



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

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THIRD SECTION

Applications nos. 27874/19 and 19659/21
OOO NOVYYE VREMENA and Yevgeniya Markovna ALBATS against
Russia
and OOO RADIO SVOBODNAYA YEVRONA/RADIO SVOBODA and
Andrey Vasilyevich SHARYY against Russia
lodged on 20 May 2019 and 15 April 2021, respectively,
and communicated on 9 June 2021

STATEMENT OF FACTS

I. CIRCUMSTANCES OF THE CASE

1. The facts of the case, as submitted by the applicants, may be summarised as follows.

A. The case of *The New Times* (application no. 27874/19)

2. The applicants in the first case are a Russian limited-liability company, OOO Novyye Vremena, and a Russian national, Ms Yevgeniya Markovna Albats, who was born in 1958 and lives in Moscow. They are represented before the Court by Ms Galina Arapova, a lawyer practising in Voronezh, Russia.

3. Since 2007 the applicant company has been the founder, editor and publisher of independent political magazine *The New Times/Novoye Vremya* and online magazine newtimes.ru. Ms Albats is the director general of the company and the editor-in-chief of the publications.

4. On 8 June 2018 a deputy prosecutor of the Tverskoy District in Moscow sent a letter to Ms Albats, alleging a breach of the foreign funding reporting requirements under section 19.2 of the Media Act. He indicated

that the applicant company had failed to submit to the media regulator Roskomnadzor the accounts for the second, third and fourth quarters of 2017 and the first quarter of 2018 concerning a sum of 24,500,000 Russian roubles (RUB) it had received in that period from the Press Freedom Support Foundation, a Russian non-commercial organisation which the Ministry of Justice had included in the register of “foreign-agent” organisations.

5. On 8 July 2018 the applicant company submitted a report on foreign funding for the second quarter of 2018.

6. On 30 July 2018 the Tverskoy district prosecutor summoned a representative of the applicant company to his office to be charged with an offence of failing to submit a report on the receipt of “foreign-agent” funding. On the following day counsel for the company drew the prosecutor staff’s attention to the fact that the three-month limitation period for the failure to submit a report for the first quarter of 2018 had ended on 11 July 2018. He relied on Article 4.5(1) of the Code of Administrative Offences (CAO) and the Plenary Supreme Court’s Resolution no. 5 (see paragraphs 31-33 below). No charges had been brought at that time.

7. On 25 and 27 September 2018 the prosecutor brought charges against the applicant company and Ms Albats for an offence under Article 13.15.1(1) of the CAO. The factual basis for the charges rested on information from the financial monitoring authority. According to it, between 6 April 2017 and 5 March 2018 the applicant company had received a total of RUB 22,250,000 from a “foreign-agent” organisation. The prosecutor received that information on 25 July 2018 and considered that this date should be taken as the date of discovery of the offence for calculating the limitation period.

8. On 26 and 27 September 2018 a magistrate of the Tverskoy Court Circuit no. 367 in Moscow ruled that the prosecution was time-barred. As the Media Act set a specific time-limit for filing a foreign-funding report, the offence was not a “continuing offence”. The report for the first quarter of 2018 should have been submitted no later than 10 April 2018. The administrative-offence reports were drawn up more than three months later, outside the limitation period set out in Article 4.5(1) of the CAO.

9. On 16 October 2018 the prosecutor filed an appeal.

10. On 22 October 2018 Ms Albats invited Mr Aleksey Navalnyy, an opposition politician who had been just released from administrative detention, to her radio talk show. They discussed current events, including the threat of excessive fines being imposed on *The New Times*.

11. On the following day the applicants were informed that the prosecutor’s appeal would be examined on 25 October 2018. On that day the Tverskoy District Court in Moscow overturned the magistrate’s decisions. It held that the date of discovery of the offence was 25 July 2018 when the prosecutors had received detailed information from the financial

monitoring authority. The matter was remitted for a new examination by the same magistrate.

12. The new hearing was held later on the same day in the absence of the applicants. By two separate judgments, the same magistrate of the Tverskoy Court Circuit no. 367 found the applicants guilty as charged and sentenced the applicant company to a fine of RUB 22,250,000 and the second applicant to a fine of RUB 30,000.

13. On 6 November 2018 the applicants lodged an appeal, complaining that the fines were excessive and grossly disproportionate to an essentially formal offence, that the sanction was not necessary because the State authorities had in their possession complete and detailed information on the sources of funding through the financial monitoring authority, that the amount of the fine had brought the independent media to the brink of bankruptcy and had a chilling effect on its operation.

14. On 20 November 2018 the Tverskoy District Court upheld the judgments on appeal as complying with domestic law. It did not consider the proportionality arguments.

15. On 28 January and 13 May 2019 the Moscow City Court and the Supreme Court of the Russian Federation, respectively, refused leave to appeal to the applicants.

B. The case of *Radio Free Europe/Radio Liberty* (application no. 19659/21)

16. The applicants in the second case are a Russian limited-liability company, OOO Radio Svobodnaya Yevropa/Radio Svoboda, and a Russian national, Mr Andrey Vasilyevich Sharyy, who was born in 1965 and lives in Moscow. They are represented before the Court by Ms Marney Cheek, a US attorney, and Mr Can Yeginsu, a lawyer practising in London.

17. The applicant company was incorporated in Russia by RFE/RL, Inc., commonly known as Radio Free Europe / Radio Liberty, a private, not-for-profit, international media organisation that broadcasts news across twenty-three countries in twenty-seven languages. RFE/RL is funded by grants from the US Congress but is, by statute, independent of the US Government. RFE/RL has been operating in Russia since 1991, acting previously through its Moscow bureau and, since 2020, through the applicant company. The second applicant is the director general of the applicant company.

18. The applicant company runs several news services in Russian and other languages, throughout Russia, including (i) *Radio Svoboda*, which publishes and broadcasts news on its website, social media and YouTube; (ii) Current Time TV, a 24/7 television network (in cooperation with Voice of America), and (iii) region-specific outlets such as *Idel.Realii*, *Kavkaz.Realii*, *Krym.Realii*, *Sever.Realii*, *Sibir.Realii*, and *Faktoğraf*, and

(iv) *Radio Azatliq*, the international news provider broadcasting in the Tatar and Bashkir languages. It employs fifty full-time staff and works with a network of 300 freelance reporters across Russia.

19. On 25 November 2017 the application of the “foreign-agent” legislation was extended to the media (Federal Law no. 327-FZ). It allowed the authorities to designate as “foreign agents” mass media organisations which receive foreign funding. Ten days later, the Ministry of Justice designated all of RFL/RE’s news services in Russia as “foreign agents”, with the exception of *Sever.Realii* which was added to the list on 15 November 2019.

20. On 2 December 2019 a new law required foreign mass media organisations designated as “foreign agents” to incorporate a legal entity in Russia if they wished to continue to broadcast news in the country (Federal Law no. 426-FZ). It also authorised the media and telecoms regulator Roskomnadzor to establish rules regarding the labelling of content produced by “foreign-agent” mass media.

21. In response to the new requirements, on 24 January 2020 RFL/RE incorporated the applicant company as a legal entity under Russian law. On 11 February 2020 it was designated as a “foreign agent”.

22. In 23 September 2020 Roskomnadzor laid down the content labelling requirements applicable to “foreign-agent” mass media organisations (Order no. 124). The written content must be labelled with a 221-character notice: “This message/material has been created and/or distributed by a foreign mass media outlet performing the functions of a foreign agent or by a Russian legal entity performing the functions of a foreign agent”. The text of the notice must be twice the font size of the original content and in a contrasting colour; the text of the notice must not overlap with the original content. The audio-visual media content must include a fifteen-second statement, enunciating the notice, played at the beginning of every broadcast.

23. The applicant company declined to implement the labelling requirements on its platforms in Russia.

24. Since 12 January 2021 Roskomnadzor charged the applicants under Article 19.34.1(1) of the CAO for multiple violations of the labelling requirements on its website and social media channels. Initially 390 administrative-offence reports were sent to the first-instance courts for adjudication. In 288 cases considered by the date of application, the applicants were held liable for the full amount of the fines. However, 158 out of 288 reports were considered by the wrong first-instance court by mistake and had to be sent for reconsideration to another court. As a consequence, prosecution became time-barred in 10 cases. New hearings were held in the other cases and the applicants were again found liable for the full amounts. First-instance courts typically heard the charges in batches of between four and twenty-four cases per day, with around ten minutes

allocated to each. The applicants’ total liability under the 267 reports determined up to the date of the application was RUB 64,050,000. The fines target both the applicant company as the legal entity and the second applicant as its official.

25. The applicants lodged appeals against all first-instance judgments. All appeals were rejected. As of the date of application, no court – whether of first-instance or appeal – upheld the applicants’ substantive objections or reduced the amount of fines sought by Roskomnadzor.

26. On 7 April 2021 the applicants were notified that a second round of 130 administrative-offence reports would be issued for “repeated offences” under Article 19.34.1(2) of the CAO. The court proceedings in those cases are now pending.

II. RELEVANT DOMESTIC LAW

A. “Foreign-agent” legislation

27. For relevant provisions, see *Ecodefence and Others v. Russia*, nos. 9988/13 and 47 others, communicated on 22 March 2017.

B. The Media Act (Law no. 2124-1 of 27 December 1991)

28. An editorial board, broadcaster or publisher must inform the media regulator on a quarterly basis, no later than ten days after the end of the relevant period, of any amounts in excess of RUB 15,000 which they received from a foreign State or individual, an international organisation, a Russian “foreign-agent” non-commercial organisation, or from any Russian organisation in which such entities are founders or participants (section 19.2, added by Law no. 464-FZ of 30 December 2015).

C. Code of Administrative Offences

29. Failure to report or delay in reporting the receipt of any sums required to be reported under the Media Act may be punishable with a fine for officials of between RUB 30,000 and 50,000, and a fine for legal entities of between one and two times the amount of non-reported sums (Article 13.15.1(1), added by Law no. 464-FZ of 30 December 2015).

30. A violation of the requirements of foreign-agent legislation by a foreign mass media organisation included in the register of foreign agents, by a Russian company it established or by any other entity included in the register may be punishable with a fine for individuals of RUB 10,000, or a fine for officials of RUB 50,000, or a fine for legal entities of RUB 500,000 (Article 19.34.1(1), added by Law no. 443-FZ of 16 December 2019). A repeated violation may be punishable with a fine for individuals of RUB 50,000, or a fine for officials of RUB 100,000, or a fine for legal

entities of RUB 1,000,000 (Article 19.34.1(2)). A gross violation may be punishable with a fine for legal entities of RUB 5,000,000 (Article 19.34.1(3)).

D. Statute of limitation

1. Code of Administrative Offences

31. The general period of limitation for offences adjudicated by a judge is three months (Article 4.5(1)). The period of limitation for continuing offences runs from the date of discovery of an offence (Article 4.5(2)).

2. Plenary Supreme Court's Resolution no. 5 of 24 March 2005

32. The period of limitation runs from the day following the day on which the offence was committed or was discovered. For offences consisting in the non-performance of a duty, the period of limitation runs from the day following the last day of the period allowed for the performance of the duty in question (point 14).

33. A “continuing offence” is “an offence consisting in prolonged and uninterrupted non-performance or inadequate performance of a statutory duty”. Failure to perform a statutory duty by the prescribed time-limit is not a “continuing offence”. The date of discovery of a “continuing offence” is the date on which the officer authorised to draw up the report on an administrative office discovers that the offence has been committed (point 14).

COMPLAINTS

34. The applicants complain under Article 10 of the Convention that the excessive and unprecedented fines constitute disproportionate interference with their right to freedom of expression and have a “chilling effect” on the independent media. The applicants in the second case additionally complain that the “foreign-agent” notice undermines the credibility of its reporting on matters of public concern conveying, as it does, a clear implication of being “an enemy of the State” and is also impossible to implement on certain platforms such as Twitter because of its length.

35. The applicants in the first case complain under Article 14 of the Convention, taken in conjunction with Article 10, that they were put at a disadvantage in comparison with media receiving funding exclusively from Russian sources. They were arbitrarily subjected to additional reporting requirements, including an obligation to submit quarterly reports which did not apply to media funded from Russian sources or to non-media companies and which was enforced through excessively harsh sanctions ranging from one to two times the amount of non-reported sums.

36. The applicants in both cases complain under Article 18 of the Convention, read in conjunction with Article 10, that the interference with their right to freedom of expression was politically motivated to punish them for independent editorial policy and publications critical of the authorities in an attempt to induce them and other media to abandon their role of a “public watchdog”.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 10 of the Convention –
 - (a) in the second case, on account of the labelling requirements applicable to “foreign-agent” mass media organisations?
 - (b) in both cases, on account of the cumulative amount of fines for alleged failures to comply with the “foreign-agent” legislation?

2. Were the applicants in the first case subjected to a differential treatment on account of their political opinion, in violation of Article 14 of the Convention, read in conjunction with Article 10?

3. Were the restrictions provided for in Article 10 of the Convention applied for any purpose other than those for which they were intended, in violation of Article 18 of the Convention?