



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

Communicated on 7 January 2016

THIRD SECTION

Application no. 48557/10
Oleg Petrovich ORLOV and HUMAN RIGHTS CENTRE MEMORIAL
against Russia
lodged on 21 July 2010

STATEMENT OF FACTS

The first applicant, Mr Oleg Petrovich Orlov, is a Russian national who was born in 1953 and lives in Moscow. The second applicant is the Memorial Human Rights Centre, a non-governmental organisation registered in Russia. They are represented before the Court by Mr B. Bowring, Ms T. Chernikova, Ms N. Ermolaeva, Ms J. Evans, Mr K. Koroteev, Mr P. Leach, Ms A. Razhikova, Ms A. Sobko and Mr F. Tishayev, lawyers practising in London and Moscow.

A. The circumstances of the case

1. Background to the case

(a) General information

The first applicant is a well-known human rights activist and the chairman of the board of the second applicant.

The second applicant's activities include monitoring and protection of human rights. It is focused on, among other things, the protection of human rights in the North Caucasus area of Russia, in particular in the Chechen Republic.

The second applicant had several representatives in the North Caucasus, including its chief officer, Ms Natalia Estemirova, who worked in the Chechen Republic. According to the applicants, she had been gathering evidence and regularly reporting on human rights violations since the beginning of the armed conflict there.

At the international level, Ms Estemirova was awarded several prizes for her activities in the protection of human rights. At the domestic level, according to the applicants, the Chechen authorities, in particular the President of the Chechen Republic, Mr R. Kadyrov, on numerous occasions

expressed their dissatisfaction with the activities of the second applicant and its activists, including Ms Estemirova. In support of their claims, the applicants have submitted several interviews with Mr Kadyrov and his officials.

According to the applicants, shortly before the incident of 15 July 2009, described below, Ms Estemirova prepared several new reports on abductions, enforced disappearances and extrajudicial executions in various parts of the Chechen Republic. In the applicants' submission, the publication of those reports provoked a negative reaction from the Chechen authorities. In particular, Mr N., the Representative for Human Rights in the Chechen Republic, allegedly had a conversation with Ms Estemirova in which he expressed his dissatisfaction and stated that she should take care of herself and her close relatives.

(b) Ms Estemirova's death

On the morning of 15 July 2009 Ms Estemirova, was on her way to a planned meeting and was abducted near her home in Grozny, the Chechen Republic.

On the same day the second applicant alerted the authorities and published information about Ms Estemirova's disappearance on its website.

In the afternoon Ms Estemirova's body was found with bullet wounds near the Kavkaz highway in the Nazranovskiy district in the Republic of Ingushetia, adjacent to the Chechen Republic.

The incident attracted massive media attention. According to the applicants, the investigation was fruitless and the perpetrators have not been identified by the police.

2. Article

On 15 July 2009, several hours after Ms Estemirova's body had been found, the second applicant published "A statement of the Memorial Human Rights Centre about Natalia Estemirova's murder" on its website, which read as follows:

"Today our friend and colleague, our loved one, has been killed.

For almost ten years Natasha has been a leading officer of [the second applicant] in the North Caucasus, first and foremost in Chechnya. She has not only collected information about violations of human rights. She has been a human rights activist with a capital "A" and a defender of the people. The residents of Chechnya were victims of bombings, sweeping-up operations, abductions and torture. Natasha tried to help them all. She required the authorities to do the impossible – to halt lawlessness. Sometimes she succeeded – confidence in her righteousness and in the power of law gave her strength. This work made Natasha famous throughout Chechnya. People reached out to her hoping for protection, hoping at least that lawlessness would not remain obscure.

Natasha was threatened more than once by officials of all ranks, but she could never have seen herself working outside her motherland, Chechnya.

[The first applicant], the chairman of the board of [the second applicant]:

"I know, I am sure who is guilty of Natasha Estemirova's murder. We all know this person. His name is Ramzan Kadyrov, the President of the Chechen Republic. Ramzan had already threatened Natalia, insulted her and considered her his personal enemy. We do not know if he gave the order himself or if his closest associates did it

to please the chief. President Medvedev appears to find it acceptable to have a murderer as the leader of one of the regions of the Russian Federation”.

After Natasha had allowed herself to speak disapprovingly of women being forced to wear headscarves in public, she had a conversation with Kadyrov. She said that Kadyrov had threatened her and had said, verbatim, “Yes, my arms are covered with blood up to my elbows and I am not ashamed of it. I have killed and will kill bad people. We are fighting against enemies of the Republic.”

We know that Natasha’s latest reports about new abductions, extrajudicial executions and a public killing in a Chechen village provoked indignation among the high authorities of Chechnya. The so-called Representative for Human Rights in the Chechen Republic, [Mr N.], spoke about this to the chief of our Grozny office. He stated that he did not want anything to happen and therefore he was going to tell the human rights activists off.

We took a risk that turned out to be unjustified. We are very guilty.

Let’s say it straight. State terror is being practiced in Russia. We know of murders within Chechnya and outside its territory. Those who attempt to speak the truth or criticise the authorities are being killed. Ramzan Kadyrov has made the work of human rights activists in Chechnya impossible. Those who killed Natasha Estemirova wanted to cut off an outflow of truthful information from Chechnya.

Perhaps they have succeeded.”

3. Defamation proceedings

On 13 August 2009 the President of the Chechen Republic, Mr Kadyrov, brought a defamation claim against the applicants.

He claimed that the expressions statements were defamatory:

1. “[The first applicant], the chairman of the board of [the second applicant]:

“I know, I am sure who is guilty of Natasha Estemirova’s murder. We all know this person. His name is Ramzan Kadyrov. This is the President of the Chechen Republic. Ramzan has already threatened Natalia, insulted her and considered her his personal enemy. We do not know if he gave the order himself or if his closest associates did it to please the chief. President Medvedev appears to find it acceptable to have a murderer as the leader of one of the regions of the Russian Federation”.

2. “After Natasha had allowed herself to speak disapprovingly of women being forced to wear headscarves in public, she had a conversation with Kadyrov. She said that Kadyrov had threatened her and had said, verbatim, “Yes, my arms are covered with blood up to my elbows and I am not ashamed of it. I have killed and will kill bad people. We are fighting against enemies of the Republic.”

3. “We know that Natasha’s latest reports about new abductions, extrajudicial executions and a public killing in a Chechen village provoked indignation among the high authorities of Chechnya.”

4. “Ramzan Kadyrov has made the work of human rights activists in Chechnya impossible.”

Mr Kadyrov argued that the above expressions were statements of fact, that they were false, unsubstantiated by evidence and damaging for his reputation. He sought to have a disclaimer published on the second applicant’s website and compensation for non-pecuniary damage in the amount of 10,000,000 Russian roubles (RUB) (approximately 217,000 euros (EUR)) paid to him by the applicants in equal shares.

(a) Proceedings before the first-instance court

In the proceedings before the Tverskoy District Court of Moscow (“the District Court”) Mr Kadyrov’s representative maintained the claim, stating that the information in question was a statement of fact which was false and tarnished his client’s honour, dignity and professional reputation by accusing him of having committed a criminal offence. The representative also stated that “unscrupulous journalists and human rights activists” would take Mr Kadyrov’s statements out of their context and would distort them. He also added that the impugned information published on the second applicant’s website had been circulated by various mass media all over the world and that it had continued to be widely and insistently discussed for the last two months until that moment.

(i) The applicants’ arguments

The applicants disagreed with the claim and argued that the impugned expressions were not factual statements, but rather represented their opinions expressed with various degree of certainty.

As regards the expression about Mr Kadyrov’s guilt in the incident, the applicants stated that they had not accused the claimant of having committed a criminal offence, but had instead alleged that he had been politically and socially responsible for Ms Estemirova’s death. They referred to Mr Kadyrov’s words, published on the Internet in 2007, when he said that he was “personally responsible for everything that [happens] in the Republic”. The applicants also argued that this expression was a value judgment, not a statement of fact.

In so far as the applicants had stated that Mr Kadyrov had considered Ms Estemirova to be his personal enemy, they argued that that had indeed been the case. The applicants submitted that that had been confirmed by witnesses who had heard this directly from Ms Estemirova. According to them, Mr Kadyrov’s hostile attitude towards Ms Estemirova had also been confirmed by the fact that even after her death he had been unable to refrain from insulting her. In particular, in a radio interview of 8 August 2009, given after the murder, Mr Kadyrov had stated that Ms Estemirova “[had] never had any honour, dignity or scruples”.

As regards the expression that the Russian President appeared to find it acceptable to have a murderer as the leader of one of the regions, the applicants argued that they had not mentioned Mr Kadyrov and, accordingly, no damage to his reputation had been caused. In any event, Mr Kadyrov had himself on several occasions admitted his involvement in murders. Thus, on 31 March 2008 he had said to Ms Estemirova that “[his] arms [had been] covered with blood up to their elbows and [he had] not [been] ashamed of it” and that “[he had] killed and [would] kill bad people”. Moreover, in his interview of 21 June 2004 with A. Politkovskaya, a journalist of *Novaya Gazeta*, who had also been murdered prior to Ms Estemirova, Mr Kadyrov had confirmed that he had given orders to kill on “the Prophet’s words” and that the Wahhabis had also to be eliminated. Further, in October 2005 in his interview to the Russian edition of the magazine *GQ* Mr Kadyrov had stated that “[he had] already killed those whom [he had] had to kill” and that “[he would] continue killing those, who

stood behind them, until [he was] killed or imprisoned”, and that “[he would continue] killing, while [he was] alive”.

In so far as the article mentioned Ms Estemirova’s words about the threats received from Mr Kadyrov, the applicants argued that Ms Estemirova had reported those words to a number of persons. According to her, on 31 March 2008 she had met Mr Kadyrov. During the meeting he had informed her of her dismissal from the post of the head of the Grozny Public Human Rights Council (*Грозненский Общественный Совет по оказанию содействия в обеспечении прав и свобод человека и гражданина*) and prohibited her from visiting the regional authorities. Mr Kadyrov had stated that she would not continue her human rights activity in Chechnya. He had also asked her if her behaviour had made her worry for her daughter. In the aftermath of that event, which the second applicant had considered as dangerous for Ms Estemirova, it had sent her abroad for several months. On 24 June 2009 Mr Kadyrov had appeared on a local news programme stating that “[he had considered] ... those who ... [had spread propaganda] [in the Chechen Republic] ... equal to bandits, terrorists and criminals”.

As regards the statement about the indignation among the Chechen authorities provoked by Ms Estemirova’s reports, the applicants argued that it had not been damaging for the claimant’s reputation because he had not been accused of inappropriate conduct.

Lastly, in so far as the statements outlined that Mr Kadyrov had made the work of human rights activists in Chechnya impossible, the applicants argued that that passage had not been defamatory. According to them, it had expressed an idea that not all human rights activists had been unable to work in the Republic, only those who were truly independent from the Chechen authorities. In support of that allegation, the applicants referred to the recent abduction and murder of two human rights activists, Ms Estemirova and Ms Sadulaeva, the head of the Chechen non-governmental youth organisation Let’s Save the Generation (*Снаём поколение*). According to the applicants, those tragic events had seriously affected the activity of the human rights organisations in the region. In particular, the second applicant had had to suspend the work of its office in Grozny. The applicants contended that not only had Mr Kadyrov himself threatened human rights activists, but his close collaborator Mr D., a member of the Russian Parliament. According to the online media, two weeks before Ms Estemirova’s murder Mr D. had appeared on television stating:

“There are some people who call themselves human rights activists and help *shaitans* and criminal rebel fighters, working with them and implementing their ideas and policies ... they carry on conversations... but I know the mood of the police and society, I know what ordinary residents say about [them] ... They say that ... those peoples’ statements ..., what they say and what they do..., are no less crimes that those of rebel fighters ... These people [human rights activists] confuse and deceive people with their speeches. They will not succeed in it. Truth and fairness always win. Here there are our soldiers, our commanders; our boys ask me what these people [human rights activists] want. I answer that we do not care one jot about human rights activists. With God’s help, all those who support evil will be called to account. Every one of them, be they a Chechen and an Ingush or anyone else, must know that they will be held responsible for their words ... In any event, we will eliminate all those

who fight against us with arms, sympathise with them, or in their minds support *shaitans*”.

Referring to the case of *Lingens v. Austria* (8 July 1986, Series A no. 103), the applicants noted that the limits of acceptable criticism regarding a politician were wider than as regards a private individual. Consequently, the authorities should be more tolerant in the assessment of the impugned expressions.

(ii) *Examination of witnesses*

On 25 September 2009 the Tverskoy District Court of Moscow held a court hearing and questioned four witnesses on the applicants’ behalf.

Ms S., a human rights activist, stated that she had known Ms Estemirova and had heard about Mr Kadyrov’s threats to her. According to Ms S., he had considered Ms Estemirova to be his personal enemy and had insulted her. The first meeting between Ms Estemirova and Mr Kadyrov had taken place in 2004, when Ms Estemirova had stood up for Ms Politkovskaya, a journalist, trying to protect the latter from Mr Kadyrov’s aggression. The next meeting had taken place on 31 March 2008, when Mr Kadyrov had organised a personal meeting with Ms Estemirova. He had been unsatisfied with the second applicant’s work in the region and had therefore intimidated Ms Estemirova, stating that he had killed and would continue killing bad people. He had also asked her if she had worried for her daughter. After that incident Ms Estemirova had left the Chechen Republic and had sent her daughter to Yekaterinburg. According to Ms S., Mr Kadyrov had been highly sensitive to criticism; he had taken every statement as if it referred to him personally; and had tried to keep everything that was going on in the Republic under his control. He had made human rights activity in the region impossible.

Ms L., a deputy head of the Russian office of Human Rights Watch, stated that she had learned from Ms Estemirova about her two meetings with Mr Kadyrov in 2004 and on 31 March 2008. As regards the former meeting, Ms L. stated that she had found out about its circumstances from Ms Estemirova. Ms L.’s description was similar to that of Ms S. In particular, Ms L. reported Ms Estemirova’s account that Mr Kadyrov’s conduct at that meeting had been very aggressive, that he had shouted at Ms Politkovskaya, had accused her of misrepresentation of events in Chechnya, had stated that such people should be shot dead in the middle of the street. Ms Estemirova had tried to stand between Ms Politkovskaya and Mr Kadyrov. According to Ms L., it was then that Mr Kadyrov had noticed Ms Estemirova and had formed an aggressive and negative attitude towards her. After that meeting both Ms Politkovskaya and Ms Estemirova had feared for their security; Ms Estemirova had left, along with her daughter, for Ireland for several months.

L. went on to state that, according to Ms Estemirova, the meeting of 31 March 2008 had been held on Mr Kadyrov’s initiative after Ms Estemirova had disapprovingly commented on television about a quasi-official policy of making women in the Chechen Republic wear headscarves. At that meeting, Mr Kadyrov had used offensive language and intimidated Ms Estemirova. He had dismissed her from the Grozny Public Human Rights Council prohibiting her from visiting any public authorities

in the region. After that meeting Ms Estemirova had followed the second applicant's advice to leave the Chechen Republic and to go to the UK for several months.

Ms L. continued, stating that human rights activity in the region had been seriously hampered. Under pressure from the authorities people had reported abductions and killings less frequently. Ms Estemirova's friends had been so intimidated, that they had rejected Ms L.'s offer to hold a demonstration in her memory, considering that tantamount to suicide.

Mr M., who had previously worked in an international organisation focused on the protection of journalists, stated that he had learned from his colleagues and Ms Estemirova that on 30 March 2008 she had had a conflict with Mr Kadyrov. Mr Kadyrov considered that the work and comments which she had permitted herself to make had contradicted his rules of behaviour and ethics. During that heated discussion, Mr Kadyrov had insulted and intimidated Ms Estemirova, his words had been threatening in towards her and her daughter. Ms Estemirova had been very frightened. After that incident she had left the country. Mr M. also confirmed that for the last few years it had become extremely difficult to continue human rights activity in the Chechen Republic.

Ms G., the head of the Committee on Civic Support (*Комитет гражданского содействия*) and a staff member of the second applicant, stated that the Chechen authorities' attitude towards human rights organisations had been very positive until 2006, when Mr Kadyrov had assumed the leadership of the region and had launched an intense media campaign against human rights activists. They had been accused of collaborating with terrorists and illegal armed groups. According to Ms G., Mr Kadyrov had been incensed by Ms Estemirova's comments about headscarves and had had a meeting with her on 31 March 2008. During that meeting Mr Kadyrov had been extremely aggressive and hostile towards Ms Estemirova, had shouted at her and intimidated her. She had had to leave Russia for a certain time, but later had returned to the Chechen Republic and had continued her work. In July 2009 the second applicant's office in Grozny had received hidden threats from the authorities, who had sharply criticised its activities in Chechnya and noted that its members' behaviour had not been "correct". Ms G. also stated that after Ms Estemirova's murder two persons had confessed to her of conveying threats to the latter.

On 6 October 2009 the Tverskoy District Court of Moscow further questioned four witnesses on the claimant's behalf.

Ms M., a human rights activist, who worked with Ms Estemirova in the Civic Supervision Committee of the Chechen Republic (*Общественная Наблюдательная Комиссия Чеченской Республики*), described her as a direct, brave and result-oriented person. Ms M. further stated that Mr Kadyrov had not obstructed Ms Estemirova's human rights activity, and that when asked whether she had ever been threatened, the latter had "just laughed" and had denied being intimidated by Mr Kadyrov. According to Ms M., Ms Estemirova had never feared for her life; otherwise she would not have lived with her daughter in a flat in Grozny, nor have walked alone in Grozny at night. Ms M. also stated, in reply to a relevant question of the applicants' representative, that women wearing headscarves was one of

Chechen society's traditions and that they needed to stick to traditions as an element of moral revival after two devastating wars that the Chechen people had survived. She added that Ms Estemirova had had a negative attitude towards that tradition and had refused to wear a headscarf; once she had not been allowed enter a public building without a headscarf following which she had "kicked up a fuss", but then she had participated in a meeting with President Kadyrov with her head uncovered.

Ms K., the leader of an organisation that searched for missing persons and a member of the Civic Chamber of the Chechen Republic (*Общественная Палата Чеченской Республики*), stated that in 2006 and 2007, together with Ms Estemirova, she had participated in annual meetings between the President of the Chechen Republic and representatives of human rights organisations. During the meetings Mr Kadyrov had been cooperative, ready to discuss the problems encountered by the human rights activists and to find solutions for those problems. According to Ms K., President Kadyrov had never met Ms Estemirova individually; a practice of individual meetings with human right activists had simply not existed. Ms K. also stated that Ms Estemirova had never mentioned to her that she had received any threats, nor had she demonstrated any concern for her daughter's safety.

Mr D.O., the head of the analytical department of the Office of the Representative for Human Rights of the Chechen Republic, stated that he had known Ms Estemirova and her family, but had never heard them mention any complaints concerning any threats to Ms Estemirova's life. Mr D.O. went on to state that the President of the Chechen Republic had regular meetings with representatives of human rights organisations; that was a well-established practice. During those meetings they discussed various topical issues; critical questions were put to Mr Kadyrov. He was always ready to address and resolve all those problems. Mr D.O. stressed that human rights organisations should cooperate with the authorities and should act on the principles of mutual assistance and peaceful coexistence; whereas the second applicant was an isolated organisation with a hostile attitude towards the authorities. The witness added that at the moment approximately forty human rights organisations were registered in the Chechen Republic, of which twenty to thirty were active.

Mr D.U., the head of a department in a regional human rights authority stated that he had personally known Ms Estemirova and had often met her at various human rights events. According to him, she had participated in regular meetings with human rights activists organised by the authorities, but had never had any personal meetings with the President of the Chechen Republic, who did not have time for any such individual meetings. Mr D.U. said that he had never heard of any threats received by Ms Estemirova. He further stated that the second applicant tended to publish unverified information instead of first verifying it and discussing it with the President of the Chechen Republic. In Mr D.U.'s view, human rights activists should have a dialogue rather than confrontation with the authorities, but apparently the second applicant did not share that idea. The witness also stated that Ms Estemirova had usually been driven by a desire to publish a lot without paying attention to the accuracy of her information.

At the same hearing the court questioned a witness for the applicants', Mr Sh., the editor-in-chief of the *Caucasian Knot* (*Кавказский Узел*) newspaper. He stated that the newspaper brought to light various issues of public interest, particularly human rights problems, in the Chechen Republic and elsewhere in the South Caucasus region of Russia. Unlike in Ingushetia, a region adjacent to the Chechen Republic, where all those who published their articles were not afraid of revealing their identities, in Chechnya recently the situation had changed – people writing articles for *Caucasian Knot* would refuse to disclose their names, or the organisations for which they worked. In particular, between May and September 2009 the newspaper had published five articles regarding Chechnya with pseudonymous authors. The situation had deteriorated after the murder of Ms Estemirova and two other human rights activists in Chechnya. Ms Estemirova, whom Mr Sh. had known personally, had been one of the newspaper's authors who had never feared to write under her own name. Mr Sh. further stated that he had been aware of Ms Estemirova's conflict with Mr Kadyrov and the threats made to her. According to Mr Sh., Mr Kadyrov's intimidation had forced Ms Estemirova to leave the Chechen Republic together with her daughter.

(iii) *Judgment of 6 October 2009*

In a judgment of 6 October 2009 the Tverskoy District Court granted the claim in part.

The court found that the first two statements affirmed that the claimant had breached criminal law by murdering Ms Estemirova and that they had been defamatory and had tarnished his honour and dignity. The court noted in this respect that under Article 152 of the Russian Civil Code and resolution no. 3 of 24 February 2005 of the Plenary of the Supreme Court of Russia, a defendant in defamation proceedings was under an obligation to prove the veracity of the disseminated information; the applicants had failed to adduce any evidence in support of their relevant two statements.

The court further rejected the first applicant's arguments that while using the word "murderer" he had been referring to Mr Kadyrov's political and social, rather than criminal, responsibility, as the latter had failed to protect Ms Estemirova's right to life secured by the Constitution of the Chechen Republic; thus the impugned statements had been value judgments expressing the first applicant's opinion regarding the claimant's responsibility for the events in the Chechen Republic, as Mr Kadyrov, himself had frequently mentioned in his interviews. The court briefly stated that those arguments "[were not] legal grounds for rejecting the claim".

It went on to reject as unconvincing the first applicant's argument that the impugned expressions represented his critical opinion of Mr Kadyrov as a politician, public figure and the leader of the Chechen Republic, and were thus protected by Article 10 of the Convention. In this connection, the court noted that the freedom of expression guaranteed by Article 10 of the Convention could be subject to certain restrictions prescribed by law which were necessary in a democratic society for the protection of the reputation and honour of others. It further noted that whilst accusing Mr Kadyrov of a serious criminal offence – Ms Estemirova's murder – the applicants had failed to submit any evidence that Mr Kadyrov had ever been involved as a

suspect or accused in the criminal proceedings instituted in connection with that death.

The court went on to reject as unconvincing the applicants' argument that, in so far as the article had stated that "President Medvedev [appeared] to find it acceptable to have a murderer as the leader of one of the regions of the Russian Federation", it had not referred to the claimant. The court noted that the statement in question had been preceded in the same paragraph by the second applicant's direct accusation of Mr Kadyrov of complicity in Ms Estemirova's murder, with the result that all those statements were closely linked and fell within one logical line of reasoning. In so far as the defendants argued that their relevant conclusion on Mr Kadyrov's involvement in Ms Estemirova's murder had been based on his interviews confirming his involvement in murders of various persons and expressing his positive attitude thereto, the court found that those interviews were irrelevant to the present case, as they had not contained any information confirming that Mr Kadyrov had committed any criminally punishable acts against Ms Estemirova.

The court furthermore rejected as irrelevant the applicants' reference to various media articles and reports of human rights organisations on the situation in the Chechen Republic in 2009.

In so far as the first applicant argued that in the impugned article he had restated Ms Estemirova's account of her meeting with Mr R. Kadyrov on 31 March 2008 during which he had threatened her and stated that "[his] arms [had been] covered with blood up to my elbows", the court noted that the claimant's representative at the court hearing had denied that any such meeting had ever taken place and that Mr Kadyrov had ever threatened Ms Estemirova or had used the words attributed to him by the author. The court further noted that the witnesses S., L., M., G., Ch., and Sh. had not been present at the meeting in question and therefore their testimonies in support of Ms Estemirova's account thereof could not serve as reliable evidence.

The court further agreed with the claimant that the third statement was also defamatory. The court regarded the impugned expression as affirming that "the President of the Chechen Republic, the guarantor of the observance of human rights in the region, [had] acted dishonestly when exercising his power", which had tarnished the claimant's professional reputation. The court further referred to the statements of witnesses D.O. and D.U, who had mentioned at the hearing that more than twenty or thirty human rights organisations were active in the Chechen Republic. In the court's view, the defendants' argument that [the second applicant] had had to suspend its work in the region and their reference to Mr D.'s interview, and the statements of S., L., M., G., Ch. and Sh. about the difficulties of human rights activists' work in the Republic, and the increased number of anonymous complaints about human rights violation, did not demonstrate the impossibility of carrying out human rights work in the Chechen Republic or that such work was banned by Mr Kadyrov.

The court thus found that the first three impugned statements were defamatory and damaging to the claimant's honour and dignity and granted his claim in its relevant part.

Concerning the remaining expression, the court stated that it had not been damaging to the claimants honour, dignity or professional reputation

as it had not contained information about a breach of the law in force at the time committed by the claimant, or his dishonest conduct, or inappropriate behavior in his personal, public or politic life, bad faith in business activity, a breach of business ethic or business customs, with the result that that part of the claim should be dismissed.

The court ordered the second applicant to publish on its website a retraction stating that the first, second and the fourth statements were untrue. It also ordered the first applicant and the second applicant to pay Mr Kadyrov compensation for non-pecuniary damage in the amount of RUB 20,000 (approximately EUR 455) and RUB 50,000 (approximately EUR 1,135) respectively.

(b) Proceedings before the appellate court

(i) Parties' arguments

Both parties to the proceedings appealed.

The claimant sought to have the third expression found to be defamatory and the full amount of compensation for non-pecuniary awarded to him. According to him, the amount of compensation awarded was nominal and insignificant. The court had not taken into account that the unfounded accusations made by the applicants had been circulated by mass media all over the world, which not only had seriously tarnished Mr Kadyrov's reputation, but had worsened the image of the Chechen Republic in the eyes of its investors.

The applicants sought the dismissal of the claim in full.

In particular, as regards the expression concerning Mr Kadyrov's guilt in the murder, the applicants reiterated their argument that the article had referred to Mr Kadyrov's political and social responsibility rather than directly accusing him of a criminal offence. As regards the expression that the Russian President appeared to find it acceptable to have a murderer as the leader of one of the regions, the defendants insisted that it had been a value judgment which could not have been verified and that it had been made in good faith because in his interviews Mr Kadyrov had on several occasions reiterated his positive attitude towards extrajudicial executions and stated that he had taken part in those. They also argued that by stating in its judgment that the applicants had failed to submit any evidence that Mr Kadyrov had ever been involved as a suspect or accused in the criminal proceedings instituted in connection with Ms N. Estemirova's death, the first-instance court had, in fact, required that they should have submitted evidence proving Mr Kadyrov's involvement in a criminal offence. In the applicant's submission the first-instance court had, in fact, imposed an excessive and unattainable burden of proof on them normally applicable only for establishing an offence under criminal law not for the assessment of their compliance with the ethics of journalism, thus curtailing their right to freedom of expression.

In so far as the article stated that Mr Kadyrov had intimidated Ms Estemirova, the defendants argued that in that impugned passage they had only reported Ms Estemirova's account of her meeting with Mr Kadyrov, including the threats he, in her account, had made towards her. A number of witnesses had confirmed at the hearing that they had heard the

same account from Ms Estemirova. Nevertheless, the first-instance court had dismissed that oral evidence as unreliable, stating that it had been hearsay, and that the witnesses in question had not, themselves, seen Ms Estemirova's meeting with Mr Kadyrov. The applicants argued that such an assessment had been arbitrary and misleading, given that they had only reported Ms Estemirova's account, without alleging that it had been accurate, and had stated that she had been frightened and had taken those threats seriously.

As regards the expression that Mr Kadyrov had made the work of human rights activists impossible, the applicants claimed that it had been a value judgment made in good faith. They argued that they had never alleged that Mr Kadyrov had banned human rights organisations in the Chechen Republic, contrary to the first-instance court's finding to that end, but rather had stated that there had been serious obstacles preventing effective human rights activity in the region; this allegation had been confirmed by witness statements.

Referring to the Court's case-law concerning Article 10 of the Convention, including the cases of *Krasulya v. Russia* (no. 12365/03, 22 February 2007), *Godlevskiy v. Russia* (no. 14888/03, 23 October 2008) and *Dyundin v. Russia* (no. 37406/03, 14 October 2008), the applicants argued that the judgment of 6 October 2009 had fallen short of the requirements of Article 10 because it had been poorly reasoned, and had failed to take into account the fact that the claimant had been a public figure and that the applicants' had been famous human rights activists with unimpeachable reputations. The applicants noted that the claimant's provocative statements and his complex and often aggressive position towards human rights activists had often provoked sharp criticism with the result that the level of tolerance applied to the applicants' impugned statements should have been particularly high.

(ii) *Decision of 21 January 2010*

On 21 January 2010 the Moscow City Court upheld the judgment on appeal, in particular holding:

“The [first-instance court] rightly considered that the disseminated information had not corresponded to reality and had damaged the claimant's honour, dignity and professional reputation.

The information had affirmed that the claimant had breached criminal law [and] murdered Ms Natalya Estemirova, whereas according to [a relevant provision of criminal law] no one can be found guilty of a criminal offence or subjected to a criminal punishment unless sentenced by a court. There is no court sentence in respect of the claimant, nor has he ever been involved as a suspect or accused in the criminal proceedings [regarding Mr Estemirova's death].

All the defence's arguments were examined by the court and rightly assessed.

The first-instance court rightly concluded that the information [that Ms Estemirova's report had provoked indignation among the high authorities of Chechnya] had not contained any statements about a breach by the claimant of the law in force and thus there was no need to publish any retraction in that connection.

The amount of the compensation awarded for non-pecuniary damage was determined in line with the requirements of [civil procedural law] ...

The defendants have failed to submit evidence to prove that the disseminated information corresponded to reality, therefore their reference to the case-law of the European Court is groundless”.

B. Relevant domestic law

Article 152 of the Civil Code of Russia, in force at the material time, provided as follows:

“Protection of honour, dignity and business reputation.

1. An individual has the right to refute in court information damaging his/her honour, dignity or business reputation, save in the event that those who disseminated such information have proven its veracity.

The honour and dignity of a deceased individual shall be granted protection upon the request of the persons concerned.

2. If damaging statements ... were disseminated in the media, they should be retracted in the same media ...

5. An individual aggrieved by the dissemination of damaging information ... has, along with the right to request rectification of such information, the right to claim damages and compensation for non-pecuniary damage sustained as a result of its dissemination ...”

By resolution no. 3 of 24 February 2005 the Plenary of the Supreme Court of Russia clarified to the lower courts that a defamation action could be granted only if the statements about the plaintiff had been both disseminated by the respondent and had been discrediting and false. It required the courts hearing defamation claims to distinguish between statements of fact, which could be checked for veracity, and value judgments, opinions and convictions, which were not actionable under Article 152 of the Civil Code since they were an expression of an individual’s subjective opinion and views and thus could not be assessed as true or false.

COMPLAINT

The applicants complain under Article 10 of the Convention that their right to freedom of expression was violated. They claim, in particular, that the interference was not lawful, because Article 152 of the Civil Code of Russia made no distinction between statements of fact and value judgments. They also claim that the interference was not “necessary in a democratic society” because the domestic courts failed to examine the case in line with the requirements of Article 10 of the Convention and because the interference was disproportional to the legitimate aim pursued.

QUESTION TO THE PARTIES

1. Has there been an interference with the applicants' right to freedom of expression, in particular their right to impart information and ideas, secured by Article 10 § 1 of the Convention?

2. If so, was that interference justified under Article 10 § 2 of the Convention? In particular:

(a) was it "prescribed by law"?

(b) did it pursue a legitimate aim?

(c) was it "necessary in a democratic society"? In particular, were the impugned expressions statements of fact or value judgments? Did the national authorities thoroughly examine the case and adduce relevant and sufficient reasons to justify the alleged interference?