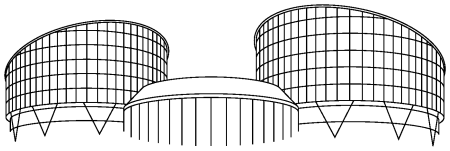

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OOO IZDATELSKIY TSENTR KVARTIRNYY RYAD v. RUSSIA

(Application no. 39748/05)

JUDGMENT

STRASBOURG

25 April 2017

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 OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia,

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

Helena Jäderblom, *President,*
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 28 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 39748/05) 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 OOO Izdatelskiy Tsentr Kvartirnyy Ryad, a publishing company incorporated under Russian law with its registered office in Moscow ("the applicant company"), on 11 October 2005.

2. The applicant company was represented by Mr A. Molokhov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant company alleged a violation of its right to freedom of expression.

4. On 30 August 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Article published on 20 May 2004

5. At the material time the applicant company was the publisher of *Kvartirnyy Ryad*, a newspaper specialising in coverage of the housing market in the Moscow area ("the newspaper").

6. On 20 May 2004 the newspaper published an article by G. entitled "So sorry for the bird. The blue one" («*А птичку жалко. Синюю*» – "the article"). The article described a conflict situation concerning a large commonhold association, Bluebird (*Синяя птица*), which included eight blocks of flats in the south-west of Moscow. G. suggested in the article that a number of residents of the Bluebird flats had been affected by the alleged misuse of common areas, in particular attics in the blocks of flats and that T., the head of the commonhold association, had been behind the misuse. G. emphasised that T. was also the deputy head of a district council in Moscow and that he had declined to comment on the article's contents prior to publication. The article asked T. and the local government questions pertaining to the misuse of the common areas.

7. The relevant parts of the article read as follows:

> "Residents of eight blocks of flats in Severnoe Butovo keep sending letters to the courts, the prosecutor's office, the city administration and even President Putin to complain about the head of the "Bluebird" commonhold association, T., [w]ho has developed an indecently hasty business activity spitting in the face of the association's Charter and a number of regional and federal laws. ...
>
> ... But T. has expressed his distrust in the commission elected by the general meeting and has appointed his own commission...as a result T. has managed to retain his position ...
>
> ... the commission was not elected, but appointed, which guaranteed the appointment of T. for a third term ...
>
> ... In sum, even though T. did not have the majority of the votes, he nonetheless managed to conclude the contract ...
>
> ... let's ask one final question, which again pertains to T.: does a State official have the right to combine his official functions with a commercial business activity?"

B. Defamation proceedings brought by T.

8. On 28 May 2004 T. lodged a defamation claim against the applicant company and G. with the Presnenskiy District Court of Moscow ("the District Court"). The plaintiff alleged that the statements contained in the article damaged his honour, dignity and business reputation. The court received the statement of claim on 15 June 2004.

9. On 8 December 2004 the District Court examined and partially allowed the claim, referring to Article 152 of the Civil Code and Resolution no. 11 of the Plenary Supreme Court. It reasoned:

> "... the impugned statement: "... who [has] developed an indecently hasty business activity spitting in the face of the commonhold association's Charter and a number of regional and federal laws" should be retracted [by the defendants] ... as during the judicial examination of the case the defendants failed to prove that T.'s actions were unlawful.

> The defendants, a third party and witnesses explained that an attic ... had been unlawfully rented out. The lease agreement had been unlawfully concluded by T. ...
>
> However, no evidence has been provided [by the defendants] to the court to prove that the plaintiff's actions were unlawful or illegal or in violation of federal and regional law or the commonhold association's Charter.
>
> Moreover, the issue of the lease of the attic ... was examined by the Zyuzinskiy District Court of Moscow. By the decision of the Zyuzinskiy District Court of Moscow of 19 May 2004 actions of the Bluebird commonhold association headed by T. were found to be in compliance with the law in force.
>
> As to the statements: "... the commission was not elected, but appointed, which guaranteed the appointment of T. for a third term ... In sum, even though T. did not have the majority of the votes, he nonetheless managed to conclude the contract ..." ... They are not to be retracted as they are not damaging to the honour and dignity of the plaintiff.
>
> ... as to the statement: "let's ask one final question, which again pertains to T.: does a State official have the right to combine his official functions with a commercial business activity?" It should not be retracted either as ... the author of the article [G.] is asking a rhetorical question ..."

10. The District Court ordered the applicant company "to refute the statement [published] in the newspaper *Kvartirnyy Ryad* on 20 May 2004 ... that T. developed activities as the head of the "Bluebird" commonhold association, violating the association's Charter as well as a whole range of laws of the capital area and federal law". It also awarded T. non-pecuniary damages: 10,000 Russian roubles (RUB – approximately 270 euros) to be paid by the applicant company and RUB 8,000 to be paid by G.

11. The applicant company and G. appealed against the judgment to the Moscow City Court ("the City Court").

12. On 4 May 2005 it upheld the judgment of 8 December 2004 in full, referring to Article 152 of the Civil Code and to Resolution no. 11 of the Plenary Supreme Court. It provided the following succinct reasoning:

> "The plaintiff has proven the fact that the contested statements were disseminated: he provided the court with an original issue of the newspaper of 20 May 2004 ...
>
> ... the court [of first instance] rightly held that the defendants had failed to prove the veracity of the disseminated statement ... that [the plaintiff] had developed an indecently hasty business activity spitting in the face of the association's Charter and the law.
>
> At the same time, the court [justifiably] referred to the judgment of the Zyuzinskiy District Court of Moscow ... which found the actions of the commonhold association ... headed by T. to be in compliance with the law in force."

13. On 25 July 2005 the City Court rejected a request by the applicant company for supervisory review.

14. On 13 October 2005 the enforcement proceedings were terminated by a bailiff as the judgment of 8 December 2004 had been enforced in full.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

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

17. Resolution no. 11 of the Plenary Supreme Court of 18 August 1992 (amended on 25 April 1995) provided that, in order to be considered damaging, statements had to be untrue and contain allegations of a breach of the law or moral principles (for example dishonest acts or improper behaviour at work or in everyday life). Dissemination of statements was understood to mean the publication of statements or their broadcasting (section 2). The burden of proof was on the defendant to show that the disseminated statements were true and accurate (section 7).

18. Resolution no. 3 of the Plenary Supreme Court of 24 February 2005 repealed Resolution no. 11. It defines "untruthful statements" as allegations of facts or events which have not taken place in reality by the time of the statements' dissemination. 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 breached 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 veracity, and value judgments, opinions and convictions, which are not actionable under Article 152 of the Civil Code since they are an expression of the defendant's subjective opinion and views and cannot be checked for veracity (section 9).

III. RELEVANT COUNCIL OF EUROPE MATERIAL

19. On 12 February 2004 the Committee of Ministers of the Council of Europe adopted, at the 872nd meeting of the Ministers' Deputies, the Declaration on freedom of political debate in the media, which read in particular as follows:

> "The Committee of Ministers of the Council of Europe,
>
> ...

Reaffirming the pre-eminent importance of freedom of expression and information, in particular through free and independent media, for guaranteeing the right of the public to be informed on matters of public concern and to exercise public scrutiny over public and political affairs, as well as for ensuring accountability and transparency of political bodies and public authorities, which are necessary in a democratic society, without prejudice to the domestic rules of member states concerning the status and liability of public officials ...

Conscious that natural persons who are candidates for, or have been elected to, or have retired from political bodies, hold a political function at local, regional, national or international level or exercise political influence, hereinafter referred to as "political figures", as well as natural persons who hold a public office or exercise public authority at those levels, hereinafter referred to as "public officials", enjoy fundamental rights which might be infringed by the dissemination of information and opinions about them in the media;

Conscious that some domestic legal systems still grant legal privileges to political figures or public officials against the dissemination of information and opinions about them in the media, which is not compatible with the right to freedom of expression and information as guaranteed by Article 10 of the Convention;

Draws particular attention to the following principles concerning the dissemination of information and opinions in the media about political figures and public officials:

...

III. Public debate and scrutiny over political figures

Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.

IV. Public scrutiny over public officials

Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant company complained that the judgments of the domestic courts had unduly restricted its right to freedom of expression guaranteed by Article 10 of the Convention. The relevant parts read as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

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

A. The parties' submissions

1. The Government

21. The Government submitted that Article 10 § 2 of the Convention allowed restrictions on freedom of expression in order to protect the reputation or rights of others.

22. When ruling on the dispute involving the applicant company, the District Court had distinguished between statements of fact and value judgments as it had only allowed T.'s claim in part, relating to one statement out of four. Attempting to justify use of the phrase "[T.] ... has developed an indecently hasty business activity spitting in the face of the association's Charter and a number of regional and federal laws ..." at the hearing before the District Court, the defendants had referred to an allegedly unlawful lease of an attic under the commonhold association's control concluded by T. as its head. However, on 19 May 2004 the Zyuzinskiy District Court of Moscow had found the lease agreement to be lawful. In the Government's view, in accordance with Resolution no. 11 (see paragraph 17 above) that in itself precluded any further discussion regarding the lawfulness of T.'s activities. The defendants had not provided any other proof that T.'s actions had been unlawful.

23. According to section 7 of Resolution no. 11, the burden of proof had been was on the defendant to prove the veracity of the disseminated statements; it had sufficed for the plaintiff to prove that the statements had been disseminated. The dissemination had been proven in the civil case against the applicant company because the District Court had had an original issue of the newspaper containing the impugned article.

24. In their observations of 22 December 2010 on the admissibility and merits, the Government distinguished the present case from the cases of *Dyuldin and Kislov v. Russia* (no. 25968/02, 31 July 2007); *Krasulya v. Russia* (no. 12365/03, 22 February 2007); *Karman v. Russia* (no. 29372/02, 14 December 2006); and *Fedchenko v. Russia* (no. 33333/04, 11 February 2010), giving the following reasons. T. had not been in public office and thus had not been a "public figure"; the issue the article touched upon had not been a part of a debate on questions of public interest; the statement had not amounted to a value judgment because it had been expressed in strong affirmative terms; and the applicant company had been subject to only civil not criminal proceedings.

25. In their further observations of 19 April 2011 on the admissibility and merits, the Government argued that the fact that T. had also been the deputy head of a district council in Moscow could not serve as grounds for applying wider limits of permissible criticism because the article had touched upon his activities as head of the commonhold association, a non-profit organisation. They concluded that for the purposes of defining the limits of acceptable criticism T. should be considered a private individual.

26. The Government also claimed that the applicant company had not provided any evidence to the District Court to prove the veracity of the impugned statement. The statement had contained no indication that it had reflected the journalist's opinion and the style of the expression had been affirmative. Accordingly, it had not been a value judgment. Furthermore, it had not been based on any verified facts or other evidence, and could cause actual damage to T. because it tarnished his reputation as head of the commonhold association among the residents of the block of flats. Relying on the cases of *Lindon, Otchakovsky-Laurens and July v. France* ([GC], nos. 21279/02 and 36448/02, § 67, ECHR 2007-IV), and *Pedersen and Baadsgaard v. Denmark* ([GC], no. 49017/99, § 78, ECHR 2004-XI), the Government emphasised that freedom of expression of journalists carried with it "duties and responsibilities", especially in the context of attacking the reputation of a named individual and infringing the "rights of others", and that special grounds were required before the media could be dispensed from their ordinary obligation to verify factual statements defamatory of private individuals.

27. The Government concluded that, while there had been an interference with the applicant company's right to freedom of expression, it had been lawful, necessary in a democratic society to protect the reputation and rights of others and fully compatible with the Court's standards regarding Article 10 § 2 of the Convention.

2. The applicant company

28. The applicant company maintained its complaint and submitted that T. had not only been the head of a commonhold association at the material time but also in public office as the deputy head of a district council in Moscow *(управа района)*.

29. The applicant company insisted that the subject matter of the impugned article had pertained to a debate on questions of public interest, and that the limit of acceptable criticism should be wider with regard to T. as he had been in public office. The article had contained value judgments, which had not been expressed in excessively harsh terms.

30. The applicant company concluded that the interference with its right of freedom of expression had been disproportionate and thus not compatible with the requirements of Article 10 of the Convention.

B. The Court's assessment

1. Admissibility

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

2. Merits

32. The Court notes that it is common ground between the parties that the District Court's judgment of 8 December 2004 as upheld by the City Court on 4 May 2005 (see paragraphs 9 and 12 above) constituted an interference with the applicant company's right to freedom of expression guaranteed by Article 10 § 1 of the Convention. The Court is further satisfied that the interference in question was "prescribed by law", notably Article 152 of the Civil Code, and "pursued a legitimate aim", that is "the protection of the reputation or rights of others", within the meaning of Article 10 § 2 of the Convention. What remains to be established is whether the interference was "necessary in a democratic society".

33. The general principles concerning the necessity of an interference with freedom of expression, which have been frequently reaffirmed by the Court since the case of *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), were summarised in *Stoll v. Switzerland* ([GC], no. 69698/01, § 101, ECHR 2007-V) and reiterated more recently in *Morice v. France* ([GC], no. 29369/10, § 124, ECHR 2015); *Pentikäinen v. Finland* ([GC], no. 11882/10, § 87, ECHR 2015); and *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, ECHR 2016):

> "(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 ..."

34. The Court considers the following elements to be relevant for the examination of the particular circumstances of the present case: the position of the applicant company, the position of the person against whom the criticism was directed, the subject matter of the publication, the domestic courts' interpretation of the contested statement, the words used by the applicant company and the penalty imposed (see *Krasulya*, cited above, § 35, and *OOO Ivpress and Others v. Russia*, nos. 33501/04 and 3 others, § 69, 22 January 2013).

35. The Court observes that the applicant company was a newspaper publisher held civilly liable for the publication in the newspaper. The impugned interference must therefore be seen in the context of the essential function that the media fulfil in a democratic society. Although they must not overstep certain bounds, their duty is nevertheless to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest. Not only do the media have the task of imparting such information and ideas, the public also have a right to receive them (see, with further references, *Pentikäinen*, cited above, § 88). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, with further references, *Delfi AS v. Estonia* [GC], no. 64569/09, § 132, ECHR 2015).

36. The Court reiterates that the safeguard afforded by Article 10 of the Convention to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism. Furthermore, Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. Consequently, it is not for this Court, or for the national courts for that matter, to substitute their own views for those of the press as to what reporting technique should be adopted by journalists. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see, with further references, *Bédat*, cited above, §§ 58-59).

37. The Court further notes that the parties disagreed in their respective assessment of T.'s position and the subject matter of the impugned article. The Government argued that the article had targeted T. in his private

capacity and had not pertained to a debate on questions of public interest (see paragraphs 24-25 above), while the applicant company insisted that, alongside his activities as head of the commonhold association, T. had also been a public official, and thus his business activities had been a matter of public interest (see paragraphs 28-29 above).

38. The Court considers that the criticism contained in the article was not directed at T.'s private activities but rather at his conduct in his capacity as head of the commonhold association in Moscow, that is, a representative of the interests of a group of flat owners vested with their trust. As such, his activities in that capacity were clearly of legitimate concern if not to the general public then to the readership of the specialist newspaper which at the material time covered housing matters in the Moscow-area. The fact that the same person was also a public official could only increase the degree of legitimate public concern in his actions, in view of the possible corruption implications. The Court reiterates in this connection its consistent position – which is also reflected in the Committee of Ministers Declaration on freedom of political debate in the media – that in a democratic society public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions. It has been the Court's consistent position that the limits of permissible criticism are wider with regard to a government official in the course of performance of his or her functions than in relation to a private citizen (see, with further references, *OOO Ivpress and Others*, cited above, § 70). The Court thus concludes that the article targeted T. in his public capacity and pertained to a debate on questions of public interest, namely, good governance in the property sector and the prevention of corruption.

39. The Court will now consider the interpretation of the impugned article given by the domestic courts. T. was of the view that its contents tarnished his reputation. The domestic courts partly agreed with the plaintiff and decided that one of the statements contained in the article, that "T. ... has developed an indecently hasty business activity spitting in the face of the association's Charter and a number of regional and federal laws" was indeed damaging to T.'s reputation (see paragraphs 9 and 12 above).

40. The Court reiterates in this connection that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life. 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 or rights of others", the Court 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. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see, with further references, *Delfi AS*, cited above, §§ 137-39).

41. Nevertheless, the Court observes that it does not transpire from the domestic judgments that the courts performed any balancing exercise between the need to protect the plaintiff's reputation and the applicant company's right to divulge information on issues of public interest. They confined their succinct analysis to establishing that the statements *(сведения)* were disseminated, accepting without question the plaintiff's assertion about the damage to his reputation. Indeed, the District and City Courts expressly proclaimed that it sufficed for T. to provide an issue of the newspaper to prove that the alleged damage had occurred. Neither the District nor the City Court gave any consideration to the applicant company's position as the newspaper publisher or to the plaintiff's status as head of the commonhold association and a public official. In the Court's view, the Russian courts did not seem to recognise that the proceedings in the present case involved a conflict between the right to freedom of expression and the protection of reputation. It does not appear that they carried out an analysis of whether or not the contested publications sought to make a contribution to a debate on matters of general interest or public concern. The Court reiterates in this connection that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest and that very strong reasons are required for justifying such restrictions (see, with further references, *OOO Ivpress and Others*, cited above, § 71).

42. The Court has consistently held that in order to assess the justification of an impugned statement, a distinction needs to be made 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 of the Convention. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see *Pedersen and Baadsgaard*, cited above, § 76, and *Lindon, Otchakovsky-Laurens and July*, cited above, § 55).

43. The Court considers that neither the impugned statement nor the article seen as a whole can be understood to be a gratuitous personal attack

on, or insult to T. The turns of the phrase employed may appear sarcastic yet they remain within the acceptable degree of stylistic exaggeration employed to express the journalist's value judgment concerning T.'s public activities and as such not susceptible of proof. Furthermore, in the Court's view, there was a sufficient factual basis to the impugned statement. As follows from the Government's assertion (see paragraph 22 above), the defendants provided proof to the District Court that there had been a legal dispute concerning the lawfulness of a lease of an attic concluded by T. Contrary to the Government's claim, the fact that the dispute was resolved by a court in itself does not imply that any further discussion of the contested issue should be curtailed. Moreover, as follows from the text of the District Court's judgment (see paragraph 9 above), the Zyuzinskiy District Court sitting in the first instance delivered its judgment regarding the lease of the attic, which could be further appealed against, on 19 May 2004, that is, one day before the date of the publication of the impugned article in the newspaper issue of 20 May 2004. Given the realities of the print media production process, it is highly probable that at the time when the article was sent to the printing press the journalist was unaware of the existence of the judgment of 19 May 2004, or that it had not yet been delivered. The Court thus considers that it has not been shown that the journalist acted in bad faith (see *Bédat*, cited above, § 58).

44. The domestic courts interpreted the statement as factual and required the applicant company to prove the veracity of the allegedly tarnishing statement. The Court points out in this connection that on 8 December 2004 Russian law did not draw any distinction between statements of fact and value judgments. By 4 May 2005, however, when the City Court examined the defamation case on appeal, Resolution no. 3 (see paragraph 18 above) had already entered into force enabling the courts, in principle, to distinguish between statements of fact and value judgments. Yet the City Court did not refer to that legal instrument basing itself, as the District Court had done, on Resolution no. 11 (see paragraph 17 above). The Court has on many occasions pointed to the deficiency in Russian law on defamation referring uniformly to "statements" and positing the assumption – as the present case illustrates – that any such "statement" is amenable to proof in civil proceedings (see *Novaya Gazeta v Voronezhe v. Russia*, no. 27570/03, § 52, 21 December 2010; *Andrushko v. Russia*, no. 4260/04, §§ 50-52, 14 October 2010; *Fedchenko*, cited above, § 36; *Dyuldin and Kislov*, cited above, § 47; *Karman*, cited above, § 38; *Zakharov v. Russia*, no. 14881/03, § 29, 5 October 2006; and *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005).

45. As regards the penalty imposed in the present case, noting that the applicant company was ordered to pay RUB 10,000 in damages, the Court does not consider it decisive that the defamation proceedings were civil rather than criminal in nature and that the final award was not particularly

large. What is important is that the domestic courts held the applicant company responsible for failing to prove the truthfulness of value judgments, that they did not assess the issue whether or not the publication contributed to a debate on a matter of public interest or general concern, and that they failed to recognise the wider limits of permissible criticism in respect of State officials (see *OOO Ivpress and Others*, cited above, § 79).

46. The Court reiterates that it is not its task to substitute its own view for that of the domestic courts, which have the advantage of possessing direct knowledge of the situation and have all the evidence before them (see, with further references, *Bédat*, cited above, § 54). Nevertheless, faced with the domestic courts' failure to give relevant and sufficient reasons to justify the interference, the Court finds that the domestic courts cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10 of the Convention" or to have "based themselves on an acceptable assessment of the relevant facts" (see *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 2)*, no. 21666/09, § 54, 7 January 2014; *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, §§ 67-69, 8 October 2013; and *OOO Ivpress and Others*, cited above, § 71). The Court thus concludes that the interference with the applicant company's right to freedom of expression cannot be said to have been "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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."

49. The applicant company did not submit a claim for just satisfaction, submitting that the finding of a violation of the Convention in itself would constitute sufficient just satisfaction for the damage sustained. Accordingly, the Court considers that there is no call to award the applicant company any sum on that account.

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.

Done in English, and notified in writing on 25 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helena Jäderblom
Deputy Registrar	President