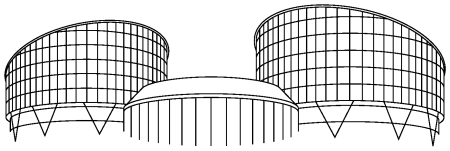

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF FEDCHENKO v. RUSSIA (No. 4)

(Application no. 17221/13)

JUDGMENT

STRASBOURG

2 October 2018

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 Fedchenko v. Russia (no. 4),

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 4 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 17221/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Oleg Dmitriyevich Fedchenko ("the applicant"), on 4 February 2013.

2. The applicant was represented by Ms M.A. Ledovskikh, a lawyer practising in Voronezh. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, a breach of his right to freedom of expression on account of defamation proceedings against him.

4. On 19 September 2016 the complaint under Article 10 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Suponevo, the Bryansk Region.

6. The applicant has been editor of a weekly newspaper, *Bryanskiye Budni* (*Брянские будни*), since he founded it in 1999.

7. On 9 August 2012 the applicant published an article in *Bryanskiye Budni* no. 658/31 headlined "Pity the birds" ("*Птичек жалко"*)[1], which he wrote under a pen name. In the article he discussed criminal proceedings which were pending against two men called Maksim Kosenkov and Ruslan Pogulyayev on charges of obtaining land by fraud. He also referred to witness statements in criminal proceedings against Anna Stregeleva, the former head of the regional department of the Federal Agency for State Property Management (*Росимущество*), which had concerned the misappropriation of other plots of land and ended with Ms Stregeleva's conviction. According to those statements, several regional officials, including a deputy governor of the Bryansk Region, Nikolay Simonenko, had been involved to a certain extent in the events which had constituted the basis of the conviction. Criminal proceedings had been instituted against Mr Simonenko as well, but they had been discontinued and on 23 April 2012 the Bryanskiy District Court had awarded him compensation for non-pecuniary damage for wrongful prosecution. The article had a photograph next to it of Mr Simonenko and Mr Denin, the governor of Bryansk Region, in a room with other people.

8. The article read as follows, in so far as relevant:

> "Maksim Kosenkov and Ruslan Pogulyayev will be on trial in Bryansk. The lads wanted to replicate the deed of the Bryansk thieves from the local administration, but they lacked the power, although they had skills in abundance.
>
> They concocted fake decrees from the Bezhitskiy District Administration on the parcelling of land for the construction of individual houses. They 'certified' the papers with makeshift stamps and took them to the Bryansk Region Department of the State Register (*Росреестр*). Here they were issued with [extracts from the State registry of real estate] in respect of nine plots of land. Try to register your property at that department. They will wear you down with requests for piles of papers. However, in this case the credulous clerks easily signed the documents after accepting the fakes. Isn't that strange?
>
> As established by the prosecutor's office, the swindlers acquired property rights in this way in respect of plots of lands which belonged to the category of indivisible State property. Their market value exceeded 6,400,000 roubles. The lads face up to ten years' imprisonment for this. Pity the birds. They could be doing good deeds, raising their kids. However, they got carried away by the example of the big Bryansk thieves and failed to take into account that the latter were protected from all sides – by the powers that be, the party, relations, and so on.
>
> At least we know now what sentence Bryansk Region residents Denin and Simonenko could be serving. This newspaper has several times dealt with the material of the criminal case which led to Simonenko spending a year detained at Matrosskaya Tishina [the SIZO no. 1 remand prison in Moscow] and who happily got out with a

1. Refers to a quote from a well-known Soviet comedy *Кавказская пленница* (Kidnapping Caucasian Style). One of the characters listens to a fable about a bird that flew too close to the sun, burned its feathers and fell to the ground. He starts crying and when asked why he says "I feel sorry for the bird" (*Птичку жалко*).

million in compensation. It looks like very few people understood that material. We shall have to shake the dust off those volumes once more.

If you go from Bryansk to the village of Michurinskoe, before the village to the left you will see a field and an orchard which caught the fancy of the Bryansk thieves from the authorities (*воры от власти*). There are almost 66 hectares of land there. Having become skilled at the misappropriation of land, the thief-officials and a deputy decided to pocket that billion. And to multiply it. The thing is, they were going to build cottages there and sell them at triple the price. It is easy to turn a billion into three or five in that way."

9. The article further referred to witness statements in the criminal proceedings against Ms Stregeleva, which concerned the misappropriation of plots of land from orchards that constituted federal land. According to the article, it could be seen from the material in the criminal case that Deputy Governor Simonenko had said at a meeting that "the issue with the orchards was agreed upon with the governor". The last paragraph of the article contained the following passages:

"Strangely enough, citizens Denin and Simonenko are still at large. Although we are talking about 66 hectares of expensive land. However, the Bezhitskiy lads may face up to ten years of prison time for a lesser crime. Can this be?..."

A. Defamation proceedings

10. Mr Simonenko brought an action for defamation against the applicant and sought damages of 300,000 Russian roubles (RUB). He stated, in particular, that the following passages were untrue and damaging to his honour and reputation:

1. "However, they got carried away by the example of the big Bryansk thieves and failed to take into account that the latter were protected from all sides – by the powers that be, the party, relations, and so on";

2. "At least now we know what sentence Bryansk Region residents Denin and Simonenko could be serving."

3. "... caught the fancy of the Bryansk thieves from the authorities ..."

4. "... Having become skilled at the misappropriation of land, the thief-officials and a deputy decided to pocket that billion. And to multiply it."

11. On 26 September 2012 the Bryanskiy District Court of the Bryansk Region dismissed the claim ("the Bryanskiy District Court"). The court noted that in the article the author had expressed an opinion and made suppositions with regard to procedural documents in the criminal case against Ms Stregeleva and the actions of certain participants in the proceedings. It further found that the first, third and fourth sentences quoted above could not be considered as damaging to the claimant's honour and reputation as he was not the only official in the Bryansk administration and it was not clear from the article that the author had meant him exactly. The court also noted that the fourth sentence did not constitute an assertion and

had neither a legal nor a literal meaning. As regards the second sentence, the court found that the claimant had failed to prove that he was the one referred to in the passage as many people with the surname Simonenko lived in the Bryansk region. There had also been other people apart from the claimant in the photograph published next to the article. Furthermore, the sentence in question had not contained information about any facts but had merely expressed the author's opinion and his suppositions.

12. Mr Simonenko appealed.

13. On 27 November 2012 the Bryansk Regional Court set aside the judgment, allowed the claim against the applicant, ordered him to publish a retraction within fifteen days of the judgment's entry into force, and awarded the claimant damages of RUB 5,000 (approximately 125 euros). It also ordered the applicant to pay fees of RUB 200.

14. The appellate court found that the passages in question had definitely referred to Mr Simonenko as his photograph had been published next to the article. It also cited the use of the expressions "thieves from the local administration", "thieves from the authorities" and "thief-officials" in connection with the criminal proceedings against Mr Simonenko. It further found that in the light of the introduction to the article, "Maksim Kosenkov and Ruslan Pogulyayev will be on trial in Bryansk. The lads wanted to replicate the deed of the Bryansk thieves from the local administration, but they lacked the power, although they had skills in abundance", it was clear that the first, third and fourth sentences constituted assertions to the effect that the claimant had committed offences and had abused his official position for personal gain. The appellate court found that the second sentence, read together with the sentence "Strangely enough, citizens Denin and Simonenko are still at large", constituted an assertion that Mr Simonenko should be punished for the offences he had committed. The information had thus been presented by the author as a statement of fact.

15. The appellate court also noted that according to the dictionary, "thief" meant a person who stole or a criminal who practised theft. It went on to conclude that the above passages, which contained negative judgments, were insulting and discrediting to the moral character of the claimant. They had also diminished his business reputation, portrayed him negatively as a person engaged in criminal activity, as a State official who abused his powers for mercenary ends, and created a wrong perception about the claimant in the eyes of society, both as a citizen and as a deputy governor of the Bryansk Region. The appellate court therefore found that all four sentences in question had damaged the honour and reputation of Mr Simonenko.

16. On 27 December 2012 the Bryansk Regional Court refused the applicant leave to lodge a cassation appeal.

B. Other developments

17. On an unspecified date Mr Denin also instituted defamation proceedings against the applicant on account of the following two passages from the article:

> 1. "However, they got carried away by the example of the big Bryansk thieves and failed to take into account that the latter were protected from all sides – by the powers that be, the party, relations, and so on";
>
> 2. "At least now we know what sentence Bryansk Region residents Denin and Simonenko could be serving."

18. On 23 April 2013 the Bryanskiy District Court granted the claim. The applicant appealed.

19. On 22 October 2013 the Bryansk Regional Court quashed the judgment on appeal and dismissed the claim. The court found that the first passage could not be considered as constituting a statement of fact but was rather a value judgment. Furthermore, the court considered that the passage could not be regarded as concerning the claimant specifically, since neither his name nor the position he held had been mentioned. The applicant had referred to "big Bryansk thieves", and, given that the article contained comments on criminal proceeding instituted against other people from the Bryansk administration, it was impossible to regard the passage as relating specifically to Mr Denin. In the court's view, that conclusion was not altered by the publication of Mr Denin's photograph next to the article, since other people had appeared in the photograph as well. Accordingly, the passage in question could not be considered as defamatory in respect of the claimant. As regards the second passage, the court held that it could not be considered as defamatory either since it had not constituted a statement of fact but had rather been a supposition, which was reflected in the use of the word "could".

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. Article 29 of the Constitution of the Russian Federation guarantees freedom of thought and expression, and freedom of the media.

21. Article 152 of the Civil Code of the Russian Federation provides that an individual can apply to a court with a request for the correction of statements (*сведения*) 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.

22. Resolution no. 3 of the Plenary Supreme Court of the Russian Federation of 24 February 2005 defines "untruthful statements" as allegations of facts or events which have not taken place in reality by the

time of the dissemination of the statements. Statements contained in court decisions, decisions by investigative bodies and other official documents amenable to appeal cannot be considered untruthful. Statements alleging that a person has broken the law, committed a dishonest act, behaved unethically or broken the rules of business etiquette tarnish that person's honour, dignity and business reputation (section 7). Resolution no. 3 requires courts hearing defamation claims to distinguish between statements of fact, which can be checked for their veracity, and value judgments, opinions and convictions, which are not actionable under Article 152 of the Civil Code since they are an expression of the defendant's subjective opinion and views and cannot be checked for their veracity (section 9).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant complained that the judgment of the Bryansk Regional Court of 27 November 2012 had violated his right to express his opinion and to impart information and ideas on matters of public interest guaranteed by 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."

24. The Government contested that argument. They conceded that the judicial decisions in the present case had constituted an interference with the applicant's rights guaranteed by Article 10. However, they argued that the interference had been "prescribed by law", being based on Article 152 of the Civil Code and Resolution no. 3 of the Plenary Supreme Court of the Russian Federation of 24 February 2005 (section 7), had pursued a legitimate aim of the protection of the reputation or rights of others and had been proportionate to that aim.

25. The Government noted that in the article in question the applicant had portrayed Mr Simonenko in a negative light as a thief and as a State servant who had abused his official powers. They argued that it had been for

the applicant to corroborate his allegations, which he had failed to do before the domestic courts. In that regard, the Government relied on *Markt Intern Verlag GmbH and Klaus Beermann v. Germany* (20 November 1989, § 35, series A no. 165); *Rumyana Ivanova v. Bulgaria* (no. 36207/03, 14 February 2008); and *Novaya Gazeta and Borodyanskiy v. Russia* (no. 14087/08, §§ 36-44, 28 March 2013). The Government also pointed out that the newspaper had a wide circulation of 6,500 copies and that the amount of damages awarded by the domestic courts had been fairly modest.

26. The Government further argued that the domestic courts had duly balanced the applicant's rights under Article 10 of the Convention and the plaintiff's rights protected under Article 8. In that regard they relied, *inter alia*, on *Keller v. Hungary* ((dec.), no. 33352/02, 4 April 2006); *Lindon, Otchakovsky-Laurens and July v. France* ([GC], nos. 21279/02 and 36448/02, ECHR 2007-IV); *Pfeifer v. Austria* (no. 12556/03, 15 November 2007); *Vitrenko and Others v. Ukraine* ((dec.), no. 23510/02, 16 December 2008); *Alithia Publishing Company Ltd and Constantinides v. Cyprus* (no. 17550/03, § 49, 22 May 2008); and *OOO 'Vesti' and Ukhov v. Russia* (no. 21724/03, § 62, 30 May 2013).

27. The applicant, while not contesting that the interference had been "prescribed by law" and had pursued a legitimate aim of the protection of the reputation or rights of others, contended that it had not been proportionate. He argued that the domestic courts had not taken into consideration either his position or that of the plaintiff. In his view, his being an editor of a newspaper and a journalist meant that the interference with his right to freedom to expression should have been assessed in the light of the important role the press played in a democratic society. At the same time, Mr Simonenko was not a State servant but a deputy governor of the Bryansk Region, that is a public figure, who had to display a greater degree of tolerance to public criticism.

28. With regard to the particular passages that the domestic courts had found defamatory, the applicant submitted that the passages containing references to "the big Bryansk thieves" and "thief-officials" were of a general nature and could not be considered as having affected Mr Simonenko directly (see *Dyuldin and Kislov v. Russia*, no. 25968/02, § 43, 31 July 2007). The applicant referred in that connection to the findings of the domestic courts in the defamation proceedings instituted against him by Mr Denin (see paragraph 19 above).

29. As regards the passage, "[A]t least now we know what sentence Bryansk Region residents Denin and Simonenko could be serving", the applicant argued that it contained hypothetical speculation as to what could have happened if the circumstances had been different. As such it could not be regarded as a statement of fact.

30. The applicant submitted that the article had been based on witness statements made in the course of the criminal proceedings on the

misappropriation of plots of land against Ms Stregeleva, the former head of the regional department of the Federal Agency for State Property Management, who had eventually been convicted. The article had clearly stated that criminal proceedings against Mr Simonenko had been discontinued and had not misled readers in that regard. However, in the applicant's view, the fact that the criminal proceedings had been discontinued did not imply that either the underlying issue or the course and outcome of the criminal investigation could not be discussed any further.

A. Admissibility

31. 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. General principles

32. The general principles for assessing the necessity of an interference with the exercise of freedom of expression are summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016) as follows:

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and

> sufficient'... In doing so, 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 relied on an acceptable assessment of the relevant facts ..."

33. The Court reiterates that the press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and Decisions* 1997-I). Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239, and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III).

34. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204). Journalistic freedom also 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).

35. In its practice, the Court has distinguished 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 (see *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103).

36. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, 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).

2. Application of the above principles to the present case

37. The Court observes that it was not disputed between the parties that the civil proceedings for defamation against the applicant constituted an interference with his freedom of expression and that this interference was in accordance with the law and pursued the legitimate aim of protecting the plaintiff's reputation. It remains to be determined whether it was "necessary in a democratic society".

38. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant, the position of the plaintiffs who instituted the defamation proceedings, and the

subject matter of the debate before the domestic courts (see *Jerusalem*, cited above, § 35).

39. As regards the applicant's position, the Court observes that he was sued in his capacity as the editor of the newspaper and the author of the article in question. 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 the 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).

40. As regards the position of the plaintiff who brought civil proceedings against the applicant, the Court notes that Mr Simonenko was a deputy governor of the Bryansk Region. The Court reiterates that the limits of acceptable criticism are wider as regards a politician than as regards a private individual. A politician acting in his public capacity inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large (see, among other authorities, *Lacroix v. France*, no. 41519/12, § 41, 7 September 2017).

41. Turning to the subject matter of the debate before the domestic courts, the Court notes that the impugned article discussed a swindle involving plots of land and corruption in the regional administration, which had entailed the institution of criminal proceedings against regional officials, Ms Stregeleva and Mr Simonenko, albeit with different outcomes. That was undoubtedly a matter of general interest to the local community which the applicant was entitled to bring to the public's attention and which the local population was entitled to receive information about (see, *mutatis mutandis*, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 94-95, ECHR 2004-XI). The Court reiterates in this respect that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001-VIII). It further reiterates that in order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Morice v. France* [GC], no. 29369/10, § 126, ECHR 2015).

42. The Court has held that when examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation ... of others", it may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see, among many other

authorities, *Annen v. Germany*, no. 3690/10, § 55, 26 November 2015). The Court emphasises that, in order for Article 8 of the Convention to come into play, an attack on a person's reputation must attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012). It is not convinced, however, in the circumstances of the present case, that the impugned statements could be considered as an attack reaching the requisite threshold of seriousness and capable of causing prejudice to Mr Simonenko's personal enjoyment of private life.

43. The Court will further consider the newspaper article as a whole and have particular regard to the words used in the disputed parts, the context in which they were published and the manner in which it was prepared (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV, and *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 90, ECHR 2007-III).

44. The Court observes that in three out of the four impugned passages the applicant did not mention Mr Simonenko by name but referred to "the big Bryansk thieves", "Bryansk thieves from the authorities" and "thief-officials". The Bryansk Regional Court found that all the passages implied a reference to the criminal proceedings against Mr Simonenko and thus affected him directly. The Court is not convinced by such an interpretation.

45. It reiterates that a fundamental requirement of the law of defamation is that in order to give rise to a cause of action the defamatory statement must refer to a particular person. If all State officials were allowed to sue in defamation in connection with any statement critical of the administration of State affairs, even in situations where the official was not referred to by name or in an otherwise identifiable manner, journalists would be inundated with lawsuits. Not only would that result in an excessive and disproportionate burden being placed on the media, straining their resources and involving them in endless litigation, it would also inevitably have a chilling effect on the press in the performance of its task of purveyor of information and public watchdog (see *Dyuldin and Kislov*, cited above, § 43).

46. Turning to the passages in question, the Court observes that the article discussed corruption within the regional authorities, which involved a number of State officials and had led to the conviction of one of them. Although Mr Simonenko's photograph was published next to the article, firstly, he was photographed along with other people and, secondly, the article contained other passages which directly referred to the plaintiff by name. Accordingly, the Court retains doubts concerning the domestic court's finding to the effect that the plaintiff had been affected directly by the three passages in question.

47. However, even assuming that Mr Simonenko could be considered to have been directly affected by these passages, the Court finds that they constituted value judgments which, furthermore, had sufficient factual basis given criminal proceedings instituted against certain regional officials, including Mr Simonenko. The Court also finds that in calling the regional officials "thieves" in the present context the applicant did not overstep the margins of a degree of exaggeration, or even provocation covered by journalistic freedom (see *Bédat*, cited above, § 58, ECHR 2016).

48. As regards the passage "[A]t least now we know what sentence Bryansk Region residents Denin and Simonenko could be serving", the Court notes that the Bryansk Regional Court found it to be an assertion that the plaintiff should be punished for the offences he had committed, which constituted a statement of fact. The Court is not convinced by such an interpretation.

49. In the Court's view, the sentence in question constitutes speculation by the applicant as to what sentence Mr Denin and Mr Simonenko might have received if they had been found guilty by the court of a similar offence. That is clearly a supposition by the author which may not be regarded as a statement of fact. Furthermore, the passage at issue remains within the acceptable limits, being closely connected with the factual information provided by the applicant in his article, given that criminal proceedings had been instituted and discontinued against Mr Simonenko, and another set of criminal proceedings had led to the conviction of another regional official (see *Marian Maciejewski v. Poland*, no. 34447/05, § 76, 13 January 2015).

50. Having regard to the foregoing, the Court concludes that the balancing exercise carried out by the domestic courts did not take sufficiently into account all the standards established in the Court's case-law under Article 10 of the Convention (compare and contrast, *Keller*, cited above, and *Kwiecień v. Poland*, no. 51744/99, § 52, 9 January 2007). The fact that the proceedings were civil rather than criminal in nature and that the final award was relatively small does not detract from the fact that the standards applied by the domestic courts were not compatible with the principles embodied in Article 10 since they did not adduce "sufficient" reasons to justify the interference at issue, namely the imposition of a fine on the applicant for publishing the impugned article.

51. Therefore, having regard to the fact that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see, among other authorities, *Sürek*, cited above, § 61, and *Novaya Gazeta v Voronezhe v. Russia*, § 59), the Court finds that the domestic courts overstepped the narrow margin of appreciation afforded to Member States, and that the interference was disproportionate to the aim pursued and was thus not "necessary in a democratic society".

52. Accordingly, there has been a violation of Article 10 of the Convention.

II. 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. Pecuniary damage

54. The applicant claimed 130 euros (EUR) in respect of pecuniary damage, which corresponds to 5,200 Russian roubles at the exchange rate of 27 November 2012, on account of the damages and fees he had been ordered to pay by the domestic courts. The applicant enclosed a certificate issued by the bailiffs service to confirm that he had paid the amount due.

55. The Government argued that the claim was unfounded as the award of damages had been made in a well-reasoned judgment of a domestic court.

56. The Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary damage claimed. It further notes that it is its standard practice to make awards in euros rather than in the currency of the respondent State, should it be different, on the basis of the exchange rate which existed at the time the claim was submitted to the Court. Consequently, the Court awards the applicant the amount claimed in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

57. The applicant claimed EUR 14,000 in respect of non-pecuniary damage on account of the breach of his right to freedom of expression.

58. The Government submitted that the claim was unfounded as, in their view, there had been no violation of the applicant's rights.

59. The Court accepts that the applicant must have suffered distress and frustration resulting from the judicial decisions incompatible with Article 10 which cannot be sufficiently compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 under this head, plus any tax that may be chargeable on that amount.

C. Costs and expenses

60. The applicant also claimed EUR 1,680 for the costs and expenses incurred before the Court. He enclosed a contract for legal services of 17 February 2017 which provides for remuneration for his representative of EUR 60 per hour and an act of 23 March 2017 attesting to twenty-eight hours spent by the applicant's representative on the case.

61. The Government argued that the claim was unsubstantiated as the applicant had not enclosed any receipts to confirm that the payment had been made. In their view, the amount claimed was in any event excessive.

62. 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 amount claimed for the proceedings before the Court.

D. Default interest

63. 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 130 (one hundred and thirty euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,680 (one thousand six hundred and eighty 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 2 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President