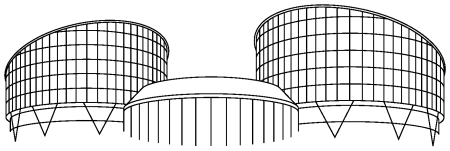

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF FEDCHENKO v. RUSSIA (No. 5)

(Application no. 17229/13)

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. 5),

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. 17229/13) 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 10 January 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.

A. Background

7. In June 2010 the prosecuting authorities conducted a check into compliance with fire safety rules at the Tymoshkovykh shopping centre (*ТРЦ Тимошковых*). The report stated that fifteen breaches of the rules had been found.

8. On 21 June 2010 the prosecutor applied to a court with a request, *inter alia*, to order N.K. Timoshkov, the owner of the shopping centre, to rectify the breaches.

9. By a final decision of 2 August 2010 the application was allowed in that part.

10. Enforcement proceedings were instituted and subsequently discontinued.

11. In September 2011 the prosecuting authorities conducted another check. They found that the breaches had not been rectified and, moreover, found new ones. Overall, fifty violations of fire safety regulations were found, of which fifteen were considered to pose a threat to the life and health of people inside the centre.

12. The bailiffs' decision to discontinue the enforcement proceedings was set aside.

13. At the same time the prosecutor instituted new court proceedings against the shopping centre, seeking to have the fire safety breaches rectified. The prosecutor also asked the court to close the shopping centre temporarily as a provisional measure until fire safety regulations had been complied with fully.

14. On an unspecified date the Bryansk Regional Court ordered the shopping centre to close temporarily. The proceedings on the merits remained pending, and a further hearing was scheduled for 27 March 2012.

15. On 23 March 2012 the Regnum Centre news portal published an article on its website about the temporary closure of the Tymoshkovykh shopping centre due to breaches of fire safety rules.

16. On 26 March 2012 the iBryansk.ru news portal published an article on its website about a meeting between Mr Timoshkov and representatives of the Ministry of Emergency Situations, the Bryansk prosecutor, the head of the Bryansk Administration and Mikhail Klimov, a deputy governor of the Bryansk Region.

17. On 27 March 2012 the bnews32.ru news portal published an article about a court order to close the shopping centre. The article also stated that the owner of the shopping centre considered the measure to be too severe, and that Nikolay Denin, governor of the Bryansk Region, had instructed Mr Klimov to personally take charge of the matter.

18. On the same date Regnum Centre published an article that at the 27 March 2012 hearing the Bezhitskiy District Curt of Bryansk had dismissed an application to lift the provisional measure. The article also

stated that Mr Timoshkov had been very active in connection with the closure of the shopping centre and had already met representatives of the Ministry of Emergency Situations, the Bryansk prosecutor, the head of the Bryansk Administration and Mr Klimov. The news portal reported that as the court hearing had taken place after the meeting, Mr Timoshkov had been outraged by the decision and had said as follows: "In my opinion, which is shared by officials at the Ministry of Emergency Situations and Deputy Governor Klimov, there is no threat to people's safety. I do not know why [the court delivered] such a decision. We shall appeal against it."

19. On 29 March 2012 the province.ru news portal published an article on its website saying that the Bryansk prosecutor's office had applied to the court to lift the suspension of the shopping centre's activities, as announced by the deputy prosecutor, A. Stupak, at a meeting of the regional Duma. The article said that he had stated that the breaches that had been found were not considered by the Ministry of Emergency Situations as posing a threat to the life of employees and customers at the centre and that the owner had rectified some of them.

20. On 30 March 2012 the Tymoshkovykh shopping centre reopened.

21. On 11 April 2012 province.ru published an article on its website which read as follows:

> "On 27 March the building was closed due to breaches of fire safety rules. By a court decision provisional measures were applied for one month pending rectification of the breaches.
>
> Those events caused a stir. Businessmen talked to the regional prosecutor. Town and regional officials pleaded on behalf of the business. As a result, on 30 March the prosecutor's office withdrew its complaint and the shopping centre opened again.
>
> However, yesterday the regional court refused to lift the provisional measures. That means that before 27 April the building may be closed again. Today the shopping centre is open as usual. However, tenants say that bailiffs might visit them again on 13 April. In the meantime, the businessmen are going to again ask the prosecutor's office for clarification."

B. Article

22. On 29 March 2012 the applicant published an article in *Bryanskiye Budni* no. 639/12 headlined "... and were Timoshkov's errand boys" ("... *и служили у Тимошкова на посылках*")[1], where he criticised the officials who had taken the side of the shopping centre in the above events. The relevant part of the article reads as follows:

1. The headline is an allusion to Alexander Pushkin's *The Tale of the Fisherman and the Fish* where an old man catches a magical golden fish that can grant three wishes. He takes the fish to his wife. She becomes greedier with each wish and says on the third one that, "The goldfish I want for my servant to do my commands and my errands."

"The finest forces were mustered in support of Timoshkov. The most notorious sages gathered at the table – deputy governor Mikhail Klimov, the head of the town administration Sergey Smirnov and other officials. They were ordered to rescue their patron Timoshkov, and they did so. Quite a few establishments have been closed on account of a breach of fire safety rules, yet no such cavalry ever came to their rescue. The highest officials rushed to defend the interests of businessman Timoshkov ...

The corrupt Bryansk officials gave themselves away and did not even understand what had happened. Actually, they would not have been very embarrassed even if they had realised that they had revealed their connections. 'Who are you with, masters of culture?' they used to say in the times of Stalin. Another question needs to be asked in Bryansk: 'Who are you with, masters of thievery? Who are you defending?'"

23. The original Russian version is given below:

"На подмогу Тимошкову бросили лучшие силы. За столом собрались самые отъявленные мудрецы – заместитель губернатора Михаил Климов, глава городской администрации Сергей Смирнов и другие чиновники. Им дали команду спасать кормильца Тимошкова, и они спасали. Мало ли заведений было закрыто из-за нарушений противопожарных норм, но никому не бросали на выручку такой десант. Интересы отдельно взятого коммерсанта Тимошкова кинулись защищать высшие чиновники ...

Брянские коррупционеры засветились и даже не поняли, что случилось. Впрочем, не слишком бы и смутились, если бы все-таки сообразили, что приоткрыли свои связи. «С кем вы, мастера культуры?» - говаривали при Сталине. Для Брянска напрашивается другой вопрос: «С кем вы, мастера воровского ремесла? Кого защищаете?"

C. Court proceedings

24. On 23 April 2012 Mr Klimov brought an action for defamation against the applicant and sought damages of 500,000 Russian roubles (RUB). He asserted, in particular, that the following passages were untrue and damaging to his honour and reputation:

1. "The finest forces were mustered in support of Timoshkov. The most notorious sages gathered at the table – deputy governor Mikhail Klimov, the head of the town administration Sergey Smirnov and other officials. They were ordered to rescue their patron Timoshkov, and they did so ... The highest officials rushed to defend the interests of businessman Timoshkov."

2. "The corrupt Bryansk officials gave themselves away and did not even understand what had happened."

3. "Another question needs to be asked in Bryansk: 'Who are you with, masters of thievery? Who are you defending?'"

25. On 27 September 2012 the Bryansk District Court of the Bryansk Region allowed the claim. In its decision it relied on a linguistic expert's examination of 1 August 2012. According to the expert's report, the passages in question were susceptible of being looked at in terms of their factual accuracy. In the first and second passages the information had been presented in the form of assertions. The third passage had contained

rhetorical questions which had expressed the author's opinion. However, there was also an implied assertion that those concerned, including the claimant, were "masters of the thieves' trade", that is they had been engaged in unlawful activities.

26. The court dismissed the applicant's argument that all the facts described in the article were true, whereas in the passages concerned he had expressed his opinion. Relying on the above report, the court found that the claimant had been referred to in the passages concerned, which constituted negative statements that had discredited his moral character and damaged his honour, dignity and business reputation.

27. The court ordered the applicant to publish a retraction within ten days of the judgment's entry into force and awarded the claimant damages of RUB 5,000 (approximately 125 euros (EUR)).

28. The applicant appealed.

29. On 27 November 2012 the Bryansk Regional Court upheld the judgment.

30. On 19 February 2013 the Bryansk Regional Court refused leave to the applicant to lodge a cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

32. 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.

33. 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 statements' dissemination. 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 breached the law, committed a dishonest act, behaved unethically or broken 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

34. The applicant complained that the domestic courts' judgments 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."

35. 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.

36. The Government noted that in the article in question the applicant had alleged that Mr Klimov had abused his official powers in his personal interests, exercised an unlawful activity and exerted pressure on the prosecutor's office. 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.

37. 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. 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).

38. The applicant, while agreeing with the Government that the interference had been "prescribed by law" and had pursued the 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 of freedom to expression should have been assessed in the light of the important role the press plays in a democratic society. At the same time, Mr Klimov was a deputy governor of the Bryansk Region, that is a public figure, who had to display a greater degree of tolerance to public criticism. Furthermore, the subject of fire safety at a local shopping centre and the involvement of regional officials in its reopening was clearly a matter of public interest, which had been widely covered by the local media.

39. With regard to the particular passages that the domestic courts had found defamatory, the applicant submitted that while the courts had interpreted them as giving a negative assessment of the plaintiff, they at the same time had considered them as constituting statements of fact which had required proof. However, such findings were contradictory and, the passages in question being value judgments, the requirement of proof was impossible to fulfil.

A. Admissibility

40. 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

41. 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 ..."

42. 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).

43. 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).

44. 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).

45. 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

46. 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 this interference was "necessary in a democratic society".

47. 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).

48. 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).

49. As regards the position of the plaintiff who brought civil proceedings against the applicant, the Court notes that Mr Klimov 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, *Colombani and Others v. France*, no. 51279/99, § 56, ECHR 2002-V).

50. Turning to the subject matter of the debate before the domestic courts, the Court notes that the impugned article discussed compliance with fire safety regulations at a local shopping centre, its temporary closure and the role played by the local authorities in its reopening, which 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 were 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).

51. 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 Klimov's personal enjoyment of private life.

52. The Court will further consider the newspaper article as a whole and have particular regard to the words used in its 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).

53. The Court observes that the first impugned passage was as follows:

> "[T]he finest forces were mustered in support of Timoshkov. The most notorious sages gathered at the table – deputy governor Mikhail Klimov, the head of the town administration Sergey Smirnov and other officials. They were ordered to rescue their patron Timoshkov, and they did so ... The highest officials rushed to defend the interests of businessman Timoshkov."

54. The applicant thereby expressed his opinion regarding the role local officials played in reopening the shopping centre. It was his view that their efforts had been aimed specifically at helping Mr Timoshkov, the owner of the centre. In the Court's view, the applicant had a sufficient factual basis to

support such a value judgment (see *Jerusalem v. Austria*, cited above, § 43), given that meetings between Mr Timoshkov and the local authorities were widely covered in the media. In his statement to the press Mr Timoshkov also specifically referred to support from local officials (see paragraph 18 above).

55. As regards the satirical tone of the impugned passage, the Court reiterates that the use of sarcasm and irony is perfectly compatible with the exercise of a journalist's freedom of expression (see *Smolorz v. Poland*, no. 17446/07, § 41, 16 October 2012).

56. Turning to the second impugned passage, "[T]he corrupt Bryansk officials gave themselves away and did not even understand what had happened", the Court notes that it does not refer directly to Mr Klimov. However, the applicant explicitly named him in the first passage as one of the local officials who, in his view, had been trying to help Mr Timoshkov, while the second passage referred to those officials. The Court therefore accepts that Mr Klimov may be considered as having been affected by the statement in question (see *Dyuldin and Kislov v. Russia*, no. 25968/02, § 43, 31 July 2007).

57. The Court further observes that the applicant expressed his view in the second impugned passage that local officials were acting inappropriately by trying to help Mr Timoshkov. It constitutes a value judgment which is not susceptible of proof.

58. The third impugned passage, "[A]nother question needs to be asked in Bryansk: 'Who are you with, masters of thievery? Who are you defending?'", likewise constitutes a value judgment, even assuming that the plaintiff may be considered to have been affected by it. The applicant once again expressed his disapproval of the actions of local officials, choosing the form of a rhetorical question. In that regard, the Court reiterates that 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)*, cited above, § 57). The Court does not consider that the applicant overstepped the margins of the certain degree of exaggeration or even provocation allowed by journalistic freedom (see *Prager and Oberschlick*, cited above, § 38).

59. 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 v. Hungary* (dec.), no. 33352/02, 4 April 2006, 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.

60. 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".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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. Non-pecuniary damage

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

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

65. 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.

B. Costs and expenses

66. The applicant also claimed EUR 1,700 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 a declaration of 25 March 2017 attesting to 28 hours and 20 minutes spent by the applicant's representative on the case.

67. The Government submitted 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.

68. 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.

C. Default interest

69. 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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,700 (one thousand seven hundred 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	Vincent A. De Gaetano
Registrar	President