



## Alleged interference by Russia in UK elections – the UK Government’s response did not violate the right to free elections

In today’s **Chamber** judgment<sup>1</sup> in the case of [Bradshaw and Others v. the United Kingdom](#) (application no. 15653/22) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 3 of Protocol No. 1 (right to free elections)** to the European Convention on Human Rights.

The case concerned the Government’s response to reports of interference by Russia in the United Kingdom’s democratic processes, including the 2019 general election. The applicants complained that, despite the existence of credible allegations that Russia had sought to interfere in the UK’s democratic elections, through, for example, the dissemination of disinformation and the running of influence campaigns, the Government had failed to fulfil its duty (“positive obligation”) to investigate those allegations and had not put in place an effective legal and institutional framework in order to protect against the risk of such interference.

The Court found that, while States should not remain passive when faced with evidence that their democratic processes were under threat, they must be given considerable latitude in their choice of how to counter such threats. In the Court’s view, while there were undoubtedly shortcomings in the UK’s initial response to the reports of Russian election interference, there had been two thorough and independent investigations, and the Government had since taken a number of legislative and operational measures to counter disinformation efforts and protect the democratic integrity of the UK. Any failings were therefore not sufficiently grave as to have impaired the very essence of the applicants’ right under Article 3 of Protocol No. 1 to benefit from elections held “under conditions which ensure the free expression of the opinion of the people.”

A legal summary of this case will be available in the Court’s database HUDOC ([link](#)).

### Principal facts

The applicants, Ben Bradshaw, Caroline Lucas and Alyn Smith, are three British nationals who were born in 1960, 1960 and 1973, respectively, and live in London. They were elected as Members of Parliament in the general election held on 12 December 2019.

In February 2019 the House of Commons Digital, Culture, Media and Sport Committee (DCMS) published a report entitled “Disinformation and ‘fake news’” following its 18-month inquiry into disinformation and how individuals’ political choices might be affected and influenced by online information and interference by malign forces in political elections in the UK. A further report by the statutory Intelligence and Security Committee of Parliament (ISC), drawn up following its 2018 inquiry covering various aspects of the Russian threat to the UK, together with an examination of how the UK Government had responded, was sent to the Prime Minister in October 2019 and published in July 2020.

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](http://www.coe.int/t/dghl/monitoring/execution).

The applicants believed that the DCMS and ISC reports, together with the public response by the Government to the ISC report, provided credible evidence of interference by Russia in the UK's democratic processes, including the 2019 general election, through, for example, the dissemination of disinformation and the running of influence campaigns. They, together with two life peers and a non-profit organisation, sought permission to challenge, by way of judicial review, the then Prime Minister's decision not to direct an independent investigation into Russian election interference.

On 12 April 2021 the applicants' application for permission to apply for judicial review was refused, as the grounds of challenge touched on core State functions and/or the exercise of State sovereignty, and it was not for the courts to decide whether or not an independent investigation was required.

The applicants renewed their application for permission to apply for judicial review, arguing that there was an investigative obligation inherent in Article 3 of Protocol No. 1 to the European Convention. They also alleged that the national legal framework breached that Article because: there was no legal entity with the legal responsibility to prevent and combat foreign interference in elections; there was no legal obligation for online political advertisements to indicate their source, who had paid for them, and their country of origin; there was no legal requirement for social media companies to cooperate with the Security and Intelligence Agencies where it was suspected that a hostile foreign State may be covertly running a campaign; there was no ban on foreign donations to political parties or election campaigns; and there was no obligation on foreign State agents, or others who represented the interests of foreign powers, to register as such in the United Kingdom.

Permission to apply for judicial review was refused by the High Court on 22 June 2021, with the High Court judge stating that Article 3 of Protocol No. 1 did not give rise to such specific obligations and did not prescribe the detailed structure or shape of electoral laws. The judge considered the complaints to be an assertion that there had been a failure to legislate, which fell outside the scope of section 6 of the Human Rights Act 1998.

On 27 September 2021 the Court of Appeal refused the applicants' application for permission to appeal.

## Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 (right to free elections) to the European Convention, the applicants complained that, despite the existence of credible allegations that Russia had sought to interfere in the United Kingdom's democratic elections, the Government had failed to fulfil its duty ("positive obligation") to investigate those allegations and had not put in place an effective legal and institutional framework in order to protect against the risk of such interference.

The application was lodged with the European Court of Human Rights on 22 March 2022.

The European Information Society Institute was granted leave to intervene as a third party.

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

Lado **Chanturia** (Georgia), *President*,  
Jolien **Schukking** (the Netherlands),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Tim **Eicke** (the United Kingdom),  
Lorraine **Schembri Orland** (Malta),  
Anne Louise **Bormann** (Denmark),  
András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

## Decision of the Court

In considering whether Article 3 of Protocol No. 1 was applicable to the facts of the case, the Court noted that Member States were obliged to adopt positive measures to organise elections “under conditions which ensure the free expression of the opinion of the people in the choice of the legislature”. According to its case-law under Article 3 of Protocol No. 1, the scope of this obligation extended beyond the integrity of the result of the election, in the narrow sense, and encompassed the circulation of political opinions and information in the period preceding an election.

In this case it was not disputed that State actors and non-State actors had weaponised disinformation in order to interfere in democratic elections, and that such actions were capable of posing a significant threat to democracy. The Court therefore accepted that if there was a real risk that, as a consequence of interference by a hostile State, the rights of electors within a member State were curtailed to such an extent as to impair the very essence of those rights, and deprive them of their effectiveness, Article 3 of Protocol No. 1 might require that State to adopt positive measures to protect the integrity of its electoral processes, and to keep those measures under review.

While there was nothing in the Court’s case-law to imply the existence, under Article 3 of Protocol No. 1, of a freestanding procedural obligation to investigate arguable claims of a breach of individuals’ rights, a flagrant failure by a State to investigate credible allegations of interference in its elections could raise an issue under that Article if it meant that no measures were taken to protect the electorate’s right to benefit from elections that “ensured the free expression of the opinion of the people.”

The Court then addressed the question of victim status. It found that in principle anyone eligible to stand for election or vote in a member State could be a potential victim of a failure by that State to adopt positive measures to protect the integrity of its electoral processes, provided that there was evidence of interference of sufficient intensity to be capable of impairing the very essence of the right to benefit from elections held “under conditions which ensure the free expression of the opinion of the people”. However, the question of whether or not the interference was in practice capable of impairing the very essence of that right depended not only on the intensity of the interference but also on the measures in place at the national level to minimise the risk of that interference influencing the outcome of an election. This issue was closely bound up with those which the Court would have to consider when examining the applicants’ complaints.

The Court therefore declared the application admissible.

Although the Court did not underestimate the threat posed by the spreading of disinformation and the running of “influence campaigns”, it acknowledged that it would be difficult to assess accurately the impact that they might have on individual voters and, by extension, on the outcome of a given election. While this fact alone should not prevent States from taking measures to defend democratic values, there appeared to be no clear consensus as to what specific actions they needed to take to protect their democratic processes against such risks. In fact, the only area where there appeared to be a clear consensus was in the conclusion that this was a complex global problem which could not be addressed without the co-operation of international partners and social media companies. The impact of disinformation and influence campaigns depended on a variety of social, economic, cultural, technological and political dynamics that did not lend themselves to simplistic solutions. Furthermore, there was a very fine line between addressing the dangers of disinformation and outright censorship.

Consequently, any actions taken by States to counter the risk of foreign election interference through the dissemination of disinformation and the running of influence campaigns had to be balanced against the right to freedom of expression under Article 10 of the Convention. While the circulation of disinformation or misinformation could potentially interfere with the right to receive information inherent in Article 10, so could any measures taken to counter its circulation. Therefore, any such measures needed to be calibrated carefully to ensure that they did not interfere disproportionately

with individuals' right to impart and receive information, especially in the period preceding an election, and take due account of the risk of abuse by States seeking to interfere in the outcome of their own elections.

Therefore, while States should not remain passive when faced with evidence that their democratic processes were under threat, they must be accorded considerable latitude in the choice of means to be adopted in order to counter such threats. In the Court's view, the UK's response to the threat of Russian election interference had not fallen outside its wide leeway in this area.

In their application to the Court, the applicants had not specified what further measures the UK Government ought to have taken. In any event, since the publication of the ISC report and the applicants' applications to the national courts, the Government had gone on to introduce three new Acts of Parliament: the Elections Act 2022 ("the 2022 Act"), the National Security Act 2023 ("the NSA 2023") and the Online Safety Act 2023 ("the OSA 2023").

In addition to these legislative measures, the Government had also created a Counter Disinformation Unit (CDU) and the "Defending Democracy" Taskforce. The CDU (now known as the National Security Online Information Team) had been set up in 2019 and led the domestic operational and policy response for countering disinformation across Government. It also proactively monitored for harmful narratives that threatened the UK, and co-ordinated with Government departments to deploy the appropriate response to mis/disinformation. The "Defending Democracy" Taskforce had been launched in 2022 and had the aim of protecting "the democratic integrity of the UK" with "particular focus on foreign interference". It worked with local councils, police forces and global tech companies to ensure that electoral processes and infrastructure were secure and resilient, ensured elected officials were protected "at all levels" from physical, cyber, and additional threats, and countered disinformation efforts aimed at "disrupting our national conversation and skewing our democratic processes". Furthermore, the need for further measures to counter threats by hostile State actors appeared to be being kept under review, for example by the Independent Reviewer of Terrorism Legislation.

Those measures appeared to address the points raised by the applicants in their judicial review application. In any event, any failings could not be considered to be sufficiently grave as to have prevented the applicants from benefitting from elections which "ensured the free expression of the opinion of the people". Therefore, the Court concluded that there had been no violation of Article 3 of Protocol No. 1 to the Convention.

## Separate opinion

Judge Jakab expressed a concurring opinion. This opinion is annexed to the judgment.

*The judgment is available only in English.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**We are happy to receive journalists' enquiries via either email or telephone.**

**Jane Swift (tel: + 33 3 88 41 29 04)**

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Inci Ertekin (tel: + 33 3 90 21 55 30)  
Neil Connolly (tel: + 33 3 90 21 48 05)

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