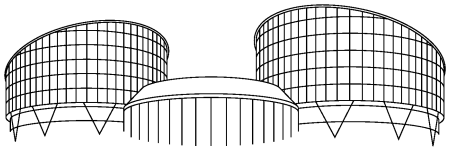

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF REDAKTSIYA GAZETY ZEMLYAKI v. RUSSIA

(Application no. 16224/05)

JUDGMENT

STRASBOURG

21 November 2017

FINAL

21/02/2018

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

In the case of Redaktsiya Gazety Zemlyaki v. Russia,

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

Helena Jäderblom, *President*,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 31 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 16224/05) 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 company, Redaktsiya Gazety Zemlyaki (hereinafter "the applicant company") on 21 April 2005.

2. The applicant company was represented before the Court by Mr S. Ostapenko, a lawyer practising in the town of Kstovo, in the Nizhegorodskiy Region. The Russian Government ("the Government") were represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant company alleged a violation of its right to freedom of expression under Article 10, and a violation of its right to a fair trial under Article 6 of the Convention.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a limited liability company registered in the town of Kstovo, in the Nizhegorodskiy Region. In 2008 it changed its name to Zemlyaki Publishing House.

A. Background information

6. The applicant company is the founder, editor and publisher of a local newspaper, *Zemlyaki*, printed in Kstovo and distributed in the Kstovskiy District.

7. In 2004 the applicant company published a series of articles commenting on the professional activity of Y.L., the then head of the Kstovo District Administration ("the District Administration").

8. In an article published in issue 11 (400) dated 6 March 2004 and entitled "Success has turned his head" ("*Головокружение от успехов*"), N.G., a member of a local council, contested the validity of the District Administration's policy concerning spending and property management in respect of 2003 in the following terms:

> "... I do not object for the sake of objecting, Y.L. I just do not understand, where exactly did you see the 'strict economy regime'. Where exactly?
>
> It has now been three years since the failure of MTS to repay its debt (of about seven million roubles). And the setting up of MTS was entirely your initiative and [it is your] creation. The Trade Committee is renting out the land for street commerce, but the profits somehow do not get back into the budget. You personally had given out the biggest shops for external management for free before the year in question, which resulted in budgetary losses of a few million roubles. I would not be surprised if [the shops] were sold by the Trade Committee to the 'right people', avoiding an open auction and following a well-established scheme (as was the case with your Mercedes car).
>
> You have already created a precedent. You have entered into so many loan contracts with commercial banks [on behalf of the District Administration] that almost seven million roubles in interest is to be paid only this year. I read the fable 'Monkey and a loan' at the meeting of councillors. It is about a similar situation. The marmoset (*мартышка*) borrowed money from a bank to pay her debts. She did repay them, but afterwards the bank required her to pay back both the loan and interest. Do you remember? The moral of the fable is very obvious. That marmoset was a fool (*дура*).
>
> ..."

9. In another article concerning the same subject matter, this time in issue 13 (402) dated 20 March 2004, authored by Z.O. and entitled "The golden grin awards" ("*Вручение премии Оскал*"), the newspaper published a photo collage depicting Y.L. as Osama bin Laden, along with the following comment:

> "A golden grin statuette goes to the head of administration Y.L. for a rational proposal on the subject: how to dispose of industrial waste in village administration. The essence of the proposal is simple: 'We could blow anything up. Or burn it'. It is a pity that the employees of waste disposal services have not thought about this yet. The solution is superficial. Or, more accurately, is going up in flames. Or, even more precisely, has been blown to bits."

B. Defamation proceedings

10. On 11 May 2004 Y.L. complained about the articles to the Kstovo City Court. He claimed that the articles published in the applicant company's newspaper had contained defamatory and damaging material. The applicant company disagreed.

11. On 31 August 2004 the court issued a judgment in which it granted Y.L.'s claims against the applicant company and N.G. in part. The court reasoned as follows:

> "... Examining the text of the publication, the court comes to a conclusion that the information contained in issue no. 11 (400) dated 6 March 2004 in the article 'Success has turned his head' and in issue no. 13 (402) dated 20 March 2004 in the article 'The golden grin awards' is defamatory to the claimant's honour, dignity and reputation; and in particular, in the article 'Success has turned his head', the defendant N.G. compares the claimant's activity as the head of the administration to the actions of a marmoset, eventually calling that marmoset a fool. In the Russian Language Dictionary edited by A.P. Evgenyev, the meaning of word 'marmoset' is defined as 'a little monkey with long limbs, a long tail and a short muzzle', and the meaning of the word 'fool' as ... 'a stupid, dumb person, in ancient times, a court or domestic jester'.
>
> In the article 'The golden grin awards' the defendant placed the claimant's photograph in a photo collage with a Muslim turban and a beard, having added to the portrait the following text in bold 'We could blow anything up. Or burn it'. Considering the events of last year: terrorist acts in America, Russia, Spain, Iraq, the world's public opinion on bin Laden as terrorist no. 1, the court finds that the publication is defamatory to the honour, dignity and business reputation of the claimant and creates an image of an aggressive, cruel and fanatical actor.
>
> ..."

12. The court declared the information in question erroneous and defamatory, and ordered the applicant company to pay an amount of a symbolic value to the claimant in damages and publish a retraction phrased in the following terms:

> "The editorial board of the [applicant company] offers its apologies to the head of the Kstovo District Administration, Y.L., for the unethical comparison of [his] actions with the actions of the marmoset, called a 'fool', ... as well as for the photo collage of Y.L ... The editorial board recognises that the photo collage is unfounded, incorrect and injurious, and once again offers its apologies to Y.L."

13. The applicant company appealed against the judgment of 31 August 2004, relying on, among other things, the case-law of the Court and the failure of the Kstovo City Court to draw a distinction between statements of facts and value judgments, and the statements of politicians and those of the general public.

14. On 22 October 2004 the Nizhegorodskiy Regional Court upheld the judgment on appeal. It held as follows:

> "Having examined the case-file, the text of the publication [...] the [first instance] court rightly concluded that the information at issue defamed the honour, dignity and

business reputation of Y.L. This being so, the court judgment was taken lawfully and justifiably, there being no grounds to quash it...".

Further attempts by the applicant company to have the case reviewed by way of supervisory review procedure were unsuccessful.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

15. Under Article 29 of the Russian Constitution, everyone has a right to freedom of expression and a right to freely seek, receive, transfer, produce or disseminate information, by any lawful means. The freedom of mass information is also protected, and censorship is banned.

B. Civil Code of the Russian Federation

16. Article 152 provides that a citizen may apply to a court to have information damaging to his or her honour, dignity or professional reputation retracted unless the person who has disseminated such information proves its accuracy. In addition to a retraction, the citizen may also claim compensation for loss and non-pecuniary damage sustained as a result of the dissemination of such information.

C. Resolutions of the Supreme Court of the Russian Federation

1. Resolution no. 11 of the Plenary Session of the Supreme Court dated 18 August 1992

17. Section 2 of the Resolution defined damaging information as information which was inaccurate and contained assertions that a citizen had broken the law or transgressed moral principles, as well information which was damaging to the honour or dignity of a citizen or the professional reputation of a citizen or a legal entity. The dissemination of such information was understood to be the publication or broadcasting of such statements, or their inclusion in professional references, public speeches, applications to State officials or communication to at least one other person in other forms, including orally.

2. Resolution no. 3 of the Plenary Session of the Supreme Court dated 24 February 2005

18. Section 9 of the Resolution requires courts hearing defamation claims to distinguish between statements of facts, which can be checked for veracity, and value judgments, opinions and views, which are not actionable

under Article 152 of the Civil Code, as they are an expression of a defendant's subjective opinion or view that cannot be verified for truthfulness. If a subjective opinion is expressed in an insulting form damaging the honour, dignity or business reputation of a claimant, the defendant may be held liable to pay damages for the harm caused by the insult. It is further noted that politicians who try to enlist public support thereby accept to have the performance of their duties criticised in the mass media.

19. Section 18 provides that apologies as a form of judicial protection of honour, dignity and professional reputation are not prescribed by Article 152 of the Civil Code of the Russian Federation or by any other law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant company complained that the court decision of 31 August 2004 ordering it to offer apologies to the claimant had violated its right to freedom of expression as provided for in Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

21. 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.

B. Merits

1. The parties' submissions

(a) The Government

22. The Government acknowledged that the domestic judgments had constituted an interference with the applicant company's right to freedom of expression. The interference had had a lawful basis in Article 152 of the Civil Code and had pursued a legitimate aim, the protection of the reputation of others.

23. According to the Government, at the time of the proceedings before the domestic courts, there had been no concept of value judgments in Russian legislation. This term had been introduced by the Resolution of the Plenary Session of the Supreme Court on 24 February 2005. The disputed publications had contained statements of facts and allegations that Y.L. had been involved in committing crimes, including the unlawful acquisition of land plots, abuse of public office, and the unlawful conclusion of credit agreements with banks. When examining the case, the Kstovo City Court had performed an appropriate analysis and established that the applicant company had published statements of facts of an insulting nature, and not value judgments.

24. The Government further insisted on the need to protect Y.L., as a politician, from offensive and defamatory remarks which had been calculated to affect him in the performance of his duties and damage public confidence in him. They also argued that the Kstovo City Court's reference to the applicant company offering apologies to the claimant in the text of the retraction published pursuant to the domestic court's judgment had not contradicted the Russian legislation.

(b) The applicant company

25. The applicant company submitted that the interference had been unlawful, as the information in question did not fall within the scope of Article 152 of the Civil Code. It argued that the comments published had concerned issues of general interest and had been an expression of the journalists' personal opinions, rather than a "dissemination of statements" as defined by this provision of the Civil Code.

26. The applicant company also argued that the domestic courts had failed to draw a distinction between statements of fact and value judgments, and had acted unlawfully in ordering it to offer its apologies to the claimant, something which had not been provided for by Russian law. It further asserted that Y.L., as professional politician, had to be more tolerant of criticism than a private individual.

2. The Court's assessment

(a) Existence of an interference

27. It is common ground between the parties that the civil proceedings for defamation against the applicant company constituted an interference with its freedom of expression as guaranteed by Article 10 § 1 of the Convention.

(b) Lawfulness of the interference

28. The Court observes that the domestic courts relied on Article 152 of the Civil Code, which allows an aggrieved party to seek judicial protection of his or her reputation and claim compensation in respect of non-pecuniary damages, and on the Resolution of the Plenary of the Supreme Court of 1992, which gave authoritative guidance to courts hearing defamation claims. In this connection, the Court notes that the interference had two aspects. Firstly, the applicant company was obliged to publish an apology, and secondly, it was obliged to pay compensation in respect of non-pecuniary damage to the claimant.

29. In so far as the court decision of 31 August 2004 ordered the applicant company to offer an apology to the claimant (see paragraph 12 above), the Court notes that the Resolution of the Supreme Court of 18 August 1992, in force at the material time, as well as Article 152 of the Civil Code of Russia, set out possibilities for the courts: ordering compensation in respect of pecuniary and non-pecuniary damage; obliging a defendant, if the defendant were a mass media outlet, to retract the impugned statements; or giving a claimant the opportunity to respond to the statements in the same mass media outlet. The Resolution of the Supreme Court of 2005 instructed courts that an apology was not prescribed under Russian law.

30. In its previous case-law, the Court has already come to the conclusion that the Resolution of 2005 was intended to harmonise the divergent case-law of the Russian courts on retractions and apologies, and that before 2005 the national courts had been inclined to interpret a retraction as possibly including an apology (see *Kazakov v. Russia*, no. 1758/02, § 24, 18 December 2008). In the *Kazakov* judgment, the Court accepted that "the interpretation of the relevant legislation by the Russian courts was not such as to render the impugned interference unlawful in the Convention terms". The Court does not see any reason to depart from its findings in *Kazakov* (cited above), and therefore proceeds on the assumption that the interference, in particular the court's order that the applicant company publish an apology, was not unlawful.

31. As to the second aspect of the interference, the Court finds that Article 152 of the Civil Code provides legal grounds to order the payment of compensation for non-pecuniary damage to a claimant for defamation. In

this respect, the interference was therefore lawful (see *Karman v. Russia*, no. 29372/02, § 31, 14 December 2006; *Reznik v. Russia*, no. 4977/05, § 41, 4 April 2013; and *Kharlamov v. Russia*, no. 27447/07, § 24, 8 October 2015).

32. However, it remains to be determined whether the interference pursued a legitimate aim and whether it was "necessary in a democratic society".

(c) Legitimate aim

33. It appears to be common ground between the parties that the interference complained of pursued the legitimate aim of protecting the claimant's rights.

(d) Necessary in a democratic society

(i) General principles

34. 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 are relevant and sufficient (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV). 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 of the Convention, in the light of the case as a whole, that the decisions they have taken in accordance with their margin of appreciation are compatible with the provisions of the Convention relied on (see *Grinberg v. Russia*, no. 23472/03, § 27, 21 July 2005, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 105, ECHR 2012).

35. As to the breadth of the margin of appreciation to be afforded, the Court reiterates that this depends on a number of factors. It is defined by the type of expression at issue and, in this respect, it is reiterated that there is little scope under Article 10 § 2 of the Convention for restrictions on debates on questions of public interest. The margin is also narrowed by the strong interest of a democratic society in the press exercising its vital role as a public watchdog: freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion on the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on subjects of public interest, and the public also has a right to receive them (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 102, ECHR 2013 (extracts)).

36. The press fulfils an essential function in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of

confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III). Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239). Journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313).

37. The Court notes that a distinction has to be drawn between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 of the Convention (see, among other authorities, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI). When drawing such a distinction, the Court considers an impugned statement as a whole and has particular regard to the words used in its disputed parts and their context, as well as the manner in which it was prepared (see *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 90, 1 March 2007).

38. However, even where the statement amounts to a value judgment, the proportionality of an interference may depend on whether a sufficient factual basis for the impugned statement exists, since even a value judgment without any factual basis to support it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II; with regard to Russian cases, see, for example, *Novaya Gazeta v Voronezhe v. Russia*, no. 27570/03, § 38, 21 December 2010).

(ii) Application to the present case

39. In the present case, the applicant company was found liable in relation to publishing a series of articles related to the managerial abilities of the head of the local administration. The impugned interference therefore must be seen in the context of the essential role of the press in ensuring the proper functioning of political democracy (see *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 59, ECHR 1999-IV). The margin of appreciation to be accorded to the State in the present context is, in principle, a narrow one.

40. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant company, the position of the person against whom its criticism was directed, the subject matter of the publication, the characterisation of the contested statement by the domestic courts, the wording used by the applicant company, and the penalty imposed on it (see *Jerusalem*, cited above, § 35).

41. The Court observes that the applicant company was sued as the editorial board of the newspaper. In that connection, it points out that the most careful scrutiny on the part of the Court is called for when, as in the present case, the measures taken or sanctions imposed by a national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298).

42. The applicant company's criticism was directed against Y.L., the then head of the District Administration, a professional politician in respect of whom the limits of acceptable criticism are wider than in the case of a private individual (see *Lingens*, cited above, § 42, and *Grinberg*, cited above, § 32). By standing in the local elections, Y.L. entered the political scene and inevitably and knowingly laid himself open to close scrutiny – scrutiny of his every word and deed by both journalists and the public at large. For these reasons, he was required to display a greater degree of tolerance (for similar reasoning, see *Krasulya v. Russia*, no. 12365/03, § 37, 22 February 2007).

43. In the publications in question the authors contested the validity of the District Administration's policy concerning its spending and its management of property, and also criticised Y.L.'s managerial abilities. The issues raised in the articles were obviously of considerable importance for the local community. This was a matter of public concern, and the articles contributed to the ongoing political debate. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on debates on questions of public concern (see *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001-VIII).

44. In the present case, there is no evidence that the Russian courts performed a balancing exercise between the need to protect the claimant's reputation and the applicant company's right to impart information on issues of general interest. They confined their analysis to a discussion of the damage to the claimant's reputation, without giving any consideration to the Convention standard described above, journalistic freedom, or the fact that the claimant was a politician and the head of the District Administration and was accordingly subject to wider limits of acceptable criticism than private individuals (see paragraphs 11, 12 and 14).

45. The Court finds that the domestic courts did not take into account specific features of political discourse, and therefore failed to recognise that the present case involved a conflict between the right to freedom of expression and the right to protection of one's reputation (see, for similar reasoning, *Kwiecień v. Poland*, no. 51744/99, § 52, 9 January 2007).

46. Turning to the content of the published articles, the Court observes that the Russian courts did not clearly characterise the statements in the applicant company's newspaper as statements of fact or value judgments. The courts did not address the applicant company's argument that the

statements were value judgments. The Court has on many occasions pointed to a deficiency in the Russian law on defamation, which refers uniformly to "statements" and posits the assumption – as the present case illustrates – that any such "statement" is susceptible of proof in civil proceedings (see *Grinberg*, cited above, § 29; *Zakharov v. Russia*, no. 14881/03, § 29, 5 October 2006; *Karman*, cited above, § 38; *Novaya Gazeta v Voronezhe*, cited above, § 52; and *Terentyev v. Russia*, no. 25147/09, § 23, 26 January 2017). The Court will examine each of the applicant company's statements in turn.

47. The first disputed extract contains a comparison of the claimant's entering into loan contracts on behalf of the District Administration with a situation described in a fable "Monkey and a loan". The Court accepts that the articles contained factual allegations against the claimant, particularly those concerning Y.L.'s orders to give out the biggest shops for external management for free and without following a well-established scheme, which resulted in large budgetary losses (see paragraph 8 above).

48. In this respect, the Court observes that the claimant did not challenge the accuracy of the factual basis for the applicant company's allegations. He was merely unhappy about the allegedly offensive use of epithets commenting on his professional activity that was exactly the basis for granting the defamation claim (see paragraph 11 above). The Court considers that the comparison of the claimant's actions with the story in the fable was a value judgment that represented the applicant's subjective appraisal of the claimant's actions (for similar reasoning, see *Zakharov*, cited above, § 30). The burden of proof in this respect was impossible to discharge. Furthermore, the impugned expression, although sarcastic, remained within the acceptable degree of stylistic exaggeration employed to express the journalist's value judgment (see, *mutatis mutandis*, *OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, no. 39748/05, § 43, 25 April 2017).

49. Another disputed extract concerns the placement of Y.L.'s photograph in a photo collage with a Muslim turban and beard, with a comment added to the portrait saying "a golden grin goes" to Y.L. for his proposal regarding the industrial waste, "blow anything up or burn it". The Court considers that the statements were similarly a quintessential example of sarcastic value judgments based on the journalist's view of Y.L.'s managerial abilities and his own perception of Y.L.'s proposal about how to deal with the industrial waste (see paragraph 9 above). The Court concludes therefore that here too the statements remained within the acceptable degree of stylistic exaggeration employed to express the journalist's value judgment (see, *mutatis mutandis*, *Grinberg*, cited above, § 31; *Zakharov*, cited above, § 30; and *Krasulya*, cited above, § 42).

50. In the light of the above considerations, and taking into account the role of the press in imparting information and ideas on matters of public

concern, even those that may offend, shock or disturb, the Court notes that the series of articles did not exceed the acceptable limits of criticism. The Court would also note that the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the right to freedom of expression (see *Jersild*, cited above, § 35). In this connection, the Court notes that notwithstanding the minor nature of the sanctions imposed on the applicant company, they were capable of discouraging the participation of the press in debates over matters of legitimate public concern. In view of the above, the Court considers that the domestic courts overstepped the narrow margin of appreciation afforded to them in relation to restrictions on debates of public interest. The Court therefore finds that the Kstovo City Court's decision of 31 August 2004 ordering the applicant company to publish an apology was an interference which was disproportionate to the aim pursued and not "necessary in a democratic society".

51. Accordingly, the Court considers that there has been a violation of Article 10 of the Convention in the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant company complained under Article 6 § 1 of the Convention that the court proceedings had been unfair on account of the unlawful order that it offer apologies to the claimant. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and must, therefore, be declared admissible. In view of the Court's finding in respect of Article 10 of the Convention, there is no need to examine the issue again in the context of Article 6 (see *Karman*, cited above, § 47).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant company claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government submitted that the claim was excessive and uncorroborated by any evidence of the applicant company's distress.

56. The Court reiterates that, under Article 41 of the Convention, a commercial company may be awarded monetary compensation for non-pecuniary damage (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV). Non-pecuniary damage suffered by such a company may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (see *Orlovskaya Iskra v. Russia*, no. 42911/08, § 140, 21 February 2017). However, the Court finds the amount claimed by the applicant company excessive.

57. The Court considers it reasonable to award the applicant company EUR 7,500 in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

B. Costs and expenses

58. The applicant company also claimed EUR 2,000 for costs and expenses incurred before the Court and EUR 1,000 for translation services.

59. The Government contested these claims, as the applicant company had not produced any agreement or document showing that the above-mentioned fees had been paid.

60. In accordance with 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 rejects the claim for costs and expenses incurred before the Court and the claim in respect of translation services, as the applicant company has failed to provide evidence that these expenses were paid.

C. Default interest

61. 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* that there is no need to examine separately the complaint under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President