



Court encourages reform of electoral-campaign media regulations in the light of violation of applicant company's rights

In today's Chamber judgment¹ in the case of [OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia](#) (application no. 43351/12) 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 publication of articles and an online poll on a website during an election campaign. Convictions followed, with the articles being classified, in particular, as “pre-election campaigning” in breach of the relevant Russian law.

Concerning the prosecutions in relation to the articles, the Court found – and the Government had not made out otherwise – that the applicant company had not acted in bad faith; the case and legislative framework had not differed greatly from another previously examined by Court, *Orlovskaya Iskra v. Russia* (no. 42911/08), in which a violation had been found; that the domestic courts had not examined if harm had been caused by the articles or whether the articles had been proven campaigning material; and that the prosecutions had not been “necessary in a democratic society”.

The Court found that the polling methodology should have been self-evident from the presentation on the website and it did not have enough evidence to conclude that the relevant regulatory framework was Convention compliant. As a result, the prosecution in relation to the poll had not been shown to have been “necessary in a democratic society”.

Principal facts

The applicant, OOO Informatsionnoye Agentstvo Tambov-Inform, is a limited-liability company incorporated in 2001 in Tambov (Russia). It is involved in radio and television broadcasting.

In November 2001 the applicant company founded *Informatsionnoye agentstvo Tambov inform*, a mass-media outlet in the form of an “information agency” with the same name. It appears that the agency was not registered as a legal entity and that it operated through an Internet site, www.taminfo.ru.

In 2011 two articles called “Miracles of transformation, or how a socialist oligarch became a conservative” and “One should answer for one's words” were published on the website during an election campaign period for elections to the national legislature, the State Duma. As a result, on 2 December 2011 the applicant company was convicted of production, dissemination or placement of campaigning material in breach of electoral legislation and fined 50,000 Russian roubles (RUB), with the court holding that that amounted to “pre-election campaigning”. That judgment was upheld on appeal and following judicial review, with the applicant's argument that it was only the owner of the website being dismissed.

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.

In 2012 the applicant company was separately convicted because of the articles of publishing “campaigning material” before the official campaigning period in media outlets, with the Justice of the Peace stating that the article had amounted to electoral campaigning and fining the applicant company RUB 30,000. That decision was upheld on appeal.

Separately, on an unspecified date, an online poll of voting intentions for the Duma was put on the website with an analysis article (entitled “Assessment of the Internet polling results: there is no obvious majority vote for the United Russia party, while the protest vote is surging”) in 2011. The poll included a “results” button. The company was convicted for, among other things, omitting to specify the region for the polling and the methodology, margin of error, and other relevant information and fined RUB 30,000. That judgment was upheld on appeal and following judicial review.

The applicant company paid the fines between 2012 and 2014.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicant complained, in particular, of the classification of the information on its website as electoral campaigning and the fines imposed on it.

The application was lodged with the European Court of Human Rights on 21 June 2012.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Dmitry **Dedov** (Russia),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 10

Prosecution in relation to articles

The Court observed that the prosecutions in this case were related to domestic regulations on “pre-election campaigning” examined by the Court in the case of *Orlovskaya Iskra* (no. 42911/08) in relation to a privately-owned print media outlet’s choice to publish critical articles about a candidate, independently of any political advertising or campaigning paid from another candidate’s electoral fund. In that case the Court had held that the “interference” in respect of the applicant organisation’s freedom of expression had pursued the legitimate aim of protecting the “rights of others” around elections. However, the domestic regulations on which the company’s prosecution relied had been based on a criterion (“campaigning aim”) that had been vague and had left too much discretion to the authorities; it had not been convincingly demonstrated that the print media had had to be subjected to rigorous requirements of impartiality during an election period; and the regulations had restricted, without any compelling justification, the number of participants in the political discourse during an election period, limiting the role of media outlets during and in relation to it to mere conduits for political advertising by candidates or political parties.

The Court noted that the present case concerned Internet publication and stated that the Internet played an important role in enhancing the public's access to news and facilitating the dissemination of information in general. This was particularly true with regard to the media, in their "public watchdog" role, especially in the run-up to elections. The Court also noted that the exercise of the right to freedom of expression online carried with it duties and responsibilities and thus could be subject to restrictions or penalties.

The Government had not argued that there had been an essential difference between this case and the *Orlovskaya Iskra* case or that the regulatory framework examined in this case had been greatly amended. Nor had they argued that the applicant company had been affiliated to any candidate or political party, had acted in bad faith, had caused damage to reputation or had disseminated false information or hate speech (the domestic courts had not examined this, limiting themselves to the application of the specific regulatory framework relating to "pre-election campaigning").

Nor, indeed, had the Government put forward any further argument regarding the need for stricter regulation of online media content during campaign periods, which was of particular importance in the context of online publications, which tended to be accessible by a greater number of people and viewed as a major source of information and ideas nowadays.

The Court considered that the findings in *Orlovskaya Iskra* concerning the mass media's exercise of the right to freedom to impart information by making an independent editorial choice to publish a text on its Internet platform were applicable in the present case. The Court noted that the website owned by the applicant company appeared to be a local outlet, similar in size and reach to a local newspaper. While the Court did not rule out that certain online operators – such as major platforms with national or international reach and/or hosting a large volume of third-party content – might present specific challenges for the integrity of electoral processes, such an issue did not arise in the present case. Furthermore, for the Court, the case underscored the even wider temporal reach of the regulatory framework examined in *Orlovskaya Iskra*, that is to say during the entire election period of some three months rather than only during the official campaigning period of 28 days before election day.

The Court also found that the domestic courts had not examined the harm caused by the articles or whether the articles had been proven campaigning material. This choice to subject the articles to the regulations concerning "pre-election campaigning" and to prosecute the applicant company with reference to those regulations and related formalities had amounted to an unjustified interference by a public authority. It had not been shown that the prosecutions had been "necessary in a democratic society", and the Court did not deem them as such.

There had thus been a violation of the Convention in this regard.

Prosecution in relation to the online poll and related article

The Court reiterated that Article 10 of the Convention protected not only the substance of the ideas and information expressed but also the form in which they were conveyed.

The Court noted that the applicant company had been convicted for not setting out its methodology for the poll and specifying the region for the polling, among other things. However, the Court found that the methodology should have been self-evident from the presentation on the website, and indeed the analysis article had stated, among other things, that 2,000 people had taken part in the poll; certain other formal requirements, such as indicating a region for polling, seemed to be inapplicable to online polling.

Without more detailed submissions concerning the rationale for the regulatory framework, and given the lack of domestic-court reasoning as regards the relevant facts and formal requirements for online polls, the Court was unable to conclude it was Convention compliant.

There had thus been a violation of the Convention in this regard.

Article 46 (binding force and execution of judgments)

The Court considered that it was incumbent on Russia to choose and implement, consistently with the conclusions and spirit of the Court's findings and subject to supervision by the Committee of Ministers, the appropriate legislative or judicial measures to (i) protect the right to freedom of expression exercised by the print and online media and their editorial independence during an electoral campaign, and (ii) to mitigate any chilling effect arising on account of the application of the electoral legislation on pre-election campaigning.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 5,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

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.