



Film reproduction licence refused because of mere suspicions: violation of the right to freedom of expression

In today's **Chamber** judgment¹ in the case of [Pryanishnikov v. Russia](#) (application no. 25047/05) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the refusal to grant the applicant a film reproduction licence.

The Court found in particular that the only reason advanced by the domestic courts for refusing the reproduction licence – that the applicant was suspected of producing or distributing pornography – had not been based on findings of fact. It further observed that the authorities had failed to strike a fair balance between the right to freedom of expression and the need to protect public morals and the rights of others.

Principal facts

The applicant, Sergey Viktorovich Pryanishnikov, is a Russian national who was born in 1957 and lives in St Petersburg (Russia).

Mr Pryanishnikov is a producer of erotic films and owns the copyright to over 1,500 such films. The films were approved for public distribution, and he holds valid distribution certificates for audiences over 18 years old. In 2003 he applied to the Ministry of the Press, Broadcasting and Mass Media for a film reproduction licence. In October 2003 it refused the application as Mr Pryanishnikov was “involved in investigative measures concerning the illegal production, advertising and distribution of erotic and pornographic material and films”, an offence under the Criminal Code.

Mr Pryanishnikov challenged the refusal before the Commercial Court of Moscow. However, in May 2004 that court upheld the decision of October 2003. It noted that Mr Pryanishnikov had never been formally charged with the distribution of pornography and had only been questioned by the police as a witness. However, no decision had yet been taken in the criminal proceedings and “it could not be ruled out that [the applicant] was involved in the illegal production of pornographic films ...”.

In September 2004 the Appeal Court upheld the judgment. It found that Mr Pryanishnikov's involvement in the distribution of pornography had been confirmed by material from the Internet containing offers to sell pornographic products. Two months later the Court of Cassation upheld the judgments, noting in particular that the licence had been refused because the applicant was “involved in investigative measures concerning the illegal production of pornographic material”.

The charges of producing and distributing pornography were subsequently dropped.

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.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained about the refusal to grant him a film reproduction licence.

The application was lodged with the European Court of Human Rights on 15 June 2005.

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

Vincent A. **De Gaetano** (Malta), *President*,
Georgios A. **Serghides** (Cyprus),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 10

The Court found that the refusal to issue a film reproduction licence had amounted to an interference with Mr Pryanishnikov's freedom of expression. The interference had been prescribed by law and had "pursued legitimate aims" for the purposes of Article 10 § 2: protecting morals and the rights of others, in particular children.

When determining whether the interference was also "necessary in a democratic society", the Court established that the domestic judgments – in so far as they relied on a suspicion regarding Mr Pryanishnikov's involvement in producing and distributing pornography – had been based on assumptions rather than reasoned findings of fact.

The domestic courts had referred to the ongoing criminal investigation, but they had not relied on any document from the criminal case file suggesting that the applicant was suspected of that offence. In fact, they had explicitly noted that he had been involved in the investigation as a witness rather than a suspect. Moreover, as regards the material from the Internet mentioned by the Appeal Court, that court had not given any description of the products offered for sale or any reasoning as to why it believed them to be pornographic. Nor had it explained why it considered that it had been Mr Pryanishnikov who had produced or distributed those products. Therefore, the domestic courts had not provided relevant and sufficient reasons for the finding that he produced or distributed pornography.

Lastly, the Court observed that the domestic courts had not weighed the impact which the refusal of a film reproduction licence would have on Mr Pryanishnikov's ability to distribute all the films for which he had distribution certificates or on his freedom of expression in general. The courts had therefore failed to recognise that the case involved a conflict between the right to freedom of expression and the need to protect public morals and the rights of others, and had failed to perform a balancing exercise. The Court considered that such a far-reaching restriction on his freedom of expression had not been justified. There had been therefore no reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

Accordingly, there had been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The applicant did not make a claim in respect of pecuniary or non-pecuniary damage.

Regarding his request for a film reproduction licence, the Court noted that the domestic law had been amended so he now no longer needed such a licence to distribute films for which he owned the copyright.

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.