



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

THIRD SECTION

CASE OF GREBNEVA AND ALISIMCHIK v. RUSSIA

(Application no. 8918/05)

JUDGMENT

STRASBOURG

22 November 2016

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 Grebneva and Alisimchik v. Russia,

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

Luis López Guerra, *President*,

Helena Jäderblom,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 8918/05) 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 two Russian nationals, Ms Irina Georgiyevna Grebneva and Ms Nadezhda Grigoryevna Alisimchik (“the applicants”), on 18 February 2005.

2. The applicants were represented by Ms K. Moskalenko and Ms O. Preobrazhenskaya, lawyers practising in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the former Representative of the Russian Federation to the European Court of Human Rights.

3. The applicants alleged a breach of Article 10 on account of their criminal conviction for a satirical publication which the domestic courts found to be insulting to the then regional prosecutor.

4. On 6 February 2007 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Both applicants were born in 1943 and live in Vladivostok.

A. Publications

6. The first applicant is the editor of a weekly newspaper, *Arsenyevskiyе Vesti* (*Арсеньевские весту*), and the second applicant is a journalist and columnist there. It has a circulation of 17,100. The newspaper is published and distributed in the Primorskiy Region.

7. In late 2003 during a campaign for elections to the national parliament, the State Duma, the newspaper published a number of satirical and parodic articles on the course of the campaign in the Primorskiy Region. They featured a Russian online cartoon character, a girl called Masyanya, who was very popular at the time, going from St Petersburg to Vladivostok as an election observer.

8. An article in issue no. 46 of the newspaper for 13-19 November 2003 contained a pretend interview with Masyanya, stating that on her arrival at Vladivostok Airport she had been attacked and injured by local prostitutes, who did not want outsiders competing with them and who had forced her to return to St Petersburg. Masyanya had had a particularly fierce fight with a certain Vasilinka, the director of an escort agency called Contact or Image! (*агентство интимных услуг Контакт или имидж!*). The article stated that Vasilinka had refused to make any comments.

9. In issue no. 47, dated 20-26 November 2003, in a column called “Nadezhda Alisimchik’s Hummock of View”¹ (*Кочка зрения Надежды Алисимчик*) written by the second applicant, *Arsenyevskiyе Vesti* published a pretend interview with Vasilinka. The article was headlined “Candidates must be known from the inside!” (*Кандидатов нужно знать изнутри!*). The relevant part read as follows:

“Nonetheless, we managed to get in touch with Vasilinka, the director of the escort agency Contact or Image! for an interview and photograph. Vasilinka proved to be a dame with a touch of greed and was pulled by a free advert for her agency in our newspaper, although she warned us that she would not answer a single question about that ‘bitch’ Masyanya.

‘This ragtag bunch from St Petersburg has no reason to be here because my agency Contact or Image can handle the elections – all my girls are professionals, and I myself am a lawyer and have extensive working experience as a prosecutor. Sporadically, during elections, I run the Contact or Image escort agency in coordination with superior organisations. There is no conflict here – the clientele is the same, and there is no need to spend money on protection on the side. Besides, this is a good opportunity for the Contact or Image escort agency to study its clients from the inside, which is particularly important when working with candidates to the State Duma. This is, so to say, a governmental order, which, I think, is also supported by the President. Especially as it’s for extra income, and there’s no such thing as too much money, even when one is at liberty,’ Vasilinka told our newspaper.

We asked this prostitute-werewolf to comment on the list of candidates to the State Duma for circuit no. 52 ...”

¹ Rhyming word-play in Russian on the expression “point of view”

10. The article was followed by a list of candidates and Vasilinka's comments on them, using slang words and expressions commonly used in the criminal underworld. Some candidates were described in more positive terms than others. To the left of the article was a picture of a female dressed in a one-dollar banknote. The figure's left hand pointed in the direction of three handwritten letters which were reproduced in small type. The face on the figure, which had long, flowing hair, was a photograph of the then prosecutor of the Primorskiy Region, Mr V.

B. Proceedings before a trial court

11. On 9 December 2003 Mr V., in a private prosecution, brought criminal proceedings against the applicants, under Article 130 § 2 of the Russian Criminal Code, before the Justice of the Peace of Circuit no. 27 in the Frunzenskiy District of Vladivostok ("the Justice of the Peace"). He alleged that the article headlined "Candidates must be known from the inside" and the picture published in issue no. 47 of *Arsenyevskiye Vesti* for 20-26 November 2003 had been highly insulting, had aimed at damaging his honour and human dignity and had ascribed negative characteristics to his personality in an indecent, cynical and defamatory manner. He pointed out, in particular, that there was no doubt that the article had referred to him as it had stated that the character Vasilinka, "was a lawyer herself and had extensive working experience as a prosecutor". Mr V. further submitted that the article in question, and the comments in respect of the list of the candidates, had been written in slang words and expressions and had represented him as an immoral and corrupt "prostitute-werewolf", thus clearly indicating the intention of the writers to humiliate and insult him. He also complained that the picture accompanying the article had been put together in an indecent manner, in breach of the established rules of behaviour and public morals.

12. By a judgment of 2 June 2004 the Justice of the Peace convicted the applicants as charged. The court noted in particular:

"In issue no. 47 for 20-26 November 2003 in the column headlined "Nadezhda Alisimchik's Hummock of View" the newspaper *Arsenyevskiye Vesti* published an article 'Candidates must be known from the inside' which was accompanied by a photographic collage showing a female body covered with a one-dollar banknote. The photographic collage shows the face of the claimant, the prosecutor of the Primorskiy Region, [Mr V.], portrayed with long hair. The article contains an interview with 'Vasilinka', the director of an escort agency and states that it was possible not only to get in touch with her, but also to obtain her photograph. The text of the article and the portrayal of the prosecutor of the Primorskiy Region, [Mr V.], as an immoral and corrupt 'prostitute-werewolf' in an indecent and insulting manner damage the claimant's honour and dignity.

The claimant's representative has highlighted the insulting nature of the information published in the newspaper ... pointing out that the claimant is a public figure and

often takes part in TV programmes; his photograph has been published on numerous occasions in the media, and [Mr V.'s] face is therefore well known to people in the Primorskiy Region.

Having examined the photographic collage and the text of the article ... the use of the name 'prostitute-werewolf Vasilinka', the explanations of the claimant's lawyer, who has insisted that the character's name in the article and the surname of the prosecutor of the Primorskiy Region have the same root, and that the article states that the character is a lawyer by profession and has extensive working experience as a prosecutor, the court concludes that [the applicants] undertook deliberate actions which were insulting to [Mr V.], and which were committed publicly as [the insult was disseminated] in a newspaper, that is to say in the media.

... The applicants' actions ...were intended to damage the honour and dignity and the professional reputation of the prosecutor of the Primorskiy Region, [Mr V.]..."

13. The court found the applicants guilty of aggravated insult as it had been published in the media, and fined each of them 30,000 Russian roubles (RUB) (approximately 860 euros (EUR)).

C. Appeal and cassation proceedings

14. On 19 July 2004 the Frunzenskiy District Court of Vladivostok ("the District Court") delivered its decision in the appeal proceedings.

15. At the hearing the applicants had contested the guilty verdict. The second applicant had stated that the article in question had been written as a parody of various negative social phenomena, especially corruption during the elections and the role of the law-enforcement agencies. The first applicant stated that the article had been misinterpreted and that it had in fact concerned violations committed by law-enforcement agencies during the election campaign. She also argued that the picture had not been related to the article, nor had it depicted the prosecutor of the Primorskiy Region.

16. The appellate court found it established that "[the applicants had] deliberately insulted" Mr V. when in issue no. 47 of *Arsenyevskiye Vesti* for 20-26 November 2003 they had in the column called "Nadezhda Alisimchik's Hummock of View" published an article entitled "Candidates must be known from the inside!", accompanied by a photographic collage representing a female body with the face of the prosecutor of the Primorskiy Region, the body having been covered with a one-dollar banknote. In the District Court's opinion, "the text of the article and the photographic collage [were] of an insulting nature, ascribe[d] negative characteristics, expressed in an indecent manner, to Mr V.'s personality and damage[d] the honour and dignity of Mr V., the prosecutor of the Primorskiy Region, as a private individual and as an official".

17. The appellate court observed, in particular, that the article had involved an interview with the director of an escort agency, "Vasilinka", who "sporadically, during elections, [ran] the escort agency Contact or Image in coordination with superior organisations", and that the article was

followed by “director Vasilinka’s rating of the candidates”, using slang words and expressions on her behalf. The photographic collage had illustrated the text about “Vasilinka”, a “prostitute-werewolf”, who “herself is a lawyer and has extensive working experience as a prosecutor”. In the District Court’s opinion, “the said information [was] of an insulting nature, since it degrade[d] Mr V.’s honour and dignity”. In reaching that conclusion, the District Court “[took] into account the fact that the prosecutor of the Primorskiy Region, Mr V., [was] a public figure and his photograph [had] been published in the media on many occasions ...”

18. With reference to its findings, the appellate court concluded that the applicants “[had taken] deliberate actions which [had been] of an insulting nature in respect of Mr V. and were performed in public, as [the impugned information] was disseminated in the media”. In the District Court’s opinion, although Mr V.’s surname had not been mentioned in the article, the image which had illustrated the article had used a photograph of him. It had therefore been clear that information “of an insulting nature” had related to Mr V. The District Court observed that, “by virtue of his office, Mr V. [was] a public figure and readers [could] therefore easily understand that the photographic collage [showed] Mr V.; so that readers [were] not mistaken, the name of the character in the article, ‘Vasilinka’, [had] the same root as Mr V.’s surname, and the character [was] a lawyer by profession and has extensive working experience as a prosecutor”.

19. The District Court further held as follows:

“The court cannot accept the defendants’ arguments that it has not been proven that [Mr V.] was insulted as, in the court’s opinion, it is the text of the article and the photographic collage that are themselves insulting. Judging by its location on the page and its composition, the said photographic collage accompanies the article headlined “Candidates must be known from the inside”. Besides, the text itself refers to the fact that the photographic collage represents that very ‘Vasilinka’ who is the character in the article. The article states ‘nonetheless we managed to get in touch with the director of the escort agency Contact or Image, Vasilinka, for an interview and a photograph. Vasilinka proved to be a dame with a touch of greed and was pulled by a free advert for her agency in our newspaper’.

...In the court’s opinion, the offence took place in the form of public speech in the media, [the applicants] acted deliberately, the related words ‘prostitute’ and ‘werewolf’ indicate an intention to humiliate, dishonour and disgrace the subject of the article and photographic collage and, in a figurative sense, portray condemnable and distinctly negative characteristics, which are seen by the public as well as the person to whom they are addressed as insulting. In the court’s opinion, representing the prosecutor of the Primorskiy Region as an immoral and corrupt ‘prostitute-werewolf’ is intended to ascribe distinctly negative characteristics to [Mr V.’s] personality in an indecent form.”

20. The appellate court concluded that the first-instance judgment had been well-founded and dismissed the applicants’ appeal.

21. By a decision of 30 August 2004 the Primorskiy Regional Court upheld the applicants' conviction at final instance, endorsing the reasoning of the lower courts.

D. Enforcement proceedings

22. On 23 March 2005 a bailiff issued a writ of execution in respect of the first applicant, ordering her to pay the fine and an execution fee of RUB 2,200.

23. On 5 April 2005 the first applicant informed the bailiff that she was unable to pay the fine in one amount owing to a lack of funds. She requested that she be authorised to pay by instalments over six months. It appears that her request was refused and the first applicant had to borrow a part of the fine from the bank. According to the first applicant, she was able to pay back the money she borrowed six months later.

24. The second applicant was also unable to pay the total amount of the fine and execution fee in one amount. She paid in instalments by deductions from her wages until 28 February 2006.

II. RELEVANT DOMESTIC LAW

25. Article 130 § 2 of the Russian Criminal Code was abolished by a federal law of 7 December 2011. As in force at the relevant time, it provided that insult, that is, the damaging of another person's honour and dignity in an indecent form, disseminated in public speech, a publicly available product or in the media was punishable by a fine of up to RUB 80,000 or an amount equivalent to the convicted person's wages or other income for six months, by up to 80 hours' compulsory labour or by up to one year's correctional labour.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicants complained of a violation of their right to freedom of expression as provided in Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Arguments by the parties

1. The Government

27. The Government agreed that there had been an interference with the applicants’ rights to freedom of expression, but argued that it had been justified under Article 10 § 2 of the Convention. They insisted that the interference in question was “prescribed by law” and pursued the aims of protecting the reputation of the prosecutor of the Primorskiy Region and maintaining the authority of the regional prosecutor’s office.

28. The Government stressed that the applicants had been prosecuted for insult rather than for defamation, that is not for the ideas, views and opinions expressed in the impugned article but rather for the form in which they had been expressed. Article 130 § 2 of the Russian Criminal Code, which had been the basis for the applicants’ conviction, had made punishable any action which damaged a person’s honour and dignity in “any form that is indecent, that is, running counter to the generally accepted rules of behaviour and public morals”. It was irrelevant in that context whether the “insulting” information had been true. In the present case therefore the domestic courts had not been called upon to examine the contents of the information, ideas and opinions expressed in the impugned text but only the form in which they had been expressed. It had fallen to them to decide whether the applicants had respected ethical and moral norms when expressing their ideas.

29. They also pointed out that the article had been accompanied by a picture showing a female dressed in a one-dollar banknote, whose face was that of the prosecutor of the Primorskiy Region, Mr V. The Government argued, with reference to the domestic courts’ findings, that the fact that the image had included Mr V.’s photograph, that the name of the character in the impugned article had been similar to his surname, and that text had said that the character “was a lawyer” and “a prosecutor” by profession, had left no doubt that the text alluded to Mr V.

30. The Government went on to note that Mr V. had never been informed of, nor had he given his consent to, the use of his photograph in the media, particularly the publication of an image of him as “a person of the opposite sex, whose occupation [is] widely condemned by the public”. Mr V. had thus viewed the unauthorised use of his photograph in a collage

made in an indecent form and accompanying a text written in an indecent form as tarnishing his honour and dignity.

31. The Government further submitted that Mr V. had brought a private prosecution under Article 130 § 2 of the Russian Criminal Code, and that therefore he had sought to protect his honour and dignity in his capacity as a private person rather than as a public official. In the Government's view, criminal proceedings brought by a private person to protect his rights could not be regarded as a violation of the applicants' right to express freely their opinion and to disseminate information.

32. They also argued that the applicants' article could not be regarded as part of a political debate as Mr V. had not participated in the election campaign because, as a public prosecutor, he could not be a member of a political party.

33. The Government were sceptical about the applicants' argument that the text of the second applicant's article had made no allusion to Mr V., but had rather criticised the course of the regional election campaign and various violations committed by regional law-enforcement agencies during that campaign. In that connection, the Government contended, firstly, that the applicant had never complained to the Central Electoral Commission of Russia or to any law-enforcement body at any level of jurisdiction about the course or results of elections in the Primorskiy Region, or about any act or omission by law-enforcement agencies during those elections. According to the Government, the applicants had not attempted "to establish, in accordance with a procedure prescribed by law, the credibility of their ideas concerning elections in the Primorskiy Region and the role in them of law-enforcement agencies". Secondly, the Government stated that the applicants could have expressed their criticism by accompanying the second applicant's article with a photograph of "inanimate, depersonalised objects", such as the building of the prosecutor's office of the Primorskiy Region or the regional electoral commission, a statue of Justice in a one-dollar banknote, or they could have refrained from using any illustrations at all.

34. Furthermore, the Government contested the applicants' argument that the image had been placed near the article accidentally, and that they had had no intention to deride Mr V. The Government believed that in that case the applicants would have made a public apology to Mr V., or sought a friendly settlement with him. The fact that the applicants had failed to do so, "for no obvious reasons", proved, in the Government's opinion, that there had been a deliberate intention to insult Mr V. and to damage his honour and dignity.

35. The Government went on to note that even in the absence of any allusion to Mr V. in the impugned article, he or any other person would have had a right to bring a private prosecution under Article 130 of the Russian Criminal Code if they had considered themselves insulted by the form of the expression of ideas in the article, in particular by the use of

slang words and expressions in a weekly newspaper with a circulation of 17,000 and accessible, among others, to minors. They argued that the use of such words and expressions in the media had been unethical and indecent because of their negative impact on public morals.

36. Lastly, the Government contended that the applicants' sentence had been quite lenient and therefore proportionate to the aim pursued, as the applicants had been held liable for a fine rather than to compulsory or correctional labour, which were the more severe penalties set forth in Article 130 § 2 of the Criminal Code.

2. The applicants

37. The applicants argued that their conviction had not been "prescribed by law", as they could not have foreseen a criminal conviction for what they had published. In particular, the applicants argued that in the absence of any legal provisions or relevant regulations, it was unclear exactly which words and expressions in the article had been indecent to the extent that their use had been unethical and detrimental to public morals, as had been alleged by the Government (see paragraph 35 above). The applicants pointed out that the Government had not referred to any such regulations in their submissions.

38. In addition, the applicants argued that their prosecution on criminal charges had aimed, in fact, at dissuading other journalists from making critical remarks about the public authorities and from reporting on sensitive issues. Their conviction, in their view, had had the objective of making an example of them by punishing them for their journalistic activity rather than the protection of Mr V.'s rights and interests.

39. The applicants further contested the Government's argument that Mr V. had brought a criminal case against them as a private person rather than as a public official. They pointed out that when the domestic courts had convicted them for insult they had noted that the applicants' actions "[had] aimed at damaging the honour and dignity of the prosecutor of the Primorskiy Region". The applicants argued that Mr V., as the head of the prosecutor's office of the whole region, was a public figure and was therefore expected to display a greater degree of tolerance towards any criticism directed at him. They stressed that the impugned article had concerned the course of the election campaign in the region, and that undoubtedly the regional prosecutor had played an important role in that campaign. One of the aims of the prosecutor's control was ensuring free and fair elections.

40. The applicants also stressed that Mr V. had misunderstood and misinterpreted the ideas expressed in the collage. According to them, it had in fact shown the figure of Themis (Justice) of the Primorskiy Region (*приморская Фемида*), who was being supervised by the regional prosecutor, hence the photograph of his face. The applicants, moreover,

argued that the picture had illustrated the whole page and not only the article. According to their submission, the illustration had been placed on the page in such a way that one of Themis's hands had pointed to letters to the first applicant from readers who had expressed their mistrust of the head of the regional electoral commission. A space between Themis's hand and the letters had symbolised the readers' inability to reach Themis with their complaints, meaning that they had had to turn to the newspaper in an attempt to seek protection of their constitutional rights. The applicants found it surprising that after studying the page the regional prosecutor had paid no attention to that fact. In their view, it indicated that the prosecutor had only been concerned with his own image rather than with the need to ensure the lawfulness of the elections in the region.

41. The applicants argued that, in any event, they could not have expected that the regional prosecutor would equate himself with an "unscrupulous and venal prostitute-werewolf", or that he would consider himself offended by the article, given its clearly satirical nature. The applicants submitted that they had chosen satire and burlesque in an attempt to attract the attention of the law-enforcement agencies, including the regional prosecutor's office, to the shortcomings of the election campaign, as their formal complaints and those of their readers about such issues had remained unanswered.

42. The applicants also argued that the Court's constant approach under Article 10 of the Convention had been to protect not only information and ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also those that offended, shocked or disturbed the State or any segment of the population. It had also consistently held that journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation. The applicants also pointed out that Article 10 protected the content of the ideas as well as the form in which those ideas were expressed.

43. The applicants acknowledged that the text in question had been provocative to a certain extent, but argued that the provocation had aimed at drawing the attention of the general public to the election campaign in the Primorskiy Region. The applicants stressed that the electoral campaign had been a matter of particular public interest that had caused heated public debate, and that it had been their journalistic duty to bring their ideas and opinions on the matter to the attention of their readers. The purpose of the article had thus been to contribute to the public debate on those issues.

44. The applicants also contended that their conviction in criminal proceedings and the imposition of a fairly heavy fine had clearly been disproportionate to the aim sought to be achieved by the authorities.

B. Admissibility

45. The Court notes that this complaint 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.

C. Merits

1. Existence of interference

46. The Court observes that the Government have not disputed the fact that there has been an interference with the applicants' right to freedom of expression. An interference with the applicants' rights under Article 10 § 1 will infringe the Convention if it does not meet the requirements of Article 10 § 2. The Court must therefore determine whether the interference in question was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve those aims.

2. "Prescribed by law"

47. The Court observes that the applicants' conviction was based on Article 130 § 2 of the Russian Criminal Code. It is therefore satisfied that it was "prescribed by law". As concerns the applicants' argument that they were unable to foresee that their publication would lead to a criminal conviction, the Court considers it more appropriate to examine that argument when it assesses whether the interference was "necessary in a democratic society".

3. Legitimate aim

48. The Court also accepts that the interference pursued a legitimate aim, namely the protection of "the reputation or rights of others", as that was the aim referred to by the domestic courts.

49. In so far as the Government may be understood to be suggesting that the aim of the interference under examination was also to protect public morals, as the impugned publication had contained slang words and expressions (see paragraph 35 above), the Court notes that neither the wording of the legal provision which was the basis for the applicants' conviction nor the relevant court decisions referred to that aim (*cf. Vereinigung Bildender Künstler v. Austria*, no. 68354/01, § 31, 25 January 2007). The Court thus rejects that argument.

50. The applicants' submission that the aim of the interference complained of had been to make an example of them by punishing them rather than to protect the regional prosecutor's reputation, also relates, in the

Court's view, to the question of whether the measure complained of was "necessary in a democratic society". The Court will now address that question.

4. "*Necessary in a democratic society*"

51. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. As set forth in Article 10 § 2, this freedom is subject to exceptions, which must, however, be construed strictly and the need for any restrictions must be established convincingly (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV; and *Bédard v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016). Furthermore, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

52. As to the form of expression, the Court has held that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example, where the sole intent of the offensive statement is to insult (see, for instance, *Skalka v. Poland*, no. 43425/98, § 34, 27 May 2003); 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. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression (see *Uj v. Hungary*, no. 23954/10, § 20, 19 July 2011, or *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 48, 21 February 2012).

53. The test of necessity requires the Court to determine whether the interference corresponded to a "pressing social need", whether the reasons given by the national authorities to justify it were "relevant and sufficient", and whether the measure taken was proportionate to the legitimate aim pursued (see *Lindon, Otchakovsky-Laurens and July*, cited above, § 45). In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that

they based their decisions on an acceptable assessment of the relevant facts (see *Dichand and Others v. Austria*, no. 29271/95, § 38, 26 February 2002, with further references).

54. The Court furthermore stresses the essential role of the press in a democratic society. Although the press must not overstep various bounds set, in particular, for the protection of the reputation of others, it is nevertheless incumbent on it – in a manner consistent with its obligations and responsibilities – to impart information and ideas on all matters of public interest (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313). In cases concerning the press, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued (see, for instance, *Kuliś and Różycki v. Poland*, no. 27209/03, § 31, 6 October 2009).

55. In the present case, the Court observes at the outset that the applicants were, respectively, the editor of a regional newspaper and a journalist at that newspaper, and in that quality their task was to impart information and ideas on matters of public interest.

56. The applicants published a number of items on the campaign for elections to the national parliament which was underway in their region at that period. The articles addressed, in a satirical and farcical way, various violations that, in the applicants' view, had taken place during the campaign. It is in that context that the impugned article was published. The Court reaffirms in that respect that it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (see *Długolecki v. Poland*, no. 23806/03, § 30, 24 February 2009).

57. More specifically, as regards the impugned article, the Court observes that its headline “The candidates must be known from the inside!” was accompanied by a montage showing a female body dressed in a one-dollar banknote with a photograph of the then regional prosecutor, Mr V., for the face and a pretend interview with an imaginary female character, who “[was] a lawyer and [had] extensive working experience as a prosecutor” and who “sporadically, during elections, [ran] the escort agency Contact or Image”. The first name of the character, Vasilinka, was very similar to the regional prosecutor's surname. The character, referred to in the article as a “prostitute-werewolf”, mentioned that her escort agency rendered services to candidates standing for election in their region, thereby earning extra income by carrying out a governmental order approved by the

President. The so-called interview was accompanied by the character's comments on the candidates, with the use of slang words and expressions.

58. The Court sees no reason to question the national courts' assessment that the article alluded to Mr V. It also notes the provocative nature of the text, which drew express parallels between the regional prosecutor and a prostitute. At the same time, the Court does not consider that, seen as a whole, the article can be understood as a gratuitous personal attack on, or insult to Mr V. The provocative comparisons did not concern Mr V.'s private or family life, but clearly related to his institutional responsibility as the head of the prosecutor's office of the entire region. The published material, in a satirical and parodic manner, denounced alleged corruption during the election campaign, criticised practices whereby certain candidates received more support from the authorities, which was to the detriment of other candidates, and whereby law-enforcement agencies, including the regional prosecutor's office headed by Mr V., turned a blind eye to such practices. The applicants thereby raised an important issue of general interest, which they considered significant for society and thus open to public debate.

59. The Court further observes that the publication of the article was one in a series of comic articles featuring a cartoon character. Moreover, the impugned article and photographic collage were published in a column called the second applicant's "hummock" rather than "point of view", which clearly showed the humorous nature of the material published in that column. Against that background, the article and photographic collage cannot, in the Court's view, be understood as being anything but a caricature and parody, that is a satirical representation, rather than a direct statement maliciously aimed at belittling Mr V. It reiterates in that connection that satire is a form of expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims at provoking and agitating. Any interference with a right to such a form of expression must be examined with particular care (see *Vereinigung Bildender Künstler*, cited above, § 33; *Alves da Silva v. Portugal*, no. 41665/07, § 27, 20 October 2009; and *Eon v. France*, no. 26118/10, § 60, 14 March 2013).

60. The Court is mindful that public prosecutors, as part of the judicial machinery in the broader sense of the term, should enjoy protection from offensive and abusive verbal attacks and unfounded accusations (see *Lešník v. Slovakia*, no. 35640/97, §§ 53-4, ECHR 2003-IV). In the present case the Court notes, however, that the domestic courts made no attempt to examine the contents of the article in question with a view to establishing whether they were based on a sufficient factual basis as regards the underlying accusations against Mr V. (see, by contrast, *ibid.*, § 58). Moreover, at the material time Mr V., in his quality as head of the prosecutor's office of the Primorskiy Region, was a public figure who appeared frequently on

television programs and in newspapers, which was acknowledged by the domestic courts (see paragraphs 12, 17 and 18 above). The Court reiterates that public officials are subject to wider limits of criticism than private individuals, although the criteria applied to them cannot be the same as for politicians (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I, or, more recently, *Otegi Mondragon v. Spain*, no. 2034/07, § 50, ECHR 2011). The Court considers that as a public figure (see paragraphs 12, 17 and 18 above) Mr V. inevitably and knowingly exposed himself to public scrutiny and should therefore have displayed a greater degree of tolerance to criticism than an ordinary civil servant. The Court also rejects the Government's argument that the applicants used the regional prosecutor's photograph in their publication without his authorisation (see paragraph 30 above) as that argument was never raised by Mr V. before the domestic courts or examined by them.

61. In the light of the reasoning developed in paragraphs 55-60 above, the margin of appreciation afforded to the authorities in establishing the "necessity" of the interference with the applicants' freedom of expression was particularly narrow. With that in mind, the Court will now assess whether the reasons advanced by the domestic courts were "relevant and sufficient" to justify the interference complained of.

62. The Court observes that the domestic courts' findings were limited to an assessment of the form of the impugned publication. As was pointed out by the Government, by virtue of Article 130 of the Russian Criminal Code, the domestic courts "had not been called upon to examine the contents of the information, or the ideas and opinions expressed therein" (see paragraph 28 above). The Court cannot subscribe to that line of reasoning. In its view, the form of a particular statement, remark or expression cannot be dissociated from their context and apparent goal. In other words, an assessment of whether such a statement, remark or expression is "insulting" will depend on an examination of the ideas they may seek to impart, and the context in which they were made.

63. The domestic courts found that the article and photographic collage were "indecent" and thus "insulting" as they portrayed the regional prosecutor as an "immoral and corrupt prostitute". It appears that the "insulting" nature of the publication was established solely on the basis that it was perceived as such by Mr V. (see paragraphs 12 and 19 above), while the applicants' "intent" to insult the prosecutor was proven by the use of the words "prostitute" and "werewolf" (see paragraph 19 above). The domestic courts' reasoning, in fact, merely reproduced the arguments advanced by Mr V. in his criminal complaint (see paragraph 11 above). Such a terse and undeveloped reasoning is, in the Court's view, in itself problematic as it rendered any defence raised by the applicants' devoid of any practical effect.

64. More importantly, in their assessment of the impugned article the domestic courts failed to take any account of the social and political context in which it was made, and to examine whether it involved a matter of general interest. In particular, they made no attempt to analyse the substance of the published material in the context of the ongoing election campaign. They furthermore did not take into account the satirical nature of the publication and the irony underlying it. Lastly, the domestic courts failed to balance the regional prosecutor's right to his reputation against the applicant's freedom of expression and their duty, as journalists, to impart information of general interest. In the light of the foregoing, the Court is bound to conclude that the domestic courts failed to provide "relevant and sufficient" reasons to justify the interference complained of.

65. The Court further reiterates that the nature and severity of the penalty imposed are the factors to be taken into account when assessing the proportionality of the interference (see, for instance, *Chauvy and Others v. France*, no. 64915/01, § 78, ECHR 2004-VI). In the present case, the applicants were convicted in criminal proceedings and sentenced to a fine. The Court cannot accept the Government's argument that the applicants' sentence was lenient, as the fine appears to have been quite burdensome for the applicants (see paragraphs 23 and 24 above). In any event, in the Court's view, what matters is not that the applicants were sentenced to a minor penalty, but that they were convicted at all (see *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 36, ECHR 2000-X). Irrespective of the severity of the penalty which is liable to be imposed, a recourse to the criminal prosecution of journalists for purported insults, with the attendant risk of a criminal conviction and a criminal penalty, for criticising a public figure in a manner which can be regarded as personally insulting, is likely to deter journalists from contributing to the public discussion of issues affecting the life of the community (see, for a similar conclusion, *Bodrožić and Vujin v. Serbia*, no. 38435/05, § 39, 23 June 2009).

66. The foregoing considerations are sufficient to enable the Court to conclude that the national authorities' reaction to the applicants' satirical article 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.

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

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

68. The applicants complained that their conviction for insult on the basis of Article 130 of the Russian Criminal Code had been unforeseeable and had thus breached Article 7 of the Convention.

69. Having regard to the materials in its possession, the Court finds that this part of the application does not disclose any appearance of a violation of the Convention provisions. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicants each claimed compensation of pecuniary damage of 30,000 Russian roubles (RUB, approximately 860 euros (EUR)), the amounts of their fine, and RUB 2,200 (approximately EUR 60), the amounts of the enforcement fee recovered from them by the bailiffs. They further claimed each EUR 3,000 in respect of non-pecuniary damage.

72. As regards the claim for pecuniary damage, the Government acknowledged that the applicants had paid the fine and execution fee in the amounts referred to by them. The Government argued, however, that those had been lawfully recovered from the applicants pursuant to court decisions and could not therefore be regarded as pecuniary damage. The Government further contested the applicants' claim for non-pecuniary damage as wholly excessive and unreasonable. In their view, there was no causal link between the facts of the case and the non-pecuniary damage alleged.

73. The Court observes, first of all, that the amounts of the fine, as well as the fact that they were actually recovered from the applicants, are not in dispute between the parties. It further notes that those sums were recovered from the applicants as a result of their criminal conviction for their article, which the Court has found to be in breach of Article 10 of the Convention. It is thus clear that there is a direct causal link between the violation found and the pecuniary damage alleged (see, among other authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 75 and 77, ECHR 1999-III). As for the enforcement fee, it resulted from the applicant's inability to pay the fine in one amount (see paragraphs 23 and 24 above), this fact being uncontested by the Government. It must therefore be regarded as a direct result of the violation found (compare and contrast *Kwiecień v. Poland*, no. 51744/99, §§ 64-66, 9 January 2007, and, more recently, *Marinova and Others v. Bulgaria*, nos. 33502/07, 30599/10, 8241/11 and 61863/11, § 119, 12 July 2016). In such circumstances, the

Court considers it appropriate to grant this claim in full and to award each of the applicants EUR 920 under this head, plus any tax that may be chargeable on that amount.

74. It further finds that the applicants suffered non-pecuniary damage on account of the violation of their right to freedom of expression and that that damage cannot be compensated by a mere finding of a violation. The amounts claimed by the applicants do not appear excessive and therefore the Court considers it reasonable to grant this claim in full. It thus awards each of the applicants EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

75. The applicants also sought reimbursement of costs and expenses incurred before the Court. In particular, the applicants claimed EUR 1,200 for Ms Moskalenko and EUR 1,560 for Ms Preobrazhenskaya. That amount included research, the preparation of documents, legal analysis and observations by the representatives at a rate of EUR 100 per hour for Ms Moskalenko and EUR 60 per hour for Ms Preobrazhenskaya.

76. The Government contested this claim as unsubstantiated.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,200 to be transferred directly to Ms Moskalenko, and the sum of EUR 1,560 to be transferred directly to Ms Preobrazhenksaya.

C. Default interest

78. 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 complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay, within three months of 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 920 (nine hundred and twenty euros) to each of the applicants in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros) to each of the applicants in respect of non-pecuniary damage;

(iii) EUR 1,200 (one thousand two hundred euros) to be transferred directly to Ms Moskalenko, and EUR 1,560 (one thousand five hundred and sixty euros) to be transferred directly to Ms Preobrazhenksaya, in respect of costs and expenses;

(iv) any tax that may be chargeable to the applicants on the above amounts;

(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 22 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President