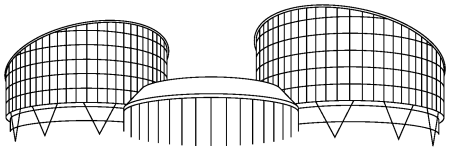

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF FEDCHENKO v. RUSSIA (No. 3)

(Application no. 7972/09)

JUDGMENT

STRASBOURG

2 October 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fedchenko v. Russia (no. 3),

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 4 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 7972/09) 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 a Russian national, Mr Oleg Dmitriyevich Fedchenko ("the applicant"), on 12 November 2008.

2. The applicant was represented by Ms M.A. Ledovskikh, a lawyer practising in Voronezh. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, a breach of his right to freedom of expression on account of defamation proceedings against him.

4. On 19 September 2016 the complaint under Article 10 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Suponevo, the Bryansk Region.

6. The applicant has been editor of a weekly newspaper, *Bryanskiye Budni* (*Брянские будни*), since he founded it in 1999.

7. On 21 February 2008 the applicant published an article in *Bryanskiye Budni* no. 429/7 headlined "Fedorov always takes the lead" *("Федоров всегда впереди")* about Viktor Fedorovich Fedorov, a member of the Bryansk Region Duma and the head of the regional Committee on Legislation, Law and Order and State Service. It discussed Mr Fedorov's having switched political parties and his wealth. The article read as follows, in so far as relevant:

> "He got into the regional Duma on the party lists of the Social Democrats. I remember that in a big beautiful poster Fedorov was seen showing off in the company of Anatoliy Bugayev and Nikolay Rudenok. Now Viktor Fedorovich is a member of the Duma faction of United Russia, as is Mr Bugayev. A very convenient and interesting position which, most importantly, is based on principle. In fact, they both 'dumped' the Social Democrat Nikolay Rudenok. Some say that is pure betrayal. Others contend that that is just politics ...
>
> Now the 'sweet couple' of former Social Democrats are united in their dislike of the speaker of the regional Duma Vladimir Gaydukov. Considering that the deputy speaker Bugayev is eager to get the post of speaker, it is very likely that he could have promised his current post to the head of the Committee on Legislation ... And why not?
>
> At present Mr Fedorov is at a political crossroads. If they include him on the United Russia list for the elections to the regional Duma, he will only be at the very end of the list. To be a candidate in a single-member constituency entails expenses, and that would go against his principles.
>
> However, according to rumour, the head of the Committee on Legislation, Law and Order and State Service is a well-to-do man and has a 'small wholesale business' in neighbouring Orel. Sources note that he all too often takes a 'promenade' there in his official cars.
>
> At first they thought Mr Fedorov was going there for the rich legislative experience of Orel's parliamentarians. However, it became clear later that the 'experience' he wanted was of a somewhat different nature ...
>
> During the three years of his 'parliamentary career' the head of the Committee on Legislation, Law and Order and State Service bought three cars for himself. And each one was a foreign car that was cooler than the one before ..."

8. The following is the original Russian text:

> "В областную же Думу он попал по партийным спискам социал-демократов. Помню, что на большом красивом плакате Федоров красовался рядом с Анатолием Бугаевым и Николаем Руденком. Сейчас Виктор Федорович уже является членом думской фракции «Единая Россия», как и господин Бугаев. Очень удобная и интересная, а главное принципиальная позиция. Фактически и один, и другой «кинули» лидера социал-демократов Николая Руденка. Одни говорят, что это чистейшей воды предательство. Другие утверждают, что это – просто политика ...
>
> Теперь «сладкая парочка» бывших социал-демократов «дружат» против спикера областной Думы Владимира Гайдукова. Если учесть, что вице-спикер Бугаев рвется на место председателя, то вполне возможно, он мог пообещать свой нынешний портфель главе комитета по законодательству ... А почему бы и нет?

В настоящее время господин Федоров на политическом распутье. Если на выборах в областную Думу его включат в списки «Единой России», то только в самом конце. Баллотироваться по одномандатному избирательному округу – надо раскошеливаться, а это не в его правилах.

Хотя по слухам, председатель комитета по законодательству, вопросам правопорядка и государственной службы состоятельный человек, и имеет свой «маленький оптовый бизнес» в соседнем Орле. Источники отмечают, что слишком часто он совершает туда «променаж» на служебных автомобилях.

Сначала думали, что господин Федоров ездит за богатым законодательным опытом орловских парламентариев. Но потом стало ясно, что это «опыт» несколько другого рода ...

За три года своего «депутатства» председатель комитета по законодательству, вопросам правопорядка и государственной службы сменил три личных автомобиля. И с каждым разом приобретал иномарку одну круче другой ...”

9. Mr Fedorov brought an action for defamation against the applicant and sought damages in the amount of 40,000 Russian roubles (RUB). He claimed, in particular, that the following passages were untrue and damaging to his honour and reputation:

1. “both ‘dumped’ the Social Democrat Nikolay Rudenok”;

2. “the ‘sweet couple’ of former Social Democrats are united in their dislike of the speaker of the regional Duma”;

3. “However, according to rumour, the head of the Committee ... has a ‘small wholesale business’ in neighbouring Orel”;

4. “he all too often takes a ‘promenade’ there in his official cars”;

5. “During the three years of his ‘parliamentary career’ the head of the Committee ... bought three cars for himself. And each one was a foreign car that was cooler than the one before”.

10. On 25 March 2008 the Bryanskiy District Court of the Bryansk Region (“the Bryanskiy District Court”) ordered an examination of the impugned passages by a psychological and linguistic expert.

11. On 16 September 2008 Bryansk State University issued a report on the psychological and linguistic expert examination (“the expert report”). In the report the expert specifically noted that the veracity of the statements at issue was not the subject of the examination.

12. On 17 November 2008 the Bryanskiy District Court allowed the claim in part. In its decision the court relied heavily on the expert report.

13. With regard to the first quote, the court referred to the conclusion of the expert report that the expression “dumped” contained a negative assessment of the claimant as an immoral person and found that, therefore, the passage contained information damaging to his honour and reputation. The court dismissed the applicant’s submission to the effect that the word “dumped” had been used in quotes specifically to emphasise its figurative sense.

14. At the same time, the court found that the second quote did not contain any information damaging to the claimant's honour and reputation.

15. With regard to the third and fourth quotes, the applicant argued that under Articles 34 and 35 of the Constitution (see paragraph 24 below) everyone had the right to exercise an entrepreneurial activity and dispose of his or her property and that the quotes in question therefore contained no allegations of unlawful activities and could not be considered as defamatory. He also stated that the third quote had specified that it was based on rumours and therefore amounted to a supposition.

16. The court dismissed the applicant's arguments and referred to the conclusions of the expert report, which stated that the third and fourth quotes contained information which showed the claimant in a negative light. In particular, they had portrayed him as a person who had committed the immoral and antisocial deed of using his official car for private purposes, and who had possibly even exercised an unlawful activity because members of the regional Duma were prohibited from other paid duties. In that regard the court referred to section 6 of the Law on the State of a Deputy of the Bryansk Region Duma (see paragraph 26 below) and noted that the claimant had provided it with a certificate from the tax authorities showing that he had not been an individual entrepreneur since 2005. It also took into account certificates from his employer about four business trips in official cars to Orel between 2005 and 2007 and concluded that the passages in question contained information damaging to the claimant's honour and reputation.

17. Lastly, with regard to the fifth quote, the court again relied on the findings of the expert report, which stated that the impugned passage contained information damaging to the claimant's honour and reputation as it implied antisocial conduct on his part by suggesting that he had pursued his own enrichment instead of defending the interests of the public. The court also took into account a registration certificate for a Mitsubishi Pajero Sport presented by the claimant and found that the quote was damaging to his honour and business reputation.

18. The court found the editorial board of *Bryanskiye Budni* and the applicant jointly liable for RUB 40,000 in respect of the non-pecuniary damage sustained by the claimant. It also ordered the newspaper to publish a retraction within ten days of the judgment's entry into force.

19. The applicant appealed.

20. On 25 December 2008 the Bryansk Regional Court upheld the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Freedom of expression and defamation

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

22. Article 152 of the Civil Code of the Russian Federation provides that an individual can apply to a court with a request for the correction of statements (*сведения*) that are damaging to his or her honour, dignity or professional reputation if the person who disseminated such statements does not prove their truthfulness. The aggrieved person may also claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of such statements.

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

B. Other relevant provisions of domestic law

24. Article 34 § 1 of the Constitution of the Russian Federation provides that everyone has the right freely to use his or her abilities and property for entrepreneurial and other economic activities not prohibited by law. Under Article 35 § 2 of the Constitution everyone has the right to have property and to possess, use and dispose of it both individually and jointly.

25. Section 12(2) of the Law on the General Principles of the Organisation of Legislative and Executive Agencies of State Authority of the Subjects of the Russian Federation of 22 September 1999 provides that a deputy exercising his or her activity on a permanent basis is prohibited from carrying out other paid activities, apart from teaching or scientific or other creative activities, unless otherwise provided for by the laws of the Russian Federation.

26. Section 6 of the Law on the State of a Deputy of the Bryansk Region Duma contains a similar provision to the effect that a deputy exercising his

or her activity on a permanent basis is prohibited from exercising other paid activities, apart from teaching or scientific or other creative activities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicant complained that the domestic courts' judgments had violated his right to express his opinion and to impart information and ideas on matters of public interest guaranteed by Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

28. The Government contested that argument. They conceded that the judicial decisions had constituted an interference with the applicant's rights guaranteed by Article 10. However, they argued that the interference had been "prescribed by law" as it had been based on Article 152 of the Civil Code and Resolution no. 3 of the Plenary Supreme Court of the Russian Federation of 24 February 2005 (section 7). It had also pursued a legitimate aim of protecting the reputation or the rights of others and had been proportionate to that aim.

29. The Government noted that in the article in question the applicant had alleged in a sarcastic manner that Mr Fedorov had bought expensive cars, abused his official powers and had been engaged in unlawful entrepreneurial activity. They argued that it had been for the applicant to corroborate his allegations, which he had failed to do before the domestic courts. The Government relied in that regard on *Markt Intern Verlag GmbH and Klaus Beermann v. Germany* (20 November 1989, § 35, series A no. 165); *Rumyana Ivanova v. Bulgaria* (no. 36207/03, 14 February 2008); and *Novaya Gazeta and Borodyanskiy v. Russia* (no. 14087/08, §§ 36-44, 28 March 2013). The Government also pointed out that the newspaper had a wide circulation of 6,500 copies and that the amount of damages awarded by the domestic courts had been fairly modest.

30. The Government further argued that the domestic courts had duly balanced the applicant's rights under Article 10 of the Convention and the plaintiff's rights protected under Article 8. In that regard they relied, *inter alia*, on *Keller v. Hungary* (dec.), no. 33352/02, 4 April 2006; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, ECHR 2007-IV; *Pfeifer v. Austria*, no. 12556/03, 15 November 2007; *Vitrenko and Others v. Ukraine* (dec.), no. 23510/02, 16 December 2008; *Alithia Publishing Company Ltd and Constantinides v. Cyprus*, no. 17550/03, § 49, 22 May 2008; and *OOO 'Vesti' and Ukhov v. Russia*, no. 21724/03, § 62, 30 May 2013).

31. The applicant, while agreeing with the Government that the interference had been "prescribed by law" and had pursued the legitimate aim of the protection of the reputation or rights of others, contended that it had not been proportionate. He argued that the domestic courts had taken neither his position nor that of the plaintiff into consideration. In his view, his being an editor of a newspaper and a journalist meant that the interference into his right of freedom of expression should have been assessed in the light of the important role the press plays in a democratic society. At the same time, Mr Fedorov was not a State servant, but a member of the Bryansk Region Duma, that is a public figure, who had to display a greater degree of tolerance to public criticism. Furthermore, rather than bringing proceedings for defamation, it had been open to the plaintiff to react to the applicant's article by making a statement to the media.

32. With regard to the particular passages that the domestic courts had found defamatory, the applicant submitted that by using the word "dumped" in the first passage – "both 'dumped' the Social Democrat Nikolay Rudenok" – he had expressed his negative opinion of Mr Fedorov's switching of political parties. That fact as such had not been contested by the plaintiff and, furthermore, there had been nothing unlawful about it. The statement had thus constituted a value judgment.

33. As for the second passage, "[H]owever, according to rumour, the head of the Committee ... has a 'small wholesale business' in neighbouring Orel", the applicant emphasised that it had been based on rumours, as specified in the article. He argued that Article 152 did not provide for an obligation to prove the truthfulness of rumours as they did not amount to "statements" whose veracity should be proved. The applicant further submitted that the passage had served to express his view that the plaintiff was a well-to-do man. It contained no allegations of Mr Fedorov's wealth being a result of unlawful activity. Furthermore, it was inherently subjective as the idea of wealth differed significantly from person to person. Accordingly, the statement also amounted to a value judgment not amenable to proof, even though the plaintiff's being an owner of an expensive car might be considered as providing grounds for such an opinion.

34. As regards the passage "he all too often takes a 'promenade' there in his official cars", the applicant pointed out that the fact of Mr Fedorov's official trips to Orel, paid for from budget funds, had been confirmed by the Bryansk State Duma, had not been contested by the plaintiff and had been reflected in the judgment of the Bryanskiy District Court of 17 November 2008. Furthermore, according to the applicant, Mr Fedorov's tax declaration, published after the delivery of the above judgment, had stated that he owned a flat in Orel, which corroborated the existence of a personal interest in official trips to Orel.

35. With regard to the passage "[D]uring the three years of his 'parliamentary career' the head of the Committee ... bought three cars for himself. And each one was a foreign car that was cooler than the one before", the applicant stated that according to the information submitted to the regional electoral commission in 2004, Mr Fedorov owned a Ford car. Upon his election to the Bryansk Region Duma he had changed it to a KIA and, by the end of his mandate, he had bought an expensive sports utility vehicle, a Mitsubishi Pajero Sport-2.5 manufactured in 2007. The applicant also pointed out that the purchase of a vehicle was in any event a lawful action.

36. The applicant submitted that the language he had used in the passages in question had been neither rude, insulting, nor did it exceed the admissible degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313). However, rather than assessing the form, the domestic courts had considered the passages in question as constituting statements of fact which the applicant had to prove. Furthermore, in the applicant's view, the amount awarded by the Bryanskiy District Court was considerable.

A. Admissibility

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

B. Merits

1. General principles

38. The general principles for assessing the necessity of an interference with the exercise of freedom of expression are summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016) as follows:

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each

individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

39. The Court reiterates that the press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *De Haes and Gijsels v. Belgium*, 24 February 1997, § 37, *Reports of Judgments and Decisions* 1997-I). Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239, and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III).

40. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick*, cited above, § 38).

41. In its practice, the Court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to

prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103).

42. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001-II).

2. Application of the above principles to the present case

43. The Court observes that it was not disputed between the parties that the civil proceedings for defamation against the applicant constituted an interference with his freedom of expression and that this interference was in accordance with the law and pursued the legitimate aim of protecting the plaintiff's reputation. It remains to be determined whether it was "necessary in a democratic society".

44. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant, the position of the plaintiffs who instituted the defamation proceedings, and the subject matter of the debate before the domestic courts (see *Jerusalem*, cited above, § 35).

45. As regards the applicant's position, the Court observes that he was sued in his capacity as the editor of the newspaper and the author of the article in question. In that connection, it points out that the most careful scrutiny on the part of the Court is called for when, as in the present case, measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298).

46. As regards the position of the plaintiff who brought civil proceedings against the applicant, the Court notes that Mr Fedorov was a member of the Bryansk Region Duma and the head of the regional Committee on Legislation, Law and Order and State Service. The Court reiterates that the limits of acceptable criticism are wider as regards a politician than as regards a private individual. A politician acting in his public capacity inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large (see, among other authorities, *Colombani and Others v. France*, no. 51279/99, § 56, ECHR 2002-V).

47. Turning to the subject matter of the debate before the domestic courts, the Court notes that the impugned article discussed Mr Fedorov's transition from one party to another and his wealth (see paragraph 7 above). Given that Mr Fedorov was a member of the regional parliament, this was a matter of general interest to the local community which the applicant was

entitled to bring to the public's attention and which the local population were entitled to receive information about (see, *mutatis mutandis*, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 94-95, ECHR 2004-XI). The Court reiterates in that regard that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001-VIII).

48. The Court has held that when examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation ... of others", it may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see, among many other authorities, *Annen v. Germany*, no. 3690/10, § 55, 26 November 2015). The Court emphasises that, in order for Article 8 of the Convention to come into play, an attack on a person's reputation must attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012). It is not convinced, however, in the circumstances of the present case, that the impugned statements could be considered as an attack reaching the requisite threshold of seriousness and capable of causing prejudice to Mr Fedorov's personal enjoyment of private life.

49. The Court will further consider the newspaper article as a whole and have particular regard to the words used in the disputed parts of it, the context in which they were published and the manner in which it was prepared (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV, and *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 90, ECHR 2007-III).

(a) The first impugned passage

50. The Court points out at the outset that the first impugned passage, "both 'dumped' the Social Democrat Nikolay Rudenok", was based on the fact that Mr Fedorov had switched political parties. The plaintiff did not contest that fact and, in any event, neither adherence to the political parties concerned nor resigning from either of them constituted an offence under Russian law at the material time (see, *mutatis mutandis*, *Novaya Gazeta v Voronezhe v. Russia*, no. 27570/03, § 50, 21 December 2010).

51. The domestic courts considered the colloquial term "dumped" used by the applicant to express a negative assessment of the plaintiff (see paragraph 12 above). However, to the extent that the tone of the passage may have implied the applicant's disapproval of Mr Fedorov's having

switched political parties, that constitutes a value judgment which is not susceptible of proof. The domestic courts thus failed to distinguish between a statement of fact and a value judgment. Furthermore, the Court does not consider that using the word "dumped", apparently with a view to adding a sarcastic tone to the passage, meant that the applicant overstepped the margins of a certain degree of exaggeration or even provocation allowed by journalistic freedom (see *Prager and Oberschlick*, cited above, § 38).

(b) The second impugned passage

52. The Court notes that the domestic courts, relying on the expert report, found that the next passage, "[H]owever, according to rumour, the head of the Committee ... has a 'small wholesale business' in neighbouring Orel", implied that the plaintiff had exercised an unlawful activity because members of the regional Duma were prohibited from carrying out other paid activities (see paragraph 16 above).

53. In previous cases, when the Court has been called upon to decide whether to exempt newspapers from their ordinary obligation to verify factual statements that are defamatory of private individuals, it has taken into account various factors, particularly the nature and degree of the defamation and the extent to which the newspaper could have reasonably regarded its sources as reliable with regard to the allegations (*Bladet Tromsø and Stensaas*, cited above, § 66). These factors, in turn, require consideration of other elements such as the authority of the source (ibid.), whether the newspaper conducted a reasonable amount of research before publication (*Prager and Oberschlick*, cited above, § 37), whether the newspaper presented the story in a reasonably balanced manner (*Bergens Tidende and Others v. Norway*, no. 26132/95, § 57, ECHR 2000-IV) and whether the newspaper gave the persons defamed the opportunity to defend themselves (ibid., § 58). Hence, the nature of such an exemption from the ordinary requirement of verification of defamatory statements of fact is such that, in order to apply it in a manner consistent with the case-law of this Court, the domestic courts have to take into account the particular circumstances of the case under consideration. If the national courts apply an overly rigorous approach to the assessment of journalists' professional conduct, they could be unduly deterred from discharging their function of keeping the public informed. The courts must therefore take into account the likely impact of their rulings, not only on the individual cases before them but also on the media in general (see *Kasabova v. Bulgaria*, no. 22385/03, § 55, 19 April 2011, and *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 48, 2 October 2012).

54. An additional factor of particular importance in the present case is the vital role of "public watchdog" which the press performs in a democratic society (see paragraph 39 above). As part of their role as a "public watchdog", the media's reporting on "'stories' or 'rumours' – emanating

from persons other than an applicant – or 'public opinion'" is to be protected where they are not completely without foundation (see *Thorgeir Thorgeirson*, cited above, § 65).

55. At the outset, the Court has to assess the nature and degree of the defamation. It notes that the domestic courts did not examine the question whether Mr Fedorov actually had or not a "small wholesale business" (see paragraphs 11, 12 and 16 above), but found that saying so was damaging to the latter's reputation. Given that entrepreneurial activity was expressly permitted by the Constitution, as was pointed out by the applicant in the proceedings before the Bryanskiy District Court (see paragraph 15 above), the Court is not convinced that that statement as such could be considered as damaging to Mr Fedorov's reputation.

56. The Court further observes that the Bryanskiy District Court found the statement defamatory by relying on the conclusions of the expert report to the effect that it might have implied that Mr Fedorov had possibly exercised an unlawful activity, as members of the regional Duma were prohibited from exercising other paid duties (see paragraph 16 above). The Court finds this conclusion rather strained. Firstly, the reference to the supposed "small wholesale business" was of too general a nature to infer from it that Mr Fedorov held a paid post elsewhere. Secondly, it appears from the context of the article that such an inference was not the applicant's intention and was one that was unlikely to have been made by an average reader.

57. The Court notes, furthermore, that in the impugned passage the applicant expressly stated that it was based on rumours. It reiterates that the extent to which it might be acceptable for journalists to rely on unverified sources depends on the particular aspects of each case (see paragraph 53 above). Having regard to its finding that the statement in question as such could not be considered as damaging to Mr Fedorov's reputation (see paragraph 55 above), the Court considers that the reliance on rumours in the present case was compatible with the exercise of the freedom of expression (*cf. Flux v. Moldova (no. 6)*, no. 22824/04, §§ 27-34, 29 July 2008).

(c) The third impugned passage

58. Turning to the third impugned passage, "he all too often takes a 'promenade' there in his official cars", the Court notes that it is based on the fact that Mr Fedorov went on business trips to Orel in official cars, which not only was not denied, by Mr Fedorov in the hearing before the Bryanskiy District Court but was corroborated by him (see paragraph 16 above). The domestic courts found, however, that the passage in question portrayed him as a person who had committed the immoral and antisocial deed of using his official car for private purposes (ibid.).

59. The Court observes in that regard that the words "all too often" reflect the applicant's opinion that Mr Fedorov's business trips to Orel were

too frequent, which constitutes a value judgment. As for the word "promenade", here ironically employed, the Court reiterates that the use of sarcasm and irony is perfectly compatible with the exercise of a journalist's freedom of expression (see *Smolorz v. Poland*, no. 17446/07, § 41, 16 October 2012).

(d) The fourth impugned passage

60. As regards the fourth impugned passage, "[D]uring the three years of his 'parliamentary career' the head of the Committee ... bought three cars for himself. And each one was a foreign car that was cooler than the one before", the Court notes that the domestic courts found it damaging to the plaintiff's reputation as it suggested that he pursued his own enrichment instead of defending the interests of the public.

61. The Court observes that it was not contested by the plaintiff that over the previous years he had bought several cars. Furthermore, he provided the Bryanskiy District Court with a registration certificate for a Mitsubishi Pajero Sport, the vehicle he owned at the time (see paragraph 17 above). Accordingly, that statement had a sufficient factual basis.

62. The Court further observes that the word "cooler" employed by the applicant reflects his opinion that each new car bought by Mr Fedorov was better than the previous one, and thus constitutes a value judgment. As for the ironic tone of the passage, it is perfectly compatible with the exercise of a journalist's freedom of expression (see *Smolorz*, cited above, § 41).

(e) Conclusion

63. Having regard to the foregoing, the Court concludes that the balancing exercise carried out by the domestic courts did not take sufficiently into account all the standards established in the Court's case-law under Article 10 of the Convention (compare and contrast, *Keller v. Hungary* (dec.), cited above, and *Kwiecień v. Poland*, no. 51744/99, § 52, 9 January 2007). The fact that the proceedings were civil rather than criminal in nature and that the final award was relatively small does not detract from the fact that the standards applied by the domestic courts were not compatible with the principles embodied in Article 10 since they did not adduce "sufficient" reasons to justify the interference at issue, namely the imposition of a fine on the applicant for publishing the impugned article.

64. Therefore, having regard to the fact that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see, among other authorities, *Sürek*, cited above, § 61, and *Novaya Gazeta v Voronezhe v. Russia*, cited above, § 59), the Court finds that the domestic courts overstepped the narrow margin of appreciation afforded to Member States. The interference was disproportionate to the aim pursued and was thus not "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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. Pecuniary damage

67. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage, which corresponds to 40,000 Russian roubles at the exchange rate of 25 December 2008, on account of the damages he was ordered to pay by the domestic courts. The applicant enclosed a certificate issued by the bailiffs service to confirm that he had paid the amount due.

68. The Government argued that the claim was unfounded as the award of damages had been made in a well-reasoned domestic court judgment.

69. The Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary damage claimed. It further notes that it is its standard practice to make awards in euros rather than in the currency of the respondent State, should it be different, on the basis of the exchange rate which existed at the time the claim was submitted to the Court. Consequently, the Court awards the applicant the amount claimed in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

70. The applicant claimed EUR 12,000 in respect of non-pecuniary damage on account of the breach of his right to freedom of expression.

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

72. The Court accepts that the applicant must have suffered distress and frustration resulting from the judicial decisions incompatible with Article 10, which cannot be sufficiently compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 under this head, plus any tax that may be chargeable on that amount.

C. Costs and expenses

73. The applicant also claimed EUR 1,830 for the costs and expenses incurred before the Court. He enclosed a contract for legal services of 17 February 2017 which provides for remuneration for his representative of 60 euros an hour and an act of 23 March 2017 attesting to the fact that the applicant's representative had spent 30 hours and 30 minutes on the case.

74. The Government argued that the claim was unsubstantiated as the applicant had not enclosed any receipts to confirm that the payment had been made. In their view, the amount claimed was in any event excessive.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed for the proceedings before the Court.

D. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,830 (one thousand eight hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President