THIRD SECTION

**CASE OF NOVAYA GAZETA AND MILASHINA v. RUSSIA**

*(Application no. 4097/06)*

JUDGMENT

STRASBOURG

2 July 2019

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

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

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

 Paulo Pinto de Albuquerque, *President,* Helen Keller, María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 June 2019,

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

PROCEDURE

1.  The case originated in an application (no. 4097/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by ANO Redaktsionno-Izdatelskiy Dom “Novaya Gazeta”, a legal entity incorporated under Russian law (“the applicant company”), and by Ms Yelena Valeryevna Milashina, a Russian national (“the second applicant”).

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

3.  On 8 April 2009 notice of the application was given to the Government.

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

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant company, an editorial and publishing house registered in Moscow, edits and publishes a national newspaper with a circulation of 500,000, the *Novaya Gazeta* (“the newspaper”). The second applicant was born in 1977 and lives in Moscow.

A.  Background information

6.  At 11.30 a.m. on 12 August 2000 K-141 Kursk, a nuclear cruise missile submarine of the Russian Navy (“the Kursk”), sank as a result of explosions on board while in the Barents Sea on a naval training exercise. Most of the crew died within minutes of the explosions. However, twenty‑three crew members (of the 118 aboard) survived the explosions and gathered in a stern compartment. They wrote a note to report the events. All of these twenty-three men died on board the Kursk before the arrival of a rescue team. It is not known for certain how long the men remained alive after the explosions. However, it was established later that they had died in a fire caused by oily sea water coming into contact with the equipment, which had triggered a chemical reaction.

7.  In case no. 29/00/0016-00 (“the investigation”), the Chief Military Prosecutor’s Office launched an official investigation into the accident under Article 263 § 3 of the Russian Criminal Code (a provision on “a breach of safety procedures while using a means of transportation which causes the death of two or more persons by negligence”).

8.  On 22 July 2002 the Chief Military Prosecutor’s Office terminated the investigation for lack of evidence of a crime. The prosecutors found that there had been minor technical defects in the Kursk and certain omissions in the organisation and conduct of the naval exercise and the rescue operation. However, they found that it was impossible to establish a causal link between those defects and omissions and the sinking of the submarine and the death of the crew members. In particular, they established that the twenty-three crew members in the ninth compartment had died as a result of fire and asphyxiation within eight hours of the explosions. In view of the rapidity of their death, any attempt to rescue them would have been futile.

9.  On 30 December 2002 B.K., counsel for the relatives of the deceased members of the Kursk crew, challenged the decision to terminate the investigation before the Chief Military Prosecutor. On 4 January 2003 his complaint was dismissed. B.K. challenged both decisions in court.

10.  On 21 April 2004 the Military Court of the Moscow Garrison confirmed the decision of 22 July 2002. On 29 June 2004 the Appeal Tribunal of the Military Court of the Moscow Garrison upheld the judgment on appeal.

11.  Between 2000 and 2005 the applicant company published in the newspaper a number of articles written by the second applicant covering the Kursk catastrophe and the investigation into it.

B.  The impugned article

12.  On 11 August 2003 the newspaper published an editorial written by the second applicant. It was timed to commemorate the third anniversary of the Kursk catastrophe. The article appeared under the headline “The Kursk case must be reopened” («*Дело «Курска» надо открывать заново*»), followed by a subtitle “Those wearing military rank insignia are among those responsible for the wreck of the submarine and the death of its crew” («*В гибели лодки и экипажа есть виновные в погонах*»).

13.  The article criticised the authorities for their decision to discontinue the investigation. It began by congratulating the investigators on their hard and meticulous work and their discovery of many omissions by senior officers of the Navy. It further alleged that there were reasons to believe that the investigators had made the conclusion about the absence of a causal link between the naval officers’ omissions and the death of the Kursk crew members under pressure. The article reproduced excerpts from the complaint lodged by B.K. against the decision to discontinue the investigation. The complaint had contested the investigators’ findings and presented an alternative interpretation of the evidence collected. The article went on to suggest that the authorities should pay close attention to B.K.’s arguments and reconsider their decision not to prosecute the senior naval officers.

14.  The article further described the authorities’ fierce reaction to B.K.’s complaint. The reaction of V.K., the chief forensic expert of the Russian Ministry of Defence, had been particularly harsh, as he had publicly accused B.K. of making a reputation for himself out of the Kursk catastrophe. The article continued as follows:

“V.K. presided over the panel of medical experts (which means that he was responsible for collating all the medical expert opinions in the case file). ...

The expert examination performed by V.K. ... [was] not supposed to be key evidence, BUT [IT] BECAME DECISIVE[[1]](#footnote-1), as [the expert] pursued a specific aim: to prove that twenty-three crew members in the ninth compartment had died no later than eight hours after the explosion in the Kursk.”

15.  The article suggested that the expert findings made by V.K. were particularly convenient for the naval officers responsible for the belated commencement of the rescue operation. Those findings indicated that even if the rescue operation had commenced in good time, it would have been in any event impossible to rescue the men in the ninth compartment, in view of the rapidity of their death. Hence, the conclusion that there was no causal link between the omissions during the rescue operation and the death of the crew members. The article then continued:

“This is the aim pursued by V.K. in his expert examination: to help the naval officers in charge of the rescue operation avoid criminal responsibility.

V.K. uses bizarre wording: ‘Died no later than four and a half to eight hours after the explosion[[2]](#footnote-2) in the Kursk’. However, in the earlier expert reports it was mentioned that the crew [had] died [several hours] after the ignition of the fire[[3]](#footnote-3) in the ninth compartment, and that it was not possible to establish the time of the ignition. The case file does not contain any proof of a causal link between the explosion and the fire in the ninth compartment. ...

The fire in the ninth compartment ... started a considerable time after the explosion and the sinking of the Kursk. What V.K. did is called distortion of the facts («подтасовка фактов»). However, the investigators preferred not to notice this distortion, and to make official findings on the basis of V.K.’s expert opinion.”

16.  The article further mentioned that independent experts had found it impossible to scientifically establish the crew members’ exact time of death. V.K.’s findings were not scientifically based, and his military rank gave reason to believe that he was biased.

C.  Defamation proceedings

17.  V.K. brought defamation claims against the applicants before the Basmannyy District Court of Moscow (“the District Court”). He sought a retraction of the following four statements that, in his view, had tarnished his honour, dignity and business reputation:

[1]  “[The expert] pursued a specific aim: to prove that twenty-three crew members in the ninth compartment had died no later than eight hours after the explosion in the Kursk.”

[2]  “This is the aim pursued by V.K. in his expert examination: to help the naval officers in charge of the rescue operation avoid criminal responsibility.”

[3]  “V.K. uses bizarre wording: ‘Died no later than four and a half to eight hours after the explosionin the Kursk’.”

[4]  “What V.K. did is called distortion of the facts.”

18.  V.K. also sought compensation for non‑pecuniary damage and legal costs.

19.  On 6 November 2003 the District Court dismissed the claim in full. It found that the first impugned statement was a true statement of fact. It was undisputed that V.K. had performed a medical expert examination and had found that the submarine crew had died within four and a half to eight hours of the explosion of the submarine. The remaining statements about the aims pursued by V.K. and the alleged distortion of the facts were the second applicant’s opinions based on a sufficient factual basis. They did not contain any allegations of violations of laws or moral principles by V.K. Therefore, they were not damaging to his honour, dignity or business reputation.

20.  On 14 May 2004 the Moscow City Court (“the City Court”) quashed the judgment on appeal. It found that the District Court had erred in finding that the statements published by the applicants did not amount to an allegation of a violation of laws by V.K. As an expert in a criminal investigation, he had been bound by the rules of conduct established for experts by the Criminal Procedure Code. Allegations regarding an expert having improper aims and distorting the facts amounted to an accusation regarding him or her giving a biased expert opinion in violation of those rules. Moreover, in the City Court’s view, a journalist could not claim exemption from liability for defamation on the grounds that he or she was expressing an opinion if that opinion was damaging to a third party’s honour or dignity. The case was referred to the District Court for re‑examination.

21.  On 6 December 2004 the District Court granted V.K.’s claims in part. Referring to Resolution no. 11 of the Plenary Supreme Court (see paragraph 30 below), it emphasised that in a defamation case the only thing that a claimant had to prove was the fact that there had been dissemination of an impugned statement by a respondent. It also emphasised that the burden of proof as regards the truthfulness of a disseminated statement lay with the respondent. The District Court found that the impugned statements – namely the allegations that V.K. had performed an expert examination with a definite aim in mind and had distorted the facts in order to achieve that aim – amounted to an accusation of perjury, an offence under Article 307 of the Criminal Code, and an accusation that there had been serious breaches of the Criminal Procedure Code. In so far as relevant, the District Court’s judgment read as follows:

“In the court’s opinion, the analysis of the impugned statements reveals that they contain allegations that V.K. performed an expert examination with the intention of receiving a predetermined result, that is, he was biased and had a personal interest in the proceedings. The same statements affirm that, in breach of the provisions of the Criminal Procedure Code, V.K. did not withdraw from the case. Accordingly, the contested statements contain allegations of breaches of laws by V.K. ... and tarnish his honour, dignity and business reputation.

The respondents’ argument that the impugned statements were a permissible expression of opinion by a journalist cannot be accepted by the court ... for the following reasons. ...

Freedom of expression guaranteed by the Constitution of the Russian Federation may not be used as an instrument for an attack on the honour and dignity of other citizens.

Therefore, a journalist could not claim exemption from liability for defamation on the grounds that he or she was expressing an opinion if that opinion was damaging to the interests protected by the Constitution of the Russian Federation and the Civil Code of the Russian Federation, namely honour, dignity and business reputation.

The respondents’ argument – that the material from the criminal case file revealed many breaches of law which had taken place during the expert examination with the participation of V.K. – was not confirmed during the hearing. The documents from the criminal case file submitted by the respondents do not contain any direct reference to unlawful acts committed by V.K. during the expert examination. A civil court does not have competence to review judicial or other decisions taken in the framework of criminal proceedings. ...

The evidence submitted by the respondents does not prove the truthfulness of the disseminated statements about the claimant.”

22.  The District Court ordered the applicant company to pay V.K. 50,000 Russian roubles (RUB – approximately 1,350 euros[[4]](#footnote-4) (EUR)) and the second applicant to pay him RUB 5,000 (approximately EUR 135). As regards court fees, the applicant company was ordered to pay RUB 9, and the second applicant was ordered to pay RUB 10. The District Court also ordered the applicant company to publish a retraction.

23.  The applicant company appealed, complaining in particular of a violation of its right to freedom of expression guaranteed by Article 10 of the Convention and Article 29 of the Russian Constitution. It argued that the article contained the journalist’s opinions and value judgments on a matter of public interest, and they had a sufficiently accurate and reliable factual basis and were not susceptible of proof.

24.  On 19 July 2005 the City Court upheld the judgment on appeal, endorsing the District Court’s reasoning. It did not mention Resolution no. 3 of the Plenary Supreme Court (see paragraph 31 below). In so far as relevant, the appeal judgment read as follows:

“The respondents have not proved that the disseminated statements corresponded to reality. ...

In the statement of appeal, the respondent [company] claims that the journalist expressed her opinion, which was based on the criminal case material, and that civil law does not hold a journalist liable for the expression of a subjective opinion. This argument is analogous to the one already assessed by the first-instance court, and the [appeals] panel endorses that assessment.

Moreover, the impugned statements contain statements of fact, not the journalist’s subjective opinion. ...”

D.  Enforcement proceedings

25.  On 15 August 2005 the District Court issued writs of execution against the applicants in V.K.’s favour.

26.  On 23 March 2006 the applicant company transferred to the bailiffs’ bank account RUB 50,009 to be paid to V.K.

27.  It is not clear whether the second applicant paid the amount which the District Court ordered her to pay to V.K.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

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

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

30.  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). The dissemination of statements was understood to mean the publication or broadcasting of statements (section 2). The burden of proof was on the defendant to show that the disseminated statements were true and accurate (section 7).

31.  Resolution no. 3 of the Plenary Supreme Court of 24 February 2005 repealed Resolution no. 11. It defines “untruthful statements” as allegations regarding facts or events which have not actually taken place by the time the statements are disseminated. Statements contained in court decisions, decisions by investigating bodies, and other official documents amenable to appeal cannot be considered untruthful. Statements alleging that a person has breached the law, committed a dishonest act, behaved unethically or broken the rules of business etiquette tarnish that person’s honour, dignity and business reputation (section 7). Resolution no. 3 requires courts hearing defamation claims to distinguish between statements of fact, which can be checked for truthfulness, and value judgments, opinions and convictions, which are not actionable under Article 152 of the Civil Code since they are an expression of a defendant’s subjective opinion and views and cannot be checked for truthfulness (section 9).

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32.  The applicants complained that the judgments of the domestic courts had unduly restricted their right to freedom of expression guaranteed by Article 10 of the Convention, which reads 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

(a)  Observations of 15 September 2009

33.  The Government accepted that there had been an interference with the applicants’ right to freedom of expression. However, they insisted that the interference in question had been lawful, necessary in a democratic society and proportionate to the legitimate aim of protecting V.K.’s reputation.

34.  The impugned statements had suggested that V.K. had been biased and had sought to obtain a specific result when performing the expert examination, and that he had failed to withdraw from the Kursk investigation, in breach of the Criminal Procedure Code. Accordingly, they had tarnished V.K.’s reputation and, consequently, the good name of the whole command of the Russian Navy.

35.  The domestic courts had meticulously analysed all the evidence in the case file. The allegations regarding numerous breaches of law in the course of the expert examination performed by V.K. had been unfounded. The material from the Kursk investigation presented by the applicants had not directly pointed at the unlawfulness of V.K.’s actions in the course of the expert examination.

36.  The domestic courts had drawn a distinction between statements of fact and value judgments. They had correctly regarded the impugned statements as “a personal opinion of the journalist” that had not been “confirmed by evidence collected in the case” and had thus lacked a sufficient factual basis.

37.  The Government further argued that there had been a “pressing social need” for the interference, as the impugned statements had attracted a great deal of public interest at the time they had been published. Criticism of the investigation into the Kursk catastrophe and suggestions that the State authorities had allegedly attempted to conceal the facts surrounding it had, in the Government’s view, engendered distrust in the authorities. Therefore, to an extent, the impugned statements had touched upon matters of State security in the field of information.

38.  The second applicant could have expressed her opinion on the matter of public interest without resorting to unfounded accusations against V.K.

39.  The sanctions imposed by the domestic courts had not been “serious” and had been compatible with the proportionality principle. The retraction order had been necessary to ensure the balance between V.K.’s right to reputation and the applicants’ freedom of expression.

40.  The allegations that V.K. had been directly or indirectly biased as an expert, in breach of the impartiality requirement of the Criminal Procedure Code, had been proved unfounded by the domestic courts. There had been no domestic judgment condemning V.K.’s professional activities. Therefore, the second applicant had disseminated untruthful information that had tarnished a civil servant’s reputation. Civil servants deserved protection from offensive, abusive and defamatory statements. An allegation that a civil servant had breached the Criminal Procedure Code should be considered an insult and “excluded from the sphere of protection under Article 10 of the Convention.”

(b)  Additional observations of 22 December 2009

41.  In their additional observations, the Government submitted that the impugned article had contained statements of fact, as confirmed by the second applicant, who had claimed that she had used material from other expert examinations when writing it.

42.  The second applicant had not shown any restraint when expressing her opinions, as the article had contained insulting remarks regarding the chief forensic expert of the Russian Ministry of Defence.

43.  The City Court had correctly established that the impugned article had contained statements of fact, not value judgments, and thus it had assessed the impugned statements in compliance with the Court’s jurisprudence. Moreover, it was for the national authorities to assess whether there had been a “pressing social need” for an interference.

44.  Lastly, the Government emphasised that the applicants had failed to prove the truthfulness of the impugned statements before the domestic courts. The findings in V.K.’s expert report had been confirmed by the judgments of the District Court of 6 December 2004 and the City Court of 19 July 2005. Accordingly, in the Government’s view, the Court could not act as a “fourth-instance tribunal” and reassess the domestic courts’ findings.

2.  The applicants

45.  The applicants maintained their complaint. They emphasised that the interference had concerned both of them and agreed with the Government’s assessment that it had been lawful and had pursued a legitimate aim of protecting the reputation of others. However, they strongly disagreed with the Government’s position that there had been a “pressing social need” for the interference in the interests of State security in the field of information.

46.  The second applicant’s statements regarding V.K. “distorting the facts” and pursuing “the aim of helping the naval officers in charge of the rescue operation avoid criminal responsibility” had had a sufficient factual basis. The material supporting the statements had included, in particular: the decision of the Chief Military Prosecutor’s Office of 22 July 2002, contradictory forensic expert examination reports (older reports stating that it was impossible to establish the crew members’ time of death, and one report signed by a group of experts, including V.K., stating that the crew members had “died no later than four and a half to eight hours after the second seismic event”), and reports by third party experts stating that it was impossible to establish the crew members’ exact time of death. The standard of proof to be observed by the second applicant, as a journalist, had been much lower than that used in a criminal court. She had expressed her views in an inoffensive manner, with a view to promoting the ongoing debate regarding the Kursk catastrophe.

47.  The domestic courts had failed to distinguish between statements of fact and value judgments, and had expressly stated “[f]reedom of expression may not be invoked as a justification for an attack on the dignity or good name of others”. Also, they had failed to establish convincingly the existence of a “pressing social need” to protect V.K.’s reputation at the cost of restricting the applicants’ right to freedom of expression.

48.  The applicants concluded by stating that the impugned article had represented fair comment on a matter of public interest, and had not amounted to a gratuitous attack on V.K.’s reputation.

B.  The Court’s assessment

1.  Admissibility

49.  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

50.  The Court notes that it is common ground between the parties that the District Court’s judgment of 6 December 2004, as upheld by the City Court on 19 July 2005 (see paragraphs 21 and 24 above), constituted an interference with the applicants’ 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. It remains to be examined whether the interference was “necessary in a democratic society”; this requires the Court to ascertain whether it was proportionate to the legitimate aim pursued and whether the grounds given by the domestic courts were relevant and sufficient (see *Morice v. France* ([GC], no. 29369/10, § 144, ECHR 2015). The Court further notes that the interference must be seen in the context of the essential role of a free press in ensuring the proper functioning of a democratic society (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 62, ECHR 2007‑IV).

51.  The Court will examine the issue of whether the interference was “necessary in a democratic society” in the light of the relevant principles developed in its case-law that were summarised, in particular, in *Novaya Gazeta and Milashina v. Russia* (no. 45083/06, §§ 55-57, 3 October 2017).

52.  The Court reiterates that, when analysing an interference with the right to freedom of expression, it must, *inter alia*, determine whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts)).

53.  The Court has already found a violation of Article 10 of the Convention in a number of cases against Russia owing to the domestic courts’ failure to apply standards in conformity with the standards of its case-law concerning freedom of the press (see, among others, *OOO Ivpress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; and *Cheltsova v. Russia*, no. 44294/06, § 100, 13 June 2017). It now has to satisfy itself as to whether the relevant Convention standards were applied in the proceedings against the applicants.

54.  The District and City Courts limited themselves to finding that the impugned statements had tarnished V.K.’s honour, dignity and business reputation, and that the applicants had not proved their truthfulness. They did not take account of: the applicants’ respective positions as a newspaper publisher and a journalist, and the presence or absence of good faith on their part; the position of the claimant as a civil servant; the aim pursued by the applicants in publishing the article; whether the impugned article had addressed a matter of public interest or general concern; or the relevance of information regarding the alleged deficiencies in the investigation into the Kursk catastrophe (see, *mutatis mutandis*, *Kunitsyna v. Russia*, no. 9406/05, § 46, 13 December 2016). By omitting any analysis of such elements, the domestic courts failed to pay heed to the essential function that the press fulfils in a democratic society.

55.  Nor did the domestic courts draw a clear distinction between statements of fact and value judgments. In this connection, the Court points out that Russian law on defamation, as it stood on 6 December 2004 when the District Court delivered its judgment, made no distinction between value judgments and statements of fact, as it referred uniformly to “statements” (*«сведения»*) (see *Grinberg v. Russia*, no. 23472/03, § 29, 21 July 2005). However, by 19 July 2005, when the City Court examined the defamation case on appeal, Resolution no. 3 (see paragraph 31 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; it endorsed the District Court’s reasoning based on Resolution no. 11 and emphasised that the applicants had not proved the truthfulness of the impugned statements (see paragraph 24 above). The Court has repeatedly pointed to the deficiency in Russian law on defamation whereby it refers uniformly to “statements” and posits the assumption – as the present case illustrates – that any such “statement” is amenable to proof in civil proceedings (see, with further references, *OOO Izdatelskiy Tsentr Kvartirnyy Ryad*, cited above, § 44).

56.  As to the need to perform a balancing exercise between V.K.’s right to reputation and a journalist’s right to freedom of expression, the Court notes that the District Court expressed a view, later endorsed by the City Court, that “a journalist could not claim exemption from liability for defamation on the grounds that he or she was expressing an opinion if that opinion was damaging to ... honour, dignity and professional reputation” (see paragraph 21 above). Such reasoning appears to be based on the assumption that interests relating to the protection of “the honour, dignity and business reputation” of others prevail over freedom of expression in all circumstances. By failing to weigh the two competing interests against each other, the domestic courts failed to perform the requisite balancing exercise.

57.  The above elements lead the Court to conclude that the reasons that the domestic courts relied upon to justify the interference with the applicants’ right to freedom of expression were not “relevant and sufficient”. The Court is mindful of the fundamentally subsidiary role of the Convention system (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). Indeed, if the balancing exercise had been carried out by the national authorities in conformity with the criteria laid down in the Court’s case-law, the Court would require strong reasons to substitute its view for theirs (see *Perinçek*, cited above, § 198). However, in the absence of such a balancing exercise at national level, it is not incumbent on the Court to perform a full proportionality analysis. Faced with the domestic courts’ failure to provide relevant and sufficient reasons to justify the interference in question, the Court finds that they cannot be said to have “applied standards which were in conformity with the principles embodied in Article 10 of the Convention” or to have “based themselves on an acceptable assessment of the relevant facts” (see, with further references, *Terentyev*, cited above, § 24). The Court concludes that the interference with the applicants’ right to freedom of expression was not “necessary in a democratic society”.

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

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

59.  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

60.  The applicant company claimed 50,009 Russian roubles (RUB – approximately 1,160 euros (EUR)[[5]](#footnote-5)), the amount paid under the judgment of 6 December 2004, in respect of pecuniary damage. The second applicant claimed RUB 5,000 (approximately EUR 116) under the same head.

61.  The applicant company and the second applicant further claimed EUR 5,000 and EUR 10,000 respectively, in respect of non-pecuniary damage.

62.  The Government submitted that the sums claimed in respect of pecuniary damage had been awarded to V.K. by the domestic courts as fair compensation for the non-pecuniary damage he had sustained, and that no award should be made to the applicants under the head of pecuniary damage. They further submitted that, in the absence of a violation of Article 10 of the Convention, no award in respect of non-pecuniary damage should be made.

63.  The Court observes that the applicant company submitted evidence to confirm the payment of RUB 50,009 in execution of the District Court’s judgment of 6 December 2004, an amount covering the award to V.K. and the court fees. However, no evidence has been submitted to demonstrate that the second applicant paid RUB 5,000 to V.K. Accordingly, the Court awards the applicant company EUR 1,160 in respect of pecuniary damage and rejects the second applicant’s claim under this head.

64.  Furthermore, making its assessment on an equitable basis, in respect of non‑pecuniary damage, the Court considers it appropriate to award EUR 3,250 to the applicant company and EUR 6,500 to the second applicant.

B.  Costs and expenses

65.  In respect of the costs and expenses incurred before the Court, the applicant company also claimed RUB 2,410 (approximately EUR 56[[6]](#footnote-6)) for translation fees. It enclosed a certificate of payment in support of the claim.

66.  The Government commented that the applicants had provided only the certificate of payment for the translation of documents and no copy of a contract for translation services. In their view, this was insufficient.

67.  Regard being had to the documents in its possession and to its case‑law, the Court considers it reasonable to award the sum of EUR 56 for the costs and expenses incurred in the proceedings before the Court.

C.  Default interest

68.  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 applicants, within three months, the following amounts,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 1,160 (one thousand one hundred and sixty euros) to the applicant company, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii)  EUR 3,250 (three thousand two hundred and fifty euros) to the applicant company, and EUR 6,500 (six thousand five hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii)  EUR 56 (fifty-six euros) to the applicant company, plus any tax that may be chargeable to it, 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 applicants’ claim for just satisfaction.

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

 Fatoş Aracı Paulo Pinto de Albuquerque
 Deputy Registrar President

1. .  Capitals in the original [↑](#footnote-ref-1)
2. .  Bold in the original [↑](#footnote-ref-2)
3. .  Bold in the original [↑](#footnote-ref-3)
4. .  In this paragraph, the amounts are calculated at the conversion rate applicable on 6 December 2004. [↑](#footnote-ref-4)
5. .  In this paragraph, the amounts are calculated at the conversion rate applicable on 11 November 2009, the date of submission of the just satisfaction claims. [↑](#footnote-ref-5)
6. .  The amount is calculated at the conversion rate applicable on 11 November 2009. [↑](#footnote-ref-6)