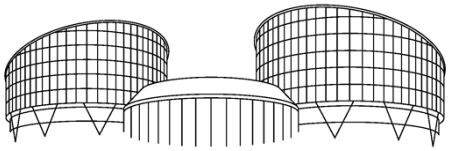

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF UDOVYCHENKO v. UKRAINE

(Application no. 46396/14)

JUDGMENT

Art 10 • Freedom of expression • Unjustified civil sanctioning of eyewitness for statement of fact made in good faith to media, on circumstances of a road accident of public interest, through application of "presumption of falsity" • Requiring applicant to prove truthfulness of good faith statement in the circumstances inconsistent with principles laid down in Court's case-law • Domestic courts' failure to give relevant and sufficient reasons • Inappropriate and severe penalties (public retraction, considerable damages and travel ban until full payment)

STRASBOURG

23 March 2023

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 Udovychenko v. Ukraine,

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

Georges Ravarani*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 46396/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Alla Anatoliyivna Udovychenko ("the applicant"), on 17 June 2014;

the decision to give notice to the Ukrainian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 28 February 2023,

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

INTRODUCTION

1. The case concerns the applicant's civil liability, allegedly in breach of Article 10 of the Convention, for a factual statement which she had been unable to prove.

THE FACTS

2. The applicant was born in 1977 and lives in Rivne. The applicant was represented by Mr M. Tarakhkalo and Ms Y. Kovalenko, lawyers practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. On 2 December 2008 the applicant witnessed a road accident in Rivne city centre in which a young woman, a pedestrian, was severely injured by an Audi Q7 car with Kyiv-registered plates.

6. On 4 December 2008, while visiting the victim in hospital, the applicant gave a comment on the circumstances of the road accident to journalists

covering the event, who were also present at the hospital. In that comment, made at the request of a journalist, the applicant stated as follows:

> "No one got out of the car for a while, then three people got out; two people stayed at the scene. B.'s son came out of the driver's door."

7. Later on, several media outlets released video and written material concerning the road accident, including a video-recording of the applicant's comment and a verbatim transcript of it, as well as statements of other eyewitnesses who alleged, among other things, that the driver had been drunk and that the victim had been hit on a pedestrian crossing. In their accompanying reports, the journalists suggested that M.B., a member of the local council and the son of a former member of parliament, B., had been implicated in the accident.

8. In his public comments, M.B. acknowledged that he had been present at the scene but said that he had arrived shortly after the accident, to support his friend – the driver of the vehicle that had hit the victim. He said that the applicant, who was his neighbour, must have been mistaken as to who she had seen.

9. In the course of the investigation into the circumstances of the accident the police established that a local businessman, whose name was M., had been the driver of the car in question and instituted criminal proceedings against him. In June 2009 the criminal investigation was terminated since it was established that the victim had been crossing the road but not using the pedestrian crossing, making it impossible for M. to avoid the collision. The evidence before the Court suggests that the applicant was questioned as a witness in the course of the investigation. According to the applicant, she provided the same evidence to the police as in her comment to the journalists on 4 December 2008 (see paragraph 6 above). The record of the questioning has not been made available to the Court. A copy of the decision to terminate the criminal proceedings has been made available to the Court and it does not mention or refer in any way to the applicant's testimony. Neither does the available material suggest that M.B. was ever treated by the police as the suspect in relation to the breach of traffic rules and the injuries caused to the victim.

II. JUDICIAL PROCEEDINGS

10. In November 2009 B. and M.B. lodged a civil claim against the applicant, accusing her of having made a false statement to the media in saying "B.'s son came out of the driver's door". According to them, the applicant's statement implied that M.B. had been guilty of causing the road accident and was the source of the accusations against M.B. in the media. The claimants stated that that implication had damaged their honour, dignity and professional reputation and they sought the retraction of the applicant's statement about B.'s son coming out of the driver's door as untrue. They also

sought compensation for pecuniary and non-pecuniary damage, doubling their claim when the applicant refused a friendly-settlement proposal. The claim was initially also lodged against the media outlets which had disseminated the applicant's comment but following a friendly settlement in which the media outlets concerned undertook to withdraw their material from the public domain, the proceedings against them were discontinued on 23 July 2010.

11. In her statements to the domestic court the applicant submitted, among other things, that her comment had been made at the request of a journalist from the Rivne 1 television channel, who had covered the accident in issue, and that it represented nothing more than a report of what she had seen with her own eyes. She was confident in what she had seen and her statement could not have required any confirmation on her part; it was up to the relevant State authorities to verify and establish all the circumstances of the incident. The applicant submitted that she had provided the same information as in her comment to the journalist to the investigating authorities when she had been questioned as a witness in the criminal proceedings concerning the accident and that at no time had she been charged with giving false testimony.

12. The applicant further argued that the phrase about B.'s son coming out of the driver's door was not couched in offensive or insulting terms and contained no assessment of the claimants' behaviour or allegation of a crime; she did not even mention B.'s son's first name and while there were at least forty other persons with the same family name in Rivne, none of them had lodged a claim against her. According to the applicant, she could not be held responsible for any interpretation put on her words by the claimants or the media or for the context in which her words had been placed by the media.

13. On 11 April 2011 the Rivne City Court ("the Rivne Court") found for the claimants and ordered the applicant to retract the disputed statement by making a new one with the following wording:

> "I, [the applicant], declare that my statement concerning the involvement of [M.B.] – the son of the head of the Rivne Regional State Administration, Member of Parliament of the V convocation [B.] – in a road accident that took place on 2 December 2008 near the Holy Intercession Cathedral in Rivne and in which [the victim] was injured, was untrue and inaccurate. I did not see who came out of the driver's door of the car which was involved in this accident."

14. The applicant was also ordered to pay each claimant 50,000 Ukrainian hryvnias (UAH – about 4,320 euros (EUR) at the time) in compensation for non-pecuniary damage and UAH 3,546.30 (about EUR 304 at the time) in respect of pecuniary damage, and she was also ordered to pay the court fees.

15. The Rivne Court, relying on a linguistic expert report provided by the claimants, found that the applicant's statement in her interview to the media that she had seen B.'s son coming out of the driver's door was a statement of fact which suggested, in non-textual form, that M.B. was the driver of the car that had been involved in the accident. Applying the so-called "presumption

of falsity" set by Article 277 of the Civil Code, the Rivne Court asked the applicant to prove the truthfulness of her factual statement, noting that it had not been confirmed by the results of the criminal investigation that M.B. had been the driver of the car. Finding further that neither the applicant nor the witnesses questioned during the proceedings before it had proved the contrary, the court concluded that her statement, which had been widely spread by the media and used as a source for their allegations against M.B., was untrue and harmful to the honour, dignity and reputation of the claimants, given that they were well-known public figures. From the documents made available to the Court, it cannot be established who the witnesses referred to in the Rivne Court's judgment were or which party to the proceedings had called them to give evidence.

16. In an appeal against the first-instance judgment, the applicant maintained her previous arguments and submitted, in addition, that:

(i) her comment had concerned an issue of public interest;

(ii) the fact that the accident had taken place and that M.B. had been present at the scene had not been contested by the claimants;

(iii) the decision to terminate the criminal proceedings could not have sufficed as proof of the untruthfulness of her words since the decision had set out a number of other aspects of the circumstances of the accident which had contradicted the statements of the victim and the witnesses questioned by the first-instance court, who had alleged that the victim had been on a pedestrian crossing at the moment when she had been hit by the car; moreover, while those witnesses had not specified to the court who had come out of the car, each of them had said that the person who came out of the driver's door had left the scene and that another person had appeared instead, namely the person whom the investigator had found to have been the driver;

(iv) the first-instance court had failed to examine whether she had acted in bad faith or whether there was a causal link between her comment and the damage allegedly suffered by the claimants; and

(v) the punishment imposed on her was unjustified.

17. Finally, the applicant drew the court's attention to the fact that the claimants had submitted their claim a year after the road accident had taken place, and that in the meantime B. had been appointed Head of the Rivne State administration and M.B. had been re-elected to the local council, which demonstrated that their reputation had not suffered any damage.

18. On 23 November 2011 the Rivne Regional Court of Appeal ("the Court of Appeal") upheld the first-instance court's judgment on the merits, agreeing with the reasoning given by it. However, it varied the order to retract the statement, rejecting the claims for compensation for pecuniary damage and court fees as unfounded and reducing the award in respect of non-pecuniary damage to UAH 500 (EUR 45 at the time) to each claimant.

19. As regards the retraction order, the Court of Appeal noted that the applicant had not given an interview to the media but had only made a

comment. It therefore found that the disputed information should be retracted by way of a reference to the operative part of its judgment on the relevant programme on the Rivne 1 television channel.

20. Relying on the results of the criminal investigation, the Court of Appeal also noted that it had been confirmed that the comment made by the applicant had not corresponded to the true circumstances of the accident. The issue of whether the applicant had acted in good or bad faith when giving her comment was found by the Court of Appeal to be irrelevant for the purposes of Article 277 of the Civil Code.

21. In her subsequent appeal on points of law the applicant reiterated the arguments she had made in the lower courts (see paragraphs 11 and 16 above).

22. On 18 December 2013 the Higher Specialised Court for Civil and Criminal Matters ("the HSCCCM") quashed the judgment of the Court of Appeal as being in breach of the procedural rules and the substantive law and upheld the judgment of the first-instance court. It found that the first-instance court had fully and comprehensively established the circumstances of the case and had reasonably determined the damages to be paid and the wording of the retraction that was ordered.

23. The HSCCCM noted that the evidence and circumstances relied on by the applicant had already been examined by the lower courts and that the arguments raised in her appeal on points of law did not show the findings of the first-instance court to have been obviously wrong.

24. The obligation to make the retraction statement was fulfilled by the applicant in February 2013. As regards the payment of damages, the enforcement proceedings lasted from July 2012 until January 2018. During that period of time, the bailiffs seized the applicant's property and garnished her bank accounts, and 20% of her salary was withheld each month to recover the debt under the judgment. She was also banned from leaving Ukraine until she had paid the compensation in full. In 2017 the applicant unsuccessfully requested the lifting of the travel ban.

RELEVANT LEGAL FRAMEWORK

I. CIVIL CODE OF 16 JANUARY 2003

25. The provisions of the Civil Code pertinent to the case read as follows:

Article 277
Retraction of untrue information

"1. An individual whose non-pecuniary rights have been infringed as a result of the dissemination of untrue information about him or her and (or) members of his or her family shall have the right to reply and [the right to] the retraction of that information ...

...

3. Negative information disseminated about a person shall be considered untrue if the person who disseminated it does not prove the contrary.

4. Untrue information shall be retracted by the person who disseminated the information ...

...

6. An individual whose non-pecuniary rights have been infringed in printed or other mass media shall have the right to reply and also [the right to] the retraction of the untrue information in the same mass media, in the manner envisaged by law ...

Untrue information shall be retracted, irrespective of the guilt of the person who disseminated it.

7. Untrue information shall be retracted in the same manner in which it was disseminated."

Article 280
The right of an individual whose non-pecuniary rights have been violated to obtain compensation for damage

"1. If there has been pecuniary and/or non-pecuniary damage caused to an individual as a result of a violation of his or her personal non-pecuniary rights, the damage shall be compensated for.

..."

II. CRIMINAL CODE OF 5 APRIL 2001

26. Articles 383 and 384 of the Criminal Code, as in force at the material time, provided for criminal responsibility for knowingly making false reports of a crime and knowingly giving false testimony as a witness.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. Relying on Articles 6 and 10 of the Convention, the applicant complained that the civil proceedings against her and the ensuing penalty had been in breach of her right to freedom of expression. The Court, being the master of the characterisation to be given in law to the facts of the case, considers that the applicant's complaint should be examined from the standpoint of Article 10 of the Convention alone. Article 10 provides 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."

A. Admissibility

28. The Court observes that the issue of the applicability of Article 10 of the Convention is not in dispute between the parties. Noting that Article 10 includes the freedom to impart information and that the applicant was found liable in civil proceedings for the comment she had made to the journalists, the Court finds that Article 10 is applicable in the present case.

29. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

30. The applicant submitted that in the disputed statement she had simply reported, at the request of a journalist, what she had seen at the scene as an eyewitness and that the statement had not been aimed at tarnishing the claimants' reputation. Article 277 § 3 of the Civil Code, which had been applied by the domestic courts, provided for no exceptions, including for persons acting in good faith, and did not leave her any opportunity to defend herself against accusations of disseminating false information. In the applicant's submission, it was incumbent on the law-enforcement authorities to verify an eyewitness's statement and, in a case of bad faith and knowingly making a false report of a crime, to bring that person to justice as provided for by the Criminal Code; at no time had the applicant been subjected to criminal proceedings in respect of her testimony, but the domestic courts had ignored her arguments in that respect.

31. The applicant also stated that the punishment imposed on her had been too severe given that her salary was about UAH 1,834 (about EUR 158) per month, and she had two minor children and an incapacitated mother dependent on her. She further submitted that the retraction she had been ordered to make was inappropriate and humiliating.

32. The Government acknowledged that the finding against the applicant in the civil proceedings at issue constituted a restriction of her rights guaranteed by Article 10 of the Convention. However, they submitted that that interference had been based on provisions of the domestic law and had pursued the legitimate aim of protecting the reputation of others. The penalty

had been proportionate to the damage caused to the reputation of the claimants, who were public figures.

2. The Court's assessment

(a) Whether there was an interference

33. It is common ground between the parties that the civil proceedings and the ensuing penalties against the applicant amounted to an interference with the applicant's right to freedom of expression. The Court sees no reason to conclude otherwise.

34. An interference will not be justified under Article 10 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of that aim or those aims.

(b) Whether the interference was lawful and pursued a legitimate aim

35. The Court is prepared to accept that the interference had a legal basis in domestic law, specifically in Articles 277 and 280 of the Civil Code. The applicant's argument about the undue application of the presumption of falsity to the statement she made as an eyewitness is rather directed at the question whether the interference was "necessary in a democratic society", a matter which the Court will examine below.

36. The Court further accepts that the interference pursued the legitimate aim of protecting the reputation or rights of others within the meaning of Article 10 § 2 of the Convention, namely the good name of B. and M.B.

(c) Whether the interference was "necessary in a democratic society"

(i) Applicable general principles

37. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society. Subject to paragraph 2 of Article 10 of the Convention, 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 the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see, among many other authorities, *Bédat v. Switzerland*, [GC], no. 56925/08, § 48, 29 March 2016).

38. 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 have 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 must satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they carried out an acceptable assessment of the relevant facts (see, among many other authorities, *Bédat*, cited above, § 48).

39. When examining the necessity of such a restriction in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the domestic authorities 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 as protected by Article 10 and, on the other, the right to respect for private life as enshrined in Article 8 (see, among many other authorities, *Bédat*, cited above, § 74). 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).

40. In its case-law, the Court has identified a number of relevant criteria whereby the right to freedom of expression is balanced against the right to respect for private life, including whether the disputed statements contributed to a debate on a matter of public interest; whether the person who had made the statements acted in good faith; the degree of fame or notoriety of the person affected and the subject of the publication; the context within which the disputed statements were made; the content, form and consequences of the publication; the prior conduct of the person concerned; the way in which the information was obtained and its veracity; and the nature and severity of the penalty imposed (see, among many other authorities, *Axel Springer AG*, cited above, §§ 89-95, and *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 108-13, ECHR 2012).

41. The Court further reiterates that, for an interference with the right to freedom of expression to be proportionate to the legitimate aim of the protection of the reputation of others, the existence of an objective link between the impugned statement and the person suing for defamation is a requisite element. Mere personal conjecture or subjective perception of a publication as defamatory does not suffice to establish that the person in question was directly affected by the publication. There must be something in the circumstances of a particular case to make the ordinary reader feel that the statement reflected directly on the individual claimant, or that he or she was targeted by the criticism (see, among other authorities, *Kunitsyna v. Russia*, no. 9406/05, §§ 42-43, 13 December 2016).

(ii) Application of the above principles to the present case

42. The Court observes that the applicant's comment concerned a road accident in which a young woman had been severely injured by an Audi Q7 car from the capital. This incident had triggered interest at local level, as was confirmed by, among other things, the presence of several reporters at the hospital where the victim of the accident had been taken (see paragraph 6 above). The Court thus finds that the applicant's comment concerned a matter of public interest and notes that no consideration was given by the domestic courts to this issue.

43. The Court further notes that the applicant's statement about B.'s son coming out of the driver's door suggested that B.'s son was among the persons involved in that accident. Even though no first names had been mentioned by the applicant, the facts of the case suggest that the claimants in the civil proceedings were easily identifiable to journalists. In fact, it was not suggested by the applicant before the domestic courts or before the Court that her comment concerned any other persons than those identified by the media. The Court is thus prepared to accept that there was an objective link between the applicant's statement and M.B. It likewise accepts that the information she had given was potentially capable of affecting M.B.'s and B.'s reputation, particularly given their status as elected public officials (see paragraph 7 above).

44. As regards the characterisation of the applicant's comment, the domestic courts held that it was a factual statement. On that basis, they required that the applicant demonstrate the truth of her assertions, as specified under Article 277 of the Civil Code, which enshrined the so-called "presumption of falsity" (see paragraph 25 above). The Court has held that the presumption of falsity of statements of fact, requiring the author to demonstrate the truth, does not necessarily contravene the Convention provided that the defendant is allowed a realistic opportunity to prove that the statement was true (see *Kasabova v. Bulgaria*, no. 22385/03, §§ 58-62, 19 April 2011, and, more recently, *Staniszewski v. Poland*, no. 20422/15, § 45, 14 October 2021, and *Azadliq and Zayidov v. Azerbaijan*, no. 20755/08, § 35, 30 June 2022). At the same time, the Court has also indicated in such cases that an applicant who was clearly involved in a public debate on an important issue should not be required to fulfil a more demanding standard than that of due diligence, as in such circumstances an obligation to prove factual statements may deprive the applicant of the protection afforded by Article 10 (see *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 75, 19 July 2018; and, more recently *Staniszewski*, cited above, § 45; *Wojczuk v. Poland*, no. 52969/13, § 74, 9 December 2021; and *Azadliq and Zayidov*, cited above, § 35).

45. In the present case, the Court agrees with the domestic courts that the phrase about B.'s son coming out of the driver's door can be seen as a statement of fact. It notes, however, that the factual allegation was made by

the applicant in her capacity as an eyewitness and represented nothing more than a direct account of one of the factual circumstances of the road accident which she had happened to witness and which attracted wide media attention, at least on a local level. It was a declaration of the applicant's personal perception of what she had witnessed at the scene. This element makes the present case different from other cases concerning freedom of expression which have been examined by the Court, in which the factual statements made by the applicants, mainly journalists, were not limited to what they had directly witnessed. The Court considers that in specific circumstances such as obtained in the present case, in accordance with the principles underlying its case-law under Article 10 of the Convention, the applicant could not have been expected to prove that what she believed she had seen with her own eyes had indeed taken place. It has not been advanced that in making her statement of fact the applicant failed to show due diligence. In this context, regard being had to the criteria developed in the Court's case-law (see paragraph 40 above), it additionally has to be examined whether the applicant acted in good or bad faith when making her comment.

46. The Court observes that neither the claimants nor the domestic courts ever suggested that the applicant had acted with the direct intention of harming M.B.'s and B.'s reputation by deliberately employing untrue information. In fact, the domestic courts never tried to examine the motive behind the applicant's comment but found this element to be irrelevant (see paragraph 20 above). They also did not assess the context in which the statement had been made.

47. The Court further observes that the comment was made at the request of a journalist covering the road accident shortly after the accident had taken place and long before the completion of the criminal investigation. The applicant did not use any insulting or offensive remarks about the claimants or adopt any stance as regards the guilt of any of the persons involved but simply recounted the sequence of events she had witnessed on the road.

48. Moreover, it was not contested by the domestic courts during the proceedings or by the Government that the applicant had given the same testimony to the police, having been warned that criminal liability attached to providing false evidence. The Court observes that there is no indication that the domestic authorities instituted or ever considered instituting a criminal investigation or proceedings against the applicant on account of the allegedly false evidence, although giving false evidence is criminally punishable under domestic law (see paragraph 26 above). Likewise, it has not been suggested by the Government that by giving her comment the applicant breached the secrecy of the investigation or otherwise revealed any confidential information relating to any ongoing criminal proceedings (see and compare *Brisc v. Romania*, no. 26238/10, §§ 109-15, 11 December 2018). In fact, it does not follow from the Government's submissions that M.B. was at any time suspected or accused of having caused the accident at issue and that there

were thus two competing interests involved relating to two rights which enjoyed equal protection, under Article 10 and Article 6 § 1 of the Convention respectively.

49. On the basis of the material before it, there are no grounds for the Court to call into question the applicant's account that when giving her comment to the media she was convinced of the truthfulness of her statement and thus acted in good faith and in the belief that it was in the public interest to disclose the circumstances of the road accident which she had witnessed. In this regard, the Court can also accept that her comment is to be seen as a statement of fact on a matter of public concern rather than a gratuitous attack on the reputation of the claimants. The fact that the official investigation did not confirm that M.B. was the driver of the car has no bearing on this conclusion in the absence of any indication of bad faith on the applicant's part.

50. The Court takes the view that allowing witnesses of events that may have involved criminal offences to convey publicly, in good faith, what they have directly observed and duly reported to the authorities, unless they are bound by the secrecy of investigations, is an aspect of the protection of freedom of expression, and, in certain circumstances, can be in the public interest.

51. In the light of the material before it, the Court finds that in the absence of any allegation of bad faith on the applicant's part, to require her to prove the truthfulness of her statement about the circumstances of the road accident she had witnessed – a requirement that would have been very difficult, if not impossible, to fulfil – was not consistent with the principles laid down in the Court's case-law. As the domestic courts limited their analysis to the question whether the applicant had proved that B.'s son had come out of the driver's seat after the accident occurred, the reasons they gave cannot be regarded as relevant and sufficient to justify the interference at issue.

52. The Court also cannot but note the inappropriateness and severity of the consequences which the applicant was made to bear. It finds it inappropriate that she was ordered to publish a retraction in terms which required her to declare, essentially, that she had not seen what she believed to have seen. Furthermore, the amount which the applicant was ordered to pay to the claimants in damages was very considerable when weighed against her salary (see paragraph 31 above). The evidence submitted by the applicant shows that she struggled to pay that amount for more than five years and that during those years she was banned from travelling abroad until she paid it in full (see paragraph 24 above). The circumstances of the case disclose no justification for the imposition of such consequences on the applicant.

53. In sum, the Court concludes that the national authorities' reaction to the applicant's statement concerning the circumstances of the road accident she had witnessed was disproportionate to the legitimate aim pursued, and

was therefore not necessary in a democratic society within the meaning of Article 10 § 2 of the Convention.

54. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicant claimed, in respect of pecuniary damage, the total amount which she had paid as a result of the domestic courts' judgments. This amounted to 112,212.60 Ukrainian hryvnias (UAH), which the applicant converted into euros (EUR) using the official exchange rate applicable on the date of the domestic court's order (EUR 9,791). She further claimed EUR 50,000 in respect of non-pecuniary damage.

57. The Government argued that the applicant's claim was unsubstantiated.

58. The Court notes that in the present case it has found a violation of the applicant's rights under Article 10 of the Convention. It takes the view that there is an obvious link between the grounds on which this violation was found and the pecuniary damage sustained by the applicant (see, for instance, *Ukrainian Media Group v. Ukraine*, no. 72713/01, § 75, 29 March 2005). The Court also considers that the applicant must have sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Making an assessment on an equitable basis and in the light of all the information in its possession, the Court considers it reasonable to award the applicant an aggregate sum of EUR 14,300, all heads of damage combined, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant also claimed EUR 3,450 in respect of costs and expenses incurred before the Court. In support of her claim, she submitted a legal services contract signed by her and Mr Tarakhkalo on 22 March 2021 indicating an hourly rate of EUR 150. According to the contract, payment was due after completion of the proceedings in Strasbourg and within the limits of the sum awarded by the Court in respect of costs and expenses. The applicant also submitted a report of 28 October 2021 on the work completed

under the above-mentioned contract. It specified that Mr Tarakhkalo had worked on the case for twenty-three hours (for a total of EUR 3,450).

60. The Government contested the applicant's claim under this head as excessive and not reasonable as to quantum. Furthermore, there was nothing to indicate that the applicant had paid the costs and expenses claimed.

61. 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 were actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see *Popovski v. the former Yugoslav Republic of Macedonia*, no. 12316/07, § 102, 31 October 2013). In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant the amount claimed, plus any tax that may be chargeable to her.

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 14,300 (fourteen thousand three hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 3,450 (three thousand four hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the account of her representative, Mr M. Tarakhkalo;
   (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 23 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georges Ravarani President