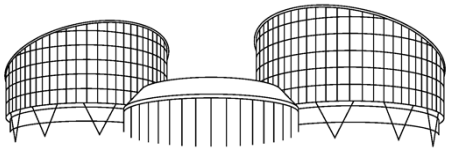

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ATAMANCHUK v. RUSSIA

(Application no. 4493/11)

JUDGMENT

Art 10 • Freedom of expression • Criminal conviction, fine and two-year ban on journalistic or publishing activities imposed on businessman for hate speech against ethnicities • Sweeping statements without any explicit call for violence • Temporary ban on journalistic or publishing activities having no significant practical consequences in view of applicant's main professional activity as entrepreneur • Exceptional circumstances justifying sentences imposed

STRASBOURG

11 February 2020

FINAL

12/10/2020

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

In the case of Atamanchuk v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Lorraine Schembri Orland, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 14 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 4493/11) 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 Vladimir Leonidovich Atamanchuk ("the applicant"), on 18 January 2011.

2. The Russian Government ("the Government") were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3. On 23 January 2017 the Government were given notice of the complaints under Articles 6 and 10 of the Convention 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

4. The applicant was born in 1951 and lives in Sochi.

5. At the material time, the applicant was leader of the local branch of the Democratic Party of Russia and founder of *Sochi–Drugoy Vzglyad*, a local newspaper with a circulation of 8,000. He also occasionally published articles in other local newspapers, apparently as a freelancer.

6. On 1 March 2008 *Lazarevskaya Panorama*, a local newspaper with a circulation of 10,000, published an article by the applicant headlined "Why I will not vote in these elections", in which the applicant stated why he would abstain in the presidential election that was due to take place on 2 March 2008.

7. The article was placed on the front page of the newspaper that had a headline in large red type saying "Time to vote". There were two sub-headings ("Yes!" in red and "No..." in black). The text was divided into two columns: the left side gave the statements of five people who were going to vote while the right side contained the applicant's article.

8. The applicant's article read, in its relevant parts, as follows:

"We are going to have a presidential election soon. It is difficult to grasp the game between good and evil this time ... So, here is my decision.

First of all, I am not a puppet in the hands of political gangs who are making a farce out of the presidential election. They only need our participation in the election for the sake of giving it an impression of a legal process, one which will result in the dislocation of Russia. This might explain the sad results of government by the two recent rulers of the State. As a result, we have what we have: widespread corruption on a broad platform of lies created by the press under the control of the State and oligarchs. Platitudes, depravity, and aggressive propaganda in favour of violence flow out at us from our television screens ...

That is how it all goes. However, it is all depicted as the reconstruction of the State, the strengthening of the economy and the rule of law on the background of growing wealth for the People.

'Which people?' I suddenly thought. 'Does it really matter?', was the answer from the television screen, 'It would not be politically correct to give a specific answer to that, to avoid complaints ...'.

Secondly, in fifteen years of 'new style' democracy no Russian person [*русский человек*] has seen anything good. He has been pushed down to the level of a simpleton who is to serve various small ethnic groupings that call themselves 'republics', within Russia or elsewhere ... In the Russia destroyed by the Bolsheviks they were called 'non-Russians' or the 'non-Russian population' ... And no one took offence at the time. Everyone stayed within his own locality, doing his best to make it wealthy. No one was irritated by that.

So what happened? Where do we stand today?

Those who on account of their ethnic [*национальные*] characteristics had engaged in criminal activities or tended their sheep or goats or prayed to their god abandoned their motherland and came here. They now call themselves builders, entrepreneurs, cultural workers or whatever is needed to get their hands into others' pockets.

Just look around and you will see crowds of them staring at you greedily at every corner ...

'We will be victorious over you all. We hold all these Kuban people,' they say during their closed meetings in their own language that 99% of Russians do not understand.

But they will speak Russian later, when they have totally paralysed our will. That is when they will start to burn, slaughter, rape, rob and enslave, in line with their barbaric ideas, as it was in Chechnya.

But for the time being, it is all 'friendship and solidarity between nations'. For the time being that is. And the President of Russia is handing out Hero of Russia decorations to slave traffickers! ...

> They participate in the destruction of the country ... Various processes of destruction dominate our society today. That is why I will not take part in the election ...
>
> However, I express my hope that when taking his decisions the new President will take into account the views I have expressed for myself and for those who are not going to vote on 2 March 2008."

9. The article was accompanied by the applicant's photograph and indicated that he was leader of the local branch of the Democratic Party of Russia.

10. The same text was reprinted in *Sochi–Drugoy Vzglyad* on 25 December 2009. The front page of the newspaper had an article titled "A campaign of criminal prosecutions on political motives has started in Sochi" about the criminal proceedings against the applicant for that text (see below). The article was repeated in small print at the bottom of the same page.

11. This issue of *Sochi–Drugoy Vzglyad* also contained a separate page with varying opinions expressed by various people in relation to the applicant's text and his ongoing criminal prosecution. One comment was made by a lawyer who considered that the main thread of the article concerned various destructive processes in the country arising, for instance, from inefficient migration policies adversely affected by widespread corruption; at the same time, the article contained no calls to action, in particular violent actions, and could not be classified as "extremist activity". The article also contained a statement by the leader of the Lazarevskoye district branch of the Armenian Union of Russia. It also contained the applicant's "open letter" in reply to that statement. It was specified in the article that on 17 December 2009 the applicant had had a meeting with the Lazarevskoye district branch.

12. It appears that both newspapers were distributed for free by being put into people's letter boxes within several streets in the Sochi area, including Lazarevskoye village for the second publication.

13. In the meantime, a criminal pre-investigation inquiry was opened on suspicion of inciting hatred and enmity, and at debasing the human dignity of a person or group of people on account of their ethnicity. In this connection, in August 2009 an investigator sought an opinion from professionals in language and psychology.

14. Ms B. and Ms R., professionals in language and psychology, issued their joint report on 5 November 2009. The report concluded as follows: the text contained statements disclosing a negative attitude toward a social group on the basis of its ethnicity, language and religion; some phrases extended certain negative characteristics of some members of a non-Slavic group to the entire group as such; the text contained no phrases calling for violence against them.

15. On 24 November 2009 and then in January 2010 the applicant was accused of an offence under Article 282 § 1 of the Criminal Code in relation

to each publication. That offence was punishable by, *inter alia*, a fine from 100,000 to 300,000 Russian roubles (RUB); a court could also prohibit a person from exercising a certain activity for a period up to three years. The applicant was charged with committing actions aimed at inciting hatred and enmity, and at debasing the human dignity of a person or group of people on account of their ethnicity (*национальность*), language, origin and religious beliefs.

16. During the preliminary investigation Mr F., a specialist in philology, also issued a specialist report (*заключение специалиста*).

17. According to F.'s report, the article contained an implicit incitement to violent acts against people of a certain social group on account of their ethnicity, race, religion or other social characteristics.

18. The investigator in the case commissioned another expert report (*заключение эксперта*).

19. Ms L. and (again) Ms R., professionals in linguistics and psychology, issued their joint report on 29 January 2010.

(a) The linguistics part of the report stated as follows: the content of the applicant's text concerned political and social issues addressed to a large audience; the main part of the text started at the phrase "Which people?" that introduced his subsequent discussion based on the opposition between the Russian people and the population of the non-Russian origin; the author presented their "ethnic characteristics" as the reasons for the suffering of the Russian people; the author had used what could be described in linguistics as "hate speech" or aggressive language creating an enemy image; he had used expressions that would be insulting to any ethnic group; while he had not named any specific group, it was clear from the context that he meant (essentially non-Slavic) ethnicities of Central Asia, Northern Caucasus and Transcaucasia; from certain parts of the text it became clear that he was talking about the Armenian ethnicity, among others; the text did not contain phrases calling for violent actions against a person or a group of people on account of his/her/their social status, race, ethnicity, language, gender or religion.

(b) The psychology part of the report concluded as follows: the article contained phrases disclosing a negative attitude toward a social group on the basis of its ethnicity, language and religion; those phrases could be perceived as inciting readers to feel hatred and enmity; the text did not contain phrases calling for violent actions against a person or a group of people on account of his/her/their social status, race, ethnicity, language, gender or religion.

20. The criminal case against the applicant was sent for trial before the Lazarevskiy District Court of Sochi. The applicant pleaded not guilty and affirmed that the text represented his own personal views and opinions.[1]

1. In his application before the Court the applicant argued, however, that the text reflected

After some minor stylistic changes on the part of the newspaper's editor the applicant had approved the publication by way of his signature of the newspaper issue's layout. The applicant also argued that he had not had anything to do with the publication of his text on 25 December 2009 (see paragraph 10 above).

21. The court examined the documentary evidence, including the expert opinions, and heard several witnesses for the defence. The court dismissed an application by the applicant to summon F. for questioning in court about his report. Apparently, neither the prosecution nor the defence deemed it necessary to obtain oral submissions from the other experts whose reports had been admitted in evidence.

22. By a judgment of 19 July 2010, the District Court convicted the applicant of inciting hatred and enmity, debasing the human dignity of a person or group of people on account of their ethnicity, language, origin and religious beliefs. The trial court phrased the accusation against the applicant as follows:

> "In an intentional and premediated manner [the applicant] worded the main part of his text by way of an opposition between the people of Russian ethnicity [*русский народ*] and members of other ethnicities [*национальности*] residing in Russia, while making statements that would be insulting and degrading to the dignity of any ethnicity; he indicated that the troubles of the Russian population lay in the non-Russian groups' ethnic characteristics, thus creating an image of enemies.
>
> Moreover, [the applicant's] assessment of the situation of the people of the Russian origin is intentionally provocative, being aimed at inciting hatred within the people of Russian ethnicity toward other ethnicities.
>
> Giving a negative assessment of any group on account of its origin, non-Russian ethnicity or on account of their language or religious beliefs, [the applicant] made statements about criminal propensity of those groups and affirmed the existence of their conspiracy against the Kubans [that is to say residents of Krasnodar Region]. He attributed to the non-Russian residents bad intentions toward the Russian population thereby creating a negative image of people prone to commit crimes in Kuban ...
>
> Moreover, in his article [the applicant] characterised people of non-Russian origin as inherently ignorant, rude, cruel, inhuman, aggressive and prone to crime against the Russian population, having secrets plans and conspiracies against people of Russian ethnicity.
>
> [The applicant's] statements about future violent actions on the part of non-Russian ethnicities toward the Russian people are phrased as statements that cannot be verified as to their veracity because they have no factual basis and do not go beyond his own speculations ...
>
> Clearly being aware that Krasnodar Region is a multi-ethnic region and that newspaper articles have an active influence on many people, [the applicant] disseminated his strong views, thereby undermining the confidence and respect toward a certain ethnicity, a certain religion and inciting hatred and enmity toward a

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his own views as a private person (a voter), a newspaper's correspondent and leader of the local branch of the Democratic Party of Russia.

certain way of life, culture, traditions and religious cults of the non-Russian population ...”

Reproducing the concluding remarks from the expert opinions, F.’s report and listing other evidence for each count of the accusation, the court concluded that the applicant was guilty as charged.

23. As to the publication of the applicant’s article in *Sochi–Drugoy Vzglyad* on 25 December 2009, the court noted that the applicant was the founder of that newspaper, that he had signed a contract for printing the relevant issue and paid for it, and had then received the whole issue and had distributed it.

24. The trial court sentenced the applicant to a fine of RUB 200,000 (5,086 euros (EUR) at the time) for each time the article had been published. It also imposed an additional sentence prohibiting the applicant from exercising any journalistic or publishing activities for two years. Noting the expiry of the prosecution period in respect of the first article, the court ordered that the related sentences were not to be enforced as regards the first article.

25. The court also held as follows:

“The author made manifestly provocative statements when assessing the situation of the Russian people, thus inciting his readers of Russian origin to feel hatred towards other ethnicities [nationalities].

The author made a negative statement about various groups on account of their origin being different from that of Russians ... Thereby, the author made intentional statements concerning the criminal propensities of certain groups, asserted that there was a plot by non-Russians against the population of the Kuban area (that is to say Russians living in Krasnodar Region) ... He said non-Russians had plans to harm Russians, thus creating a negative image of non-Russians ... He described non-Russians as ignorant, rude, cruel or inhuman ... Those are conjectures that are aimed at instilling fear ...

As regards the type of sentence and its severity, the court takes into account the nature and degree of dangerousness of the relevant offences, the information about the defendant’s personality, the circumstances that plead for mitigating or aggravating the sentence and the sentence’s potential for correcting the defendant’s behaviour.

Pursuant to Article 15 of the Criminal Code, the two offences committed by the defendant are offences of minor gravity. The defendant has been given average reviews from his neighbours. No mitigating or aggravating circumstances ... have been established ... In view of the foregoing and bearing in mind the aim of restoring the justice and the principle of proportionality, [the following elements are taken into account:] the influence of the sentence in terms of correcting the defendant’s behaviour and noting that it was the first time he had committed those offences of minor gravity, that he has been taking care of an elderly mother, that he is self-employed as an entrepreneur. Thus the court imposes the sentence in the form of a fine. Given that all the offences concerned a journalistic activity, the court finds it necessary to impose an additional sentence consisting in prohibiting him from carrying out a certain type of activity ...”

26. The applicant appealed, stating, *inter alia*, that the trial court's refusal to summon "defence witness" F. had undermined the defence's rights. The applicant indicated that F. had been interviewed during the preliminary investigation as a "specialist" and had then submitted a report (see paragraph 17 above).

27. On 8 September 2010 the Krasnodar Regional Court upheld the judgment, relying on the expert reports. It made no findings relating to the lack of opportunity to put questions to F. during the trial.

28. For unspecified reasons the applicant did not pay the fine. On 22 August 2011 the Lazarevskiy District Court of Sochi examined a bailiff's request, found that the applicant had manifestly evaded payment of the fine and replaced the fine with two hundred hours of community work.

II. OTHER RELEVANT MATERIAL

29. On 8 December 2015 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted General Policy Recommendation No. 15 on combating hate speech. In its relevant part, the recommendation reads as follows:

> "The European Commission against Racism and Intolerance (ECRI):
>
> ...
>
> Recommends that the governments of member States:
>
> ...
>
> 10. take appropriate and effective action against the use, in a public context, of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it through the use of the criminal law provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected, and accordingly:
>
> a. ensure that the offences are clearly defined and take due account of the need for a criminal sanction to be applied;
>
> b. ensure that the scope of these offences is defined in a manner that permits their application to keep pace with technological developments;
>
> c. ensure that prosecutions for these offences are brought on a non-discriminatory basis and are not used in order to suppress criticism of official policies, political opposition or religious beliefs;
>
> d. ensure the effective participation of those targeted by hate speech in the relevant proceedings;
>
> e. provide penalties for these offences that take account both of the serious consequences of hate speech and the need for a proportionate response;
>
> f. monitor the effectiveness of the investigation of complaints and the prosecution of offenders with a view to enhancing both of these;
>
> g. ensure effective co-operation/co-ordination between police and prosecution authorities..."

30. The Explanatory Memorandum to the recommendation, in its relevant part, provides as follows:

> "16. ... the assessment as to whether or not there is a risk of the relevant acts occurring requires account to be taken of the specific circumstances in which the hate speech is used. In particular, there will be a need to consider (a) the context in which the hate speech concerned is being used (notably whether or not there are already serious tensions within society to which this hate speech is linked): (b) the capacity of the person using the hate speech to exercise influence over others (such as by virtue of being a political, religious or community leaders); (c) the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination); (d) the context of the specific remarks (whether or not they are an isolated occurrence or are reaffirmed several times and whether or not they can be regarded as being counter-balanced either through others made by the same speaker or by someone else, especially in the course of a debate); (e) the medium used (whether or not it is capable of immediately bringing about a response from the audience such as at a "live" event); and (f) the nature of the audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant complained under Article 10 of the Convention of his criminal conviction for inciting hatred and enmity, and debasing the human dignity of a person or group of people on account of their ethnicity, language, origin and religious beliefs.

32. Article 10 of the Convention reads, in its relevant parts, 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 ...
>
> 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 ..."

A. The parties' submissions

33. First of all, citing the Court's case-law, the Government mentioned that the complaint had to be dismissed with reference to Article 17 of the Convention. The Government argued that the interference in the present case (the applicant's criminal conviction) had been aimed at protecting the rights of others, preventing disorder and at "solving a potential conflict by legal means". There had been a pressing social need to put an end to the

dissemination of provocative publications. The applicant's articles could have incited violence and could have adversely affected the Russian legal order (*правопорядок*). The applicant had intended to use aggressive language by way of drawing an image of an enemy for inciting and deepening strong destructive feelings, hate and anger within its readers. Should the Court consider Article 17 of the Convention inapplicable, the Government argued that the criminal sentence had been a proportionate measure in the circumstances of the case.

34. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

35. The Court considers that the Government's reference to Article 17 of the Convention and, by implication, considerations relating to the applicability of Article 10 are closely linked to the merits of the complaint under that Article and thus should be joined to the merits (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 115, ECHR 2015 (extracts), and *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, § 23, 13 March 2018).

36. The Court also notes that the complaint under Article 10 of the Convention 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.

2. Merits

37. To the extent that the applicant can rely on Article 10 of the Convention, the Court reiterates that an "interference" infringes Article 10 of the Convention unless it satisfies the requirements of paragraph 2 of that provision. It thus remains to be determined whether the interference was "prescribed by law", sought to pursue one or more legitimate aims as defined in that paragraph and was "necessary in a democratic society" to achieve those aims.

(a) "Prescribed by law"

38. The Court notes that the applicant's prosecution was based on Article 282 § 1 of the Russian Criminal Code. He has not raised any specific argument pertaining to whether that "interference" was "prescribed by law". The Court considers that this criterion has been complied with in the present case.

(b) Legitimate aims

39. The Government mentioned the aim of protecting the rights of others, preventing disorder and "solving a potential conflict by legal means". In their view, the applicant's articles could have incited violence and could have adversely affected the Russian legal order (*правопорядок*).

40. The applicant was convicted for inciting hatred and enmity and debasing the dignity of a "group of people" on account of their "ethnicity, language, origin and religion". As noted in at least one of the expert reports, the applicant did not target any specific group by naming it in his article, except for an indirect reference to the Armenian ethnic group. The domestic court found it established that in his article the applicant talked about people residing in Krasnodar Region and being "non-Russian" in that they had a non-Russian ethnicity and/or had arrived in Russia from another country and/or spoke a language other than Russian and/or had religious beliefs (apparently, different from the majority of the population in the region). It does not appear that the applicant contested that interpretation. The Court finds it established and will thus take it into account. Indeed, the applicant affirmed, with reference to "ethnic characteristics", that members of those groups had engaged in criminal activities and that while residing in Russia they continued to behave in a criminal manner. On the other hand, the applicant opposed those groups to the "Russian" population in the sense of an ethnicity.

41. At the same time, the content of the article reveals that it also focused on the fact that those groups or their individual members had "migrated" to Russia. This aspect is also pertinent while being secondary.

42. In view of the foregoing considerations, the Court accepts that the "interference" in the present case was aimed at protecting the "rights of others", specifically the dignity of people of a non-Russian ethnicity residing in the Krasnodar Region in Russia. In *Aksu v. Turkey* ([GC], nos. 4149/04 and 41029/04, §§ 44, 53-54, 61 and 81, ECHR 2012) the Court observed that discrimination on account of, *inter alia*, a person's ethnicity is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. The Court also held, *inter alia*, that negative stereotyping of an ethnic group was capable, when reaching a certain level, of having an impact on the group's sense of identity and on its members' feelings of self-worth and self-confidence (ibid; see also *Lewit v. Austria*, no. 4782/18, §§ 46-47 and 82-87, 10 October 2019).

43. In the Court's view, there is no basis in the domestic assessment for the Government's allegation relating to prosecuting the applicant on account of a risk of violence or, more generally, any risk of disorder. To substantiate that legitimate aim, it must be demonstrated that an applicant's statements were "capable of leading" or actually led to disorder – for instance in the

form of public disturbances such as riots – and that the domestic authorities had that in mind when acting to penalise him or her (see *Perinçek*, cited above, §§ 146 and 151-53). It is uncontested that the applicant's article contained no direct or indirect calls to violence. Indeed, the court did not appear to follow the finding made in F.'s report that the applicant's statements contained an indirect call to violent actions against a group of people (see paragraphs 17 and 22 above).

44. Furthermore, in the absence of sufficient detail, the Court does not discern whether the Government's reference to "adverse consequences for the Russian legal order" or "solving a potential conflict by legal means" amounted to legitimate aims in terms of Article 10 § 2 of the Convention.

45. The Court will now turn to the issue of whether the interference with the applicant's right to freedom of expression was (convincingly demonstrated to be) "necessary in a democratic society" in the pursuance of the legitimate aim of protecting the "rights of others" as they have been described above (see also *Perinçek*, cited above, § 156, and *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, § 73, 4 November 2008).

(c) "Necessary in a democratic society"

(i) General principles

46. 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, freedom of expression 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" (see *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

47. Offensive language may fall outside the protection of freedom of expression if it amounts to "wanton denigration", but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. Style constitutes part of communication as the form of expression and is as such protected together with the substance of the ideas and information expressed (see *Gül and Others v. Turkey*, no. 4870/02, § 41, 8 June 2010, and *Grebneva and Alisimchik v. Russia*, no. 8918/05, § 52, 22 November 2016, and the cases cited therein).

48. As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, as a recent authority, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 124, 27 June 2017).

49. 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 of the Convention the decisions they delivered in accordance with 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 the reasons adduced by the national authorities to justify the interference are "relevant and sufficient" and whether it was "proportionate to the legitimate aim pursued". 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 relied on an acceptable assessment of the relevant facts (see, among other authorities, *Perinçek*, cited above, § 196).

50. When assessing a specific instance of "interference" with freedom of expression in this type of case, various factors should be taken into account, including: the context in which the impugned statements were made, their nature and wording, their potential to lead to harmful consequences and the reasons adduced by the national courts to justify the interference in question; whether the statements were made against a tense political or social background; whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences. It is the interplay between the various factors rather than any of them taken in isolation that determines the outcome of a particular case (see *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 217-21, 17 July 2018, and *Ibragim Ibragimov and Others*, nos. 1413/08 and 28621/11, § 99, 28 August 2018).

51. In assessing whether the statements could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance, the Court has been particularly sensitive towards sweeping statements attacking or casting in a negative light entire ethnic, religious or other groups (see *Seurot v. France* (dec.), no. 57383/00, 18 May 2004; *Soulas and Others v. France*, no. 15948/03, §§ 40 and 43, 10 July 2008; and *Le Pen v. France* (dec.), no. 18788/09, 20 April 2010, all of which concerned generalised negative statements about non-European and in particular Muslim immigrants in France; *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI, which concerned statements linking all Muslims in the United Kingdom with the terrorist acts in the United States of America on 11 September 2001; *W.P. and Others v. Poland* (dec.), no. 42264/98, 2 September 2004, and *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007, both of which concerned vehement anti-Semitic statements; *Féret v. Belgium*, no. 15615/07, § 71, 16 July 2009,

which concerned statements portraying non-European immigrant communities in Belgium as criminally minded; *Hizb ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, § 73, 12 June 2012, and *Kasymakhunov and Saybatalov v. Russia*, nos. 26261/05 and 26377/06, § 107, 14 March 2013, which concerned direct calls for violence against Jews, the State of Israel, and the West in general).

52. Inciting hatred does not necessarily involve an explicit call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating xenophobic or otherwise discriminatory speech in the face of freedom of expression exercised in an irresponsible manner (see *Féret*, cited above, § 73; see also *Vejdeland and Others v. Sweden*, no. 1813/07, § 55, 9 February 2012; *Dmitriyevskiy v. Russia*, no. 42168/06, § 99, 3 October 2017; and *Ibragim Ibragimov and Others,* cited above, § 94).

(ii) Application of the principles in the present case

53. In his article the applicant claimed to present his arguments for his decision not to vote in the coming election. His reasoning led him to enquire about the notion of "the people" whose wealth had been growing, according to some assessments. His ensuing reasoning could be perceived as suggesting that the people of Russian ethnicity suffered and non-Russian groups were to blame. His article ended with an appeal to an incoming President of Russia to tackle related issues.

54. The applicant affirmed, with reference to "ethnic characteristics", that members of those groups had engaged in criminal activities and that while residing in Russia they continued to behave in a criminal manner, getting "their hands into others' pockets" and conspiring against the "Kuban people". The applicant affirmed that the members of those groups would "slaughter, rape, rob and enslave, in line with their barbaric ideas" and that they "participate[d] in the destruction" of Russia.

55. The applicant was then convicted for his article that, as adjudged by the domestic courts, incited hatred and enmity and debased the dignity of a group of people on account of their ethnicity, language, origin and religion.

56. For each publication of the article the applicant was sentenced to a fine of RUB 200,000 (some EUR 5,086 at the time)[2] and was also prohibited from exercising any journalistic or publishing activities for two years. Noting the expiry of the prosecution period in respect of the first article, the court ordered that the related sentences were not to be enforced as regards the first publication of the article.

2. The fine for the second offence was then converted into two hundred hours of community work, on account of the applicant's failure to pay the fine.

57. As regards the language used in the article, the Court considers that it was such as to "offend, shock or disturb". Having said this, the Court reiterates that it is the interplay between the various factors, rather than any of them taken in isolation, that leads it to the conclusion that a particular statement constitutes an expression which cannot claim the protection of Article 10 or which may be punished by way of criminal proceedings, for instance, under the legislation pertaining to "hate speech" as in the present case.

58. It has not been contested, and the Court accepts, that the reasons adduced by the domestic courts for convicting the applicant were relevant in the pursuance of a legitimate aim (see paragraph 42 above). It remains to be ascertained whether those reasons were sufficient in the context of the present case.

59. In this connection the Court notes that the impugned text was first published during and in relation to an ongoing election campaign in 2008 (compare *Féret*, cited above, § 79). The underlying intended message of the applicant's article was to present his own views regarding (non-)participation in the upcoming election.

60. At the same time, the Court discerns no particular logic or substance in the applicant's ensuing discourse pertaining to the negative role of non-Russian groups *vis-à-vis* the initial topic being discussed. His discourse could not be reasonably perceived as comments criticising any specific policy of the government, for instance as regards migration.

61. Even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there is a sufficient "factual basis" for the impugned statement: if there is not, that value judgment may prove excessive (see *Morice v. France* [GC], no. 29369/10, § 126, ECHR 2015 and cases cited therein). The Court agrees with the domestic courts that the applicant's article furnished no such sufficient factual basis. There is nothing in the applicant's submissions before the domestic courts or this Court to supply any such basis for the sweeping remarks about residents of non-Russian ethnic groups in Krasnodar Region and negative stereotyping (compare *Aksu*, cited above, §§ 71 and 72).

62. In this context it is questionable whether the content of the applicant's article was "capable of contributing to the public debate" on the relevant issue (compare *Bédat*, cited above, §§ 64-66) or that its "principal purpose" was to do so (compare *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 174) in the present case, on the matter of voting in the election or abstaining from it.

63. The Court also notes that the applicant's article was published in newspapers with distribution figures of 8,000 and 10,000 within the Sochi area, which as the trial court pointed out, albeit in a cursory manner, was situated in a "multi-ethnic region".

64. The Court agrees with the national courts that the wording of the impugned statements could be reasonably assessed as stirring up base emotions or embedded prejudices in relation to the local population of non-Russian ethnicity. Thus, even though it was not considered that the article contained any explicit call for acts of violence or other criminal acts, it was within the national authorities' margin of appreciation to react in some manner (see the cases cited in paragraph 52 above).

65. Lastly, the Court notes that the sentence in respect of the first publication of the impugned article was not enforced. As to the second publication of the same article, in the circumstances of the case the Court considers that the sentences were proportionate to the aims sought to be achieved.

66. The nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI). The utmost caution must be exercised where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern (ibid.). Although the Contracting States are permitted, or even obliged, by their positive obligations under Article 8 of the Convention to regulate the exercise of freedom of expression so as to ensure adequate protection by law of individuals' reputation, they must not do so in a manner that unduly deters the media from fulfilling their "public watchdog" role (for instance, by way of alerting the public to apparent or suspected misuse of public power as in *Cumpănă and Mazăre*, cited above, § 113). Investigative journalists are liable to be inhibited from reporting on matters of general public interest (for instance, such as suspected irregularities in the award of public contracts to commercial entities) if they run the risk, as one of the standard sanctions imposable for unjustified attacks on the reputation of private individuals, of being sentenced to imprisonment or to a prohibition on the exercise of their profession (ibid). The chilling effect that the fear of such sanctions has on the exercise of journalistic freedom of expression works to the detriment of society as a whole, is likewise a factor which goes to the proportionality, and thus the justification, of the sanctions imposed on an applicant, who was entitled to bring to the attention of the public an important matter of general interest (ibid, § 114).

67. Although sentencing is in principle a matter for the national courts, the imposition of a custodial sentence (even a suspended one) for a media-related offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (see *Sallusti v. Italy*, no. 22350/13, § 59, 7 March

2019, and *Cumpănă and Mazăre*, cited above, § 115). Prior restraints on the activities of journalists call for the most careful scrutiny and are justified only in exceptional circumstances (*Cumpănă and Mazăre*, § 118).

68. The Court considers, however, that the context of the present case is different from that in *Cumpănă and Mazăre*, cited above.

69. The applicant was sentenced to a non-negligible fine. The trial court also chose to impose an additional sentence consisting in prohibiting him from carrying out any journalistic or publishing activity.

70. Importantly, the sentences in the present case were imposed in the context of the legislation aimed at fighting hate speech. In the specific context of the charges against the applicant the sentences were aimed at protecting the "rights of others", specifically the dignity of people of a non-Russian ethnicity residing in the Krasnodar Region in Russia (compare *Aksu*, cited above, §§ 44, 53-54, 61 and 81). The Court reiterates in this connection that the Contracting States are permitted, or even obliged, by their positive obligations under Article 8 of the Convention, to regulate the exercise of freedom of expression so as to ensure adequate protection by law in such circumstances and/or where fundamental rights of others have been seriously impaired. Furthermore, the Court has already indicated its doubt as to whether the content of the applicant's article was "capable of contributing to the public debate" on the relevant issue or that its "principal purpose" was to do so (see paragraphs 60-62 above). The Court further notes that Article 282 § 1 of the Criminal Code provided for a possibility to adjust the period for a prohibition to carry out a certain activity, which could be "up to three years". As regards the applicant, the court limited this additional sentence to two years on account of the circumstances of the case.

71. On the other hand, it is noted that at the material time the applicant was founder of *Sochi–Drugoy Vzglyad* and only occasionally published articles in other local newspapers (such as *Lazarevskaya Panorama*), apparently, as a freelancer, apart from his main professional activity as an entrepreneur. The Court considers that it would not appear from the circumstances of the case that the prohibition to exercise journalistic or publishing activities for two years had any significant practical consequences for the applicant. The applicant did not argue otherwise before the Court.

72. In view of the foregoing, the Court accepts that the present case discloses exceptional circumstances justifying the sentences imposed on the applicant (compare *Stomakhin v. Russia*, no. 52273/07, §§ 127-32, 9 May 2018). In particular, the Court considers that by prohibiting the applicant from carrying out a journalistic or publishing activity for two years, the domestic courts did not contravene in the present case the principle that the press must be able to perform the role of a public

watchdog in a democratic society (see, by contrast, *Cumpănă and Mazăre*, cited above, § 119).

73. The Court concludes that there has been no violation of Article 10 of the Convention.

74. Having reached this conclusion, the Court considers that it is not necessary to decide whether the present complaint should be dismissed with reference to Article 17 of the Convention (see *Stern Taulats and Roura Capellera*, cited above, § 42; compare *Perinçek*, cited above, § 282).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

75. The applicant complained under Article 6 of the Convention that he had had no opportunity to question F., the philology specialist.

76. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. The parties' submissions

77. The Government submitted that F.'s report had been commissioned by the defence; the trial court had admitted it to the file alongside F.'s statement submitted by the defence. F.'s findings had been in line with the expert evidence incriminating the applicant and supporting the charge against him. The applicant had had ample opportunities to contest that evidence.

78. The applicant submitted no observations in reply within the prescribed time-limit. In his application to the Court he had merely mentioned with reference to his statement of appeal (paragraph 26 above) that the trial court had not examined F.

B. The Court's assessment

1. Admissibility

79. The Court notes that the complaint under Article 6 of the Convention 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.

2. Merits

80. The applicable principles have been summarised by the Court in *Matytsina v. Russia* (no. 58428/10, §§ 166-69, 27 March 2014) and *Constantinides v. Greece* (no. 76438/12, §§ 37-39, 6 October 2016); see also *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 152-68, 18 December 2018 as regards "witnesses" on behalf of the defence.

81. Neither party has submitted to the Court a copy of F.'s report or his written comments on it (none were mentioned in the trial judgment). The material before the Court does not support the Government's allegation that F.'s report was commissioned by the defence. At the same time, the applicant considered F. as a "defence witness", apparently, in so far as his report had been admitted in evidence upon the defence's initiative, even though it contained findings that were not favourable to the defence (see paragraphs 17 and 26 above). The trial and appeal courts provided no reasons for dismissing the applicant's request to have F. examined.

82. In the Court's view, irrespective of whether F.'s eventual oral testimony at the trial could be treated as that of a "witness" (either for the prosecution or for the defence), in the present case regard should be had to the overall fairness of the proceedings and, on that account, the complaint should be dismissed for the reasons stated below.

83. In so far as it can be deduced from the relevant summaries in the trial judgment, F.'s major findings were consistent with a number of expert reports commissioned in the criminal case (see paragraphs 13, 14 and 19 above). Those findings were unfavourable to the applicant. It is true that, unlike the expert reports, F. concluded that the applicant's article contained indirect calls to violent actions against the non-Russian population (see paragraph 17 above). This finding was not, however, taken up by the trial court when convicting the applicant. It appears that both the trial and appeal courts chose to rely primarily on the expert reports rather than F.'s report, which, however, was mentioned among the evidence supporting the applicant's guilt. It has not been alleged, and the Court does not find, that the applicant was restricted in challenging those expert reports during the trial. In addition, it appears that F. had been interviewed during the pre-trial investigation. It remains unclear what questions the applicant wanted to put to F. during the trial or on appeal.

84. The Court thus considers that, notwithstanding the courts' omission to state reasons for dismissing the applicant's request, in the particular circumstances of the present case the refusal to summon F. for examination in court in relation to the evidence produced by him (that is to say his specialist report) did not offend the overall fairness of the criminal proceedings in respect of the applicant under Article 6 § 1 of the Convention (see, by contrast, *Kuveydar v. Turkey*, no. 12047/05, §§ 44-47, 19 December 2017).

85. The Court concludes that there has been no violation of Article 6 of the Convention in the present case.

FOR THESE REASONS, THE COURT

1. *Joins*, unanimously, the question whether Article 17 of the Convention is to be applied *to the merits* of the complaint under Article 10 of the Convention;

2. *Declares*, unanimously, the complaints under Articles 6 and 10 of the Convention admissible;

3. *Holds*, by six votes to one, that there has been no violation of Article 6 of the Convention;

4. *Holds*, by six votes to one, that there has been no violation of Article 10 of the Convention;

5. *Holds*, unanimously, that it is not necessary to decide in the present case whether Article 17 of the Convention is to be applied.

Done in English, and notified in writing on 11 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Paul Lemmens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Lemmens and Serghides are annexed to this judgment.

P.L.
J.S.P.

CONCURRING OPINION OF JUDGE LEMMENS

1. I voted with the majority in finding that there had been no violation of either Article 10 or Article 6 of the Convention. I also voted for holding that it was not necessary to decide whether Article 17 was to be applied.

In this opinion I would like briefly to comment on the relationship between Articles 10 and 17 and on the scope of the latter Article.

2. Replying to the complaint based on Article 10, the Government objected in the first place to the admissibility of this complaint on the ground that the articles written by the applicant fell within the scope of Article 17 and were therefore removed from the protection of Article 10. This is an objection based on the incompatibility *ratione materiae* of the Article 10 complaint with the Convention.

Following a strict logic, the Court would first have to examine the objection and, depending on the outcome of that examination, decide whether the complaint was admissible or not. If the Court found that the statements made by the applicant were covered by Article 17, then Article 10 would have to be declared inapplicable and the complaint incompatible *ratione materiae* with the Convention, without there being any need to examine whether the interference with the applicant's freedom of expression was lawful, pursued a legitimate aim, and was proportionate to that aim (see, for example, *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX (extracts); *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI; *Hizb Ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, 12 June 2012, §§ 74-75 and 78; *Kasymakhunov v. Russia*, no. 29604/12, §§ 113-114, 14 November 2013; *M'Bala M'Bala v. France* (dec.), no. 25239/13, § 42, ECHR 2015 (extracts); *Belkacem v. Belgium* (dec.), no. 34367/14, § 37, 27 June 2017; and *Roj TV A/S v. Denmark* (dec.), no. 24683/14, §§ 48-49, 17 April 2018). If, by contrast, the Court were to find that the applicant's statements were not such that they were covered by Article 17, then it would have to declare Article 10 applicable and (unless the complaint had to be declared inadmissible on another ground) proceed with an examination of the merits.

In the present case, the Court in effect leaves open the question whether the Article 10 complaint is admissible. Not only does it join the Government's objection relating to the applicability of Article 10 to the merits (see paragraph 35 of the judgment), but when it comes to the examination of the merits it arrives at its conclusion without having previously returned to the issue of the applicability of Article 10 (see paragraph 73 of the judgment). Indeed, the Court states that it is not necessary to consider the question of Article 17, and thus of the applicability of Article 10 (see paragraph 74 of the judgment).

What the Court states is in fact as follows: without it being necessary to decide whether Article 10 is applicable or not, that Article has in any event

not been violated. If Article 17 had been applied, a straightforward conclusion could have been reached; by leaving the question of Article 17 open, the Court opts to embark on a "normal" analysis of the Article 10 complaint, including an assessment of the proportionality of the interference.

The latter approach is possible when under the "normal" analysis of Article 10 the conclusion is that the complaint is *manifestly ill-founded* or that there has been *no violation* of that Article (see, for example, *Williamson v. Germany* (dec.), no. 64496/17, §§ 20-21, 8 January 2019; *Šimunić v. Croatia* (dec.), no. 20373/17, § 39, 22 January 2019; and (implicitly) *Pastörs v. Germany*, no. 55225/14, § 49, 3 October 2019). If the Court had considered that the interference was not prescribed by law, did not pursue a legitimate aim or was not necessary in a democratic society, it could only have concluded that there had been a *violation* of Article 10 if it had rejected the Government's objection based on Article 17 (see, for example, *Vajnai v. Hungary*, no. 33629/06, §§ 26 and 58, ECHR 2008; *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 81 and 105, 22 April 2010; *Rubins v. Latvia*, no. 79040/12, §§ 49 and 93, 13 January 2015; *Perinçek v. Switzerland* [GC], no. 27510/08, § 282, ECHR 2015 (extracts); *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, § 42, 13 March 2018; and *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, § 124, 28 August 2018).

3. In my opinion, it would have been possible for the Court to find that the applicant's statements were not covered by Article 17, and then to conclude that there had (nevertheless) not been a violation of Article 10 (see, for a similar approach, *Féret v. Belgium*, no. 15615/07, § 82, 16 July 2009).

Indeed, the Court has made clear that Article 17 is only applicable on an exceptional basis and in extreme cases (see *Paksas v. Lithuania* [GC], no. 34932/04, § 87, 6 January 2011). In cases concerning Article 10 of the Convention, "it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention" (see *Perinçek*, cited above, § 114; *Roj TV A/S*, cited above, § 46; *Ibragim Ibragimov and Others*, cited above, § 62; and *Pastörs*, cited above, § 37). The decisive point under Article 17 is "whether the applicant's statements sought to stir up hatred or violence, and whether by making them he attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it" (see *Perinçek*, cited above, § 115).

In the present case, "the Court agrees with the national courts that the wording of the impugned statements could be reasonably assessed as stirring up base emotions or embedded prejudices in relation to the local population of non-Russian ethnicity" (see paragraph 64 of the judgment).

The applicant's statements were clearly xenophobic. That does not mean, however, that the statements were totally unprotected under Article 10. In my opinion, for Article 17 to apply (and Article 10 not to apply), there would have to be a "call for hatred, violence or intolerance" (see *Perinçek*, cited above, § 239, and compare with the wording used in the judgments cited in paragraph 52 of the present judgment). I do not think that the applicant's articles can be read as containing such a call. The applicant merely vented his own frustration at the presence of "non-Russians". Article 17 is therefore not applicable, and Article 10 is applicable.

4. For the reasons developed in the judgment, I agree that the authorities had good reasons to react to the applicant's statements (see paragraph 64 of the judgment) and that there has been no violation of Article 10.

DISSENTING OPINION OF JUDGE SERGHIDES

1. The present opinion is not a fully-fledged one, but rather a statement of opinion.

2. Regrettably, I disagree with the Court's finding that there has been no violation of Articles 10 and 6.

3. The applicant was convicted of inciting hatred and enmity and debasing the human dignity of a person or group of people on account of their ethnicity, and was sentenced to a prohibition on exercising any journalistic or publishing activities for two years and, in addition, to a fine of 200,000 Russian roubles (5,086 euros at the time) for each time his article had been published. It is to be noted that the article was published twice.

4. Regarding Article 10, the Court in the present case adhered in principle to its previous well-established case-law on the interpretation of Article 10 § 2, according to which "freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly" (see paragraph 48 of the judgment). This is rightly stated, since it is a requirement or aspect of the principle of effectiveness that limitations or restrictions to rights should be construed strictly and narrowly. However, in my view, the Court followed only in theory, and not in practice, its previous approach regarding the interpretation and application of restrictions to freedom of expression. Although the Court stated that it was applying that approach to the facts of the present case, in my view it did not do so. I contend that the restrictions imposed on the applicant were not necessary in a democratic society; the interference complained of was based on reasons which in the light of the case as a whole were not "relevant and sufficient" to justify it. Furthermore, in my opinion, the sentence imposed on the applicant, prohibiting him from exercising any journalistic or publishing activities for two years (in addition to the penalty of a fine, which was also high), was disproportionate in the circumstances, thus violating the applicant's rights under Article 10 and the principle that the press must be able to perform the role of a public watchdog in a democratic society. This principle was enunciated, *inter alia,* in *Cumpănă and Mazăre v. Romania* ([GC], no. 33348/96, ECHR 2004-XI), where the Court considered "that by prohibiting the applicants from working as journalists as a preventive measure of general scope, albeit subject to a time-limit, the domestic courts contravened the principle that the press must be able to perform the role of a public watchdog in a democratic society" (§ 119).

5. As regards Article 6 § 1, with due respect to the majority I maintain that the fact that the applicant was not afforded the opportunity to question witness F., a specialist in philology, undermined his rights as a defendant and offended the overall fairness of the criminal proceedings in respect of

his rights under Article 6 §§ 1 and 3 (d) and the principle of effectiveness. The right to examine witnesses under Article 6 § 3 (d) is a minimum right for everyone charged with a criminal offence. Not permitting the applicant to cross-examine witness F. rendered the protection of his right to a fair trial under Article 6 neither practical nor effective. Any other interpretation of Article 6 would not reflect its purpose and the notion of fair trial. That the evidence of this witness was not favourable to the applicant is clear from the judgment (see paragraphs 17, 26 and 81). The domestic courts provided no reasons for dismissing the applicant's request to have witness F. examined (see paragraphs 81 and 84 of the judgment), notwithstanding that witness F.'s report had been admitted in evidence (ibid.), such that it was unavoidable that it had some influence on the domestic judges' thinking.

6. Since I am in the minority, it would be a purely theoretical exercise to determine the amount of non-pecuniary damage I would award to the applicant for the above two violations. Hence, I will abstain from dealing with this issue.