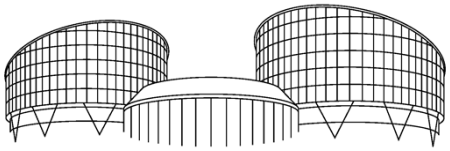

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OOO MEMO v. RUSSIA

(Application no. 2840/10)

JUDGMENT

Art 10 • Freedom of expression • No legitimate aim for civil defamation proceedings against a media outlet, seeking to protect "reputation" of a public authority as such and unrelated to any economic activity • Interests of executive bodies with State powers in maintaining a good reputation differing from those of natural person or legal entities competing in the marketplace • Risk of hampering media freedom and chilling effect, through shielding executive bodies from media criticism • Easily identifiable individual members of such a body not excluded from bringing proceedings in their own name

STRASBOURG

15 March 2022

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 OOO Memo v. Russia,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Frédéric Krenc,
Mikhail Lobov, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 2840/10) 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 OOO Memo, a legal entity under the Russian law ("the applicant company"), on 24 December 2009;

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

the parties' observations;

Having deliberated in private on 25 January 2022,

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

INTRODUCTION

1. The case concerns civil defamation proceedings brought by the Administration of the Volgograd Region against an Internet media outlet following the publication of an interview with a third party.

THE FACTS

2. The applicant company is a legal entity under the Russian law. It was represented by Ms A. Soboleva, a lawyer practising in Moscow.

3. The Government were initially represented by Mr G. Matyushkin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

I. BACKGROUND TO THE CASE

5. The applicant company is the founder of *Kavkazskiy Uzel* («*Кавказский узел*», "The Knot of the Caucasus"), an online media outlet

registered under Russian law which is devoted to the political and human rights situation in the south of Russia, including the Volgograd Region.

6. In 2008 the executive authority of the Volgograd Region ("the Administration of the Volgograd Region"), registered as a legal person in the Unified State Register of Legal Persons, suspended the transfer of the funds allocated as a subsidy to the Town of Volgograd in the amount of 5,294,000 Russian roubles (approximately 145,000 euros) for the reason that its budget limit for subsidies had already been exceeded. It appears that the lawfulness of the decision to suspend the transfer was widely discussed by the public in the Volgograd Region.

II. IMPUGNED ARTICLE

7. On 1 July 2008 *Kavkazskiy Uzel* published an article written by its correspondent, Mr Ya., on the basis of his interview with Mr S., an expert of the Fund for the Development of Information Policy («*Фонд развития информационной политики*»).

8. The article was titled "[Mr S]: the Mayor's Office of Volgograd fell out with the Administration of the Volgograd Region over a bus factory" and read as follows:

> "Interests of officials of the Administration of the Volgograd Region and of the management of the Volzhanin bus factory could be the reason behind a financial conflict between the Office of the Mayor of Volgograd and the Administration of the Volgograd Region.
>
> The above conclusion has been reached by an expert of the Fund for the Development of Information Policy, Mr [S.], in his interview with a correspondent of *Kavkazskiy Uzel*.
>
> 'In my view, there are two main reasons for the financial conflict that stemmed from the order of the Administration of the Volgograd Region to suspend allocation of subsidies from the regional budget to the City of Volgograd. As you remember, the amount totalled 5,294,000 roubles', explained Mr [S.]. 'Undoubtedly, the first reason is a political one. It is linked to the [results] of the regional elections [of 2 March 2008]. The second reason is not widely known. It is of a purely economic character'.
>
> Mr [S.] further stated that many officials of the Administration of the Volgograd Region are 'impresarios' of the Volzhanin bus factory. According to him, the Administration of the Volgograd Region gave a significant support to the bus factory for opening of its branch in the Republic of Kabardino-Balkaria, which took place on 30 January 2008. '[The Governor of the Volgograd Region] himself attended the opening ceremony', noted the expert.
>
> 'Recently the Mayor's Office held an open call for tender to buy buses. The Administration of the Volgograd Region lobbied the Volzhanin's interests to win the call for tender, but it was won by another company which offered buses, each of which was almost 1,000,000 roubles cheaper [than the buses offered by the Volzhanin factory]. The total budget saving was significant. It amounted to 35,000,000 roubles', said the expert.

'The officials of the Administration came down on the Mayor's Office, saying, "How come you did not support the local producer!" It appears to me that the Mayor's Office's refusal to do business with the Volzhanin factory was one of the main reasons of the regional officials' anger', noted Mr [S.].

In conclusion the expert [said that he] could not exclude that 'the suspension of allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tender'.

Kavkazskiy Uzel reported earlier that the members of the [Legislative Assembly] of the Volgograd Region sent a letter to the Administration of the Volgograd Region with a request to revoke the order ... to suspend ... allocation of subsidies from the regional budget to the City of Volgograd...

The regional authorities, in their turn, explain this step by the municipal authorities' failure to respect the limits of expenditure set by the regional authorities to finance the municipal governance activities.

The members of [the Legislative Assembly of the Volgograd Region] called into doubt the lawfulness of that decision. [They] asked the Governor [of the Volgograd Region] to suspend the impugned order and to ensure its compliance with the federal method of development of inter-budget relations, with due regard to calculation and substantiation by [the Mayor's Office of Volgograd]."

III. DEFAMATION PROCEEDINGS

9. On 2 October 2008 the Administration of the Volgograd Region brought civil defamation proceedings against the applicant company and the editorial board of *Kavkazskiy Uzel* seeking a retraction of the following statements.

(a) "... there are two main reasons for the financial conflict that stemmed from the order of the Administration of the Volgograd Region to suspend allocation of subsidies from the regional budget to the City of Volgograd. ... Undoubtedly, the first reason is a political one. It is linked to the [results] of the regional elections [of 2 March 2008]. The second reason is not widely known. It is of a purely economic character."

(b) "Recently the Mayor's Office held an open call for tender to buy buses. The Administration of the Volgograd Region lobbied the Volzhanin's interests to win the call for tender, but it was won by another company."

(c) "The officials of the Administration came down on the Mayor's Office, saying, 'How come you did not support the local producer!' It appears to me that the Mayor's Office's refusal to do business with the Volzhanin factory was one of the main reasons of the regional officials' anger."

(d) "... the suspension of allocation of subsidies to the City of Volgograd from the regional budget was an act of revenge for the lost call for tender."

10. The claimant contested the impugned statements as false, complaining they had been disseminated as Mr S.'s opinion and had tarnished the Administration's "business reputation" (*деловая репутация*). The Administration of the Volgograd Region insisted that they had not put any pressure on the municipal authorities and had not lobbied the Volzhanin bus

factory to win the call for tender, and that the subsidy transfer had been suspended solely because the budget limit for subsidies had been exceeded.

11. The applicant company argued that the impugned statements were Mr S.'s value judgments based on his opinion rather than statements of fact. It further argued that the impugned publication had touched upon a matter of public concern, in particular, the complex relations between the regional and municipal authorities. The applicant company insisted that the impugned statements had not been offensive, had not represented a gratuitous attack on any particular official of the Administration of the Volgograd Region, and had not exceeded the limits of acceptable criticism in respect of the latter, that, being a body of the executive, should display a higher degree of tolerance towards such criticism than private individuals.

12. On 8 April 2009 the Ostankinskiy District Court of Moscow ("the District Court") examined the case on the merits. It noted that, by virtue of Article 152 of the Civil Code of Russia, in defamation proceedings a claimant carried an obligation to prove a fact of dissemination of the information and its nature, whereas a defendant was under an obligation to prove the accuracy of that information.

13. The District Court held as follows:

> "On 1 July 2008 an article entitled '[Mr S.]: the Mayor's Office of Volgograd fell out with the Administration of the Volgograd Region over a bus factory' authored by Mr [S.] was published on [the applicant company's] *Kavkazskiy Uzel*. In the article the author reached a conclusion about an economic nature of the conflict between the Mayor's Office of Volgograd and the Administration of the Volgograd Region, the reason for which had been lobbying by the Administration of the Volgograd Region of the Volzhanin factory's interests in a call for tender, and the suspension of allocation of subsidies to the Town of Volgograd from the regional budget as an act of revenge for the lost call for tender. The defendant has not contested the fact that the impugned information was published. It has only argued that the expressions in question were not statements of fact, but value judgments. However, the court considers that the defendant had disseminated statements of fact in the form of affirmations that the Administration of the Volgograd Region had lobbied the Volzhanin factory's interests. Lobbying, in its essence, implies someone's intent to create advantageous conditions for one person in comparison with the others. In other words, it means to incline a person or a State body, through the use of unlimited resources for achieving the aim pursued with a view to creating a priority for someone over the others.
>
> Despite the fact that the author is using such an expression as 'it appears to me', he is affirming that the suspension of allocation of subsidies to the Town of Volgograd is an act of revenge by the Administration of the Volgograd Region.
>
> Allegations of lobbying a particular legal entity's interests and those of revenge on the part of a body of the executive authority, are, in themselves, damaging for the reputation of the Administration of the Volgograd Region, as they can make numerous Internet users believe that the Administration has been involved in unclean and unethical – even if not unlawful and criminally punishable – activity condemned by society. At the same time, the defendant has failed to provide any evidence to prove that the events referred to in the article did take place. The Administration of the Volgograd Region has submitted its orders to suspend allocation of subsidies to the

> Town of Volgograd in connection with exceeding the limit of expenditure envisaged for the municipal authorities.
>
> Therefore, the fact of dissemination of the statements tarnishing the business reputation of the Administration of the Volgograd Region has been proved during the examination of the present dispute. On the other hand, the truthfulness of the disseminated statements has not been proved by the defendant, who neither submitted any evidence, nor requested the court to assist it in obtaining evidence."

14. The District Court further ordered the applicant company, within thirty days after the judgment had become final, to publish on the *Kavkazskiy Uzel* website a retraction to the effect that the following statements were false and tarnished the claimant's business reputation: "the Administration of the Volgograd Region [had] lobbied the Volzhanin factory to win the call for tenders"; "the suspension of allocation of subsidies to the Town of Volgograd from the regional budget [had been] an act of revenge for the lost call for tender". The District Court also ordered the applicant company to publish the operative part of its judgment on the website.

15. The applicant company appealed, complaining that the District Court had not taken into account any of its arguments. It further maintained its arguments advanced before the District Court, arguing that the statements in issue had been value judgments and had not been formulated in absolute terms. It also noted that the article concerned a topical issue and that the author, being a professional journalist, had not overstepped the limits of permissible criticism.

16. On 16 July 2009 the Moscow City Court, summarily endorsing the reasoning of the District Court, upheld the judgment on appeal.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

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

18. Article 29 of the Constitution of the Russian Federation guarantees freedom of thought and expression, and freedom of the media.

19. Article 152 of the Civil Code of the Russian Federation as in force at the material time, prior to the amendments in force as of 1 October 2013, provided that a natural person ("a citizen") could apply to a court requesting to order a retraction of statements («*сведения*») damaging to his or her honour, dignity or business reputation if the person who disseminated such statements did not prove their truthfulness. The aggrieved person could also claim compensation for [pecuniary] damage and non-pecuniary damage ("moral harm") sustained as a result of the dissemination of such statements. Its paragraph 7 provided: "[n]orms of this Article on protection of the

business reputation of a citizen are accordingly applicable to the protection of the business reputation of a legal person". On 1 October 2013 the new amendments to Article 152 entered into force, expanding it to eleven paragraphs instead of seven. Paragraph 7 became paragraph 11 and was amended to read as follows: "[p]rovisions of this Article on the protection of business reputation of a citizen, except for the provisions on compensation for non-pecuniary damage *(«моральный вред»)*, are respectively applicable to the protection of business reputation of a legal person."

20. At the material time, there was no domestic courts' jurisprudence explaining whether a public authority could bring claims to protect its business reputation under Article 152 of the Civil Code of the Russian Federation.

21. Pursuant to Ruling no. 16 of 15 June 2010 by the Plenary Supreme Court of Russia, in cases concerning regulations in respect of freedom of expression and mass media outlets, courts are required to strike a balance between their rights and the rights of others or other constitutional values. The question of an alleged abuse of media freedom should be decided by taking into account the wording of the article and the context in which the impugned statements were made, together with the purpose, genre and style of the article and whether the statements could be deemed to constitute an expression of opinion in the field of political discussion or to draw attention to the discussion of socially significant issues.

II. COUNCIL OF EUROPE MATERIALS

22. The Report on Honouring of obligations and commitments by the Russian Federation by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) of the Parliamentary Assembly of the Council of Europe of 3 June 2005 (doc. 10568) stated, in so far as relevant, as follows:

> "392. ... the possibility of filing lawsuits against media and journalists by public authorities should be abolished as the latter per se cannot possess any dignity, honour, or reputation.
>
> 393. Therefore, we urge the Russian authorities to reform its defamation legislation, *inter alia*: ... to rescind additional defamation protection for public officials, to introduce a clear ban on public bodies to institute civil proceedings in order to protect their 'reputation' (without hindrance to the right of public officials to litigate in their private capacity), to clearly establish that no one should be liable under defamation law for the expression of an opinion ('value judgements'), to prioritise non-pecuniary forms of redress over pecuniary remedies, and to enhance protection of journalists' sources of information."

23. Human Rights Comment by the Council of Europe Commissioner for Human Rights "Time to take action against SLAPPs" [Strategic Lawsuits against Public Participation] of 27 October 2020 reads, in so far as relevant, as follows:

"*SLAPPs: lawsuits with an intimidating effect*

The Annual Report of the Council of Europe Platform to promote the protection of journalism and safety of journalists highlights groundless legal actions by powerful individuals or companies that seek to intimidate journalists into abandoning their investigations. In some cases, the threat of bringing such a suit, including through letters sent by powerful law firms, was enough to bring about the desired effect of halting journalistic investigation and reporting.

This problem goes beyond the press. Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted. SLAPPs are typically disguised as civil or criminal claims such as defamation or libel and have several common features.

First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.

Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organisations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.

...

Member states therefore have a positive obligation to secure the enjoyment of the rights enshrined in Article 10 of the Convention: not only must they refrain from any interference with the individual's freedom of expression, but they are also under a positive obligation to protect his or her right to freedom of expression from any infringement, including by private individuals. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant company complained about an interference with its right to freedom of expression guaranteed by Article 10 of the Convention, which reads, in so far as relevant, 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. Admissibility

25. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

26. The applicant company submitted that the interference had not been "prescribed by law". Article 152 of the Russian Civil Code, as it stood at the material time, spoke of "honour and dignity" of "citizens", that is, natural persons, and of "business reputation" of a legal entity, and yet the Administration of the Volgograd Region being a body of the executive could not engage in any business activities and thus could not enjoy any "business reputation". On the same grounds, the applicant company argued that it could not be said that the interference complained of had pursued a "legitimate aim" of protecting the reputation of others. They referred in this connection to the PACE Report on Honouring of obligations and commitments by the Russian Federation of 3 June 2005 (doc. 10568) (see paragraph 22 above).

27. The applicant company submitted that the interference complained of had not corresponded to any "pressing social need". The Convention as interpreted by the Court does not accord any special level of protection to public officials.

28. The domestic courts had failed to pay heed to the Supreme Court's Resolution no. 3 of 24 February 2005 requiring to distinguish statements of fact from value judgments even though Mr S. in the course of the interview had clearly stated that he had been expressing his personal opinion. Moreover, Mr S.'s opinion had been based on the facts as shown before the District Court.

(b) The Government

29. Accepting that there had been an interference with the applicant company's right to freedom of expression, the Government argued that it had been lawful, pursued a legitimate aim of protecting the reputation of others and had been proportionate to the aim pursued. They noted that the applicant company had "disseminated through media the statements that [had] tarnished the reputation of representatives of the State authorities".

30. In particular, the Government observed that "as follow[ed] from the analysis of the meaning of the impugned fragments of the article, these fragments contain[ed] information that the Administration of the Volgograd Region [had] lobbied the interests of the Volzhanin factory and that the

actions of the Administration to halt the payment of subsidies to the Town of Volgograd [had been] an act of revenge on the part of the Administration of the Volgograd Region" and noted that the applicant company had not furnished any documentary proof in support of the impugned "statements of fact". Before the domestic courts, the applicant company had not provided "any information concerning the reliability of the source of the information used, his qualifications, and [had] not file[d] any motions to examine witnesses, request for the evidence that could confirm the reliability of circumstances stated in the article".

31. The Government insisted that the interference corresponded to a "pressing social need" and noted that the first-instance court had "held that the reference to lobbying the specific legal entity and revenge on the part of [a body of the] executive authority in itself [had] damaged the business reputation of the Administration of the Volgograd Region, as it [had been] perceived by the mass Internet users as its involvement in an unclean and unethical behaviour – though not constituting a crime and not [being in violation of] the law – but disapproved by society."

32. The Government refuted the applicant company's claim that the impugned statements had in fact been value judgments of Mr S. and concluded that "the domestic court rightfully established the affirmative nature of the information disseminated and not confirmed by the evidence."

2. The Court's assessment

33. While it is not in dispute between the parties that the judgment of the District Court of 8 April 2009 upheld on 16 July 2009 by the Moscow City Court constituted an interference with the applicant company's right to freedom of expression, the parties have disagreed as to whether the interference in question was "prescribed by law", whether it pursued a "legitimate aim" within the meaning of Article 10 § 2 of the Convention, and whether it was proportionate to the aim sought (see paragraphs 26 and 29 above).

(a) Whether the interference was "prescribed by law"

34. The Court notes that the wording employed in Article 152 of the Russian Civil Code as in force at the material time conferred the right to bring civil defamation proceedings to a citizen entitled to the protection of her/his honour, dignity, and business reputation. Its provisions, in so far as they concerned business reputation, were made expressly applicable to legal persons (see paragraph 19 above). Given that the Administration of the Volgograd Region is a legal entity (see paragraph 6 above), and despite the lack of an established national jurisprudence on the "business reputation" of public authorities, the Court is prepared to accept that the interference complained of was "prescribed by law".

(b) Whether the interference pursued a "legitimate aim"

35. The Court observes at the outset that the claimant in the defamation proceedings under consideration is the executive authority of a constituent entity of the Russian Federation.

36. In the Government's submission, the interference complained of had pursued a legitimate aim of "the protection of the reputation and rights of others". The applicant company objected arguing that the Administration of the Volgograd Region could not claim to hold any "business reputation".

37. The Court reiterates that the list of legitimate aims provided in paragraph 2 of Article 10 is exhaustive. Strictly construed, this paragraph accords – as a matter of exception, in view of its special role in society – protection to only one branch of public powers, the judiciary (see, for details, *Morice v. France* [GC], no. 29369/10, §§ 128-30, ECHR 2015).

38. The Court has long held that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. The concept of "private life" is a broad term not susceptible to exhaustive definition, which covers also the physical and psychological integrity of a person. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, with further references, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017).

39. Yet the ambit of the "protection of the reputation ... of others" clause of paragraph 2 of Article 10 is not restricted to natural persons, notwithstanding a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society in so far as the former are devoid of the moral dimension of human dignity (see *OOO Regnum v. Russia*, no. 22649/08, § 66, 8 September 2020).

40. The Court has recognised that there exists a legitimate "interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good" (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II, and *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011). However, these considerations are inapplicable to a body vested with executive powers and which does not engage as such in direct economic activities.

41. As regards public bodies seeking legal protection of their reputation, in the case of *Lombardo and Others v. Malta* (no. 7333/06, 24 April 2007) the Court, noting that it was only in exceptional circumstances that a measure proscribing statements criticising the acts or omissions of an elected body could be justified with reference to "the protection of the rights or reputations of others", was prepared to assume that this aim could be relied on as legitimate in the context of defamation proceedings brought by the local council of a town with a population of under 12,000 persons. When assessing

the proportionality of the interference, the Court observed that "the limits of permissible criticism are wider still with regard to the government than in relation to a private citizen or even a politician" (ibid., § 54). In the case of *Romanenko and Others v. Russia* (no. 11751/03, 8 October 2009) regarding civil defamation proceedings instituted by the courts' management department of a constituent entity of the Russian Federation, the Court, while noting that there may be sound policy reasons to decide that public bodies should not have standing to sue in defamation in their own capacity, accepted the existence of a legitimate aim of "protection of reputation and rights of others" (ibid., § 39). Building on these findings, the Court observed in a case concerning defamation proceedings against journalists in which the Copenhagen University Hospital, a public body, was a claimant, that it was not convinced by the applicants' submission that the judiciary is the only public authority whose protection is capable of constituting a legitimate aim under Article 10 § 2 (see *Frisk and Jensen v. Denmark*, no. 19657/12, § 47, 5 December 2017).

42. In its judgments against Russia adopted subsequently to that in the case of *Romanenko and Others*, in the absence of a dispute between the parties regarding the existence of a legitimate aim, the Court, when examining complaints under Article 10 stemming from the defamation proceedings brought by a remand prison and its two officers (see *Reznik v. Russia*, no. 4977/05, § 41, 4 April 2013), by a university (see *Kharlamov v. Russia*, no. 27447/07, § 25, 8 October 2015), by the Chief Military Prosecutor's Office of Russia (see *Novaya Gazeta and Milashina*, cited above, § 62), by the electoral commission and the body of the executive of a constituent entity of the Russian Federation as well as a regional branch of the United Russia party (see *Ostanina v. Russia*, no. 22169/11, § 19, 17 April 2018), or by the body of the executive of a constituent entity of the Russian Federation (see *Margulev v. Russia*, no. 15449/09, § 45, 8 October 2019, and *Kommersant and Others v. Russia*, nos. 37482/10 and 37486/10, 23 June 2020), focused on the assessment of proportionality of an interference.

43. Given that the parties contested whether the interference complained of had pursued a legitimate aim within the meaning of Article 10 § 2 of the Convention, considering the growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights (see paragraph 23 above), and in view of the power imbalance between the claimant and the defendant in the present case, the Court considers it apt to establish in the present case whether the interference complained of, - that is, the civil defamation proceedings brought by the Administration of the Volgograd Region against the applicant company, a media outlet, - was in pursuance of the legitimate aim of "protection of the reputation of others" within the meaning of Article 10 § 2 of the Convention.

44. The Court considers that bodies of the executive vested with State powers are essentially different from legal entities, including public or State-owned corporations, engaged in competitive activities in the marketplace as the latter rely on their good reputation to attract customers with a view to making a profit and the former exist to serve the public and are funded by taxpayers. To prevent abuse of powers and corruption of public office in a democratic system, a public authority's activities of all kinds must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion (see *Sener v. Turkey*, no. 26680/95, § 40, 18 July 2000).

45. In *Steel and Morris* (cited above, § 40) the Court noted the position under the laws of England and Wales, whereby "local authorities, government-owned corporations and political parties... [cannot] sue in defamation, because of the public interest that a democratically elected organisation, or a body controlled by such an organisation, should be open to uninhibited public criticism." Indeed, shielding bodies of the executive, which have the ability to respond to any adverse allegations in the "court of public opinion" through their public relations capabilities, from media criticism by way of according them protection of their "business reputation" may seriously hamper freedom of the media. That executive bodies be allowed to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their task of purveyor of information and public watchdog (see, *mutatis mutandis*, *Dyuldin and Kislov v. Russia* (no. 25968/02, § 43, 31 July 2007).

46. The Court considers that, by virtue of its role in a democratic society, the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differ from both the right to reputation of natural persons and the reputational interests of legal entities, private or public, that compete in the marketplace.

47. It follows that civil defamation proceedings brought, in its own name, by a legal entity that exercises public power may not, as a general rule, be regarded to be in pursuance of the legitimate aim of "the protection of the reputation ... of others" under Article 10 § 2 of the Convention. This does not exclude that individual members of a public body, who could be "easily identifiable" in view of the limited number of its members and the nature of the allegations made against them (see *Thoma v. Luxembourg*, no. 38432/97, § 56, ECHR 2001-III, and, *mutatis mutandis*, *Lombardo and Others*, cited above, § 54), may be entitled to bring defamation proceedings in their own individual name.

48. Turning to the present case, the Court notes that the claimant in the domestic defamation proceedings is the highest body of the executive of the Volgograd Region. It is hardly conceivable that it had an "interest in protecting its commercial success and viability", be it for "the benefit of shareholders and employees" or "for the wider economic good" (see *Steel*

and Morris, cited above, § 94) that would warrant legal protection. Nor could it be said that its members were as "easily identifiable" as members of the Water and Forestry Commission in Luxembourg (see *Thoma*, cited above, § 56) or members of the Fgura Local Council representing 12,000 inhabitants (see paragraph 39 above) given the scale of its operations: in 2010 the population of the Volgograd Region exceeded two and a half million. In any event, the defamation case was brought on behalf of the legal entity as such, not any of its individual members.

49. Accordingly, the Court finds that the civil defamation proceedings instituted by the Administration of the Volgograd Region against the applicant company did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 10 of the Convention. Where it has been shown that the interference did not pursue a "legitimate aim", it is not necessary to investigate whether it was "necessary in a democratic society" (see *Khuzhin and Others v. Russia*, no. 13470/02, § 117, 23 October 2008).

50. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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."

52. The applicant company did not make any claims for just satisfaction. Accordingly, the Court makes no award under Article 41 of the Convention.

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.

Done in English, and notified in writing on 15 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Georges Ravarani President

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

G.R.
M.B.

JOINT CONCURRING OPINION OF JUDGES RAVARANI, SERGHIDES AND LOBOV

1. We respectfully disagree with the majority's view that the violation of Article 10 in this case was due to the fact that the impugned interference with the applicant company's right to freedom of expression lacked a legitimate aim under paragraph 2 of Article 10 of the Convention. In our view, Article 10 was violated on another ground, relating to the domestic courts' failure to demonstrate that the interference was necessary in a democratic society, in line with the Court's well-established case-law.

The existence of a legitimate aim for the interference

2. The majority decided to review the Court's approach to the entitlement of public entities to "the protection of the reputation and rights of others", provided for by paragraph 2 of Article 10. Notwithstanding the policy considerations that prompted the majority's novel approach (paragraph 43 of the judgment), we are not convinced that there were good reasons for the Chamber to deviate in such a radical way from numerous previous judgments that had accepted the applicability of the aforementioned legitimate aim to various public entities and authorities in different countries, in both criminal and civil contexts.

3. The Court has so far invariably acknowledged the existence of a legitimate aim in similar cases, irrespective of whether the parties disputed this point or not (compare the cases cited in paragraph 42 of the judgment, and *Frisk and Jensen v. Denmark*, no. 19657/12, §§ 42-50, 5 December 2017, where the applicants explicitly challenged the existence of a legitimate aim). In the latter case, the Court unambiguously rejected the applicants' submission that "the judiciary is the only public authority whose protection is capable of constituting a legitimate aim under Article 10 § 2" (ibid., § 47), a conclusion which is contradicted by the majority's overly restrictive assumption in paragraph 37 of the present judgment.

4. In addition to the various cases cited in the present judgment and those where the interference served a more specific aim of "maintaining the authority ... of the judiciary" (see, most recently, *Freitas Rangel v. Portugal*, no. 78873/13, § 48, 11 January 2022, not yet final), the Court has already accepted the legitimate aim of "the protection of the reputation ... of others" in respect of such public institutions as the police (*Savva Terentyev v. Russia*, no. 10692/09, § 60, 28 August 2018) or the prosecutor's office (*Goryaynova v. Ukraine*, no. 41752/09, § 56, 8 October 2020). The majority's view, restricting the reputational protection to public institutions which compete on the marketplace (paragraphs 44-46 of the judgment), does not sit well with the above case-law. Nor is it convincing, in our view, to determine the eligibility of "easily identifiable" members of a public authority to protection

of their individual reputation and interests solely on the basis of this authority's "scale of operation" (paragraph 48 of the judgment).

5. Admittedly, the Court has acknowledged at times that a legal entity's right to reputation (including the scope of such right) is debatable and has emphasised a difference between the reputational interests of a legal entity (including a public authority) and the reputation of an individual. That did not alter its finding in another recent case that the same legitimate aim could be relied upon in respect of Moscow City Council, although its interest in protecting its "reputation" did not necessarily attract the same level of guarantees as that accorded to "the protection of the reputation ... of others" within the meaning of Article 10 § 2 (see *Margulev v. Russia*, no. 15449/09, § 45, 8 October 2019).

6. We consider the latter point to be of great relevance to the present case, which also concerned a set of defamation proceedings brought against an applicant by a similar public institution, the Administration of the Volgograd Region. The interest of preserving the Court's case-law consistency should therefore have led the Chamber to follow the established approach by accepting the existence of the legitimate aim and by considering the proportionality of the interference with due regard to the difference in the "level of guarantees" applicable to different public entities depending on their status and the nature of their activities.

7. While it cannot be excluded that defamation proceedings could be intended to have a chilling effect on those who criticise the authorities' activities, the existence of such an illegitimate aim cannot be presumed, let alone taken for granted, without tangible evidence to that effect. In any event, the determination of the limits of acceptable criticism lends itself to be assessed through the balancing exercise under the proportionality test, in line with the Court's established case-law.

The necessity of the interference in a democratic society

8. The publication at the heart of the present case contributed to a debate of public interest and the impugned statements represented Mr S.'s value judgment, which was not devoid of any factual basis. In such circumstances, in view of the respective position of the claimant as a public authority and the applicant company as a media outlet, having regard to the fact that the impugned statements had concerned matters of public administration, and admitting that the applicant company did not make allegations of illegal conduct, the domestic authorities had a narrow margin of appreciation in assessing the need for the interference with the applicant company's right to freedom of expression.

9. Where a public authority (and not its individual officials) resorts to defamation proceedings in relation to criticism by the media, it is incumbent on the domestic courts examining institutional defamation claims to provide

compelling reasons capable of demonstrating convincingly that members of the media acted in bad faith or in flagrant disregard of the tenets of responsible journalism when making allegedly defamatory statements. Any failure to do so would run contrary to the positive obligations under Article 10 of the Convention requiring States to create a favourable environment for participation in public debate by all persons concerned, enabling them to express their opinions and ideas without fear (see *Uzeyir Jafarov v. Azerbaijan*, no. 54204/08, § 68, 29 January 2015).

10. We are not satisfied, however, that the existence of a pressing social need for the interference complained of was convincingly established by the domestic authorities in the circumstances of the present case. Indeed, the domestic courts paid no heed to the positions of the parties to the defamation proceedings as a public authority and a media outlet. Nor did they make the necessary distinction between the statements of fact and the value judgement conveying the criticism against the Administration of the Volgograd Region. The domestic courts thus failed to apply the standards embodied in Article 10 of the Convention, including those reiterated in Ruling no. 16 of 15 June 2010 by the Plenary Supreme Court of Russia (see paragraph 21 of the present judgment).

11. The authorities therefore failed to demonstrate that there was a reasonable relationship of proportionality between the interference in question and the legitimate aim pursued (see, among others, *Romanenko and Others v. Russia,* no. 11751/03, § 49, 8 October 2009; *OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; *Cheltsova v. Russia*, no. 44294/06, § 100, 13 June 2017; *Skudayeva v. Russia,* no. 24014/07, § 39, 5 March 2019; *Nadtoka v. Russia (no. 2)*, no. 29097/08, § 50, 8 October 2019; *Tolmachev v. Russia*, no. 42182/11, § 56, 2 June 2020; and *Timakov and OOO ID Rubezh v. Russia*, nos. 46232/10 and 74770/10, § 71, 8 September 2020).

12. We have accordingly concluded that there has been a violation of Article 10 of the Convention in the present case.