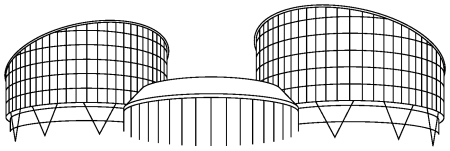

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NOVAYA GAZETA AND MILASHINA v. RUSSIA

(Application no. 45083/06)

JUDGMENT

STRASBOURG

3 October 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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

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

Branko Lubarda, *President*,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 5 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 45083/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ANO "Redaktsionno-Izdatelskiy Dom 'Novaya Gazeta'", a legal entity incorporated under Russian law ("the applicant company"), and by Ms Yelena Valeryevna Milashina, a Russian national ("the second applicant"), on 15 September 2006.

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

3. The applicants alleged a violation of their right to freedom of expression.

4. On 8 July 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company, an editorial and publishing house registered in Moscow, edits and publishes a national newspaper with a circulation of

500,000, the *Novaya Gazeta* ("the newspaper"). The second applicant was born in 1977 and lives in Moscow.

A. Background information

6. At 11.30 a.m. on 12 August 2000 K-141 Kursk, a nuclear cruise missile submarine of the Russian Navy ("the Kursk"), while in the Barents Sea on a naval training exercise, sank as a result of explosions on board. Most of the crew died within minutes of the explosions. However, twenty-three crew members (of the 118 aboard) survived the explosions and gathered in a stern compartment. They wrote a note to report the events. All of these twenty-three men died on board the Kursk before the arrival of a rescue team.

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

8. On 22 July 2002 the Chief Military Prosecutor's Office terminated the investigation for lack of evidence of a crime.

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

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

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

B. Impugned articles

1. First article

12. In late 2004 B.K. lodged an application before the Court on behalf of R.K., the father of D.K., lieutenant-captain of the Kursk, alleging a violation of D.K.'s right to life.

13. On 24 January 2005, in issue no. 5 of 24-26 January 2005, the newspaper published an article written by the second applicant entitled "The Kursk case is now before the European Court" (*"'Дело 'Курска' - в Европейском суде"* – "the first article").

14. The first article reported that R.K. had lodged an application before the Court alleging a violation of Article 2 of the Convention. It described D.K. as the person who had written the note stating that twenty-three men had survived the explosions and had been waiting for rescue in the stern compartment. The note had been discovered in October 2000. According to the first article, the note refuted the official version that all crew members had died as a result of the explosions. The first article stated that after the Kursk had sunk a series of knocks making an SOS signal in Morse code had been audible from the stern part of the submarine. Russian officials, including the then Prosecutor General, V.U., had refused to consider those knocks a plea for rescue, and had established that the noise had originated outside the stern part of the submarine. R.K. had unsuccessfully tried to prove in courts that the omission to consider the knocks an SOS signal amounted to an abuse of public office (*"должностное преступление"*). His complaints had been rejected by the Moscow Garrison Military Court and the Moscow Circuit Military Court. In particular, the first article read as follows:

> "R.K., the father of D.K., and his counsel B.K. have repeatedly tried to prove in Russian courts that this [failure to characterise the noise as an SOS signal] is absurd and [constitutes] an abuse of public office, the purpose of which is to help the Navy officers escape criminal responsibility.
>
> The abuse of public office, according to the claimants, was perpetrated not only by investigators of the Chief Military Prosecutor's Office, but also by experts, V.K. and S.K. The reports by those two military officials (V.K. is the chief forensic expert of the Ministry of Defence, S.K. is the chief navigating officer of the Russian Navy) were relied upon by the investigators, headed by A.E. and V.U., who terminated the criminal case in relation to the Kursk catastrophe and delivered a decision refusing to prosecute eleven officers of the Northern Fleet."

2. Second article

15. On 27 January 2005, in issue no. 6 of 27-30 January 2005, the newspaper published another article by the second applicant entitled "The prosecutor's office is worried about the prospect of the Kursk case being examined by the European Court. All reasonable offers welcome?" (*"Перспективы Европейского суда по 'делу "Курска"' взволновали прокуратуру. Торг уместен?"* – "the second article"). The second article described State officials' reaction to R.K.'s lodging the application. It reported that the Leningrad Military Circuit prosecutor had tried to persuade R.K. that his counsel had lodged the application exclusively for the purposes of self-promotion. B.K. had reportedly stated that his client had been willing to cooperate with the prosecutors, and had implied that R.K. had received an offer to have the official investigation reopened in exchange for the withdrawal of his application to the Court. In particular, the second article read as follows:

"B.K., counsel who represents the forty-seven families of the deceased crew members, has also confirmed that the application before the European Court was the last resort. There was no other prospect of success for the Kursk case in Russia, owing to the position adopted by V.U., the Prosecutor General, and A.S., the Chief Military Prosecutor. Apparently, those two officials took a decision to help the officers in command of the Northern Fleet escape criminal responsibility and to terminate the investigation. (B.K. has written about this in his book 'It has sunk ... The truth about the Kursk hidden by Prosecutor General U.')."

C. Defamation proceedings

16. After the publication of the two articles, V.K., the chief forensic expert of the Russian Ministry of Defence, A.E., the head of an investigative group within the Chief Military Prosecutor's Office in charge of the Kursk investigation, A.S., the Chief Military Prosecutor of Russia, and the Chief Military Prosecutor's Office of Russia as a legal entity lodged civil actions for defamation against the applicants with the Basmannyy District Court of Moscow ("the District Court"). Each claimant sought compensation for non-pecuniary damage and the retraction of certain statements appearing in the articles.

17. V.K. sought the retraction of the following statement:

"... this is ... an abuse of public office, the purpose of which is to help the Navy officers escape criminal responsibility. The abuse of public office ... was perpetrated not only by investigators of the Chief Military Prosecutor's Office, but also by experts ..."

18. A.E. insisted that his reputation as the head of the investigative group in charge of the Kursk case had been tarnished by the following text:

"... this is ... an abuse of public office, the purpose of which is to help the Navy officers escape criminal responsibility. The abuse of public office ... was perpetrated not only by investigators of the Chief Military Prosecutor's Office, but also by experts ..."

19. The Chief Military Prosecutor's Office and its head, A.S., sought to have the following parts of the articles retracted:

"... this is ... an abuse of public office, the purpose of which is to help the Navy officers escape criminal responsibility. The abuse of public office ... was perpetrated not only by investigators of the Chief Military Prosecutor's Office, but also by experts ..."

"There was no other prospect of success for the Kursk case in Russia, owing to the position adopted by V.U., the Prosecutor General, and A.S., the Chief Military Prosecutor. Apparently, those two officials took a decision to help the officers in command of the Northern Fleet escape criminal responsibility and to terminate the investigation."

20. On 3 March and 7 July 2005 the District Court joined the proceedings instituted by V.K., A.E., A.S. and the Chief Military Prosecutor's Office.

21. On 11 April 2005 an expert linguist of the Russian Language Institute of the Russian Academy of Sciences, at the applicant company's request, delivered an expert report on the impugned articles. The expert concluded that it was possible to perceive the texts as the reported opinions of R.K. and B.K., and not those of the journalist.

22. On 7 December 2005 the District Court decided the case. It found that it had been established that the newspaper had indeed disseminated information concerning the claimants. It further found that the information in question was damaging to the claimants' reputation for the following reasons. The allegations that investigators and experts had tried to help the Navy officers escape criminal responsibility had suggested that these officials had lacked the requisite impartiality when performing their duties. The District Court found the expression "to help escape criminal responsibility" defamatory, as it contained an allegation of criminal conduct. The applicants had failed to provide evidence that the claimants had committed a crime. The District Court dismissed as unsubstantiated the applicants' reference to the fact that the second article had merely reproduced B.K.'s position as reflected in his book. Furthermore, the District Court reasoned that the applicants had been under an obligation to verify the truthfulness of the information before publishing it. It dismissed the applicants' assertion that the impugned statements amounted to value judgments. The District Court found in the claimants' favour, ordered the retraction of the statements concerning the claimants' involvement in an abuse of public office, and awarded each claimant 50,000 and 7,000 Russian roubles (RUB – approximately 1,470 and 205 euros (EUR)), to be paid by the applicant company and the second applicant respectively. To reimburse court fees, the applicant company was ordered to pay RUB 85 and the second applicant was ordered to pay RUB 15 to each claimant.

23. In so far as relevant, the District Court's judgment read as follows:

> "... assessing the impugned statements, the court considers that they contain affirmations that V.K., A.E., A.S. and investigators of the Chief Military Prosecutor's Office broke the Russian law which was in force and committed an abuse of public office, and that such statements tarnish the honour, dignity and business reputation of V.K., A.E., [and] A.S., as well as the business reputation of the Chief Military Prosecutor's Office as an agency performing, in the name of the Russian Federation, State functions of supervision with regard to respect for the Constitution of Russia and laws in force within the Russian territory.
>
> ...
>
> The defendants have failed to produce any evidence to prove the veracity of the disseminated statements that the claimants abused public office and adopted unlawful decisions.
>
> Looking into the defendant's claim that the impugned articles reflect the opinion of ... B.K., ... expressed in his complaint before the European Court and his book "It has sunk. The truth about the Kursk hidden by Prosecutor General U.", the court finds as follows.

> ... page 170 of the book by B.K. ... contains the following text: "I think that the final decision not to find commanders of the Northern Navy criminally liable was taken by ..., A.S. and ..."
>
> In view of the above, comparing the impugned statements of the article ... and the text of the book, the court considers that the meaning of the phrase "to take a decision not to find [somebody] criminally liable" is not equivalent to the phrase "to take a decision to help [somebody] escape criminal responsibility".
>
> The complaint ... lodged by B.K. before the European Court ... does not contain statements alleging that the claimants committed an abuse of public office.
>
> Furthermore, the defendants' arguments that ... the editorial department and the author of the articles are not the authors of [B.K.'s] statements cannot serve as grounds to absolve a mass media outlet and a journalist of responsibility, in view of the following.
>
> Under section 49 of ... the Mass Media Act, a journalist must verify the truthfulness of the information he communicates, and section 57 of the Act sets out an exhaustive list of grounds for absolving an editorial department, an editor-in-chief, or a journalist of responsibility for disseminating untruthful statements that tarnish the honour and dignity of individuals and organisations ...
>
> The court cannot accept as grounds to dismiss the [defamation] action the defendants' arguments that the impugned statements are opinions, value judgments that could not be retracted under Article 152 of the Civil Code, for the following reasons.
>
> Under Article 17 of the Constitution, freedom of thought and expression, as well as the right to protect one's honour and good name, are recognised and guaranteed ... At the same time, the realisation of the rights and freedoms of an individual and citizen should not breach the rights and freedoms of other citizens.
>
> In view of the Constitution's provisions, freedom of thought and expression guaranteed by the Constitution should not serve as an instrument to violate the honour and dignity of others.
>
> Therefore, expression by a journalist of his opinion on any topic, or the publication of an opinion by another person does not give grounds to absolve [the journalist] of responsibility where damage has been unlawfully inflicted on the values protected by the Constitution and the Civil Code of Russia, [such as] honour, dignity and the business reputation of an individual."

24. The applicants appealed, arguing in particular that the information contained in the impugned articles amounted to value judgments, and that the articles had reflected the opinions of R.K. and B.K., opinions expressed in the former's application to the Court and the latter's book.

25. On 16 March 2006 the Moscow City Court ("the City Court") dismissed the appeal and upheld the District Court's judgment in full. In particular, it reasoned "the defendants have not submitted evidence of the veracity of the disseminated statements, [while] the claimants have provided evidence proving that they did not commit the actions mentioned in the disseminated statements."

26. The applicants also unsuccessfully applied for supervisory review.

D. Enforcement proceedings

1. V.K.'s claims

27. On 7 December 2005 the District Court issued two writs of execution against the applicant company in V.K's favour. The first writ contained an order to publish a retraction, and the second one ordered the applicant company to pay V.K. RUB 50,085.

28. On 3 May 2006 the bailiffs' service received the writs and commenced enforcement proceedings.

29. The newspaper published the retraction regarding V.K. in its issue of 22-25 June 2006.

30. On 26 June 2006 the applicant company transferred RUB 50,085 to the bailiffs' bank account to be paid to V.K.

31. On 27 June 2006 the bailiffs' service terminated the enforcement proceedings against the applicant company in respect of the retraction.

32. On 28 June 2007 the second applicant transferred RUB 7,490 to the bailiffs' bank account to be paid to V.K.

2. A.E.'s claims

33. On 12 February 2008 the bailiffs' service initiated enforcement proceedings against the applicants on the basis of writs of execution in A.E.'s favour. They ordered the applicant company and the second applicant to pay RUB 50,085 and RUB 7,015 respectively.

34. On the same date the applicant company transferred to the bailiffs' bank account RUB 50,085 on its own behalf and RUB 7,015 on behalf of the second applicant, to be paid to A.E.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. Article 17 of the Constitution states that fundamental human rights and freedoms recognised and guaranteed in Russia are inalienable, and that their realisation shall not violate the human rights and freedoms of others. Article 29 of the Constitution guarantees freedom of thought and expression, together with freedom of the mass media.

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

37. Section 49 of Law N 2124-1 on Mass Media Outlets ("the Media Act") of 27 December 1991, with amendments, lists the obligations of a journalist, and includes the obligation to verify the truthfulness of the

information he or she communicates. Section 57 of the Media Act lists grounds for absolving mass media outlets and journalists of responsibility for disseminating defamatory information in a number of situations: where the information has originated from an information agency, certain categories of public speakers, or press offices of State agencies; where the information has been copied from another mass media outlet verbatim; and where it has been contained in an obligatory communication or text not subject to editing.

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

39. The applicants complained that the judgments of the domestic courts of 7 December 2005 and 16 March 2006 had unduly restricted their right to freedom of expression guaranteed by Article 10 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

1. The Government

40. The Government admitted that there had been an interference with the applicants' right to freedom of expression. They argued that such an interference had been lawful, necessary in a democratic society and proportionate to the legitimate aim of protecting the claimants' reputation.

41. The domestic courts had based their judgments on the following. The impugned articles had implied that V.K., A.E. and A.S., as well as agents of the Chief Military Prosecutor's Office, had committed a crime when staging a cover-up for officers of the Navy. Such allegations of criminal conduct had tarnished the claimants' reputation.

42. In the Government's view, the impugned parts of the articles had contained statements of facts, not value judgments. The applicants had failed to provide proof of the veracity of such statements.

43. The Government further asserted that, given that the applicants had not submitted evidence to provide the "exact factual basis" for the impugned statements, and that these statements had tarnished the claimants' reputation, their actions had not been "in good faith" and thus did not fall within the ambit of protection of Article 10 of the Convention.

44. The applicants, like the applicant in the case of *Perna v. Italy* ([GC], no. 48898/99, §§ 44-48, ECHR 2003-V), had overstepped the acceptable level of criticism aimed at agents of the Chief Military Prosecutor's Office. By virtue of their occupation, like judges, the agents required a much higher degree of protection from defamation than other civil servants and politicians.

45. The Government submitted that the District Court's judgment of 7 December 2005 remained unenforced, as no enforcement proceedings had been instituted by the claimants.

46. Concluding by asserting that the interference had been proportionate and based on relevant and sufficient grounds, and that the domestic courts had drawn a distinction between statements of facts and value judgments, the Government invited the Court to declare the application manifestly ill-founded.

2. The applicants

47. The applicants maintained their complaint, arguing that, in breach of Article 10 § 2 of the Convention, the interference with their freedom of expression had been neither necessary in a democratic society nor proportionate to the aims sought.

48. The domestic courts had failed to distinguish between statements of facts and value judgments, although it had been clear from the content of the impugned articles that the journalist had been reporting the opinions of third

parties, as confirmed by the expert linguist's report of 11 April 2005. The value judgments contained in the impugned articles had had a sufficient factual basis.

49. The opinions of B.K. reflected in the impugned articles had represented his value judgments regarding the actions of V.K., A.E. and A.S. acting in their professional capacity, not his assessment of their personalities. The expression "abuse of public office" had been employed in the impugned articles as a value judgment, as it had referred to what B.K. and the relatives of the crew members whom he had represented had sought to prove. The object of the publications had been to report the opinions of a group of relatives of the crew members to the general public.

50. The second applicant had acted in full compliance with the ethics and standards of journalism. The domestic courts had failed to balance the interests of protecting the claimants' reputation against the applicants' rights under Article 10 of the Convention.

51. To demonstrate that the District Court's judgment of 7 December 2005 had been enforced in respect of A.E. and V.K., the applicants enclosed copies of the writs of execution in favour of A.E. and V.K., the decision to terminate the enforcement proceedings regarding the retraction, and documents confirming the bank transfers of the sums paid to the bailiffs' service for A.E. and V.K.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Existence of an interference

53. The Court notes that it is common ground between the parties that the District Court's judgment of 7 December 2005, as upheld by the City Court on 16 March 2006 (see paragraphs 22 and 25 above), constituted an interference with the applicants' right to freedom of expression guaranteed by Article 10 § 1 of the Convention. The Court is further satisfied that the interference in question was "prescribed by law", notably Article 152 of the Civil Code, and "pursued a legitimate aim", that is "the protection of the reputation or rights of others", within the meaning of Article 10 § 2 of the Convention. It therefore 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).

54. The Court emphasises at the outset that the applicant company, a newspaper publisher, and the second applicant, a journalist, were held civilly liable for two publications in a newspaper. The interference must therefore 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).

(b) Whether the interference was "necessary in a democratic society"

(i) General principles

(α) Freedom of expression

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

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.
>
> (iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether

> the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

(β) Media and journalistic freedom of expression

56. The Court has consistently emphasised the essential function the media fulfil in a democratic society. Although they must not overstep certain bounds, their duty is nevertheless to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest. Not only do the media have the task of imparting such information and ideas, the public also have a right to receive them (see, with further references, *Pentikäinen*, cited above, § 88). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, with further references, *Delfi AS v. Estonia* [GC], no. 64569/09, § 132, ECHR 2015).

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

(ii) Application of the above principles to the present case

58. The Court considers the following elements relevant to the examination of the particular circumstances of the present case: the position of the applicants, the position of the people against whom the criticism was directed, the subject matter of the publications and the words used in the publications, the domestic courts' interpretation of the contested statements, and the penalty imposed on the applicants (see *Krasulya v. Russia*, no. 12365/03, § 35, 22 February 2007, and *OOO Ivpress and Others v. Russia*, nos. 33501/04 and 3 others, § 69, 22 January 2013).

59. The Court has already observed that the applicants in the present case are a newspaper and a journalist (see paragraph 54 above). It will now proceed to analyse the remaining elements.

(α) Position of the claimants

60. The Court observes that three of the four claimants were high-ranking civil servants: the chief forensic expert of the Russian Ministry of Defence, the head of the investigative group of the Chief Military Prosecutor's Office, and the Chief Military Prosecutor of Russia. The fourth claimant, the Chief Military Prosecutor's Office of Russia, is a State agency (see paragraph 16 above).

61. The Court takes note of the Government's argument that public prosecutors, like judges, should be afforded a higher degree of protection from defamation (see paragraph 44 above). It is mindful that public prosecutors, as part of the judicial machinery in the broader sense of the term, should enjoy protection from offensive and abusive verbal attacks and unfounded accusations (see *Lešník v. Slovakia*, no. 35640/97, §§ 53-54, ECHR 2003-IV, and *Grebneva and Alisimchik v. Russia*, no. 8918/05, § 60, 22 November 2016). However, this does not give public prosecutors immunity from any media criticism of their actions performed in the official capacity. To suggest otherwise would undermine the vital public watchdog role of the press (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). Considering that the impugned statements concerning the three claimants employed by or affiliated with the Chief Military Prosecutor's Office were not insulting (see, by contrast, *Lešník*, cited above, §§ 15 and 18) or attacking their personality (see, by contrast, *Perna*, cited above, § 13), the Court is satisfied that, as civil servants, they were subject to wider limits of acceptable criticism than private individuals (see *Thoma v. Luxembourg*, no. 38432/97, § 47, ECHR 2001-III; *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 80, ECHR 2004-XI; and *Dyundin v. Russia*, no. 37406/03, § 26, 14 October 2008).

62. Regarding the position of the Chief Military Prosecutor's Office as a claimant, the Court observes that it is a State authority tasked, among other things, with ensuring respect for the Constitution and compliance with the domestic laws. The Court has previously acknowledged in the case concerning defamation claims brought by a courts' management department that there may be sound policy reasons to decide that public bodies should not have standing to sue in defamation in their own capacity (see *Romanenko v. Russia*, no. 19457/02, § 39, 19 October 2006) and found that State bodies acting in an official capacity were subject to wider limits of acceptable criticism than private individuals (ibid., § 47). Similarly, the Court considers that, while the Chief Military Prosecutor's Office, a public authority forming part of the judicial machinery in a broad sense, must enjoy public confidence if it is to be successful in carrying out its duties (see, *mutatis mutandis*, *Morice*, cited above, § 128), as an institution of a State it should display tolerance to criticism, particularly that emanating from the press.

63. The Court concludes that, by virtue of their respective positions, all four claimants should have been more tolerant to criticism than private individuals.

(β) Subject matter of the impugned articles and words used in them

64. Turning to the subject matter of the impugned articles, the Court reiterates that the public have a legitimate interest in the provision and availability of information about criminal proceedings (see *July and SARL Libération v. France*, no. 20893/03, § 66, ECHR 2008 (extracts), and *Morice*, cited above, § 152). The scale of the Kursk catastrophe indisputably makes it a matter of general public interest for Russian society as a whole. Consequently, the Court is satisfied that, through the impugned articles, the applicants contributed to a debate of public interest.

65. The Court further observes that the impugned articles were not strongly worded, could not be considered offensive, and did not constitute a gratuitous personal attack on the claimants. The Court is disinclined to agree with the District Court's insufficient reasoning that the use of the words "abuse of public office" in itself tarnished the claimants' honour, dignity and business reputation (see paragraph 23 above). To rule otherwise, in essence equating any allegation of wrongdoing on the part of the prosecutorial authorities with an insulting personal attack, would stifle media debate about matters of serious public concern and shield prosecutors' decisions from public scrutiny.

(γ) Domestic courts' interpretation of the impugned statements

66. Before assessing the domestic courts' interpretation of the impugned statements, the Court, taking into account its findings in paragraphs 59-64 above regarding the applicants' and claimants' respective positions, as well as the subject matter of the articles, considers that the margin of appreciation afforded to the domestic authorities in establishing the "necessity" of the interference with the applicants' freedom of expression was a narrow one (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 102-04, ECHR 2013 (extracts), and *Grebneva and Alisimchik*, cited above, § 61).

67. The Court points out that, when interpreting the impugned statements, the District and City Courts relied heavily on the need to protect the claimants' reputation, arguing that "freedom of thought and expression ... should not serve as an instrument to violate the honour and dignity of others" (see paragraph 23 above). In this respect, the Court notes that it has developed extensive case-law in the area of balancing the right to freedom of expression against the right to respect for private life under Article 8 of the Convention (for a summary of the relevant principles, see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83-93, ECHR 2015 (extracts)).

68. The Court emphasises that, in order for Article 8 of the Convention to come into play, an attack on a person's reputation must attain a certain level of seriousness, and its manner must cause prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009). In the circumstances of the present case, the Court has doubts as to whether the impugned articles could be considered an attack reaching the requisite threshold of seriousness and capable of causing prejudice to the enjoyment of Article 8 rights by the three civil servants and the Chief Military Prosecutor's Office. It considers it appropriate, however, to leave this issue aside, since the primary task incumbent on the Court in the present case is 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 freedom of expression protected by Article 10 on the one hand, and the right to respect for private life enshrined in Article 8 on the other (see, among many other authorities, *Delfi AS*, cited above, § 138).

69. The Court is not satisfied that the District and City Courts performed a balancing exercise between the need to protect the claimants' reputation and the Convention standard, which requires very strong reasons to justify restrictions on debates on questions of public interest (see *Reznik v. Russia*, no. 4977/05, § 43, 4 April 2013). The District Court's reasoning, endorsed by the City Court, appears to be based on the tacit assumption that interests relating to the protection of "the honour and dignity of others" prevail over freedom of expression in all circumstances. Finding for the claimants, the domestic courts made no allowances for the essential function which the media fulfil in a democratic society.

70. The Court further observes that the domestic courts rejected the applicants' argument that the impugned statements were value judgments not susceptible of proof. While mindful of the need to make a careful distinction between statements of facts and value judgments (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI), the Court considers that the thrust of the present case is not the distinction between statements of facts and value judgments as such, but the fact that the applicants were found liable for having reported the opinions of third parties, namely R.K. and B.K.

71. In this connection, the Court reiterates that "punishment of a journalist for assisting in the dissemination of statements made by another person ... 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 *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298, and *Thoma*, cited above, § 62). 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*, cited above, § 64). In the Court's view, the District Court did not provide any particularly strong reasons when finding the applicants liable for defamation for disseminating B.K.'s opinions. It rejected the applicants' argument that the impugned statements had emanated from B.K., merely because the phrases employed in B.K.'s book and in the articles were not identical. The District Court considered it completely irrelevant whether the journalist had expressed her own views or those of a third party "where damage [had] been unlawfully inflicted on ... the honour, dignity and business reputation of an individual" (see paragraph 23 above). The City Court endorsed this one-sided approach by upholding the judgment on appeal (see paragraph 25 above).

72. Taking note of the Government's submissions that the applicants did not act "in good faith" (see paragraph 43 above), the Court disagrees with this argument for the following reason. The impugned articles made it clear to readers that the second applicant was reporting the opinions of R.K. and B.K. about acts which, in B.K.'s view, constituted an abuse of public office. These opinions had been expressed in B.K.'s and R.K.'s complaints brought at national level and before the Court, as well as in B.K.'s book. In the Court's view, in such circumstances, it cannot be said that the applicants failed to provide at least some factual basis for the impugned statements (see, by contrast, Novaya Gazeta *and Borodyanskiy v. Russia*, no. 14087/08, § 43, 28 March 2013). The Court is thus satisfied that the applicants acted in good faith in accordance with the ethics of journalism and, as regards the second applicant, with the diligence expected of a responsible journalist reporting on a matter of public interest (see *Erla Hlynsdóttir v. Iceland*, no. 43380/10, § 72, 10 July 2012, and *Björk Eiðsdóttir v. Iceland*, no. 46443/09, § 81, 10 July 2012).

73. The domestic courts' failure to balance the claimants' right to reputation against freedom of the press by providing "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) leads the Court to conclude that in their examination of the defamation claims against the applicants they applied standards which were not in conformity with the principles embodied in Article 10 of the Convention. In such circumstances, the Court does not deem it necessary to assess whether the impugned statements amounted to statements of fact or value judgments.

(δ) Penalty imposed on the applicants

74. Lastly, the Court notes that the penalty imposed on the applicants was relatively lenient: an order to publish a retraction and a pecuniary award (see paragraph 22 above). Nevertheless, the Court does not consider it

decisive that the proceedings were civil rather than criminal in nature and that the final award was relatively modest. What is important in the instant case is that the standards, according to which the national authorities examined the defamation claims against the applicants, were not in conformity with the principles embodied in Article 10 (see *OOO Ivpress and Others*, cited above, § 79).

(ε) Conclusion

75. In view of the above considerations, faced with the domestic courts' failure to give relevant and sufficient reasons to justify the interference in question, the Court finds that the domestic courts cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10 of the Convention" or to have "based themselves on an acceptable assessment of the relevant facts" (see *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017; *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 2)*, no. 21666/09, § 54, 7 January 2014; *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, §§ 67-69, 8 October 2013; and *OOO Ivpress and Others*, cited above, § 71). The Court thus concludes that the interference with the applicants' right to freedom of expression was not "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant company claimed 107,185 Russian roubles (RUB) (approximately 2,388 euros (EUR)) in respect of pecuniary damage. The amount claimed represented the sums paid by the applicant company on its own behalf and on behalf of the second applicant in the course of the enforcement of the judgment of 7 December 2005 which were to be paid to V.K. (RUB 50,085 – approximately EUR 1,116) and A.E. (RUB 50,085 – approximately EUR 1,116, and RUB 7,015 – approximately EUR 156).

79. The applicant company also claimed EUR 1,000 in respect of non-pecuniary damage.

80. The second applicant claimed RUB 7,490 (approximately EUR 170), the sum that she had paid in the course of the enforcement proceedings in

V.K.'s favour, in respect of pecuniary damage, and EUR 2,000 in respect of non-pecuniary damage.

81. The Government submitted that no reimbursement of the judicial awards paid by the applicants should be awarded under the head of pecuniary damage, because the amounts paid had "represented fair compensation for non-pecuniary damage caused to the claimants by the applicants".

82. As regards the applicants' claims in respect of non-pecuniary damage, the Government suggested that they were ill-founded, because there had been no violation of Article 10 of the Convention. They further suggested that, should the Court find a violation of the applicants' rights, that in itself would amount to sufficient just satisfaction. The Government lastly asserted that they considered the second applicant's claims in respect of non-pecuniary damage excessive.

83. The Court observes that, in the present case, it has found a violation of the applicants' rights guaranteed by Article 10 of the Convention. It considers that there is a clear link between the violation found and the pecuniary damage caused to the applicants (see paragraph 51 above). Accordingly, in respect of pecuniary damage, it awards EUR 2,388 to the applicant company and EUR 170 to the second applicant, plus any tax that may be chargeable on these amounts.

84. Furthermore, making its assessment on an equitable basis, in respect of non-pecuniary damage, the Court considers it appropriate to award EUR 1,000 to the applicant company and EUR 2,000 to the second applicant.

B. Costs and expenses

85. The applicant company claimed RUB 1,000 (approximately EUR 22) for costs and expenses incurred before the domestic courts in respect of court fees relating to the appeal.

86. The Government stated that the costs claimed were not relevant to the Court's examination of the application.

87. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant company the sum of EUR 22 for costs and expenses incurred in the domestic proceedings.

C. Default interest

88. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months 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 2,388 (two thousand three hundred and eighty-eight euros) to the applicant company and EUR 170 (one hundred and seventy euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,000 (one thousand euros) to the applicant company and EUR 2,000 (two thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 22 (twenty-two euros), plus any tax that may be chargeable to the applicant company, 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.

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

Stephen Phillips
Registrar

Branko Lubarda
President