



TV coverage during 2003 parliamentary elections provided Russian opposition sufficient public visibility

In today's Chamber judgment in the case of **Communist Party of Russia and Others v. Russia** (application no. 29400/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights; and,

no violation of Article 3 of Protocol No 1 (right to free elections) to the Convention.

The case concerned the complaints by Russian political opposition parties and politicians that the 2003 parliamentary elections had not been free as a result of unequal media coverage of the electoral campaign by the five major TV companies.

The Court found that laws and procedures existing at the relevant time guaranteed the opposition minimum access to TV as well as well as provided for the neutrality of the State-controlled media. While equality in TV coverage had not in reality been achieved during the 2003 elections, that had not been sufficient to find that the elections were not "free" within the meaning of the Convention.

A Factsheet on the Right to Free Elections, which comprises selected Court's case-law and pending cases, can be found on this [link](#).

Principal facts

The applicants are two political parties registered in Russia, namely the "Communist Party of Russia" and the Russian democratic party "Yabloko", and six Russian nationals, Sergey Ivanenko, Yevgeniy Kiselyev, Dmitriy Muratov, Vladimir Ryzhkov, Vadim Solovyev and Irina Khakamada. The applicants participated in the December 2003 Parliamentary elections as candidates; the individual applicants also participated as voters. All of them were in opposition to the government. The pro-government forces during those elections were represented essentially by the "United Russia" party.

All major television companies in Russia covered the elections in question. Among them were the five main nationwide broadcasting companies, three of which were directly controlled by the State. The remaining two TV channels were affiliated with the State indirectly.

During the electoral campaign all candidate parties received the same amount of free air-time on national and regional TV, namely seven and a half hours for electoral

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

campaigning (direct political advertisement). The time schedule for distribution of free air-time was allocated following the drawing of lots. All political parties used the free air-time provided to them by the broadcasting companies.

In addition, all parties could buy some air-time for political campaigning. The "Communist Party" did not use that opportunity, while "Yabloko" bought time from "Channel One" to show two video clips each lasting one minute.

Besides direct political advertisement, TV companies provided media coverage of both the elections as well as its candidates. The applicants claimed that media coverage of the December 2003 electoral campaign was unfair to opposition parties and candidates and that the TV channels effectively campaigned for the ruling party under the pretext of media coverage. The applicants submitted in particular that while United Russia had 642 minutes of coverage during that campaign, the "Communist Party" had 316 minutes and "Yabloko" 197 minutes. The applicants also argued that information broadcast during that campaign had not been neutral, and that the "Communist Party"'s coverage had almost exclusively been negative. They submitted data on media coverage which showed bias of TV companies in favour of "United Russia".

The OSCE (Organisation for Security and Co-operation in Europe) criticised the 2003 parliamentary elections for unequal access of the candidates to the media, and so did a Moscow-based research affiliate of Transparency International (an international non-governmental organisation) in 2004.

The then deputy chairperson of "Yabloko" complained to the Central Electoral Commission (CEC) about unfair media coverage of the 2003 campaign. The CEC chairperson replied in September 2003, acknowledging that several TV broadcasts and press reports contained elements of unlawful electoral campaigning against "Yabloko".

Subsequently, some of the other applicants complained to various public authorities, including CEC, the prosecution service and the CEC Working Group on Information Disputes (Working Group), about the media coverage of the 2003 elections. The Working Group concluded that some of the five major broadcasters had displayed a tendency towards deliberate and systematic neutral or positive coverage of "United Russia" while providing mainly negative coverage of the "Communist Party" activities. In November 2003, CEC wrote to four of the major broadcasters signalling their observations and asking the State broadcasting companies to comply with the relevant legislation as interpreted by the Constitutional Court.

In the December 2003 elections the "United Russia" party obtained a majority of the votes (over 37 %) and formed the biggest group in Parliament (224 seats). The Communist Party obtained 52 seats, thus forming the second biggest group in the Duma. "Yabloko" did not get any seats in Parliament. Mr Ryzhkov was elected as an individual member of Parliament, while Mr Ivanenko and Ms Khakamada were not elected.

In 2004 the applicants complained to the Supreme Court asking it to invalidate the December 2003 parliamentary election results. They produced a large amount of material (reports, transcripts of TV programmes etc.) in support of their claim that TV media coverage had been biased. The Supreme Court, sitting as a first instance court, dismissed their claim in December 2004 finding that no violation of the electoral law capable of undermining the genuine will of voters had occurred. In particular, it observed that it was difficult to distinguish "positive" media coverage, that Russian electoral law did not limit the number of election-related events during campaigns, that in addition to the TV coverage there had been other mass media coverage of the 2003 Parliamentary election, that voters had received information from other sources, and that there was no direct correlation between the amount of TV media coverage and the number of votes a

party would receive. The Supreme Court also recalled the Constitutional Court's finding of October 2003 that media coverage without a special intention to persuade the voters in favour or against a party or a candidate was not electoral campaigning. In all, the Supreme Court examined evidence submitted by the applicants which amounted to 14 days of transcripts of election-related news and TV programmes.

Following the applicants' appeal, the Supreme Court, sitting as a court of appeal, dismissed their claim accepting the reasoning of the first-instance bench.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No 1 to the Convention, as well as on Articles 13, 6 § 1 (right to a fair trial) and 14 (prohibition of discrimination), the applicants complained that the media coverage of the 2003 Parliamentary election had been biased to the detriment of the opposition parties and candidates.

The application was lodged with the European Court of Human Rights on 1 August 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Admissibility

The Court found it necessary to examine at the same time the questions of admissibility of the complaints and their substance.

Right to an effective remedy (Article 13)

The Court accepted that the remedies which existed during the election campaign to complain about the bias of TV companies could have been insufficient. However, the applicants had had the possibility of requesting invalidation of the results after the elections, which they had used. The Supreme Court had had the powers to annul election results; it had examined the applicants' claims and delivered a reasoned judgment. The independence of the Supreme Court had not been questioned, and the Court did not consider that its impartiality was an issue. The fact that the Supreme Court had examined only part of the TV transcripts produced by the applicants ("the sampling method") did not make that remedy ineffective. Furthermore, the Court did not find any procedural flaws before the Supreme Court which would have made them ineffective. It therefore concluded that the proceedings before the Supreme Court had to be considered an effective remedy in accordance with the Convention.

Accordingly, there had been no violation of Article 13.

Right to free election (Article 3 of Protocol No 1)

The Court observed that the right to free elections was a fundamental principle of any effective democracy. It was particularly important in the period preceding an election that opinions and information of all kinds were permitted to circulate freely.

That said, the Court observed that there were many ways of organising and running electoral systems, and Article 3 of Protocol No 1 had not been conceived as a code on electoral matters. Thus, States enjoyed considerable discretion to adopt rules on parliamentary elections in accordance with their specific historical or political factors.

It had been undisputed that the applicable Russian law had guaranteed neutrality of the broadcasting companies making no distinction between pro-governmental and opposition parties. The applicants had claimed, however, that the law had not been complied with in practice. In particular, they argued that the TV coverage had been mostly hostile to opposition parties and candidates, that United Russia had influenced the TV companies so as to obtain favourable reporting, and that biased media coverage on TV had critically affected public opinion and therefore the election had not been free.

The Court first addressed the applicants' claim that the TV companies had been manipulated by the government. It examined the findings of the Supreme Court in that respect and concluded that they had been not been irrational. Thus, the applicants had not presented any direct proof that there had been abuse by the Government of their dominant position in the TV companies concerned. The TV journalists themselves had not complained of undue pressure by the Government or their superiors during the elections. Indeed, formally speaking, the journalists covering elections had been independent and, under Article 10 of the Convention, had had wide discretion to comment on political events. The Court accepted, referring to the Supreme Court's findings, as well as to the opinions of the OSCE and the CEC Working Group, that media coverage had been unfavourable to the opposition. It noted, however, that in the circumstances it was difficult to distinguish between Government-induced propaganda and genuine political journalism or routine reporting on the activities of State officials. The Court also agreed with the Supreme Court that it was very difficult, if not impossible, to determine a causal link between "excessive" political publicity and the number of votes obtained by a party or a candidate. The Court emphasised once again its subsidiary role in assessing primary evidence and concluded that it did not have sufficient reasons to discard the Supreme Court's findings. It concluded that the applicants' allegation of political manipulation was not sufficiently proven.

Furthermore, it concluded that Russia had complied with its obligation to act in order to ensure that elections were free both in procedural as well as in substantive terms. More specifically, the applicants' complaint about unequal media coverage had been examined by an independent judicial body providing procedural guarantees and had resulted in a reasoned judgment. Also, opposition parties had been able to convey their message on TV by using the free and paid airtime provided without distinction to them and to the other political forces. The OSCE reports had confirmed that while the main country-wide State broadcasters had displayed favouritism towards United Russia, voters who sought information had been able to obtain it from other available sources. Finally, the Court recalled that imposing prior restraints on free speech of the journalists had to be avoided, especially in the sphere of political debate. The Court stressed that the Russian legislation proclaimed the principles of neutrality and editorial independence of public media and prohibited journalists from taking part in political campaigning, and the applicants did not produce sufficient evidence that those principles were not complied with in practice.

The Court concluded that Russia had taken measures which guaranteed some visibility of opposition parties on Russian TV and ensured editorial independence and neutrality of

the media. While equality among all political forces during those elections might not have been achieved, the State, in the light of its broad discretion to decide (wide margin of appreciation) on such matters, had not failed to meet its obligation to ensure free elections.

There had therefore been no violation of Article 3 of Protocol No 1.

Other Articles

The Court found that the applicants' other complaints concerning the electoral campaign of 2003 were inadmissible.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.