La CEDU sulla libertà di espressione
(CEDU, sez. III, sent. 8 ottobre 2019, ric. n. 29097/08)

La Corte EDU evidenzia come nel caso in esame risulta essere pacifico tra le parti il riconoscimento dell'interferenza dello Stato con il diritto alla libertà di espressione del richiedente.
I giudici di Strasburgo evidenziano come l'interferenza con questo diritto non "era necessaria in uno stato democratico", come sancito dall'articolo 10 della convenzione. Questo perché i tribunali nazionali non hanno prestato attenzione al fatto che le dichiarazioni oggetto della restrizione, non erano frutto del richiedente, ma erano state rilasciate da un'altra persona in un'intervista. Inoltre il richiedente aveva registrato e rappresentato accuratamente le parole del terzo, che non erano prive di una base fattuale, avendo agito dunque, in buona fede per fornire informazioni "affidabili e precise" in conformità con l'etica del giornalismo. Per la Corte, il fatto che i tribunali russi non abbiano fornito "motivi particolarmente forti" per questa interferenza che ha seriamente ostacolato un contributo della stampa ad una discussione su questioni di interesse pubblico, è sufficiente per concludere che sono state applicate norme non conformi ai principi incorporati nell'articolo 10 della convenzione.

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

THIRD SECTION

CASE OF VLADIMIR USHAKOV v. RUSSIA

(Application no. 15122/17)

JUDGMENT
STRASBOURG
18 June 2019

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 Vladimir Ushakov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Vincent A. De Gaetano, *President,*
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,

Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*
Having deliberated in private on 28 May 2019,
Delivers the following judgment, which was adopted on that date:
(palatino linotype, 11, intestazione comprensiva dei nomi del collegio centrata e il resto della sentenza giustificato, interlinea dell'intero file multipla – 1,15, rientri e spaziature "0")

THIRD SECTION

CASE OF NADTOKA v. RUSSIA (No. 2)
(Application no. 29097/08)

JUDGMENT
STRASBOURG
8 October 2019

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 Nadtoka v. Russia (No. 2),
The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Vincent A. De Gaetano, *President,*
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
María Elósegui, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 17 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 29097/08) 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, Ms Yelena Mikhaylovna Nadtoka ("the applicant"), on 16 May 2008.

2. The applicant was represented by Ms G. Arapova, a lawyer practising in Voronezh. 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. The applicant alleged that there had been a disproportionate interference with her right to freedom of expression.

4. On 6 May 2013 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Novocherkassk, the Rostov Region.

6. The applicant is a journalist who, at the material time, was editor-in-chief of *Chastnaya Lavochka* (*Частная Лавочка*), a local newspaper with a circulation of 2,500 distributed in Novocherkassk ("the newspaper").

The publication of 29 March 2007

7. On 29 March 2007 the newspaper published, in its issue no. 12 (434) in the section "Our interviews", an interview conducted by the applicant with N.K., the leader of a Cossacks' movement "Vsevelikoye Voysko Donskoye" (*"Всевеликое Войско Донское"* – "the Great Army of the Don"). The article was headlined "We are not the type of Cossacks who are just all talk and no walk" (*"Мы не те казаки, что занимаются базарами"*).

8. The interview contained several passages criticising A.V., the then mayor of Novocherkassk, and his entourage. In particular, it quoted N.K. as stating:

"...

[N.K.]: – ... We will not forgive the moral suffering and material damage that he [A.V.] has inflicted on the Cossacks and on the entire town. A.V.'s entourage, his family members, have misappropriated numerous real-estate properties in Novocherkassk. The rest of what is left is being sold to people from out of town, including to those belonging to ethic groups native to the North Caucasus.

We prepared a number of documents [for submission] to the Prosecutor General's Office, the Russian President, petitions to mass-media and the Internet [outlets]. Now we have additional information concerning facts of corruption and unlawful actions. On the basis of this information we have prepared the materials and, I think, we will submit them to the Deputy Prosecutor of the Southern Federal Circuit. This petition has been signed by more than 250 persons – all of whom are respected citizens of Novocherkassk.

[The applicant]: – Could you share this information with our newspaper? What kind of information is it?

[N.K.] – Yes. For example, the privatisation of the Consumer Service Centre was carried out with obvious violations [of the law]. Piece by piece the 'Klyuch' agency sold the 'Pobeda' cinema for offices and shops, even though this cinema had been municipal property that had not been put up for auction. The privatisation of the municipal part of the 'Yuzhnaya' hotel was carried out with violations: in our opinion, the auction had been botched on purpose. As a result, the lot was put up for public bidding, which in our town means that no one other than the intended buyer would be able to purchase it. Six hundred square metres of the 'Yuzhnaya' hotel were sold at dumping price and then re-sold for almost ten times more than that. The [municipal] budget lost, in the estimation of specialists, about one million U.S. dollars.

There are numerous breaches [of the law] concerning plots of land. The land next to houses nos. 97-101 Baklanovskiy Lane was allocated, without an auction, for the construction of a commercial

centre commissioned, through intermediaries, by a high-ranking representative of the Novocherkassk town administration. The preparation of the land [for construction], the re-run of the utility lines were done at the town's expense. The misuse of the budget funds is obvious.

Also, two plots of land designated for construction in the town centre (Baklanovskiy and Krivopustenko Lanes) were sold at laughable prices and without any bidding ...[1]

...

[The applicant]: – Is that to say that it is obvious that the budget is suffering as a result of such actions on the part of public officials?

[N.K.] – Absolutely right. There is not enough money in the budget. Where does it go? This has to be examined. We are going to write to the control and audit commissions so they come over and check where our taxes go. ..."

Defamation proceedings

9. On 3 April 2007 A.V. brought defamation proceedings against the applicant, the newspaper's editorial board and N.K. He demanded that certain statements contained in the interview of 29 March 2007 (underlined in paragraph 8 above) be recognised as untruthful and tarnishing his honour and reputation, and that each respondent pay him 100,000 Russian roubles (RUB) (approximately 2,880 euros (EUR)) in compensation for non-pecuniary damage. In addition, he demanded that the newspaper publish a retraction of the impugned statements.

10. On 15 August 2007 the Novocherkassk Town Court ("the Town Court") granted A.V.'s claims in part. It held, in particular:

"The court undoubtedly agrees with the respondents' assertions concerning the role of the press in a democratic society, its duty to inform the readers on all matters of public interest, freedom of expression and journalistic freedom.

However, when exercising such freedom the press may not overstep the set boundaries regarding respect for the reputation and rights of others. ..."

11. The Town Court found that the impugned statement "[w]e will not forgive the moral suffering and material damage that he [A.V.] has inflicted on the Cossacks and on the entire town" amounted to a value judgment and thus was not actionable. It further found that the following statement had not been directly connected to the claimant and refused to grant the claims for its retraction:

"... the privatisation of the Consumer Service Centre was carried out with obvious violations [of the law]. Piece by piece the 'Klyuch' agency sold the 'Pobeda' cinema for offices and shops even though this cinema had been municipal property that had not been put up for auction. The privatisation of the municipal part of the 'Yuzhnaya' hotel was carried out with violations: in our opinion, the auction had been botched on purpose. As a result, the lot was put up for public bidding, which in our town means that no one other than the intended buyer would be able to purchase it."

12. The Town Court also found that the statement "[t]he rest of what is left is being sold to people from out of town, including to those belonging to ethic groups native to the North Caucasus" did not tarnish A.V.'s reputation.

13. However, the Town Court considered that the following statements had tarnished the claimant's honour and dignity because they had accused him of committing unlawful acts:

[1] "A.V.'s entourage, his family members, have misappropriated numerous real-estate properties in Novocherkassk"; and

[2] "[t]here are numerous breaches [of the law] concerning plots of land. The land next to houses nos. 97-101 Baklanovskiy Lane was allocated, without an auction, for the construction of a commercial centre commissioned, through intermediaries, by a high-ranking representative of the Novocherkassk town administration. The preparation of the land [for construction], the re-run of the utility lines, were done at the town's expense. The misuse of the budget funds is obvious. Also, two plots of land designated for construction in the town centre (Baklanovskiy and Krivopustenko Lanes) were sold at laughable prices and without any bidding ..."

14. The Town Court rejected the respondents' argument that the two statements had not concerned A.V. personally. As regards the first statement, it observed that "the claimant identifies himself with his family, these people are close to him, and he is insulted by statements about them" and that "an indication that the mayor's family 'misappropriated numerous real-estate properties' has certain connotations and points to an unlawful method of acquiring real-estate property". As regards the second statement, the Town Court found that allegations of unlawful allocation of plots of land had tarnished A.V.'s honour and reputation because questions of land allocation fell within the competence of mayors. It noted, in particular, the following:

"... The respondents did not furnish the court with evidence confirming the truthfulness of the disseminated information which the court has regarded as tarnishing [the claimant's honour]. ...

The court cannot agree with the respondents' argument that they should be relieved of the burden of proof as regards the truthfulness of the disseminated statements and of liability, because in this case that would create an opportunity to disseminate untruthful tarnishing statements, which is not allowed by law. ...

When deciding on the amount of compensation for non-pecuniary damage, the court takes into account ... that the claimant is a renowned person in the town, that the information concerning him is of great interest to a wide range of people, and that any written statements made publicly and aimed at him may have a considerable impact on his reputation. ..."

15. The Town Court awarded the claimant RUB 5,000 (approximately EUR 144) in respect of non-pecuniary damage, to be paid by the newspaper's editorial board, and RUB 3,000 (approximately EUR 86) to be paid by the applicant and N.K., respectively.

16. The applicant appealed against the judgment to the Rostov Regional Court ("the Regional Court"). She submitted that the Town Court had failed to apply the standards regarding freedom of the press developed by the Court, that the impugned article had covered a matter of public interest, namely, corruption in the Novocherkassk town administration, that the newspaper's editorial board and herself as a journalist had disseminated opinions of a third party, and could

not be held liable for doing so. The applicant also requested that the Regional Court include in the case file a letter from the Novocherkassk town prosecutor's office of 17 October 2007 as evidence to demonstrate that the town administration had breached the law when allocating the plots of land mentioned in the interview (see paragraph 23 below).

17. On 19 November 2007 the Regional Court upheld the District Court's judgment in full. It reasoned that the respondents had not furnished evidence to prove the truthfulness of the statements "regarding misappropriation of real property in Novocherkassk and breaches of the rules on selling plots of land that tarnish the claimant's honour and dignity because they accuse him of having committed unlawful acts." It further observed that "under the law in force, publication of an interview is not listed as grounds for absolving [members of the press] from liability [for defamation]." The Regional Court's judgment further read, in so far as relevant:

"... In the present case, what the newspaper published was not a value judgment but untrue facts regarding the claimant that were presented in an insulting manner and tarnished his honour, dignity and business reputation as a public official ...

... The respondents failed to provide evidence of the unlawfulness of the claimant's actions aimed at embezzlement of State property and misuse of budgetary funds. The appeal panel has dismissed Ms Nadtoka's application to include the letter from the Novocherkassk town prosecutor's office of 17 October 2007 in the case file [because] it does not prove the unlawfulness of the claimant's actions either. ..."

Enforcement proceedings

18. According to the applicant, the newspaper's editorial board and she herself paid the awards due to A.V. in accordance with the judgment of 15 August 2007 at the same time, in autumn 2009. In the applicant's submission, a withdrawal order for RUB 7,000 issued by the Novocherkassk bailiffs service confirmed that the payment of the award had been made by the newspaper's editorial board in accordance with the judgment of 15 August 2007, together with the compensation for non-pecuniary damage awarded to A.V. in two earlier judgments. The applicant herself had paid the award due to A.V. in cash, which was noted in a document issued by the Novocherkassk bailiffs service. The document in question had been lost.

19. According to the Government, A.V. did not submit a writ of execution issued in respect of the applicant on the basis of the judgment of 15 August 2007 to the bailiffs service for enforcement. On 8 September 2009 a bailiff of the Novocherkassk bailiffs service ordered the withdrawal of RUB 7,000 from the bank account of the newspaper's editorial board in enforcement of the two judgments in A.V.'s favour delivered by the Town Court on 3 and 23 June 2004, respectively.

20. The case file before the Court contains a scarcely legible copy of the document of 8 September 2009 issued by the Novocherkassk bailiffs service ordering the withdrawal of RUB 7,000 from the bank account of the newspaper's editorial board. It is not clear from the document which judgment served as a basis for such withdrawal.

Information obtained by the applicant from the prosecutor's office

21. On 4 April 2003 the applicant received a reply to her request for information from the prosecutor's office of the Rostov Region. The letter contained the following information:

"Your collective petition concerning breaches of the law by the Novocherkassk town administration has been examined by the regional prosecutor's office. As a result of our inquiry the following has been established:

On 14 December 2001 ... an auction for the privatisation of non-residential premises in Moskovskaya Street took place; the auction was won by 'Sfera Plus Ltd' owned by the wife and a son-in-law of the mayor of Novocherkassk. ...

... the privatisation of the non-residential premises in Aleksandrovskaya Street was also conducted with breaches. The property was purchased by ... the deputy mayor of Novocherkassk. ...

As a result of the inquiry, the prosecutor's office requested that the mayor of Novocherkassk eliminate the breaches of the federal laws on privatisation. ...

As regards breaches of the law on the use of land committed by the town administration of Novocherkassk, the prosecutor's office of the Rostov Region has already demanded that the administration of Novocherkassk take measures to eliminate them. ..."

22. On 3 April 2007 the applicant received a letter from the Novocherkassk town prosecutor's office, which included the following:

"... In 2006-07 the prosecutor's office conducted an inquiry into compliance with the legislation on ... the distribution of land for construction purposes, its use and construction work. ...

The inquiry established that ... a number of violations of the relevant legislation by officials of the Novocherkassk town administration had taken place during the sale of the land ..., issuance of construction permits and ... the construction work.

In connection with the above, the prosecutor's office demanded that the mayor of Novocherkassk eliminate the breaches. However, no measures have been taken by the administration. ..."

23. On 17 October 2007 the applicant received a letter from the Novocherkassk town prosecutor's office, which included the following information:

"... in 2006 the prosecutor's office conducted an inquiry, as a result of which it was established that ... the construction permit [for construction of the commercial centre in Baklanovskiy Lane] had been issued without the required endorsement of the Ministry of Culture of the Rostov Region ... and without an expert environmental assessment ...

...

Therefore the officials of the Novocherkassk town administration... had allowed for a range of unlawful actions that led to the sale of the land in Krivopustenko Lane at an understated price and resulted in arrears in the town's budget ..."

RELEVANT DOMESTIC LAW AND PRACTICE

24. The relevant domestic law and practice have been summarised in *Novaya Gazeta and Milashina v. Russia* (no. 45083/06, §§ 35-38, 3 October 2017).

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that the judgments of the domestic courts had unduly restricted her 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."

The parties' submissions

The Government

26. The Government contested the applicant's argument. They submitted that "the right to impart information is not unconditional" and could be subject to restrictions, in particular with a view to protecting the reputation of others.

27. The Government acknowledged that there had been an interference with the applicant's right to freedom of expression. They insisted, however, that the interference in question had been lawful, necessary in a democratic society and proportionate to the legitimate aim of protecting A.V.'s reputation.

28. The Town Court had distinguished the statements of fact contained in the contested article from the applicant's value judgments in compliance with the Convention standards and had only found the applicant liable for the statements of fact unsupported by evidence.

29. A.V. as the then mayor of Novocherkassk had been a civil servant and, accordingly, should have enjoyed public confidence in conditions that were free of undue perturbation, and had had a right to be protected from offensive and abusive verbal attacks when on duty. He had been "an important political figure" and the applicant should have acted in good faith in accordance with the tenets of responsible journalism. However, the impugned statements had not been "accurate and reliable" as they had not had an "accurate factual basis".

30. The applicant and the other respondents had failed to prove the truthfulness of the disseminated information, whereas the claimant, on the other hand, had proved that the impugned statements had been disseminated.

31. The domestic courts had awarded a relatively modest amount of compensation to be paid by the applicant. Moreover, A.V. had not initiated enforcement proceedings, and the judgment of 15 August 2007 had remained unenforced for the first three years after its entry into force on 19 November 2007. After the lapse of three years, A.V. had lost the right to demand enforcement of the judgment. Accordingly, the applicant had not incurred any pecuniary losses following the defamation proceedings.

32. The fact that the contested statements had emanated from N.K., not the applicant, had not absolved her as a journalist or the newspaper's editor-in-chief of responsibility.

33. The statements had contained a negative assessment of A.V.'s activities as a public official and comments regarding his family members. Accordingly, the applicant had overstepped the limits of acceptable criticism and thus could not be regarded as a victim of a violation of Article 10 of the Convention. The Government invited the Court to dismiss her complaint as manifestly ill-founded.

The applicant

34. The applicant maintained her complaint. She agreed with the Government that the interference with her right to freedom of expression had been "prescribed by law" and pursued a legitimate aim of protecting the reputation of others. However, in her view, it had not been "necessary in a democratic society" for the following reasons.

35. The Town Court had failed to perform a balancing exercise weighing the interests of protection of A.V.'s reputation against the applicant's journalistic freedom in the context of reporting on a matter of public interest, that is, alleged corruption of the mayor's office. It had failed to take into account A.V.'s position as a mayor, that is, an elected public official accountable before his constituency, the applicant's position as a journalist, the fact that the subject matter of the impugned article had been of great interest to the public, or the fact that the impugned statements had been a part of N.K.'s interview.

36. A.V. had not been named in two of the statements but the domestic courts had nevertheless found that those statements had tarnished his honour and reputation. Those statements had had sufficient factual basis as confirmed by the letter of the prosecutor's office of the Rostov Region of 4 April 2003.

37. The Regional Court had not thoroughly analysed the impugned statements, but had merely stated that the evidence submitted by the respondents had not contained information regarding A.V.'s actions. However, the statements themselves had concerned A.V.'s relatives or had been of an impersonal nature.

38. The applicant had paid A.V. the amount awarded by the Town Court on an unspecified date in autumn 2009.

39. The applicant concluded that the impugned article had covered an important matter of public interest and had had a sufficient factual basis, and that both N.K., who had given the interview, and she herself in writing it down, had acted in good faith. She invited the Court to find a violation of Article 10 of the Convention.

The Court's assessment

Admissibility

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

Merits

41. The Court notes that it is common ground between the parties that the Town Court's judgment of 15 August 2007, as upheld by the Regional Court on 19 November 2007 (see paragraphs 10 and 17 above), constituted an interference with the applicant'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. 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).

42. 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* (cited above, §§ 55-57).

43. The Court further reiterates that, when examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", it may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see, with further references, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 84, 7 February 2012). Furthermore, when analysing an interference with the right to freedom of expression, the Court 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)).

44. 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 that the relevant Convention standards were applied in the proceedings against the applicant.

45. The Court welcomes the fact that the Town Court drew a distinction between a statement of fact and a value judgment in respect of one of the impugned statements. It also dismissed the claims regarding a statement that, in its view, did not concern A.V. personally, and a statement that it perceived as neutral (see paragraphs 11 and 12 above).

46. Nevertheless, while acknowledging the importance of freedom of the press (see paragraph 10 above), the Town Court emphasised that A.V. had been "a renowned person in the town". By virtue of his position as a mayor, the claimant was accorded a higher degree of protection of his reputation. The Town Court regarded statements concerning A.V.'s family and impersonal statements concerning the allocation of plots of land in Novocherkassk as grounds for successful defamation claims because the claimant "identified himself with his family" and held the office of mayor (see paragraph 14 above). It appears to have acted on the assumption that the claimant's interest in protecting his reputation prevailed over the respondents' interest in disseminating the impugned information. Thus it did not strike a fair balance when protecting the two competing values guaranteed by the Convention (see, among many other authorities, *Bédat v. Switzerland* [GC], no. 56925/08, § 74, 29 March 2016, and *Nadtoka v. Russia*, no. 38010/05, § 47, 31 May 2016). Nor did the Town Court acknowledge that the limits of acceptable criticism were wider as regards a politician as such than as regards a private individual (see, with further references, *Lindon, Otchakovsky-Laurens and July*, cited above, § 46) or consider the subject matter of the impugned article, namely allegations of corruption of the mayor's office, even though there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see, with further references, *Fedchenko v. Russia (no. 3)*, no. 7972/09, § 64, 2 October 2018).

47. The Regional Court endorsed the Town Court's approach (see paragraph 17 above). In doing so, it refused to admit to the case file the letter of 17 October 2007, which the applicant had sought to use as evidence in substantiation of the impugned statements (see paragraph 23 above).

48. The Court finds it particularly salient that the domestic courts did not consider whether the applicant as a journalist had acted in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015). It observes in this connection that none of the impugned statements was an expression of the applicant's own thoughts, but part of N.K.'s interview. The Court has already had occasion to state that punishing a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be contemplated unless there are particularly strong reasons for doing so (see, with further references, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 142, ECHR 2015 (extracts)). A general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas (see *Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III). However, the domestic courts dealing with A.V.'s defamation claims paid no heed to the fact that the statements had not emanated from the applicant but had been clearly identified as someone else's (see *Godlevskiy v. Russia*, no. 14888/03, § 45, 23 October 2008).

49. The Town Court and the Regional Court both failed to acknowledge that the applicant had recorded and accurately represented the words of a third party that had not been devoid of a factual basis, having acted in good faith to provide "reliable and precise" information in accordance with the ethics of journalism. In the Court's view, the fact that the domestic courts did not provide "particularly strong reasons" for an interference that seriously hampered a contribution by the press to a discussion of matters of public interest (see *Couderc and Hachette*

Filipacchi Associés, cited above, § 142) is sufficient to conclude that they examined A.V.'s defamation claims against the applicant by applying standards which were not in conformity with the principles embodied in Article 10 of the Convention (see *Cheltsova*, cited above, § 92).

50. 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 applicant's right to freedom of expression was not "necessary in a democratic society".

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

OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Lastly, the applicant complained under Article 6 of the Convention of the overall unfairness of the defamation proceedings and under Article 13 of the Convention of the lack of effective domestic remedies against the alleged violations.

53. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that there is no 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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."

Damage

55. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government considered this claim ill-founded in the absence of a violation of Article 10 of the Convention. They suggested that, should the Court find a violation of this provision, a lower amount or a finding of a violation would suffice as just satisfaction.

57. The Court finds it appropriate to award the applicant the amount claimed in respect of non-pecuniary damage.

Costs and expenses

58. The applicant claimed EUR 1,325 in legal fees for the costs and expenses incurred before the Court. She submitted an itemised schedule of her representative's fees at an hourly rate of EUR 50.

59. In addition, the applicant claimed 3,912.45 Russian roubles (RUB) in compensation for the amount paid, in accordance with the judgment of 15 August 2007, to A.V. in September 2009 (RUB 3,000) adjusted for inflation in November 2013.

60. The Government insisted that the applicant had not made any payment in execution of the judgment of 15 August 2007 and thus could not claim compensation of RUB 3,000 (or RUB 3,912.45). As for the legal fees, they regarded the amount claimed as excessive.

61. 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 850 for the proceedings before the Court. However, in the absence of any proof of payment of RUB 3,000 by the applicant to A.V. in execution of the judgment of 15 August 2007 (see paragraphs 18-19 above), the Court dismisses the remainder of the applicant's claims submitted under the head of costs and expenses.

Default interest

62. 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,

Declares the complaint concerning applicant's right to freedom of expression admissible and the remainder of the application inadmissible;

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

Holds

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

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Vincent A. De Gaetano
RegistrarPresident

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Elósegui and Serghides is annexed to this judgment.

V.D.G.
J.S.P.

JOINT CONCURRING OPINION OF JUDGES ELÓSEGUI AND SERGHIDES

1. In brief, the facts of the case were as follows: the applicant in the present case was a journalist and the editor-in-chief of a local newspaper. She was found liable in civil proceedings for defamation; those proceedings were instituted by the mayor of a town following the publication in that newspaper of an interview with a third person. The domestic authorities did not take into account the fact that the impugned statements had emanated from the third person, nor did they balance the interests of protecting the mayor's reputation against the freedom of the press. The applicant complained, *inter alia*, that the judgments of the domestic courts had unduly restricted her right to freedom of expression under Article 10 of the Convention. The Court found that there had been a violation of Article 10 and awarded the applicant, in addition to her costs, the sum of 3,000 euros (EUR) in respect of non-pecuniary damage.

2. We are in agreement with the conclusion of the judgment, namely that there has been a violation of Article 10 of the Convention. The need for our concurring opinion will become apparent from what follows.

3. Both the principle of subsidiarity and the principle of proportionality are fundamental Convention principles (see, *inter alia*, point 11 of the Brighton Declaration of 2012, points 4, 10, 13, 28, 31 of the Copenhagen Declaration of 2012 and the Brussels Declaration of 2015 (*in passim*)), which complement each other, and the Court must apply them both without subordinating the one to the other. This can be seen also from the following passage, from § 196 (iii) of *Perinçek v. Switzerland*, [GC], 27510/08, 15 October 2015, ECHR 2015:

"The Court's task is not to take the place of the competent national authorities but to review the decisions that they made under Article 10. This does not mean that the Court's supervision is limited to ascertaining whether these authorities exercised their discretion reasonably, carefully and in good faith. The Court must rather examine the interference 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 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."

4. It is stated in paragraph 50 of the present judgment that "it is not incumbent on the Court to perform *a full* proportionality analysis" (emphasis added) in the absence of a balancing test carried out at national level in conformity with the criteria laid down in the Court's case-law.

5. It appears that the phrase "full proportionality analysis" has never before been used by the Court in its case-law. The adjective "full" used in paragraph 50 of the present judgment is the opposite of the adjective "partial", and it implies, as it is used in the judgment, that the Court sometimes proceeds to perform a partial proportionality analysis.

6. In our view, however, the proportionality test by its very nature can never be partial. It is a process involving different steps or phases, which can either be fulfilled or not fulfilled. The domestic courts must always fulfill the proportionality test, as the Court itself must do. There is no exception. It is not enough for the Court to declare a violation or to state that the domestic courts have not provided relevant and sufficient reasons, because in order to perform this evaluation and reach a conclusion, the Court must first carry out its own analysis and interpretation of what the domestic courts have already done and also conduct the proportionality test. The principle of proportionality is an indispensable tool for interpreting and applying the Convention provisions.

7. In this concrete case, after having conducted our own proportionality test with regard to the two competing rights, we both arrive at the same conclusion as the judgment.

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[1]. Underlining added (see paragraph 9 below)