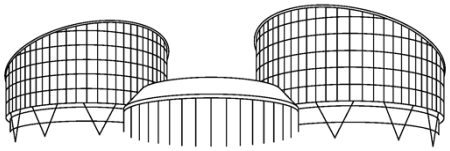

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OOO INFORMATSIONNOYE AGENTSTVO TAMBOV-INFORM v. RUSSIA

(Application no. 43351/12)

JUDGMENT

Art 10 • Freedom of expression • Freedom to impart information and ideas • Legislation relating to parliamentary election pertaining to and limiting a media outlet's participation in "pre-election campaigning" • Unjustified prosecution and conviction of applicant company for publication of certain articles and the results of an opinion poll on its internet site during the election period • Interference not "necessary in a democratic society"
Art 46 • Execution of judgment • Need for general legislative or jurisprudential measures

STRASBOURG

18 May 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Peeter Roosma,
Andreas Zünd, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 43351/12) 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 OOO Informatsionnoye Agentstvo Tambov-Inform ("the applicant"), on 21 June 2012;

the decision to give notice of the complaints under Article 10 of the Convention to the Russian Government ("the Government");

the parties' observations;

Having deliberated in private on 6 April 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns fines imposed on the applicant company for certain articles and an opinion poll published on its website during an election period.

THE FACTS

2. The applicant is a limited liability company incorporated in Tambov, Russia. The applicant company was represented by Ms M.A. Ledovskikh, a lawyer practising in Voronezh, Russia.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant company was incorporated in October 2001. It stated that its main activities were radio and television broadcasting. The company had one founding member, who also became its director. In November 2001 the applicant company founded "Informatsionnoye agentstvo *Tambov-inform*", a mass media outlet in the form of an information agency

(*информационное агентство*) under the same name (see also paragraph 34 below). It appears that the agency was not registered as a legal entity and that it operated through an Internet site, www.taminfo.ru (hereafter "the website"). In 2001 the applicant company registered the website as an electronic periodical (*электронное периодическое издание*) (see also paragraph 33 below).

I. PUBLICATION OF A.'S ARTICLES AND RELATED PROCEEDINGS

6. A new composition of the State Duma was to be elected on 4 December 2011. The election campaign started in August 2011. The official period of "pre-election campaigning" on mass media outlets (see also paragraph 42 below) started on 5 November 2011.

A. Publication of A.'s articles and proceedings against the applicant company

7. On 3 October 2011 an article by A. entitled "Miracles of transformation, or how a socialist oligarch became a conservative" was published on the website. On 12 October 2011 another article by A. entitled "One should answer for one's words" was published on the website.

8. The Electoral Committee of the Tambov Region considered that the applicant company had violated various regulations on pre-election campaigning on account of A.'s articles. The Committee sought the prosecution of the applicant company for administrative offences.

1. Prosecution under Article 5.12 of the Code of Administrative Offences

9. By judgment of 2 December 2011 a Justice of the Peace sentenced the applicant company under Article 5.12 § 1 of the Code of Administrative Offences (CAO) (see paragraph 32 below). The court considered that the following parts of A.'s texts comprised "pre-election campaigning" within the meaning of section 55 of the State Duma Deputies Election Act of 2005, in the form of negative comments about candidate B., the United Russia party and the A Just Russia party:

> "Mr B. and the A Just Russia party have always kept their distance from actual opposition activities, as recent events have clearly shown."
>
> "... The 'dispatched oligarch' eventually ended up in the Tambov region. And not just here or there but as number 3 on the electoral list of the United Russia party. Thus at the very least it would be short-sighted to lend any credence to the other statements coming from [members of that party]."
>
> "A new campaign for the elections to the State Duma has started. As is usual for electoral campaigns, many politicians distribute promises that they will happily forget

> after the election. Or they will fake some intense work. This all happens regularly, while the problems remain. The members of the United Russia party are the best at it."
>
> "Having said this, what United Russia have been doing deserves nothing more than laughter."

The court held that the applicant company had violated section 61 § 4 of the State Duma Deputies Election Act requiring that "campaigning material" had to specify the number of copies of the distributed material and the date of its publication, and whether it had been paid for from the electoral fund of a candidate or a party; it had also to give details on the persons who had "produced" the campaigning material (see paragraph 41 below).

10. The court dismissed the applicant company's argument that it was only the founder of the information agency, and that pursuant to the Charter of the information agency the founder bore no liability for the content published by the agency (its editor). The court noted that the agency was not formally registered as a legal entity; that the editor was employed by the applicant company, and therefore that the agency was to be considered as a unit of the company. It also noted that the applicant company's director had previously written to the electoral committee specifying that her company's activities included providing information about elections. The court concluded from those facts that the applicant company's liability for the administrative offence was thus "not excluded" by law.

11. Noting that A.'s articles had been removed from the website, the court sentenced the applicant company to a minimum statutory fine of 50,000 Russian roubles (RUB; approximately 1,235 euros (EUR) at the time).

12. The applicant company appealed, arguing that it could not be held liable for the agency's (editor's) decision to publish A.'s articles; that the editor had not been employed by the company and the agency was not one of its units; and that Article 5.12 § 1 of the CAO only concerned printed material and mass media outlets disseminating such printed material, whereas A.'s articles had been published on an Internet site.

13. On 22 December 2011 the Oktyabrskiy District Court of Tambov upheld the judgment. The appeal court rejected the company's arguments, indicating, *inter alia*, that an Internet site was "a complex multitude of objects, given its actual content and means of presenting information as well as its mode of communication with readers, which includes audio-visual materials". The appeal court also stated that while a media outlet's founder could not interfere with the outlet's activities, such interference would be "acceptable" in certain circumstances. For instance, the founder could insist on publishing content under his/her name, to supervise the editor's compliance with the Charter, the legislation and the outlet's thematic areas as outlined in the Charter. Thus, separately from the editor's personal

liability, the founder (the applicant company) could be held liable for violations of the regulations relating to the outlet's participation in the coverage of elections.

14. The applicant company sought review of the above-mentioned court decisions before the Tambov Regional Court. On 16 April 2012 the Regional Court upheld those decisions.

2. Prosecution under Article 5.5 of the CAO

15. In separate proceeding the applicant company was also prosecuted under Article 5.5 § 1 of the CAO (see paragraph 31 below).

16. The applicant company argued that when choosing to publish A.'s articles its information agency had had no intention of engaging in pre-election campaigning; such publication had been part of the normal work of its information agency, serving as an outlet for disseminating analytical texts in order to keep its readers informed.

17. By a judgment of 18 May 2012 a Justice of the Peace convicted the applicant company under Article 5.5 § 1 of the CAO. The court held that the above-mentioned parts of A.'s articles (see paragraph 9 above) amounted to a repeated dissemination of information that essentially concerned one party and contained negative comments which incited voters to form a negative opinion of that party; thus those statements amounted to "pre-election campaigning" in the meaning of the electoral legislation. A.'s articles had been published prior to the official "per-election campaigning" period, which had started on 5 November 2011. The court concluded that the applicant company had therefore violated section 56 of the State Duma Deputies Election Act (see paragraph 42 below).

18. Noting that the applicant company had removed the articles from its website, the court sentenced it to the minimum statutory fine of RUB 30,000 (approximately EUR 730 at the time).

19. The applicant company appealed, submitting that the publication of A.'s articles was part of the information agency's normal work and had not pursued the aim of pre-election campaigning. The applicant company had not notified the electoral committee that it would provide access to its Internet portal to any candidates or parties for campaigning within the 2011 election campaign. The absence of "pre-election campaigning" in A.'s articles had already been confirmed in separate proceedings against A. (see paragraph 21 below). The applicant company had already been punished in relation to the very same articles in separate proceedings (see paragraphs 9-14 above). Only the publication of "campaigning material" could be punishable where it was distributed prematurely to the public via a printed or radio- or television mass media outlet (see paragraph 42 below). Lastly, the founder of a mass media outlet could not be held liable under Article 5.5 § 1 of the CAO. Under a contract between the applicant company (the founder) and the media outlet's editorial board

(editor-in-chief), the latter was in charge of running the information agency and the website, while the founder bore no liability for published content.

20. On 27 June 2012 the District Court upheld the judgment of 18 May 2012.

B. Proceedings against A.

21. The impugned articles by A. were also published in a newspaper in October 2011. In separate proceedings A. was first convicted under Article 5.5 § 1 of the CAO. However, on 1 March 2012 the appeal court set aside this conviction, considering that the articles contained no direct calls to vote for or against any specific candidate or party; his actions had not been aimed at inciting voters to vote one way or another and had not been aimed at obtaining any specific election result; thus his articles could not be classified as "pre-election campaigning"; nor had there been any evidence that he had acted in an official professional capacity (for instance, as the editor-in-chief of a media outlet), such as to be prosecuted under Article 5.5 of the CAO. The court concluded that there had been no *corpus delicti*.

II. PUBLICATION OF AN ONLINE POLL AND T.'S ARTICLE, AND RELATED PROCEEDINGS

22. The Institute of Social and Political Communications, a non-profit-making organisation, introduced an IT solution consisting of an online questionnaire for polling users' preferences in the run-up to the 2011 election to the State Duma.

23. On an unspecified date, this questionnaire was launched on the information agency's website as an online opinion poll entitled "What party will you vote for in the election on 4 December 2011?" It provided choices consisting of the names of seven political parties competing in the election and an "I am not sure" option. Users could click on one of the choices and then validate it by clicking on a "vote" button. The poll also comprised a separate "results" button.

24. On 8 November 2011 an 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" was published on the website. This article was written by T., who, it would seem, was the information agency's editor-in-chief. T. specified that 2,000 people had participated, and then presented some statistical data relating to the party preferences expressed by the poll voters.

25. The applicant company was then accused of breaching section 53 of the State Duma Deputies Election Act (see paragraph 48 below) by disseminating an opinion poll while omitting to provide information on the organisation that had run the poll, when the poll had been taken, the number

of people who had participated, the information-gathering method, the region where the poll had been carried out, the exact wording of the polling question, the statistical data on the margin of error and the people who had commissioned the poll and paid for its dissemination.

26. By judgment of 2 December 2011 a Justice of the Peace convicted the applicant company under Article 5.5 of the CAO and fined it RUB 30,000. The court considered that once polling had been completed, users could have seen the cumulative polling results obtained so far, and that T.'s article had disseminated the results of the poll while omitting to specify the aforementioned data.

27. On 21 December 2011 the District Court upheld the judgment.

28. The applicant company sought further review of the court decisions before the Regional Court. The Institute of Social and Political Communications made submissions to the Regional Court indicating that the online questionnaire that they had elaborated was a static online polling tool for gathering raw data, and that access to the results had been confined to the Institute's officials, while the questionnaire users could only cast a vote but had had no access to the preliminary or final results.

29. On 16 April 2012 the Regional Court upheld the court decisions on further review.

30. The applicant company paid the fines imposed in instalments between 2012 and 2014, apparently on account of financial hardship, to the total amount of RUB 103,000.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN LAW

A. Federal Code of Administrative Offences

31. Article 5.5 of the CAO entitled "Violation of the procedure regulating the participation of mass media outlets in providing information on elections or referenda" (as in force at the time) punished (i) violations – by the editors and editorial boards of mass media outlets or other organisations producing or distributing mass media output (*иная организация, осуществляющая выпуск или распространение средства массовой информации*) – of the procedure (*порядок*) for disseminating materials relating to the election (including campaigning material); (ii) violations of that procedure when disseminating such materials on the Internet.

32. Article 5.12 of the CAO entitled "Production, dissemination or placement of campaigning material in breach of the electoral legislation" (as in force until 2016) punished the production (*изготовление*) or dissemination of printed or audio-visual campaigning material without

providing information on the number of copies produced (*тираж*), the date of dissemination, the electoral fund that had paid for it, and details on the organisation or person having commissioned or produced (*изготовившие*) them (paragraph 1 of Article 5.12). Since 2016, Article 5.12 § 1 punishes the production or dissemination of printed, audio-visual or other campaigning material in breach of the electoral legislation.

B. Mass Media Act

33. Until 10 November 2011 Federal Law no. 2124-1 of 27 December 1991 (the "Mass Media Act") defined a mass media outlet as a periodical print outlet, a radio, video or television programme, a cinematic programme or any other mode of periodic dissemination of mass information (section 2). A print outlet was defined as a newspaper, journal, almanac, bulletin or other outlet having a permanent title and being disseminated at least once per year. On 10 November 2011 the Act was amended with the addition of an "online outlet" (*сетевое издание*), defined as an Internet website registered as a mass media outlet. This concept was also added to electoral legislation in 2016.

34. The legal regime of an "information agency" was determined, at the same time, under the provisions of the Act concerning an editorial board and a mass media outlet (section 23). An information agency could put in place a bulletin, a programme or another outlet (*издание*) pursuant to the rules of the Act.

35. By 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, courts are required to strike a balance between their rights and the rights of others or other constitutional values. Referring to the Convention and other international treaties of the Russian Federation, the Supreme Court specified that mass media outlets bear special responsibilities and liability, and their exercise of freedom of expression may be restricted by law where this is necessary in a democratic society for ensuring respect for 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 is a means of mass dissemination of information; as such it has no rights or obligations and thus cannot be party to proceedings. In order to use this means of disseminating information an editorial board registers a mass media outlet, except in the case of printed mass media issuing fewer than 1,000 copies and in a limited number of other circumstances. Where, in order to produce and disseminate mass information, a mass media outlet is set up and operated and content is created and disseminated, courts need to determine who should be the parties to and relevant proceedings, depending on the stage in the production and dissemination of content and on who was in charge of it at that stage, on the basis of legislation or contractual relations. One person (a founder, editor, publisher or distributor) can perform different functions at different stages.

An editorial board must be involved in cases relating to content disseminated by a mass media outlet. Where such board is not constituted by a person or a legal entity, the outlet's founder or editor-in-chief may be involved in the court proceedings. Proceedings relating to the 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*.

36. Pursuant to section 18 of the Mass Media Act, a media outlet's founder adopts the charter of the outlet's editorial board's and/or enters into a contract with the editorial board (editor-in-chief). The founder may require the editorial board to disseminate a statement or material on the founder's behalf (a "founder's statement"). The founder is not entitled to interfere with the outlet's activities, except in the situations listed in the Act, the charter or the contract mentioned above. The founder may act as an editorial board, publisher, distributor or owner of the editorial board's possessions.

C. Electoral legislation

1. "Pre-election campaigning" in Russian law

(a) Definition

37. For a summary of the relevant domestic law and judicial practice, in particular relating to section 55 of Federal Law no. 51-FZ of 18 May 2005 (the "State Duma Deputies Election Act of 2005"), see *Orlovskaya Iskra v. Russia* (no. 42911/08, §§ 36-51, 21 February 2017). This Act ceased to be applicable in October 2016.

38. Section 55 of the Act provided in the relevant parts as follows:

> "1. During an electoral campaign for electing deputies of the State Duma the following [actions] amount to pre-election campaigning:

1) calls to vote for a federal list of candidates or against it, or for a candidate (candidates) or against him/her (them);

2) expression of preference for a political party that presents a federal list of candidates, or for a candidate (candidates), in particular, by way of indicating the political party, federal list or candidate(s) the voter will vote (except for situations of disseminating the results of an opinion poll under section 53 [of the Act]);

3) description of possible consequences of a certain federal list obtaining parliamentary mandates;

4) dissemination of information which is predominantly about one political party that presents a federal list of candidates, a candidate or candidates, in combination with positive or negative comment;

5) dissemination of information about candidates' activities that are not connected with their professional activities or the exercise of their official duties;

6) activities contributing to the creation of a positive or negative attitude on the part of voters towards a political party that presents a federal list of candidates or a candidate or candidates.

2. Actions carried out by representatives of [mass media outlets] during the exercise of their professional activities amount to pre-election campaigning: for actions under sub-paragraph 1) in paragraph 1 above – where they are committed with the aim of inducing voters to vote for or against a federal list of candidates or a candidate or candidates; for actions under sub-paragraphs 2) to 6) in paragraph 1 above – where they are committed with such aim repeatedly ..."

39. Similar provisions are now contained in section 62 of the Federal Law no. 20-FZ of 22 February 2014 (the "State Duma Deputies Election Act of 2014").

40. Section 48 of the Federal Law no. 67-FZ of 12 June 2002 ("the Electoral Rights Act") also contains similar provisions.

41. Section 61 § 4 of the State Duma Deputies Election Act of 2005 required that in all printed and audio-visual pre-election campaigning material the following information had to be specified: details on the persons or organisations who commissioned and produced that material; information on the number of its copies (*тираж*), the date of its publication/production (*выпуск*) and the electoral fund of a candidate or a party who paid for producing that material.

(b) Campaigning period

42. A "campaigning period" on radio, television and in periodical printed outlets started twenty-eight days before election day and ended twenty-four hours before that day (section 56 of the State Duma Deputies Election Act of 2005).

43. Section 63 of the State Duma Deputies Election Act of 2014 contains the same regulation. Between 2014 and 2016 it provided for a separate regulation in respect of online outlets.

44. An offence under Article 5.5 of the CAO can be committed on account of publishing campaigning material before the campaigning period mentioned above, that is, during three months of an electoral campaign starting with its official launch and ending on the election day (see Decision no. 19-AD20-12 of 6 November 2020 by the Supreme Court of Russia).

2. "Information of voters" in Russian law

45. Pursuant to section 45 of the Electoral Rights Act, in publications in periodical print outlets and during information programmes on television or radio (and since 2016 in updates in online outlets) information about electoral events must be presented in the form of a separate information session/section (*информационный блок*) without comments and without giving preference to any candidate. Such information sessions/section are not paid from candidates' electoral funds.

46. In its ruling no. 5 of 31 March 2011, the Plenary Supreme Court of Russia provided the lower courts with clarifications and instructions relating to the electoral legislation. Unlike the act of campaigning, the act of providing information is not aimed at inciting people to vote for or against a candidate or a party. Mass media outlets are not prohibited from expressing their opinions or commenting on the running of election campaigns; they can do that outside the information sessions/sections of programmes (see also Ruling no. 15-P of 30 October 2003 by the Constitutional Court of the Russian Federation). In order to determine the actual nature of the statement relating to an election, courts have to delve into various elements relating to the extent of the influence such statements exercise on voters: the type of mass media outlet used, the type of television or radio programme (news programme, or analytical political programme, for instance); the manner in which the statements are presented and their nature (neutral, positive, negative); and the density of information provision. Mass media outlets may be held liable for violating the rules on information provision where they breach the regulations relating to the objectivity or veracity of the information they are providing, the regulations on candidate equality, or where they have deliberately attempted to engage in campaigning, inciting people to vote for or against certain candidates (paragraph 34 of the ruling).

47. As regards statements on the Internet, section 51 of the State Duma Deputies Election Act of 2005 banned the publication of election results on the day of the election until the voting was completed.

48. Section 53 of the Act provided as follows:

> "1. Publication (dissemination) of the results of opinion polls about the election should be considered as a form of providing information to voters.
>
> 2. When publishing (disseminating) such results editorials boards of mass media outlets, citizens or other organisations must indicate the entity that carried out the poll, the timing of the poll, the number of people who were polled, the method of gathering information, the region where the poll was carried out, the exact wording of the

question, the statistical assessment of a possible error, the person(s) who commissioned the poll and who paid for the publication (dissemination) of the poll.

3. Within five days preceding election day and on election day it is prohibited to publish (disseminate) – including ... on the Internet – the results of opinion polls, prognoses of the results of the election to the State Duma or other research reports relating to the election."

49. The same requirement was also set out in section 46 of the "Electoral Rights Act. Under section 21(13) of the Act the Central Elections Committee was competent to issue mandatory instructions relating to the coherent application of that Act. In January 2008 it published a document dated 18 December 2007 and entitled "Clarifications relating to the statutory procedure for publishing opinion polls relating to elections". The document specified in relation to the requirements of section 46 of the Act that where a poll was initiated by an organisation and there was no third party who had commissioned it, the organisation should indicate itself; where the organisation had run the poll free of charge, there was no need to provide any information regarding payment.

II. COUNCIL OF EUROPE MATERIAL

A. Recommendation CM/Rec(2007)15

50. Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns:

"Definition

For the purposes of this recommendation:

The term "media" refers to those responsible for the periodic creation of information and content and its dissemination over which there is editorial responsibility, irrespective of the means and technology used for delivery, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. This could, *inter alia*, include print media (newspapers, periodicals) and media disseminated over electronic communication networks, such as broadcast media (radio, television and other linear audiovisual media services), online news-services (such as online editions of newspapers and newsletters) and non-linear audiovisual media services (such as on-demand television). ...

Principles

I. General provisions

...

8. Opinion polls

Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular:

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;
- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights ..."

B. Recommendation CM/Rec(2011)7

51. Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, adopted on 21 September 2011, provides for a differentiated and graduated approach. It requires that each actor whose services are identified as media or as an intermediary or auxiliary activity benefit from both the appropriate form (differentiated) and the appropriate level (graduated) of protection and that responsibility also be delimited in conformity with Article 10 of the European Convention on Human Rights and other relevant standards developed by the Council of Europe (see also *Delfi AS v. Estonia* [GC], no. 64569/09, § 46, ECHR 2015, for a summary of the relevant parts of the Recommendation).

C. Execution of the Court's judgment in *Orlovskaya Iskra v. Russia*

52. Within the procedure under Article 46 § 2 of the Convention, the Russian Federation has been invited to submit an action plan or report to the Council of Europe Committee of Ministers in relation to that judgment.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 10 OF THE CONVENTION

53. The applicant company complained under Article 10 of the Convention about the classification of the materials published on its Internet site as "pre-election campaigning" and the fines imposed on it in the administrative-offence cases.

54. It also raised a complaint in relation to the fine imposed on it for failure to comply with certain formal requirements for online polling and its reporting in T.'s article.

55. Article 10 of the Convention reads, in the relevant parts, 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."

56. The Court notes at the outset that the applicant company's prosecution in relation to A.'s articles concerned the interpretation and application of the domestic regulations on "pre-election campaigning" while the prosecution in relation to the poll and T.'s article concerned the regulations on the "information of voters" by mass media outlets during an election period.

A. Prosecution in relation to A.'s articles

1. Admissibility

57. The parties agreed that Article 10 § 1 of the Convention was applicable in the present case. For the following reasons, the Court sees no grounds to hold otherwise.

58. The convictions were related to unlawful "pre-election campaigning" prior to the start of the campaigning period, and non-compliance with certain formalities for "pre-election campaigning" by way of publishing material on a website. Such activity fell within the scope of the right to freedom of expression as protected by the first paragraph of Article 10 and constituted its "exercise" in the meaning of the second paragraph of Article 10 (see *Orlovskaya Iskra v. Russia*, no. 42911/08, §§ 94 and 95, 21 February 2017).

59. The Court further considers that the formalities and related convictions and penalties were directed at the exercise of that activity, thereby "interfering" with it. Article 10 of the Convention applies not only to the content of information but also to the means of its dissemination, for any restriction imposed on the latter necessarily interferes with that freedom (see *Ahmet Yıldırım v. Turkey*, no. 3111/10, §§ 48-54, ECHR 2012).

60. The Court 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.

2. Merits

(a) The parties' submissions

(i) The applicant company

61. The applicant company argued that its conviction for administrative offences had violated Article 10 of the Convention in that the domestic legislative framework prevented media outlets from any meaningful activity during an election period, confining their functioning to providing candidates and parties with a platform for campaigning. Any other type of publication would be classified as campaigning action or campaigning material, thereby exposing editorial boards or journalists to liability for breaching various regulations relating to media work during an election period. The applicant company referred in this connection to the Court's findings in *Orlovskaya Iskra* (cited above) and the Plenary Supreme Court's findings in 2011 (see paragraph 46 above), and reiterated its various arguments raised in the domestic proceeding.

62. In particular, the applicant company argued that the notion of "campaigning material" under Article 5.12 of the CAO and the related regulations contained in section 54 of the Electoral Rights Act had been inapplicable *ratione personae* to the outputs produced and disseminated by and through mass media outlets. Such outputs had been regulated by other *lex specialis* provisions of the Electoral Rights Act and the State Duma Deputies Election Act. Moreover, the notion of "campaigning material" in Article 5.12 concerned such outputs as leaflets, banners, audio or video clips, and did not encompass (*ratione materiae*) Internet publications.

63. The domestic courts had not taken due account of the status of the defendant. The applicant company had not disseminated the impugned articles and had not determined its content because under Russian law a media outlet's founder could not interfere with the editorial board's activity (see paragraph 36 above). The applicant company had been fined for actions on the part of third parties. The domestic courts should have provided particularly compelling reasons for imposing fines on the media outlet's founder in such circumstances.

(ii) The Government

64. The Government stated that the applicant company had published the impugned articles and that the interference under Article 10 of the Convention had been prescribed by law and necessary in a democratic society. The interference had pursued the legitimate aim of ensuring compliance with the national law relating to the circulation of information during an election period, the aim of protecting free elections and ensuring voters' ability to make free and informed choices in relation to the election to the national legislature and the aim of preventing further violations of the

electoral legislation. The applicant company had received the minimum statutory fines.

(b) The Court's assessment

(i) Interference

65. The Government have not disputed that the applicant company's convictions for administrative offences amounted to "interferences" under Article 10 § 2 of the Convention. For the following reasons, the Court sees no grounds to hold otherwise.

66. Both at the national level and before the Court the applicant company denied that as a founder of the information agency it had been responsible for any violations of the applicable electoral legislation relating to the information agency's independent editorial choices to publish the impugned materials, and that under Russian law only the editorial board (editor-in-chief) which/who had operated the mass media outlet in question could be charged with such violations. The applicant company did not formally associate itself with the impugned content.

67. The Court notes that the applicant company was created, at least primarily, for the purpose of producing and distributing news and analytical information. For that purpose it founded an information agency operating through an Internet platform owned by the applicant company (see paragraph 5 above). Before the domestic courts the applicant company put forward several lines of argument to avoid liability for administrative offence. In particular, they challenged the assertion that the impugned articles amounted to "campaigning material" and that their publication had had to be in compliance with the related regulations and formalities. The applicant company defended the content of the articles pleading for its information agency's right to freely impart information and ideas during an election period.

68. By way of comparison the Court reiterates that, admittedly, publishers do not necessarily associate themselves with the opinions expressed in the works they publish. However, by providing authors with a medium they participate in the exercise of the freedom of expression, just as they are vicariously subject to the "duties and responsibilities" which authors take on when they disseminate their opinions to the public (see *Öztürk v. Turkey* [GC], no. 22479/93, § 49, ECHR 1999-VI; see also *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 46, ECHR 1999-IV).

69. The domestic courts in the present case interpreted Russian law as imposing liability on a media outlet's owner in such circumstances, despite the general statutory rule of non-interference with the editorial policies of their outlets (see paragraph 36 above). At this juncture the Court takes note of that interpretation of national law.

70. By ascribing to the applicant company liability for violating certain formalities applicable to the publication of the impugned "campaigning" materials, the domestic courts attributed the impugned expression to the company (compare with *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, § 54, ECHR 2006-I; *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015; and *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, § 45, 16 July 2019).

71. Thus it should be open to the applicant company to complain before the Court under Article 10 of the Convention about such liability.

(ii) Justification of the interference

72. An interference infringes Article 10 of the Convention unless it satisfies the requirements of paragraph 2 of that provision. It thus remains 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.

(1) Prescribed by law

73. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 of the Convention requires that the impugned measure should have a legal basis in domestic law. That expression also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 93, 20 January 2020). The scope of the notion of foreseeability depends to a considerable degree on the content of the legal instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. The electoral context takes on special significance in this regard, given the importance of the integrity of the voting process in preserving the confidence of the electorate in the democratic institutions. Accordingly, the Court has found wide and unpredictable interpretations of legal provisions governing elections to be either unforeseeable in their effects or indeed arbitrary and therefore incompatible with Article 3 of Protocol No. 1 (ibid., §§ 98-99 and cases cited therein). When those legal provisions form the basis for restricting the exercise of freedom of expression, this is an additional element to be taken into account when considering the foreseeability requirements which the law must fulfil (ibid., § 100).

74. The applicant company's conviction for pre-election campaigning outside the statutory period was based on Article 5.5 of the CAO read in

conjunction with section 56 of the State Duma Deputies Election Act of 2005 (see paragraphs 31 and **Error! Reference source not found.** above). Section 56 of the Act set a period for "campaigning" in print outlets and radio- and television broadcasting outlets. The Court cannot but note that it did not refer to any Internet-based media outlet, like the website in the present case, or the act of "pre-election campaigning" through them. It appears that the only specific reference to Internet publications concerned the provision of information, specifically the ban on certain Internet publications in the five days before election day or on that day itself (see paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** above). In other words, while Article 5.5 of the CAO could, in principle, encompass violations of the Act on the Internet, section 56 of the Act (that is the relevant material regulation of the prohibited conduct) referred to specific types of media outlets being regulated (print and broadcasting) but it did not expressly regulate pre-election campaigning through an Internet-based media outlet. Nor did section 56 of the Act expressly ban pre-election campaigning through such outlets prior to the start of the one-month campaigning period. Thus the Court has doubts as to whether the applicant company could have lawfully been punished – with reference to section 56 of the State Duma Deputies Election Act – for the publication of A.'s articles in the form of electronic text on the information agency's website in October 2011.

75. Similar considerations concern the applicant company's conviction for failing to specify certain information (specifically, the number of copies of the distributed material, the date of its publication, details on the persons who had "produced" the campaigning material, and whether it had been paid for from the electoral fund of a candidate or a party). The Court notes that that conviction was based on Article 5.12 of the CAO read in conjunction with section 61 § 4 of the State Duma Deputies Election Act (see paragraphs 9 and 32 above). The applicant company argued that it could not have foreseen that the above provisions made it an offence for a mass media outlet to publish an electronic text on the Internet (see paragraph 62 above).

76. However, in view of the findings below on whether the interferences under both Article 5.5 and Article 5.12 of the CAO were "necessary in a democratic society" in the pursuance of a legitimate aim, the Court considers that it is not necessary to decide whether the same interferences were prescribed by law (see, in the same vein, *Orlovskaya Iskra*, cited above, § 98).

(2) Legitimate aim(s) and necessity of the interference in a democratic society

77. As regards the prosecution under both Article 5.5 and Article 5.12 of the CAO, the Court observes that the main legal aspect of the present case is similar to that already examined by the Court in *Orlovskaya Iskra* (see also

Yartseva v. Russia [Committee], no. 19273/08, §§ 23-28, 25 February 2020). Indeed, the main thrust of both cases concerns the notion of "pre-election campaigning" under section 55 of the State Duma Deputies Election Act of 2005.

– *The Court's judgment in Orlovskaya Iskra v. Russia*

78. In *Orlovskaya Iskra* (§§ 99-104) the Court 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", regard being had to the need to ensure transparency of elections and the absence of distortion of the electoral process, as well as enforcing the voters' right to impartial, truthful and balanced information via mass media outlets and the formation of their informed choices in an election.

79. The Court then assessed the regulatory framework that had been applied in relation to the publication of the impugned articles by the applicant organisation, which had constituted, in the circumstances of that case, a fully-fledged exercise of its own freedom of expression. The Court made the following observations (§§ 117-34):

(a) The information before the Court in that case did not enable it to assess the quality of the parliamentary review of the necessity of the special regulatory framework affecting the print media during an election period and for the Court to ascertain the operation of the relevant margin of appreciation.

(b) As to the practical implications of the special regulations for freedom of expression, despite their formal distinction under Russian law both information and campaigning could induce voters to make a certain choice; the only criterion to distinguish between them under Russian law would be the existence of a particular campaign aim, namely to incite the voters to support or oppose a certain candidate.

(c) While it may be desirable, for the sake of the "free expression of the opinion of the people in the choice of the legislature" or another legitimate and compelling consideration, for publications to contain a review of several candidates or parties or their programmes, it is difficult if not impossible to ascertain whether the content in relation to a candidate should be perceived as a mere "negative comment" or whether it had a "campaigning" goal. The domestic regulatory framework restricted the activity of the print media on the basis of a criterion that was vague and conferred a very wide discretion on the public authorities that were to interpret and apply it.

(d) It was not convincingly demonstrated that the print media had to be subjected to rigorous requirements of impartiality, neutrality and equality of treatment during an election period. At election time the press assists the "free expression of the opinion of the people in the choice of the legislature". The "public watchdog" role of the press is no less pertinent at

election time. This role is not limited to using the press as a medium of communication, for instance by way of political advertising, but also encompasses an independent exercise of freedom of the press by mass media outlets such as newspapers on the basis of free editorial choice aimed at imparting information and ideas on subjects of public interest. In particular, discussion of the candidates and their programmes contributes to the public's right to receive information and strengthens voters' ability to make informed choices between candidates for office.

(e) Both during and outwith an election period, the print media's activity is subject to the requirement to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism and considerations relating to certain boundaries, particularly as regards the reputation and rights of others.

(f) The Russian regulatory framework excessively and without compelling justification reduced the scope for press expression by restricting the range of participants and perspectives during the election period and impinging upon the applicant organisation's freedom to impart information and ideas and was not shown to achieve, in a proportionate manner, the aim of running fair elections. By subjecting the expression of comments to the regulation of "campaigning" and by prosecuting the applicant with reference to this regulation, there was an interference with the applicant organisation's editorial choice to publish a text taking a critical stance and to impart information and ideas on matters of public interest. No sufficiently compelling reasons had been shown to justify the prosecution and conviction of the applicant organisation for its publications at election time.

– *The Court's findings pertaining to the present case*

80. Like *Orlovskaya Iskra* the present case concerns the legislation relating to parliamentary elections, specifically the regulations limiting a media outlet's participation in "pre-election campaigning" and certain rules pertaining to such "pre-election campaigning" such as the formalities applicable to disseminating "campaigning material".

81. The Court accepts that those regulations (already assessed in *Orlovskaya Iskra*), the formalities mentioned above and the applicant company's convictions for related administrative offences sought to protect the "rights of others" in so far as they aimed to ensure transparency of parliamentary elections, including campaign spending, as well as to enforce the voters' right to impartial, truthful and balanced information via mass media outlets and the formation of their informed choices in an election to the State Duma.

82. Similarly, the context of the present case concerns the dissemination of information and ideas during and in relation to an election period and an "interference by public authority", such interference being based on the

legislation relating to elections as specified above. It has not been suggested, and the Court does not find on the basis of the available material, that either the applicant company or its information agency was affiliated to any political party, electoral group or candidate.

83. Having said this, the Court notes that the facts of the present case concern the exercise of the right to freedom of expression via an Internet-based media outlet, specifically through a website owned by the applicant company and run by its information agency (compare with *Ólafsson v. Iceland*, no. 58493/13, § 46, 16 March 2017; *Arnarson v. Iceland*, no. 58781/13, § 37, 13 June 2017; *OOO Regnum v. Russia*, no. 22649/08, § 60, 8 September 2020; and *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, § 29, 23 June 2020; contrast with cases concerning liability in relation to the content generated by third parties, for instance, *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 115-16 and 146-62, ECHR 2015).

84. The Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. This is especially the case during and in relation to election periods which are particularly conducive to contributions to political debates or other debates on matters of public/general interest (see, in that context, *Ólafsson*, cited above, § 50). The Internet enables new forms of expression and activities that may fall within the ambit of Article 10 § 1 of the Convention (see *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009, and *Ahmet Yıldırım*, cited above, § 49). In view of its accessibility and its capacity to communicate information and ideas "regardless of frontiers", the Internet also enhances the availability, diversity and reach of traditional media through their online outlets, as well as their "public watchdog" role, which is increasingly pertinent at election time.

85. The Court also notes that the exercise of the right to freedom of expression online carries with it duties and responsibilities and thus may be subject to such formalities, conditions, restrictions or penalties that are necessary in a democratic society (see *Times Newspapers Ltd (nos. 1 and 2),* cited above, § 45, in which the Court mentioned the "duty of the press" to act in accordance with the principles of responsible journalism in relation to the online dimension of the activities of the press). The Court considers that the harm caused by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is potentially greater than that caused by publications in the press (see also *Delfi AS*, cited above, § 133).

86. The domestic courts' approach toward the regulations on pre-election campaigning and related formalities (in particular, as regards section 61 § 4 of the State Duma Deputies Election Act) appeared to be the

same irrespective of whether information was disseminated through a print media outlet or an online media outlet (see also paragraphs 74-76 above). The applicant invited the Court to follow the reasoning in *Orlovskaya Iskra*, cited above, which concerned election-related restrictions on the print media in 2007. The Government have not invited the Court to make any distinction under this account either or, for instance, on account of the 2011 Supreme Court's ruling referred to by the applicant (see paragraph 46 above), or for any other reason. The Government have not explained how the concept of an "information section/session", referenced by the Supreme Court in its 2011 ruling as a basis for determining the kind of media content to which the ban on campaigning should apply, is to be interpreted under Russian law, in particular in the context of an article published on a website. They have not argued that that ruling amended the applicable regulatory framework in an effort to make it compliant with Article 10 of the Convention. The domestic courts in the applicant's case did not refer to the Supreme Court's ruling either, for instance as regards the interpretation and application of the concepts of "objectivity" and "veracity" within the regulatory framework of "information of voters" under Russian law (see also paragraphs 90 and 94 below).

87. Furthermore, the respondent Government have not pointed to any essential factual or legal elements distinguishing the present case from Orlovskaya Iskra. Nor have they put forward any further argument regarding the need for stricter regulation of online media content during campaign periods.

88. The Court concluded in *Orlovskaya Iskra* that the regulatory framework in 2007 excessively and without compelling justification reduced the scope for political expression in the press by restricting the range of participants and perspectives. That framework was not shown to achieve, in a proportionate manner, the aim, for instance, of running fair elections to the national legislature. That rationale applies even more forcefully in the context of online publications, which nowadays tend to be accessible by a greater number of people and viewed as a major source of information and ideas.

89. The Court considers that its findings in *Orlovskaya Iskra* pertaining to the state of the domestic law and judicial practice are applicable in the present case. The Court confirms those findings in the present case concerning the mass media's exercise of the right to freedom to impart information and ideas by way of making an independent editorial choice to publish a text on its Internet platform. The Court notes that the website owned by the applicant appeared to be a local outlet, similar in size and reach to a local newspaper. While the Court does 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 – may present

specific challenges for the integrity of electoral processes, such an issue does not arise in the present case.

90. The Court further notes that it has not been argued or otherwise raised as part of the subject-matter before the domestic courts that the applicant company had failed to act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism or exceeded the acceptable boundaries, for instance as regards another person's reputation (compare with *Ólafsson*, cited above, §§ 12, 20, 38 and 49-62, in the context of a private defamation dispute under the Penal Code of Iceland) or as regards calls to violence or stirring up hatred, intolerance or discrimination (see *Féret v. Belgium*, no. 15615/07, §§ 66-82, 16 July 2009, and *Atamanchuk v. Russia*, no. 4493/11, §§ 53-64, 11 February 2020). The domestic courts did not delve into such matters, their task being limited to the application of the specific regulatory framework relating to "pre-election campaigning" that media outlets were not allowed to engage into under Russian law.

91. The following circumstances of the present case underscore two further (temporal and substantive) aspects of the above findings about the "pre-election campaigning" regulation in Russia.

92. The Court notes that it was lawful under Russian law to characterise as "pre-election campaigning" a text published during the official period of "pre-election campaigning" (four weeks before an election) and to punish a media outlet for violating various related rules and formalities applicable for such material (for instance, the rules mentioned above). However, it follows from the judicial findings in the present case that the reach of the "campaigning" part of the regulatory framework was extended beyond twenty-eight days prior to an election (see paragraph **Error! Reference source not found.** above) so as to punish a media outlet for publishing texts prior to the start of the official "campaigning" period. The present case underscores the even wider temporal reach of the regulatory framework the Court scrutinised in *Orlovskaya Iskra*. It has not been substantiated that it was "necessary in a democratic society" to prosecute the applicant company for publishing the impugned articles on the Internet some two months before the election day (compare *Erdoğan Gökçe v. Turkey*, no. 31736/04, §§ 49-53, 14 October 2014).

93. In addition to the above conviction, the applicant company was punished in separate proceedings for failing to accompany the same "campaigning material" with certain information about, *inter alia*, the number of copies – a requirement that would only make sense in the case of a print publication – and the persons who had "produced" that material. It was self-evident that the articles had an author (Mr A.) and that they were made available on a website run by the information agency and owned by the applicant company. It is uncontested that the relevant information was indicated on the website. It has not been substantiated that it was "necessary

in a democratic society" to punish the applicant company for failing to specify, *inter alia*, the "number of copies" or the "producers" (including any "manufacturers") of the articles made available on a website.

94. Lastly, the Court notes that the domestic courts did not discuss the harm caused by the content of the articles published on the Internet to the exercise and enjoyment of human rights and freedoms in the electoral context. The Court has not been provided with, for instance, data relating to the website's traffic statistics and analytics, including in relation to the pages on which the impugned articles were published. As required by Russian law, the focus of the domestic proceedings should have been on the proof of the campaigning aim of the material (see paragraph 46 above). However, the court decisions contain no such assessment either.

95. The Court considers that the respondent State's choice to subject the expression to the regulations concerning "pre-election campaigning" and to prosecute the applicant company with reference to those regulations and related formalities amounted to an unjustified "interference by [a] public authority". Having examined the circumstances of the present case, the Court concludes that it was not "necessary in a democratic society" to convict the applicant company of the administrative offences for the breach of sections 56 and 61 of the State Duma Deputies Election Act, seeking to achieve the legitimate aim of protecting the "rights of others".

– *Conclusion*

96. There has accordingly been a violation of Article 10 of the Convention as regards the applicant's convictions in relation to the publication of A.'s articles.

B. Prosecution in relation to the online poll and the publication of T.'s article

1. Admissibility

97. The Court 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.

2. Merits

(a) The parties' submissions

98. The applicant company challenged the domestic courts' finding that the online poll in question fell within the notion of an "opinion poll" under section 53 of the State Duma Deputies Election Act; that its results had been "published" or "disseminated" because Internet users could see its provisional or definitive results; that T. had disseminated the results of the poll in his article. T.'s article had not been confined to reporting on the

results of the online poll, but had been based on various sources. Thus the fine imposed on the applicant had not been necessary in a democratic society.

99. The Government stated that the interference had been prescribed by Russian law and pursued the legitimate aim of ensuring compliance with the regulations on information of voters and running fair parliamentary elections on the basis of free and informed choices made by voters.

(b) The Court's assessment

(i) Interference

100. The Court reiterates that Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see, among many other authorities, *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204, and *Women On Waves and Others v. Portugal*, no. 31276/05, §§ 29 and 30, 3 February 2009).

101. For the reasons stated in paragraphs 57-59 and 65-71 above, the Court accepts that there has also been an "interference" with the applicant company's freedom to impart information and ideas under Article 10 of the Convention on account of the prosecution for violating formal requirements for distributing the results of an online opinion poll on its website, directly as well as via T.'s article (compare with *Magyar Kétfarkú Kutya Párt*, cited above, §§ 87-92).

(ii) Justification of the interference

102. An interference infringes Article 10 of the Convention unless it satisfies the requirements of paragraph 2 of that provision. It thus remains 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.

103. The Court notes that the applicant's prosecution was based on Article 5.5 of the CAO read in conjunction with section 53 of the State Duma Deputies Election Act (see paragraphs 31 and **Error! Reference source not found.** above).

104. The applicant company did not challenge the justification for the statutory requirement to provide certain information when disseminating opinion polls during an election period (see also paragraph 50 above). Be that as it may, whatever the legitimate aim pursued by the national authorities, for the reasons stated below the Court is not satisfied that the applicant's conviction was shown to have been "necessary in a democratic society".

105. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States

have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10. The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. What the Court has to do is, *inter alia*, to look at the interference complained of in the light of the case as a whole and determine whether the national authorities adduced "relevant and sufficient" reasons to justify it, including whether they relied on an acceptable assessment of the relevant facts (see *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

106. The Court does not exclude that certain regulations in relation to the manner in which opinion polls on voting intentions are disseminated may be necessary in a democratic society in the pursuance of a legitimate aim (see also paragraph 50 above). The applicant's complaint in the present case is primarily focused on the allegedly deficient judicial assessments of the circumstances of their case rather than the Russian regulatory framework as such.

107. The Court notes in this connection that the applicant company challenged the domestic courts' finding that the poll in question had fallen within the notion of an "opinion poll" under section 53 of the State Duma Deputies Election Act; that its results had been "published" or "disseminated" because Internet users could see its provisional or definitive results; and that T. had further disseminated the results of the poll in his article.

108. Indeed, the Court notes that the applicant company was convicted in relation to the "publication" ("dissemination") of the "results" of the "opinion poll" on the website and also by means of T.'s article. Those notions were essential constituent elements of the offence. At the domestic level the applicant company referred to the statement made by the organisation that had been in charge of the IT issues of the online poll. The applicant company argued that users who had completed the online questionnaire could not see any results immediately or at any other time and that there had been no "publication"/"dissemination" of the results on the website (see paragraphs 22 and 28 above). The domestic courts did not assess or refer in their decisions to any evidence confirming the opposite conclusion.

109. The Court further notes that the applicant company was found guilty of omitting, *inter alia*, to specify their information gathering method, the region where the poll had been carried out, the number of people who had been polled and the person(s) who had commissioned the poll and who

had paid for the publication (dissemination) of the poll. It appears that the polling method used in this case relied on the views of users who happened to visit that particular website and not on a representative sample of the electorate as a whole; therefore, at least some of the statutory requirements, such as to indicate the poll's margin of error, would appear to not be applicable. In any event, the domestic courts referred to no evidence as regards the supposed omissions during the alleged "publication" of the polling results on the website. Thus, the exact question and the information gathering method were self-evident from the presentation of the poll on the website, and the region requirement appeared to be inapplicable to the polling on the Internet. T.'s article indicated that 2,000 people had taken part in the poll. It was not alleged or proven that anyone had commissioned or paid for this poll, that is to say, that it had not been initiated by the information agency itself. Indeed, it appears that it was open to the applicant to rely on the Central Elections Committee's instructions in that respect (see paragraph 49 above). It has therefore not been substantiated that prosecution for the violation of those requirements when publishing material on the Internet was "necessary in a democratic society".

110. In view of the foregoing considerations and in the absence of more detailed submissions on the rationale of the regulatory framework for opinion polls during an election period and on the justification of the applicant's conviction, the Court cannot conclude in the present case that the related "formalities, conditions, restrictions or penalties" within the meaning of Article 10 § 2 of the Convention were in compliance with it.

111. The Court is mindful of its fundamentally subsidiary role in the Convention system (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, ECHR 2016). However, faced with the domestic courts' failure to provide relevant and sufficient reasons to justify the "interference" the Court finds that they cannot be said to have applied standards which were in conformity with the principles embodied in Article 10 of the Convention or to have based themselves on an acceptable assessment of the relevant facts (see, with further references, *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017, and *MAC TV s.r.o. v. Slovakia*, no. 13466/12, §§ 53-58, 28 November 2017).

112. The foregoing considerations are sufficient for the Court in the present case to conclude that there has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The applicant company claimed 7,000 euros (EUR) in respect of non-pecuniary damage and the amounts of the fines it had paid.

115. The Government contested the claims.

116. Having regard to the nature and scope of the violations, the Court grants the claim in respect of pecuniary damage.

117. As to non-pecuniary damage, the Court reiterates that there is a possibility under Article 41 of the Convention that a commercial company may be awarded monetary compensation for non-pecuniary damage (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV). Non-pecuniary damage suffered by companies may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (ibid.; see also *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 221-22, ECHR 2012). It appears that the applicant company (represented by its only member) had difficulties in paying the fines, which caused some disruption to its operation (see paragraphs 2, 5 and 30 above).

118. In view of the above considerations, the Court awards the applicant company an aggregate sum of EUR 5,000 in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

119. The applicant company claimed EUR 2,825 for the legal fees incurred before the Court, based on a 2012 contract with Ms Ledovskikh and the final invoice (certificate of acceptance) issued in 2017 for 56.5 hours of work. The contract provided for a rate of EUR 50 per hour and the total fee of up to EUR 3,000, and deferred payment of such fee until "after the notification of the Court's judgment and its entry into force".

120. The Government argued that the applicant had submitted no proof of actual payment, the invoice merely summing up the lawyer's claim for the work done; that this type of contract had been and remained, as of 2018, unenforceable under Russian law, as ruled by the Constitutional Court of Russia in 2007.

121. An applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 234, 10 September 2019; *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-71, 28 November 2017; *Allanazarova v. Russia*, no. 46721/15, § 123, 14 February 2017; and *H.K. v. Finland*, no. 36065/97, § 131, 26 September 2006). In the present case, regard being had to the documents in its possession and the above criteria, the Court awards EUR 2,500. As requested this sum should be paid to Ms Ledovskikh directly.

C. Default interest

122. 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.

III. ARTICLE 46 OF THE CONVENTION

123. Article 46 of the Convention in the relevant parts provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

124. Under Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in cases to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or the Protocols thereto imposes on the respondent State the legal obligation not just to pay those concerned the sums awarded by way of just satisfaction pursuant to Article 41 of the Convention but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if necessary, individual measures which it considers appropriate to incorporate into domestic law in order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 311, 1 December 2020).

125. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used under its domestic law to comply with that obligation provided that such means are compatible with the conclusions and spirit of the Court's judgment. However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation which has given rise to the finding of a violation (ibid, § 312).

126. The Court has found a violation of Article 10 of the Convention (see paragraphs 80-96 above) on account of the interpretation and application of certain provisions of the Electoral Rights Act of 2002 and the State Duma Deputies Election Act of 2005 (in force until 2016) in the context of prosecution for administrative offences. The Court notes that similar provisions are now contained in the State Duma Deputies Election Act of 2014. The Court's findings in the present case concern online publications of texts by a media outlet, which was privately owned and was not affiliated to any candidate or political party. Drawing on its findings in *Orlovskaya Iskra* (see paragraph **Error! Reference source not found.** above) that publications in the print media during the statutory one-month "pre-election campaigning" period prior to the election day were regulated on the basis of a criterion that was vague and conferred a very wide discretion on the implementing authorities, the Court has pointed out the absence of any specific regulation of election-related online publications by media outlets, the extensive substantive and temporal reach of the general regulations based on the notions of "pre-election campaigning" (*предвыборная агитация*) and "campaigning material" (*агитационный материал*) and the lack of clarity as to the media outlets' expression outside "information sessions/sections" (*информационные блоки*) and the overall uncertainty of the existing legal framework for media outlets.

127. The Court has also taken note of the state of the execution proceedings before the Committee of Ministers in respect of the Court's judgment in *Orlovskaya Iskra* that became final in July 2017 (see paragraph 52 above).

128. The Court considers that it is incumbent on the respondent State to choose and implement, consistently with the conclusions and spirit of the Court's findings in paragraphs 80-96 above and subject to supervision by the Committee of Ministers, the appropriate legislative or jurisprudential measures aimed at (i) protecting the right to freedom of expression exercised by the print media and online media outlets and their editorial independence during an electoral campaign, and (ii) at mitigating any chilling effect arising on account of the application of the electoral legislation on pre-election campaigning.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 10 of the Convention admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention on account of the publication of A.'s articles;

3. *Holds* that there has been a violation of Article 10 of the Convention on account of the publication of the results of the online opinion poll;

4. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant company:

(i) EUR 5,000 (five thousand euros), in respect of pecuniary and non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros) to Ms Margarita Ledovskikh, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President