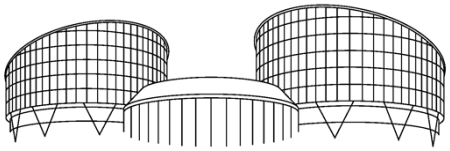

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NOVAYA GAZETA AND BORODYANSKIY v. RUSSIA

(Application no. 42113/09)

JUDGMENT

STRASBOURG

29 October 2019

This judgment is final but it may be subject to editorial revision.

In the case of Novaya Gazeta and Borodyanskiy v. Russia,

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

Paulo Pinto de Albuquerque, *President,*
Helen Keller,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 8 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 42113/09) 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 ANO Redaktsionno-Izdatelskiy Dom "Novaya Gazeta", a legal entity incorporated under Russian law ("the applicant company"), and Georgiy Emilyevich Borodyanskiy, a Russian national ("the second applicant"), on 12 September 2008.

2. The applicants were represented by Mr Ya. Kozheurov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 6 February 2013 notice of the application was given to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company, an editorial and publishing house registered in Moscow, edits and publishes a national newspaper with a circulation of 500,000, the *Novaya Gazeta* ("the newspaper"). The second applicant was born in 1959 and lives in Omsk.

A. Impugned article

6. On 25 August 2005 the newspaper published an article by the second applicant entitled "The Pope of Omsk, or a Masked Bell" *(«Папа Омский, или колокол в маске»)* (hereinafter – "the article"). The article concerned

Mr P., the then Governor of the Omsk Region, and read, in so far as relevant, as follows:

> [1] "The Governor of Omsk, Mr P., is typical of those in power for whom acting is an everyday part of life. He even received a Golden Mask award[1] ..."
>
> [2] "Few believed that the Governor possessed nothing else. They call him the Pope for a reason – his hand spreads out over a region with two million inhabitants feels the pulp of every serious business enterprise in it. It [the hand] can pat on a head or beat. Everybody, as they do elsewhere, would prefer to believe a rumour than official sources. A rumour spread over the town [Omsk] in 2003 started by the singer Ms Pugacheva, who made a slip in an interview broadcast on the radio saying that her villa in Miami was next to the villa of the Governor of Omsk."
>
> [3] "He [Mr P.] also knows a thing or two about car makes. While he prefers to travel on service-related business in a BMW-750 SUV, he is also partial to Land Rover cars. At the same time a car corresponding to his rank, a Lexus, is parked in his private garage".

B. Defamation proceedings

7. On 17 September 2007 Mr P. initiated civil defamation proceedings against the applicants, claiming compensation for non-pecuniary damage in the amount of 150,000 Russian roubles (RUB) (approximately 4,245 euros (EUR)). He argued that, as the Governor of the Omsk Region, he was a civil servant and that the article had depicted him, in the eyes of the general public, as a person who had committed unlawful and unethical acts and had exercised inappropriate influence on State agencies, officials and citizens.

8. On 12 October 2007 the Kuybyshevskiy District Court of Omsk ("the District Court") heard the defamation case in the absence of the applicants and delivered a default judgment. The District Court reasoned that an obligation to prove the truthfulness of information disseminated in the mass media lay with the defendants, whereas the claimant only had to prove that the information had been disseminated. It observed that the defendants had not disputed that the statements contained in paragraphs 1 to 3 (see paragraph 6 above) had been disseminated. Nor had they presented any objection regarding the claimant's assertion that the statements had tarnished his reputation or any proof of the truthfulness of the statements. The District Court further noted the claimant's assertion that the statements had "engender[ed] in the residents of the Omsk Region distrust of the actions and policies of the claimant as the highest office holder, the head of the highest body of the State executive power in the Omsk Region". It reasoned as follows:

> "Taking into account that the defendant has not presented before the court any objections and evidence in their support as regards the claimant's arguments that the statements made in Mr Borodyanskiy's article "The Pope of Omsk, or a Masked Bell"

1. The Russian National Theatre Award "Golden Mask"

> tarnished his honour, dignity and business reputation by way of describing his activities as being in breach of the laws on elections, aimed at personal enrichment, [amounting to] interference with entrepreneurial activities and unlawful control over business structures, and in fact [those statements] asserted that [the claimant] had abused his powers in personal interests, wrong, unethical behaviour in social life aimed at confusing the population, having analysed and assessed these statements contained in the impugned [article], the court agrees with the claimant and concludes that these statements have tarnished the claimant's honour, dignity and business reputation".

The District Court thus found for the claimant and ordered that a retraction be published. It held the applicants jointly liable to publish the retraction and to pay the claimant RUB 150,000 (approximately EUR 4,245). The applicants were also ordered to pay stamp tax in the amount of RUB 100 (approximately EUR 3).

9. On 6 and 12 November 2007 the second applicant and the applicant company, respectively, applied to the District Court requesting that it set aside the default judgment on the grounds that neither defendant had been able to attend the hearing of 12 October 2007 for good reason.

10. On 26 November 2007 the District Court dismissed the requests to set aside the default judgment as manifestly ill-founded.

11. On 24 and 28 January 2008 counsel for the applicant company lodged a statement of appeal and a request to restore the time-limit for appeal. On 11 February 2008 the District Court acceded to the request and restored the time-limit.

12. The second applicant did not lodge a separate statement of appeal. However, the heading of that lodged by counsel for the applicant company read that the second applicant was a co-defendant in the defamation case.

13. On 12 March 2008 the Omsk Regional Court ("the Regional Court") upheld the default judgment of 12 October 2007, but reduced the amount of the award to RUB 50,000 (approximately EUR 1,370). It agreed with the District Court's reasoning that the applicants had failed to prove the truthfulness of the information contained in the article and found that the text of the article had served to form a negative public opinion about Mr P. and to engender in the general public distrust of the policies adopted and implemented by him as the head of the Omsk Region. The judgment became final on the same date.

C. Enforcement proceedings

14. On 14 August 2008 the bailiffs service initiated enforcement proceedings.

15. On 23 September 2008 the applicant company transferred RUB 50,100, that is, the amount awarded together with the court fees, to the bank account of the bailiffs service.

16. On an unspecified date the newspaper published a retraction.

17. On 2 October 2008 the enforcement proceedings were terminated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. Article 29 of the Constitution guarantees freedom of thought and expression, together with freedom of the mass media.

19. Article 152 of the Civil Code provides that an individual may apply to a court with a request for the retraction of statements (*сведения*) that are damaging to his or her honour, dignity or business reputation, unless the person who has disseminated the statements proves them to be true. The aggrieved person may also claim compensation for loss and non-pecuniary damage sustained as a result of the dissemination of the statements.

20. Resolution no. 3 of the Plenary Supreme Court of 24 February 2005 defines "untruthful statements" as allegations regarding facts or events which have not actually taken place by the time the statements are disseminated. Statements contained in court decisions, decisions by investigating bodies, and other official documents amenable to appeal cannot be considered untruthful. Statements alleging that a person has breached the law, committed a dishonest act, behaved unethically or broken the rules of business etiquette tarnish that person's honour, dignity and business reputation (section 7). Resolution no. 3 requires courts hearing defamation claims to distinguish between statements of fact, which can be checked for truthfulness, and value judgments, opinions and convictions, which are not actionable under Article 152 of the Civil Code since they are an expression of a defendant's subjective opinion and views, and cannot be checked for truthfulness (section 9).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

21. The applicants complained that the judgments of the domestic courts had unduly restricted their right to freedom of expression guaranteed by Article 10 of the Convention, which reads, in so far as relevant, as follows:

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

A. The parties' submissions

1. The Government

22. The Government contested the applicants' complaint on the following grounds.

23. The second applicant had failed to exhaust effective domestic remedies available to him, as he had not lodged a separate statement of appeal. Moreover, he had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention because he had not participated in the hearings before the District and Regional Courts; he had never pleaded his case in writing before the domestic courts; and the amount awarded to the claimant had been paid by the applicant company in total. The Government further argued that since the second applicant had not lodged a separate statement of appeal, it would be no longer justified to continue the examination of the application because of his "unwillingness ... to pursue the proceedings on the domestic level" (see *Goryachev v. Russia* (dec.), no. 34886/06, § 27, 9 April 2013). They invited the Court to strike the application out of its list pursuant to Article 37 § 1 (c) of the Convention.

24. The Government acknowledged that there had been an interference with the applicants' right to freedom of expression. However, the interference had been based on Article 23 of the Constitution of the Russian Federation and Article 152 of the Civil Code, as well as on Resolution no. 3 of the Supreme Court of the Russian Federation of 24 February 2005. It had pursued the legitimate aim of protecting the reputation of the Governor of the Omsk Region.

25. The Government emphasised that in performing their tasks, civil servants should enjoy public confidence and should be protected from offensive and abusive verbal attacks when on duty. The article had been written "in a sarcastic style" and contained statements of fact regarding Mr P.'s ownership of luxurious cars and real estate. It implied that he had abused his office and that his behaviour had been unethical. The applicants had failed to provide the District Court with evidence to prove the truthfulness of such statements. The statements tarnishing the Governor's reputation that had been disseminated by the applicants had been devoid of sufficient factual basis.

26. The impugned statements had been widely disseminated and had contained allegations that the Governor had breached the law. The domestic courts had correctly treated them as statements of fact susceptible of proof. The Governor, by virtue of his office, had been under an obligation to comply with the law, to behave ethically, and to abstain from abusing his office. The applicants had not submitted proof of the truthfulness of the statements that had been insulting to Mr P. as a person and thus had exceeded the acceptable level of criticism.

27. Referring to the Court's judgment in the case of *Novaya Gazeta and Borodyanskiy v. Russia* (no. 14087/08, 28 March 2013) in which no violation of Article 10 had been found, the Government invited the Court to take into account the "repeated nature" of the dissemination of tarnishing statements concerning Mr P. by the same applicants.

28. The Government concluded that the interference with the applicants' right to freedom of expression had been prescribed by law, had pursued the legitimate aim of protecting the reputation of Mr P., had been proportionate considering the "repeated nature" of the dissemination of the tarnishing statements concerning the Governor, and had been necessary in a democratic society.

2. The applicants

29. The applicants maintained their complaint.

30. Regarding the Government's plea of non-exhaustion of available domestic remedies by the second applicant, the applicants submitted that even though the second applicant had not signed the statement of appeal, his position in the defamation proceedings had been identical to that of the applicant company. Counsel for the applicant company had presented the statement of appeal on behalf of both co-defendants. The second applicant had participated in the appeal hearing, supporting the arguments raised in the statement of appeal and contesting the District Court's judgment.

31. Regarding the alleged lack of significant disadvantage, the applicants submitted that as a professional journalist, the second applicant's professional reputation had been at stake. The domestic courts' findings that the information presented by him had been untruthful had had a chilling effect on the exercise of his right to freedom of expression in the future and had discouraged him from publishing critical comments on matters of public interest. Furthermore, the Regional Court had made a joint award to be paid by either of the co-defendants in full. Enforcement proceedings had been instituted against the second applicant and had only been terminated after the applicant company had paid the amount awarded in full.

32. Furthermore, the applicants, while accepting that the interference with their right to freedom of expression was "prescribed by law" and had pursued the legitimate aim of protecting the reputation of others, asserted that it had not been "necessary in a democratic society". Emphasising the essential function of the press in a democratic society, they asserted that the interference had not corresponded to a "pressing social need" on the following grounds. The impugned article had concerned a matter of public interest as it had criticised the Governor of the Omsk Region, an elected official and thus a professional politician. The contested statements had been the second applicant's value judgments representing his subjective appraisal of the moral dimension of Mr P.'s behaviour in the public sphere. Moreover, they had had a sufficient factual basis. Yet the domestic courts

had erroneously considered them to be statements of fact susceptible of proof and had failed to perform a requisite balancing exercise to assess the proportionality of the interference with journalistic freedom of expression.

B. The Court's assessment

1. Admissibility

33. The Court will begin by analysing the Government's objections regarding the second applicant (see paragraph 23 above).

34. As to the allegation that the second applicant had not exhausted domestic remedies on account of the fact that he had not signed the statement of appeal, the Court notes the following. It is clear that the interests of the applicant company and the second applicant, as co-defendants in the defamation proceedings, were fully aligned. Moreover, the statement of appeal lodged by counsel for the applicant company bore the second applicant's name as a second defendant (see paragraph 12 above). By virtue of the fact that counsel for the applicant company had appealed against the default judgment of 12 October 2007 in due form, the Regional Court was given an opportunity to rule on the complaint which the applicants have now referred to the Court (see, *mutatis mutandis*, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 120, ECHR 2007-IV). The Court sees no reason to assume that the appeal proceedings would have taken a different course had the applicant company and the second applicant lodged separate appeals against the default judgment (see, *mutatis mutandis*, *Mariya Alekhina and Others v. Russia*, no. 38004/12, § 247, 17 July 2018). Accordingly, the Court dismisses the Government's objection regarding non-exhaustion of domestic remedies by the second applicant.

35. In the Court's view, the same reasons are relevant as regards the Government's proposal to strike the second applicant's application out of the Court's list of cases because of his alleged "unwillingness" to pursue the appeal proceedings at the national level. It is also noteworthy that the second applicant lodged a separate complaint in parallel with that lodged in the applicant company's name, seeking to reverse the default judgment (see paragraph 9 above). The Court is thus not convinced that the second applicant "freely [chose] not to pursue his complaints through a reasonable legal avenue on the domestic level" or "failed to demonstrate necessary diligence on his part" (see, by contrast, *Goryachev*, cited above, § 42) and sees no reason to strike his application out of its list of cases under Article 37 § 1 (c) of the Convention.

36. Turning to the Government's objection that the second applicant had not suffered a significant disadvantage, the Court has considered the rule contained in Article 35 § 3 (b) of the Convention to consist of three criteria. Firstly, has the applicant suffered a "significant disadvantage"? Secondly, does respect for human rights compel the Court to examine the case?

Thirdly, has the case been duly considered by a domestic tribunal (see *Smith v. the United Kingdom* (dec.), no. 54357/15, § 44, 28 March 2017)?

37. The first question of whether the applicant has suffered any "significant disadvantage" represents the main element. Inspired by the general principle *de minimis non curat praetor*, this first criterion of the rule rests on the premise that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case. In other words, the absence of any "significant disadvantage" can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. However, the applicant's subjective perception cannot alone suffice to conclude that he or she has suffered a significant disadvantage. The subjective perception must be justified on objective grounds (see, with further references, *C.P. v. the United Kingdom* (dec.), no. 300/11, § 42, 6 September 2016). A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010-V).

38. The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 39, ECHR 2003-VI, and *Roşiianu v. Romania*, no. 27329/06, § 56, 24 June 2014). In cases concerning freedom of expression the application of the admissibility criterion contained in Article 35 § 3 (b) of the Convention should take due account of the importance of this freedom and be subject to careful scrutiny by the Court. This scrutiny should encompass, among other things, such elements as contribution to a debate of general interest and whether a case involves the press or other news media (see, with further references, *Sylka v. Poland* (dec.), no. 19219/07, § 28, 3 June 2014).

39. Applying these principles to the case at hand, the Court notes that the second applicant's subjective perception of the alleged violation was that he had experienced a chilling effect as a result of the defamation proceedings and had felt reluctant to further contribute to the debate on a matter of general interest (see paragraph 31 above). Moreover, both defendants were held jointly liable to pay the amount awarded to Mr P. The second applicant had thus been facing an obligation to pay the amount awarded in full until such time as the applicant company paid the sum in question. That factor may have further affected his subjective perception of the alleged violation of his right to freedom of expression. Seen in the context of the essential role of a free press in ensuring the proper

functioning of a democratic society (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 62, ECHR 2007-IV), the alleged violation of Article 10 of the Convention in the present case concerns, in the Court's view, "important questions of principle". The Court is thus satisfied that the second applicant suffered a significant disadvantage as a result of the defamation proceedings, regardless of pecuniary interests, and does not deem it necessary to consider whether respect for human rights compels it to examine the case or whether it has been duly considered by a domestic tribunal (see, *mutatis mutandis*, *M.N. and Others v. San Marino*, no. 28005/12, § 39, 7 July 2015).

40. Accordingly, the Court does not find it appropriate to reject the second applicant's complaint with reference to Article 35 § 3 (b) of the Convention. The Government's objection is therefore dismissed.

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

2. Merits

42. Before embarking on an analysis of the merits of the applicants' complaint, the Court notes that the Government invited it to take into account the "repeated nature" of the dissemination of tarnishing statements concerning Mr P. by the same applicants (see paragraph 27 above). The fact that the Court has already delivered a judgment in the case of *Novaya Gazeta and Borodyanskiy* (cited above) concerning defamation proceedings instituted by Mr P. against the applicants in December 2006 has no bearing on its findings in the present case, which concerns a distinct set of facts.

43. Turning to the merits of the complaint, the Court notes that the following elements are not disputed between the parties: that the District Court's default judgment of 12 October 2007, as upheld by the Regional Court on 12 March 2008 (see paragraphs 8 and 13 above), constituted an interference with the applicants' right to freedom of expression guaranteed by Article 10 § 1 of the Convention; that the interference in question was "prescribed by law", notably Article 152 of the Civil Code; and that it "pursued a legitimate aim", that is "the protection of the reputation or rights of others", within the meaning of Article 10 § 2 of the Convention. It thus remains to be examined whether the interference was "necessary in a democratic society"; this requires the Court to ascertain whether it was proportionate to the legitimate aim pursued and whether the grounds given by the domestic courts were relevant and sufficient (see *Morice v. France* [GC], no. 29369/10, § 144, ECHR 2015). The Court further notes that the interference must be seen in the context of the essential role of a free press in ensuring the proper functioning of a democratic society (see, among

many other authorities, *Skudayeva v. Russia*, no. 24014/07, § 30, 5 March 2019; see also paragraph 39 above).

44. The general principles concerning the necessity of interference with the right to freedom of expression frequently reiterated by the Court have been summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016), among many other authorities. The general principles concerning Article 10 and press freedom have recently been summarised in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, §§ 124-28, 27 June 2017). The standards established in the Court's case-law which an interference with the exercise of press freedom must meet in order to satisfy the necessity requirement of Article 10 § 2 of the Convention have been recently summarised in *Skudayeva* (cited above, §§ 33-34).

45. The Court has already found a violation of Article 10 of the Convention in a number of cases against Russia because the domestic courts did not apply standards that were in conformity with the standards of its case-law concerning press freedom (see *OOO Ivpress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *Kunitsyna v. Russia*, no. 9406/05, §§ 46-48, 13 December 2016; *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; *Cheltsova v. Russia*, no. 44294/06, § 100, 13 June 2017; *Skudayeva*, cited above, §§ 36-39; and *Novaya Gazeta and Milashina v. Russia*, no. 4097/06, §§ 54-57, 2 July 2019).

46. The Court observes in this connection that the District and Regional Courts in the present case limited themselves to establishing the fact that statements which they regarded as tarnishing Mr P.'s honour, dignity and business reputation had been disseminated and to observing that the applicants had not proved the truthfulness of the statements (see paragraphs 8 and 13 above). The domestic courts of both instances emphasised the position of the claimant as "the head of the highest body of the State executive authority of the Omsk Region", while failing to recognise the respective roles of the applicants as a newspaper editorial board and a journalist. Furthermore, the District and Regional Courts did not take account of: the presence or absence of good faith on the applicants' part; the aim pursued by the applicants in publishing the article; the existence of a matter of public interest or general concern in the impugned article; or the relevance of information regarding the Governor's allegedly corrupt practices. By omitting any analysis of such elements, the domestic courts failed to pay heed to the essential function that the press fulfils in a democratic society (see *Skudayeva*, cited above, § 36).

47. Moreover, the domestic courts did not draw any distinction between statements of fact and value judgments, as they failed to consider whether the impugned statements amounted to a value judgment. They thus showed

a total disregard for the requirements of section 9 of Resolution no. 3 of the Plenary Supreme Court of the Russian Federation of 24 February 2005 (see paragraph 20 above), under which value judgments are not actionable under Article 152 of the Civil Code, since they are an expression of the defendant's subjective opinion and views and cannot be checked for their veracity (see *Cheltsova*, cited above, § 32).

48. As to the need to perform a balancing exercise between the Governor's right to reputation and journalistic freedom of expression, the Court notes that the domestic courts merely declared that the impugned statements had tarnished the Governor's honour, dignity and business reputation, without providing any reasons to support such a finding. The District and Regional Courts did not deem it necessary to examine whether the impugned statements could be regarded as an actual attack capable of causing prejudice to the claimant's honour or business reputation, let alone his dignity. Their reasoning appears to be based on the tacit assumption that interests relating to the protection of the honour and dignity of others, in particular of those vested with public powers, prevail over freedom of expression in all circumstances. By failing to weigh the two competing interests against each other, the domestic courts failed to perform the requisite balancing exercise (see *Skudayeva*, cited above, § 38).

49. The above elements lead the Court to conclude that the reasons that the domestic courts relied upon to justify the interference with the applicants' right to freedom of expression were not "relevant and sufficient". The Court is mindful of the fundamentally subsidiary role of the Convention system (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). Indeed, if the balancing exercise had been carried out by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 198, ECHR 2015 (extracts)). Faced, however, with the domestic courts' failure to provide relevant and sufficient reasons to justify the interference in question, the Court finds that they cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10 of the Convention" or to have "based themselves on an acceptable assessment of the relevant facts" (see, with further references, *Novaya Gazeta and Milashina*, cited above, § 57). The Court concludes that the interference with the applicants' right to freedom of expression was not "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant company claimed 50,100 Russian roubles (RUB) (approximately 1,160 euros (EUR)[2]), the amount paid in execution of the Regional Court's judgment, in respect of pecuniary damage. The applicants also claimed EUR 1,000 each in respect of non-pecuniary damage. They requested that the awards be paid to their representative's bank account.

53. The Government reaffirmed their position that there had been no violation of Article 10 of the Convention in the present case and submitted that, should the Court find otherwise, awarding the applicant company RUB 50,100 in respect of pecuniary damage and EUR 1,000 in respect of non-pecuniary damage would be in line with its awards in similar cases previously decided. The Government insisted that no award should be made to the second applicant since his application should be declared inadmissible on multiple grounds.

54. The Court observes that, in the present case, it has found a violation of the applicants' rights guaranteed by Article 10 of the Convention. It considers that there is a clear link between the violation found and the pecuniary damage caused to the applicant company (see paragraph 15 above). Accordingly, in respect of pecuniary damage, it awards EUR 1,160 to the applicant company, plus any tax that may be chargeable on this amount.

55. The Court further observes that a violation has been found in respect of both the applicant company and the second applicant. It thus awards the applicants the amounts claimed in respect of non-pecuniary damage.

56. The amounts awarded should be paid to the applicants' representative's bank account, as requested by the applicants.

B. Costs and expenses

57. The applicants did not make any claims in respect for costs and expenses. Accordingly, the Court makes no award under this head.

2. The euro equivalent of the amount awarded to Mr P. is calculated at the exchange rate applicable on the date of submitting the applicants' just satisfaction claims.

C. Default interest

58. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay, to the bank account of the applicants' representative, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,160 (one thousand one hundred and sixty euros), plus any tax that may be chargeable, to the applicant company in respect of pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, to the applicant company and the second applicant, each, in respect of non-pecuniary damage;
   (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.

Done in English, and notified in writing on 29 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paulo Pinto de Albuquerque
President