THIRD SECTION

CASE OF PARFENTYEV v. RUSSIA

(Application no. 44376/09)

JUDGMENT

STRASBOURG

3 November 2020

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

In the case of Parfentyev v. Russia,

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

 Georgios A. Serghides, *President,* Georges Ravarani, María Elósegui, *judges,*and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 44376/09) 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 Andrey Gennadyevich Parfentyev (“the applicant”), on 26 November 2008;

the decision to give notice to the Russian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 13 October 2020,

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

INTRODUCTION

1.  The applicant complained that the publication of a newspaper article disclosing his personal information, accompanied by a photograph of him, and the prosecutor’s statement in relation to the pending criminal proceedings against him had been in breach of his rights under Articles 6 § 2 and 8 of the Convention.

1. THE FACTS

2.  The applicant was born in 1968 and lives in Chelyabinsk Region. The applicant, who had been granted legal aid, was represented by Mr E. Markov, a lawyer admitted to practise in Ukraine.

3.  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.

4.  The facts of the case, as submitted by the parties, may be summarised as follows.

* 1. Criminal proceedings against the applicant and a newspaper article

5.  At the material time the applicant was the head of the local inspectorate for juvenile affaires.

6.  In April 2005 he was arrested on suspicion of sexual assault of a minor.

7.  On 18 May 2005 a local newspaper published an article “*Major’s shameful passion. Police officer abused underage offenders.*”, which was accompanied with the applicant’s photograph and read as follows:

“Andrey Parfentyev, the head of the inspectorate for juvenile affairs of the Sosnovskiy district in Chelyabinsk Region was well-respected by his fellow colleagues and superiors ...

The well-appreciated major molested underage hooligans in his office. He had no wife and no children of his own, and was 37 years of age [at the time]. He lived together with his mother and brother. The latter has had no problems with his private life.

Andrey was jealous of his brother. He did try to have an affair but, despite his rank and status, ladies would not maintain a relationship with him ...

The major is now in detention. The investigation will have to clarify how many souls he ‘saved’ with his advice. The police have so far received one complaint from the parents of one minor ... Parfentyev has plead not guilty and asserted that the boys made wrongful accusations against him. The district prosecutor thinks differently:

*‘Numerous schoolboys who “visited” the major’s office are reluctant to talk about the loving officer. The children feel simply embarrassed to describe the sex games in detail to the investigator or even to their parents. Parfentyev has been charged with sexual abuse of minors and can be punished with up to twelve years’ imprisonment.’*”

8.  In September 2005 the criminal case against the applicant was referred to the Sosnovskiy District Court of Chelyabinsk Region (“the District Court”) for trial.

9.  On 28 April 2006 the District Court found the applicant guilty of several counts of sexual abuse of minors, who had not reached the age of 14 years old, which had been committed by taking advantage of the helplessness of the victims, and sentenced him to nine years’ imprisonment.

10.  On 11 August 2006 the Chelyabinsk Regional Court upheld the judgment.

* 1. Defamation proceedings

11.  In March 2008 the applicant brought defamation proceedings against the publisher of the local newspaper. He submitted that the article had contained untrue information about him, which had damaged his honour, dignity and reputation. In that article he had been *de facto* found guilty of a criminal offence prior to his conviction by a court. The publisher had also breached his right to private and family life by publishing a photograph from his private album and disclosing information about his family and private life.

12.  On 22 May 2008 the Tsentralnyy District Court of Chelyabinsk rejected his claims. The court held as follows:

“... It is apparent from the claimant’s [the applicant’s] statement of claim that he has been convicted of the impugned criminal offences and he is serving a prison term ...

Having analysed the circumstances of the case and legal norms, the court considers that the mass media’s information about the criminal offence committed by the claimant does not amount to an interference with his private life or a violation of the presumption of innocence. The circumstances of his life, which relate to the offence, do not fall within the scope of private life. The above information is an exercise of the principle of openness of proceedings, protected by Article 10 of the Convention ...

By publishing the disputed article the newspaper provided press coverage of a public event, exercising therefore its right to freedom of mass media. It did not breach the claimant’s constitutional right to respect for private and family life ...

The defendant’s actions were aimed at calling the public’s attention to the functioning of justice. They were also a means of control over the activities of the investigating authorities and of the courts ...”

13.  On 19 August 2008 the Chelyabinsk Regional Court upheld the judgment. It held as follows:

“Article 152 of the Civil Code provides that a citizen can seek refutation of statements, which tarnish his or her honour ... The relevant circumstances include the fact of dissemination of the information relating to the claimant, its tarnishing character and that it does not correspond to reality [*не соответствует действительности*] ... The absence of one of the above elements entails a rejection of the claim ... The court rightly concluded that the information in “Major’s shameful passion” corresponded to reality, did not tarnish the claimant’s honour and reputation and did not violate his rights ...

Thus, the publication of the photograph and information about the applicant’s family does not fall under the sphere of private or family life and does not breach the inviolability of private life, as protected by Article 23 of the Constitution...

Moreover, in a judgment of 28 April 2006 the Sosnovskiy District Court of Chelyabinsk Region found the applicant guilty of sexual abuse of minors who had not reached fourteen years of age.

Therefore, the information published in the article corresponded to the reality and did not damage the claimant’s honour, dignity and reputation...

It is impossible to accept the claimant’s [the applicant’s] argument whereby the article contains confidential information about him. His name, place of work, official position, private relationships with his relatives do not belong to such information...

The publication in mass media of the information about the charges against the claimant [the applicant], as well as of some information from his biography and his photograph do not constitute an interference with his private life... ”

* 1. The applicant’s correspondence with the Court

14.  Between 2006 and 2015 the applicant served his sentence in two prisons. During his imprisonment he sent five letters to the Court: his first letter of 26 November 2008, his application form of 11 February 2009 and his letters of 16 June and 10 September 2009 and 12 January 2012.

15.  All those letters arrived at the Court accompanied by cover letters drawn up by the staff of prisons in which he was serving his sentence. The cover letters indicated the information on the applicant’s conviction, the number of pages submitted by the applicant for dispatch and the nature of the correspondence (for instance, complaint, application form, additional submissions). All those letters bore inscriptions made by prison authorities indicating the registration number and the date of the registration.

16.  The cover letter to the applicant’s letter of 12 January 2012 indicated that the applicant had been acquainted with the procedure for sending of the complaints and submissions.

17.  On 1 August 2015 the applicant appointed Mr E. Markov to represent him in the proceedings before the Court and all further correspondence in the case was sent to the Court by the applicant’s representative.

1. RELEVANT LEGAL FRAMEWORK

18.  Article 91 § 2 of the Code of Execution of Sentences of 9 January 1997, as amended on 8 December 2003, 30 December 2012 and 2 November 2013, provides that detainees’ correspondence is subject to censorship by the prison authorities. Article 15 § 4 provides that detainees’ complaints submitted to intergovernmental bodies of protection of human rights and freedoms and replies to those complaints are not subject to censorship.

1. THE LAW
	1. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

19.  The applicant complained that the prosecutor’s statement reproduced in the newspaper article of 18 May 2005 had breached Article 6 § 2 of the Convention, which reads as follows:

“2.  Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

Admissibility

* + - 1. The parties’ submissions

20.  The Government submitted that the applicant had not exhausted the domestic remedies available to him in respect of his complaint. He had not lodged any complaints against the prosecutor regarding the statements which he had allegedly made in respect of him. Nor had he raised any complaints before the courts which had examined the criminal charges against him. Alternatively, the applicant had lodged his complaint outside the six‑month time-limit, which had started to run either on 18 May 2005, when the article had been published, or on 11 August 2006, when the appellate court had upheld the applicant’s criminal conviction.

21.  The Government further submitted that the publishing house was not a representative of the public authorities and the newspaper was not an official news source of the Government. Articles and opinions published in the newspaper were not official statements by the Russian authorities and their content should not be attributable to the State.

22.  The applicant submitted that the newspaper article had referred to the opinion of the prosecutor, who had alleged the applicant’s guilt in the incriminated offence. Therefore, the contents of the publication should be attributable to the State.

* + - 1. The Court’s assessment

23.  The Court does not find it necessary to examine the pleas of inadmissibility raised by the Government concerning the applicant’s failure to exhaust the domestic remedies and comply with the six-month time-limit for lodging his complaint since his complaint is in any event inadmissible for the reasons stated below.

24.  The Court observes that there is nothing in the material in the case file to indicate that the impugned statement constituted a verbatim reproduction of (or an otherwise direct quotation from) any official statement by the prosecutor or any other State authority and that, therefore, the State should be held responsible under Article 6 § 2 of the Convention. Accordingly, the applicant’s complaint is manifestly ill-founded and should be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention (see *Mityanin and Leonov v. Russia*, nos. 11436/06 and 22912/06, § 102, 7 May 2019).

* 1. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25.  The applicant complained that the disclosure in the newspaper article of 18 May 2005 of the information on his private life and publication of a photograph of him had been in breach of his right to respect for his private life guaranteed by Article 8 of the Convention, which reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

* + 1. Admissibility
			1. The parties’ submissions

26.  The Government submitted that there had been no interference by a State authority with the applicant’s right to respect for his private life. If the Court came to the conclusion that there had been such interference due to the publication in the newspaper of a statement which had been allegedly made by the prosecutor, the complaint should be rejected for non‑exhaustion of domestic remedies.

27.  The Government further submitted that in so far as the applicant complained of the way in which the domestic courts had examined his complaints against the publisher, his complaint was manifestly ill-founded.

28.  The applicant submitted that the impugned article had amounted to an interference with his right to respect for his private life.

* + - 1. The Court’s assessment

29.  In so far as the applicant complained of the interference with his right to respect for his private life by State authorities, the Court observes that there is nothing in the material in the case file to indicate that there had been interference by State authorities with the applicant’s right to respect for his private life. Accordingly, the applicant’s complaint is manifestly ill‑founded and should be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

30.  In so far as the applicant complained that the domestic courts had failed to strike a fair balance between his right to respect for his private life and the freedom of expression of the publisher, the Court observes that the impugned article disclosed the applicant’s personal information, including his image in a photograph, which he could legitimately have expected not to have been published without his consent. The Court considers that such content fell within the scope of the applicant’s private life, within the meaning of Article 8 of the Convention (see *Flinkkilä and Others v. Finland*, no. 25576/04, § 75, 6 April 2010). Therefore, the applicant’s complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

* + 1. Merits
			1. The parties’ submissions

31.  The applicant submitted that the domestic courts had failed to strike a fair balance between the competing interests.

32.  The Government submitted that the domestic courts had carefully balanced the applicant’s rights and the public interests involved and concluded that the publication in the mass media of information concerning a crime had not amounted to an interference with the applicant’s right to respect for his private life. Regarding the photograph, the domestic courts held that the applicant had not provided any evidence to confirm that that photograph had been taken from his private archive in breach of his right to respect for his private life.

* + - 1. The Court’s assessment

33.  The Court observes that what is at issue in the present case is not an action by the State but the alleged inadequacy of the protection afforded by the domestic courts to the applicant’s private life. While the essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may also involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundary between the State’s positive and negative obligations under Article 8 does not lend itself to precise definition; the applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the relevant competing interests (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 98-99, ECHR 2012).

34.  Relying on principles which are well-established in the its case-law (see, among other authorities, *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-95, 7 February 2012; *Von Hannover*, cited above, §§ 95-113; and *Bédat v. Switzerland* [GC], no. 56925/08, §§ 48-54, 29 March 2016), the Court will examine the question whether a fair balance has been struck between the applicant’s right to respect for his private life under Article 8 of the Convention and the freedom of expression of the publisher, as guaranteed by Article 10 of the Convention.

35.  Having examined the judgments of the domestic courts delivered at two levels of jurisdiction, the Court observes that the national judicial authorities refused to acknowledge that the publication of the article which contained the applicant’s personal information together with the applicant’s photograph had constituted an interference with his right to respect for his private life. Although the domestic courts took into account the freedom of the expression of the publisher, they failed to balance this right against the applicant’s rights guaranteed by Article 8 of the Convention.

36.  The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 8 of the Convention.

* 1. ALLEGED VIOLATION OF ARTICLES 8 and 34 oF the CONVENTION

37.  The Court, of its own motion, raised the issue of whether the registration by the prison authorities of the applicant’s letters to the Court in the register of outgoing correspondence and sending them together with their own cover letters had amounted to a violation of Articles 8 and 34 of the Convention.

38.  The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), finds it appropriate to examine this complaint under Article 34 of the Convention, which reads as follows:

 “The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

39.  The applicant submitted that the prison authorities had opened and monitored his correspondence with the Court.

40.  The Government submitted that the registration of the applicant’s letters and sending them with cover letters had not amounted to a hindrance to the effective exercise of his right of individual petition.

41.  The Court observes at the outset that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Yefimenko v. Russia*, no. 152/04, § 157, 12 February 2013).

42.  It is of the utmost importance for the effective operation of the system of individual petition, guaranteed by Article 34 of the Convention, that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (see, among others, *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 158-59, ECHR 2012 (extracts).

43.  The Court reiterates the importance of respecting the confidentiality of correspondence between the Court and applicants, since that correspondence may concern allegations against prison authorities or prison officials (see *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001‑III). The opening of letters from the Court or addressed to it undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Klyakhin v. Russia*, no. 46082/99, § 118, 30 November 2004).

44.  In the present case it is not in dispute that the applicant’s letters addressed to the Court bore inscriptions made by the prison staff and were accompanied by cover letters written by prison staff indicating the nature of the applicant’s correspondence. These facts suggest that the applicant’s correspondence with the Court was subject to monitoring by the officers of the detention facility.

45.  The Court observes that pursuant to Article 91 of the Code of Execution of Sentences, correspondence with the Court is privileged and is not subject to censorship (see paragraph 18 above). The applicant’s letters addressed to the Court were therefore monitored in breach of domestic law.

46.  The opening and monitoring of the applicant’s correspondence addressed to the Court therefore amounted to a hindrance to the effective exercise of the applicant’s right of individual petition (see *Yefimenko*, cited above, §§ 164‑65).

47.  The Court therefore considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

* 1. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48.  The Court has examined the other complaints submitted by the applicant. Having regard to all the material in its possession and in so far as these complaints fall within the Court’s competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49.  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

50.  The applicant claimed 10,000 euros (EUR) in respect of non‑pecuniary damage.

51.  The Government submitted that Article 41 of the Convention should be applied in the present case in accordance with the Court’s established case-law.

52.  Making an assessment on an equitable basis, the Court awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

53.  The applicant also claimed EUR 2,500 for the costs and expenses incurred.

54.  The Government did not comment.

55.  Regard being had to the documents in its possession and to its case‑law, to the fact that some complaints have been declared inadmissible and to the fact that legal aid was granted to the applicant, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C. Default interest

56.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the complaint under Article 8 of the Convention concerning the domestic courts’ failure to strike a fair balance between the applicant’s right to respect for his private life and the freedom of expression of the publisher admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
5. *Holds*
	1. that the respondent State is to pay the applicant, 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:
		1. EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
		2. EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
	2. 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;
6. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 3 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Georgios A. Serghides
 Deputy Registrar President