



THIRD SECTION

**CASE OF NOVAYA GAZETA AND OTHERS v. RUSSIA**

*(Applications nos. 12996/12 and 35043/13)*

JUDGMENT

STRASBOURG

28 September 2021

*This judgment is final but it may be subject to editorial revision.*



**In the case of Novaya Gazeta and Others v. Russia,**

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

Darian Pavli, *President*,

Dmitry Dedov,

Peeter Roosma, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 12996/12 and 35043/13) 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 three applicants (“the applicants”), whose details as well as the dates of introduction of each application are indicated in Appendix I below;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the applicants’ right to freedom of expression;

the parties’ observations;

the decision to reject the Government’s objection to examination of the applications by a Committee;

Having deliberated in private on 7 September 2021,

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

## INTRODUCTION

1. This case concerns two sets of civil defamation proceedings instituted against members of the media by commercial companies alleging damage to their business reputation before commercial courts. The applicants considered that the domestic courts’ judgments finding them civilly liable for defamation amounted to a disproportionate interference with the exercise of their right to freedom of expression.

## THE FACTS

2. The applicant company is a publisher of *Novaya Gazeta*, a leading Russian newspaper (“the newspaper”). Mr Polukhin and Mr Nikolayev are professional journalists who at the material time wrote for the newspaper. The applicants were represented by Mr Ya. Kozheurov, a lawyer practising in Moscow.

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

I. APPLICATION No. 12996/12

4. In November 2009 and March 2010 the newspaper published two articles by Mr Polukhin and Mr Nikolayev, respectively. The articles concerned the Clear Water Programme that promoted water filters based on a supposedly innovative technology that had not been supported by scientific consensus. The filters, known as “Petrik’s filter” after the name of their creator, attracted criticism on the part of expert community and considerable public attention. The articles by Mr Polukhin and Mr Nikolayev alleged that the then Speaker of the Russian State Duma had promoted the interests of the producer of the filters lobbying for installation of the filters in public schools and hospitals. The article by Mr Polukhin contained open questions as to why documented outbreaks of meningitis had happened in schools equipped with “Petrik’s filter”. The articles contained quotes from an article published in a third-party science magazine in 2009. The subject matter of the articles pertained to issues of public health and safety and allocation of State funds. The articles did not contain offensive or abusive language and were socially acceptable in terms of contents and form.

5. OOO Holding Zolotaya Formula, a limited liability company that produced the filters, brought civil proceedings for defamation in respect of five articles published in three different media outlets, including the newspaper, in which the efficacy of the filters had been questioned. The claims were lodged with the Commercial Court of St Petersburg and the Leningrad Region (“the St Petersburg Court”) under Article 152 of the Russian Civil Code against eight defendants: the applicant company, two other media outlets that had published materials critical of the “Petrik’s filter” and five people, including Mr Polukhin and Mr Nikolayev. The claimant company alleged that the defendants had disseminated statements that had tarnished their business reputation and claimed the total of 21,162,700 Russian roubles (RUB) in compensation.

6. The eight defendants objected, in particular, that some of the statements had represented value judgments not susceptible of proof. The applicant company invoked the provision of the Russian Media Act exempting a publisher or journalist from liability under Article 152 of the Civil Code for quoting a material already published by another media outlet.

7. On 29 December 2010 the St Petersburg Court found established the fact of dissemination by the defendants of the statements to the effect that the filters produced by the claimant company had not been safe to use, as well as the tarnishing nature of such statements. It further proclaimed the impugned statements, including those in the form of a question, to be “implicit or explicit” statements of fact that had not been proven to be true. The applicant company’s reference to the source material from which the articles had borrowed was dismissed on the grounds that the defendants had

failed to prove the truthfulness of the information contained in the source material. The St Petersburg Court thus found for the claimant company and granted its claims in part. Basing itself on “an expert report on the prognosis of the income that the claimant had not received”, it awarded, in particular, RUB 200,000 in respect of non-pecuniary damage and RUB 4,000 in respect of court fees to be paid by the applicant company. The St Petersburg Court also ordered a retraction of all impugned publications, including the two articles published in the newspaper,

8. On 21 April 2011 the Thirteenth Appellate Commercial Court upheld, in substance, the judgment of 23 October 2010 on appeal. The appellate court modified the judgment to the effect that the applicant company be ordered to publish the judgment of 29 October 2010 on its website, not a retraction.

9. On 23 May 2011 the applicant company transferred RUB 204,000 to the bailiffs’ service’s account in execution of the judgment of 29 December 2010.

10. On 10 August 2011 the Federal Commercial Court of the North-Western Circuit dismissed the applicants’ cassation appeal.

11. On 5 December 2011 the Supreme Commercial Court of the Russian Federation dismissed the applicants’ application for supervisory review of the lower courts’ judgments.

## II. APPLICATION No. 35043/13

12. In 2006 Gazprom, a multinational energy corporation, the majority of stocks of which are State-owned, commissioned the construction of its headquarters in St Petersburg on the basis of the project known as “Gazprom City” or “Okhta Centre”, that was supposed to include the tallest skyscraper in Europe. Its construction was co-funded by the city of St Petersburg. The project attracted considerable criticism domestically and internationally, and concerns were expressed that its realisation would be damaging to the city’s historic skyline, and was eventually abandoned.

13. On 12 February 2010 the newspaper published an article entitled “How I built a gas-scraper” containing a first-person narrative by Mr K., a former employee of ZAO Soletanshstroy, a subcontractor involved in the construction of Okhta Centre. The newspaper’s editors only added notes explaining certain technical terms that Mr K. used. According to Mr K., numerous breaches of rules and regulations had taken place in the course of that stage of the works. The article included a commentary by a representative of ZAO Soletanshstroy.

14. ZAO Soletanshstroy brought before the Commercial Court of Moscow (“the Moscow Court”) civil proceedings for defamation under Article 152 of the Russian Civil Code against the applicant company and Mr K. alleging that the article had tarnished their business reputation. In the

course of the proceedings, the applicant company pleaded that it bore no liability for the statements by the third person. Mr K. submitted evidence in support of his factual assertions and witness statements by two other employees of the claimant.

15. On 22 March 2011 the Moscow Court found for the claimant company for the reason that the impugned statements had been disseminated, that they had been tarnishing to the claimant company's business reputation, and that they had been untruthful. It ordered a retraction and awarded, in particular, RUB 50,000 in compensation of non-pecuniary damage and RUB 49,000 in court and legal fees to be paid by the applicant company.

16. On 28 July 2011 the Ninth Appellate Commercial Court upheld the Moscow Court's judgment on appeal.

17. On 19 October 2011 the applicant company transferred RUB 99,000 to the bailiffs' service's account in execution of the judgment of 22 March 2011.

18. On 23 November 2011 the Federal Commercial Court of the Moscow Circuit upheld the judgment on cassation appeal.

19. The Supreme Commercial Court of Russia dismissed the applicant company's request for supervisory review on 23 May 2012.

## RELEVANT LEGAL FRAMEWORK

20. The relevant provisions of the domestic law applicable at the material time and practice have been summarised in *OOO Regnum v. Russia* (no. 22649/08, §§ 35-39, 8 September 2020).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

21. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

22. The applicants complained that the relevant judgments of the domestic courts in the defamation proceedings against them violated their right to freedom of expression guaranteed 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

### **A. Admissibility**

23. As regards application no. 12996/12, the Government submitted that Mr Polukhin and Mr Nikolayev could not claim to be “victims” of the violation alleged because the commercial courts had imposed no penalties on them. The Court notes that it has previously dismissed similar objections on the grounds that the fact that no award of damages was issued against the applicant cannot be decisive for his status as a “victim” of the alleged violation where he had been a co-defendant in the relevant proceedings (see *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, §§ 57-60, 12 July 2007, and *Godlevskiy v. Russia*, no. 14888/03, §§ 34-37, 23 October 2008). The Court thus dismisses the Government’s objection concerning incompatibility *ratione personae*.

24. The Court further notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

### **B. Merits**

#### *1. The parties’ submissions*

25. The applicants maintained their complaints insisting that the domestic commercial courts had not applied the relevant standards established in the Court’s case-law.

26. The Government argued that the instances of the interference with the applicants’ right to freedom of expression had been “prescribed by law”, had pursued a legitimate aim of protecting the reputation of others, and had been “necessary in a democratic society”. They emphasised that, under Article 152 of the Russian Civil Code, three elements are relevant in the assessment whether a statement tarnished one’s dignity, honour and business reputation: the tarnishing nature of the statements; the fact of their dissemination; and their untruthfulness.

#### *2. The Court’s assessment*

27. The Court will examine this case in the light of the general principles of its settled case-law on balancing the right to freedom of expression against the right to reputation that were summarised in *OOO Regnum* (cited above, §§ 58-63).

28. The Court emphasises that the claimants in both sets of proceedings at hand were private commercial companies. Accordingly, the following criteria are relevant in the assessment of the necessity of the instances of interference complained of both by domestic courts and the Court itself: the subject matter of the impugned publications, that is, whether they concerned a matter of public interest; the content, form and consequences of the publications; the way in which the information was obtained and its veracity; and the gravity of the penalty imposed on the media outlet or journalists (*ibid.*, § 67).

29. The Court is satisfied that the articles published in the newspaper concerning OOO Holding Zolotaya Formula and ZAO Soletanshstroy had touched upon matters of public interest, such as public health and allocation of public funds. The content and form of the impugned publications were socially appropriate.

30. The Court reiterates that protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism. This obligation required that they should have relied on a sufficiently accurate and reliable factual basis which could be considered proportionate to the nature and degree of their allegation, given that the more serious the allegation, the more solid the factual basis has to be (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI). The Court has no reasons to doubt that the information related in all three articles was obtained in compliance with the tenets of responsible journalism. Notably, the articles concerning OOO Holding Zolotaya Formula contained references to the source material published in 2009 regarding documented outbreaks of meningitis in schools equipped with “Petrik’s filters” (see paragraph 4 above). The Court is thus satisfied that these articles had had sufficient factual basis. The article concerning ZAO Soletanshstroy reproduced verbatim an interview given by a third party, a builder immediately involved in the construction of the skyscraper who had named in the domestic proceedings two persons willing to corroborate his account of the events (see paragraph 14 above). However, the commercial courts examining the defamation claims stemming from the three articles summarily dismissed the defendants’ reference to the fact that the statements had clearly been identified as someone else’s.

31. The Court reiterates that an indiscriminate approach to the author’s own speech and statements made by others is incompatible with the standards elaborated in the Court’s case-law under Article 10 of the Convention. In a number of cases the Court has held that a distinction needs to be made according to whether the statements emanate from the journalist or are a quotation of others, since punishment of a journalist for assisting in the dissemination of statements made by another person in an interview



would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so. The domestic courts did not advance any such reasons (see, with further references, *Godlevskiy v. Russia*, no. 14888/03, § 45, 23 October 2008; and *Pedersen and Baadsgaard*, cited above, § 77). A general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas (see *Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III, and *Nadtoka v. Russia (no. 2)*, no. 29097/08, § 48, 8 October 2019). The commercial courts limited themselves to establishing the fact that statements that they regarded as tarnishing the business reputation of the claimants had been disseminated and to observing that the defendants had not proved the truthfulness of the statements (see paragraphs 7 and 15 above); the courts then made sizeable awards as compensation for non-pecuniary damage.

32. The Court reiterates that, when faced with the task of balancing the reputational interests of a commercial company against the general interests of society in being informed of irregularities in the use of public funds or of potential health hazards, as well as the corresponding interest (and duty) of members of the media in reporting on such irregularities or hazards, domestic courts ought to demonstrate convincingly the existence of a pressing social need capable of justifying an interference with freedom of the media (see *OOO Regnum*, cited above, § 78). Yet the commercial courts that delivered the judgments complained of had limited their findings to establishing whether the three elements referred to by the Government in their observations (see paragraph 26 above) had been met, thus disregarding the need to weigh the reputational interests of a commercial company against the interests of members of the media in purveying information and the public interest in obtaining it.

33. The Court has found a violation of Article 10 of the Convention in a large number of cases concerning freedom of the media in Russia for the reason that the domestic courts had failed to apply the Convention standards when deciding on a defamation dispute (see, among many others, *OOO Ipress and Others v. Russia*, nos. 33501/04 and 3 others, § 79, 22 January 2013; *Kunitsyna v. Russia*, no. 9406/05, §§ 46-48, 13 December 2016; *Terentyev v. Russia*, no. 25147/09, §§ 22-24, 26 January 2017; *OOO Izdatelskiy Tsentri Kvartirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; *Novaya Gazeta and Milashina v. Russia*, no. 4097/06, §§ 66-73, 2 July 2019; *Tolmachev v. Russia*, no. 42182/11, § 47, 2 June 2020; and *Rashkin v. Russia*, no. 69575/10, § 18, 7 July 2020).

34. Having carefully examined the parties' submissions, the Court cannot but conclude that the domestic courts did not give due consideration

to the principles and criteria as laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. They thus exceeded the margin of appreciation afforded to them and failed to demonstrate that there was a reasonable relationship of proportionality between the instances of interference in question and the legitimate aim pursued (see, with further references, *Tolmachev*, cited above, § 56, and *Timakov and OOO ID Rubezh v. Russia*, nos. 46232/10 and 74770/10, § 71, 8 September 2020). Nothing in the Government's submissions indicates otherwise. The Court thus concludes that it has not been shown that the two instances of interference were "necessary in a democratic society".

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

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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."

37. The applicants claimed the amounts indicated in Appendix II below.

38. The Government considered the amounts claimed excessive.

39. The Court awards the applicants the amounts indicated in Appendix II below, plus any tax that may be chargeable on the applicants.

40. 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. *Decides* to join the applications;
2. *Dismisses* the Government's objection in application no. 12996/12 and *declares* the applications admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Darian Pavli  
President

NOVAYA GAZETA AND OTHERS v. RUSSIA JUDGMENT

**Appendix I**

List of applications:

| Application no. | Application name                                 | Lodged on  | Applicant(s)   |
|-----------------|--|------------|--|
| 12996/12        | <b><i>Novaya Gazeta and Others v. Russia</i></b> | 10/02/2012 | <b>1. ANO “Redaktsionno-Izdatelskiy Dom ‘NOVAYA GAZETA’”</b><br>(“the applicant company”)<br>Legal entity incorporated under Russian law |
|                 |  |            | <b>2. Mr Aleksey Viktorovich POLUKHIN</b><br>Year of birth: 1983<br>Place of residence: Moscow<br>Nationality: Russian                   |
|                 |  |            | <b>3. Mr Valeriy Mikhaylovich NIKOLAYEV</b><br>Year of birth: 1942<br>Place of residence: Moscow<br>Nationality: Russian                 |
| 35043/13        | <b><i>Novaya Gazeta v. Russia</i></b>            | 22/11/2012 | <b>ANO “Redaktsionno-Izdatelskiy Dom ‘NOVAYA GAZETA’”</b><br>(“the applicant company”)<br>Legal entity incorporated under Russian law    |

NOVAYA GAZETA AND OTHERS v. RUSSIA JUDGMENT

Appendix II

| Application no. | Applicants' claims for just satisfaction (Article 41 of the Convention)  |   |   | The Court's award                  |  |                                    |
|-----------------|--|---|---|------------------------------------|--|------------------------------------|
|                 | <i>Pecuniary damage</i>  | <i>Non-pecuniary damage</i>   | <i>Costs and expenses</i>   | <i>Pecuniary damage</i>            | <i>Non-pecuniary damage</i>  | <i>Costs and expenses</i>          |
| <b>12996/12</b> | Applicant company:<br>RUB 204,000 (EUR 3,240 at the exchange rate applicable on 23/05/2011, the date of execution of the judgment of 29/12/2010) | 1. Applicant company:<br>EUR 5,000<br><br>2. Mr Polukhin:<br>EUR 5,000<br><br>3. Mr Nikolayev:<br>EUR 5,000 | EUR 7,664 (RUB 484,160 at the exchange rate applicable on the date of submission of the applicants' claims for just satisfaction) | EUR 3,240 to the applicant company | EUR 2,500 to the applicant company, Mr Polukhin and Mr Nikolayev, each | EUR 1,500 to the applicant company |
| <b>35043/13</b> | RUB 99,000<br><br>(EUR 2,326 at the exchange rate applicable on 19/10/2011, the date of execution of the judgment of 22/03/2011)                 | EUR 5,000   | EUR 100<br><br>(RUB 4,000)  | EUR 2,326                          | EUR 5,000  | EUR 100                            |