



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

THIRD SECTION

CASE OF MUKHIN v. RUSSIA

(Application no. 3642/10)

JUDGMENT

Art 10 • Freedom of expression • Unjustified conviction and sentencing of newspaper editor, as well as termination of newspaper's media-outlet status, under anti-extremism laws

STRASBOURG

14 December 2021

FINAL

14/03/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mukhin v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

Paul Lemmens,

Dmitry Dedov,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 3642/10) 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 a Russian national, Mr Yuriy Ignatyevich Mukhin (“the applicant”), on 17 November 2009;

the decision to give notice of the complaints under Article 10 of the Convention to the Russian Government (“the Government”) and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 24 August and 9 November 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The applicant, an editor-in-chief of a newspaper, complains of his criminal conviction for publishing in that newspaper a controversial piece authored by another person and of the ban on the distribution of the newspaper.

THE FACTS

2. The applicant was born in 1949 and lives in Moscow. He was represented by Ms M. Visentin and previously also by Mr K. Eckstein, lawyers practising in Lainate (Italy) and Rorschach (Switzerland) respectively.

3. The Government were represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights and lately 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.

5. Mr S. founded the Centre for Independent Journalism (“the CIJ”), a not-for-profit partnership. On 27 December 1995 it was registered as a legal entity; the applicant was appointed as its managing director. The partnership had three members: the applicant and two other people. On 29 December 1995 the newspaper *Duel* (Дуэль – hereinafter “the newspaper”) was registered as a mass-media outlet. The partnership also made up the newspaper’s editorial board (редакция). Mr S. and the partnership managing director (the applicant) signed a contract under which the applicant was also appointed as the newspaper’s editor-in-chief. In fact, he was the only member of its editorial board. The newspaper published material submitted by its readers. The CIJ ceased to exist as a legal entity in 2017.

I. PUBLICATION OF THE MATERIAL ENTITLED “YOU VOTED, YOU HAVE THE RIGHT TO JUDGE” IN 2006

A. Background of the publication of the impugned material

6. The applicant created the *Army of the People’s Will* (APW), an informal (non-registered) not-for-profit organisation campaigning for amending the legislation to provide for the personal liability of certain elected officials, including the President of the Russian Federation and members of the Federal Council of the Russian Federation. It appears that the main activity consisted in campaigning for organising a referendum to have the Constitution of the Russian Federation amended and for having a new federal statute adopted under the title “For the people’s trial of the President and members of the Federal Council of the Russian Federation”. The organisation declared that it intended to “enlist” in it from twenty to fifty thousand people and to gather two million signatures of eligible voters, which would be enough to require a national referendum under the Federal Constitutional Law no. 5-FKZ of 28 June 2004.

7. One of APW’s manifestos was entitled “You voted, you have the right to judge”. The outline of the plan set out in the text was to gather support for the proposal, by way of a petition, among *Duel*’s readers, and then to put the proposal before the electorate via a referendum. The text read as follows:

“Here is our approach to passing the proposed amendment and the statute. We are going to gather within the Army of the People’s Will twenty to fifty thousand fighters, to gather two million votes, which would be sufficient for a referendum. During that referendum the people are going to vote for this amendment and the statute. And then, we are going to compel its enforcement.

If we are going to be impeded on this lawful path, the Army of the People’s Will will apply force against those who impede the enforcement of the law in Russia.

If you are a human being and not a mere body, join the Army of the People’s Will.”

8. According to the applicant, that text had been published on numerous occasions for over a decade until in 2006 when its publication gave rise to various procedures under the Suppression of Extremism Act and the applicant's criminal prosecution (see below).

9. In 2010 the Moscow City Court classified APW as an extremist organisation and banned its activities in Russia. It appears that another organisation, For a Responsible Power (FRP), continued APW's certain activities and projects. In 2017 the applicant and some others were convicted under Article 282.2 of the Criminal Code (organisation of the activities of an extremist organisation) in relation to APW's and FRP's activities.

B. Impugned publication in 2006

10. On 21 February 2006 the newspaper once again published the text mentioned above.

1. Anti-extremist caution procedures

11. On 20 March 2006 the Russian media regulator (*Федеральная служба по надзору за соблюдением законодательства в сфере массовых коммуникаций и охране культурного наследия*) issued an official caution to Mr S. and the editor of the newspaper under the Suppression of Extremism Act. The regulator considered that the material "You voted, you have the right to judge" contained information "justifying extremist activities and calling for extremist activities to be carried out, for the undermining of national security and for the taking over and usurpation of public powers". The media regulator cautioned the newspaper against future similar violations of (anti-extremism) legislation.

12. Following the publication of the same text on 4 April 2006, on 26 April 2006 the media regulator issued a new official caution to the newspaper.

13. The CIJ sought judicial review of the official cautions under Chapter 25 of the Code of Civil Procedure. It was represented in those proceedings by the applicant acting as the CIJ's director and as the newspaper's editor-in-chief.

14. The applicant adduced in evidence a report by a person holding a PhD in Political Science, apparently challenging the notion that the impugned material was extremist.

15. On 4 June 2007 the Presnenskiy District Court of Moscow upheld the official cautions. It rejected the report, indicating that the scope of judicial review of official cautions was related to ascertaining the "procedural legality" of such cautions and did not encompass assessment of whether impugned material had been or should be classified as "extremist" (see paragraph 17 below for the relevant subsequent proceedings).

16. On 9 August 2007 the Moscow City Court upheld this judgment on appeal.

2. *Classification as “extremist material” under the Suppression of Extremism Act*

17. A prosecutor brought court proceedings, seeking the classification of the text “You voted, you have the right to judge” as extremist material in breach of the Suppression of Extremism Act. Mr S. and the CIJ were named as the respondents in this civil case. On 20 March 2009 the Zamoskvoretskiy District Court of Moscow classified the text as extremist material. According to the applicant, he lodged an appeal against that judgment. However, the Court has not been informed of any details of such an appeal.

II. PUBLICATION OF THE PIECE “DEATH TO RUSSIA!”

A. Background of the publication of the impugned material

18. On 2 May 2006 the newspaper published a text by D. that contained the following paragraph:

“I was wondering why Putin would bring for ‘reburial’ to Moscow from Switzerland the body of the ‘famous Russian nationalist philosopher’ Ivan Ilyin. Are they crazy there in the Kremlin? Did the world go upside down? I started to look into this. It turned out that the mother of this ‘Russian philosopher’ was named Yulia Schweikert. I had a look at a picture of him. And all became clear. He was a very influential Mason. After the [Nazis] came to power, they immediately kicked him out of his German university. This ‘poor and sad’ guy had had to sit through the war at university in Switzerland. The Kremlin is predictably doing ‘as it should be’. The ‘Russian nationalist philosopher’ turned out to be a typical ‘Holocaust victim’.”

19. In June 2006 the newspaper published a text by G. entitled “Does one’s surname matter?”, in relation to the so-called “Jewish emigration movement” in the USSR in the 1970s. Quoting the above paragraph from D.’s text and referring to information about D. and his mother from the website of Memorial, a non-governmental organisation in Russia, G. stated that the website contained names of people who had nothing to do with the Jewish emigration movement. He concluded:

“I would not bother you with all that information about [D.] ... but I was surprised by the position taken by both the newspaper and that ‘Holocaust victim’: namely, that whatever the content of the writings by the ‘famous Russian nationalist philosopher’ what matters is that his mother’s name was Schweikert.”

B. Publication of the impugned material

20. On 4 July 2006 the newspaper published a “letter” from D. entitled “About [the] mother”. Immediately above D.’s text the applicant added the

headline “Death to Russia!” which corresponded to the concluding phrase of D.’s text.

21. D.’s “letter” reads as follows:

“About [the] mother

I have read a text from a Mr G. (published in the twenty-third issue of *Duel* in 2006) about my mother and myself. It says that, according to Memorial, my mother and I were ‘participants in the Jewish emigration movement’. This is a lie! Indeed, we did take part in the ‘emigration movement’ but we left the USSR because of political persecution. And, formally speaking, it was to ‘Israel’, because in 1973 one could not leave to any other country from the USSR. During that ‘Jewish emigration’ (that ended up in ‘transit’ in Vienna) there were lots of people of Russian origin, Ukrainian or Armenian origin, ethnic Germans, none of whom had any link to the Jews. Those people would then spread between Western countries, mostly to the USA. My mother’s last name was not Schweikert (as G. seemed to suggest) but Varnakova ... She was of pure Russian origin, a native Muscovite ...

I have not a single drop of Jewish blood in me. Obviously, none was in my parents. By the way, the Memorial’s list contains ‘participants in the Jewish emigration movement’ of different ethnicities on two accounts: (1) political persecution in the USSR; (2) subsequent departure from the USSR with an ‘Israeli’ visa ...

By the way, my short summary (in *Duel*) as regards the biography of the ‘well-known Russian writer and nationalist’ Ivan Ilyin (his mother’s name was Schweikert) received large coverage on some Internet forums ...

As to my ethnic origin, I know perfectly well that Zionists tarnish their opponents in three ways ... (1) you are a Jew yourself, (2) he is insane (meaning, probably, that no normal person would criticise Zionists); (3) he is a homosexual (here Zionists uncover their complexes in a Freudian manner). However, there are certain limits that no Zionist or Jew (pretending to be a Russian) would cross. None would say, for instance, that he has no drop of Jewish blood in him ...

I have not a single drop of Jewish blood in me!

Overall, ... the debate between [G.] and myself is an example of a fight within the grand information war between nationalists and patriots, that is to say between a huge consolidated mass of Jewish patriots of their Jewish State of the Russian Federation ... with the involvement and public aid of ruling Jews ... Russia’s brainless and zombified mass of people ... and a bunch of nationalists of Russian blood who are determined to eliminate that State which is now foreign to them. Jew Ivan Ilyin was an apologist for that Jewish ‘legal’ State. Looking at it from the distance of Vienna, I notice that the leaders of so-called nationalist patriots happen to all be Jews with close ties to the Federal Security Service. Communist and democratic crowds also display the very same Jewish patriotism. Lenin would roll over in his grave, hearing about the communists’ support for the neo-colonial war waged by the modern bourgeois imperialist Russia against freedom loving people in the Caucasus. In former times communists supported movements of national liberation on the fringes of the disgusting empire. Now everything is the opposite. All those people are corrupt, went crazy, became morons, chauvinists and patriotic bourgeois ... The Jews fully support and actively strengthen their State: their bastard Yid [*жидовский*] army of Russian slaves and Jewish generals, their bloody dogs of cops and FSB officers; their frantic ‘Israeli-type’ patriotism, their rotten church of Satan and Antichrist (Russian Orthodox Church) with its Yid priests and Yid bishops and so on. Only a bunch of nationalists of Russian blood argue for the total destruction of Jewish Russia. Russia

is a Satanist Russia as even the atheist Limonov stated. It should be fully destroyed. In the name of God and the Aryan Russian nation. I am clear that it is about the total destruction of the Russian State of the Yids and its replacement by another State, as Lenin did, and not about a 'change of regime'. Everything is so rotten, there is nothing to be 'reformed'.

It is in the context of those global problems that the information war between those such as [G.] and myself is going on.

Russia must be destroyed!

Death to Russia! [D.], Vienna"

22. That text was followed by what appeared to be a question from a reader:

"Question: Dear Mr Mukhin, what would the following information mean (it was taken from the Kavkaz Centre): 'Lots of condolences have been sent in relation to the death of the President of the ChRI¹ A.-Kh. Sadulayev ... [D.], *Duel*'s correspondent in Vienna, expressed his condolences to the family, the ChRI government and the Chechen people. The Vienna office of the newspaper sympathises with their sorrow caused by the vile murder by Russian occupants and their puppets ... The Vienna office is convinced that [they] will receive rivers of bloody tears for that vile murder.'"

It was followed by the applicant's reply:

"From Mr Mukhin: Let me explain. Well, yes, he is our correspondent in Vienna."

23. Some 10,900 copies of that issue of the newspaper were printed and delivered to sellers for further distribution through open sale at newspaper stands or through newspaper subscriptions via Russian Post. It appears that the newspaper was distributed in various regions of Russia, with sales predominantly in Moscow. The newspaper contained a disclaimer that it bore no responsibility for the material submitted by its authors. The issue was also published on the newspaper's website.

24. In August 2006 the applicant published in the newspaper a letter from several readers under the headline "Position", calling for the newspaper to make a public statement refusing collaboration with D. in view of his support for "Chechen bandits". The applicant also published his own reply to this letter, indicating as follows:

"... The *Duel* newspaper is a newspaper of its authors, that is those write in it. [D.] is the historical author of the newspaper. So why would we remove him from it? ... Yes, I do not like some issues he has such as blindly following Lenin ... The latter called for Russia's defeat in the First World War (albeit, without congratulating the Kaiser with victories) in order to give the power to the proletariat. [D.] dares to think that if Putin's regime falls because of the Chechens, the power in Russia would go to the Russians. Yes, he does not get it that it is all the same camarilla. Is it a reason to kick him off the newspaper? ... You are trying to shut down the [newspaper's author]? Are you not forgetting what a similar shutting down did to the Communist Party of the

¹ An abbreviation for a so called "Chechen Republic of Ichkeriya".

Soviet Union and the Soviet Union? ... Freedom of expression is a freedom for everyone. It is not only your freedom or mine.”

25. According to the applicant, the newspaper then refused to publish any material from D.

C. Related proceedings

1. Anti-extremist caution procedure

26. The media regulator commissioned a report from a panel of linguists about the material published on 4 July 2006. On 9 April 2007 the panel concluded that the following parts of D.’s text constituted calls for undermining the national security of the Russian Federation; statements aimed at inciting ethnic and religious discord (*рознь*) as well as social discord combined with calls to violence; statements aimed at debasing the dignity of the Russian nation (*русская нация*); statements calling for the full destruction of the Russian State and people of Jewish and Russian ethnicity:

“All those people are corrupt, went crazy, became morons, chauvinists and patriotic bourgeois ... All fully support and actively strengthen their bastard Yid army of Russian slaves and Jewish generals, their bloody dogs of cops and FSB officers; their frantic ‘Israeli’-type patriotism, their rotten church of Satan and Antichrist (Russian Orthodox Church) with its Yid priests and Yid bishops and so on. Only a bunch of nationalists of the Russian blood argue for the total destruction of the Jewish Russia. Russia is a Satanist Russia as even the atheist Limonov stated. It should be fully destroyed. In the name of God and the Aryan Russian nation. I am clear that it is about the total destruction of the Russian State of the Yids and its replacement by another State, as Lenin did, and not about a ‘change of regime’. Everything is so rotten, there is nothing to be ‘reformed’ ... Russia must be destroyed! Death to Russia!”

27. On 24 April 2007 the media regulator issued an official caution (*предупреждение*) to the newspaper. The regulator considered that the material (consisting of D.’s letter and the applicant’s additions) published on 4 July 2006 had violated the Suppression of Extremism Act.

28. It appears that no judicial review of the caution was sought.

2. Classification as “extremist material” under the Suppression of Extremism Act

29. A district prosecutor brought proceedings before the Zamoskvoretskiy District Court of Moscow, seeking that the texts published on 4 July 2006 under the headline “Death to Russia!” be classified as extremist material in breach of the Suppression of Extremism Act.

30. Mr S. and the editorial board were named as the respondents in this civil case. The District Court heard arguments from the applicant. Mr S. chose to not participate in the proceedings.

31. The prosecutor adduced in evidence the findings made in the separate proceedings in which the newspaper had been issued with the official anti-extremism caution (see paragraphs 26-27 above) and an expert report commissioned within the related ongoing criminal proceedings against the applicant (see paragraph 44 below).

32. The applicant adduced in evidence an opinion from Ms B., who held a PhD in philology and a professor at the Moscow City Pedagogics University, who concluded that the linguistics report of 9 April 2007 (see paragraph 26 above) had been based on incomplete information and had wrongly assessed D.'s text in terms of inciting ethnic discord and calls to overthrowing the constitutional regime.

33. Having examined the evidence mentioned above, the court commissioned a new linguistics expert report. The expert concluded that the impugned material contained statements aimed at undermining national security; calls for the total destruction of the State; statements aimed at the forcible change of the foundations of the constitutional regime and at the breaching of its territorial integrity; statements aimed at inciting ethnic, social and religious discord, at debasing the dignity of people of Russian ethnicity. The headline "Death to Russia!" called for the destruction of the Russian State and had been aimed at undermining national security, at the forcible change of the foundations of the constitutional regime and at breaching of Russia's territorial integrity. The expert concluded that the following part of D.'s text contained a call for the total destruction of the State of Russia; statements aimed at undermining national security of the Russian Federation, at the forcible change of its constitutional regime and the breaching of its integrity:

"... Only a bunch of nationalists of Russian blood argue for the total destruction of the Jewish Russia. Russia is a Satanist Russia as even the atheist Limonov stated. It should be fully destroyed. In the name of God and the Aryan Russian Nation. I am clear that it is about the total destruction of the Russian State of the Yids and its replacement by another State, as Lenin did, and not about a 'change of regime'. Everything is so rotten, there is nothing to be 'reformed' ..."

The expert also concluded that the following parts of D.'s text had been aimed at inciting ethnic, social and religious discord:

"Overall, ... the debate between [G.] and myself is an example of a fight within the grand information war between nationalists and patriots, that is to say between a huge consolidated mass of Jewish patriots of their Jewish State of the Russian Federation ... with the involvement and public aid of ruling Jews ... Russia's brainless and zombified mass of people ... and a bunch of nationalists of Russian blood who are determined to eliminate that State which is now foreign to them. ... All those people are corrupt, went crazy, became morons, chauvinists and patriotic bourgeois ..."

The expert found that the following part of D.'s text debased the dignity of the people of Russian ethnicity:

“... Russian brainless and zombified mass of people ...”; “... All fully support and actively strengthen their bastard Yid army of Russian slaves ...”

Lastly, the expert found that the following part of the question-and-answer section added by the applicant had incited ethnic, social and religious discord (see paragraph 22 above):

“[D.], *Duel*’s correspondent in Vienna, expressed his condolences to the family, the ChRI government and the Chechen people. The Vienna office of the newspaper sympathises with their sorrow caused by the vile murder by Russian occupants and their puppets ...”

34. In a judgment of 24 November 2008 the District Court allowed the prosecutor’s claim and classified the impugned texts as extremist material, relying on the findings of that expert report. The court concluded that the impugned texts had contained calls for extremist activities and for the undermining of national security, and had contained statements aimed at inciting ethnic and religious discord as well as social discord relating to calls for violence; statements calling for the complete destruction of the Russian State and people of Russian and Jewish ethnicity. The court dismissed the applicant’s argument that the texts had been a part of a larger discussion and had constituted a personal opinion expressed by D. In the court’s view, personal opinions with extremist content were not allowed under Russian legislation, and thus that argument could not shield the texts from being classified as extremist material.

35. On 29 January 2009 the Moscow City Court upheld the judgment.

III. TERMINATION OF THE NEWSPAPER’S MASS-MEDIA STATUS

36. After resolving certain jurisdictional issues relating to their initial application in 2006, in September 2007 the media regulator brought court proceedings before the Zamoskvoretskiy District Court of Moscow, seeking that the newspaper be divested of its mass-media status and banned from being distributed. The CIJ – Editorial Board of the newspaper *Duel* was named as the respondent in this civil case.

37. The media regulator referred to the official cautions dated 20 March and 26 April 2006 (see paragraphs 11 and 12 above). It also submitted, as additional evidence, the official caution in relation to the material entitled “Death to Russia!” (see paragraph 27 above) as well as three other official cautions issued between August 2007 and June 2008 in relation to some other articles published in the newspaper between July 2007 and March 2008.

38. It appears that the newspaper’s founder, Mr S., was notified of the court proceedings but chose not to participate in them.

39. On 26 November 2008 the District Court granted the media regulator’s application and ordered the termination of the mass-media-outlet status of the newspaper. The court noted that the newspaper had been issued

with an official caution on 20 March 2006 but had published extremist materials again within twelve months; the first caution had been followed by a second one, on 26 April 2006. Those two official cautions had been upheld on judicial review (see paragraphs 11-16 above). Referring to sections 8 and 11 of the Suppression of Extremism Act and sections 4 and 16 of the Mass Media Act (see paragraphs 67-70 below), the District Court allowed the media regulator's claim.

40. The CIJ – Editorial Board of the *Duel* newspaper appealed against the judgment. The applicant participated in the proceedings as a representative of the CIJ.

41. The newspaper argued that the legislation cited above required an initial violation of the law (such as dissemination of extremist material) to have been established in an official caution, and the repeat violation of the law. The initial violation had been established in March 2006 by a non-judicial authority. However, it had been outside the purview of the media regulator to classify material being disseminated as “extremist” since only a court, in a separate procedure, was competent to impose such a classification. So far the impugned material had not been classified as extremist (see paragraph 17 above).

42. On 19 May 2009 the Moscow City Court upheld the judgment. It noted that within a year, on 20 March and 26 April 2006, the newspaper had been issued with anti-extremism cautions and that those cautions had been upheld on judicial review. The appeal court also dismissed the newspaper's argument that the media regulator's application was belated, indicating that no time-limit was prescribed by law for lodging an application for terminating a media outlet's distribution.

43. The legal effect of the courts' decisions was the divestment of the newspaper's mass-media status, originally conferred in 1995, and the annulment of the certificate of its registration as a mass-media outlet.

IV. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

44. Meanwhile, on an unspecified date criminal proceedings were initiated in relation to the publication of D.'s text under the headline “Death to Russia!” on 4 July 2006 (see paragraphs 20-22 above). An expert of the Centre for Special Techniques of the Criminalists Institute of the Federal Security Service was asked to issue a report. In his report of 5 October 2007 he concluded that D.'s text had contained calls for actions aiming at the forcible change of the constitutional regime of the Russian Federation and the breaching of its territorial integrity; and the undermining of national security; it had aimed at inciting racial, ethnic and religious discord associated with violence or threats of violence; and at debasing ethnic (national) dignity; it had contained statements aimed at inciting hatred (*ненависть*) or enmity (*вражда*) or debasing the dignity of the Russian

and Jewish populations of the Russian Federation, with reference to their religion(s). The expert also concluded that D.'s text had contained no statements which clearly and unequivocally amounted to calls: for planning, organising or committing any actions aimed at overtaking and usurping public powers; for the creation of unlawful militarised units; for the carrying out of terrorist activities; for massive riots, hooliganism or vandalism or any of the other type of "extremist activity" listed in section 1 of the Suppression of Extremism Act.

45. On 15 January 2008 an investigator charged the applicant under Article 280 § 2 of the Criminal Code for public calls, through a mass-media outlet, for the carrying out of extremist activities (see paragraph 63 below). The prosecutor held as follows:

"... having a negative attitude towards the existing social and political regime in the Russian Federation and aiming at the undermining of the foundations of the constitutional regime and national security, [the applicant] publicly called via a mass-media outlet for the carrying out of extremist activities ..."

Having examined D.'s letter, the defendant added to it the headline "Death to Russia!". Having made that change, in breach of the Suppression of Extremism Act the defendant then published, in the form of an article in his newspaper, this letter that contained calls to carry out actions aimed at: forcible changing the constitutional foundations of the Russian Federation and at breaching its integrity; at undermining the national security of the Russian Federation; at inciting racial, ethnic or religious discord linked to violence or calls to violence; at debasing ethnic dignity ..."

46. The investigator interviewed Ye., who appeared to be one of the newspaper's readers, who stated that he had read the article and expressed his negative perception of its content.

47. The applicant stood trial before the Savelovskiy District Court of Moscow.

48. The trial court heard from Da., the deputy chief officer of the Anti-fascist Centre, a non-governmental organisation, who stated that *Duel* had previously published material of an extremist nature, the impugned article being one example which had demonstrated the applicant's use of propaganda to promote certain ideas.

49. The applicant pleaded not guilty and stated that he had not intended to publicly call for extremist action when he had made an editorial choice to assemble a number of texts (including the text entitled "About [the] mother") under the headline "Death to Russia!". He had put that heading so as to stimulate the readers' interest in those texts. At that time the text entitled "About [the] mother" had not been classified as extremist material by a court, which had been a requirement of Russian law. Under the impugned headline there had been two other texts: a reader's message consisting of a quotation from the Kavkaz Centre on D.'s support for Chechen separatists and the applicant's reply to the reader about D. (see paragraph 22 above). In adding those two texts the applicant had wanted to warn the readers and invite them to read D.'s texts critically. The applicant

also argued that D.'s text and the phrase "Death to Russia!" in that text or in the headline had lacked any specific addressee and could not have potentially been a successful call to violence and, as a matter of fact, had not been successful since no violence or other harmful consequences had ensued. Thus, the article had been no more than a wish or information or, at worst, a threat.

50. Following an application by the applicant the court admitted written and oral statements from a number of people who had read the impugned material and concluded that it had contained no calls to carry out extremist activities but had merely been a part of the debate between D. and G.

51. Following an application by the applicant the court also heard evidence from Ms M. and Ms B., doctors in philology and working at the Russian State Library and the Moscow City Pedagogics University respectively. They stated that the impugned material had contained no calls to extremist activities or insulting statements but, as presented by the editor, that material had alerted the reader to D.'s views.

52. The court commissioned an expert report from professionals in psychology and linguistics.

The linguists (experts of the Centre for Special Techniques of the Criminalists Institute of the Federal Security Service) concluded that the semantic aim (the main content) of the article entitled "Death to Russia!" had been the author's statement that he "had not a single drop of Jewish blood!" and that Russia was a Jewish State and "had to be destroyed" (as a Jewish State). The first part of D.'s "letter" had been a reply to G.'s article and had concerned the relationship between the author and G. That part of the article had contained neither calls for any actions against a certain person or group of people nor any threats. The second part of the article had amounted to a classic call for the destruction of the existing State of Russia. The author had indicated what action had been needed to correct the unsatisfactory (in his view) state of affairs in Russia, specifically to destroy that State through violence. The author had considered that course of action as useful for Russia because the situation at that time had not lent itself to reform. The author had not indicated any specific addressee in respect of his call, but the content suggested that the article readers had been its addressees. The article had ended with "Death to Russia!", while the same phrase had also been placed in the headline of the publication thereby specifying the semantic aim of the publication as a whole, namely the part relating to the destruction of Russia (as a Jewish State). The article contained insulting names for people of Jewish ethnicity, negative emotional assessments of those people and the Russian Orthodox Church. The article contained a positive assessment of the "Russian nation" and a negative assessment of people of Russian ethnicity (when characterising them as slaves within a Jewish State). The article used no linguistic or other means to incite any action against a specific nation, race, religion or people.

The psychology expert (holding a Master's degree in law and working as a chief specialist in psychology assessments within an expert institution of the Ministry of Justice of the Russian Federation) examined the impugned material (the editor's headline, D.'s text and the editor's additions) as well as D.'s and G.'s texts published in the newspaper previously and statements from the applicant and some readers provided to him by the defence. The expert concluded that the "article" had amounted to a hidden warning that the applicant (as the editor) had addressed to the reader in relation to D.'s activities. The impugned material had not contained degrading characterisations, negative emotional assessments or negative affirmations in relation to any ethnic, racial, or religious group or their members. D. had given a negative assessment of his ideological and political opponents and the Russian and Chechen authorities' actions in relation to separatists, the leaders of the so-called non-recognised "Republic of Ichkeriya". D.'s critical statements about the Russian authorities including the President of the Russian Federation, or the Russian Orthodox Church had been value statements and had constituted his point of view. D.'s text had been a means of communication aimed at defending himself. The text had been more about the political argument rather than sowing any ethnic discord. The semantics of the headline had the aim of drawing the reader's attention towards D.'s activities and discrediting him. The editor had attempted to provide the readers with the information to form their own judgment about D.'s true nature. The readership's actual reaction confirmed that the editor had achieved this goal.

53. On 18 June 2009 the District Court convicted the applicant under Article 280 § 2 of the Criminal Code for making, via a mass-media outlet, public calls for extremist activities to be carried out (see paragraphs 63 and 66 below). The facts held against the applicant were described as follows:

"As the editor-in-chief of the newspaper ..., given his own negative attitude towards the existing social and political regime of the Russian Federation and with the aim of undermining the foundations of the constitutional regime and national security, the defendant issued, via a mass-media outlet, public calls to carry out extremist activities ...

Having examined D.'s letter, the defendant added to it the headline "Death to Russia!". Having made that change, in breach of the Suppression of Extremism Act the defendant then published, in the form of an article in his newspaper, this letter that contained calls to carry out actions aimed at: forcibly changing the constitutional foundations of the Russian Federation and at breaching its integrity; at undermining the national security of the Russian Federation; at inciting racial, ethnic or religious discord linked to violence or calls to violence; at destroying [уничтожение] ethnic dignity ..."

54. In its judgment the trial court held that the findings made by the experts in linguistics and the expert in psychology were not contradictory (see paragraph 52 above). The former only assessed the material (D.'s text and the editor's headline) from the linguistic point of view, their linguistic

approach towards the existence of “calls for extremist activities” not being dependent on any actual harmful consequence or how the text had been perceived by others. Assessment of such a perception fell within the scope of psychological assessment. The expert in psychology had assessed some other material, including various statements made by the parties to the proceedings, witnesses, and readers of the newspaper. That expert had assessed the impact that the impugned material had had on readers.

55. The trial court considered that the offence under Article 280 of the Criminal Code required no proof of any actual harmful consequences arising from the publication of the impugned material. In that connection the actual perception of that material by certain individuals could not be decisive for finding the applicant guilty or not guilty as charged.

56. The court rejected the applicant’s argument that D.’s text had discussed an important public issue – that of the Jewish lobby in Russia – and was a response to a previous article criticising D.’s stance on the matter. The court also referred to the fact that in 2008 D.’s text had been banned as “extremist material” (see paragraphs 34-35 above).

57. The trial court concluded as follows:

“The above evidence and the defendant’s specific actions ... indicate the presence of the defendant’s intent to commit the impugned offence. As an editor-in-chief of a mass-media outlet with a lot of journalistic experience, the defendant examined D.’s letter and, while understanding that it contained extremist material, intentionally authorised its publication and distribution in Russia. He did so on the basis of his own negative attitude towards the existing political regime in Russia, with the aim of undermining the constitutional regime and national security by way of adding the title ‘Death to Russia!’, which is a public slogan and a public call for the destruction of Russia. He thereby repeated the same concluding remark from D.’s letter and indicated the overall aim of the article; he also added further material. In doing so, the defendant made public calls for extremist activities to be carried out ...”

58. As regards the sentencing the court held as follows:

“When sentencing the defendant the court takes into account the nature and degree of dangerousness of the defendant’s actions, the circumstances of the case, the defendant’s personality, noting that he is being prosecuted for the first time and has positive character references in his area of residence, at his workplace and from his readers. The court considers those circumstances as mitigating. No aggravating circumstances have been established.

In view of the foregoing, the effectiveness of a sentence in reforming the defendant and on his household, the court finds it appropriate to impose a custodial sentence ... as well as an additional sentence consisting of banning him from taking up a leadership role within a mass-media outlet.”

59. The court sentenced the applicant to a suspended prison term of two years and restricted his right to exercise leadership functions (*должностей, связанные с выполнением организационно-распорядительных обязанностей*) in a mass-media outlet for two years. The applicant was required to report regularly to the authority supervising the execution of

sentences and to not leave his area of residence without notifying that authority.

60. The applicant appealed, arguing that the offence under Article 280 of the Criminal Code required the existence of a “call” to carry out extremist activities; no such “call” had been made by the applicant.

61. On 16 September 2009 the Moscow City Court upheld the trial judgment in a summary manner.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN LAW AND PRACTICE

A. Constitution of the Russian Federation

62. Chapter 1 of the Constitution of the Russian Federation is entitled “Foundations of the constitutional regime” (Articles 1 to 16). Among the foundations of the constitutional regime it lists, for instance, the democratic and republican form of government, the supreme value of fundamental rights and freedoms, the principle of sovereignty, the illegality of an individual’s usurpation of power, the federal structure of the State and political pluralism.

B. Criminal Code of the Russian Federation

63. Article 280 § 2 of the Criminal Code, as in force at the relevant time, provided as follows:

“1. Public calls to extremist activities shall be punishable by a fine of up to 300,000 Russian roubles, or an amount equivalent to the convicted person’s wages or other income for a period of up to two years, or by detention for a period of four to six months, or by imprisonment for a period of up to three years;

2. The same acts committed through a mass-media outlet shall be punishable by imprisonment for a period of up to five years, accompanied by withdrawal of the right to hold certain posts or carry out certain activities for a period of up to three years.”

64. Pursuant to Ruling no. 11 of 28 June 2011 by the Plenary Supreme Court of the Russian Federation, “public calls” under Article 280 of the Criminal Code are defined as appeals to other people with the aim of inciting (inducing) them to carry out extremist activities as defined in the Suppression of Extremism Act (see paragraph 66 below). The crime under Article 280 is deemed completed from the moment of a public dissemination of at least one call, irrespective of whether one succeeded in inciting (inducing) others to carry out extremist activities (paragraph 4 of the ruling).

65. Pursuant to Articles 24 and 25 of the Criminal Code, there are two types of criminal guilt: intent and negligence; direct intent (*прямой умысел*)

requires proving that a person understands that his or her action or inaction is socially dangerous, anticipates that socially dangerous consequences may ensue or will inevitably ensue and wishes them to ensue.

C. Suppression of Extremism Act

66. Federal Law of 25 July 2002 no. 114-FZ on Suppression of Extremist Activities (“the Suppression of Extremism Act”), as in force at the relevant time, provided as follows:

Section 1: Basic concepts

“For purposes of the present Federal Law the following basic concepts shall apply:

Extremist activity (extremism) is:

(1) activity of non-governmental, religious or other organisations, mass-media outlets or individuals, consisting in planning, directing, preparing and committing acts aimed at:

forcible change of the constitutional foundations of the Russian Federation and breach of its integrity;

undermining the security of the Russian Federation;

...

inciting racial, ethnic or religious discord, or social discord linked to violence or calls to violence;

debasing dignity on the ground of ethnic origin (*унижение национального достоинства*);

...

(3) public calls to carry out the above-mentioned activities or acts; ...”

67. Section 8 of the Act provides that where a mass-media outlet disseminated extremist material or where established facts provided indications that the outlet had engaged in extremist activities, the competent authority issues the outlet’s founder or editorial board (editor-in-chief) with a written official caution (*предупреждение*) about the inadmissibility of such actions or activities. Where an official caution was not challenged before a court and was not declared unlawful and where within twelve months after the official caution new facts were established disclosing indications of extremism on the part of the outlet, its activity must be terminated (*подлежит прекращению*).

68. Section 11 provides that in the situations listed in section 8 or where the outlet’s extremist activity caused violations of human rights, damage to an individual’s life or health or cause damage to the society or the State or posed a real threat of such damage, the operation of a mass-media outlet can be terminated (*может быть прекращена*) by a court order.

D. Mass Media Act

69. Section 4 of Federal Law no. 2124-1 of 27 December 1991 (“Mass Media Act”) prohibited the use of mass-media outlets for, *inter alia*, disseminating material containing public calls to carry out terrorist activities or publicly justifying terrorism, or for disseminating other extremist material.

70. Section 16 of the Act provided at the material time that a court could terminate the activity of a mass-media outlet where within twelve months its editorial board had committed multiple violations of section 4 of the Act and where such violations had given rise to written cautions issued by the competent authority to the outlet’s founder and/or editorial board (editor-in-chief). The termination of a media outlet’s operation entailed the annulment of the certification of its registration and the editorial board’s articles of incorporation.

71. In ruling no. 16 of 15 June 2010 the Plenary Supreme Court of Russia assessed the judicial application of the Mass Media Act (see below).

With reference to Article 29 of the Russian Constitution and Article 10 of the Convention, in cases concerning regulations in respect of freedom of expression and mass-media outlets (for instance, under the Mass Media Act or the Suppression of Extremism Act) courts are required to strike a balance between the mass media’s rights and the rights of others or other constitutional values. Referring to the Convention and other international treaties to which the Russian Federation is a party, the Supreme Court specified that mass-media outlets bear special responsibilities and special liability and their exercise of the freedom of expression may be restricted by law where it is necessary in a democratic society for the respect of the reputation and rights of others, for the protection of national security and public order (*общественный порядок*), for the prevention of disorder and crime, for the protection of health or morals, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Article 55 of the Constitution provides that rights and freedoms may be limited by a federal law only in so far as necessary for the protection of the constitutional regime, morals, health, rights and legitimate interests of others, for securing the defence of the State and for ensuring national security.

A mass-media outlet such as a newspaper is a medium for mass dissemination of information; as such it has no rights or obligations and thus cannot be party to proceedings. For using this form of disseminating information an editorial board registers a mass-media outlet, except where a printed publication produces less than 1,000 copies and in some other circumstances. In so far as for producing and disseminating mass information one creates and runs a mass-media outlet and creates and disseminates content, courts need to determine who should be party to

related proceedings depending on the stage of producing and disseminating content and on who was in charge of it at that stage on the basis of the legislation or contractual relations. One and the same person can perform different functions (for example founder, editor, publisher and distributor) at different stages.

An editorial board should be involved in cases relating to content disseminated by a mass-media outlet. Where such a board has not been constituted by a person or a legal entity, the outlet's founder or editor-in-chief may be involved in court proceedings. Proceedings relating to termination of a mass-media outlet concern rights and interests of its founder(s) and the editorial board and thus both should be parties to those proceedings. An editor-in-chief represents the editorial board *ex officio*.

Authorities may issue official cautions which entail legal consequences for a mass-media outlet's founder or editorial board (editor-in-chief); judicial review of such cautions was (until September 2015) carried out under Chapters 23 and 25 of the Code of Civil Procedure. In such cases courts should assess the wording of the impugned statements, the context of their publication (for instance, their goal, genre or style; whether it amounted to political speech or was aimed at discussing a matter of public interest; the journalist's stance on the impugned statements if any), the social and political context in the country or a part of it (relating to the area where a mass-media outlet operates).

Under the Mass Media Act within pending proceedings for terminating the operation of a mass-media outlet a court may issue interim measures which may include, in exceptional circumstances, temporary suspension of its operation.

The termination of an outlet's operation entails a ban on the production and dissemination of its content. Such a measure can only be imposed on the grounds and within the procedure listed in sections 4 and 16 of the Mass Media Act or sections 8 and 11 of the Suppression of Extremism Act.

There are notable differences between those two frameworks: under the first framework a court should only take account of the violations of section 4 of the Mass Media Act established in written cautions to the outlet's founder or editorial board (editor-in-chief); recourse to the second framework does not require the existence of further official cautions for establishing new facts indicating extremism on the part of the outlet that then serve as a basis for seeking termination of its operation.

Where examining a claim for termination of the operation of a mass-media outlet, a court had jurisdiction to review the legality (*правомерность*) of a relevant official caution (paragraph 36 of the ruling).

72. The Supreme Court subsequently specified, sitting as a court of appeal in a case, that the Plenary's indication in paragraph 36 of its ruling meant that an official caution was a piece of evidence that as such was to be reviewed and assessed together with other evidence in accordance with the

rules of Article 67 of the Code of Civil Procedure (decision no. 20-G10-11 of 9 November 2010).

E. Code of Administrative Offences of the Russian Federation

73. In July 2007 the Code of Administrative Offences was amended with a new offence under Article 20.29 that punished, with a fine or administrative detention, mass production or mass distribution of extremist material that had already been banned by way of inclusion in the special federal register of extremist material.

II. COUNCIL OF EUROPE DOCUMENTS

74. On 30 October 1997 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (97) 20 on “hate speech” and the appendix thereto. The Committee of Ministers recommended that the member States’ governments be guided by certain principles in their action to combat hate speech (see, in particular, Principle 5).

75. On 13 December 2002 the Council of Europe’s European Commission against Racism and Intolerance (ECRI) adopted General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination. The recommendation was revised in December 2017. On 8 December 2015 ECRI adopted General Policy Recommendation no. 15 on combating hate speech (see, in particular, § 10) and the Explanatory Memorandum to that recommendation (see, in particular, §§ 7, 14-16, 148 and 169). On 1 July 2021 ECRI revised General Policy Recommendation no. 9 (adopted in 2004) on preventing and combatting antisemitism (see, in particular, §§ 12 and 13).

76. Opinion no. 660/2011 adopted by the European Commission for Democracy through Law (the Venice Commission) in 2012 contains assessment of the Suppression of Extremism Act mentioned above (see, among others, §§ 32-35).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT’S CRIMINAL CONVICTION

77. The applicant complained under Article 10 of the Convention about his criminal conviction on account of his editorial choices relating to the publication of the material under the headline “Death to Russia!”.

78. The relevant parts of Article 10 of the Convention read 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

1. The parties’ submissions

79. Referring to Article 17 of the Convention, the Government submitted that the national courts had established that the material entitled “You voted, you have the right to judge!” and “Death to Russia!” as well as some other articles published in the newspaper contained calls for the forcible change of the foundations of the constitutional regime of the Russian Federation and the breaching of its territorial integrity as well as incitement to ethnic, religious and social discord. Such calls to carry out extremist activities had impinged upon public order (*общественный порядок*) and had been aimed at insulting the multi-ethnic people of Russia. Concluding the relevant section of their observations, the Government stated that the “application” had to be declared incompatible *ratione materiae*.

80. The applicant acknowledged that D.’s text alone would not warrant protection under the Convention as it had been speech incompatible with its values. However, the assessment of the applicant’s actions did not only depend on the content of that text but also on its context and on the distinction between the author of hate speech and the role of the media in reporting on matters of public interest. The applicant had provided a medium for another person’s exercise of freedom of expression and had not endorsed or appeared to endorse the impugned text. He had not been convicted for the negation of fundamental rights and his actions could not be equated with racist, antisemitic remarks that struck directly against the values of the Convention. He had been convicted, in essence, for a statement against the State motivated by “his negative attitude towards the existing social and political regime”. Thus the examination of Article 17 of the Convention had to be joined to the merits of the complaint under Article 10 of the Convention.

2. The Court’s assessment

81. Article 17 of the Convention reads as follows:

“Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

82. The Court reiterates that the effect of Article 17 of the Convention is to negate the exercise of the Convention right that the applicant seeks to vindicate in the proceedings before the Court (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 114, ECHR 2015 (extracts)). Article 17 is only applicable on an exceptional basis and in extreme cases and should, in cases concerning Article 10 of the Convention, only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (*ibid.*, § 114, and *Pastörs v. Germany*, no. 55225/14, § 37, 3 October 2019). The decisive point when assessing whether the statements are removed from the protection of Article 10 by Article 17, is whether those statements are directed against the Convention’s underlying values or whether by making the statement the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it (see *Kilin v. Russia*, no. 10271/12, § 48, 11 May 2021).

83. The Government’s submissions under Article 17 of the Convention appear to be related to the proceedings in which the impugned materials had been classified as “extremist material” or the proceedings in which the newspaper had been issued with related anti-extremism cautions. The Government’s submissions did not mention any factual or legal matters specifically pertaining to the applicant’s criminal prosecution, which was the subject-matter of the present distinct complaint which had been communicated to the Government.

84. Even accepting that the Government have properly raised an objection under Article 17 in relation to the present complaint, the Court considers that it is not immediately clear that the applicant’s editorial choices in the present case sought to deflect Article 10 from its real purpose by employing his right to freedom of expression for ends clearly contrary to the values of the Convention. The objection is therefore dismissed.

85. The Court also notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

86. Reiterating his submissions concerning Article 17 of the Convention (see paragraph 80 above), the applicant argued that the assessment of his

actions and the State's interference with his freedom of expression through a criminal conviction could not be confined to the content of D.'s text but had to be viewed in context and in the light of the distinction between the author of hate speech and the role of the media in reporting matters of public interest. The applicant could not be held directly liable for inciting others to engage in "extremist activities" since the newspaper had merely provided a forum for the dissemination of another person's speech. While the media could be held liable if they adopted or appeared to endorse the statement, holding them generally liable for the statements of others was not justifiable under Article 10 of the Convention.

87. The applicant submitted that the authorities had wrongly attributed to him the content of the "letter" that had been written by D. The applicant had put that letter and some other material under the headline "Death to Russia!" and had added a reader's question, suggesting that D. supported "Chechen rebels". Moreover, according to the applicant, he had clearly distanced himself from the content of the letter by way of the phrase "I explain: we have such readers". In a subsequent issue of the newspaper he had expressly stated that he did not share D.'s views but had published his letter as he believed in free speech and his duty to impart information. The applicant's criticism of D.'s views had not been ambiguous or contradictory. His intention to distance himself from D. had been confirmed by the psychological expert opinion. Moreover, at the end of each issue of the newspaper there had been a standard disclaimer stating that the views of the editor had not necessarily concurred with those expressed in the articles and letters published in the newspaper. In this context the applicant could not have known or ought to have known that, even if expressing his dissent and criticism, he would still be rendered criminally liable under Article 280 of the Criminal Code.

88. Importantly, the applicant had not been prosecuted under a criminal-law provision prohibiting dissemination of extremist material. Such a provision was in the federal Code of Administrative Offences only. He had been convicted, in criminal proceedings, of direct (intentional) incitement to commit extremist activities. However, the authorities had omitted to interview D. and had not specified which parts of D.'s text had been attributed to the applicant.

89. The use of the headline "Death to Russia!" had reproduced the concluding line of D.'s letter. That headline had been sensationalist, an acceptable journalistic technique. It could not reasonably have been construed as an attempt to incite violence against an individual, a public official or a sector of the population. The headline had been an editorial choice not dissimilar to the choice of other editors when summarising the content of articles they publish. The headline should be interpreted as an expression of political opinion and not the advocacy of or incitement to violent political action. It had been an abstract expression and not the

language of direct incitement designed to promote specific action against identified individuals or groups.

90. There had been no clear and present danger, as the statement (the headline) had not been likely to produce and had not actually produced any immediate violence or insurrection. The statement had been removed in time and space from any violence, actual or impending. Even assuming the headline could be reasonably interpreted as expressing his own view rather than summarising D.'s letter, it had not been made in a situation of any ongoing conflict. The prosecution of the applicant had been initiated only two years after the publication of the headline. In the meantime, no acts of violence had been recorded in connection with D.'s letter.

91. The applicant had published D.'s text in the context of a deliberately wide-ranging debate among *Duel*'s readers. It had always identified itself as a newspaper "of the readers and for the readers". After D. had "involuntarily" started a debate on whether a person's mentality had been determined by his or her ethnicity, citing Mr Ilyin as an example, he had then been challenged by G. about his participation in the Jewish emigration movement. In his subsequent text D. had denied being Jewish and had expressed his hatred of Jews. By that time it had become clear that he had supported "Chechen rebels", thus raising a question of his future collaboration with the newspaper.

92. The criminal courts had not specified which of the foundations of the constitutional regime had been put at risk by the applicant's actions.

(b) The Government

93. The Government submitted that D. had affirmed in his text that it had not been possible for a person of Jewish descent or someone practising Judaism to be a true patriot of Russia; that serving national interests had not been necessary to be Russian in an individual's soul; that various initiatives supported by Jews had caused damage to the Russian State and society; and that Russia, as a Jewish State, had had to be destroyed. The applicant had then been issued with an official anti-extremism caution because the media regulator considered that that text had undermined Russia's national security and had contained statements inciting ethnic, social and religious discord, had debased the dignity of the Russian nation (*русской нации*) and had called for the full extermination of the Russian State and people of Russian and Jewish ethnicities.

94. D.'s text had then been classified and banned from being distributed as extremist material. In the related proceedings a court had commissioned a linguistics expert report, noting differences between earlier linguistics reports and the opinion expressed by Professor B. This new report stated that the material that included D.'s text under the headline "Death to Russia!" had contained statements calling for the undermining of national security and the total destruction of the State, thus aiming at forcible change

of the constitutional regime and a forcible attack on Russia's territorial integrity, as well as inciting ethnic, social and religious discord. When declaring D.'s text extremist material, the courts had found those elements established.

95. In the criminal proceedings against the applicant experts in linguistics had concluded that D.'s text had affirmed that he had "not [had] a single drop of Jewish blood"; that Russia had "had to be destroyed" as a Jewish State; that D.'s text had called for a specific action aimed at correcting the bad state of affairs in Russia, specifically by destroying the current State by violent means; the author considered that course of action useful for Russia because there remained no route to improvement through reform. D. had concluded his text with a phrase "Death to Russia!". The same phrase had been put as the text's headline, thereby highlighting the meaning of the text, specifically the destruction of Russia as a Jewish State. The part of the text starting with "Overall, ..." and ending with "Death to Russia!" had amounted to an appeal for the destruction of Russia. The headline was also a public call in the same vein. The linguists also noted that the text contained insulting statements in respect of people of Jewish ethnicity, a negative emotional assessment of those people and a negative attitude towards them and the Russian Orthodox Church. The text contained both positive and negative assessments of people of Russian ethnicity, specifically with relation to their alleged debasing position as slaves in a Jewish State.

96. Another panel of linguists considered that the main conclusion of D.'s text had been the need to eliminate all citizens of the Russian Federation and creation of a new State consisting of true Russian patriots, who would be members of the "Aryan Russian nation" and would strive for the elimination of the Jewish State of Russia.

97. The criminal court had taken account of all the expert reports and had formed its own opinion about the applicant's actions. The courts had specified what extremist activities the applicant had called for. While the criminal judgment did not quote the problematic part of D.'s text, it contained a reference to the part starting with "Overall, ..." and ending with "Death to Russia!".

98. The published material had been rude and offensive towards a large group of citizens.

99. The criminal court took account of the facts that 10,900 copies of the relevant issue of the newspaper had been distributed and that that issue had also been published on the newspaper's website, which was indicative of a wide dissemination of the extremist material. One person had stated at the trial that the newspaper had previously published extremist materials. The applicant had benefitted from a fair trial, with due respect given to equality of arms and adversarial procedure. When choosing the sentences the criminal court had taken account of the nature of the offence and its danger,

the sentences' effect on correcting his behaviour, the applicant's personality and his household situation.

100. The Government concluded that the interference had been convincingly shown to have been "necessary in a democratic society".

2. The Court's assessment

(a) Existence and scope of the interference

101. The Court considers that the applicant's prosecution and conviction amounted to an "interference" under Article 10 § 1 of the Convention.

102. At this juncture the Court notes the lack of clarity as to the scope of the criminal charge against the applicant, specifically as regards the "extremist activities" he was convicted for calling to on account of his own actions relating to the publication of the impugned material.

103. The trial court mentioned that D.'s text (rather than the applicant's own conduct) had contained calls to carry out extremist activities aimed at the breaching of the integrity of the Russian Federation and at inciting racial, ethnic or religious discord combined with violence or threats of violence; at debasing (destroying) ethnic dignity (see paragraph 53 above). Having said this, it is also noted that the trial court relied on the findings made by the experts in linguistics and psychology (see paragraph 52 above). That fact could explain why when finding the applicant guilty the trial court appeared to have only retained the elements pertaining to national security and the forcible change of the constitutional regime (see paragraph 53 above).

104. When characterising the charge the trial court placed a clear emphasis on the applicant's political stance and the danger his actions (the publication of the impugned material) posed to national security and unspecified foundations of the constitutional regime. The Court will proceed on the understanding that the applicant was convicted of public calls to others to engage in activities falling within the scope of two specific "extremist activities" mentioned in the Suppression of Extremism Act: activities aimed at the forcible change of the foundations of the constitutional regime and at the undermining of national security (see paragraph 66 above).

(b) Justification of the interference

105. An "interference" infringes Article 10 of the Convention unless it satisfies the requirements of its paragraph 2. It has to be determined whether the interference was prescribed by law, pursued one or more legitimate aims as defined in that paragraph and was necessary in a democratic society to achieve those aims.

(i) *Prescribed by law*

106. It was not in dispute that the applicant's conviction had had a basis in national law – Article 280 § 2 of the Criminal Code read together with section 1 of the Suppression of Extremism Act – and that those provisions had been accessible.

107. The applicant called into doubt those provisions as applied by the courts in his case, arguing that his conviction for the publication of another person's material from which he had distanced himself had gone beyond what could reasonably have been foreseen.

108. In the present case, the salient issue is whether when publishing the impugned article in the newspaper of which he was the editor, the applicant knew or ought to have known – if need be, with appropriate legal advice – that that course of action could render him liable under Article 280 § 2 of the Criminal Code for a “public call” to others to engage in certain types of “extremist activities” listed in section 1 of the Suppression of Extremism Act.

109. In the area under consideration it may be difficult to frame laws with absolute precision, and a certain degree of flexibility may be called for to enable the national courts to assess whether a particular action can be considered as capable of amounting to a “public call” for extremist activities, in particular, against the “foundations of the constitutional regime” (see *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 39, ECHR 1999-IV; *Öztürk v. Turkey* [GC], no. 22479/93, § 55, ECHR 1999-VI; and *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 39, ECHR 2005-I). The Court has consistently held that in any system of law, including criminal law, however clearly drafted a legal provision may be, there will inevitably be a need for interpretation by the courts, whose judicial function is precisely to elucidate obscure points and dispel any doubts which may remain regarding the interpretation of legislation (see, for instance, *Öztürk*, cited above, § 55, and, *mutatis mutandis*, *Jorgic v. Germany*, no. 74613/01, § 101, ECHR 2007-III).

110. As regards the Russian anti-extremism legislation, the Court stressed that criminal-law provisions directed against expressions that stir up, promote or justify violence, hatred or intolerance must clearly and precisely define the scope of the relevant offences, and that those provisions must be strictly construed in order to avoid a situation where the State's discretion to prosecute for such offences becomes too broad and potentially subject to abuse through selective enforcement (see *Savva Terentyev v. Russia*, no. 10692/09, § 85, 28 August 2018).

111. In so far as the applicant complained that the domestic courts had incorrectly applied Article 280 of the Criminal Code, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. This question relates rather to the

relevance and sufficiency of the reasons given by them to justify his conviction, and should be addressed in the assessment of whether the interference with the applicant's right to freedom of expression was "necessary in a democratic society".

112. In view of the Court's findings as to whether the criminal conviction was necessary in a democratic society to achieve certain legitimate aims (see paragraphs 120-147 below), the Court does not need to determine whether the interference was prescribed by law within the meaning of Article 10 § 2 of the Convention.

(ii) *Pursuing a legitimate aim*

113. It is with reference to the Government's submissions and, foremost, to the related domestic findings on the "necessity" of the interference in a democratic society in pursuance of a legitimate aim or, at least, the rationale for the underlying legislative framework that the Court would take a stance on the relevant legitimate aim(s) (see *Kilin*, cited above, § 61). When referring to a legitimate aim the Government must demonstrate that in acting to penalise an applicant, the domestic courts had that legitimate aim in mind (*ibid.* and *Perinçek*, § 152).

114. The Government made no specific argument as to the legitimate aim listed in Article 10 § 2 of the Convention being pursued by convicting the applicant as charged under Article 280 § 2 of the Criminal Code. They only relied on the findings made by the national authorities in relation to the type of "extremist activities" D.'s text had called for.

115. The Court reiterates already at this juncture that it is apparent from its case-law that where the views expressed, for instance on political issues, do not comprise incitement to violence – in other words unless they advocate recourse to violent actions or bloody revenge, justify the commission of terrorist offences in pursuit of their supporters' goals or can be interpreted as likely to encourage violence by expressing deep-seated and irrational hatred towards identified persons – Contracting States must not restrict, on the basis of the aims set out in Article 10 § 2 concerning the protection of territorial integrity and national security and the prevention of disorder or crime, the public's right to be informed of those views (see *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, § 56, 6 July 2010, and *Mehdi Tanrıkulu v. Turkey*, no. 9735/12, § 26, 5 May 2020, referring to *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 60, 8 July 1999, all concerning criminal convictions relating to the activities of media outlets).

116. Noting the content of the impugned material, the criminal courts' reasoning and the absence of any elaboration by the Government, the Court is not convinced that the applicant's conviction was in pursuance of "the interests of territorial integrity" (see *Saygılı and Karataş v. Turkey*, no. 6875/05, § 33, 16 January 2018).

117. The concept of “national security” should be applied with restraint and interpreted restrictively (*ibid.*). Noting the trial court’s references to national security, the Court considers that the applicant’s conviction, at least *prima facie*, was in pursuance of the interests of national security.

118. As to the call for the forcible change of the foundations of the constitutional regime, the Court recognises that the protection of minority rights and inter-ethnic harmony can be deemed, especially in a multi-ethnic society, to constitute part of the constitutional foundations of the State as well as national security. However, the Court notes that the domestic courts did not specify which of the constitutional foundations (see paragraph 62 above) had been at stake and had been put at a risk of the “forcible” change. A question arises as to what legitimate aim in the meaning of Article 10 of the Convention was thus being concerned.

119. Since it is not clear that the criminal charge and the trial judgment, as they were worded, pursued the aim of the protection of the “rights of others”, specifically the dignity of people of Jewish or Russian ethnicity (see paragraph 104 above; compare *Atamanchuk v. Russia*, no. 4493/11, § 42, 11 February 2020), in so far as the applicant appeared to be convicted for calls to violent action *vis-à-vis* the political regime, in the present case the Court will take into account public-safety considerations and prevention of disorder and crime (compare *National Turkish Union Kungyun v. Bulgaria*, no. 4776/08, § 40, 8 June 2017, and *Ayoub and Others v. France*, nos. 77400/14 and 2 others, § 105, 8 October 2020).

(iii) *Necessary in a democratic society*

120. The Court’s remaining task is to determine whether the applicant’s conviction was “necessary in a democratic society” in the interests of national security, public safety and prevention of disorder and crime.

(α) General principles

121. The general principles concerning freedom of the press are well-established in the Court’s case-law (see *Bédar v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 165, 8 November 2016; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 124-27 and 186, 27 June 2017; see also *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 77, ECHR 2004-XI, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 142, ECHR 2015 (extracts)).

122. The Court notes at this juncture that the applicant was prosecuted with reference to the so-called “anti-extremism” legislation relating to the fight against hate speech, terrorism and separatism.

123. In this connection the Court refers to the principles established in cases concerning political ideas which challenge the existing order and the current principles and structures of a given State, with or without calls to violence (see *Socialist Party and Others v. Turkey*, 25 May 1998, § 47, *Reports of Judgments and Decisions* 1998-III; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 97, ECHR 2001-IX; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 79, 19 January 2006; *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, §§ 70 and 74-75, ECHR 2012 (extracts); *Dmitriyevskiy v. Russia*, no. 42168/06, § 96, 3 October 2017; and *Stomakhin v. Russia*, no. 52273/07, §§ 85, 86 and 92, 9 May 2018). In particular, the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician (see *Incal v. Turkey*, 9 June 1998, § 54, *Reports of Judgments and Decisions* 1998-IV, and *Yalçiner v. Turkey*, no. 64116/00, § 43, 21 February 2008).

124. The Court has also previously stated that when exercising their right to freedom of expression by way of providing an outlet and thereby assisting others in the dissemination of their statements editors-in-chief, media owners and publishers are subject to the “duties and responsibilities” under Article 10 § 2, and that their legal liability can be compatible with that Article where those statements were found to incite violence and to stir up hatred, even where they did not personally associate themselves with them (see, among others, *Gürbüz and Bayar v. Turkey*, no. 8860/13, §§ 43-44, 23 July 2019; compare with *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298, in which the Court found a violation of Article 10 on account of the applicant’s criminal conviction for aiding and abetting the dissemination of an interview containing racist statements). The Court has previously taken into account – mostly, in “hate speech” cases – the intention of or the purpose being pursued by the applicant, in particular where that consideration had formed part of the criminal courts’ reasoning (see *Kilin*, cited above, § 72 and cases cited therein). For example, the fact that a person participating in the dissemination of another person’s statements acted without intention to incite hatred or violence or, *a fortiori*, that the purpose of disseminating such statements was to denounce or expose, for instance, racist or intolerant views (see *Jersild*, cited above, §§ 32-33) has been treated by the Court as a relevant factor for assessing whether the criminal conviction was convincingly shown to have been “necessary in a democratic society” under Article 10 of the Convention.

(β) Application of the principles to the present case

125. The material for which the applicant was convicted gave rise to two other types of measures on the part of the State, namely an anti-extremism caution and the classification as “extremist material” and its ban for any

further dissemination (see paragraphs 27, 34 and 35 above). The present complaint before the Court concerns the applicant's criminal conviction.

– *Justification of the criminal conviction*

126. The criminal conduct imputed to the applicant consisted of his actions taken as a newspaper editor, specifically by way of adding a headline "Death to Russia!" to D.'s text and of publishing that material as a newspaper article. It is unclear whether the applicant's addition of the question-and-answer section was held against him in the criminal proceedings (see paragraph 22 above).

127. The Russian court considered that those actions on the part of the applicant amounted to public calls to other people to engage in "extremist activities" as defined in section 1 of the Suppression of Extremism Act. The focus of Article 280 of the Criminal Code was on calls to carry out extremist activities being intentional. Those calls were assessed with reference to the "aim" being pursued by an individual communicating, that is the aim of inciting others to commit extremist activities (see also *Kilin*, cited above, § 75).

128. It is not the Court's task to rule under Article 10 of the Convention on the constituent elements of the offence of which the applicant was convicted under Russian law. It must, however, ascertain whether that conviction answered a "pressing social need" and was "necessary in a democratic society" for the legitimate aims mentioned in paragraph 120 above. It is essentially with reference to the scope of what was held against the applicant and the reasoning given by the domestic courts that the Court will do that.

129. The Court cannot but note that D.'s text contained statements relating to a specific group of people and that those statements were antisemitic. The impugned part of D.'s text may be characterised as a racist rant, with no factual basis whatsoever for the sweeping statements and allegations made in it. However, having carefully examined the trial judgment (see paragraphs 53-57 above), the Court is doubtful that the element of racist discourse formed to any significant extent the basis for justifying the criminal conviction in the present case (see also paragraphs 104 and 119 above). The court decisions contain no specific reasoning on that element, including as regards the relevant principles under Article 10 of the Convention (see *Kilin*, cited above, § 71, and *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, § 91, 11 May 2021; see also paragraphs 74 and 75 above).

130. What was held against the applicant was his alleged incitement to activities aimed at the forcible change of the foundations of the constitutional regime and at the undermining of national security (see paragraph 104 above). The Court has to determine whether the applicant's criminal conviction on that basis was convincingly justified in the interests

of national security and public safety and for the prevention of disorder or crime (see paragraphs 117-119 above).

131. The Court notes that the problematic part of D.’s text called for the “destruction” of the current political regime in Russia. The text left little doubt as to its meaning when it clearly stated that the path of reforms had proved to be ineffective and that the only solution would consist in the total destruction of that “State” through its replacement by another State rather than a “change of regime”.

132. As regards the applicant’s choice to publish that text, the Court reiterates that to assess the weight of one’s interest in the exercise of his or her right to freedom of expression, the Court must first examine the nature of his or her statements (see *Perinçek*, cited above, § 229). The relevant question is whether the statements belonged to a type of expression entitled to heightened or reduced protection under Article 10 of the Convention, which is ultimately for the Court to decide, while having regard to the findings of the domestic courts in this regard (see, for instance, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 174; *Bédat*, cited above, § 66; and *Herbai v. Hungary*, no. 11608/15, §§ 43-44, 5 November 2019). Expression on matters of public interest is in principle entitled to stronger protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection (see *Perinçek*, § 230).

133. The applicant put forward a number of arguments relating to the legitimate exercise of his right to freedom of expression, as part of his line of defence against the charge of intentional public calls to extremist activities (see paragraphs 61 and 86-92 above; compare *Kilin*, cited above, § 80). In that context, with due regard to the presumption of innocence it was incumbent on the criminal courts to adduce convincing reasons to discard those arguments (see *Süreş v. Turkey (no. 1)* [GC], no. 26682/95, § 63, ECHR 1999-IV).

134. The domestic courts considered that the applicant’s editorial choices, including the wording and addition of the headline “Death to Russia!”, had been guided by his negative attitude towards the existing social and political regime in Russia. While the applicant did not deny that, it was incumbent on the criminal courts to elaborate on that general assertion *vis-à-vis* the specific criminal charge of incitement to extremist activities, in particular as regards the applicant’s motivation for disseminating D.’s views (concerning Chechens, Jews or the political regime, for instance) and for doing so in the manner he did.

135. The courts did not delve into elements of the immediate or wider context, for instance, whether when publishing D.’s text the applicant expressed any endorsement, approval or support *vis-à-vis* the content. It is noted that the publication of D.’s text “On [the] mother” was part of the debate between D. and G. That debate had arisen from and had been

prompted by the applicant's earlier decisions to publish D.'s first text and then G.'s reaction to it (see paragraphs 18-19 above). Furthermore, while it is conceivable that the same reader did not necessarily read both the impugned material in June 2006 and then the applicant's statement in a subsequent issue in August 2006, it remains the fact that that statement should have been a relevant element of the context relating to the criminal courts' assessment of the applicant's intention for inciting others (the readership) to engage in certain "extremist activities".

136. In the Court's view, in so far as Article 10 of the Convention is concerned, even accepting that it was established that the applicant disagreed with certain State policies, that factor alone would not necessarily be sufficient to prove his intention to incite others to engage in activities aiming at a violent overthrow of the government or at otherwise undermining national security. The applicant's choice to add the headline "Death to Russia!" would not necessarily be conclusive in that connection either. While that headline could shock or disturb certain readers, it was obvious that it reproduced verbatim the concluding remark from D.'s text. The Court has consistently held that it is not for it, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (see *Jersild*, cited above, § 31, and *Stoll v. Switzerland* [GC], no. 69698/01, § 146, ECHR 2007-V). It was not convincingly established that the applicant intended to incite violence. Nor did the courts assess the applicant's argument that he intended to (further) expose and discredit views held by D. by way of publishing verbatim a provocative and controversial text as well as by way of adding another text concerning D.'s stance relating to the situation in the Chechen Republic.

137. In so far as the element of exposing certain views, even controversial or harmful ones, is concerned (compare *Jersild*, §§ 33-35; *RID Novaya Gazeta and ZAO Novaya Gazeta*, §§ 92-98, both cited above; and *Şık v. Turkey (no. 2)*, no. 36493/17, § 133, 24 November 2020), the criminal courts did not convincingly establish that the principal purpose of the applicant's editorial choices had not been to thereby contribute to a discussion on a matter of general interest, or that the manner in which he had discharged the relevant duties and responsibilities had not been in compliance with the standards of responsible journalism.

138. The Court stresses that its findings in the preceding paragraphs should not be taken as an approval of the language used in D.'s text or views put forward in it. The Court's findings in the present case are limited to stating that in their decisions the criminal courts did not sufficiently justify the conviction in the circumstances of the present case (see paragraph 129 above). Indeed, it appears that in reaching their decisions in relation to the publication of that specific text the domestic courts were motivated, in a rather excessive and unsubstantiated manner, by the

applicant's prior critical views on the national political system (see also paragraphs 104 and 134 above; compare *M'Bala M'Bala v. France* (dec.), no. 25239/13, §§ 37 and 39, ECHR 2015 (extracts), and *Kilin*, cited above, §§ 73, 81, 89 and 90).

139. The Court is mindful of its fundamentally subsidiary role in the mechanism established by the Convention, according to which the Contracting Parties have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, 15 November 2016). It also notes, however, that the principle of subsidiarity imposes a shared responsibility between the States Parties and the Court, and that national authorities and courts must interpret and apply the domestic law in a manner that gives full effect to the Convention (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 250, 1 December 2020). It therefore follows that while it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, it falls ultimately on the Court to determine whether the way in which that law is interpreted and applied produces consequences that are compatible with the Convention (*ibid.*).

140. In the present case the Court is not satisfied that the domestic courts provided sufficient reasons to justify the conviction under Article 280 of the Criminal Code (see, by contrast, *Kilin*, cited above, §§ 90 and 93).

– *Justification of the sentences*

141. The Court also finds it necessary to examine whether the sentences imposed on the applicant were in compliance with Article 10 of the Convention, specifically whether they were proportionate to the legitimate aims being pursued (see paragraph 120 above).

142. The applicant was sentenced to two years' imprisonment with the sentence suspended and a two-year ban on holding leadership positions in a mass-media outlet.

143. A criminal conviction is a serious "penalty" within the meaning of Article 10 § 2 of the Convention and one of the most serious forms of interference with the right to freedom of expression (see *Perinçek*, cited above, § 273). The nature and severity of the sentence imposed on an applicant is also taken into account when assessing the proportionality of the interference (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI, in the context of defamation). Although sentencing is in principle a matter for the national courts, the imposition of a custodial sentence for a press offence will be compatible with the freedom of the press under Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (*ibid.*, § 115, and *Atamanchuk*, cited above, § 67).

144. Measures of prior restraint on the activities of journalists, including penalties consisting in a ban on the future exercise of their activities falling within the scope of Article 10 § 1, also call for the most careful scrutiny and are only justified in exceptional circumstances (see *Cumpănă and Mazăre*, cited above, § 118). In *Stomakhin* (cited above, §§ 128-29) the Court left open the question whether a ban on the exercise of journalistic activities, as such, was compatible with Article 10 of the Convention. In the Court's view, a deprivation of liberty coupled with a ban on practising journalism, particularly for a long period, for speech, even if criminal, had to be regarded as an extremely harsh measure requiring very convincing reasons with due regard to the particular circumstances of the case (*ibid.*). In that case, the domestic courts had limited their justification of the penalties with reference to the applicant's "personality" and the "social danger" posed by his offence. Whilst those considerations could be relevant, they were not regarded as sufficient to justify the exceptional severity of the penalties imposed on that applicant. In *Atamanchuk* (cited above, §§ 70-72) the Court considered that that case disclosed exceptional circumstances justifying a two-year ban imposed on that applicant in addition to a fine for the publication of his own statements.

145. Even assuming there was a pressing social need for interfering – by way of criminal prosecution – with the applicant's right in order to protect certain interests under Article 10 § 2 of the Convention (see paragraph 120 above), it was not convincingly shown that the sentences were proportionate in the circumstances of the case concerning a single instance of publishing another person's controversial views (compare *Féret v. Belgium*, no. 15615/07, § 80, 16 July 2009).

– *Conclusion*

146. The Court concludes that the applicant's conviction and sentences were not convincingly shown to have been "necessary in a democratic society".

147. There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 10 OF THE CONVENTION ON ACCOUNT OF THE CLASSIFICATION OF THE MATERIAL "YOU VOTED, YOU HAVE THE RIGHT TO JUDGE" AS EXTREMIST MATERIAL AND THE TERMINATION OF THE NEWSPAPER'S MEDIA-OUTLET STATUS

148. Referring to Article 10 of the Convention, the applicant complained about the classification of the piece "You voted, you have the right to judge" as extremist material, and the termination of the newspaper's mass-media status.

149. The text of Article 10 of the Convention is quoted above.

A. Admissibility

1. The parties' submissions

(a) The Government

150. The Government argued that the applicant had no standing to lodge a complaint before the Court under Article 10 of the Convention in respect of the judicial termination of *Duel*'s mass-media-outlet status. The relevant court order had been issued in respect of "the CIJ – Editorial Board of the newspaper *Duel*", a not-for-profit partnership. The latter had been represented by the applicant and the newspaper's founder, Mr S. Similarly, the judicial classification of the text "You voted, you have the right to judge" was related to the newspaper and not to the applicant as a private person. The applicant was not the only "member" of *Duel*; the domestic judgments indicated S. as the newspaper's founder. The present complaint was lodged by the applicant in his personal capacity and not on behalf of the newspaper.

151. The Government's submissions with reference to Article 17 of the Convention (see paragraph 79 above) could be understood as being relevant to this part of the application.

(b) The applicant

152. The applicant argued that he had standing to complain before the Court about the termination of the newspaper's mass-media status. He had been at the origin of the referendum initiative's having "You voted, you have the right to judge" as its manifesto. The newspaper had been created specifically to promote such a referendum; it had published the related text 300 times between 1997 and 2008. The newspaper had been the vehicle through which the volunteers for gathering signatures for the referendum initiative had been sought. The repeated publication of that material in April 2006 and a related official caution issued by the media regulator had served as a legal basis for then revoking the newspaper's media status. The applicant had acted in the related judicial proceedings as its editor-in-chief and had had a direct personal interest in the subject matter, in particular because he had been accused of being the author and promoter of the piece on the basis of which the ban had been sought. Furthermore, the ban on the newspaper's being distributed had directly affected the applicant's freedom to impart and receive information as editor-in-chief. Moreover, the newspaper and the editorial board's (editor-in-chief's) functions had been annulled and ceased to exist in May 2009 (see paragraph 70 above). It had thus been impossible for the newspaper to lodge a complaint before the Court through its organs (or rather its editorial board or editor-in-chief). The

original founder, Mr S., had not been employed by the newspaper, had no longer been involved in its publication and had not objected to the lodging of the present application before the Court. There had been no risk of competing claims as *Duel* had employed no journalists besides the applicant.

153. The applicant contested the application of Article 17 in the present case.

2. *The Court's assessment*

(a) **Classification of the piece “You voted, you have a right to judge” as extremist material**

154. The Court reiterates that, even where no plea of inadmissibility concerning compliance with the six-month rule was made by the Government in their observations, it is not open to it to set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 138, 20 March 2018). The Court notes that the relevant proceedings ended on 20 March 2009. It has not been substantiated that any appeal was lodged against the judgment of 20 March 2009. The related complaint was first raised before the Court on 17 November 2009 in a cursory manner and then reiterated in the application form dispatched in March 2010.

155. Accordingly, this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) **Termination of the newspaper's media-outlet status**

(i) *Article 17 of the Convention*

156. The Court's findings in paragraphs 83 and 84 above are applicable to the present complaint too. The Court has insufficient material to consider that the operation of the media outlet sought to deflect Article 10 of the Convention from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention. The Court decides that Article 17 should not be applied in the present case. The objection is therefore dismissed.

(ii) *The applicant's standing under Article 10 of the Convention*

157. The Court has interpreted the concept of “victim” under Article 34 of the Convention autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act, even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 52,

ECHR 2012 and cases cited therein). Article 34 concerns not just direct victim or victims of an alleged violation, but also any indirect victim to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts) and cases cited therein; compare *Margulev v. Russia*, no. 15449/09, §§ 36-38, 8 October 2019).

158. The subject-matter of the relevant proceedings concerned the specific legal status that the newspaper had acquired in 1995 through its official registration as a media outlet. Under Russian law as editor-in-chief (and a *de facto* sole member of the editorial board under a contract between its founder, Mr S., and himself in his capacity as the board's director) the applicant played the decisive role in the operation of the outlet and was directly affected by the outcome of the proceedings resulting in the termination of the newspaper's media-outlet status. The legal effect of the courts' decisions consisted in divesting the newspaper of its media-outlet status and in annulling the document certifying its registration. That legal effect became enforceable in May 2009. The applicant was the last editor-in-chief and had also held that post when the material giving rise to the termination of the newspaper's distribution had been published on account of his editorial choices.

159. It is also noted that after the appeal decision in May 2009 the newspaper ceased to exist under Russian law in that it no longer had any official organ such as an editorial board or an editor-in-chief (see paragraph 70 above). The original founder, Mr S., was no longer involved in its publication or the domestic proceedings; he did not object to the lodging of an application before the Court. There was no risk of other competing claims as the newspaper, besides the applicant, employed no journalists.

160. Having examined the parties' submissions and the applicable legislation and judicial practice (see paragraph 71 above), the Court is satisfied that the applicant has standing to raise before the Court a complaint under Article 10 of the Convention in relation to the termination of the media-outlet status (see, *mutatis mutandis*, *Gözel and Özer*, cited above, § 41; see also, *mutatis mutandis*, *Halis Doğan and Others v. Turkey*, no. 50693/99, § 16, 10 January 2006, and *Ürper and Others v. Turkey*, nos. 14526/07 and 8 others, § 18, 20 October 2009 concerning a temporary suspension of a newspaper's distribution).

161. The Court also notes that this complaint is neither manifestly ill-founded nor inadmissible on the other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

162. The applicant argued that the termination of the newspaper's distribution had been disproportionate, in particular in that the State had not exhausted less intrusive measures (such as seizure of the relevant edition(s) of the newspaper) before banning it from being distributed altogether.

163. The Government argued that several official cautions had been issued to the newspaper in relation to it publishing extremist material. The ban on distributing *Duel* had been based on those official cautions and on further facts disclosing extremist activity within the newspaper. The mass-media outlet had not complied with its "duties and responsibilities" under Article 10 of the Convention, specifically by failing to respect the anti-extremism legislation. The ban on the newspaper's being distributed had been issued only after less intrusive (preventive) measures, such as the official-caution procedure, had been exhausted. Despite the numerous official cautions, the newspaper had continued to publish the same or other extremist material. The ban had also been justified on account of the nature and content of the articles, which had been part of a campaign for violent change of the constitutional regime or a public justification of terrorism. The ban on the distribution of the newspaper had been aimed at maintaining the order, ensuring national security and territorial integrity, and preventing disorder and crime that might occur if it continued to be available.

2. *The Court's assessment*

164. The Court considers that there has been an "interference" under Article 10 § 1 of the Convention in the present case (see also paragraphs 157-160 above). That "interference" infringes Article 10 unless it satisfies the requirements of its paragraph 2. It has to be determined whether the interference was prescribed by law, pursued one or more legitimate aims as defined in that paragraph and was necessary in a democratic society to achieve those aims.

(a) **Prescribed by law**

165. The Court reiterates that the phrase "prescribed by law" implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts)).

166. For domestic law to meet those requirements it must afford a measure of legal protection against arbitrary interference by public authorities with the rights safeguarded by the Convention. In matters

affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the “law” must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 82, 14 September 2010, and *Ivashchenko v. Russia*, no. 61064/10, § 73, 13 February 2018, and the cases cited therein).

167. The Court notes that the termination of the newspaper’s media-outlet status had a legal basis in sections 8 and 11 of the Suppression of Extremism Act and sections 4 and 16 of the Mass Media Act (see paragraphs 39 and 67-70 above). Thus the interference had a basis in domestic law, and it was accessible.

168. As to the criteria applied by the courts, this question relates rather to the relevance and sufficiency of the reasons given by them to justify the interference, and should be addressed in the assessment of whether it was “necessary in a democratic society”. In view of the related findings below, the Court does not need to determine whether the interference was “prescribed by law” within the meaning of Article 10 § 2 of the Convention.

(b) Pursuing a legitimate aim

169. The Court considers that the ban on the distribution of the newspaper was aimed, at least on the face of it, at ensuring national security and preventing (future) disorder and crime.

(c) Necessary in a democratic society

170. The relevant principles have been summarised in paragraphs 121-124 above.

171. The legal effect of the courts’ decisions in the present case was the divestment of the newspaper’s mass-media status, originally conferred in 1995, and the annulment of the certificate of its registration as a mass-media outlet. The courts put an end to its operation as a mass-media outlet and incidentally (by implication) to the applicant’s participation, as an editor-in-chief, in the newspaper’s exercise of freedom of expression, specifically freedom of the press.

172. Termination of the newspaper’s media-outlet status amounted to a complete and permanent ban on the distribution of the newspaper in Russia (compare *Ürper and Others*, cited above, § 42). The Court considers that that particularly drastic measure calls for the most careful scrutiny and may only be justified in exceptional circumstances (*ibid.*, § 36; see, *mutatis mutandis*, *Cumpănă and Mazăre*, cited above, § 118).

173. The Court observes that the termination of the distribution of the newspaper was ordered by a court. The judicial character of the system governing that type of interference is a valuable safeguard of freedom of the press (see *Ürper and Others*, cited above, § 40). It remains that decisions given by the national courts must also conform to the principles of Article 10 of the Convention (*ibid.*).

174. The decision to terminate the newspaper's media-outlet status had as its basis the official anti-extremism cautions issued by the media regulator, an administrative authority, on 20 March 2006 in relation to the publication of the text "You voted, you have the right to judge" and was based on a repeated issuance of a caution to the newspaper and its editor (the applicant), specifically on 26 April 2006 in relation to the same text (see paragraphs 11-16 and 37 above). The caution of 24 April 2007 in relation to the "Death to Russia!" piece (see paragraphs 11-16 and 27 above) as well as other official cautions issued between August 2007 and June 2008 in relation to some other articles published in the newspaper between July 2007 and March 2008 (see paragraph 37 above) were also adduced, as additional evidence, by the media regulator and were mentioned by the first-instance court (see paragraph 39 above). The Court does not discern from the court decisions what those further official cautions issued between August 2007 and June 2008 were about. In any event, as the appeal court confirmed, only the cautions of 20 March and 26 April 2006 had a legal bearing on the decision to terminate the newspaper's distribution (see paragraph 42 above).

175. Section 8 of the Suppression of Extremism Act provided that where a mass-media outlet disseminated "extremist material" or where established facts provided indications that the outlet had engaged in "extremist activities", the competent authority could issue the outlet's founder or editorial board (editor-in-chief) with a written official caution concerning the unacceptability of such actions or activities. Where within twelve months of the caution new facts were established disclosing indications of extremism on the part of the outlet, the competent authority could seek a judicial order to terminate the operation of the media outlet.

176. As compared to that termination, the issuance of a caution and then another one within a year, amounted to less intrusive measures, which, indeed, had been implemented in the present case. However, it has not been argued that the operation of the media outlet could be or was, then, suspended under Russian law on a temporary basis. It appears that the media regulator could directly seek the complete and permanent termination of a media outlet's distribution.

177. Furthermore, termination of a media outlet's status could be sought and ordered any time after issuing the cautions (see paragraph 42 above). In the Court's view, the lack of any ascertainable time-limit was conducive to

creating and maintaining an adverse chilling effect on a media outlet's legitimate exercise of its right to freedom of expression.

178. The parties have taken no clear stance as to the scope of judicial assessment in the termination case. The Court observes that the Suppression of Extremism Act and the Mass Media Act contained different wordings regarding the powers afforded to a court in such circumstances (see paragraphs 67-70 above). Section 8 of the Suppression of Extremism Act provided that the outlet's activity "had to be" terminated. Section 11 provided that the operation of the outlet "could be" terminated. The wording of section 16 of the Mass Media Act seemed to be closer to that in section 11 of the Suppression of Extremism Act. Be that as it may, it is clear from the court decisions in the present case that the essential factual and legal elements were limited to the formal fact of the issuance, within a year, of two cautions and their validity at the time when an application for terminating a media outlet's distribution was lodged.

179. In so far as the caution procedure laid foundation for the termination of the media's circulation, the domestic legislation and practice relating to the caution procedure are of relevance for the present complaint. The Court previously considered that they had not been foreseeable as to their effects and had not provided adequate protection against arbitrary recourse to the warning and caution procedures; the scope of the judicial-review procedure at the material time had not been in compliance with Article 10 of the Convention (see *Karastelev and Others v. Russia*, no. 16435/10, §§ 78-107, 6 October 2020, and *RID Novaya Gazeta and ZAO Novaya Gazeta*, cited above, §§ 99-100 and 110-12). In the present case by the time a court ordered in November 2008 the termination of the distribution of the newspaper, the cautions issued on 20 March and 26 April 2006 had been subject to a final court decision in separate judicial-review proceedings under Chapter 25 of the Code of Civil Procedure (see paragraphs 11-16 above). The Court declared the related complaint inadmissible at the previous stage of the proceedings.

180. Be that as it may, the Court considers that even if there were exceptional circumstances justifying the termination of the newspaper's media-outlet status (see paragraph 172 above), that particularly drastic measure had to be justified on its own, that is separately and distinctly from the justification underlying the anti-extremism cautions, and by reference to the criteria established and applied by the Court under Article 10 of the Convention (compare *Kablis v. Russia*, nos. 48310/16 and 59663/17, § 94, 30 April 2019, and *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, § 38, 23 June 2020).

181. No such exceptional circumstances were established, and no such justification was put forward by the national courts in the present case. The distribution of the newspaper was terminated without any judicial assessment of the underlying factual and legal elements pertaining to

whether there was a “pressing social need” for ending its distribution and whether it was “necessary in a democratic society” in pursuance of certain legitimate aims, for instance, the interests of national security or prevention of disorder or crime (compare *Kommersant Moldovy v. Moldova*, no. 41827/02, §§ 36-38, 9 January 2007).

182. It has not been contested that the text, which gave rise to the termination of the newspaper’s distribution, had been published on numerous occasions over many years prior to 2006 without giving rise to application of the Suppression of Extremism Act or any concerns relating to the interests of national security and prevention of disorder or crime (see paragraph 8 above). The court decisions in the termination case provided no insight into any change of circumstances that might have occurred in 2006.

183. The Government seemed to suggest that the newspaper had been used as the mouthpiece for an organisation, pursuing the ends contrary to the values of the Convention. However, no relevant factual or legal findings had been made by the courts in the termination case.

(d) Conclusion

184. Faced with the domestic courts’ omission – by the operation of the law or on the facts of the case – to provide sufficient reasons to justify the interference (see also paragraph 71 above) the Court finds that they did not convincingly demonstrate that the interference was proportionate to the legitimate aims they sought to achieve.

185. The narrow scope of the judicial assessment made the termination of media-outlet status an automatic outcome resulting from the mere existence of at least two official cautions. In the Court’s view, the operation of that regulation under Russian law disproportionately affected the freedom of the press and, incidentally, the applicant’s participation in the exercise of that freedom.

186. There has therefore been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

187. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

188. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

189. The Government contested that claim as excessive.

190. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

191. The applicant claimed 46,012 Swiss francs and EUR 22,730 for his representation before the Court by Mr Eckstein and Ms Visentin respectively under conditional-fee agreements.

192. The Government argued that the applicant had submitted no proof of payment and that conditional-fee agreements were not enforceable in Russia.

193. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 233, 10 September 2019).

194. A representative's fees are "actually incurred" if the applicant has paid them or is liable to pay them. Accordingly, the fees of a representative who has acted free of charge are not actually incurred. The opposite is the case with respect to the fees of a representative before the Court who, without waiving them, has simply taken no steps to pursue their payment or has deferred it. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017 and the cases cited therein).

195. Contingency (no-win no-fee) agreements – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred but also to whether they have been reasonably incurred (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI). Accordingly, as a basis for its assessment the Court must examine the other information provided by the applicant in support of the claim (see, as a recent authority, *Strand Lobben and Others*, cited above, § 234; see also *Allanazarova v. Russia*, no. 46721/15, § 123, 14 February 2017).

196. Having regard to the above criteria and in so far as the claim is related to the findings of violation in the present case, the Court awards EUR 6,000 plus any tax that may be chargeable to the applicant.

C. Default interest

197. 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. *Dismisses* the objection under Article 17 of the Convention;
2. *Declares* the complaints concerning the applicant's criminal conviction and the termination of the newspaper's media-outlet status admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 10 of the Convention on account of the applicant's criminal conviction;
4. *Holds* that there has been a violation of Article 10 of the Convention on account of the termination of the newspaper's media-outlet status;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
6. *Dismisses* the remainder of the applicant's 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.

Milan Blaško
Registrar

Georges Ravarani
President