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

THIRD SECTION

CASE OF ASSOTSIATSIYA NGO GOLOS AND OTHERS v. RUSSIA

(Application no. 41055/12)

JUDGMENT

Art 10 • Freedom of expression • Unjustified sanctioning of NGO for disseminating election-monitoring material on the basis of statutory ban on all election-related publications during pre-election "silence period" • Domestic courts' failure to provide relevant and sufficient reasons • Election observers to be allowed to draw the public's attention to potential violations of electoral laws and procedures as they occur • Unjustified "chilling effect" *vis-à-vis* NGO's exercise of its "social watchdog" function warranting similar protection as that afforded to the press

STRASBOURG

16 November 2021

FINAL

16/02/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Assotsiatsiya NGO Golos and Others v. Russia,

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

Georges Ravarani, *President,*
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Peeter Roosma,
Andreas Zünd,
Frédéric Krenc, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 41055/12) 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 the Association of Non-Governmental Organisations "For the Protection of Voters' Rights "Golos"" ("the first applicant") and two Russian nationals, Ms Liliya Vasilyevna Shibanova ("the second applicant") and Ms Tatyana Georgiyevna Troynova ("the third applicant") on 22 June 2012;

the decision to give notice to the Russian Government ("the Government") of the complaints under Articles 6 and 10 of the Convention concerning administrative-offence proceedings against the first applicant;

the parties' observations;

Having deliberated in private on 12 October 2021,

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

INTRODUCTION

1. The case concerns the statutory "silence period", prohibiting the dissemination of certain information during the five days preceding an election day, and the fine imposed on the first applicant in relation to the publication of such election-related materials on the Internet during that statutory period in the course of elections to the national legislature in 2011.

THE FACTS

2. The first applicant, a non-governmental organisation, was incorporated as a legal entity in June 2000 and was dissolved in March 2020. The second and third applicants were born in 1952 and 1942 respectively and live in Moscow, Russia.

3. The applicants were represented by Mr R. Akhmetgaliyev, a lawyer practising in Kazan, Russia. He lodged the present application before the Court on behalf of the first applicant, being instructed by Ms Shibanova as its executive director, as well as in the interest of Ms Shibanova and

Ms Troynova under the authority form issued by them. Acting on behalf of Ms Shibanova and Ms Troynova, in June 2020 Mr Akhmetgaliyev informed the Court that the first applicant had been dissolved and that the second and third applicants supported the complaint and insisted on its consideration.

4. The Government were represented initially by Mr G. Matyushkin and Mr M. Galperin, the then Representatives of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, their successor in that office.

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

I. BACKGROUND INFORMATION

6. The first applicant was a not-for-profit association created by several non-governmental organisations. It aimed to provide short-term and long-term monitoring of electoral campaigns. The applicant organisation had its own website (located at the time at www.golos.org; "the NGO's website" hereinafter).

7. At the relevant time (that is, in 2011 and 2012) the second applicant was the first applicant's executive director. The third applicant was a member of the first applicant's "council". It was composed of representatives of the founding members (non-governmental organisations). It appears that at the relevant time the council was made up of three members and carried out governing functions. It also appears that one of its functions consisted in appointing or dismissing the executive director.

8. On an unspecified date Ms G. was appointed as the NGO's executive director. In 2015 Ms D. succeeded her in that post. In 2016 Mr S. became the executive director and, apparently, remained in that post until the NGO's final dissolution in March 2020.

9. In 2016 the Moscow Department of the Ministry of Justice of the Russian Federation sought dissolution of the applicant organisation and appointed Ms D. as the receiver. By a judgment of 27 July 2016 the Presnenskiy District Court of Moscow granted that application and ordered that the applicant organisation be struck off the Register of Legal Entities. The court noted that in June 2014 the applicant organisation had been classified as a "foreign agent", receiving funding from sources outside the Russian Federation; and that, despite the legislative ban, it had then engaged in dissemination of information concerning elections, in particular in 2015.

10. The above judgment was enforced on 4 March 2020. In the meantime, Ms D. had been engaged in various proceedings in which she argued that she could not act as a receiver, having resigned from her post as executive director prior to the judgment of 27 July 2016.

II. INTERNET PUBLICATIONS IN 2011

11. The electoral campaign to the State Duma of the Russian Federation started on 30 August 2011. The election was to be held on 4 December 2011.

12. On an unspecified date in 2011 the first applicant launched a project which consisted in creating a website called *Map of Violations* located at the time at www.kartanarusheni.ru ("the project website" hereinafter). The project was run in partnership with Gazeta.ru, an Internet news outlet. According to the first applicant, the website was to function using the crowd-sourcing method; that is, the website users were able to generate the site's content, while the project managers were in charge of technical support and preliminary monitoring of the content.

13. It appears that the NGO's website had textual or visual hyperlinks to the project website, for instance through a banner.

14. A group of members of the State Duma and the Chief Officer of the Central Elections Committee complained to the Prosecutor General, alleging that the NGO's website contained negative information about the United Russia political party.

15. On 1 December 2011 Meshchanskiy inter-district prosecutor issued a decision to institute administrative offence proceedings against the first applicant under Article 5.5 of the Federal Code of Administrative Offences (CAO) (see paragraph 36 below). The decision reads as follows:

> "On 29 and 30 November 2011 the NGO published [on its website] the results of its research relating to the forthcoming elections to the State Duma. The website has a folder "Map of Violations. Elections 2011", which contains statistical data concerning electoral campaigning and analysis of that data, as well as analytical conclusions from the information received about violations committed during the electoral campaign ...
>
> On 29 and 30 November 2011 the NGO violated the rules for publishing information relating to the preparation and running of the elections to the State Duma. This violation consists in the publication of information about the results of research carried out in Russia in relation to the electoral campaign."

16. The prosecutor's decision contained no reference to or list of the impugned publications.

17. On 1 December 2011 a copy of the prosecutor's decision was handed over to one of the first applicant's employees. The administrative offence case was submitted for trial before a justice of the peace.

18. The NGO's executive director (the second applicant) was abroad and did not take part in the proceedings. However, a lawyer was retained. He attended the court hearing, listed for 2 December 2011.

19. The prosecutor provided the justice of the peace with forty-nine printouts, showing textual and visual material obtained on 1 December 2011 from various pages within the NGO's website and the *Map of Violations* project website.

20. The impugned publications from the applicant's website included texts, reports or links to the following: a press-release concerning the NGO's activities on 4 and 5 December 2011; articles concerning alleged pressure exerted on the NGO; articles entitled "Meet the richest candidate to the regional Duma", "Thirty-one violation complaints were registered in the Irkutsk Region", "*Golos* in Tomsk united the civil sector and the parties", and "Pskov Region two days before the election: bare numbers".

21. Certain other printouts represented a list of references to texts containing the words "United Russia". It appears that the related texts were user-generated messages posted on the project website. Another printout showed an interactive map indicating the number of user messages per region in relation to violations of the law allegedly committed during the electoral campaign.

22. It appears that the prosecutor also referred to a number of publications on the project's website. According to the applicant, those were direct posts made by the website users.

23. The court dismissed the lawyer's request for adjournment. However, the court then granted a 30-minute pause in the hearing for the lawyer to have access to the case-file material.

24. The lawyer renewed his request for adjournment, arguing that he had insufficient time to study the 139 pages of the file. This request was rejected.

25. The lawyer also argued that the prosecutor's decision claimed that the NGO's website contained unlawful campaigning material, whereas the screenshots enclosed with the decision concerned the project website *Map of Violations*. The lawyer also argued that the prosecutor had not properly articulated the accusation, namely by specifying the relevant webpages and texts that allegedly violated the requirements of Article 5.5 of the CAO.

26. By a judgment of 2 December 2011 the justice of the peace convicted the first applicant and sentenced it to a fine of 30,000 Russian roubles (RUB; approximately 720 euros at the time). The court held as follows:

> "[The first applicant] unlawfully published the conclusions arising from its research in relation to the forthcoming elections to the State Duma ... The [first applicant's] information resource includes a folder entitled "Map of Violations. 2011 Elections", which contains statistical data relating to the matter of electoral campaigning and the assessment of such data, as well as conclusions concerning the assessment of messages received about violations during the electoral campaign. Thus, [the first applicant] violated the rules concerning publication of content relating to the preparation and running of elections ...
>
> The court has no doubt that the defendant published the results of public opinion polls, research reports relating to the ongoing election to the State Duma, and statistical data ... less than five days before the election day ...
>
> The court rejects as irrelevant the argument suggesting that the [project website] is not the defendant's website. It has been properly established that it was the defendant

who committed the relevant administrative offence. In addition, no evidence has been submitted to substantiate the above argument ..."

27. On 4 December 2011 the elections to the State Duma took place.

28. The first applicant appealed, arguing that the defence had been deprived of adequate time for studying the case file and for lodging oral motions and requests during the trial hearing; the impugned publications had been on the project website, which was not a "folder" within the first applicant's website but instead a separate website, created by Gazeta.ru, a distinct Internet media outlet; none of those publications could be reasonably classified as sociological research reports or "results of opinion polls", which could not lawfully be disseminated within the five days preceding the election day; the messages about violations of the electoral legislation had been submitted by Internet users, with the first applicant merely having the role of providing a platform and removing messages unrelated to the electoral context and providing technical support for the project website.

29. On 29 December 2011 the Meshchanskiy District Court of Moscow held a hearing and heard the NGO's lawyer. On the same date the District Court upheld the judgment of 2 December 2011. It considered that the first applicant had disseminated "material relating to the preparation and running of an election". The court dismissed the first applicant's argument that the evidence submitted by the prosecutor concerned the project website and publications posted directly by its users, rather than by the first applicant. The court considered that the project website was "a common project, in which [the first applicant] was one of the actors"; the information posted on the first applicant's Internet platforms less than five days before the election day contained statistical data about campaigning and analysis of such data, and analytical conclusions regarding the complaints received about violations during the electoral campaign.

30. In February 2012 the first applicant sought review of the above judgments under Article 30.12 of the CAO before the Moscow City Court. That application was rejected.

31. The Human Rights Ombudsman of the Russian Federation lodged a review request. He argued that the lower courts had not properly established the essential factual circumstances of the case, in that they had not relied upon any verified information about the date on which the publications had been "made", instead merely referring to the date(s) on which they had been "accessed"; they had not relied on any verified information as to who exactly had published the impugned information (given that the project website was not a "folder" of the first applicant's website; the latter only contained a link to the project website); information about violations of the electoral legislation was being posted and updated in a "live" manner, so that the statistical elements had been changing constantly and thus prevented any possibility of a "research" finding.

32. On 2 November 2012 the deputy President of the Moscow City Court upheld the lower courts' decisions on review.

33. The Human Rights Ombudsman lodged a further review request before the Supreme Court of Russia. He stated that the actual publication date was irrelevant, since it sufficed that the publications remained widely accessible within the period of five days preceding the election day.

34. On 22 April 2013 a judge of the Supreme Court dismissed the request. He concluded that on 29 and 30 November 2011 the results of the NGO's research had been published on the NGO's website. This material included statistical data concerning electoral campaigning and analysis of such data, and analytical conclusions on the information received concerning violations during the electoral campaign. The material was related to the preparation and running of the electoral campaign. The judge also stated that the NGO's website contained a link to the *Map of Violations* website, both of which were available to an unlimited audience.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN LAW AND PRACTICE

A. Publication of information during an election period

35. Under Article 29 of the Russian Constitution everyone has a right to freedom of expression and a right to freely seek, receive, transfer, produce or disseminate information, by any lawful means. This constitutional provision also protects the freedom of mass information (*свобода массовой информации*).

36. Article 5.5 § 1 of the Code of Administrative Offences of the Russian Federation read as follows:

> "**Article 5.5. Violation by media outlets of the rules for participation in the information support of elections and referendums**
>
> 1. A violation – on the part of an editor-in-chief, an editorial board, an organisation that carries out radio or television broadcasting or another organisation that produces or disseminates a media outlet – in respect of the rules for publishing materials relating to the preparation or running of an election or referendum as well as a violation during an election campaign or a referendum campaign in respect of the rules for publishing such material in information and telecommunication networks access to which was not limited to a restricted group of people
>
> shall be punishable by an administrative fine of: five hundred to two thousand roubles – for citizens; one to five thousand roubles – for officials; thirty thousand to one hundred thousand roubles – for legal entities ..."

37. The Electoral Rights Act 2002 prohibited, within five days of the election day and on the election day itself, publication of the results of any opinion polls, election result forecasts or other research reports (*исследования*) relating to the ongoing elections or referenda, including by

way of posting such information in telecommunication networks, including Internet, where access is not limited to a restricted group of people (section 46 § 3).

38. Similar regulations were contained in section 53 § 3 of the State Duma Deputies Election Act 2005.

39. Pursuant to Decision no. 77/618-5 adopted on 18 December 2007 by the Central Elections Committee of Russia, the above-mentioned ban did not entail the need to delete from the Internet any results of opinion polls or other relevant material that had been disseminated in compliance with the Electoral Rights Act.

B. Constitutional-complaint procedure

40. Section 96 of the Federal Constitutional Law No. 1-FKZ of 21 July 1994 (the "Constitutional Court Act") provided at the relevant time that Russian citizens could lodge an individual or group complaint before the Constitutional Court of Russia to complain about the violation of their constitutional rights or freedoms, where such rights and freedoms were violated on account of a federal law that had been applied in their case(s). Section 97 of the Act provided that an individual complaint would be admissible where the impugned law had affected constitutional rights or freedoms and if it had been applied in a specific case that had already been examined.

41. Section 3 of the Act provided that the Constitutional Court was to abstain from establishing or assessing factual circumstances in the situations where this was within the jurisdiction of other courts or authorities. The Constitutional Court considered that section 3 was compatible with the Constitution, noting that the constitutional review consisted in assessing that compatibility of a normative legal act with the Constitution; and that section 3 did not prevent the Constitutional Court from "taking into account the factual circumstances that had been established and assessed by other authorities" (Decision no. 1578-O-O of 16 December 2010).

II. COUNCIL OF EUROPE

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

> "...
>
> **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.

Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

9. "Day of reflection"

Member states may consider the merits of including a provision in their regulatory frameworks to prohibit the dissemination of partisan electoral messages on the day preceding voting or to provide for their correction. ..."

THE LAW

I. PRELIMINARY CONSIDERATIONS

43. In June 2020 the applicants' representative before the Court informed it that the first applicant had been dissolved and that the second and third applicants "supported the complaint and insisted on its consideration". The Government then maintained their position that there had been no violation of Article 10 of the Convention in respect of the first applicant.

44. The Court notes that the Government have not argued that the first applicant's complaint should be struck out under Article 37 § 1 of the Convention, for instance, its sub-paragraph (c). Despite this, the Court must determine whether it should continue the examination of this complaint, that is, whether someone has expressed a legitimate interest in pursuing it or whether respect for human rights as defined in the Convention and the Protocols thereto so requires.

45. In June 2020 Mr Akhmetgaliyev, acting on behalf of the second and third applicants, stated that they maintained "the complaint" and insisted on its consideration by the Court.

46. The second and third applicants had held an executive position and participated with others in exercising governing functions within the non-governmental organisation in 2012. The second applicant had ceased to exercise the role in question some time prior to 2015. The Court has no related information as to the third applicant.

47. In 2012 the applicant organisation lodged a complaint with the Court. It was lodged by Mr Akhmetgaliyev, who was being instructed by the then executive director of the organisation, Ms Shibanova (the second applicant) and who had held that position at the time of the "interference" under Article 10 of the Convention. The second applicant had been placed in charge of pursuing the first applicant's aims as indicated in its articles of incorporation. In her capacity as the organisation's executive director, the second applicant had exercised control over the NGO's operations and activities. In 2015 Ms D., the organisation's executive director at the time (who is also the person who was appointed in July 2016 as its receiver), confirmed this lawyer as the organisation's representative before the Court and, by implication, the organisation's interest in pursuing the complaint before the Court.

48. The first applicant was incorporated as an association of other non-governmental organisations. Those organisations have expressed no interest in pursuing the first applicant's complaints before the Court.

49. In the circumstances of the present case the Court accepts that the second applicant has a legitimate interest in pursuing the first applicant's complaint under Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

50. The applicants complained under Article 10 of the Convention that the administrative-offence proceedings against the first applicant had interfered – through the enforcement of the statutory ban on election-related publications in the days preceding the election day – with the election monitoring project that they had been running or had otherwise engaged in.

51. In the applicants' view, at least some material, for instance user-generated messages containing allegations of violations of the electoral legislation, should not have been classified as campaigning material or another material that might influence voters in making informed choices in relation to candidates or parties. Such material could only be assimilated to general information in relation to the ongoing election and thus should not have been covered by the temporal statutory limitation.

52. Article 10 of the Convention reads 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."

A. Admissibility

1. First applicant

53. The Government argued that following the rejection of the request for supervisory review in February 2012 (see paragraph 30 above) the first applicant ought to have exhausted further domestic remedies by way of an individual constitutional complaint under sections 96 and 97 of the Constitutional Court Act (see paragraph 40 above). They argued that the Constitutional Court had had jurisdiction to assess a complaint based on the alleged unconstitutionality of the electoral legislation *vis-à-vis* the constitutional right to freedom of expression. The Government also specified that prior to a legislative amendment in 2014 there had been no time-limit for lodging such a complaint before the Constitutional Court of Russia. In the Government's view, unlike a constitutional procedure which would pertain to the allegedly mistaken (unconstitutional) interpretation and application of law in the specific circumstances of a case, such a procedure for review *in abstracto* could be accepted as a remedy to be exhausted.

54. The first applicant argued that the complaint under Article 10 of the Convention (see paragraph 51 above) concerned the erroneous application of section 46 § 3 of the Electoral Rights Act in the context of Article 5.5 of the CAO (see paragraphs 36 and 37 above). Specifically, the first applicant argued that at least some of the material in question, for instance user-generated messages containing allegations of violations of the electoral legislation, should not have been classified as campaigning material or other material that might influence voters in making informed choices in relation to candidates or parties. Such material could only be assimilated to general information concerning the ongoing election and should not therefore have been covered by the temporal statutory limitation. Thus, the first applicant did not allege at the national level and then before the Court that the above-mentioned legal provisions were unconstitutional *per se*. Thus, a constitutional complaint was not a remedy to exhaust.

55. The Court reiterates that whether an individual application to the Constitutional Court is required by Article 35 § 1 of the Convention depends largely on the particular features of the respondent State's legal system and the scope of its Constitutional Court's jurisdiction (see *Uzun v. Turkey* (dec.), no. 10755/13, §§ 42-71, 30 April 2013, and the cases cited therein). The Court has previously considered that the procedure under

sections 96 and 97 of the Constitutional Court Act was not a remedy to exhaust (see *Sergey Smirnov v. Russia* (dec.), no. 14085/04, 6 July 2006) and held as follows:

> "The Court observes that the Russian Constitutional Court is competent to examine individual complaints lodged to challenge the constitutionality of a law. An individual constitutional complaint can only be lodged against a law which infringes constitutional rights and freedoms and which has been applied or may be applicable in an individual case. Thus, the procedure of constitutional complaint cannot serve as an effective remedy if the alleged violation resulted only from erroneous application or interpretation of a statutory provision which, in its content, is not unconstitutional ...
>
> In the present case the Government suggested that the applicant should have challenged Article 131 of the new CCP. However, the Constitutional Court itself clarified that it could not verify whether in an individual case the courts of general jurisdiction applied this Article correctly. The applicant does not contest the compatibility of Article 131 with the Constitution, rather he questions the way in which the domestic courts applied the requirements contained in that Article to his case. It appears that in those circumstances an application to the Constitutional Court would have had no prospects of success. Therefore, the application cannot be rejected for non-exhaustion of domestic remedies."

56. The Court notes that a constitutional complaint could be lodged once the examination of a case had been "completed". However, it remains unclear what level of jurisdiction ought to have been exhausted in a case under the CAO (an ordinary appeal procedure or, in addition, one or two layers of the review procedure). The Government cited no domestic provision or case-law in support of their suggestion that the constitutional-complaint remedy had become available following a decision taken on an application for review under Article 30.12 of the CAO, namely, in the present case, a decision not to examine such an application. It appears that recourse to the review procedure under Article 30.12 of the CAO was not subject to any time-limit at the relevant time. At least as of 2014 the Court did not consider that review procedure as a remedy to be exhausted (see *Smadikov v. Russia* (dec.), no. 10810/15, § 49, 31 January 2017). The Court also notes that the constitutional-complaint remedy was not subject to any time-limit at the material time, that is, prior to the first applicant's decision to submit an application to the Court in June 2012. In so far as recourse to the constitutional-complaint remedy was thus dependent on the prior use of the review procedure in a CAO case, the Court is not satisfied that it was a remedy to be exhausted in 2012.

57. The Court concludes that the first applicant was not required to exhaust the constitutional-complaint procedure prior to lodging a complaint under Article 10 of the Convention before the Court in 2012. The Government's objection is therefore dismissed.

2. Second and third applicants' complaints lodged in 2012 in their own name and as the then officials of the first applicant

58. The Government argued that the second and third applicants were not victims of the alleged violations of Article 10 of the Convention on account of the administrative-offence proceedings against the first applicant. The latter had been the only defendant in those proceedings. The second and third applicants had not been a party to those proceedings.

59. The second and third applicants disagreed.

60. The Court notes that along with the first applicant's complaints under Articles 6 and 10 of the Convention, the then executive director of the first applicant (the second applicant) and one of the members of the council constituted by the first applicant's founding members (the third applicant) also lodged similar complaints in their own name, each arguing that the administrative-offence proceedings against the organisation had interfered with her own exercise of the right to freedom of expression as protected by Article 10 § 1 of the Convention.

61. The Court reiterates that Article 34 of the Convention does not allow complaints *in abstracto* alleging a violation of the Convention. The Convention does not provide for the institution of an *actio popularis*, meaning that applicants may not complain about a provision of domestic law, a domestic practice or public acts simply because they appear to contravene the Convention (see *Albert and Others v. Hungary* [GC], no. 5294/14, § 120, 7 July 2020). Accordingly, in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that she or he was "directly affected" by the measure complained of. This is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (ibid, § 121).

62. A person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 92-93, ECHR 2012). The Court reached the same conclusion in a case in which the editor-in-chief of a magazine published by a limited-liability company (in which he was one of two shareholders and the chairman of the board) complained that his right to freedom of expression had been violated on account of the Finnish authorities prohibiting the company from processing personal data (see *Anttila v. Finland* (dec.), no. 16248/10, 19 November 2013; see also *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 30 and 139-40, 27 June 2017).

63. As regards the second applicant, it has not been substantiated that she was directly involved in the Map of Violations online project and other

related activities for monitoring elections, the activities which gave rise to the first applicant's administrative-offence liability and constituted an "interference" under Article 10 of the Convention in the present case. Thus, in the specific circumstances of the case the Court is not satisfied that the second applicant had a "valid and personal interest" in making sure that the organisation was enabled to impart information and ideas on election-related matters within the monitoring role it assigned itself, and thus in seeing the alleged violation of the Convention "brought to an end" (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)). This finding is without prejudice to the Court's conclusion that she has standing to pursue the first applicant's complaint.

64. As to the third applicant, in her application to the Court the third applicant indicated that she was, as of June 2012, a member of the first applicant's council. It appears that she was a representative for one of the three non-governmental organisations which had founded the first applicant. The Court has no information at its disposal as regards her role and involvement in the first applicant's main activities, namely those activities which amounted to the exercise of the right to freedom of expression, specifically within the online project or related activities aimed at monitoring elections. Nor had she been involved in the impugned administrative-offence proceedings.

65. The Court concludes that the second and third applicants' complaint concerning their own right to freedom of expression in the present case is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

3. Conclusion on admissibility

66. As regard the first applicant's complaint, the Court notes that it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The first applicant

67. The first applicant acknowledged that both electoral campaigning for or against candidates or parties and information such as opinion polls or election-related research reports were capable of influencing voters' choices. Thus, the institution of a "silence period" several days prior to an election day was justified. However, the material held against the first applicant in the CAO proceedings should not have been classified within

either of the above categories. The national courts had not assessed the impugned printouts submitted by the prosecution and had not convincingly refuted the defendant's arguments. In particular, some printouts had merely presented information on the ongoing work of election committees or described allegations of violations of the electoral legislation.

(b) The Government

68. The Government argued that the applicants had wrongly assumed that the ban concerned only campaigning materials or the like. In fact, the ban concerned any material relating to the ongoing election. The category of "other research reports" that could not be published during the "silence period" concerned only election-related material. The Government suggested that such reports could include analytical or statistical materials, and assessments that could influence voters, directly or indirectly, in favour or against a certain candidate or party. It was incumbent on the courts in each case to consider whether the impugned material amounted to such "research reports". Whereas in their observations before the Court the applicants placed emphasis on the material that contained no structured analysis or generalisation which are characteristic of the results of "research reports", the courts had also taken into account some other material that had those features. The legislation on the "silence period" concerned all types of publications, all types of media being used (including publications on the Internet). As regards Internet publications the regulation concerned all types of actors, including media outlets, legal entities or ordinary citizens. Referring to a 2007 Opinion of the Central Elections Committee on election-related opinion polls (see paragraph 39 above), the Government affirmed that the legislation on the "silence period" did not require the removal of any material that had been published prior to the start of that period.

69. The applicant organisation had been given the minimum statutory fine of RUB 30,000, which could not be considered burdensome for a legal entity. It had not been shown that this fine put the organisation's operations at risk.

2. The Court's assessment

70. It is not in dispute between the parties, and the Court considers, that both the dissemination of the impugned materials on the NGO's and the project website and the provision of the project's Internet platform for user-generated content amounted to the exercise of the right to freedom of expression as protected by Article 10 § 1 of the Convention (see, among others, *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 87-91, 20 January 2020 (*inter alia*, on making available a platform for user-generated content); *Magyar Jeti Zrt v. Hungary*, no. 11257/16, § 56,

4 December 2018 (on posting a hyperlink to a third party's material); and *Erdoğan Gökçe v. Turkey*, no. 31736/04, § 27, 14 October 2014). The Court considers that there has been an "interference" with the first applicant's freedom of expression in the present case.

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

72. The Court notes that the first applicant's conviction was based on Article 5.5 of the CAO read in conjunction with section 46 § 3 of the Electoral Rights Act (see paragraphs 36 and 37 above).

73. The Court also notes that the parties agreed that the first applicant's prosecution was aimed at protecting the "rights of others".

74. It remains to be ascertained whether in the present case the "interference" (the first applicant's prosecution) was convincingly shown to have been "necessary in a democratic society".

75. 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).

76. The Court also reiterates that when an NGO draws attention to matters of public interest, it is exercising a "public watchdog" role of similar importance to that of the press (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 103, ECHR 2013 (extracts)) and may be characterised as a "social watchdog" warranting similar protection under the Convention as that afforded to the press (ibid.; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, 8 November 2016; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, §§ 87 and 108, 27 June 2017; and *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, no. 18597/13, §§ 57 and 78-79, 9 January 2018).

77. The parties agree that at least "some material" made available on the NGO's and project websites could legitimately fall within the scope of "other research reports" under section 46 § 3 of the Electoral Rights Act (see paragraph 37 above). The Government seemed to acknowledge that "some other material" should, probably, not have been caught by that ban.

78. The Court notes that the administrative-offence report (deemed to constitute an act of accusation under the Russian CAO) did not specify the publications held against the first applicant. Before the justice of the peace the prosecutor submitted forty-nine pages of printouts from the Internet. That material had been printed out from the NGO's website as well as the project website. It is also noted that the material contained a variety of material, such as texts, visual material (for example, banners which acted as hyperlinks to other material, or without this functionality), an interactive map and a list of results following a key-word search. Furthermore, the Court notes that while some material was generated by the operators of the websites, the remainder was essentially generated by users of the project website.

79. The Court notes that the first-instance court found it established that the first applicant had disseminated, through its website, "results of opinion polls, research reports relating to the ongoing election", "statistical data relating to electoral campaigning and research reports on such data", "results of the analysis of messages received about alleged violations during the election period" (see paragraph 26 above).

80. The courts did not discuss or even refer to any specific printouts. Nor did they establish that the impugned materials had been uploaded or otherwise "published" within the relevant statutory five-day period.

81. The domestic courts did not attempt to specify what elements had led them to conclude that the impugned material fell within the scope of the above notions or the notions used in section 46 § 3 of the Electoral Rights Act (see paragraphs 36 and 37 above), specifically the notion of "research report".

82. The courts' judgments do not indicate that they assessed in any detail the content of various Internet publications on either the NGO's website or the project website. The Court is not able to discern from the courts' reasoning any element that would have allowed them to reach the conclusion that any such material could reasonably amount to "research reports" "relating to" the ongoing election period under Russian law.

83. It appears that the first applicant's conviction was related to the printouts showing user-generated content, specifically texts alleging violations of the electoral legislation, and the interactive map of Russia. It is uncontested that this interactive and constantly updated map was made available prior to the "silence period". The application of the "silence period" to that technological tool and the first applicant's conviction meant, in substance, that it was unlawful under Russian law to impart in this

manner data on a matter of public interest. The domestic courts' reasoning contains no elements disclosing whether that aspect of the interference was convincingly shown to have been "necessary in a democratic society".

84. Overall, the Court is not satisfied that the domestic courts provided relevant and sufficient reasons for enforcing the temporal restriction in the present case.

85. The first applicant provided an Internet platform for users to generate content, specifically reports of alleged violations during the ongoing election period. The first applicant was punished, in substance, for continuing to run (for not suspending) – during the "silence period" – the *Map of Violations* online project, including the operation of the online interactive map.

86. The unspecified nature of the charge against the first applicant and the courts' rather superficial approach to assessing this charge also created an unjustified "chilling effect" *vis-à-vis* the first applicant's exercise of its "social watchdog" function.

87. 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, *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*, no. 43351/12, § 111, 18 May 2021).

88. Furthermore, the Court considers that the overbroad reach of the electoral legislation on the "silence period" extending to all material "relating to" an ongoing election – as interpreted and applied by the national courts and as confirmed by the Government in the present case – disproportionately interfered with the first applicant's exercise of the freedom to impart information and ideas on issues relating to the running of free and fair elections to the national legislature, specifically in so far as some publications were not classified, for instance, as (last-minute) partisan or adverse political campaigning. For example, the texts on the first applicant's activities on 4 and 5 December 2011 and its activities in the town of Tomsk (see paragraph 20 above) do not appear to have contained any such campaigning, nor to have relayed any polling results on voting intentions. In this connection, the Court considers that election observers should generally be able to draw the public's attention to potential violations of electoral laws and procedures as they occur, otherwise such reporting would lose much of its value and interest (see, *mutatis mutandis*, *Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, § 65, 8 October 2013

and *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, § 39, 23 June 2020).

89. There is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in the fields of political speech and other matters of public interest, including during electoral periods (see *Orlovskaya Iskra v. Russia*, no. 42911/08, §§ 115 and 116, 21 February 2017). At the same time, the Court reiterates that States must be accorded some discretion in regulating certain forms of electoral campaigning with a view to safeguarding the democratic order within their own political systems (see *Orlovskaya Iskra*, § 125 and *Animal Defenders International*, § 111, both cited above). It can be assumed that the imposition of a short "silence and reflection period" on active campaigning before an election falls, in principle, within the scope of the State's discretion. However, the Court considers that the respondent State overstepped it in the present case by sanctioning the dissemination during the silence period of all content that could be considered as "relating to" a forthcoming election.

90. There has therefore been a violation of Article 10 of the Convention in respect of the first applicant.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

91. The applicants also complained that the administrative-offence proceedings against the first applicant had been conducted in a manner that had breached Article 6 of the Convention.

92. In view of the nature and scope of the findings under Article 10 of the Convention, the Court decides to dispense with the examination of the admissibility and merits of the first applicant's complaints under Article 6.

93. For reasons similar to those set out in paragraph 62 above, the Court considers that the second and third applicants' complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. In May 2016 the first applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage. In respect of pecuniary damage, the first applicant claimed the amount of the fine it had paid.

96. The Government contested the claims.

97. As regards the first applicant's claim in respect of 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*, cited above, §§ 221-22). The Court notes that the first applicant, a not-for-profit organisation, was struck off the register of legal entities in March 2020 following a court order issued in July 2016. While the second applicant has been permitted to pursue before the Court the first applicant's complaint resulting in the finding of a violation of Article 10 of the Convention, the Court does not find it necessary to award her any compensation previously claimed by the first applicant in respect of non-pecuniary or pecuniary damage. Indeed, the second applicant has made no such request.

B. Costs and expenses

98. Mr Akhmetgaliyev claimed, on behalf of all three applicants and, additionally, in relation to unspecified staff employed by the first applicant, EUR 2,000 for his representation before the Court and for his legal services before the domestic authorities, as well as his travel expenses to attend court hearings in the case against the first applicant.

99. The Government contested the claim.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court has found a violation of Article 10 of the Convention in respect of the first applicant. There is no evidence that they paid any fee to their representative or that the representative actually incurred any related expenses, including the travel expenses. Regard being had to the documents in its possession and the above criteria, the Court rejects the claim.

FOR THESE REASONS, THE COURT

1. *Decides*, by a majority, that the second applicant has standing to pursue the first applicant's complaint under Article 10 of the Convention and *declares*, by a majority, that complaint admissible;

2. *Declares*, unanimously, the second and third applicants' complaints inadmissible;

3. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention in respect of the first applicant;

4. *Holds*, unanimously, that it is not necessary to examine the admissibility and merits of the first applicant's complaints under Article 6 of the Convention;

5. *Dismisses*, unanimously, the claim for just satisfaction.

Done in English, and notified in writing on 16 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Georges Ravarani
President

APPENDIX

List of applicants

No.	Applicant's Name
1	ASSOTSIATSIYA GOLOS
2	Liliya Vasilyevna SHIBANOVA
3	Tatyana Georgiyevna TROYNOVA