CONSEIL DE L'EUROPE	COUNCIL OF EUROPE

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

Application no. 11751/03
by Tatyana Gavriilovna ROMANENKO and others
against Russia

Written Comments Submitted by the Open Society Justice Initiative and the Moscow Media Law and Policy Institute

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Application no. 11751/03
Tatyana Gavriilovna ROMANENKO -v- RUSSIA

WRITTEN COMMENTS OF THE OPEN SOCIETY JUSTICE INITIATIVE AND THE MOSCOW MEDIA LAW AND POLICY INSTITUTE ON THE PRINCIPLES RAISED BY THIS APPLICATION

Pursuant to leave granted on 23 May 2005 by the President of the Chamber, acting under Rule 44 § 2 of the Rules of Court, the Open Society Justice Initiative and the Moscow Media Law and Policy Institute hereby submit their written comments on the legal principles that should govern the resolution of the issues presented by this case.

RELEVANT PRINCIPLES

A. Permitting Government Agencies to Sue for Defamation Contravenes Fundamental Principles Under Article 10 of the Convention.

1. In one of the two civil defamation actions that form the subject of the Application in the instant case, the plaintiff was a government agency: a regional branch (for the Primorskiy Region) of the Judicial Department of the Supreme Court of the Russian Federation (the "PJD"). In its submissions, the PJD claimed that the statement in question, which quoted an official report critical of timber consumption by local authorities, (1) harmed its professional reputation; and (2) undermined judicial administration in the Primorskiy Region. The domestic courts granted the PJD's claim and awarded a total of 45,000 Russian rubles in compensation for non-pecuniary harm.

2. By way of context, the PJD is a public authority, established pursuant to a legislative act of the Parliament of the Russian Federation. According to the 8 January 1998 Law of the Russian Federation that established it, the Judicial Department of the Supreme Court is an organ of the federal judiciary that provides organizational, personnel, financial, logistical, and other forms of support to regional courts.[1] The Department itself – like each of its regional subdivisions (including the PJD) – is a legal person.[2] In carrying out their tasks, the Department's regional subdivisions are authorized to conduct a wide range of activities, including the provision of construction, maintenance, and equipment for regional court facilities.[3] The Judicial Department and its regional subdivisions do not perform adjudicative functions: as the 8 January 1998 Law states, they "do not have any right to interfere in the process of rendering justice."[4]

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[1] The January 8, 1998 Law, Articles 1.1 and 1.2.

[2] *Id*., Article 2.2.

[3] *Id*., Article 14.6 and 14.7.

[4] *Id*., Article 4.

3. The issues raised by this case have acquired particular immediacy in light of actions taken on 22 June 2005 by the Parliamentary Assembly of the Council of Europe.[5] In Resolution 1455 and Recommendation 1710, the PACE adopted Doc. 10568:[6] a report entitled "Honouring of obligations and commitments by the Russian Federation", prepared by the Parliamentary Assembly's Monitoring Committee. The PACE Report voices concern about "current defamation legislation and its application by Russian executive and judicial powers,"[7] and urges the Russian Federation to address the very problem under consideration in these Comments – the ability of public authorities to institute civil proceedings "in order to protect their 'reputation'" – by introducing a "clear ban" on such practice.[8]

4. Article 10 of the Convention guarantees the right to freedom of expression, but provides, in section 2, that "[t]he exercise of these freedoms … may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society," for a number of prescribed aims. This Court's well-settled jurisprudence establishes a three-part test for determining whether the restriction upon free expression at issue in the instant case – the extension to a public authority of civil law protection against defamation – is justified: (i) is the restriction "prescribed by law"; (ii) does the authority's action in suing for defamation pursue a "legitimate aim"; and (iii) whether that action meets a pressing social need so as to make the interference with the exercise of freedom of expression and the rights of the news media "necessary in a democratic society."[9]

5. With respect to the first prong of the Article 10 inquiry – whether the extension of defamation law protection to a public authority is sufficiently foreseeable to make it a form of legal action "prescribed by law" – the Court recently reiterated that a "norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."[10]

6. In this regard, it is doubtful that journalists or others could foresee that the civil justice system would be employed to protect the reputation or authority of judicial administration bodies – especially in those countries where the law does not expressly provide so. Civil defamation laws generally safeguard personal non-property rights and other non-material interests. They are neither intended nor reasonably construed to protect the broader public interest of judicial organs in preserving their authority.

7. The second inquiry is whether an interference with the rights and freedoms guaranteed by Article 10.1 pursues one or more of the legitimate aims set forth in Article 10.2.

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[5] The concerns of the PACE and its Monitoring Committee clearly are relevant to the Court, as indicated by its lengthy citation of similar PACE actions, and actions of other international bodies, in regard to Ukraine in *Ukrainian Media Group v. Ukraine*, Judgment of 29 March 2005, paras. 18-21.

[6] PACE Resolution 1455 (22 June 2005), footnote 1 (hereafter the "PACE Report").

[7] Doc. 10568, para. 389.

[8] *Id*., para. 393.

[9] *Handyside v. the United Kingdom*, Judgment of 26 April 1979, paras. 48-50.

[10] *Ukrainian Media Group v. Ukraine*, para. 48. Another recent judgment applying these requirements is *Karademirci v. Turkey*, Judgment of 25 January 2005.

The Court has made clear that Article 10.2 exceptions must be "construed strictly".[11] In this regard, interference with critical media reporting might be viewed as pursuing the aim of "maintaining the authority and impartiality of the judiciary" only if a published statement were directed at the judiciary's distinctive adjudicative functions. Acts of judicial administration, organization and logistics are clearly not embraced within this aim.

8. Nor, under the Court's required strict construction of the enumerated legitimate aims, is it reasonable to include a public authority within the meaning of "others" whose reputation or rights Article 10(2) is designed to protect. To do so would subject journalists to a constant risk of harassment through lawsuits and frustrate the media's ability to act as a watchdog of public bodies and a check against abuse of power.[12] A public authority's use of the civil justice system to conceal its activities from wide-ranging public scrutiny severely undermines its accountability to the citizenry. Indeed, the PACE Report recommended that "the possibility of filing lawsuits against media and journalists by public authorities should be abolished as the latter *per se* can not possess any dignity, honour, or reputation".[13]

9. Courts in the United Kingdom have reached a similar conclusion. Thus, in the 1993 case of *Derbyshire County Council v. Times Newspapers Ltd.*,[14] the House of Lords ruled that elected public authorities are barred from suing in defamation because of the public interest that such entities must be open to uninhibited public criticism. Lord Keith of Kinkel, authoring the judgment, stated:

> I regard it as right for this House to lay down that not only is there no public interest favouring the right of organs of government, whether central or local, to sue for libel, but that it is contrary to the public interest that they should have it. It is contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech.[15]

10. Subsequent UK cases have extended the *Derbyshire* rationale to deny libel standing to unelected public authorities, such as public corporations,[16] and even political parties.[17] A similarly broad principle has been adopted by the Supreme Court of India, which held in *Rajagopal v. State of Tamil Nadu* that "the Government, local authority and other organs and institutions exercising governmental power" cannot bring a defamation action.[18] This is also the case in the United States, where "no court of last resort … has ever held, or even suggested,

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[11] *Yankov v. Bulgaria*, Judgment of 11 December 2003, para. 129.

[12] See *Ukrainian Media Group v. Ukraine*, para. 38.

[13] *Id*., para. 392.

[14] *Derbyshire County Council v. Times Newspapers Ltd* [1993] AC 534.

[15] *Id.* at 549A.

[16] *British Coal Corporation v. NUM (Yorkshire Area) and Capstick*, unreported, 28 June 1996. *See also Die Spoorbond v. South African Railways* [1946] AD 999, where the South African Court of Appeal held that a public corporation had no standing to sue for defamation under common law.

[17] *Goldsmith and another v. Bhoyrul* [1997] 4 All ER 268. This Court noted *Derbyshire County Council* and its progeny in *Steel and Morris v. United Kingdom*, Judgment of 15 February 2005, para. 40.

[18] *Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632, at 650.

that prosecutions for libel on government have any place in the American system of jurisprudence."[19]

11. Similarly, in continental Europe, civil defamation actions by government bodies are generally not possible in law, and widely unused in practice. In Germany, for example, courts have recognized a remedy in tort, under section 823 of the Civil Code, for injuries to the "right to personality", which includes privacy and reputational rights.[20] However, a section 823 action – as a private law remedy intended to give effect to the constitutional protection of human dignity and personality – is not available to government entities. In France, the letter of the 1881 Press Law makes it a crime and a tort to defame public institutions, such as the courts, the army, and public administration bodies.[21] Civil defamation actions by such institutions are, nevertheless, very rare in practice.

12. Recent developments in the new European democracies illustrate well the democratic imperative of barring government bodies from claiming libel damages. As in today's Russia, such actions were widespread in Ukraine in the late 1990s. Recognizing their very severe chilling effects on media freedom, Ukrainian civil society groups advocated a complete ban on government defamation lawsuits. As a result, the law was amended in 2003 to allow central and local authorities to request "only refutation of false information [without having] the right to claim moral [non-pecuniary] damages."[22] Georgia recently adopted a similar ban.[23] In other new democracies, such as Bulgaria and Serbia,[24] only individuals can claim moral damages for harm to reputation.

13. The Court should take this opportunity to affirm that the plain meaning of the phrase "for the protection of the reputation or rights of others" in Article 10.2 refers only to the reputation and rights of physical and private legal persons, and not to public authorities. Government bodies are fully equipped, and should be expected, to defend their reputation before the court of public opinion, rather than a court of law.

14. The final inquiry is whether the interference with the exercise of freedom of expression and the rights of the news media is "necessary in a democratic society," which requires a showing that it corresponds to a "pressing social need".[25] This inquiry necessitates reference to a number of fundamental principles articulated by the Court in regard to the role of the media in a democratic society.

15. This Court has on numerous occasions recalled the vital roles of public information, and of the media as its disseminator, in guaranteeing democratic governance.[26] The

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[19] *City of Chicago v. Tribune Co*., 307 Ill. 595 (1923), at 601. Justice Brennan quoted the Supreme Court of Illinois' ruling in his celebrated opinion in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), at 291 (*see* below).

[20] Donald Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany* (2nd ed., 1997), p. 124.

[21] Law of 29 July 1881 on Freedom of the Press, *as amended*, arts. 29-30.

[22] Law No. 2657-XII on Information (1992), *as amended*, art. 49.2.

[23] The Law on Freedom of Speech and the Press (adopted on 14 June 2004), provides in Article 6.2 that "defamation disputes shall not deal with protection of the private nonproprietary rights of … state or administrative agencies."

[24] Law on Obligations (1978), art. 200.

[25] *Pedersen and Baadsgaard v. Denmark*, Judgment of 17 December 2004, para. 68.

[26] *See, e.g., Lingens v. Austria*, Judgment of 8 July 1986; *Dalban v. Romania*, Judgment of 28 September 1999; *Colombani v. France*, Judgment of 25 June 2002; and *Selisto v. Finland*, Judgment of 16 November 2004.

media has a duty to impart, in a manner consistent with its obligations and responsibilities, information and ideas on all matters of public interest, and the public has a right to receive them. These corresponding rights and duties undergird the functioning of a free society.[27]

16. These considerations underlie the stringent limits that the Court has placed on governmental interferences with the media's investigation and reporting on matters of public concern. Thus, there is little scope under Article 10.2 of the Convention for restrictions on political speech or debates on questions of public interest.[28] In cases concerning freedom of expression, the "national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press."[29]

17. Moreover, this Court has long recognized that, in this context, the public interest encompasses more than pure political speech.[30] Indeed, in recent cases, the Court has made clear that reporting on matters relating to management of public resources lies at the core of the media's responsibility and the right of the public to receive information.[31]

18. These fundamental free speech considerations must be weighed against competing interests in protecting reputation and maintaining the authority of the judiciary. In this regard, protection of reputation is at its weakest as a justification for interference with Article 10 rights when invoked in support of a public authority's injured "reputation."[32] In applying this principle regarding political libels, the Court has stated that "[i]n a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion."[33] Nor does the interest in maintaining the authority of the judiciary justify penalizing legitimate and measured criticism of a public institution responsible for judicial administration. By contrast, the interest in protecting the public's right to receive information and ideas is most substantial when it comes to the performance of public authorities.[34]

19. When balancing these interests, it must be recalled that civil defamation gives a public authority a powerful tool to curb democratic debate through judicial actions against the media. In this regard, the Court recently stated: "The most careful scrutiny on the part of the Court is called for when the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern."[35] The availability of monetary compensation and other civil law remedies for "moral harm" to a public authority plaintiff significantly increases the risk of a chilling effect. The

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[27] *Ukrainian Media Group v. Ukraine*, para. 38.

[28] *Id*., para. 39.

[29] *Colombani v. France*, para. 57.

[30] *Thorgeirson v. Iceland*, Judgment of 28 May 1992, paras. 64 and 67.

[31] *See Cumpana and Mazare v. Romania*, Judgment of 17 December 2004, paras. 93-95; and *Busuioc v. Moldova*, Judgment of 21 December 2004, paras. 63-64 and 84.

[32] *Castells v. Spain*, Judgment of 26 March 1992, para. 46 ("The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician").

[33] *Incal v. Turkey*, Judgment of 9 June 1998, para. 54.

[34] *Colombani v. France*, para. 55; *Ukrainian Media Group v. Ukraine*, para. 38.

[35] *Busuioc v. Moldova*, Judgment of 21 December 2004, para. 57. *See also Selisto v. Finland*, para. 53.

considerable uncertainty associated with judicial assessment of such harm makes this opportunity for legal harassment a genuine threat against protected expression.

B. When Public Officials Bring Defamation Lawsuits Against the Media, Article 10 Requires Strict Application of the Identification Requirement.

20. Another issue raised by this case is whether Article 10 permits the head of a government agency to prosecute a defamation suit against the media based on a news article that is critical of his department but does not mention him by name or specific implication. This concerns more than standing, or victim status; it also implicates an essential element of the role of the media in a democratic society. As this Court has repeatedly affirmed, criticism of government and its institutions lies at the heart of the guarantee of freedom of expression.[36] And Article 10 would ring hollow if public officials could substitute themselves for the state in taking legal action against every comment critical of government in general. Simply put, a government official cannot maintain a defamation action against the media, unless the statement at issue is unequivocally "of and concerning" that official.

21. This principle has deep roots in the European legal tradition. Thus, three centuries ago in the case of *King v. Alme and Nott*, an English court held that "where a writing . . . inveighs against mankind in general, or against a particular order of men, as for instance, men of the gown, this is no libel, but it must descend to particulars and individuals to make it a libel."[37] The *Alme* principle was affirmed in the 1858 case of *Eastwood v. Holmes*, which involved reports by a scholarly journal that recently-discovered lead artifacts were not antique originals. The plaintiff in the case was an antiques dealer, not named in the article, but a seller of some of the questioned artifacts. The court held for the defendant, noting that the article referred only to antique dealers as a group; it said nothing about the plaintiff specifically. The court provided the following example: "If a man wrote that all lawyers were thieves, no particular lawyer could sue him *unless there is something to point to the particular individual . . . .*"[38]

22. While the *Eastwood* and *Holmes* decisions are properly characterized as falling within the "group defamation" doctrine, the same rationale applies where a public official alleges defamation arising from the general criticism of a government entity. The United States Supreme Court case of *New York Times Co. v. Sullivan* is squarely on point.[39]

23. On March 29, 1960, the *New York Times* published a full-page advertisement paid for by the Committee to Defend Martin Luther King Jr. and the Struggle for Freedom in the South. The advertisement claimed that police of Montgomery, Alabama, armed with shotguns and teargas, ringed the campus of Alabama State College in response to student demonstrations and, on seven occasions, arrested Dr. King. L. B. Sullivan, an elected Commissioner of the City of Montgomery, was in charge of the police department during the events described by the advertisement. Though never named in the advertisement, either specifically or by title, Commissioner Sullivan nonetheless commenced a defamation action against the *Times* and

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[36] *See Lingens v. Austria*; *Castells v. Spain*.

[37] *King v. Alme & Nott*, 91 Eng. Rep. 790 (1700) (per curiam).

[38] *Eastwood v. Holmes*, 1 F. & F. 347, 175 Eng. Rep. 758 (1858) (emphasis added).

[39] *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

others under the theory that descriptions of police actions necessarily referred to him in his capacity as Commissioner.

24. Overturning an award of $500,000 against the defendants, the U.S. Supreme Court held that the evidence "was constitutionally defective" and "incapable of supporting the jury's findings that the allegedly libelous statements were made 'of and concerning' the respondent [Commissioner Sullivan]".[40] The Court rejected Sullivan's claim that it was "common knowledge" an average person would associate the actions of the police with the Commissioner responsible for the department.[41] The *Sullivan* decision stands for the proposition that public officials – who are unnamed in news accounts about their agencies – cannot sue the press for libel consistent with sound principles of media freedom, unless they can clearly and convincingly show that the articles were "of and concerning" them personally.

25. Defamation laws in continental Europe have similar identification requirements. Thus, in France, a plaintiff must be clearly identified by name or image, or be otherwise identifiable, in order to bring an action for defamation. If a defamatory statement concerns a group of unnamed persons who may be identified by virtue of their membership in the group – such as a town council or a company's board of directors – then all of them can act against the defendant. The attack must, however, be direct and point at individual members of the group.[42] In particular, public officials suing in their official capacity must show that the attack is related to their official duties or performance.[43] General criticism of the government or their department does not give individual officials standing to sue.

26. This Court has similarly recognized the dangers of exposing all criticism of government actions to defamation lawsuits by unnamed officials. In *Thorgeirson v. Iceland*, the Court held that the applicant's conviction for defamation of "unspecified members" of the Reykjavik police department, based on two strongly-worded articles about police abuse, violated Article 10. The Government alleged that the applicant journalist had acted with the intent to damage the reputation of the police department as a whole. The Court dismissed that claim, finding that the articles at issue "could not be taken as an attack against all members or any specific member" of the police force and that, in any event, the ultimate goal of the applicant had been to promote the establishment of an independent mechanism to investigate police brutality.[44] The Court concluded that the applicant's conviction was "capable of discouraging open discussion of matters of public concern" and ultimately not "necessary in a democratic society."[45]

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[40] *Id*. at 288.

[41] *Id*. at 291-92.

[42] Nick Braithwaite, *The International Libel Handbook* (1995), pp. 124-126.

[43] *Id*. at 126. Similar rules apply in Germany, where an unnamed plaintiff can prevail only if reasonably identifiable from the circumstances. A member of a group or institution can sue only if the defamatory statements contain sufficient elements of personal identification. *Id*. at 187.

[44] *Thorgeirson v. Iceland*, para. 66.

[45] *Id*. at paras. 68-69. *See also Thoma v. Luxembourg*, Judgment of 29 March 2001, involving civil libel actions against a journalist by sixty-three unnamed forest service officials. The Court noted that "there [was] a special feature to be taken into account in view of the size of the country. Even though the applicant made his remarks in [a radio] programme without mentioning anyone by name, the engineers and wardens were easily identifiable to listeners, given the limited number of officials working for the Water and Forestry Commission in Luxembourg."

27. As this caselaw demonstrates, surrogate defamation actions by unnamed government officials undermine free expression in ways that Article 10 does not tolerate. By interfering with the media's freedom of expression, such lawsuits impede open discussion of matters of public concern, and restrict the right of all persons to receive and impart information and ideas without interference by public authority, absent compelling justification.

C. Permitting Journalists to be Held Liable for Defamation for Accurately Publishing Statements Contained in Non-Confidential Government Documents Is Incompatible With Article 10.

28. In order effectively to inform the public about the workings of government, the media must be allowed to report on, and republish the content of, non-confidential government documents without fear of punishment. Documents generated by government institutions are a primary source of information on matters of public concern which the media should be free to publish, and the public has a right to know – unless they are lawfully restricted on legitimate grounds, such as national security.

29. In recent judgments this Court has recognized that Article 10 disfavors defamation suits arising from reports about government documents. In *Selisto v. Finland*, the Court ruled that punishing journalists for republishing information from publicly available police documents was an unjustifiable restriction on the right to free expression. Indeed, so strong was the public's interest in knowing such information that the Court found that journalists had no obligation to verify the accuracy of statements quoted from public records:

> In the Court's opinion no general duty to verify the veracity of statements contained in such documents can be imposed on reporters and other members of the media, who must be free to report on events based on information gathered from official sources. If this were not the case the efficacy of Article 10 of the Convention would to a large degree be lost.[46]

30. Similarly, in *Colombani v. France*, the Court found it reasonable for a newspaper to republish allegations from a report commissioned by the European Commission on international drug trafficking. The Court noted that the press "should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the content of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press may be undermined."[47]

31. As both the *Selisto* and *Colombani* rulings suggest, it would be practically impossible for the media independently to investigate the truth or falsity of statements contained in public government documents. Such a requirement would deprive the public of essential information about the function and activities of government.

Para. 56. The journalist's comments in this case included a quote from an anonymous source that "only one person [among all of Luxembourg's forest wardens] … is incorruptible." Para. 9.

[46] *Selisto v. Finland* , para. 60.

[47] *Colombani v. France*, para. 65. *See also Bladet Troms and Stensaas v. Norway*, Judgment of 20 May 1999, where this Court found that punishing journalists for republishing an entire government report violated Article 10: "[T]he press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research". *Id*. at para. 68.

32. Other decisions of this Court have more broadly recognized that the media should not automatically be punished for republishing allegations made by third parties. Thus, in *Jersild v. Denmark* the Court held that "[p]unishment of a journalist for assisting in the dissemination of statements made by another person ... 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."[48]

33. This Court's reasoning reflects the weight of comparative jurisprudence in other jurisdictions. In the United States, a well-developed legal doctrine known as the "fair report privilege" provides as follows: the "publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported."[49]

34. Statutory or jurisprudential privileges for reproduction of, or reporting on, certain official documents and proceedings exist in many European countries. In France, for example, good-faith media accounts of official reports issued by either chamber of parliament and pleadings filed in court enjoy immunity from defamation actions.[50] The privilege does not extend, however, to documents of the executive branch or other official bodies, as demonstrated by the domestic proceedings in the *Colombani* case. A similar privilege exists in Germany for accurate media accounts of parliamentary proceedings and documents. Reports of court papers and proceedings are not *per se* immune from defamation actions, but are generally protected by a public interest defense.[51]

35. The robust approach taken by the Court in this area of its Article 10 jurisprudence is fully justified by the fundamental connection between a well-informed citizenry and democratic government. The doctrine of fair report privilege recognizes that (1) the public has a right to know about government actions that affect the public interest; (2) that it learns of these actions through the media, and (3) the only way the media can report on such matters in a timely way is if it is free from liability to do so.

36. Punishing the media for republishing the contents of publicly available government documents is also at odds with international principles of freedom of information. As recognized in Council of Europe Recommendation (2002)2 on access to official documents,[52] broad public access to non-confidential government documents is essential to foster efficient, effective and honest government – and to strengthen public confidence in public authorities. These purposes would be subverted if public officials could sue or threaten the media with punishment for republishing documents that expose corruption or other official misconduct.

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[48] Judgment of 23 September 1994, para. 35. *See also Thorgeirson v. Iceland;* and *Thoma v. Luxembourg*.

[49] *Restatement (Second) Torts* § 611 (1977). The *Restatement* defines official proceedings broadly to include the reports, hearings and meetings of any national or local government body. It is also applicable to public proceedings and actions of other bodies or organizations that are by law authorized to perform public duties, such as a medical or bar association charged with authority to examine or license or discipline practitioners. *Id.* comment (d).

[50] 1881 Law on Freedom of the Press, *as amended*, art. 41.

[51] Braithwaite, *The International Libel Handbook*, pp. 198-99.

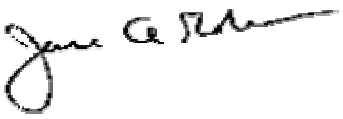
[52] Available at http://wcd.coe.int/ViewDoc.js=262135&Lang=en.

CONCLUSION

37. We have respectfully argued that permitting government agencies to sue for defamation under civil defamation laws is inconsistent with the fundamental principles underlying Article 10 of the Convention. Such laws simply serve no legitimate purpose and impose unacceptable restraints on the ability of the media and others to debate matters of the highest public concern. For similar reasons, defamation lawsuits brought by unnamed government officials against criticism of their agencies, or of the government generally, are also inconsistent with freedom of expression principles. As surrogates of defamation actions brought directly by government entities, they equally undermine the ability of the citizenry to hold the government accountable and are not necessary in a democratic society to protect personal rights and reputations. Finally, in line with the jurisprudence of this Court to date, journalists have a right under Article 10 to accurately publish statements contained in non-confidential government documents without being liable for the content of such statements.

Dated: 11 July 2005

Open Society Justice Initiative

By: 

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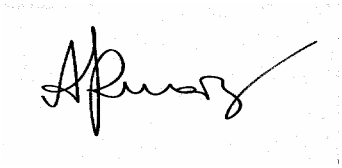

Andrei Richter