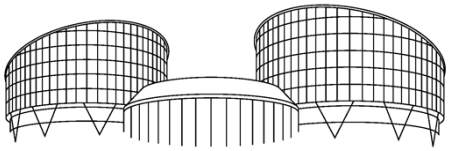

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DMITRIYEVSKIY v. RUSSIA

(Application no. 42168/06)

JUDGMENT

STRASBOURG

3 October 2017

FINAL

29/01/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dmitriyevskiy 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,
Georgios A. Serghides,
Jolien Schukking, *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. 42168/06) 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 a Russian national, Mr Stanislav Mikhaylovich Dmitriyevskiy ("the applicant"), on 25 September 2006.

2. The applicant was represented by Ms O. Sadovskaya, a lawyer practising in Nizhniy Novgorod. The Russian Government ("the Government") were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and then by Mr M. Galperin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his criminal conviction for the publication of articles in a newspaper of which he was the chief editor had constituted a violation of his freedom of expression secured by Article 10 of the Convention. He also complained under Articles 6 and 13 of the Convention of various irregularities in the criminal proceedings against him and a lack of effective remedies in that respect.

4. On 6 February 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Nizhniy Novgorod.

6. At the material time he was the executive director of the Russian-Chechen Friendship Society (*Общество российско-чеченской дружбы*), a non-governmental organisation which monitored human rights violations in the Chechen Republic and other parts of the North Caucasus. He was also the chief editor of a monthly newspaper, *Pravo-Zashchita (*Protection of Rights), with a circulation of 5,000. The newspaper was published and distributed mainly in the Nizhniy Novgorod Region. At the end of each issue there was a standard disclaimer stating that the views of the editorial team might not concur with those expressed in the articles published.

A. The first article

7. In early 2004 the applicant obtained two articles from the website Chechenpress. The first, which had the headline "Address by Akhmed Zakayev, Vice Prime Minister of the Government of the Chechen Republic of Ichkeria, to the People of Russia"*(«Обращение вице-премьера правительства Чеченской Республики Ичкерия Ахмеда Закаева к российскому народу»* – "the first article"), was published by him in issue no. 1 (58) of *Pravo-Zashchita* for March 2004. It read as follows:

> "A year ago a peace process that had just begun was interrupted by the tragic events in the Dubrovka [theatre]. There may be long arguments as to who was responsible for that tragedy, but there is no dispute as to who benefited from it.
>
> Today, on behalf of Aslan Maskhadov, President of the Chechen Republic of Ichkeria, I am again addressing myself to the people of Russia. It is still not too late for us to resolve all the questions at issue. But for this, the people of Russia should get rid of those for whom peace represents the loss of power or perhaps even a trial. As long as they remain in the Kremlin, blood will continue to flow in Chechnya and in Russia.
>
> I am extending to the people of Russia the hand of peace over the head of their president. No one needs the war except for him: neither right nor left, neither poor nor rich. Vladimir Putin left the Chechens no choice, but you have a choice and you may still choose peace by voting against Putin in March 2004. Both for you and for us this is a real opportunity."

8. The article was accompanied by the editorial team's comments (*от редакции*), which read as follows:

> "For reasons beyond the editorial team's control, we are publishing this document belatedly. This address was made on the eve of the presidential elections in Russia. Unfortunately, the people of Russia did not avail themselves of their historic

opportunity, having again elected as their president a man who has made political capital out of a bloody war against his own people and who is leading the country towards the blind alley of a police state. Nevertheless, we are convinced that this document, which represents the legitimate Chechen authorities' statement to the outside world, has not lost its topicality in the meantime".

B. The second article

9. The second article, which had the headline "Address by Maskhadov, President of the Chechen Republic Ichkeria, to the European Parliament" *(«Обращение Президента Чеченской Республики Ичкерия Масхадова к Европарламенту»* – "the second article"), was published by the applicant in issue no. 2 (59) of *Pravo-Zashchita* for April and May 2004 and read as follows:

"On 26 February 2004 the Parliament of the European Union adopted a declaration in which Stalin's deportation of the Chechen people on 23 February 1944 was officially recognised as an act of genocide. The European Parliament also recommended that the European Council study the plan of the Government of the Chechen Republic of Ichkeria (the CRI) on peaceful resolution of the present military conflict [between Russia[1] and Chechnya], which I had approved.

The total deportation to Central Asia and Kazakhstan in 1944 is one of the most tragic pages in the entire centuries-old history of the Chechens, since during this act of violence the national republic was completely liquidated and its territory separated among the adjacent regions. During the 13 years which the Chechen people spent in exile, about 70% of the population died.

It must be mentioned that the 1944 deportation was the ninth large-scale act of genocide by the military and political authorities of Imperial Russia during the period of the 400-year-long armed confrontation between the Chechens and Russians.

The very first deportation of the Chechens was carried out by Russia as early as in 1792, after the destruction of the State headed by the first Imam of the Caucasus, Sheikh Mansur. And after the destruction of the State headed by Imam Shamil, when the Russian-Caucasian war was officially declared to be over in 1859, a considerable proportion of Chechens ended up on the territory of the Ottoman Empire.

The last tsarist deportation was the expulsion of many Chechen families to cold and faraway Siberia in 1913. And the first mass deportations of the Chechens during the Soviet regime began in the years of collectivisation and cultural revolution, in other words during Stalin's regime.

What is the aim of this historical overview? The Government of the CRI regards this political resolution by the European Parliament as an undoubtedly serious historic act on the way to achieving the long-awaited peace on blood-stained Chechen soil. More than a quarter of a million innocent civilians have already died in the CRI during the latest continuing Russian-Chechen war, the entire infrastructure of the republic has

[1] The English term "Russian" is used to translate two notions which have different meaning in the Russian language: (i) being of Russian ethnic origin (*russkiy*), and (ii) "Russian" as pertaining to the State of Russia (*rossiyskiy*). In order to distinguish between these two notions in the text of the article and hereinafter where relevant, the word "Russian" will be used to denote (i), whereas (ii) will be denoted as "Russia's".

been completely devastated, many towns, villages, schools, hospitals and cultural facilities have been destroyed, and there is still no light at the end of the tunnel.

Yet the international community is watching the deliberate and systematic murder of the entire nation with complete serenity and has not the slightest desire to react in any way to this criminal madness by the bloody Kremlin regime. This in turn engenders thousands and thousands of new fighters in the republic, who replenish the ranks of the Chechen Resistance with fresh forces each day, and who believe that they have a moral right to use the enemy's own methods against the enemy, [an approach] which we unequivocally condemn.

Even on this mournful date – the 60th anniversary of the deportation – many Chechens marked the occasion in extremely harsh conditions of unmotivated mass murders, extrajudicial executions, groundless detentions, severe 'clear-up' operations, tortures, kidnappings, disappearances and 'residential' checks by Russia's invaders and their accomplices, who have been committing excesses in the territory of the CRI for the past five years.

As the legitimately elected President of the Chechen Republic of Ichkeria, I express, on behalf of the recalcitrant Chechen people fighting for their freedom, sincere gratitude to all the members of the European Parliament who took this fundamental decision to recognise the deportation of 1944 as an act of genocide...

Today, just as 60 years ago, the new global Russia's terror has become our national tragedy. Its inexorable millstones are grinding the gene pool of the unique and original Chechen people, one of the indigenous nations of the ancient Caucasus, and this in the end may lead to [the Chechens'] total physical disappearance from the face of the earth.

Your decision in defence of the Chechen people, living in a situation of ongoing genocide, is an additional moral incentive in the fight for survival. We are always open to constructive dialogue with the international community, and we invite independent experts from the United Nations and the European Union to monitor the situation with their own eyes, so that the groundless and defamatory attacks on the Chechens by Russia's propagandists, who insolently continue to pester the PACE, OSCE and other authoritative organisations, can no longer distort the real picture in the Chechen Republic of Ichkeria.

There is no doubt that the Kremlin is today the centre of international terrorism, and [the Kremlin] selected Chechnya and the Chechens as targets for testing terrorist methods which are being developed by the [Federal Security Service]. It would be naive to believe that the present regime in Russia would be too shy to use its terrorist experience in the international arena to solve its political and other problems. An example of this is the treacherous and cowardly terrorist attack by Russia's special services in the State of Qatar, which prematurely took the life of my predecessor, Zelimkhan Yandarbiyev, and was carried out with the use of diplomatic channels.

Owing to the wide publicity given to the latest events concerning the Khanbiyev family, you have become witnesses to one of the numerous terrorist methods used by the State party of Russia, notably taking hostages from the civilian population. In the majority of cases, hostages disappear without trace, and their bodies, showing traces of torture, are later discovered in secret graves that can be found all across the territory of Chechnya.

The genocide of the Chechen people, which continues in the 21st century, is a direct and impertinent challenge to all of progressive mankind, let alone civilised and democratic Europe, which considers human rights as its main value and priority, thus

making the human factor of paramount importance and the most valuable achievement of civilisation.

We would therefore like to believe that the Chechen people have a right to hope that you will soon recognise the war which the Putin regime imposed on Chechnya as genocide – a war which, in its scale, refinement, vandalism and inhumanity, overshadows the genocide of 1944.

I sincerely believe in the triumph of reason and justice on earth, and in the final victory of the Chechen people. The bright day is near when the sacred Chechen soil will be completely cleansed of the countless hordes of Russia's invaders and their accomplices among local nation-traitors. The Chechen Resistance will inevitably accomplish it! Whatever the costs! No one in the world should have any doubt about this!"

C. Investigation in connection with the published articles

10. On 28 November 2004 an officer from the prosecutor's office of the Nizhniy Novgorod Region (*прокуратура Нижегородской области* – "the regional prosecutor's office") reported that he had established that the articles written by unidentified authors contained public appeals to extremist activity – most notably to overthrow the State regime and forcibly change fundamental aspects of Russia's constitutional system.

11. The applicant was interviewed in connection with his publication of the articles. He stated that he supported the assessment given by Akhmed Zakayev in his article of the role of Mr V. V. Putin, the President of Russia, in the history of Russia over the last several years. He also stated that he strongly supported his appeal to stop the war and to resolve the military conflict in the Chechen Republic in a peaceful political way, having made a commentary to that effect after the article. As regards the second article, the applicant explained that he had considered the material to be of great public importance for the people of Russia so had published it. He added that he had intended to convey to the readers the position of the leaders of one of the parties to the military conflict in the Chechen Republic as he had considered that, in the light of the continuing tragedy in the Northern Caucasus and terrorist threat, citizens should be entitled to have an idea of that position first hand rather than having the situation presented to them by Russia's mass media, which only reflected the point of view of the authorities of Russia.

12. On 11 January 2005 the regional prosecutor's office instituted criminal proceedings under Article 280 § 2 of the Criminal Code (public appeals to extremist activity through the mass media). The applicant was questioned on several occasions as a witness.

13. In reports dated 18 February 2005 Ms T., a linguistic expert, stated that the articles in question contained no appeals to extremist activity but rather were aimed at inciting racial, ethnic and social discord (*рознь*), associated with violence (see paragraphs 20-27 below). Following that

conclusion, the authorities decided to conduct a further investigation under Article 282 § 2 of the Criminal Code (incitement to hatred (*ненависть*) or enmity (*вражда*) and the humiliation of human dignity).

14. In a witness interview on 25 April 2005 the applicant stated, *inter alia*, that he had published the two articles as he had considered the material to be of great public significance and had intended to apprise readers in the Nizhniy Novgorod Region of them. He had not pursued any other aim. He also stated that he had taken the decision to publish the articles, without being asked by anyone. In his opinion, the articles were decent and reflected their authors' point of view. He disagreed with the conclusions of the expert reports of 18 February 2005 that the articles contained statements aimed at inciting enmity between the Russians and the Chechens, or statements humiliating the human dignity of the Russians on the grounds of their ethnic origin. He also affirmed his principal position regarding that issue, namely that the actions of the Government of Russia and its armed forces during the conflict in the Chechen Republic should be regarded as a war crime and a crime against mankind. The applicant further stated that he had considered that the publication of the articles promoted friendship and peace between the people of Russia and the Chechen people. Lastly, he denied that he had obtained any payment for publishing the articles. During subsequent interviews the applicant consistently maintained his position.

15. By a decision of 5 May 2005 the investigator in charge suspended the proceedings as those responsible remained unidentified. The decision referred to the statements the applicant had made during witness interviews to the effect that he had obtained the impugned documents from a website and published them with a view to apprising readers in the Nizhniy Novgorod Region of them. The decision further stated that no evidence capable of refuting the applicant's arguments had been obtained during the investigation. It went on to say that there was evidence of a crime under Article 282 § 1 of the Criminal Code in the actions of those who had published the documents online; however, since they remained unidentified the investigation had to be suspended.

16. The decision of 5 May 2005 was quashed by a deputy prosecutor of the regional prosecutor's office and the proceedings were resumed on 9 July 2005.

17. On 2 September 2005 the applicant was formally charged under Article 282 § 2 of the Criminal Code and banned from leaving his place of residence. On the same date the investigator in charge refused a request by him for another linguistic expert examination of the articles, stating that the conclusions in the reports of 18 February 2005 were well-reasoned and consistent.

18. By a decision of 26 September 2005 the investigator in charge refused a request by the applicant for a comprehensive expert examination of the articles involving linguistic experts and historians including the

history, culture and traditions of the Chechen people. The grounds for the refusal were similar to those stated in the decision of 2 September 2005.

19. On 29 September 2005 an indictment was served on the applicant and the case file was sent for trial.

D. Expert reports of 18 February 2005

20. In the context of the criminal proceedings against the applicant, the investigating authorities ordered a linguistic expert examination of the articles published by him. An expert was requested to answer whether they contained any appeals to extremist activity and, in particular, whether there were any appeals to activity aimed at advocating the exceptionality, supremacy or inferiority of citizens on the grounds of their racial, ethnic or social origin. The expert was also requested to reply whether the articles contained statements aimed at inciting hatred or enmity or humiliating the dignity of an individual or a group of individuals on the grounds of their race, ethnic origin, language, origin, attitude towards religion, or membership of a certain social group.

21. On 18 February 2005 Ms T. drew up two expert reports. In a report on the linguistic expert examination of the first article, she pointed out that the text contained statements in the affirmative to the effect that "the tragedy in the Dubrovka [theatre] and the war in Chechnya [were] beneficial for Vladimir Putin", that "the cessation of war and a peace agreement with the leaders of the [Chechen Republic of Ichkeria meant] the loss of power for V. Putin", and that "until V. Putin [guided] the State, blood [would] continue to flow in Chechnya and Russia". The report then referred to the following statement:

> "It is still not too late for us to resolve all the questions at issue. But for this, the people of Russia should get rid of those for whom peace represents the loss of power or perhaps even a trial. As long as they remain in the Kremlin, blood will continue to flow in Chechnya and in Russia."

According to the report, that statement, analysed in the context of the whole article, contained a demand by the author to the people of Russia not to vote for Vladimir Putin in March 2004. It went on to note that the author was also promising that, otherwise, killings and terrorist acts would be carried out in Chechnya and in Russia ("blood will continue to flow..."), verbally threatening the people of Russia. On the basis of that analysis, Ms T. concluded that the above-mentioned statement was aimed at inciting racial, ethnic or social discord, associated with violence. The report provided no further details in respect of that conclusion. It also stated that the article contained no appeals to extremist activity or any statements aimed at advocating the exceptionality and supremacy of the Chechens on the grounds of their ethnic origin.

22. The other report of 18 February 2005 concerned a linguistic expert examination of the second article and stated that the following statements were aimed at inciting racial, ethnic and social hostility, associated with violence:

> "...the 1944 deportation was the ninth large-scale act of genocide by the military and political authorities of Imperial Russia..."
>
> "The very first deportation of the Chechens was carried out by Russia as early as in 1792..."
>
> "More than a quarter of a million innocent civilians have already died in the [Chechen Republic of Ichkeria] (the CRI) during the latest continuing Russian-Chechen war..."
>
> "...the international community ... has not the slightest desire to react in any way to this criminal madness by the bloody Kremlin regime..."
>
> "...the 60th anniversary of the deportation ... many Chechens marked ... in extremely harsh conditions of unmotivated mass murders, extrajudicial executions, groundless detentions, severe 'clear-up' operations, tortures, kidnappings, disappearances and 'residential' checks by Russia's invaders and their accomplices, who have been committing excesses in the territory of the CRI for the past five years..."
>
> "Today, just as 60 years ago, the new global Russia's terror has become our national tragedy. Its inexorable millstones are grinding the gene pool of the unique and original Chechen people..."
>
> "...we invite independent experts from the United Nations and the European Union to monitor the situation with their own eyes, so that the groundless and defamatory attacks on the Chechens by Russia's propagandists... can no longer distort the real picture in the Chechen Republic of Ichkeria..."
>
> "There is no doubt that the Kremlin is today the centre of international terrorism, and [the Kremlin] selected Chechnya and the Chechens as targets for testing terrorist methods which are being developed by the [Federal Security Service]..."
>
> "It would be naive to believe that the present regime in Russia would be too shy to use its terrorist experience in the international arena to solve its political and other problems..."
>
> "An example of this is the treacherous and cowardly terrorist attack by Russia's special services in the State of Qatar, which prematurely took the life of ... Zelimkhan Yandarbiyev..."
>
> "...you have become witnesses to one of the numerous terrorist methods used by the State party of Russia, notably taking hostages from the civilian population..."
>
> "We would therefore like to believe that the Chechen people have a right to hope that you will soon recognise the war which the Putin regime imposed on Chechnya as genocide..."
>
> "The bright day is near when the sacred Chechen soil will be completely cleansed of the countless hordes of Russia's invaders and their accomplices..."

23. The report stated that in all those statements the author of the article was directly pointing out that it was Russia and its invaders, military and political authorities, special services and State party who were carrying out

"genocide", "unmotivated mass murders, extrajudicial executions, groundless detentions, severe 'clear-up' operations, tortures, kidnappings, disappearances and 'residential' checks", and that it was they who were "committing excesses". It also indicated that "the expression 'State party [of Russia]' should be understood to mean a designation of a group of people, organisation or State set in contrast in some aspect to another group of people, organisation or State (in the present case, to Chechnya)".

24. The report also pointed out that the last three sentences of the articles were exclamatory and expressed the author's contemptuous and angry attitude. According to the report, the three sentences were "an undisputable and unequivocal statement to the effect that the Chechen Resistance [would] inevitably liberate their soil of Russia's servicemen". The report went on to state that the expression "Whatever the costs!" referred to the means and methods ("to use the enemy's own methods against the enemy", "terrorist methods"), and that it was of little importance whether those methods were condemned by the author or not, as the author's "protective reservation" "to use the enemy's own methods against the enemy, [an approach] which we unequivocally condemn" did not change the true meaning of the aforementioned expression.

25. T. also considered it necessary to note that the article contained a number of statements with contemptuous, angry stylistic connotations expressing a distinctly negative assessment of the actions of Russia's servicemen and governance of the military and political authorities of Russia, such as "this criminal madness by the [bloody] Kremlin regime", "Russia's invaders and their accomplices, who have been committing excesses in the territory of the CRI for the past five years", "the Kremlin is today the centre of international terrorism" and "the Putin regime".

26. The report went on to note that the article in question also contained statements aimed at advocating the exceptionality and supremacy of the Chechens on the grounds of their ethnic origin, namely:

> "...the new global Russia's terror has become our national tragedy. Its inexorable millstones are grinding the gene pool of the unique and original Chechen people, one of the indigenous nations of the ancient Caucasus..."
>
> "The bright day is near when the sacred Chechen soil will be completely cleansed of the countless hordes of Russia's invaders..."

27. Lastly, the report concluded that the article contained no appeals to extremist activity.

E. Proceedings before the courts

1. Trial

28. At a hearing, the applicant denied the charges. He confirmed that he had decided to publish the articles in question in the newspaper *Pravo-*

Zashchita himself and supported the views expressed in them. He further argued that it had been his responsibility as a journalist to inform his readers of the position of the other party to the Chechen conflict and of possible means to its peaceful resolution. According to the applicant, he had acted in the name of peace and friendship between various nations in Russia. He confirmed that he supported the ideas expressed in the articles.

29. The applicant's defence submitted a report by a linguistic expert, Ms V., which they had obtained at their own request at the investigation stage. It stated that the two articles in question could not be regarded as inciting racial or national hatred and discord. Before the trial court, the applicant argued that Ms T.'s conclusions in the reports of 18 February 2005 were hypothetical and that she had not taken into account scientific recommendations for investigating the type of criminal offence with which he had been charged. The applicant also insisted that Ms T. had exceeded her competence as she had given a legal qualification to his actions. He also pointed to discrepancies between the reports by Ms T. submitted by the prosecution and the report by Ms V. submitted by the defence.

30. A number of witnesses examined at the trial gave positive references about the applicant, stating that he was a man of good character and spoke out in favour of a peaceful resolution of the conflict in the Chechen Republic.

31. Both experts were also cross-examined during the trial. The applicant submitted an audio recording of Ms T.'s cross-examination, which he had made at the trial. It appears from the recording that, in reply to the applicant's questions, Ms T. refused to give definitions of the notions of "race", "ethnic origin" and "social group", stating that it fell outside of her field of expertise.

2. Judgment of 3 February 2006

32. In a judgment of 3 February 2006 the Sovetskiy District Court of Nizhniy Novgorod ("the District Court"), sitting in a single-judge formation composed of Judge B., established that, in breach of sections 51 and 59 of the Mass Media Act, the applicant, "acting intentionally and using his official position as chief editor, [had] decided to publish two articles which contained statements aimed at inciting enmity and humiliating the dignity of a group of persons on the grounds of race, ethnic origin and membership of a certain social group". The court then quoted the expressions referred to in the expert reports of 18 February 2005 (see paragraphs 21-22 above) and observed that 5,000 copies of each of the two issues in which the articles had been published had been distributed in Nizhniy Novgorod, Moscow, Voronezh, Kazan and the Republic of Ingushetia.

33. The District Court found that the applicant's guilt had been proven "by witness statements and the case material, [in particular] by the conclusions of the forensic expert examinations, according to which the

texts [of the impugned articles contained] no appeals to extremist activity, but [contained] statements aimed at inciting racial, ethnic or social discord, associated with violence". On the basis of the evidence adduced to it, the District Court found it necessary to classify the applicant's actions as those punishable under Article 282 § 2 (b) of the Criminal Code, namely those aimed at inciting enmity and humiliating the dignity of a group of persons on the grounds of race, ethnic origin, membership of a social group, committed through the mass media by a person using his official position.

34. The trial court then found that, "acting with direct intent, being aware of the nature of his actions and wishing to carry them out, [the applicant], on his own, [had taken] a decision to publish two articles which had, as their basis, statements aimed at inciting enmity and humiliating the dignity of persons on the grounds of race, ethnic origin and membership of a social group". It observed that "during the trial [the applicant had] repeatedly expressed his support for the points of view reflected in the published articles" and had "pointed out that he [had been] carrying out his duty as a journalist by so doing". In the court's opinion, however, the arguments advanced by the applicant in his defence were "untenable from a legal point of view and should be regarded as [his] attempt to defend himself to avoid punishment for the committed offence of medium gravity". The witness statements in the applicant's favour were held "to concern only the applicant's personality" and to be "irrelevant for the present criminal case".

35. The District Court further pointed out that it had based its guilty verdict "on the lawful and well-founded expert reports [of 18 February 2005], in which [Ms T. had] thoroughly analysed the texts of both articles in their entirety and made a conclusion as to the presence in [them] of statements aimed at inciting racial, ethnic and social discord". The court considered that it had no reason to doubt or question the conclusions of the expert reports given, in particular, "Ms T.'s competence, professional skills and [past] experience."

36. The District Court further rejected the report by Ms V. as defective, saying that it was superficial and formalistic and that the expert examination in question had been carried out without due regard to an analysis of the texts. The court also noted in this connection that the applicant had paid for the report and that Ms V. had not been informed of the relevant provisions of procedural legislation which criminalised the drawing up of knowingly false expert reports.

37. The trial court found it necessary to exclude from the charges against the applicant reference to "the statements aimed at advocating the exceptionality and supremacy of the Chechens on the grounds of their ethnicity" "in the absence of such wording in the provisions of Article 282 of the Russian Criminal Code".

38. As regards the punishment to be imposed on the applicant, the court had regard to the nature and social dangerousness of the offence with which he had been charged and the fact that he had no criminal record, had positive references and had two dependent children. It also stated that there was no evidence at that time that "[his] illegal actions had entailed any serious consequences". The court therefore considered it appropriate to give the applicant a two-year suspended sentence and four years' probation.

3. Trial record

39. On 9 February 2006 the applicant applied to the District Court to have the trial record amended. He complained that Ms T.'s testimony, which was of crucial importance to his case, had been distorted in the record and that, in particular, it attributed certain statements to her which she had not made at the trial. He pointed out, more specifically, that during the trial Ms T. had refused, in reply to his questions, to give definitions to the notions of "race", "ethnic origin" and "social group", stating that it was outside of her competence as a linguist and rather fell within the competence of a sociologist or historian. However, according to the official trial record, Ms T. had defined the aforementioned notions. The applicant also asked the court to include in the case file a copy and transcript of the audio recording of the first-instance hearings, made by the defence, indicating the discrepancies between the actual statements made by Ms T. and those reflected in the trial record.

40. By a decision of 13 February 2006 Judge B. of the District Court rejected the applicant's application. He noted that the trial record had been made in compliance with procedural law and fully reflected the actual testimony given by all witnesses. The judge further stated that neither the applicant nor his lawyer had notified the District Court of the audio recording of Ms T.'s cross-examination at the trial or requested that the court include it in the case file, and that there were no legal grounds at that time for entertaining the applicant's application.

4. Appeal proceedings

41. On 9, 10 and 13 February 2006 respectively the applicant's two lawyers and the applicant lodged appeals against his conviction.

42. On 17 February 2006 the applicant filed supplementary appeal pleadings, reiterating his complaints concerning the shortcomings in the trial record with respect to Ms T.'s testimony and requesting that the appellate court examine the audio recording made during the trial of Ms T.'s statements and establish the discrepancy between them and those reflected in the trial record.

43. By a letter of 21 February 2006, Judge B. returned the applicant's supplementary pleadings, stating that, in substance, they reflected his

remarks in respect of the trial record, which had already been examined and rejected on 13 February 2006.

44. On 1 March 2006 the applicant resubmitted his supplementary pleadings of 17 February 2006 to the Nizhniy Novgorod Regional Court ("the Regional Court") and complained about Judge B.'s refusal to accept them. In a letter of 13 April 2006 the Regional Court informed the applicant that it had accepted his pleadings of 17 February 2006 for examination and had examined them during an appeal hearing on 11 April 2006, and therefore the breach of his right of appeal against the judgment of 3 February 2006 had been remedied. The letter also stated that Judge B.'s actions when he had unlawfully returned the applicant's supplementary pleadings of 17 February 2006 would be discussed by the Regional Court, but that at the same time there were insufficient grounds for instituting disciplinary proceedings against him.

45. In its decision of 11 April 2006 the Regional Court found the judgment of 3 February 2006 reasoned and well-founded and upheld it on appeal. It reiterated the reasoning of the trial court, stating that the applicant's guilt for the offence with which he had been charged had been proven by the body of evidence examined during the trial – his own statements in which he had admitted having published the impugned articles and the expert reports of 18 February 2005. The Regional Court endorsed the trial court's argument that there was no reason to question the conclusions of those reports. It also stated that the trial court had addressed Ms V.'s report, which had been favourable to the applicant, having assessed it critically.

F. The applicant's complaints against Judge B.

46. In February and March 2006 the applicant unsuccessfully attempted to have disciplinary and criminal proceedings instituted against Judge B. for alleged falsifying the trial record, exceeding his powers and obstructing justice.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal acts

1. Criminal Code

47. Article 282 of the Criminal Code (incitement to hatred or enmity and the humiliation of human dignity) provides, as follows:

> "1. Actions aimed at inciting hatred or enmity and humiliating the dignity of an individual or a group of individuals on the grounds of gender, race, ethnic origin, language, background, religious beliefs or membership of a social group, committed

publicly or through the mass media, shall be punishable by a fine of 100,000 to 300,000 Russian roubles, or an amount equivalent to the convicted person's wages or other income for a period of one to two years, by withdrawal of the right to hold certain posts or carry out certain activities for a period of up to three years, by compulsory labour of up to 180 hours or by correctional labour of up to one year, or by a deprivation of liberty of up to two years.

2. The same actions, if committed:

(a) with the use of violence and the threat of its use;

(b) by a person using his or her official position;

(c) by an organised group,

shall be punishable by a fine of RUB 100,000 to 500,000 or an amount equivalent to the convicted person's wages or other income for a period of one to three years, by withdrawal of the right to hold certain posts or carry out certain activities for a period of up to five years, by compulsory labour of 120 to 240 hours or by correctional labour of one up to two years, or by a deprivation of liberty of up to five years."

2. Mass Media Act

48. The relevant sections of the Law of the Russian Federation of 27 December 1991 no. 2124/1 "On the Mass Media" (*Закон РФ от 27 декабря 1991 г. № 2124-1 «О средствах массовой информации»* – "the Mass Media Act") provide as follows:

Section 51. Impermissibility of abuse of the rights of a journalist

"The rights of a journalist established in this Law shall not be used with the aim of concealing or falsifying information of public significance, dissemination of rumours posed as reliable information, gathering of information in favour of a third person or organisation who are not a mass medium.

It is prohibited to use the right of a journalist for dissemination of information with the aim of tarnishing a citizen or particular categories of citizens exclusively on the grounds of gender, age, racial or ethnic origin, language, attitude towards religion, profession, place of residence or work as well as in connection with their political views."

Section 59. Liability for the abuse of the freedom of mass information

"Abuse of the freedom of mass information ... entails criminal, administrative, disciplinary or other liability in accordance with the legislation of the Russian Federation.

Abuse of the rights of a journalist in breach of [section] ... 51 of this Law or a failure to comply with the duties of a journalist entails criminal, administrative, disciplinary or other liability in accordance with the legislation of the Russian Federation."

B. Court practice

1. Supreme Court resolution no. 16 of 15 June 2010

49. On 15 June 2010 the Plenary Session of the Supreme Court of Russia ("the Supreme Court") adopted resolution no. 16 "On the Application by the Courts of the Law of the Russian Federation "On the Mass Media" (*Постановление Пленума Верховного суда РФ от 15 июня 2010 г. № 16 «О практике применения судами Закона Российской Федерации «О средствах массовой информации»*).

50. Paragraph 28 provided that when examining the question as to whether there had been an abuse of the freedom of mass information, the courts should take into account not only the words and expressions (wording) used in an article, television or radio programme, but also the context in which they had been made. In particular, the courts should take into account the aim, genre and style of the article or programme, or the relevant part it played; whether it could be regarded as an expression of an opinion in the sphere of political discussions or a drawing of attention to a debate on matters of public interest; whether an article, programme or material was based on an interview; and the attitude an interviewer and/or representatives of the editorial board of a medium had towards expressed opinions, judgments and statements. The courts also should take into account the social and political situation in the country as a whole and in that particular part, depending on the region in which the particular medium was being distributed.

2. Supreme Court resolution no. 11 of 28 June 2011

51. On 28 June 2011 the Supreme Court adopted resolution no. 11 "On Court Practice in respect of Criminal Cases concerning Criminal Offences of Extremist Orientation" (*Постановление Пленума Верховного суда РФ от 28 июня 2011 г. № 11 «О судебной практике по уголовным делам о преступлениях экстремистской направленности»*).

52. Paragraph 3 stated that, during criminal proceedings in cases concerning a criminal offence of extremist orientation, the courts should take into account that under the relevant provision of the criminal law the motive for committing the offence should be proven.

53. Paragraph 7 provided that actions aimed at inciting hatred or enmity were to be understood as comprising statements vindicating and/or affirming the necessity of genocide, mass repressions, deportations and other illegal action, including the use of violence, in respect of representatives of a certain nationality, race, followers of a certain religion and other groups of individuals. Criticism of political organisations, ideological and religious associations, political, ideological and religious

convictions, national and religious customs, should not, as such, regarded as an action aimed at inciting hatred or enmity.

54. The same paragraph clarified that when establishing in an action taken in respect of public officials (professional politicians) elements aimed at humiliating the dignity of an individual or a group of individuals, the courts should take into account the provisions of paragraphs 3 and 4 of the Declaration on freedom of political debate in the media adopted by the Committee of Ministers of the Council of Europe on 12 February 2004 and the practice of the Court, according to which political figures who, having decided to appeal to the confidence of the public, have thereby accepted to subject themselves to public political debate and criticism through the media. Public officials can be subject to criticism in the media over the way in which they carry out their functions, in so far as this is necessary for ensuring transparency and the responsible exercise of their functions. Criticism through the media of public officials (professional politicians), their actions and convictions should not, as such, be regarded in all cases as an action aimed at humiliating the dignity of a person or a group of persons, as the limits of acceptable criticism are wider in respect of such persons than in respect of private individuals.

55. Paragraph 8 stated that a criminal offence punishable under Article 282 of the Criminal Code could only be committed with direct intent and with the aim of inciting hatred or enmity and humiliating the dignity of an individual or group of individuals on the grounds of gender, race, nationality, language, origin, attitude to religion or membership of a certain social group. The expression of value judgments and inferences using the facts of interethnic, interreligious or other social relations in scientific or political discussions and texts and not pursuing the aim of inciting hatred or enmity and humiliating the dignity of an individual or group of individuals on the grounds of gender, race, nationality, language, origin, attitude to religion or membership of a certain social group was not a criminal offence punishable under Article 282 of the Criminal Code.

56. Paragraph 23 stated that when ordering a forensic expert examination in cases concerning a criminal offence of extremist orientation, experts should not be asked legal questions falling outside his or her competence and involving an assessment of an impugned act, the resolution of such questions being exclusively within a court's competence. In particular, experts should not be requested to answer questions as to whether a text contains appeals to extremist activity, or whether documentary material is aimed at inciting hatred or enmity.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

57. The applicant complained of a violation of his right to freedom of expression secured by Article 10 of the Convention, which reads as follows:

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

A. Submissions by the parties

1. The applicant

58. The applicant insisted that his publication of the articles for which he had been convicted had pursued the aim of presenting objective and undistorted information about the conflict in the Chechen Republic and imparting the opinions of both parties to that conflict. He argued that his conviction had constituted an unjustified interference with his right to freedom of expression.

59. In particular, the applicant stated that the alleged interference could not be said to have been "prescribed by law". He contended that his conviction had been the result of an unforeseeable, if not abusive, application of Article 282 of the Criminal Code. In other words, a reasonable person could not have foreseen that the acts for which he had been convicted would have been classified as those "aimed at inciting enmity and humiliating the human dignity of a group of persons on the grounds of race, ethnic origin and membership of a certain social group".

60. The applicant argued that, in his capacity as chief editor of a newspaper and public activist, at the time of publication of the two articles he had been aware of the provisions of Article 282 of the Criminal Code and the generally accepted interpretation of notions in that Article including "race, "ethnicity" and "social group", and would exercise some diligence when selecting material for publication. In particular, he would carefully check whether the material could be said to contain any statements prohibited by the relevant legislation. He had done the same with regard to the "addresses" by Akhmed Zakayev and Aslan Maskhadov. In his view, although the articles were very critical, they never incited hatred or sowed discord, or were humiliating in respect of any of the groups or individuals

protected by Article 282 of the Criminal Code. In particular, the articles never mentioned any individuals or groups in connection with their race. In addition, although the articles mentioned two ethnic groups – the Russians and the Chechens – no individuals or groups of persons were mentioned, let alone stigmatised, in connection with their ethnic origin. Lastly, as regards social groups, the articles were, indeed, highly critical as regards certain individuals or groups, such as the President of Russia, special services of Russia, "Russia's invaders and their accomplices", "Russia's propagandists", and the like; however, those individuals or groups were never stigmatised on account of their membership, as such, of those groups, but rather were criticised for their actions.

61. The applicant further pointed out that, under the relevant domestic law, the Supreme Court was empowered to give a formal interpretation of domestic legal norms. However, by the time his trial had commenced, the Supreme Court had never interpreted Article 282 of the Criminal Code. Moreover, the practice of the Russian courts on that issue appeared to have been rather limited at that time. Therefore, in the applicant's view, it had been essential for the domestic courts in his case to at least have regard to a doctrinal interpretation of the issue in question; however, they had not taken into account the doctrinal sources to which he had referred at the trial.

62. The applicant went on to argue that the courts in his case had failed to establish duly the constituent elements of the offence with which he had been charged and to provide any reasonable justification for the interference with his freedom of expression. Firstly, they had not defined the groups protected by Article 282 of the Criminal Code, and, more specifically, had not established the meaning of the notions of "race", "ethnic origin" or "social group". They had merely referred to the expert reports of 18 February 2005, which had contained no such definitions. Moreover, during her cross-examination at the trial T. had refused to give any such definitions, stating that it fell outside her field of expertise. In the latter respect, the applicant referred to an audio recording of Ms T.'s cross-examination at the trial which he had submitted to the Court, stating that the official trial record, according to which Ms T. had given the necessary definitions, had been falsified. He further argued that the courts in his case, however, had never sought the opinion of a competent expert such as, for instance, a sociologist or anthropologist, or had had recourse to any specialist scientific literature or relevant court practice.

63. Secondly, the courts had not determined which actions could constitute incitement to enmity and the humiliation of dignity with respect to the aforementioned groups. Lastly, they had not determined whether such actions had been carried out by the applicant and, if so, in respect of which groups or individuals. In their decisions, the courts only referred generally to "enmity" and "humiliation of human dignity" without any concretisation.

64. Therefore, in the applicant's opinion, the Russian courts had not established any link between his actions and the legal provision applied in his case, and therefore the alleged interference with his rights secured by Article 10 had not been "lawful".

65. The applicant also submitted that the interference in question had not pursued any legitimate aim. He argued that his conviction had been an act of deterrence to punish him for publishing the articles, which had been highly critical towards the top politicians in Russia, including the President, and their politics, and to discourage him from making use of his right to freedom of expression.

66. The applicant further contested the Government's argument that the interference with his rights had been necessary for "protecting the rights and interests of the multinational population of Russia, maintaining public order and preventing possible unlawful actions". He stated in this connection that the prosecution had not found any single witness who would have considered him or herself humiliated or insulted by the articles in question on the grounds of his or her race, ethnic origin, or membership of a social group. On the contrary, all the witnesses examined at trial – both Russians and Chechens – had stated that they could not see anything in the articles insulting to their honour and dignity on any of the aforementioned grounds. The applicant also argued that the Government had not been justified in their reference to the sensitive nature of the relationship between the Russian Federation and the Chechen Republic, as they had never availed themselves of their right under Article 15 of the Convention to derogate from their obligations under the Convention.

67. Lastly, the applicant contended that his conviction had been a grossly disproportionate measure. He stated that the protection offered by Article 10 of the Convention extended to information and ideas that sometimes shocked, offended and disturbed, and that those criticised should tolerate and accept such ideas even if they stood in conflict with their political views, activities, beliefs and so forth. The applicant also pointed out that he had not written the articles in question, but was merely a journalistic commentator. He argued in that connection that freedom of expression, as such, required that care be taken to dissociate the personal views of the writer of a commentary from the ideas that were being discussed and reviewed.

2. The Government

68. Firstly, the Government strongly objected to the Court's reproducing "as established facts" in its official texts "various propaganda material written by a person charged in Russia with a number of serious criminal offences" and regarded it unacceptable "to use the Court's resources for incitement to hatred or enmity and the humiliation of dignity of a person or a group of persons on the grounds of sex, race, nationality, language, origin,

religion and membership of a social group". They pointed out that it was precisely in this way that they had interpreted the "dissemination by the Court of the so-called 'addresses' by Akhmed Zakayev and Aslan Maskhadov which had earlier been published by the applicant in his newspaper". The Government insisted on the exclusion of the "addresses" reproduced in the statement of facts from the material of the present case.

69. The Government further conceded that there had been an interference with the applicant's right to freedom of expression secured by Article 10 § 1 of the Convention. At the same time, they argued that that interference had been lawful and necessary in a democratic society.

70. In particular, they pointed out that at two levels of domestic court the applicant had been found guilty of incitement to enmity and the humiliation of human dignity of a group of persons on the grounds of their race, ethnic origin and membership of a social group, committed through the mass media by him using his official position. Such actions were punishable under Article 282 § 2 of the Criminal Code, which had been the basis for the applicant's criminal conviction. They further contested the applicant's argument concerning the foreseeability of the domestic law applied. They submitted that, being a chief editor of a newspaper, he ought to have been aware that he was responsible for his professional activities. Moreover, he had admitted in his observations that he had been aware of the provisions of section 51 of the Mass Media Act and those of Article 282 of the Criminal Code. Therefore, in the Government's view, the interference in question had been prescribed by law.

71. They further insisted that, taking into account the situation obtaining at that time and, in particular, the sensitive nature of the relationship between the Russian Federation and the Chechen Republic and separatist tendencies, the interference with the applicant's right under Article 10 of the Convention had been necessary in a democratic society and pursued the legitimate aims of "protecting the rights and interests of the multinational population of Russia, maintaining public order and preventing possible unlawful actions which the publication of the impugned articles might have provoked".

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) The Court's preliminary remarks

73. The Court notes at the outset that it cannot accept the Government's criticism in so far as they contended that by reproducing the texts of the two articles published by the applicant the Court had used its "resources for incitement to hatred or enmity and the humiliation of dignity of a person or a group of persons on the grounds of sex, race, nationality, language, origin, religion and membership of a social group".

74. The Court observes that the publication of the impugned articles was the basis for the applicant's criminal conviction on a charge of incitement to enmity and the humiliation of dignity of a group of persons on the grounds of race, ethnic origin and membership of a social group, committed through the mass media by a person using his official position. This conviction lies at the heart of the applicant's complaint under Article 10 of the Convention of an unjustified interference with his freedom of expression. The Court's task is to determine whether his rights secured by the aforementioned provision of the Convention were violated as a result of that interference. In order to be able to make its assessment, the Court must have due regard to the circumstances of the case and, in particular, examine all the material made available to it, of which the articles in question are of key importance. Moreover, the Court has to rely on that material when providing reasons for its judgment in the present case and thus, irrespective of the conclusions it will reach, it cannot avoid reproducing the articles in question in its judgment. It therefore rejects the Government's request to exclude the articles from the statement of facts in the instant case.

75. The Court also considers it necessary to stress that the discussion in the present judgment of statements in the articles published by the applicant is intended solely for the purposes of the present case, and is made in the context of the Court's review of the measure imposed on him with a view to establishing whether the respondent Government overstepped their margin of appreciation in the relevant field. The Court has no intention of providing in this judgment any factual or legal assessment or historical arbitration of the events referred to in the two articles (see, in a similar context, *Fatullayev v. Azerbaijan*, no. 40984/07, § 76, 22 April 2010).

(b) Existence of interference

76. The parties agreed that there had been an "interference" with the applicant's exercise of his freedom of expression on account of his conviction. Such interferences infringe Article 10 of the Convention unless they satisfy the requirements of paragraph 2 of that provision. It thus remains to be determined whether the interference was "prescribed by law", pursued one or more legitimate aims as defined in that paragraph and was "necessary in a democratic society" to achieve those aims.

(c) "Prescribed by law"

77. In the present case, it was not in dispute that the applicant's conviction had a basis in national law – Article 282 § 2 of the Criminal Code – and that the relevant provision was accessible. Rather, the applicant called into doubt the foreseeability of that provision as applied by the domestic courts, arguing that his conviction under the above-mentioned provision for the publication of the two articles had gone beyond what could reasonably have been expected (see paragraphs 59-64 above).

78. The Court reiterates its settled case-law, according to which the expression "prescribed by law" requires that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, which should be accessible to the persons concerned and foreseeable as to its effects, that is formulated with sufficient precision to enable the persons concerned – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct (see, among many other authorities, *Öztürk v. Turkey* [GC], no. 22479/93, § 54, ECHR 1999-VI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; and *Dilipak v. Turkey*, no. 29680/05, § 55, 15 September 2015). Those consequences need not be foreseeable with absolute certainty, as experience shows that to be unattainable (see, as a recent authority, *Perinçek v. Switzerland* [GC], no. 27510/08, § 131, ECHR 2015 (extracts)).

79. The Court has consistently recognised that laws must be of general application with the result that their wording is not always precise. It is true that the need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. The interpretation and application of such enactments depend on practice (see, for instance, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 64, ECHR 2004-I, and *Altuğ Taner Akçam v. Turkey*, no. 27520/07, § 87, 25 October 2011). The scope of the notion of foreseeability depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see, for instance, *Lindon, Otchakovsky-Laurens and July*, cited above, § 41). It may be assumed therefore that, even if generally formulated, the provision in question may be regarded as compatible with the "quality of law" requirement, if interpreted and applied by the domestic courts in a rigorous and consistent manner. The Court is furthermore mindful that its task is not to review domestic law in the abstract but to determine whether the way in which it was applied to the applicant gave rise to a breach of the Convention (see *Perinçek*, cited above, § 136).

80. In the present case, the key issue is whether by deciding to publish the impugned articles in the newspaper of which he was the chief editor, the

applicant knew or ought to have known – if need be, with appropriate legal advice – that this could render him criminally liable under the above-mentioned provision of the Criminal Code (cf. ibid., § 137). The Court recognises that in the area under consideration it may be difficult to frame laws with absolute precision and that a certain degree of flexibility may be called for to enable the Russian courts to assess whether a particular action can be considered as capable of stirring up hatred and enmity on the grounds listed in that Article (see *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 39, ECHR 1999-IV; *Öztürk*, cited above, § 55; and *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 39, ECHR 2005-I). It has consistently held that in any system of law, including criminal law, however clearly drafted a legal provision may be, there will inevitably be a need for interpretation by the courts, whose judicial function is precisely to elucidate obscure points and dispel any doubts which may remain regarding the interpretation of legislation (see, for instance, *Öztürk*, cited above, § 55, and, *mutatis mutandis*, *Jorgic v. Germany*, no. 74613/01, § 101, ECHR 2007-III).

81. In this connection, the Court observes that the Government did not adduce or refer to any practice of the national courts which would, at the time when the applicant was tried and convicted, interpret the notions referred to in Article 282 of the Criminal Code to define their meaning and scope with a view to giving an indication as to what "actions" could result in criminal liability under that provision. The applicant, in turn, pointed to a lack of relevant practice of the Russian courts or interpretation of the provision in question by the Supreme Court (see paragraph 61 above). Indeed, it was not before 28 June 2011, more than five years after the applicant had been convicted at final instance, that the Supreme Court adopted a resolution in which it addressed the problem with the interpretation of Article 282 of the Criminal Code and provided some guidance in that respect for the national courts (see paragraphs 51-56 above).

82. Against this background, it appears that in the applicant's criminal case the domestic courts were faced with a relatively novel legal issue, not yet clarified through judicial interpretation. The Court recognises that they cannot be blamed for that state of affairs, and that there will always be an element of uncertainty about the meaning of a new legal provision until it is interpreted and applied by the domestic courts (see, *mutatis mutandis*, *Perinçek*, cited above, §§ 135 and 138, and *Jobe v. the United Kingdom* (dec.), no. 48278/09, 14 June 2011). As to the criteria applied by the courts in the applicant's case, this question relates rather to the relevance and sufficiency of the grounds given by them to justify his conviction, and should be addressed in the assessment of whether the interference with the applicant's rights secured by Article 10 of the Convention was necessary in a democratic society.

83. In the light of the foregoing consideration, the Court will proceed on the assumption that the interference with the applicant's right to freedom of expression may be regarded as "prescribed by law", within the meaning of Article 10 § 2 of the Convention.

(d) Legitimate aim

84. The Government argued, with reference to the sensitive nature of the relationship between the Russian Federation and the Chechen Republic at the material time, and separatist tendencies in that republic, that the interference in question had pursed the aims of protecting "the rights and interests of the multinational population of Russia", maintaining public order and preventing crime. The applicant disagreed with the Government, contending that his conviction had rather been an act of deterrence pursuing the aim of punishing him for his publication of critical articles regarding top politicians in Russia and suppressing his public activities.

85. The Court observes at the outset that whilst referring to the need of protecting "the rights and interests of the multinational population of Russia", the Government did not specify which particular rights and which particular individuals, group of individuals or sector of the population they sought to protect so as to engage the aim of "the protection of the ... rights of others", enshrined in Article 10 § 2 of the Convention. In the absence of any indication to the contrary, it will therefore assume that the Government's reference to "the rights and interests of the multinational population of Russia" seen together with their reference to the sensitive relationship between Russia and the Chechen Republic and separatist tendencies in that region, corresponded to the aims of protecting "national security", "territorial integrity" and "public safety" established by the above-mentioned provision.

86. The Court further reiterates that the concepts of "national security" and "public safety" in Article 10 § 2, that permit interference with Convention rights, must be interpreted restrictively and should be brought into play only where it has been shown to be necessary to suppress the release of information for the purposes of protecting national security and public safety (see *Stoll v. Switzerland* [GC], no. 69698/01, § 54, ECHR 2007-V, and *Görmüş and Others v. Turkey*, no. 49085/07, § 37, 19 January 2016). It has also previously stressed the sensitivity of the fight against terrorism and the need for the authorities to stay alert to acts capable of fuelling additional violence (see, among other authorities, *Öztürk*, cited above, § 59; *Erdoğdu v. Turkey*, no. 25723/94, § 50, ECHR 2000-VI, and *Leroy v. France*, no. 36109/03, § 36, 2 October 2008).

87. In the Russian context, the Court has on a number of occasions noted the difficult situation in the Chechen Republic, which obtained at the relevant time and called for exceptional measures on the part of the State to suppress the illegal armed insurgency (see, among many other authorities,

Khatsiyeva and Others v. Russia, no. 5108/02, § 134, 17 January 2008; *Akhmadov and Others v. Russia*, no. 21586/02, § 97, 14 November 2008; and *Kerimova and Others v. Russia*, nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, § 246, 3 May 2011). The Court may therefore accept that in the period when the applicant was tried and convicted, matters relating to the conflict in the Chechen Republic were of a very sensitive nature and required particular vigilance on the part of the authorities.

88. The Court accepts, accordingly, that the measure taken against the applicant, at least on the face of it, pursued the aims of protecting national security, territorial integrity and public safety and preventing disorder and crime.

(e) "Necessary in a democratic society"

89. The Court's remaining task is to determine whether the applicant's conviction was "necessary in a democratic society".

(i) General principles

(α) Freedom of expression and the standards applied by the Court

90. 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 Article 10 § 2, 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 that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, among many other authorities, *Sürek and Özdemir v. Turkey* [GC], nos. 23927/94 and 24277/94, § 57, 8 July 1999; *Ceylan v. Turkey* [GC], no. 23556/94, § 32, ECHR 1999-IV; and, more recently, *Perinçek*, cited above, § 196; and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

91. The press plays an essential role in a democratic society. Although it must not overstep the boundaries set, *inter alia*, for the protection of vital interests of the State such as the prevention of disorder or crime, it is nevertheless incumbent on the press, in accordance with its duties and responsibilities, to impart information and ideas on all matters of public interest, in particular political questions, including divisive ones (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 59, ECHR 1999-IV, and *Sürek v. Turkey (no. 3)* [GC], no. 24735/94, § 38, 8 July 1999). Not only has the press the task of imparting such information and ideas, the public has a right to receive them. Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. In that connection, press freedom also covers possible

recourse to a degree of exaggeration, or even provocation (see *Erdoğdu*, cited above, § 52).

92. The test of "necessity in a democratic society" means that an interference with this freedom must meet the requirement of the Court to determine whether the interference complained of corresponded to a "pressing social need". In general, that "need" must be convincingly established. Admittedly, it is first of all for the national authorities to assess whether there is such a need capable of justifying that interference and, to that end, they enjoy a certain margin of appreciation. However, the margin of appreciation is coupled with supervision by the Court both of the law and the decisions applying the law and, particularly where the press is concerned, it is circumscribed by the interests of a democratic society in ensuring and maintaining journalistic freedom (ibid., § 53).

93. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken 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 or 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, including the content of the statements held against the applicant and the context in which they were made (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 89, ECHR 2004-XI, and *Fatullayev*, cited above, § 83).

94. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued". In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Ceylan*, cited above, § 32; *Fatullayev*, cited above, § 84; and *Dilipak*, cited above, § 64). In addition, the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see, for instance, *Ceylan*, cited above, § 37). The Court must also exercise the utmost caution where the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern (see *Cumpănă and Mazăre*, cited above, § 111, and *Fatullayev*, cited above, § 102).

(β) Political speech

95. There is little scope under Article 10 § 2 for restrictions on political speech or on debate on questions of public interest (see, among other

authorities, *Sürek v. Turkey (no. 1)*, cited above, § 61; *Stoll*, cited above, § 106; and *Perinçek*, cited above, § 197). It has been the Court's constant approach to require very strong reasons for justifying restrictions on political speech, since broad restrictions imposed in individual cases would undoubtedly affect respect for freedom of expression in general in the State concerned (see *Fatullayev*, cited above, § 117, and the authorities cited therein).

96. Moreover, the limits of permissible criticism are wider with regard to the government than in relation to a private individual, or even a politician. In a democratic system the actions or omissions of the government must be subject to close scrutiny, not only of the legislative and judicial authorities, but also of the public. Also, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it certainly remains open to the relevant State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks (see, among many other authorities, *Ceylan*, cited above, § 34; *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 57, 8 July 1999; and *Sürek and Özdemir,* cited above, § 60).

(γ) "Hate speech" and calls to violence

97. In its assessment of the interference with freedom of expression in cases concerning expressions alleged to stir up or justify violence, hatred or intolerance, the Court has regard to a number of factors, which have been summarised in the case of *Perinçek* (cited above, §§ 205-07).

98. One of those factors is the social and political background against which the statements were made. Thus, the Court has previously acknowledged that in situations of conflict and tension particular caution is called for on the part of the national authorities when consideration is being given to the publication of opinions which advocate recourse to violence against the State (see, for instance, *Erdoğdu*, cited above, § 62).

99. Another factor is whether the statements, fairly construed and seen in their immediate or wider context, can be seen as a direct or indirect call to violence or as a justification of violence, hatred or intolerance. The Court has held, in particular, that where such remarks incite violence against an individual, a public official or a sector of the population, the State enjoys a wider margin of appreciation when examining the need for an interference with freedom of expression (see, for instance, *Ceylan*, cited above, § 34). It has also held that inciting hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating

xenophobic of otherwise discriminatory speech in the face of freedom of expression exercised in an irresponsible manner (see *Féret v. Belgium*, no. 15615/07, § 73, 16 July 2009, and *Vejdeland v. Sweden*, no. 1813/07, § 55, 9 February 2012).

100. At the same time, it has been the Court's constant approach to stress that where the views expressed do not comprise an incitement to violence – in other words unless they advocate recourse to violent action or bloody revenge, justify the commission of terrorist offences in pursuit of their supporter's goals or can be interpreted as likely to encourage violence by expressing deep-seated and irrational hatred towards identified persons – Contracting States cannot rely on protecting territorial integrity and national security, maintaining public order and safety, or preventing crime, to restrict the right of the general public to be informed of them (see, *mutatis mutandis*, *Sürek (no. 4),* cited above, § 60; *Fatullayev*, cited above, § 116; *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, § 56, 6 July 2010; *Nedim Şener v. Turkey*, no. 38270/11, § 116, 8 July 2014; *Şık v. Turkey*, no. 53413/11, § 105, 8 July 2014; and *Dilipak*, cited above, § 62).

101. Lastly, the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences is important (see *Perinçek*, cited above, §§ 206-07). Be that as it may, it is always the interplay between the various factors rather than any one of them taken in isolation that determines the outcome of the case. The Court's approach to that type of case can thus be described as highly context-specific (ibid., § 208).

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

102. In the present case, the applicant was prosecuted in criminal proceedings and given a suspended sentence for publishing two articles which, as the domestic courts found, contained statements "aimed at inciting enmity and humiliating the dignity of a group of persons on the grounds of race, ethnic origin and membership of a social group". As noted in paragraph 93 above, it is not the Court's task to rule on the constituent elements of the offence of which the applicant was convicted under domestic law by reviewing whether those elements actually arose from his actions. It will only have to ascertain whether his conviction in connection with those articles was "necessary in a democratic society" for protecting national security, territorial integrity and public safety and preventing disorder and crime – the legitimate aims advanced by the Government and accepted by the Court (see paragraphs 84 and 88 above). In so doing, the Court will have particular regard to the applicant's status, the nature of the impugned articles and their wording, the context in which they were published, and the approach taken by the Russian courts to justify the interference in question.

103. The Court observes at the outset that the applicant was the chief editor of a regional newspaper and that in that capacity his task was to impart information and ideas on matters of public interest (see paragraph 91 above). He published two articles presumably written by two Chechen separatist leaders, where they blamed the Russian authorities for the ongoing conflict in the Chechen Republic and criticised them in that connection. It is thus clear that, as such, the statements concerned the governmental policies in the region and were part of a political debate on a matter of general and public concern (see paragraphs 95 and 96 above).

104. The Court is mindful of the very sensitive nature of that debate, given the difficult situation prevailing in the Chechen Republic at the time, where separatist tendencies in the region led to serious disturbances between the Russian security forces and the Chechen rebel fighters and resulted in a heavy loss of life. In this connection, the Court notes the Government's argument (see paragraph 68 above) that the presumed authors of the impugned articles — Mr Zakayev and Mr Maskhadov – were leaders of the Chechen separatist movement and were wanted in Russia on a number of very serious criminal charges (as regards Mr Maskhadov, see also *Maskhadova and Others v. Russia*, no. 18071/05, §§ 8-17, 6 June 2013). However, it has previously held that the fact that statements are made by somebody who is considered to be an outlaw cannot in itself justify an interference with the freedom of expression of those who publish such statements (see *Sürek and Özdemir*, cited above, § 61, and *Gözel and Özer v. Turkey*, cited above, § 52, and the authorities cited therein). What has to be determined in the present case is whether the impugned statements in the articles published by the applicant can be regarded as inciting, or liable to provoke violence capable, in the light of the legitimate aims advanced by the Government, of undermining national security, territorial integrity or public safety, or leading to disorder (see paragraph 100 above).

105. Turning to the texts in question, the Court observes that the first article, presumably authored by Mr Zakayev, is written in quite a neutral and even conciliatory tone. The author "[is] extending to the people of Russia the hand of peace", stating that "it is not too late ... to resolve all questions" and that "no one needs the war". Although obviously critical towards the actions of the Russian authorities in the Chechen Republic, by attributing exclusive responsibility for the ongoing armed conflict to unnamed top politicians of Russia – those who "remain in the Kremlin" – and personally to the Russian President, Mr Putin, the article contains no appeals to violence, rebellion or forcible overthrow of the existing political regime, nor otherwise rejects democratic principles. On the contrary, it suggests that a conflict can be resolved in a peaceful manner if the Russian people "get rid" of those politicians through a democratic process, by voting Mr Putin out at the forthcoming presidential election. On the whole, the article, in the Court's view, clearly cannot be construed as stirring up hatred

or intolerance on any ground, let alone fuelling violence capable of provoking any disorders or undermining national security, territorial integrity or public safety.

106. The second article, presumably written by Mr Maskhadov, is admittedly more virulent in its language and contains strongly worded statements describing the Russian authorities' actions in the Chechen Republic as "genocide", "criminal madness by the bloody Kremlin regime", "Russia's terror", "terrorist methods", "excesses", and the like. The article condemns Russia's policies in the region in the past and fervently accuses the current political regime of "imposing a war" on the republic at the present time. It furthermore denounces the practices used by "Russia's invaders" in the region during the recent armed conflict, such as "unmotivated mass murders", "extrajudicial executions", "groundless detentions", "severe 'clear-up' operations", "taking hostages from the civilian populations", "tortures", "kidnappings", "disappearances" and "residential checks". The Court observes in this connection that, as it has previously held, it is an integral part of freedom of expression to seek the historical truth, and that a debate on the causes of acts of particular gravity which may amount to war crimes or crimes against humanity should be able to take place freely (see *Fatullayev*, cited above, § 87). Moreover, it is in the nature of political speech to be controversial and often virulent (see *Perinçek*, cited above, § 231) and the fact that statements contain hard-hitting criticism of official policy and communicate a one-sided view of the origin of and responsibility for the situation addressed by them is insufficient, in itself, to justify an interference with freedom of expression (see *Sürek and Özdemir,* cited above, § 61).

107. In the Court's view, seen as a whole, the article in question cannot be regarded as a call to use violence, or encouraging violence by stirring up any base emotions, embedded prejudices or irrational hatred. Indeed, whilst highly critical of Russia's actions in the Chechen Republic, the article does not call for armed resistance or the use of armed force as a means of achieving national independence for Chechnya or for the use of terrorist attacks, which was "unequivocally condemn[ed]" in its text, or bloody revenge; there is no message to the reader that recourse to violence is a necessary and justified measure of self-defence in the face of the aggressor. The article rather deplores the current state of affairs, where the armed conflict that has already resulted in numerous deaths and destruction of the republic's infrastructure is still ongoing "and there is still no light at the end of the tunnel", and seeks "a constructive dialogue" with "the international community" and its assistance for a "peaceful resolution" of that conflict and for "achieving the long-awaited peace on blood-stained Chechen soil".

108. The Court does not overlook the use of the term "the Chechen Resistance" as well as the last passage of the text, mentioning "the final victory of the Chechen people" and stating that "the Chechen soil will be

completely cleansed of the countless hordes of Russia's invaders and their accomplices...Whatever the costs!". In the Court's view, however, those remarks can be seen as a reflection of the resolve of the opposing side to pursue its goals and of the intransigent attitude of its leaders in this regard. They therefore had newsworthy content which allowed the public to both have an insight into the psychology of those who were the driving force behind the opposition to official policy in the Chechen Republic, assess the stakes involved in the conflict and to be informed of a different perspective on the situation in that region (cf. ibid.).

109. Overall, in the Court's opinion, the views expressed in the articles cannot be read as an incitement to violence, nor could they be construed as instigating hatred or intolerance liable to result in any violence. The Court discerns no elements in the impugned texts other than a criticism of the Russian Government and their actions in the Chechen Republic, which however acerbic it may appear does not go beyond the acceptable limits, given the fact that those limits are particularly wide with regard to the government (see paragraph 96 above).

110. The Court is thus not convinced that the publication by the applicant of the two articles could have any harmful effect on preventing disorder and crime in the Chechen Republic or in any other region of Russia, or had the potential to exacerbate the security situation there or to undermine territorial integrity or public safety. It is also of relevance that the impugned articles were published in a regional newspaper whose circulation was low (see paragraphs 6 and 32 above), thereby significantly reducing their potential impact on national security, public safety or public order (cf. *Okçuoğlu v. Turkey* [GC], no. 24246/94, § 48, 8 July 1999). Moreover, the trial court explicitly acknowledged that there had been no "serious consequences" of the applicant's actions (see paragraph 38 above).

111. In the light of the reasoning developed in paragraphs 103-110 above, the Court considers that the margin of appreciation afforded to the authorities in establishing the "necessity" of the interference with the applicants' freedom of expression was narrow. With that in mind, it will now proceed to examine whether the domestic courts based their decisions on an acceptable assessment of all relevant facts and advanced "relevant and sufficient" reasons to justify the interference complained of (see paragraph 94 above).

112. In the instant case, the domestic courts found that the applicant had committed "actions aimed at inciting enmity and humiliating the dignity of a group of people on the grounds of race, ethnic origin and membership of a social group" by publishing two articles which, according to the linguistic expert reports of 18 February 2005, "contained statements aimed at inciting racial, ethnic or social discord, associated with violence". In the Court's view, the domestic courts' decisions in the applicant's case were profoundly deficient for a number of reasons.

113. Firstly, whilst basing their guilty verdict on the above-mentioned expert reports, the courts failed to assess them and merely endorsed the linguistic expert's conclusions, which, in their view, were reliable in view of her competence, professional skills and past experience (see paragraphs 35 and 45 above). Thus, the crucial legal finding as to the presence in the impugned statements of elements of "hate speech" was, in fact, made by the linguistic expert who drew up the above-mentioned reports (see paragraphs 20-27 above). The relevant expert examination clearly went far beyond resolving merely language issues, such as, for instance, defining the meaning of particular words and expressions, and provided, in essence, a legal qualification of the applicant's actions. The Court finds that situation unacceptable and stresses that all legal matters must be resolved exclusively by the courts. In the latter respect, it notes that the Supreme Court took the same stance in its resolution of 28 June 2011 (see paragraph 56 above).

114. Secondly, the courts in the applicant's case made no meaningful attempts to analyse the statements in issue. As can be ascertained from the relevant court decisions, the courts generally listed the statements examined in the above-mentioned expert reports and, in fact, limited their assessment to repeatedly reproducing the conclusions of those reports and the text of Article 282 § 2 of the Criminal Code (see paragraphs 32-34 and 45 above). Whilst finding that the statements disseminated by the applicant "aimed at inciting enmity and humiliating the dignity of a group of persons on the grounds of race, ethnic origin and membership of a social group", the courts failed to indicate any of those groups targeted by the statement, or to specify which statements and in which respect had any racist, nationalistic, xenophobic or any other discriminatory or humiliating connotations. The Court also notes that the wording "associated with violence" present in the description of the impugned statements in the expert reports of 18 February 2005 was eventually omitted from the wording of the offence of which the applicant was ultimately convicted by the domestic courts (see paragraph 33 above), but the latter provided no explanation in that respect either. The Court furthermore discerns nothing in the domestic courts' decisions to show that they made any attempts to assess whether the impugned statements could, indeed, be detrimental to national security, territorial integrity or public safety, or public order, as was alleged by the Government.

115. In the light of the foregoing, the Court is bound to conclude that the domestic authorities failed to base their decision on an acceptable assessment of all relevant facts and to provide "relevant and sufficient" reasons for the applicant's conviction.

116. Furthermore, the Court reiterates that the obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing

against the decision, and also serves to justify the reasons for a judicial decision to the public. This general rule, moreover, translates into specific obligations under Article 10 of the Convention, by requiring domestic courts to provide "relevant" and "sufficient" reasons for an interference. This obligation enables individuals, amongst other things, to learn about and contest the reasons behind a court decision that limits their freedom of expression or freedom of assembly, and thus offers an important procedural safeguard against arbitrary interference with the rights protected under Article 10 of the Convention (see *Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, §§ 67-68, 8 October 2013, and *Gülcü v. Turkey*, no. 17526/10, § 114, 19 January 2016). In the present case, the Court observes that not only did the domestic courts fail to provide relevant and sufficient reasons to justify the applicant's conviction (see paragraphs 113-15 above), they also dismissed all the arguments in the applicant's defence in a summary manner as "untenable from a legal point of view", saying that it was his "attempt to defend himself to avoid punishment" (see paragraph 34 above). This brings the Court to the conclusion that the applicant was stripped of the procedural protection that he was entitled to enjoy by virtue of his rights under Article 10 of the Convention.

117. Lastly, the Court notes that the applicant was given a two-year suspended sentence and four years' probation in connection with his publication of the articles. It has previously stressed that the "duties and responsibilities" which accompany the exercise of the right to freedom of expression by media professionals assume special significance in situations of conflict and tension. Particular caution is called for when consideration is being given to the publication of views of representatives of organisations which resort to violence against the State lest the media become a vehicle for the dissemination of "hate speech" and the promotion of violence. At the same time, where such views cannot be categorised as such, Contracting States cannot with reference to the protection of national security or the prevention of crime or disorder restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media (see *Sürek (no. 4)*, cited above, § 60, and *Erdoğdu*, cited above, § 71). In the Court's opinion, it is not so much the severity of the applicant's sentence but the very fact that he was criminally convicted that is striking in the present case (cf. *Perinçek*, cited above, § 273). The Court considers that both the applicant's conviction and the severe sanction imposed were capable of producing a chilling effect on the exercise of journalistic freedom of expression in Russia and dissuading the press from openly discussing matters of public concern, in particular, those relating to the conflict in the Chechen Republic (cf. *Fatullayev,* cited above, § 128).

118. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities overstepped the margin of appreciation afforded to them for restrictions on debates on matters of

public interest. The applicant's conviction did not meet a "pressing social need" and was disproportionate to the legitimate aims invoked. The interference was thus not "necessary in a democratic society".

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

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

120. The applicant also complained under Article 6 of the Convention of various irregularities which had rendered the criminal proceedings against him unfair. In particular, he complained that the trial court had unjustifiably based his conviction on the expert reports by Ms T., dated 18 February 2005 and submitted by the prosecution, whilst rejecting the report by Ms V., submitted by the defence. In the applicant's view, Ms T.'s reports had been unreliable as she, being only a linguist, had not possessed any other specific knowledge, and therefore had not been sufficiently competent to draw such conclusions. The applicant also claimed that the trial record had been incorrect since the testimony of the key witness, Ms T., had been falsified. He furthermore complained that Judge B. had disallowed his applications to have the transcript amended in line with the audio recording of the hearings submitted by him on the sole ground that the recording had not been authorised, and had refused to accept his supplementary appeal pleadings of 17 February 2006. In this connection, the applicant claimed that Judge B. had been biased and hostile throughout the trial. He also alleged that although his appeal pleadings of 17 February 2006 had eventually been included in the case file, the appellate court had not given due consideration to his arguments concerning the incorrect trial record. Lastly, the applicant complained under Article 13 of the Convention that there had been no effective remedies in respect of his complaints concerning Judge B.'s alleged misconduct.

121. The Government contended that the criminal proceedings against the applicant had been fair. In particular, the domestic courts had established his guilt on the basis of the reports of Ms T., who had thoroughly analysed the texts of the impugned articles and concluded that they had contained statements aimed at inciting racial, national and social discord. During the trial Ms T. had confirmed her conclusions and provided reasons for them. The domestic courts, according to the Government, had had no reason to doubt her reports, given, in particular, her professional competencies and skills and past experience. The Government also argued that the courts had provided valid reasons for rejecting Ms V.'s report as inadmissible evidence. Lastly, they pointed out that a prosecutor's office had carried out checks in that connection regarding the applicant's complaint against Judge B.; however, no evidence had been found that the

judge had exceeded his powers, or taken any action with a view to falsifying the transcript.

122. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and must, therefore, be declared admissible. Having regard to the circumstances of the case and its relevant findings under Article 10 of the Convention (see paragraphs 113-116 above), the Court considers that it is not necessary to examine these complaints separately (see, among other authorities, *Cumhuriyet Vakfi and Others,* cited above, § 79).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

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

125. The Government contested the claim, stating that a finding of a violation would constitute a sufficient just satisfaction in the applicant's case.

126. The Court finds that the applicant suffered non-pecuniary damage on account of the violation of his right to freedom of expression and that that damage cannot be compensated by a mere finding of a violation. The amount claimed by the applicant does not appear excessive and therefore the Court considers it reasonable to allow the full claim. It thus awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

127. The applicant also sought reimbursement of costs and expenses incurred before the Court. In particular, he claimed EUR 3,530 for his legal representation. That amount included research, the preparation of documents, legal analysis and observations by the representative at a rate of EUR 50 per hour as well as related administrative costs. The applicant enclosed a copy of his contract with Ms Sadovskaya. He also claimed EUR 85 for postal expenses, EUR 70 for stationery costs and EUR 1,500 for the translation of his observations into English. He enclosed a copy of an invoice from DHL for the relevant amount.

128. The Government contested the claim, stating that the applicant had failed to substantiate it with any documentary evidence.

129. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only 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, the applicant failed to submit any documents to corroborate his claim, in so far as it related to the translation and stationery costs; therefore the Court rejects this part of his claim. As for the costs for legal representation and postal expenses, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to allow this part of the claim. It therefore awards the applicant EUR 3,615 in this respect.

C. Default interest

130. 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* that there is no need to examine the complaints under Articles 6 and 13 of the Convention;

4. *Holds*

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

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,615 (three thousand six hundred and fifteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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