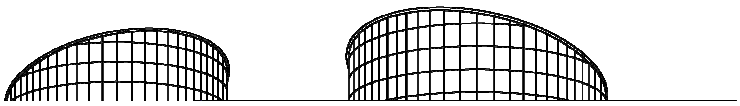

In the case of Fedchenko v. Russia (no. 2),

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 48195/06) 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 Oleg Dmitriyevich Fedchenko ("the applicant"), on 30 September 2006.

2. The applicant was represented by Ms A. Soboleva, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 31 January 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in the village of Suponevo, in the Bryansk Region.

5. The applicant has been the editor of a weekly newspaper, *Bryanskiye Budni* (*Брянские будни*), since he founded it in 1999.

A. Articles concerning the educational system in the Bryansk Region

6. In 2004-2005 the state of educational system in the Bryansk Region became the subject of media attention.

7. The newspaper *Bryanskoye Vremya* (*Брянское время*), in issue no. 30 of September 2004, published an article entitled "Textbook for an Alchemist" ("Учебник для алхимика"). The article discussed the shortage of textbooks in schools and problems related to their publication and supply. In particular, the article mentioned a "mysterious" publisher of textbooks which it linked to the dismissal of the then head of the Bryansk Department of Education, I. Geraschenkov, who was later reappointed to the post. The article also referred to an audit report which had revealed numerous financial irregularities in the supply of textbooks.

8. On 6 July 2005 *Rossiyskaya Gazeta (Российская газета)*, a newspaper of the Russian Government, published an abridged version of an article by S.F. and A.G. entitled "Question for an official. Where does the 'children's money' disappear' to?" (Экзамен для чиновника. Куда исчезают «детские» деньги), which criticised the poor state of the education system in the Bryansk Region. The article read as follows:

> "The Bryansk Department of Education headed by I. Geraschenkov and his first deputy N. Prokopenko spends more than 13,000 [roubles] a month per boarding school pupil. Education in a vocational school is more expensive than in a prestigious commercial college. According to the Department's reports, each year 36,000 roubles are allocated to each school for the additional training of teachers. However, the schools do not receive it.
>
> The Bryansk Region broke all records for the number of children playing truant from boarding schools and has been subject to harsh criticism as a result. A shocking number of children are put on a missing list every day. All right, now it is summer and the weather is warm. However, the number of children playing truant from the boarding schools is no smaller in winter, when it is freezing outside and the child has neither a place to sleep nor food. What is the explanation for this? Children are being kept in boarding schools in unbearable conditions. Material resources there are very scarce and there is a high turnover of tutors because of low wages.
>
> One third of a billion roubles is allocated annually to 38 vocational schools in Bryansk. However, the picture is not any better in these schools. Ugly walls, obsolete equipment, low wages for the teachers ... The quality of training also leaves much to be desired. It is notable that 90% of the school leavers do not take up their chosen profession.
>
> Fortunately, school financing is not within the competence of the local education officials. However, significant finances aimed at the development of school education pass through the Department. And very strange things happen there!
>
> For instance, take the 'School Textbook' programme. The Department's senior officials manage to convince the councillors that there are not enough textbooks in the schools and that children from low-income families are in a particularly difficult situation. However, as soon as the councillors take a decision on the allocation of

funds, these officials immediately forget the acuity of the problem. Nobody remembers the children from low-income families any more. Thus, between three and five million [roubles] of budgetary funds are spent year in, year out. This year the officials bought textbooks out of the budgetary funds from a single supplier without an open tender. This is a gross violation of the presidential decree on fighting economic crime and corruption.

Another sphere within the Department's competence is the advanced training of educational staff. Bryansk teachers became accustomed a long time ago to working without any methodical support. However, 36,000 roubles from the regional budget is allocated annually to each school for advanced training and retraining. Headmasters in rural areas have not seen this money for a long time and do not even know that it has been allocated.

Why does this happen? There are two reasons. First, the money is not received by the schools as earmarked funds, but by entities subordinate to the Department, such as the Bryansk Institute of Advanced Training of Educational Staff, irrespective of the quality of their work.

And if you enter the rector's reception area, you will see fashionable splendour, an incredible number of secretaries ... The maintenance of the 'Institute of Advanced Training' costs the regional budget more than 16 million per year. Teachers and headmasters cannot even rebel against it, the point being that the rector of the 'Institute of Advanced Training' is the selfsame Mr Geraschenkov, who heads the Department.

Clearly, in an organisation as secretive as the regional Department it is very hard to get at the truth. For instance, we have still to find out where one million roubles for computer and communications equipment in the Department's account left over from 2004 have disappeared to. As far back as the first half of this year schools in the region were due to be provided with modern communication systems, but they still have not received anything."

9. On 14 July 2005 the *Bryanskiye Budni* published the full version of the article. It was entitled "Where does the 'children's money' disappear to?" *(Куда исчезают «детские деньги»)* and read as follows:

"*The Bryansk Department of Education headed by I. Geraschenkov and his first deputy N. Prokopenko spends more than 13,000 a month per boarding school pupil. Education in a vocational school is more expensive than in a prestigious commercial college. According to the Department's reports, each year 36 thousand roubles are allocated to each school for the additional training of teachers. However, the schools do not receive it.*

The saddest thing about this situation is that the heads of the Department do not even think about trying to change things for the better. They wearily give instructions for decisions taken at meetings held five years previously to be rewritten. Indeed, why change anything when they are comfortable with everything.

The Department is remarkable not only because of the inefficient expenditure of taxpayers' money but because of the inertia of its senior officials. Both Geraschenkov and Prokopenko have held the top posts in the regional education office for a very long time.

Establishments for children left without parental care are the first thing the Department finances and is responsible for. The Bryansk Region broke all records for the number of children playing truant from boarding schools and has been subject to harsh criticism as a result. A shocking number of children are put on the missing list every day. All right, now it is summer and the weather is warm. However, the number of children playing truant from the boarding schools is no smaller in winter, when it is freezing outside, and the child has neither a place to sleep nor food. What is the explanation for this? Children are being kept in boarding schools in unbearable conditions.

Material resources there are very scarce and there is a high turnover of tutors because of the low wages. Many benefactors who have seen this picture grant considerable funds to afford some improvement in the conditions for the children. But if only they knew how much budgetary money is spent per child! We repeat: 13,000 per month! This is in addition to the funds provided by the benefactors.

However, there is another sad fact: notwithstanding such heavy expenditure, in most cases the region still ends up with social misfits. Many of the boarding school pupils engage in alcohol abuse, become dependent on state benefits or end up being prosecuted and sent to jail.

However, it is not the children's fault, but the fault of the system which the abovementioned heads have been building for years.

Vocational schools are also directly dependent on the regional Department of Education and receive taxpayers' money through the Department. Getting acquainted with the way the vocational schools function brings you down. The material resources of most of them are in decline: ugly walls, obsolete equipment and low wages for teachers. School leavers have extremely low levels of knowledge and professional skills. Unfortunately, 90% of the school leavers do not take up their chosen profession, so that budgetary money is effectively wasted.

One third of a billion roubles is seemingly allocated annually to 38 vocational schools. Despite this they are in decline and those they have trained are not in demand in the labour market, even though nowadays highly qualified workers are in sufficient demand and earn quite good money.

Fortunately, school financing is not within the competence of the local education officials. However, significant finances aimed at the development of school education pass through the Department, including the material resources for the schools and methodical support for teacher training. And very strange things happen there!

For instance, take the 'School Textbook' programme. When it is time to allocate funds, the Department's senior officials go to the council and convince the councillors that there are not enough textbooks in the schools and that children from low-income families are in a particularly difficult situation and cannot get the basic books. This is true. However, as soon as the councillors take a decision on the allocation of funds – these officials immediately forget the acuity of the problem. Books are purchased randomly, distributed among the districts even more chaotically and incomprehensibly large sums (around one hundred roubles) are spent on shipping the educational materials. Nobody remembers the children from low-income families any more.

Thus, between three and five million [roubles] of budgetary funds are spent year in, year out. This year the officials bought textbooks out of the budgetary funds from a single supplier without an open tender. This is a gross violation of the presidential decree on fighting economic crime and corruption.

One more sphere within the Department's competence is the advanced training of educational staff. Bryansk teachers became accustomed a long time ago to working without any methodical support. The situation is absurd even: many teachers prefer to avoid methodical institutions as they do not expect anything from them but admonition and disrespect. However, 36,000 roubles from the regional budget are allocated annually to each school for advanced training and retraining. Headmasters in rural areas have not seen this money for a long time and do not even know that it has been allocated.

Why does this happen?

There are two reasons. First, the money is not received by the schools as earmarked funds, but by entities subordinate to the Department, such as the Bryansk Institute of Advanced Training of Educational Staff, irrespective of the quality of their work. If you enter the rector's reception area, you will see fashionable, chic secretaries ... The maintenance of the 'Institute of Advanced Training' costs the regional budget an incredible figure of more than 16 million per year.

Not only are the teachers and headmasters of the schools deprived of money that is due to them, they cannot even rebel against it, the point being that the rector of the 'Institute of Advanced Training' is the selfsame Mr Geraschenkov who heads the Department. He is responsible not only for training, but for performance appraisal as well. If a teacher claims that he was offered a poor quality or uninteresting course, the training specialist who appraises him will unnerve and humiliate him, and perhaps reduce his marks and leave him with a pittance.

These are the conditions in which teachers work: with the feeling that as far as professional development is concerned they can count only on themselves and their colleagues. Or, as a teacher of literature, a teacher of the highest grade, said: 'You work and work, try and try, and then a newly fledged training specialist comes along and humiliates you for no reason.'

The other reason for the stalemate and mismanagement in education is the following. The former Governor released Geraschenkov from the post of director of the regional Department. However, the new Governor reappointed him for some reason, thus violating the law for a third time. Section 18 of the Law on State Service of the Bryansk Region provides that only persons under 60 can be appointed to such posts and that the appointment should be made on the basis of a competition advertised in the media. The executive branch is not a private clique, everything here is subject to State laws. However, the competition did not take place, not even superficially.

And the third: Geraschenkov holds two posts of head of department at the same time. This is a flagrant violation of the Law of the Bryansk Region and of the Law on Education. The appointments of the first deputy head of the Department N. Prokopenko and the other deputy L. Kletskina were gross violations.

Then followed the dismissal of uncooperative members of staff presumptuous enough to hold their own point of view. This was followed by multimillion purchases without tenders and the concealment of the unauthorised expenditure by subordinate entities.

Clearly, in an organisation as secretive as the regional Department it is very hard to get at the truth. For instance, we have still to find out where one million roubles for computer and communications equipment in the Department's account left over from 2004 has disappeared to. Pursuant to the agreement with the Ministry of Education the schools of the Bryansk Region were to be provided with modern communication systems in the first half of this year. We have not found any evidence that the modern communication systems have arrived in the schools, but the million is not in the account either. We would hope that the new authority will put things right in the education system of the region.

[signature]

(an abridged version of this material was published in *Rossiyskaya Gazeta*. Readers of the *Bryanskiye budni* have an opportunity to get acquainted with the full version.)"

10. The newspaper *Bryanskiy Rabochiy* (*Брянский рабочий*), in its issue of 15 July 2005, published an interview with S.F., a member of the Federal Expert Council of the Ministry of Education and Sciences and a former deputy head of the Bryansk Department of Education, entitled "Teachers' Instructors" (Поучатели учителей). S.F. stated, *inter alia*, that I. Geraschenkov and his deputy, N. Prokopenko, were responsible for the deficient system of education in the region. In particular, funding for schools had been misappropriated and a tender for publication of textbooks had been conducted with irregularities. Furthermore, despite the significant financial support provided to boarding schools from local budgets and private sponsors, many pupils developed alcohol addiction and upon leaving the boarding schools became dependent on the welfare system or went to jail. S.F. claimed that this state of affairs was due to the system created by I. Geraschenkov and N. Prokopenko. He also blamed them for the lamentable conditions in vocational schools.

B. Defamation proceedings

11. On 1 August 2005 Mr Geraschenkov brought an action for defamation against the applicant and the authors of the article in the Sovetskiy District Court of Bryansk and sought damages in the amount of 50,000 Russian roubles (RUB) and costs from the applicant, damages in the amount of RUB 25,000 from S.F. and RUB 15,000 from A.G. He claimed, in particular, that the following passages were untrue and damaging to his honour and reputation:

1. "The Department is remarkable not only because of the inefficient expenditure of taxpayers' money but because of the inertia of its senior officials. Both Geraschenkov and Prokopenko have held the top posts in the regional education office for a very

long time. Establishments for children left without parental care are the first thing the Department finances and is responsible for. The Bryansk Region broke all records for the number of children playing truant from boarding schools and has been subject to harsh criticism as a result. A shocking number of children are put on the missing list every day. All right, now it is summer and the weather is warm. However, the number of children playing truant from the boarding schools is no smaller in winter, when it is freezing outside, and the child has neither a place to sleep nor food. What is the explanation for this? Children are being kept in boarding schools in unbearable conditions."

2. "However, there is another sad fact: notwithstanding such heavy expenditure, in most cases the region still ends up with social misfits. Many of the boarding school pupils engage in alcohol abuse, become dependent on state benefits or end up being prosecuted and sent to jail. However, it is not the children's fault, but the fault of the system which the abovementioned heads have been building for years."

3. "This year the officials bought textbooks out of the budgetary funds from a single supplier without an open tender. This is a gross violation of the presidential decree on fighting economic crime and corruption."

4. "Not only are teachers and headmasters of the schools deprived of money that is due to them, they cannot even rebel against it, the point being that the rector of the 'Institute of Advanced Training' is the selfsame Mr Geraschenkov who heads the Department. He is responsible not only for training, but for performance appraisal as well. If a teacher claims that he was offered a poor-quality or uninteresting course, the training specialist who appraises him will unnerve and humiliate him, and perhaps reduce his marks and leave him with a pittance."

5. "Then followed the dismissal of uncooperative members of staff presumptuous enough to hold their own point of view. This was followed by multimillion purchases without tenders and the concealment of the unauthorised expenditure by subordinate entities."

12. At the hearing Mr Geraschenkov's representative amended the claim. He excluded the first passage on the ground that it directly concerned the Department of Education, and the third passage since it had previously been published in the *Rossiyskaya Gazeta* and was reproduced verbatim.

13. The applicant claimed that the passages in question were merely excerpts from articles that had been published in other media.

14. On 22 May 2006 the Sovetskiy District Court found for the claimant. It held:

"It follows from the [second assertion] that the authors of the article drew an affirmative conclusion as to the connection between the fact that the region attracts social misfits – those who abuse alcohol, are dependent [on state benefits] or end up being prosecuted – and the system of work of the senior officials named in the article: N.V. Prokopenko and I.A. Geraschenkov.

...

Without providing incontrovertible evidence, the author contends [in the fourth assertion] that there is a correlation between what might be regarded as "improper"

working methods used by training specialists when making an appraisal and the head of the Department responsible for the teachers' appraisal.

...

[As regards the fifth assertion], without having, either now or when the article was published, any evidence, such as a court decision, the Department's decree in respect of the claimant or documentary evidence concerning the inquiries into the expenditure, the author has defamed the claimant's business reputation and has not substantiated his allegations.

The defendants have not provided any evidence that the claimant dismissed uncooperative members of staff presumptuous enough to hold their own point of view, that he had made multimillion purchases without tenders and had concealed the unauthorised expenditure by subordinate entities. This is not supposition or speculation on the author's part, but an assertion, since the statements in question are not interrogative but affirmative.

...

The author conveys to the reader the idea that there were negative aspects to I.A. Geraschenkov's work as a person and a senior official (the Director of the Department of General and Professional Education of the Bryansk Region) without providing evidence of this to the court ...

The court cannot take into account [S.F.'s] arguments that he only gave one interview to *Rossiyskaya Gazeta*. The article is signed by [him and A.G.]; there is no reference to the interview with *Rossiyskaya Gazeta*. The defendant does not deny that he was the author.

The court finds unfounded [S.F.'s] arguments that the article provides critical coverage of the problem of education in the territory of the Bryansk Region, that the aim of his interview was to try to change the educational system in the Bryansk Region for the better, and that the article was not about V.A. Malashenko, or N.V. Prokopenko and I.A. Geraschenkov, but about the problems of the children, teachers, headmasters and population in our region.

The article provides specific figures, and the surnames of senior officials. From the wording of the contested statements it is clear that the author was specifically referring to the activity of the Department's head, I.A. Geraschenkov.

In order to substantiate his arguments [S.F.] provided copies of decrees issued by the Bryansk Regional Authority and documentary evidence of the inquiries that had been made.

By decree no. 404-p of 14 July 2005 the Bryansk Regional Authority established a commission to investigate the facts presented in the article 'Question for an official. Where does the 'children's money' disappear to?' By decree no. 448-p of 28 July 2005 the Bryansk Regional Authority established a commission to investigate the facts presented in the article entitled 'Teachers' instructors'.

The commissions' conclusions show that the articles presented information that was not true and that no evidence of unlawful expenditure or of textbooks being purchased without a tender was found.

The court cannot take into account the arguments of [S.F.] that the editors of *Bryanskiye Budni* should not be liable because the passages in question reproduce verbatim excerpts from other media sources, such as *Rossiyskaya Gazeta* and the newspaper *Good afternoon, Bryanschina* [*Добрый день, Брянщина*].

Pursuant to section 57 § 6 of the Law on Media no. 2124-1 of 27 December 1991 as amended, the editorial board, editor in chief and journalist are not liable for the dissemination of information that is not true, or damages the honour and dignity of citizens or organisations, infringes the rights and lawful interests of citizens, or constitutes abuse of freedom of the media and (or) journalist's rights, if they reproduce verbatim information and materials or excerpts from them disseminated by another media source that is identifiable and can be made liable for the breach of the legislation of the Russian Federation on the media.

The court found that the article indeed reproduced verbatim an excerpt from an article that was published in *Rossiyskaya Gazeta* on 6 July 2005 (third assertion in dispute).

However, the claimant's representative stated as much when he amended his client's claims. In accordance with [his] request, this assertion was not examined by the court.

The defendant did not produce any evidence to show that he had reproduced an excerpt from materials published in *Good afternoon, Bryanschina*. The article was published in *Good afternoon, Bryanschina* on 13 July 2005. On the same date the material for the article that was published in *Bryanskiye Budni* on 14 July 2005 was ready for publication. Furthermore, the article contained no acknowledgment that it was reproducing material from the newspaper *Good afternoon, Bryanschina.* There is only a reference to the fact that 'an abridged version of this material was published in *Rossiyskaya Gazeta'*.

...

The court considers that the passages in dispute do not constitute an opinion or speculations by the article's authors, but a statement of fact.

...

Having analysed the text of the article, it concludes that the information contested by the claimant was published by the newspaper's editorial board on the basis of insufficiently verified data."

15. The court held the applicant liable to pay RUB 5,000 (approximately 150 euros (EUR)) in respect of non-pecuniary damage sustained by the claimant. The applicant was also ordered to pay costs of RUB 10,100 and court fees of RUB 1,900, and to publish the operative part of the judgment under the heading "refutation" in *Bryanskiye Budni*. The court also held S.F. and A.G. liable to pay RUB 2,000 each in respect of non-pecuniary damage. The applicant and S.F. appealed.

16. On 29 June 2006 the Bryansk Regional Court reversed the part of the judgment relating to the award of costs and court fees, quashing the order to pay court fees in the amount of RUB 1,900, but upheld the remainder. It held:

> "[The appeal court] finds the [first-instance] court's conclusion that the information in dispute published in the article 'Where does the 'children's money' disappear to?' damaged the honour, dignity and business reputation of the claimant well-founded, since the passages in question affirmatively conclude that there was a connection between the fact that the region attracts social misfits – those who abuse alcohol, are dependant on welfare benefits or end up being prosecuted and sent to jail – and the system of work of the senior officials named in the article, including I.A. Geraschenkov. The defendants did not provide any evidence to support either the author's contention that there is a correlation between what might be regarded as 'improper working methods' used by training specialists when making an appraisal and the head of the Department responsible for the teachers' appraisal, or the fact of unauthorised expenditure by the claimant and the dismissal of uncooperative members of staff 'presumptuous enough to hold their own point of view'.
>
> The [first-instance] court rightly concluded that [S.F.'s] arguments that the article was an independent reproduction by the regional newspaper *Bryanskiye Budni* of material from *Rossiyskaya Gazeta* which he had provided during an interview were unfounded. The names of the authors [A.G. and S.F.] appear under the article 'Where does the 'children's money' disappear to?', which was published in the newspaper *Bryanskiye Budni* on 14 July 2005, edition no. 296 (28). It is also indicated that 'an abridged version of this material was published in *Rossiyskaya Gazeta*' (an assertion supported by a copy of the article published in *Rossiyskaya Gazeta* on 6 July 2005 that was provided to the court), and that 'readers of the *Bryanskiye budni* have an opportunity to get acquainted with the full version'."

II. RELEVANT DOMESTIC LAW AND OTHER RELEVANT DOCUMENTS

A. Constitution of the Russian Federation

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

B. Civil Code of the Russian Federation

18. Article 152 provides that an individual may apply to a court with a request for the rectification of information ("*сведения*") that is damaging to his honour, dignity or professional reputation unless the disseminator of that information proves that it "corresponds to reality" (Paragraph 1). The defamatory information must be refuted in the same media source that disseminated it (Paragraph 2). The aggrieved person also has a right to publish a response in the same media source (Paragraph 3). He may also

claim compensation for losses and non-pecuniary damage sustained as a result of the dissemination of the information (Paragraph 5).

C. Law on Mass Media

19. Under Section 45 of the Law on Mass Media no. 2124-I of 27 December 1991 a media source may refuse to publish a response to defamatory information if the aggrieved person did not apply for the publication of the response within a year of the publication of the defamatory information. Under Section 46 a refusal to publish a response may be appealed against to a court within a year of the publication of the defamatory information.

D. Resolution of the Plenary Supreme Court of the Russian Federation, no. 3 of 24 February 2005

20. The Resolution provides that untrue information ("*сведения*") constitutes statements concerning facts or events which did not take place in reality at the time to which the information relates. It includes allegations of a breach of laws or moral principles (commission of a dishonest act, improper behaviour in the workplace or in everyday life, etc.). Dissemination of such information is understood as the publication of the information or its broadcasting, diffusion thereof on the Internet, inclusion in professional references, public speeches, applications to State officials and communication in other forms, including oral, to at least one other person (Section 7).

21. The domestic courts are instructed to take into account 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, in particular in the part relating to public scrutiny of political figures and public officials. The burden of proof is on the defendant to show that the disseminated information was true and accurate. If a subjective opinion is expressed in an insulting form damaging the honour, dignity or business reputation of the plaintiff, the defendant may be held liable to pay damages for the harm caused by the insult (Section 9).

E. Declaration on Freedom of Political Debate in the Media adopted by the Committee of Ministers of the Council of Europe on 12 February 2004

22. The Declaration states, *inter alia*, that pluralist democracy and freedom of political debate require that the public is informed about matters of public concern, which includes the right of the media to disseminate negative information and critical opinions concerning political figures and

public officials, as well as the right of the public to receive them (Section I). Public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out or carry out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions (Section IV).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant complained under Article 10 of the Convention that the Sovetskiy District Court's judgment of 22 May 2006, which had been upheld on appeal by the Bryanskiy Regional Court on 29 June 2006, had violated his freedom of expression protected by Article 10 of the Convention. He submitted that the domestic courts had failed to draw a distinction between statements of fact and value judgments and had held him responsible for a failure to prove the truth of value judgments. Article 10 of the Convention 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

24. The Government argued that the applicant had failed to exhaust the domestic remedies available to him as he had not applied for supervisory review of the domestic courts' decisions.

25. The Court reiterates that an application for supervisory review is not a remedy to be used for the purposes of Article 35 § 1 of the Convention (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Therefore, the

Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

27. The Government submitted that the domestic courts had found that the impugned passages constituted not the opinions of or speculations by the authors of the article but statements of fact which had presented the plaintiff in a negative light. The newspaper had failed to verify the veracity of those statements prior to publication. Accordingly the domestic courts were right to rule in favour of the plaintiff and the interference with the applicant's freedom of expression was justified in terms of Article 10 of the Convention. In the Government's view, there had been no violation of this Convention provision.

28. The applicant disagreed. He maintained that the domestic courts had held him liable for inability to prove the truth of value judgments whereas the veracity of the underlying statements of fact had not even been contested. In particular, it had not been contested either that there had been significant financial contributions to the educational system, or that many boarding school pupils become social misfits. However, he was held liable for failure to prove the existence of a link between the two phenomena. Likewise, it had not been contested that Mr Geraschenko was the head of the entity responsible for the assessment of teachers. However, the applicant was found liable for expressing his opinion that given the situation teachers might have been afraid to voice their concerns. As for the last statement, the passage concerning purchases without tenders had been based on the earlier publication in *Rossiyskaya Gazeta*. The issue had also been discussed in the *Bryanskoy Vremya* issue of 16-22 September 2004. The misappropriation of funds had been subject to investigation by two commissions instituted by the Bryansk Administration. The passage concerning the "dismissal of uncooperative members of staff" was based on the fact that one of the authors, S.F., had been dismissed without any reasons for the dismissal having been provided to him. In the applicant's view, in the present case the domestic courts had overstepped the narrow margin of appreciation afforded to them for restriction on debates of public interest in breach of Article 10 of the Convention.

29. The Court notes that it is common ground between the parties that the judgments adopted by the domestic courts in the defamation proceedings constituted an interference with the applicant's right to freedom of expression guaranteed by Article 10 § 1. It is not contested that the

interference was prescribed by law, notably Article 152 of the Civil Code, and pursued a legitimate aim, that of protecting the reputation or rights of others, within the meaning of Article 10 § 2. What remains to be established is whether the interference was "necessary in a democratic society".

30. The Court reiterates that the right to freedom of expression enshrined in Article 10 constitutes one of the essential foundations of a democratic society. Subject to paragraph 2, it is applicable not only to "information" or "ideas" which are favourably received or regarded as inoffensive, but also to those which offend, shock or disturb (see, among many other authorities, *Castells v. Spain*, 23 April 1992, Series A no. 236, § 42, and *Vogt v. Germany*, 26 September 1995, Series A no. 323, § 52). It comprises, among other things, the right to impart, in good faith, information on matters of public interest, even where this involves damaging statements about private individuals (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, ECHR 1999-III). The Court emphasised that the limits of acceptable criticism are wider still where the target is a politician (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, Series A no. 204, § 59).

31. The test of necessity requires the Court to determine whether the interference corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-...). In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. In cases concerning the press, it is circumscribed by the interest of a democratic society in ensuring and maintaining a free press (see *Dalban v. Romania* [GC], no. 28114/95, § 49, ECHR 1999-VI).

32. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Dichand and Others v. Austria*, no. 29271/95, § 38, 26 February 2002).

33. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant, the position of the plaintiff in the defamation claim, the subject matter of the publication and qualification of the contested statement by the domestic courts (see *Jerusalem v. Austria*, no. 26958/95, § 35, ECHR 2001-II).

34. As regards the applicant's position, the Court observes that he was a journalist and founder of a newspaper. It reiterates in this connection that the press fulfils an essential function in a democratic society. Although it

must not overstep certain bounds, particularly in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Dalban*, cited above, § 49).

35. The plaintiff was the head of the Bryansk Department of Education. The Court reiterates that civil servants acting in an official capacity are, like politicians, subject to the wider limits of acceptable criticism than a private individual (*Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I). Therefore, he was obliged to display a greater degree of tolerance in this context (see, *mutatis mutandis*, *Oberschlick v. Austria (no. 2)*, 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, §§ 31-33).

36. The subject matter of the publication was the state of the educational system in the Bryansk Region. The publication was thus part of a debate on a matter of general and public concern, which is further supported by the fact that various issues concerning secondary and vocational schools in the Bryansk Region were discussed in numerous other newspapers (see paragraphs 7-8 and 10 above). The Court recalls that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

37. The Court notes that the scope of the defamation proceedings extended not to the publication in its entirety but to several passages. The Court will examine below the qualification of each statement by the domestic courts as well as their general findings applicable to all the passages at issue.

1. Statement concerning contributions to the educational system and boarding school pupils

38. The statement read as follows:

> "However, there is another sad fact: notwithstanding such heavy expenditure, in most cases the region still ends up with social misfits. Many of the boarding school pupils engage in alcohol abuse, become dependent on state benefits or end up being prosecuted and sent to jail. However, it is not the children's fault, but the fault of the system which the abovementioned heads have been building for years."

39. On 22 May 2006 the Sovetskiy District Court found that in the passage at issue the authors had concluded that there was a connection between the fact that the region attracted social misfits and the system of work of the senior officials of the Bryansk Department of Education, N.V. Prokopenko and I.A. Geraschenkov, and held that that conclusion was defamatory. The finding was upheld on appeal by the Bryansk Regional Court on 29 June 2006.

40. The Court reiterates that, according to its established case-law, a distinction has to be drawn between statements of fact and value-judgments. While the existence of facts can be demonstrated, the truth of value-judgments is not susceptible of proof. The requirement to prove the truth of a value-judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Oberschlick (no. 1)*, cited above, § 63).

41. It observes that according to Resolution no. 3 of 24 February 2005 of the Plenary Supreme Court of the Russian Federation untrue information constitutes statements concerning facts or events which did not take place in reality at the time to which the information relates. The Resolution further provides that if a subjective opinion is expressed in an insulting form damaging the honour, dignity or business reputation of the plaintiff, the defendant may be held liable to pay damages for the harm caused by the insult.

42. The Court notes that the passage at issue contained two statements of fact: that there was heavy expenditure in the educational sector in the region and that a number of boarding school pupils turned out to be social misfits. The veracity of either of those statements was neither contested by the plaintiff nor examined by the domestic courts.

43. At the same time the domestic courts found defamatory the authors' assertion that despite that heavy expenditure many boarding school pupils had turned out to be social misfits because of the educational system in the region created, among others, by the plaintiff. In the Court's view, the assertion at issue constituted a value judgment which the domestic courts failed to distinguish from a statement of fact. It is clearly the authors' subjective opinion that the regional educational system is faulty and that that affects the boarding school pupils. Thus, they offered their assessment of a complex social situation and drew their conclusions concerning the particular aspects involved. By criticising what in their view were undue public policies they have done no more than fulfil the essential role of the press, that is, to impart information and solicit debate on a matter of public concern.

2. Statement concerning appraisal of teachers

44. The statement read as follows:

> "Not only are the teachers and headmasters of the schools deprived of money that is due to them, they cannot even rebel against it, the point being that the rector of the 'Institute of Advanced Training' is the selfsame Mr Geraschenkov, who heads the Department. He is responsible not only for training, but for performance appraisal as well. If a teacher claims that he was offered a poor-quality or uninteresting course, the training specialist who appraises him will unnerve and humiliate him, and perhaps reduce his marks and leave him with a pittance."

45. The domestic courts at two levels of jurisdiction found the authors liable for their failure to provide "incontrovertible evidence" of a correlation between the possibly improper working methods of training specialists when appraising teaching staff and the head of the Department responsible for the appraisal.

46. The Court observes that it was not contested that the plaintiff, as well as holding the position of head of the Bryansk Department of Education, was the rector of the Institute of Advanced Training which carried out the appraisal of teachers. Accordingly, the Court has no reasons to doubt the veracity of this statement. However, the authors were held liable for their assertion that that situation might keep teachers from voicing their discontent with the plaintiff's actions as the head of the Bryansk Department of Education out of fear of possible reprisals on the part of the staff of the Institute of Advanced Training subordinate to him.

47. The assertion at issue was the authors' opinion that in the given situation teachers might be afraid to voice their concerns and thus constituted a value judgment. The requirement to provide any evidence, let alone "incontrovertible", to corroborate the authors' view was obviously impossible to fulfil. Therefore, in this instance as well, the domestic courts failed to distinguish between a statement of fact and a value judgment.

3. Statement concerning dismissal of uncooperative staff and unauthorised budget expenditures

48. The statement read as follows:

> "Then followed the dismissal of uncooperative members of staff presumptuous enough to hold their own point of view. This was followed by multimillion purchases without tenders and the concealment of the unauthorised expenditure by subordinate entities."

49. The domestic courts at two instances found the authors liable for their failure to provide any evidence, such as a court decision, the Department's decree in respect of the claimant or documentary evidence concerning the inquiries into the expenditure, concerning the alleged multimillion purchases without tenders and the concealment of the unauthorised expenditure by subordinate entities. Likewise, the courts found that no evidence was presented with respect to the alleged dismissal of uncooperative staff. In the courts' view, the statements did not constitute suppositions or speculations on the authors' part, but assertions, since they were phrased not interrogatively but affirmatively. The court will proceed to examine each phrase of the statement separately.

a. Dismissal of uncooperative staff

50. The Court notes that one of the authors, S.F., used to hold a position at the Bryansk Department of Education and was subsequently dismissed

allegedly without any reasons for the dismissal having been provided to him. From the applicant's submissions it follows that the passage at issue referred to, in the first place, S.F.'s dismissal.

51. The Court is satisfied that the passage at issue might have been based to a significant extent on S.F.'s dismissal. It also accepts that S.F. might believe himself to have been dismissed for disagreeing with the policies of the plaintiff. To this extent the statement at issue might be regarded as his personal view of the circumstances of his dismissal. However, the text of the article did not refer specifically to S.F.'s dismissal or, for that matter, to a dismissal of a single member of staff, but to "uncooperative members of staff", thus creating the impression that there had been numerous dismissals. At the same time, no evidence of other dismissals was provided either to the domestic courts or to the Court.

52. The Court observes that the aim of the article was to discuss problems in the educational sphere in the region. To that end the authors highlighted certain issues which, in their view, contributed to what they considered to be the overall unsatisfactory state of the educational system. One of those issues was what they perceived to be the general climate preventing teachers (see paragraphs 44-47 above), and even the staff of the Bryansk Department of Education, from expressing their discontent with the policies of its head. Given the sensitivity of the problem for the region, the issue was definitely one of serious public concern. Therefore, even though the authors failed to present any evidence of dismissals other than that of S.F., the Court considers that their reference to the "dismissal of uncooperative members of staff" may be regarded as an exaggeration not exceeding the boundaries of the protection afforded by Article 10 (see paragraph 34 above).

b. Purchases without tenders and concealment of the unauthorised expenditure

53. The Court notes that in September 2004 the newspaper *Bryanskoye Vremya* published an article discussing problems related to the publication and supply of textbooks. In particular, it mentioned a "mysterious" publisher of textbooks which it linked to the dismissal of the plaintiff from the post of head of the Bryansk Department of Education, who was later reappointed to the post. An audit report which had revealed numerous financial irregularities in the supply of textbooks was also referred to in the article.

54. The Court further notes that S.F. provided the domestic courts with copies of decrees of the Bryansk Regional Authority of 14 and 28 July 2005 respectively instituting commissions to investigate the facts presented in the articles "Where does the 'children's money' disappear' to?" and "Teachers' Instructors" and the results of the enquiries. The domestic courts stated that

the commissions had found no evidence of unlawful expenditure or of textbooks being purchased without a tender.

55. The Court observes that the results of the inquires, which had not been instituted at the time of publication of the article, could not have been available to the authors then. At the same time the purchase of textbooks with the alleged irregularities and the related budgetary expenditures, with reference to an audit report, had been discussed in an article published in a different newspaper by a different author several months prior to the publication at issue. The question is, therefore, whether there existed an underlying basis of fact for the authors' assertion.

56. In the Court's view, the defendant in a defamation case concerning criticism of a public official's performance of his duties may not be required to prove the truth of all his factual assertions. This would but stifle public debate on matters of genuine public concern.

57. Therefore, despite the fact that the enquiries conducted after the publication of the article found no irregularities in the purchase of textbooks or budget expenditure, the Court considers that, taking into account the article published in the newspaper *Bryanskoye Vremya* in September 2004, the authors of the article at issue had a sufficient underlying factual basis for their statement. It does not consider that they were required to carry out their own research into the accuracy of the facts presented in that newspaper and sees no reason to doubt that they acted in good faith in this respect (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas*, cited above, § 72).

4. General findings of the domestic courts concerning the three statements

58. In the judgment of 22 May 2006 the Sovetskiy District Court stated that the authors of the articles conveyed to the reader "the idea that there were negative aspects" to the plaintiff's work "without providing evidence of this to the court". In this regard the Court points out, once again, that the domestic courts failed to distinguish between a statement of fact and a value judgment, the truth of which cannot be proved.

59. Furthermore, in the same judgment the Sovetskiy District Court dismissed S.F.'s arguments that the article provided critical coverage of problems in the regional educational system and aimed to bring about its change on the ground that the author had specifically referred to the plaintiff's activity and that the article had mentioned specific figures and given the surnames of senior officials. The Court observes that effective criticism is impossible without reference to specific figures and persons. Holding otherwise would mean extinguishing the essence of the right to public debate over matters of public concern and turn it into a purely fictitious concept. In the present case the plaintiff held the position of the most senior official in the regional educational system. A public debate on the state of the educational system in the region is hardly conceivable

without mentioning the name of its most senior official. At the same time, having agreed to hold that office, the plaintiff must have been prepared to tolerate a significant amount of public criticism (see paragraph 35 above).

5. Conclusion

60. In the light of the above considerations the Court finds that the domestic courts failed to establish convincingly any pressing social need for putting the civil servant's personality rights above the applicant's rights and the general interest in promoting the freedom of press where issues of public interest are concerned. The fact that the proceedings were civil rather than criminal in nature and that the final award was relatively small does not detract from the fact that the standards applied by the domestic courts were not compatible with the principles embodied in Article 10 since they did not adduce "sufficient" reasons justifying the interference at issue. Therefore, the Court considers that the domestic courts overstepped the narrow margin of appreciation afforded to them for restrictions on debates of public interest and that the interference was disproportionate to the aim pursued and not "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 485 euros (EUR), which at the time when the claim was submitted equalled 16,324 Russian roubles (RUB), in respect of pecuniary damage and EUR 8,000 in respect of non-pecuniary damage. The applicant produced copies of receipts for payment of RUB 16,324 to the plaintiff, including bank charges.

64. The Government contested the claim. In their view, a finding of a violation would constitute sufficient just satisfaction. However, should the Court decide to award the applicant compensation for pecuniary damage, the Government insisted that the award be made in Russian roubles or in euros at the exchange rate applicable at the date of payment.

65. The Court finds that in the circumstances of the case there is a causal link between the violation found and the alleged pecuniary damage claimed.

It further notes that it is its standard practice to make awards in euros rather than in the currency of the respondent State, should it be different, on the basis of the exchange rate which existed at the time when the claim was submitted to the Court. Consequently, the Court awards the applicant EUR 485 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

66. The Court accepts that the applicant has also suffered distress and frustration resulting from the judicial decisions incompatible with Article 10 which cannot be sufficiently compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

67. The applicant also claimed RUB 157,20 (approximately EUR 5) for costs and expenses incurred before the Court.

68. The Government expressed their doubts that the applicant's claim should be granted.

69. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5 for the costs and expenses incurred before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the 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 Russian roubles at the rate applicable at the date of settlement:

(i) EUR 485 (four hundred and eighty-five euros) in respect of pecuniary damage;

(ii) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;

(iii) EUR 5 (five euros) in respect of costs and expenses;

(iv) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] 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 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President