Presidium of the Tomsk Regional Court in the supervisory review proceedings (see paragraphs 17-22 and 24 above), constituted an interference with the applicant's right to freedom of expression secured by Article 10 § 1 of the Convention. The Court is further satisfied that the interference in question was "prescribed by law", notably by Article 152 of the Civil Code, and "pursued a legitimate aim", that is "the protection of 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 democratic society".

39. The test of necessity requires the Court to determine whether the interference corresponded to a "pressing social need", whether the reasons given by the national authorities to justify it were "relevant and sufficient", and whether the measure taken was proportionate to the legitimate aim pursued (see, for instance, *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. 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, as a recent authority, *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

40. The Court observes that, in the present case, the applicant, a journalist, was held civilly liable, after the first final and binding court decision in her favour had been quashed in supervisory review proceedings, for writing an article and having it published in a regional newspaper. The impugned interference must therefore be seen in the context of the essential role of the press in a democratic society (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). The national authorities' margin of appreciation was thus circumscribed by the interest of a democratic society in enabling the press to play its vital role of "public watchdog" (see *Radio France and Others v. France*, no. 53984/00, § 33, ECHR 2004-II, with further references).

41. The Court further notes that the article in question described the everyday life of residents in a care home for the elderly, including the mother of Mr S., who was identified by his full name in the headline and text of the article. Mr S.'s father, brother and sister subsequently sued the applicant for disclosing information about their private life and tarnishing their reputation. However, as can be seen from the relevant court decisions (see paragraph 22 and 24 above), the domestic courts only addressed the part of the claim relating to the claimants' reputation, whereas the question of the alleged breach of their privacy was left unexamined. The Court will therefore limit the scope of its examination to the assessment of the "necessity" of the measure complained of in so far as it aimed at protecting the claimants' reputation.

42. In this connection, the Court reiterates that the right to protection of one's reputation is covered by Article 8 of the Convention as part of the right to respect for private life (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; *Polanco Torres and Movilla Polanco v. Spain*,

no. 34147/06, § 40, 21 September 2010; and, more recently, *Annen v. Germany*, no. 3690/10, § 54, 26 November 2015). For Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life" (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012). The Court further reiterates 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 in defamation is a requisite element. Mere personal conjecture or subjective perception of a publication as defamatory does not suffice to establish that the person in question was directly affected by the publication. 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 *Reznik v. Russia*, no. 4977/05, § 45, 4 April 2013, and the authorities cited therein).

43. The Court observes that, in the instant case, the impugned extracts either named Mr S., or referred to "the people in authority" (see paragraphs 8-9 above); the Court is thus prepared to accept that there was an objective link between those extracts and Mr S. It notes, however, that he was never a party to the defamation proceedings in question. Therefore, the Court rejects the Government's argument that Mr S. was "discredited in the eyes of his voters" (see paragraph 34 above), as that question was never assessed by the domestic courts. The Court is furthermore not convinced that the same objective link can be found between the extracts and the claimants in the defamation proceedings, Mr S.'s father, brother and sister. As was stressed by the Government, they were not "people in authority"; moreover, the text in question only mentioned "Deputy S." and no other member of the S. family. The statements can therefore hardly be regarded as directly relevant to the claimants, or detrimental to their reputation. The Court further does not consider that the regional court's mere reference to the statements of two witnesses, who had perceived the impugned extracts to relate to the claimants (see paragraph 19 above), is sufficient for establishing any such link, as the identity of those two witnesses was not clarified, nor the basis for that perception.

44. Turning to the qualification of the contested extracts by the Tomsk Regional Court, the Court is mindful that a careful distinction needs to be made between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. Admittedly, where allegations are made about the conduct of a third party, it may sometimes be difficult to distinguish between assertions of fact and value judgments. Nevertheless, even a value judgment may be excessive if it has no factual basis to support it (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 98-99, ECHR 2004-XI). The Court has

on many occasions pinpointed the structural deficiency of the Russian law on defamation, as interpreted and applied at the relevant time, which made no distinction between value judgments and statements of fact, referring uniformly to "information" (*"svedeniya"*), and proceeded on the assumption that any such "information" was susceptible to proof in civil proceedings (see *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005; *Zakharov v. Russia*, no. 14881/03, § 29, 5 October 2006; *Karman v. Russia*, no. 29372/02, § 38, 14 December 2006; *Dyuldin and Kislov v. Russia*, no. 25968/02, § 47, 31 July 2007; *Fedchenko v. Russia*, no. 33333/04, §§ 36-41, 11 February 2010; *Andrushko v. Russia*, no. 4260/04, §§ 50-52, 14 October 2010; *Novaya Gazeta v Voronezhe v. Russia*, no. 27570/03, § 52, 21 December 2010; and *OOO Ivpress and Others v. Russia*, nos. 33501/04, 38608/04, 35258/05 and 35618/05, § 72, 22 January 2013).

45. The Court observes that, in the present case, the fact of the placement of the claimants' relative in the care home was not in dispute between the parties to the defamation proceedings; rather, they disagreed about the motives lying behind that decision. In particular, the disputed extracts described the placement as "an attempt to escape unnecessary trouble" and "a lack of mercy", whereas the claimants argued that they had been driven by the need to ensure proper medical assistance and care for their relative (see paragraph 20 above). It is obvious that the above-mentioned expressions were value judgments; they represented the applicant's interpretation of the placement of the claimants' relative in the care home for the elderly, were quotes of the care home's chief medical officer, and were concerned with moral criticism of that placement. In relation to such criticism, the Court notes that, although journalists must be afforded some degree of exaggeration or even provocation, they nevertheless have "duties and responsibilities", and should act in good faith and in accordance with the ethics of journalism (see, among other authorities, *Rumyana Ivanova v. Bulgaria*, no. 36207/03, § 61, 14 February 2008). Gratuitous accusations of morally reprehensible behaviour may arguably be taken as going beyond the limits of responsible journalism. In particular, in the context of the issue raised by the applicant in her article, that is, in her submission, the lack of specialist care facilities for elderly people in the region (see paragraph 30 above), the Court fails to see why it was relevant to give information – disclosing the full name and containing suggestions of morally reprehensible behaviour – on the last days of a lady who had died three years earlier (see paragraph 35 above), and who had been the mother of a person standing as a candidate for election to the national Parliament at that time.

46. At the same time, the Court observes that the domestic courts failed to examine the elements necessary for the assessment of the applicant's compliance with her journalistic "duties and responsibilities". Contrary to what was alleged by the Government (see paragraph 34 above), they failed

to distinguish between value judgments and factual statements, and limited themselves to finding that the contested information had been "disseminated" by the applicant, and that she had not proved its truthfulness (see paragraphs 18 and 20 above). The domestic courts did not have regard to: the presence or absence of good faith on the applicant's part; the aim pursued by her in publishing the article; the existence of a matter of public interest or general concern in the impugned publication; or the relevance of information regarding the claimants' next of kin in the context of that topic.

47. Furthermore, the Court does not overlook the fact that, in the present case, the court decision holding the applicant liable for defamation was taken by the appellate court in the second round of proceedings, after the final and binding court decision in the applicants' favour taken in the first round of the proceedings had been quashed by way of supervisory review, and after the first-instance court in the second round of the proceedings had again ruled in her favour.

48. In the light of the foregoing, the Court finds that the standards according to which the national authorities examined the claim against the applicant were not in conformity with the principles embodied in Article 10. It matters little in these circumstances that the proceedings were civil in nature, and that the amount of compensation which the applicant was ordered to pay was moderate, as it is the failure by the domestic courts to base their decisions "on an acceptable assessment of the relevant facts" and to adduce "relevant and sufficient" reasons that brings the Court to the conclusion that the interference complained of was not "necessary in a democratic society" (see, for a similar finding, *Godlevskiy v. Russia*, no. 14888/03, § 48, 23 October 2008, and *OOO Ivpress and Others*, cited above, § 79).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed EUR 4,000 in respect of pecuniary damage. She argued that, as a result of the interference complained of, she had not been able to work as a freelance journalist, as she had "had to address complaints" regarding the unjustified court decision of 17 October 2003 to a higher court, in an attempt to have it reviewed in supervisory review

proceedings. She therefore sought compensation for pecuniary damage in the amount of EUR 3,600, which, in her submission, represented her lost earnings for the period from 17 October 2003 (the date of the appellate court's decision in her case) until 13 October 2004 (the date when that decision had been upheld in the supervisory review proceedings). Under this head, the applicant also claimed compensation of RUB 12,000 (approximately EUR 330), the amount which she had been ordered to pay to the claimants in damages, and RUB 840 (approximately EUR 25), the amount of the enforcement fee, which had been as a result of her failure to comply voluntarily with the writ of execution. According to the documents adduced by the applicant, she had paid both amounts in full. She further claimed EUR 5,000 in respect of non-pecuniary damage.

52. In so far as the applicant's claim for compensation for pecuniary damage concerned lost earnings, the Government contested that claim as speculative and unsubstantiated. They further argued that the applicant had failed to prove that there was a causal link between the violation alleged and the non-pecuniary damage she had allegedly suffered.

53. The Court does not discern any causal link between the violation found and the applicant's claim regarding the lost earnings; it therefore rejects this claim.

54. On the other hand, the Court observes that the amount of RUB 12,000 (approximately EUR 330) which the applicant was ordered to pay in the defamation proceedings, and the fact that that amount was actually recovered from the applicant, are not in dispute between the parties. It further notes that the above-mentioned sum was recovered from the applicant as a result of the court decision against her for her article, which the Court has found to be in breach of Article 10 of the Convention. It is thus clear that there is a direct causal link between the violation found and the pecuniary damage alleged (see, among other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 75 and 77, ECHR 1999-III). The Court therefore awards the applicant EUR 330 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

55. As for the enforcement fee, no evidence has been adduced to the Court to show that it was a direct result of the breach of Article 10 of the Convention (*cf. Kwiecień v. Poland*, no. 51744/99, §§ 64-66, 9 January 2007, and, more recently, *Marinova and Others v. Bulgaria*, nos. 33502/07, 30599/10, 8241/11 and 61863/11, § 119, 12 July 2016). Indeed, whilst arguing that the penalty imposed on her was burdensome financially (see paragraph 31 above), the applicant has not informed the Court whether she was able to pay the damages in one amount; or, if not, whether she requested that she be authorised to pay by instalments. The Court therefore rejects this part of the applicant's claim for compensation for pecuniary damage.

56. It further considers that, in the circumstances of the case, a finding of a violation of Article 10 will constitute sufficient just satisfaction for the applicant in respect of non-pecuniary damage (see, for a similar finding, *OOO Ivpress and Others*, cited above, § 88).

B. Costs and expenses

57. The applicant also claimed EUR 1,000 for costs and expenses incurred at domestic level. She submitted an invoice from a lawyer in the amount of RUB 35,000 (approximately EUR 1,000) for legal advice at the preliminary stage and during the court proceedings, and for preparation of written submissions to the courts.

58. The Government contested that claim as unsubstantiated, stating that the invoice was illegible, and that the applicant had not adduced any agreement on legal assistance.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 1,000 to cover costs and expenses in the domestic proceedings.

C. Default interest

60. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 330 (three hundred and thirty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Luis López Guerra
Registrar	President

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

L.L.G.
J.S.P.

CONCURRING OPINION OF JUDGE DEDOV

It is very difficult to examine a defamation case in which a public figure was criticised but other members of the family alleged that this criticism affected them as well. I believe that the national courts did not even have the authority to examine such a case, as the claim was inadmissible *ratione personae*.

In the similar case of *Putistin v. Ukraine* (no. 16882/03, § 38, 21 November 2013) the Court accepted that "the applicant [member of the family] was affected by the article, but only in an indirect manner, in the sense that a reader who knew that the applicant's father's name was on the 1942 poster might draw adverse conclusions about his father. The level of impact was thus quite remote". This is a completely different approach compared with the arguments set out in the present judgment. It is more concrete and closer to the factual circumstances. However, in neither case do I see any substantial analysis being made by this Court, which the domestic courts could follow, as to how to strike an appropriate balance between the right to private life and the right to freedom of expression.

The enjoyment of private life by other members of the family was affected, remotely or not. However, the claimants, who were not mentioned in the article, should then have borne a heavier burden of proof and they should have produced material evidence of a negative effect or made a public announcement that they should not be associated with the impugned action or with a particular person, for specific reasons.

The national courts limited their analysis to the claimants' private life without striking any balance with the applicant's right to freedom of expression, and in particular her right to raise issues of public interest. I believe that the moral criticism directed by the applicant as a journalist against the parliamentarian was addressed not only to that public figure but to the rest of society, as she raised the issue of social solidarity.