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

FIRST SECTION

**CASE OF GODLEVSKIY v. RUSSIA**

*(Application no. 14888/03)*

JUDGMENT

STRASBOURG

23 October 2008

**FINAL**

*06/04/2009*

*This judgment may be subject to editorial revision.*

**In the case of Godlevskiy v. Russia,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

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

# PROCEDURE

1. The case originated in an application (no. 14888/03) 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 Gennadiy Vasilyevich Godlevskiy ("the applicant"), on 24 April 2003.

2. The applicant was represented before the Court by Mr V. Suchkov, a lawyer practising in Oryol. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of his right to freedom of expression.

4. By a decision of 9 December 2004, the Court declared the application partly admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1958 and lives in Oryol. At the material time the applicant was a journalist and editor-in-chief of the *Orlovskiy Meridian* newspaper, published by the *Mir Novostey* limited company.

## A. The applicant's publication

7. On 21 March 2001 the applicant's newspaper published his article "Tied in the system, or, Why are the generals waiting for the appointed hour?" ("*В путах системы, или Почему генералы ждут часа «Ч»?*"). The article was signed by his pen name Sergey Smirnov. The article told the readers about a criminal investigation opened by the regional prosecutor's office into the activities of six (out of fourteen) officers from the regional anti-narcotics unit (*ОБНОН УВД Орловской области*). It was alleged that on several occasions the officers of the unit had unlawfully discontinued the criminal prosecution of drug-dealers who had agreed to "co-operate" with them and to share the profits from drug sales.

8. The article featured an interview with a former drug dealer, Ms V., who sold drugs under the unidentified officers' "cover" for several years, until they "betrayed" her and she was arrested:

> "They apprehended me at a market when I was purchasing opium, [they] wrote down my contact details... Like many others, *I had been paying them*, and, 'as a gesture of thanks', they at first overlooked my buying and consuming drugs, [and] later my selling them... *They said: here is a new drug, try it and describe the effect to us. It was heroin*... I assure you that the police know every single [sale-purchase] point and every single dealer – in this sense they work very well [because] it brings them profit... *I had to remember all of their birthdays – theirs, their wives' and children's. All of them expected presents.* Also, they needed money all the time: once [they asked for money] to buy petrol for the police car... They set me up... Now I am in prison. There are only my kind here, because we cannot pay them off – our income from drug-dealing is barely sufficient for a 'pay-off' and our own dose. As to the dealers... I bear witness that all of them left the pre-trial detention facility..."

9. The article described the alleged wrongdoings of the anti-narcotics unit in general terms, without identifying any officers by name or rank:

> "The persons who are charged today do not admit their guilt. They claim that they have been slandered by drug addicts and are being avenged by the regional prosecutor's office for the drug-related arrest of the prosecutor's son in the past... Nevertheless, it is for the court to determine the matter – this is why I do not name any of the police officers. But one fact is indisputable: the extent to which drugs have spread in the Oryol Region is such that there is probably no way out. Taking into account that the duties of various state authorities are clearly demarcated, no matter what subterfuges you use, *it is the police in particular who are responsible for the prosperity of drug-dealers in Oryol and, more specifically, the anti-narcotics unit. The anti-narcotics unit is also to be blamed for the deaths of 39 persons who died last year by overdose and for the easy access to drugs of each school student in Oryol. And also for the fact that drug-dealers are still at liberty.*"

10. The article further stated that the officers charged had used drugs to pay for "information and services":

> "The investigation found that, as a matter of course, some officers in the unit used drugs to pay for services and information. Question: where does a police officer get drugs from? Answer: *part [of the drugs] seized from drug addicts and drug dealers was retained, in contravention of all laws and regulations, for the needs of the police.*

*And when such a dreadful weapon ends up in the hands of people who are not entirely morally upright, one can expect anything: drugs become a means of payment, a means of blackmail, and a threat to life... A police officer becomes a criminal.*"

11. The concluding paragraphs of the article explained its headline. A high-ranking general in the Russian security service once allegedly stated that the police knew all criminals and only waited for the appointed hour when the order would come to exterminate them. The article doubted the general's illusion of omnipotence and expressed concern for the future of the Oryol Region.

### B. Defamation proceedings

12. On an unspecified date all fourteen officers of the Oryol Region anti-narcotics unit, including the six charged with drug-related offences, filed a civil defamation action. Without mentioning specific parts of the article, the officers asserted that the publication had damaged their honour, dignity and professional reputation and claimed compensation for non-pecuniary damage. The statements designated the editor's office of the *Orlovskiy Meridian* newspaper and "the author of the article Sergey Smirnov" as co-defendants. One of the plaintiffs subsequently died.

13. On 18 June 2001 the Sovietskiy District Court of Oryol invited the plaintiffs to specify which extracts of the publication they believed to be damaging to their honour and reputation. Between mid-2001 and early 2002 the plaintiffs filed identically worded addenda to their original statements of claim, according to which the following expressions had damaged their reputation:

"...I had been paying them...They said: here is a new drug, try it and describe the effect to us. It was heroin... I had to remember all of their birthdays – theirs, their wives' and children's. All of them expected presents...

...it is the police in particular who are responsible for the prosperity of drug-dealers in Oryol and, more specifically, the anti-narcotics unit. The anti-narcotics unit is also to be blamed for the deaths of 39 persons who died last year by overdose and for the easy access to drugs of each school student in Oryol. And also for the fact that drug-dealers are still at liberty...

...part [of the drugs] seized from drug addicts and drug dealers was retained, in contravention of all laws and regulations, for the needs of the police. And when such a dreadful weapon ends up in the hands of people who are not entirely morally upright, one can expect anything: drugs become a means of payment, a means of blackmail, and a threat to life... A police officer becomes a criminal..."

14. On an unspecified date the staff lawyer of the applicant's newspaper commissioned a linguistic examination of the publication, which was carried out by a professor from Oryol State University who had a degree in language studies. His report pointed out that the publication had not referred

to any police officer by name or otherwise and the blame had been placed on the state authorities as a whole and the Oryol Region anti-narcotics unit in particular. The expert concluded that none of the quoted extracts could be considered as damaging the honour or dignity of any specific person as an individual.

15. On 4 October 2002 the Sovietskiy District Court of Oryol delivered the judgment in the defamation action against the editor's office of the *Orlovskiy Meridian* newspaper and the *Mir Novostey* company. The assessment of the damaging nature of the extracts was solely based on the statements by the plaintiffs and their relatives who claimed that the publication had been a cause of psychological anxiety. The court did not address the issue of whether the publication had targeted the plaintiffs. Nor did it distinguish between the author's speech and the statements quoted as having been made by Ms V. in an interview. In the court's opinion, the defendant failed to prove that the published information had been true on the date of its dissemination. Its findings were worded as follows:

> "The information designated by the plaintiffs was published in the *Orlovskiy Meridian* newspaper and contains statements to the effect that the Oryol Regional anti-narcotics unit is to be blamed for the prosperity of drug-dealers in Oryol, for the deaths of 39 individuals by overdose and for the fact that most dealers are still at liberty; that the officers of the anti-narcotics unit made use of drugs seized from drug addicts and drug-dealers and unlawfully retained them to meet the needs of the police in paying for information; that the officers of the anti-narcotics unit were paid off, that drug addicts knew their birthdays and those of their family members because they had to give them presents on these days, that they suggested to her that she test a new drug...
>
> The court considers that this information is damaging to the honour, dignity and professional reputation of [the 13 plaintiffs] as officers of the anti-narcotics unit, whose main duty is the fight against crime and, more specifically, against the unlawful trade in drugs...
>
> The plaintiffs have not been found guilty of any crime or offence in accordance with the legal procedure, and thus the information which is damaging to their honour, dignity and professional reputation is untrue and is subject to a rectification in the same media..."

16. The District Court ordered the newspaper to publish a rectification, the editor's office to apologise to the plaintiffs and the *Mir Novostey* company to pay 5,000 Russian roubles (approximately EUR 200) to each of the plaintiffs.

17. In the statement of appeal, counsel for the *Mir Novostey* company submitted that the District Court had not given proper assessment to the fact that the publication had concerned a structural police unit rather than named individuals, that a criminal case was pending against several police officers, that other officers had been disciplined after the publication and that the

director of the regional police had negatively appraised the performance of the anti-narcotics unit.

18. On 27 November 2002 the Oryol Regional Court examined the appeal and heard oral submissions by the applicant as the editor-in-chief, and counsel for the *Mir Novostey* company. It found as follows:

> "The [article in question] was published in March 2001, that is, before the criminal case, including the indictment bill, was submitted for trial. As of today, there has still been no conviction in the criminal case against [six plaintiffs]. The first-instance court has therefore correctly concluded that there was no proof of the truthfulness of the information contained in the publication and contested by the plaintiffs...
>
> The court considers that the negative appraisal of the performance of the anti-narcotics unit by the Oryol Regional police department, which followed publication of the article, cannot be a proof of the truthfulness of the information contested by the plaintiffs because in the present case the only such proof would be a court judgment.
>
> With regard to the foregoing, the court considers that... the appellant's argument that the contested publication did not contain information on specific individuals, but only referred to a structural unit of the police, is not a valid ground to quash the judgment. Under Article 306 § 2 of the Russian Code of Civil Procedure, a judgment that is correct in substance need not be quashed merely because of formal defects."

19. The Regional Court upheld the judgment of 4 October 2002 in substance. It also ordered that the newspaper should print the operative part of the judgment as the rectification, but it struck out the requirement to apologise to the plaintiffs on the ground that such a requirement had no basis in domestic law.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitution of the Russian Federation

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

### B. Civil Code of the Russian Federation

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

### C. Resolution of the Plenary Supreme Court of the Russian Federation, no. 11 of 18 August 1992 (amended on 25 April 1995)

22. The Resolution (in force at the material time) provided that, in order to be considered damaging, statements had to be untrue and contain allegations of a breach of laws or moral principles (commission of a dishonest act, improper behaviour at the workplace or in everyday life, etc.). Dissemination of statements was understood as the publication of statements or their broadcasting (section 2). The burden of proof was on the defendant to show that the disseminated statements had been true and accurate (section 7).

23. If the defamation claim concerned information printed in a newspaper, the defendants were the author and the editor's office of the newspaper. If the author's name was not mentioned (for example, in an editorial), the editor's office was the defendant. If the editor's office had no legal personality, the newspaper's founder was to be brought into the proceedings as the defendant (section 6).

### D. Case-law of the Supreme Court of the Russian Federation

24. On 20 December 2002 a deputy President of the Supreme Court of the Russian Federation lodged an application for supervisory review in a defamation action which had been originally granted by the Penza courts. The deputy President noted, in particular:

> "However, the courts did not take into account that one of the requirements of Article 152 of the Civil Code is that statements must refer to a particular person or a clearly identifiable group of persons..."

On 7 February 2003 the Presidium of the Penza Regional Court granted the application and quashed the judgments in the defamation claim. The case eventually ended in a friendly settlement.

### E. Mass-Media Act (Law no. 2124-I of 27 December 1991)

25. Section 2 defines the "editor's office" as an organisation, institution, individual or group of individuals that produces and publishes a newspaper. The "editor-in-chief" means the person who is in charge of the editor's office and who takes final decisions regarding production and publication of the newspaper.

26. The editor's office is professionally independent. It may be registered as a legal entity, but this is not an obligation. The editor-in-chief acts for the editor's office before the newspaper founder, publisher, distributor, individuals, groups of individuals, companies, institutions, organisations, State authorities and the courts. The editor-in-chief bears

responsibility for compliance with the requirements of the Mass-Media Act and other laws of the Russian Federation (section 19).

27. A journalist has a duty to verify the truthfulness of the information he or she communicates (section 49 § 1 (2)), as well as a duty to inform the editor-in-chief of all potential actions or claims arising out of his or her publications (section 49 § 1 (7)).

28. Founders, editor's officers, publishers, distributors, journalists and authors bear responsibility for violations of the Mass-Media Act (section 56).

## III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

29. Recommendation Rec(2003)13 of the Committee of Ministers to Member States on the provision of information through the media in relation to criminal proceedings reads, in the relevant parts, as follows:

> "...Recalling that the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and that they have a professional duty to do so;
>
> ...
>
> Stressing the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;
>
> Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention...
>
> Recommends, while acknowledging the diversity of national legal systems concerning criminal procedure, that the governments of member states:
>
> 1. take or reinforce, as the case may be, all measures which they consider necessary with a view to the implementation of the principles appended to this recommendation, within the limits of their respective constitutional provisions,
>
> 2. disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation...

**Appendix to Recommendation Rec(2003)13**

**Principles concerning the provision of information through the media in relation to criminal proceedings**

**Principle 1 - Information of the public via the media**

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

**Principle 2 - Presumption of innocence**

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

...

**Principle 8 - Protection of privacy in the context of on-going criminal proceedings**

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicant complained under Article 10 of the Convention about a violation of the right to impart information. Article 10 provides:

"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...”

### A. Submissions by the parties

31. The applicant submitted that the domestic courts’ acceptance of the plaintiffs’ standing to sue for defamation had not been explained, given that none of them had been identified in the publication. His article had placed moral blame for the extent to which drug use had spread in the region on the officers of the regional anti-narcotics unit, who had been paid from public funds to wage war on drugs. The imposition of moral responsibility had been a value judgment, not verifiable by facts. His statement that thirty-nine individuals had died from drug abuse had been factually true and corroborated by a certificate from the regional health protection authority. Some of his statements had been taken out of context and distorted: in particular, he had never claimed that the unit’s officers had unlawfully retained all drugs seized from drug-addicts in order to pay their informers. The applicant emphasised that persons whose duty was to fight against drugs should have been more tolerant to criticism of their work, given that their work corresponded to the needs of society and was financed by that same society through regional and federal budgets.

32. The Government submitted that the applicant and his newspaper had failed to demonstrate the truthfulness of the information contained in the article. In the absence of a final judicial decision the applicant had presented information about criminally punishable offences allegedly committed by drug-enforcement officers, as if they had actually been committed. However, the officers should have been presumed innocent and protected against “trial by media”. Given the circulation of the newspaper (46,600 copies) and the population of Oryol (350,000 residents), the publication had damaged the reputation of State officials, who had been easily identifiable to the readership. Referring to the Court’s case-law, the Government emphasised that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks, and that it may prove necessary to protect them from offensive and abusive verbal attacks when on duty (they referred to *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I, and *Nikula v. Finland*, no. 31611/96, § 46, ECHR 2002-II).

### B. The Court’s assessment

33. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions

for its progress. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, p. 26, § 37).

*1. Whether there has been interference with the applicant's right to freedom of expression*

34. The Court observes that in previous Russian cases which it has examined under Article 10 of the Convention, the applicants have been defendants in defamation proceedings in their individual capacity and an award for damages was made against them (see, for example, *Karman v. Russia*, no. 29372/02, §§ 7 and 18, 14 December 2006, and *Grinberg v. Russia*, no. 23472/03, §§ 10-12, 21 July 2005). In the present case the applicant took part in the proceedings but an order for refutation was made against the newspaper and a pecuniary award against the newspaper's publisher, the *Mir Novostey* company. The Court therefore considers it appropriate to examine, even in the absence of disagreement between the parties as to the existence of an interference, whether the applicant may claim to be a "victim" of the alleged violation.

35. The Court observes that it has already examined a similar situation in the case where the author of the contested publication took part in the defamation proceedings but an award for damages and an order to publish rectification were made against the newspaper. Thus, in a Latvian case, it rejected the Government's objection relating to the alleged lack of the applicant's status as a "victim" of the violation, finding that, even though the measure only targeted the applicant's employer, the applicant – as the author of the articles in question – was affected by the judicial decisions which declared his publications defamatory and insulting and ordered their public refutation (see *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, §§ 55-60, 12 July 2007, and also, *mutatis mutandis*, *Monnat v. Switzerland*, no. 73604/01, § 33, ECHR 2006-...).

36. Further, the Court reiterates its constant approach that the existence of a violation is conceivable even in the absence of prejudice or damage; the question whether an applicant has actually been placed in an unfavourable position is not a matter for Article 34 of the Convention and the issue of damage becomes relevant only in the context of Article 41 (see, among many authorities, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66, and *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, § 38). Thus, the fact that no award of damages was issued against the applicant cannot be decisive for his status as a

"victim" of the alleged violation. The Court notes that the applicant was not only the editor-in-chief of the newspaper but also the author of the contested article. What was therefore at stake in the defamation proceedings was his good faith as a journalist and compliance with the duty to provide reliable and precise information in accordance with the ethics of the journalism. The domestic courts' finding that he had disseminated untrue information in his article must undeniably have had a chilling effect on the exercise of his right to freedom of expression and may have discouraged him from publishing further critical materials on matters of public interest.

37. In the light of the above considerations, the Court finds that the judgment pronounced in the defamation action constituted an interference with the applicant's right to freedom of expression within the meaning of Article 10 § 1 of the Convention.

*2. Whether the interference was justified*

38. The Court notes that the interference was "prescribed by law", namely Article 152 of the Civil Code, and pursued a legitimate aim, that of protecting the reputation or rights of others, for the purposes of Article 10 § 2. The dispute in the case relates to whether the interference was "necessary in a democratic society".

39. The test of necessity requires the Court to determine whether the interference corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not however unlimited, but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, most recently, *Karman*, § 32, and *Grinberg*, §§ 26-27, both cited above, with further references).

40. In the present case, the applicant expressed his views by having them published in a newspaper. Regard must therefore be had to the pre-eminent role of the press in a State governed by the rule of law. Whilst the press must not overstep the bounds set, inter alia, for the protection of the reputation of others, it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does it have the task of

imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see, among many authorities, *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, § 63).

41. The publication concerned the problem of drug dealing in the Oryol Region, where drugs had become easily available to high-school students and a significant number of individuals had died from overdoses. It also covered the alleged involvement of officers of the anti-narcotics unit in drug dealing. This problem was obviously a matter of great public concern and the applicant was entitled to bring it to the public's attention through the press. The Court reiterates in this connection that there is little scope under Article 10 § 2 of the Convention for restrictions on debates on questions of public interest and that very strong reasons are required for justifying such restrictions (see, most recently, *Krasulya v. Russia*, no. 12365/03, § 38, 22 February 2007, with further references).

42. According to the Court's constant case-law, Article 10 of the Convention protects journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I; *Schwabe v. Austria*, judgment of 28 August 1992, Series A no. 242-B, p. 34, § 34; *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 18, § 37). In the circumstances of the present case the Court finds no indication of carelessness on the part of the applicant.

43. It appears that the applicant proceeded with caution, refraining from identifying any police officers charged with criminal offences by their names or ranks pending completion of the judicial proceedings (see paragraph 9 above). That approach distinguishes the present case from the Austrian one in which the Court found an interference with the right to freedom of expression to be justified because an Austrian news magazine published the full name of the police officer concerned at an early stage of criminal proceedings against him, although the disclosure of his full name did not add anything of public interest to the information already given in the article (see *Wirtschafts-Trend Zeitschriften-Verlag GmbH v. Austria* (no. 2) (dec.), no. 62746/00, 14 November 2002). Furthermore, the Court observes that the applicant did not use or cite any documents protected by the secret of the investigation or otherwise reveal confidential information relating to on-going criminal proceedings (compare *Dupuis and Others v. France*, no. 1914/02, § 43 et passim, 7 June 2007, ECHR 2007-...). The applicant's conduct was therefore in keeping with the Principles concerning the provision of information on criminal proceedings through the media, as outlined in the Committee of Ministers' Recommendation Rec(2003)13 (see paragraph 29 above).

44. The Court further notes that, for an interference with the right to freedom of expression to be proportionate to the legitimate aim of the protection of the reputation of others, the existence of an objective link between the impugned statement and the person suing in defamation is a requisite element. As noted above, the applicant's publication did not mention any of the plaintiffs in the defamation action by name or an otherwise identifiable manner. The article collectively referred to "the police", "the anti-narcotics unit" or employed the non-specific third-person pronoun "they" (see, in particular, Ms V.'s interview in paragraph 8 above). The District Court devoted a considerable part of its judgment to statements by the plaintiffs and their relatives who had felt hurt by the publication and claimed to be affected by it. The Court reiterates, however, that mere personal conjecture or subjective perception of a publication as defamatory does not suffice to establish that the person was directly affected by the publication. There must be something in the circumstances of a particular case to make the ordinary reader feel that the statement reflected directly on the individual claimant or that he was targeted by the criticism (see *Dyuldin and Kislov v. Russia*, no. 25968/02, § 44, 31 July 2007). The District Court's judgment was founded solely on the subjective perception of the publication by the plaintiffs and their relatives, without discussion of whether the decision to accept the standing of non-identified individuals to sue in defamation was objectively and reasonably justified. Furthermore, the District Court failed to operate a distinction between the situation of the officers against whom criminal charges had been levelled and that of those officers who were not subject to any criminal proceedings. The issue of standing was explicitly raised in the statement of appeal. Nevertheless, the Regional Court considered the District Court's failure to verify the plaintiffs' standing to sue in defamation to have been a formal defect which did not invalidate the otherwise correct judgment (see paragraph 18 above). The Court finds that, in the circumstances of the case, the issue of standing was of primordial importance and that the domestic courts did not identify a pressing social need for putting the protection of the plaintiffs' personality rights above the applicant's right to freedom of expression.

45. Turning now to the contents of the article at issue, the Court observes that a prominent feature of it was the interview with Ms V., a former drug-addict and police informant. Parts of the interview were found to have been defamatory by the domestic courts. In so finding, they did not give heed to the fact that the statements did not emanate from the applicant but were clearly identified as those proffered by another person. In this regard, the Court reiterates that an indiscriminate approach to the author's own speech and statements made by others is incompatible with the standards elaborated in the Court's case-law under Article 10 of the Convention. In a number of cases the Court has held that a distinction needs to be made according to whether the statements emanate from the journalist

or are a quotation of others, since punishment of 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 envisaged unless there are particularly strong reasons for doing so (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 77, ECHR 2004-XI, *Thorgeir Thorgeirson*, § 65, and *Jersild*, § 35, both cited above). The domestic courts did not advance any such reasons.

46. As regards the applicant's own speech, the aspect relevant to the Court's determination is the distinction between statements of fact and value judgments. It has been the Court's constant view that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 28, § 46; and *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, § 63). In the present case the domestic courts considered all the contested extracts to have been statements of fact, without examining whether they could be considered to be value judgments. Their failure to embark on that analysis was accounted for by the position of the Russian law on defamation at the material time. As the Court has already found, it made no distinction between value judgments and statements of fact, referring uniformly to "statements" ("*svedeniya*"), and proceeded from the assumption that any such "statement" was amenable to proof in civil proceedings (see *Grinberg*, cited above, § 29; *Karman*, cited above, § 38; *Zakharov v. Russia*, no. 14881/03, § 29, 5 October 2006, and the domestic law cited in paragraphs 21 and 22 above). Furthermore, as regards the Regional Court's holding that it would have been legitimate for the applicant to make his comments public only after the judgment in the criminal case had been made, the Court recalls that the standard of proof for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, since the standards applied when assessing someone's actions in terms of morality are quite different from those required for establishing an offence under criminal law (see *Karman*, cited above, § 42; *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, § 46, ECHR 2002-I; and *Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria*, no. 58547/00, § 39, 27 October 2005).

47. In the circumstances of the instant case the Court does not need to determine whether the expressions used in the applicant's own speech should be characterised as value judgments or statements of fact. According to its constant approach, the difference between a value judgment and a statement of fact ultimately lies in the degree of factual proof which has to

be established and therefore a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10 (see *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 40, ECHR 2003-XI). The applicant expressed the view that the regional police force's anti-narcotics unit bore responsibility vis-à-vis society for a failure to stamp out drug dealing in the region, which had resulted in multiple deaths from overdoses. He also warned against the dangers of using prohibited substances as a means of paying for or obtaining information from informants, since that might lead to criminalisation of the police. Against this background, it appears that the thrust of the impugned article was not primarily to accuse certain individuals of committing offences but rather promote an ongoing debate of evident concern to the local public (compare Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 63, ECHR 1999-III). As regards the evidentiary basis underlying the applicant's discourse, the Court notes that he relied on publicly available materials from an investigation into the actions of officers from the anti-narcotics unit and on an official medical certificate showing the number of deaths by overdose. It therefore finds that the applicant's publication was a fair comment on a matter of public concern rather than a gratuitous attack on the reputation of named police officers.

48. In the light of the above considerations and taking into account the role of journalists and the press in imparting information and ideas on matters of public concern, the Court finds that the applicant's publication did not exceed the acceptable limits of criticism. That the proceedings were civil rather than criminal in nature does not detract from the fact that the standards applied by the Russian courts were not compatible with the principles embodied in Article 10, since they did not adduce "relevant" and "sufficient" reasons justifying the interference at issue. The Court therefore considers that the domestic courts overstepped the narrow margin of appreciation afforded to them with regard to restrictions on debates of public interest and that the interference was not "necessary in a democratic society".

There has therefore been a violation of Article 10 of the Convention.

## II. 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 EUR 2,000 in respect of compensation for pecuniary damage, representing the amount paid by the *Mir Novostey* company to the plaintiffs in the defamation action, which he had undertaken to reimburse to the company within three years. He further claimed EUR 25,000 in respect of non-pecuniary damage.

51. The Government pointed out, firstly, that the applicant submitted a copy of a translation of the payment document issued by the *Mir Novostey* company rather than the original. Furthermore, the payment had been made by the company, which was not an applicant before the Court. There was no evidence that the applicant had ever reimbursed the sum in question to the company and, in any event, his undertaking to do so was not enforceable under domestic law. Finally, the Government stated that the applicant had not substantiated his claim for non-pecuniary damage.

52. The Court notes that the award of damages in the defamation action was paid by the owner of the newspaper rather than by the applicant (compare *Voskuil v. the Netherlands*, no. 64752/01, § 91, 22 November 2007). There is no evidence that the applicant reimbursed that amount to the company within the three-year period stipulated in his undertaking. The Court rejects the applicant's claim for pecuniary damage. It considers however that the applicant has suffered non-pecuniary damage as a result of the domestic courts' judgments, which were incompatible with Convention principles. The damage cannot be sufficiently compensated by a finding of a violation. The particular amount claimed by the applicant is nevertheless excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

53. The applicant claimed EUR 750 in translation costs relating to the translation of the Court's correspondence from English into Russian, and also EUR 5,000 for the travel and translation expenses during his visit to Strasbourg. He submitted his written undertaking to pay "the amount determined by the European Court" to the translator.

54. The Government stressed that the applicant did not submit a calculation of expenses and that his personal visit in Strasbourg was unnecessary since no oral hearing had been held in the case.

55. The Court notes at the outset that no oral hearing was held in this case and that the applicant visited Strasbourg on his own initiative. The only document he submitted in relation to translation costs did not indicate any specific amount. In these circumstances, the Court rejects the applicant's claim for costs and expenses.

### C. Default interest

56. The Court considers it appropriate that the default interest 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

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

2. *Holds* by five votes to two
   (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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| André Wampach | Nina Vajić |
| Deputy Registrar | President |