



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

THIRD SECTION

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

*(Applications nos. 11971/10 and 48557/10)*

JUDGMENT

STRASBOURG

14 December 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 on 23 November 2021 as a Committee composed of:

María Elósegui, *President*,

Darian Pavli,

Frédéric Krenc, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 11971/10 and 48557/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four 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 applicants’ complaints concerning the 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 23 November 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 and a human rights NGO and its chairperson by the President of the Chechen Republic. The applicants considered that the domestic courts’ judgments finding them civilly liable for defamation constituted each a disproportionate interference with the exercise of their right to freedom of expression.

## THE FACTS

2. The first applicant is a publisher of *Novaya Gazeta*, a leading Russian newspaper (“the newspaper”). Mr Izmaylov is a professional journalist who at the material time wrote for the newspaper. Mr Orlov, the third applicant, was at the material time the chairperson of the fourth applicant, NGO Memorial. Their representatives are listed in Appendix I below.

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

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

I. APPLICATION No. 11971/10

5. In May 2008, the newspaper published an investigation by Mr Izmaylov under the headline “In Chechnya, they kidnap friends of the Kadyrov family”. It covered an alleged kidnapping of Mr N.P., a friend of the late President of the Chechen Republic Akhmat Kadyrov. The article stated that Ramzan Kadyrov, incumbent President and son of Akhmat Kadyrov, had declined to comment. The relevant extracts read as follows:

“... In Chechnya, they kidnap friends of the Kadyrov family ...

On 14 May, N.P., an well-informed and rather well-known person in the [Chechen] Republic aged sixty-one, was kidnapped. In 2003, N.P., a writer and public figure, had run for President of the Chechen Republic against Akhmat Kadyrov. ...

On 9 April, his wife and a seven-year-old daughter had been kidnapped. N.P. had not attracted a lot of attention to his grief as he had understood perfectly well that the kidnapers had wanted him, rather than his family members who had been taken hostage. And then, all of a sudden – a phone call: the wife told him that their kidnapped daughter had been taken ill. N.P. in great haste took a cab from Khasavyurt to Groznyy. Over there, near the Sabita market, right in the centre of the Chechen capital in plain sight of the many, people in camouflage first beat N.P. up and then pushed him inside a car and took in the unknown direction. Witnesses were told that it was a special [law-enforcement] operation ...

Nothing else is known about the destiny of N.P. President of the [Chechen] Republic Ramzan Kadyrov has also remained silent despite the fact that the kidnapped person was a close friend of his father.”

6. In June 2008, Mr Izmaylov continued investigating the kidnapping in a follow-up publication “The story of a kidnapping”. It focused on N.P.’s story and that of his family. Ramzan Kadyrov was mentioned once – the article claimed that it was rumoured that N.P. was no longer Ramzan Kadyrov’s ally. The relevant extracts read as follows:

“One week before his disappearance, [N.P.] had contacted Russian human rights activists asking for help: he had complained about persecution on the part of the Chechen authorities and had told that his wife and a young daughter had been kidnapped ...

It was as if [N.P.] had stopped supporting the younger Kadyrov, had started communicating with the latter’s foes, the Ya. [family], and even had accepted gifts from them ...

It was rumoured that the reason why [N.P.] had been taught a lesson was exactly that – a gifted bespoke suit ...

I tried to find his wife and a daughter. I contacted Sh.S., Ramzan Kadyrov’s aide in the police forces ...

And N.P., who apparently had indeed been kidnapped, ... had left Russia ... (the human rights defenders complied with the request helping him to move to one of the CIS member States) ...

He was kidnapped ... and lost the last thing he had, his homeland.”

7. Ramzan Kadyrov brought a civil defamation claim against the applicant company and Mr Izmaylov seeking a retraction of the statements quoted above and compensation in respect of non-pecuniary damage.

8. On 28 October 2008 the Basmany District Court of Moscow (“the Basmany Court”) dismissed the claim on the grounds that the publications had not contained any defamatory elements directly concerning the claimant. On 29 January 2009 the Moscow City Court quashed that judgment and remitted the case.

9. In the resumed proceedings before the Basmany Court, Ramzan Kadyrov submitted that the articles had been published “to demonstrate that an atmosphere of total lawlessness and lack of respect to people exists in the Chechen Republic headed by the claimant, which is not true”. The applicant company and Mr Izmaylov, in their turn, submitted that the articles contained no statements whatsoever, be it tarnishing or otherwise, regarding Ramzan Kadyrov.

10. On 15 April 2009 the Basmany Court found for the claimant. In doing so, it focused on establishing the three elements that, pursuant to section 7 of the Supreme Court’s Resolution no. 3, were relevant in examining a claim under Article 152 of the Civil Code, namely, (i) whether a defendant disseminated statements regarding a claimant, (ii) whether the disseminated statements tarnished the claimant’s reputation, and (iii) whether such statements were untruthful.

11. The Basmany Court held as follows:

“The analysis of the [intended] direction of the meaning and content of the fragments of the text permits to identify the claimant, the President of the Chechen Republic Ramzan Kadyrov, as the person in respect of whom [these fragments] had been disseminated. Accordingly, the fact of dissemination of the statements concerning [Ramzan Kadyrov] is considered established regardless of whether or not each of the statements contains his name.

12. The Basmany Court held that the publications had concerned kidnappings and the atmosphere of lawlessness in the Chechen Republic and a “*de facto* approval” of such events and social climate by its President:

“Accordingly, assessing the statements, the court finds that they contain statements of fact that discredit Ramzan Kadyrov in the eyes of a wide readership, are aimed at creating his negative [public] image, and indicate that in his professional activities he breaks the law, does not respect humanistic principles of morals and ethics, and represents a menace, and such statements tarnish [his] honour, dignity and reputation.”

13. Having heard as a witness Mr N.P. who had described the circumstances of the kidnapping, the Basmany Court dismissed his testimony as unsupported by other evidence, unreliable and self-contradictory. It noted that, according to Mr N.P.’s spouse, Mr N.P. “had made the statements tarnishing Ramzan Kadyrov’s reputation in the course of the press conference in exchange for a promised remuneration”.

The Basmany Court concluded that the defendants had not proved the truth of the statements. It dismissed Mr Izmaylov's arguments that information on Mr N.P.'s alleged kidnapping had been available from other media outlets as follows: "[these arguments] cannot serve as proof of the truth of the disseminated statements because they bear no witness to it."

14. The Basmany Court found no grounds for absolving the defendants of liability as per the exemption rule of section 57 of the Media Act on the grounds that the list of exemptions given in that provision had been exhaustive. It argued that where the statement in question had been directed at a public figure or an official, this in itself could not absolve a person from liability for wrong statements of facts.

15. The Basmany Court ordered a retraction and awarded the claimant 100,000 Russian roubles (RUB) and RUB 10,000 to be paid by the applicant company and the second applicant, respectively. The applicant company was also ordered to pay the claimant RUB 100 in compensation of court fees.

16. On 28 July 2009 the Moscow City Court ("the Moscow Court") upheld the judgment of 15 April 2009 in full agreeing with every finding by the Basmany Court. It observed, in particular, as follows:

"Having satisfied itself that the statements had been neither a criticism of the highest official in the Chechen Republic nor opinions or value judgments, the district court correctly concluded that freedom of thought and expression guaranteed by the Russian Constitution should not be used as a tool for violating the rights of others, having established the untruth of the statements disseminated in a media outlet ...."

17. On 18 September 2009 the first applicant transferred RUB 100,100 (2,234 euros (EUR) at the exchange rate applicable on the date of the transaction) to the bailiffs' service's bank account in execution of the judgment of 15 April 2009.

## II. APPLICATION No. 48557/10

### A. Background to the case

18. Mr Orlov is a human rights campaigner and activist. At the material time he was the chairperson of Memorial, a leading non-governmental organisation involved in monitoring and protection of human rights with a special focus on the North Caucasus area of Russia, in particular, the Chechen Republic. Memorial and three of its leading members, including Mr Orlov, were awarded the European Parliament's 2009 Sakharov Prize for Freedom of Thought.

19. Ms Natalia Estemirova was Memorial's board member and its leading representative in Northern Caucasus. A reputable human rights defender, she was awarded several international prizes for her work. At the same time, her activities attracted vocal criticism on the part of the State

officials of the Chechen Republic, including its President, Ramzan Kadyrov, expressed in published interviews.

20. Shortly before the events of 15 July 2009 described below, Natalia Estemirova authored a number of reports on abductions, enforced disappearances and extrajudicial executions in various parts of the Chechen Republic, which, once published, were harshly criticised by the authorities in the region. Mr N.N., Ombudsman of 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**

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

22. Memorial immediately alerted the authorities and published information about Ms Estemirova's disappearance on its website.

23. Ms Estemirova's body with bullet wounds was found on the afternoon of the same day, near the Kavkaz motorway in the Nazranovskiy District in the Republic of Ingushetia, adjacent to the Chechen Republic<sup>1</sup>.

### **C. Impugned publication**

24. On 15 July 2009, several hours after Natalia Estemirova's body had been found, Memorial published on its website "Statement of the Memorial Human Rights Centre concerning Natalia Estemirova's murder", which read as follows:

"Today our dear friend and colleague has been killed.

For almost ten years Natasha has been a leading staff member of Memorial in the North Caucasus, first and foremost in Chechnya. Not only has she collected information about violations of human rights, she has been a capital 'A' human rights activist, a defender of the people. Residents of Chechnya had been victims of bombings, sweeping-up operations, abductions and torture. Natasha tried to help them. She demanded from the authorities to do the impossible – to end lawless practices. On occasions she succeeded – confidence in her rectitude 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 lawless practices would not remain a secret.

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

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

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<sup>1</sup> For details, see *Estemirova v. Russia* (no. 42705/11, 31 August 2021)

‘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 whether he gave the order himself or if his closest associates did it to please the boss. President Medvedev appears to find it acceptable to have a killer as the leader of one of the regions of the Russian Federation’.

After Natasha had allowed herself to speak disapprovingly of the fact that women [in the Chechen Republic] were being almost forced to wear headscarves in public, she had had a conversation with Kadyrov. She said [later] 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 on new abductions, extrajudicial executions and a public lethal shooting in a Chechen village provoked indignation among the high and mighty of Chechnya. The so-called Ombudsman of the Chechen Republic, [Mr N.N.], spoke about this to the head of our Grozny bureau. [Mr N.N.] 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 call a spade a spade. State terror is being practiced in Russia. We are aware of murders within Chechnya and outside its territory. Those who attempt to speak the truth or to criticise the authorities are being killed. Ramzan Kadyrov has made the work of human rights activists in the [Chechen] Republic impossible. Those who killed Natasha Estemirova wanted to cut off an outflow of truthful information from Chechnya.

Perhaps they have succeeded.”

#### **D. Defamation proceedings**

25. On 13 August 2009 the President of the Chechen Republic, Ramzan Kadyrov, brought before the Tverskoy District Court of Moscow (“the Tverskoy Court”) defamation proceedings against the third and fourth applicants. Mr Kadyrov argued that the impugned article of 15 July 2009 contained the four following statements of fact that were false, unsubstantiated by evidence and tarnishing to his reputation:

(a) “‘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 whether he gave the order himself or if his closest associates did it to please the boss. President Medvedev appears to find it acceptable to have a killer as the leader of one of the regions of the Russian Federation’”;

(b) “‘After Natasha had allowed herself to speak disapprovingly of the fact that women [in the Chechen Republic] were being almost forced to wear headscarves in public, she had had a conversation with Kadyrov. She said [later] 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’”;



(c) “We know that Natasha’s latest reports on new abductions, extrajudicial executions and a public lethal shooting in a Chechen village provoked indignation among the high and mighty of Chechnya”;

(d) “Ramzan Kadyrov has made the work of human rights activists in the [Chechen] Republic impossible”.

Ramzan Kadyrov sought to have a retraction published on Memorial’s website and compensation for non-pecuniary damage in the amount of RUB 5,000,000 to be paid by the third and fourth applicants, each.

26. The third and fourth applicants argued before the Tverskoy Court 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 Natalia Estemirova’s death. They referred to Ramzan Kadyrov’s words, published on the Internet in 2007, that he was “personally responsible for everything that [was happening] in the [Chechen] Republic”. The applicants also argued that the expression “killer” was a value judgment, not a statement of fact. Ramzan Kadyrov had shown hostile attitude towards Natalia Estemirova even after her death, stating in a radio interview of 8 August 2009 that the latter “[had] never had any honour, dignity or scruples”. Furthermore, Ramzan Kadyrov had himself on several occasions admitted his involvement in murders. In the interview of 21 June 2004 with Anna Politkovskaya, a journalist of *Novaya Gazeta*, herself assassinated in October 2007<sup>2</sup>, Ramzan Kadyrov had confirmed that he had given orders to kill because “the Prophet [had] said: the Wahhabis must be exterminated”. In October 2005, in his interview to the Russian edition of the *GQ* magazine, Ramzan Kadyrov had stated: “I have already killed the one I had to kill. As for those who stand behind him, I will kill every last one of them until the end, until I myself am killed or imprisoned. I will carry on killing as long as I live”.

27. The Tverskoy Court heard witnesses, including four persons who submitted that Natalia Estemirova had shared with them information regarding Ramzan Kadyrov’s intimidating behaviour addressed at her.

28. On 6 October 2009 the Tverskoy Court granted Ramzan Kadyrov’s claims in part. It noted at the outset that under the domestic law a court sitting on a defamation dispute must establish three elements: (i) whether a defendant had disseminated impugned statements; (ii) whether the statements had been of tarnishing nature; and (iii) whether the statements had been untruthful.

29. The Tverskoy Court considered it established that the defendants had disseminated the impugned statements but had not furnished any evidence to prove their truthfulness. The Tverskoy Court summarily dismissed the third applicant’s arguments that the thrust of the impugned publication had been Ramzan Kadyrov’s political and social, rather than criminal,

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<sup>2</sup> For details, see *Mazepa and Others v. Russia* (no. 15086/07, 17 July 2018)

responsibility, as the latter had failed to protect Ms Estemirova's right to life secured by the Constitution of the Chechen Republic and that the impugned statements had been value judgments expressing the third applicant's opinion. It noted that it could not take into account previous interviews given by Ramzan Kadyrov "because the interviews in question [did] not contain any information regarding the commission by the claimant of criminal acts in respect of N. Estemirova". Similarly, the Tverskoy Court refused to take into account numerous materials on the poor human rights situation in the Chechen Republic, including materials by the media and applications lodged with the Court by victims of human rights abuses as irrelevant to the subject matter of the defamation claims. References to Natalia Estemirova's reports of intimidation by Ramzan Kadyrov were dismissed for the reason that the claimant's representative had submitted that the meeting described had never taken place. Overall, the Tverskoy Court proclaimed the impugned statements (a), (b) and (d) defamatory; the impugned statement (c), however, had not contained tarnishing information concerning the claimant (see paragraph 25 above).

30. The Tverskoy Court ordered Memorial to publish on its website a retraction to the effect that three statements in the impugned articles had not been truthful. It also ordered that the third and fourth applicants pay Ramzan Kadyrov compensation for non-pecuniary damage in the amount of RUB 20,000 and RUB 50,000, respectively. When deciding on the amount to be awarded, the Tverskoy Court took into account "the factual circumstances of the case, online publication of the impugned article that caused unrestricted access and wide dissemination of the information on Memorial's website, and the personality of the claimant, a holder of the highest office of the Chechen Republic, his political status".

31. The third and fourth applicants appealed, noting in particular that the judgment of 6 October 2009 had fallen short of the requirements of Article 10 of the Convention because it had been poorly reasoned.

32. On 21 January 2010 the Moscow Court upheld the judgment of 6 October 2009 on appeal, briefly noting that the Tverskoy Court had correctly concluded that the disseminated information had not corresponded to reality and had tarnished the claimant's honour, dignity and professional reputation. It did not analyse the arguments raised by the defendants on appeal stating that "all arguments by the defendants [had been] examined by the [Tverskoy] Court in the course of a hearing where they [had] received correct assessment". It also noted that "the defendants [had not] furnished evidence of the truthfulness of the disseminated statements regarding the claimant, therefore the reference in the statement of appeal to the practice by the European Court [of Human Rights] [was] invalid".

33. On 30 June 2010 the fourth applicant transferred RUB 50,000 (EUR 1,310 at the exchange rate applicable on the date of the transaction) to the bailiffs' service's bank account in execution of the judgment of

6 October 2009. In the applicants' submission, the third applicant paid RUB 20,000 (EUR 524 at the exchange rate applicable on the date of the transaction) to the bailiffs' service on the same date.

#### **E. Criminal proceedings against the third applicant**

34. On 20 October 2009 the Moscow Department of the Interior opened a criminal investigation against the third applicant on account of the Statement of 15 October 2009 under Article 129 § 3 of the Criminal Code as in force at the material time ("libel concerning an alleged commission of a grave crime").

35. On 6 July 2010 the third applicant was charged with aggravated libel.

36. On 14 June 2011 a justice of the peace acquitted the third applicant.

37. The prosecution appealed. While the appeal was pending, Article 129 § 3 of the Criminal Code was repealed.

38. On 20 January 2012 the criminal proceedings against the third applicant were discontinued.

#### **RELEVANT LEGAL FRAMEWORK**

39. For the summary of the relevant domestic framework and practice concerning civil defamation proceedings see *Cheltsova v. Russia* (no. 44294/06, §§ 32-34, 13 June 2017).

#### **THE LAW**

##### **I. JOINDER OF THE APPLICATIONS**

40. 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**

41. The applicants complained that the judgments by the Basmannyy and Tverskoy Courts upheld by the Moscow Court amounted to instances of a disproportionate interference with 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**

42. The Court 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. Submissions by the parties*

##### **(a) The applicants**

43. The applicants, accepting that the five instances of interference had been “prescribed by law” and had pursued a “legitimate aim”, argued that they were not “necessary in a democratic society” as there had been no “pressing social need” to justify them.

##### *(i) Application no. 11971/10*

44. The articles had had ample factual basis that was reported by other media and Mr N.P. and his family.

45. Kidnappings and forced disappearances represented a systemic issue in Chechnya. Mr Izmaylov, reporting on a potentially dangerous situation as it had been unfolding, had acted in accordance with the tenets of responsible journalism. Whether Mr N.P. might have misled Mr Izmaylov and others or not did not change the fact that the articles had provided a reader with the information available at the time of their writing and that Mr Izmaylov had acted in exercise of his obligation to inform the public on a potentially dangerous situation.

46. The allegedly defamatory statements had not directly concerned the claimant, and yet the domestic courts had not established any objective link between disseminated information and the person of Ramzan Kadyrov. The articles had not even hinted at Ramzan Kadyrov’s involvement in Mr N.P.’s kidnapping. The fact that the alleged kidnapping had been said to have taken place in the Chechen Republic did not in any manner tarnish Ramzan Kadyrov’s honour, dignity or business reputation.

47. The amount awarded to Ramzan Kadyrov had been large enough to produce a “chilling effect” on the applicant company and Mr Izmaylov.

*(ii) Application no. 48557/10*

48. The applicants considered, referring to the Court's findings regarding the absence in the Russian domestic legal system of a distinction between statements of fact and value judgments in the case of *Grinberg v. Russia* (no. 23472/03, §§ 29-31, 21 July 2005), that the interference complained of had not been prescribed by law. They also asserted that it had not pursued any legitimate aims listed in Article 10 § 2 of the Convention and had not been "necessary in a democratic society".

49. The fact that criminal proceedings against the third applicant had been pending for almost three years had had a serious chilling effect on Mr Orlov.

50. The domestic courts had failed to recognise that Ramzan Kadyrov as a holder of the highest office in the Chechen Republic should have displayed tolerance to criticism. The impugned statements were value judgments, not statements of fact, as the defendants had pleaded in the course of the domestic proceedings, yet the Moscow Court had failed to pay heed to their arguments raised on appeal.

**(b) The Government**

51. Accepting that the judgments in the defamation proceedings in question amounted to an interference with the right to freedom of expression, the Government submitted that the instances of the interference had been prescribed by law, pursued a legitimate aim of protecting the reputation of others, and had been "necessary in a democratic society".

*(i) Application no. 11971/10*

52. The contextual analysis of the two articles by Mr Izmaylov had enabled the Basmanyy Court to establish that the disseminated statements had concerned Ramzan Kadyrov because they had indicated that there had been instances of kidnapping in the Chechen Republic and thus that its inhabitants had not been protected from arbitrariness and the climate of lawlessness, which its President had condoned. The Basmanyy Court had found that the statements had aimed at portraying Ramzan Kadyrov as a contemptuous, immoral, and threatening person and thus had tarnished his honour, dignity and business reputation. The Basmanyy Court had examined the evidence and found that there had been no reliable evidence to confirm the truth of the statements regarding Ramzan Kadyrov. The Basmanyy Court had ordered a retraction of all the statements because it had considered them as a coherent whole.

53. In view of Ramzan Kadyrov's status as "the higher official of the state – the Chechen Republic as a constituent entity of the Russian Federation", the statements "could inflict real damage on [Ramzan Kadyrov's] further professional activities".

(ii) *Application no. 48557/10*

54. The Government, referring to presumption of innocence, noted that the defendants had not furnished any proof before the Tverskoy Court to the effect that Ramzan Kadyrov had been charged with Natalia Estemirova's murder. The Tverskoy Court could not rely on the earlier interviews of Ramzan Kadyrov as they had not contained information to the effect that the claimant had murdered Natalia Estemirova. Other materials concerning the poor human rights situation in the Chechen Republic furnished by the defendants had not been accepted by the Tverskoy Court because they had not concerned Ramzan Kadyrov's defamation claim. Overall, the Government considered that the applicants' right to freedom of expression had to be limited to ensure respect for Ramzan Kadyrov's right to reputation and his right to presumption of innocence.

## 2. *The Court's assessment*

55. The Court accepts that the two instances of interference complained of were "prescribed by law", namely Article 152 of the Russian Civil Code, and pursued a legitimate aim of protecting the reputation of others. It now has to satisfy itself whether the interference in both instances was "necessary in a democratic society".

56. It observes that the salient common element of the two sets of defamation proceedings at hand is the person of the claimant, the President (now Head) of the Chechen Republic. It will analyse the two sets of defamation proceedings at hand in the light of the public watchdog function exercised by the media and NGOs (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, 8 November 2016; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 126, 27 June 2017; and *Margulev v. Russia*, no. 15449/09, § 47, 8 October 2019).

57. The following principles settled in the Court's case-law are particularly relevant in the context of the present case. By virtue of the essential function the press fulfils in a democracy, Article 10 of the Convention affords journalists protection, subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. A high level of protection of freedom of expression, with the authorities therefore having a particularly narrow margin of appreciation, is normally accorded where the remarks concern a matter of public interest. Politicians and civil servants acting in an official capacity are subject to wider limits of acceptable criticism than private individuals. A careful distinction needs to be drawn between facts and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of

“protecting the reputation ... of others”, domestic authorities must strike a fair balance when protecting two conflicting values that are guaranteed by the Convention, namely, on the one hand, the right to freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8. In order for Article 8 of the Convention to come into play, however, an attack on a person’s reputation must attain a certain level of seriousness and its manner must cause prejudice to the personal enjoyment of the right to respect for private life. When analysing an interference with the right to freedom of expression, the Court must, *inter alia*, determine whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and relied on an acceptable assessment of the relevant facts (see, with further references, *Skudayeva v. Russia*, no. 24014/07, §§ 33-34, 5 March 2019).

58. The Court notes that the Basmannyy and the Tverskoy Courts limited themselves to establishing three elements only (see paragraphs 10 and 28 above): (i) whether the defendants had disseminated impugned statements; (ii) whether the statements had been of tarnishing nature; and (iii) whether the statements had been untruthful. The Court reiterates in this respect that allegations in the press cannot be put on an equal footing with those made in criminal proceedings (see *Kasabova v. Bulgaria*, no. 22385/03, § 62, 19 April 2011). The two first-instance courts did not assess whether the impugned statements represented value judgments not susceptible of proof rather than statements of fact (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 98, ECHR 2004-XI, and *Tolmachev v. Russia*, no. 42182/11, § 50, 2 June 2020), or whether they should be seen in the context of Ramzan Kadyrov’s position as a political public figure open to close scrutiny of word and deed by both journalists and the public at large (see *Jerusalem v. Austria*, no. 26958/95, § 38, ECHR 2001-II, and *Redaktsiya Gazety Zemlyaki v. Russia*, no. 16224/05, § 42, 21 November 2017), or whether the publications had touched upon a matter of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV, and *Fedchenko v. Russia (no. 3)*, no. 7972/09, § 47, 2 October 2018), or whether they had emanated from third parties (see, with further references, *Nadtoka v. Russia (no. 2)*, no. 29097/08, § 48, 8 October 2019)). Moreover, they did not consider the defendants’ financial situation at all when making awards to be paid to the claimant (see *Timakov and OOO ID Rubezh v. Russia*, nos. 46232/10 et 74770/10, § 70, 8 September 2020).

59. It is noteworthy that the Moscow Court that sat on appeal in both sets of defamation proceedings did nothing to offset any of the above defects.

60. As regards application no. 11971/10, the Court in its turn observes that the references to Ramzan Kadyrov in the impugned articles were weak, if at all discernible, in terms of attributing responsibility for the events described (see paragraphs 5 and 6 above). The Court considers that, in a democratic society, the head of a state or of a federation's constituent entity cannot claim to have been defamed every time there are critical remarks about events in the country or the constituent entity in question. As regards application no. 48557/10, even though the allegations were serious, the applicants did not directly accuse Ramzan Kadyrov of having ordered the assassination but rather invoked his possible moral responsibility in the context of targeting human rights defenders and his prior antagonistic attitudes towards them (see paragraph 24 above).

61. The Court has previously 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 Tsentr Kvaritirnyy Ryad v. Russia*, no. 39748/05, § 46, 25 April 2017; *Skudayeva*, cited above, § 39; *Novaya Gazeta and Milashina v. Russia*, no. 4097/06, §§ 66-73, 2 July 2019; *Nadtoka (no. 2)*, cited above, § 50; *Tolmachev*, cited above, § 47; and *Rashkin v. Russia*, no. 69575/10, § 18, 7 July 2020).

62. Having carefully examined the case materials and the parties' submissions, the Court concludes 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*, cited above, § 71). 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".

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

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

64. 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.”

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

66. The Government considered the amounts claimed excessive.

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

68. 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. *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 14 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature\_p\_2}

Olga Chernishova  
Deputy Registrar

María Elósegui  
President

NOVAYA GAZETA AND OTHERS v. RUSSIA JUDGMENT

APPENDIX I

App. no.	Application name	Lodged on	Applicants	Representative(s)
11971/10	<i>Novaya Gazeta and Izmaylov v. Russia</i>	10/02/2012	<b>1. ANO “Redaktsionno-Izdatelskiy Dom ‘NOVAYA GAZETA’”</b> (“the first applicant”) Legal entity incorporated under Russian law	Mr Ya. Kozheurov, a lawyer practising in Moscow
			<b>2. Mr Vyacheslav Yakovlevich IZMAYLOV</b> (“the second applicant”) Year of birth: 1954 Place of residence: Zhukovskiy, the Moscow Region Nationality: Russian	
48557/10	<i>Orlov and Memorial v. Russia</i>	21/07/2010	<b>3. Mr Oleg Petrovich ORLOV</b> (“the third applicant”) Year of birth: 1953 Place of residence: Moscow Nationality: Russian	Mr B. Bowring, Ms T. Chernikova, Ms J. Evans, Mr K. Koroteyev, Mr P. Leach, Ms A. Razhikova, Ms A. Sobko, Mr F. Tishayev and Ms N. Yermolaeva, lawyers practising in London and Moscow.
			<b>4. MEMORIAL Human Rights Centre</b> (“the fourth applicant”) Non-governmental organisation registered under Russian law	

## 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>11971/10</b>	The first applicant: the amount paid in execution of the judgment of 15/07/2009, that is, EUR 2,234 (RUB 100,100 at the exchange rate applicable on 18/09/2009, the date of execution)	The first and second applicants: EUR 5,000 each	No claims	EUR 2,234 to the first applicant	EUR 3,750 to the first and second applicants, each	N/A
<b>48557/10</b>	The third applicant: RUB 20,000 (EUR 524 at the exchange rate applicable on 30/06/2010, the date of execution of the judgment of 06/10/2009); no proof of payment submitted  The fourth applicant: RUB 50,000 (EUR 1,310 at the exchange rate applicable on 30/06/2010, the date of execution of the judgment of 06/10/2009)	The amount is left at the Court's discretion	EUR 5,000 (fees of Moscow-based lawyers)  GBP 1,950 (fees of London-based lawyers)  GBP 189.32 (administrative expenses)  GBP 2,379.44 (translation fees)	EUR 1,310 to the fourth applicant	EUR 3,750 to the third and fourth applicants, each	EUR 1,500