European Court of Human Rights: New judgment finds systematic violations of freedom of expression and media freedom by Russia

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The European Court of Human Rights (Third Section) has found, unanimously, numerous violations of the right to freedom of expression and media freedom in *Novaya Gazeta and others v. Russia*, a judgment of 11 February 2025. The scale of the violations reveals a structural or systemic character: the Court joined 161 other applications to that of the newspaper, *Novaya Gazeta*, as they all concerned similar subject matter.

The violations took place on the back of new rules introduced immediately or shortly after the full-scale military invasion of Ukraine by Russia, which was framed by President Putin as a "special military operation". The rules, issued by the Federal Service for Supervision of Communications, Information Technology and Mass Media (*Roskomnadzor*) and the Prosecutor General's Office, sought to restrict access to war reports by Russian independent media outlets and to allow only information and data obtained from official Russian sources. Amendments to the Code of Administrative Offences and the Criminal Code followed quickly. Those amendments concerned the "dissemination of knowingly false information about the deployment of the Russian Armed Forces, and public calls to prevent their deployment".

There were no real obstacles to admissibility: the facts amounting to the alleged interference with the applicants' rights occurred before 16 September 2022 – the date on which the Russian Federation ceased to be a Party to the Convention. Cessation of a State Party's membership of the Council of Europe does not relieve that Party of its duty to cooperate with the organs of the Convention, including the European Court of Human Rights. Nevertheless, the Russian authorities did not submit any written observations in this case. In accordance with the settled case-law of the Court, such a manifest intention of non-participation cannot impede the examination of the case. It should also be noted that Russia did not comply with the Court's decision on interim measures under Rule 39 of the Rules of the Court. In light of the exceptional circumstances involved, the Court had decided that the Government of Russia had to abstain until further notice from actions and decisions aimed at fully blocking and terminating the activities of *Novaya Gazeta*, as well as other actions that could deprive the newspaper of exercising its rights under Article 10 of the European Convention on Human Rights

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(ECHR). The Ukrainian Government joined the case as a third-party intervener in respect of the three applications submitted by Ukrainian nationals.

After establishing the existence of an interference with the applicants' right to freedom of expression, the Court assessed whether the interference met the "prescribed by law" criteria. The conviction of the applicants by the "courts" in Crimea was held to be unlawful, given that the extension of Russian law to Crimea is in contravention of the ECHR. The other applicants were convicted based on provisions of the Russian Criminal Code and Code of Administrative Offences that were introduced or amended shortly after the start of Russia's full-scale military invasion of Ukraine. The Court expressed "serious doubts" as to whether those provisions were formulated with sufficient clarity and precision as to render their consequences foreseeable and thus offer adequate protection against arbitrariness.

Nor was the Court satisfied that the interference pursued legitimate aims in the sense of Article 10(2) ECHR. It observed that "the impugned measures were applied indiscriminately to a wide range of expressions, including peaceful anti-war protests, factual reporting on the events in Ukraine from non-official sources and statements of support for Ukraine". It thus found it "difficult to discern how expressions of pacifism or independent reporting could pose a genuine threat to national security, territorial integrity or public safety".

Notwithstanding its misgivings about whether the first two prongs of the assessment had been met, the Court proceeded to examine whether the interference was necessary in a democratic society.

The Court summarised the subject matter of the applications neatly, observing that the applicants "were subjected to various forms of interference with their freedom of expression, including administrative fines, pre-trial detention, prison sentences and closure of media outlets, for expressing views critical of Russia's military actions in Ukraine or disseminating information that diverged from official accounts". The Court also categorised the impugned expressions neatly: "peaceful anti-war protests, such as displaying the slogan "No to war"; expressions of support or solidarity with Ukraine; drawing historical parallels between the current conflict and past wars; sharing information about civilian casualties and alleged war crimes; general criticism of Russian military actions and government policy, and support for international sanctions against the Russian leadership". All of these expressions "pertained to a matter of intense public interest and significance: an unprovoked military aggression against a neighbouring State, leading to a major international armed conflict with profound implications for both European and global security". In a democratic society, public debate on such issues is "crucial"; any restrictions on such debate therefore warrant the Court's closest scrutiny.

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The Court recalled several key principles from its settled case-law and applied them to the facts of the cases at hand: in the spirit of the Handyside doctrine (that the right to freedom of expression also offers protection to expression that may offend, shock or disturb), even caustic political expression directed at the government is protected under Article 10 ECHR; it is important for the voices of small and informal campaign groups and individuals to be heard in public debate; symbolic speech and the use of foreign national symbols and colours are in principle protected under Article 10 (except in specific, narrowly-defined and historically-contingent situations); satirical and provocative expressions conveying anti-war messages are also protected, even for example, when they may seem crude and shocking to some sections of society; the "use of controversial and provocative imagery, such as Nazi symbols, to draw parallels with current events may also constitute a legitimate rhetorical device to stimulate public debate", for example, comparing "the "Z" symbol used by Russian forces and Nazi emblems, including the swastika"; expressions of outrage and debate about acts which may constitute war crimes or crimes against humanity, including the Bucha massacre and the Mariupol theatre bombing, must be able to take place freely; restricting the dissemination of reports on alleged atrocities impedes transparency, scrutiny and accountability and blanket bans on discussing alleged war crimes are not compatible with Article 10.

All in all, the Court observed "a systemic and widespread pattern of unjustified restrictions on expression related to the war in Ukraine" and a "coordinated effort by the Russian authorities to suppress dissent rather than mitigate specific security threats". The Court found that the wide and far-reaching restrictions appeared to be part of a broader campaign, in which "a broad interpretation of terms such as "discrediting" the armed forces or disseminating "knowingly false information" [...] "facilitated the prosecution of statements that should be protected in a democratic society, including criticism of foreign policy or the sharing of information from diverse sources during an armed conflict". The Court found "no justification for restricting peaceful, non-violent expression, particularly through the imposition of criminal sanctions involving pre-trial detention and deprivation of liberty". It concluded that these measures not only caused a chilling effect on freedom of expression, but also intimidated civil society and silenced dissenting voices.

The Court found that the domestic courts did not make any genuine effort to balance the applicants' right to freedom of expression with possible legitimate aims such as protecting national security, or to assess the accuracy of information about alleged war crimes or the good faith behind its dissemination. "Instead", the Court held, "any deviation from the official narrative, including the use of the term "war" rather than "special military operation", was regarded as harmful, without consideration of the content or context of the expressions in question". The Court also held that the authorities effectively criminalised "the reporting of

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any information that contradicted the official narrative", thus breaching the public's right to be informed of a different perspective on the situation in Ukraine.

The Court also held that the nature and severity of the penalties were disproportionate and that they appeared to have the aim of not only punishing individual applicants, but of sending "a clear and intimidating message to society at large, thereby stifling public debate on matters of vital public interest", thus fostering a climate of self-censorship. The blocking of independent media's websites and the revocation of the publication licence of Novaya Gazeta amounted to sweeping measures that "effectively silenced important independent voices in Russian society, significantly restricting the public's access to diverse sources of information on matters of crucial public interest". Finally, the Court also found breaches of other Convention articles, in particular Articles 5 and 3, arising out of the pre-trial detention and conditions of confinement of some of the applicants.

Judge Pavli wrote a concurring opinion in which he offered a very probing reflection on how Russia progressively dismantled its national instruments and structures for the protection of human rights and the rule of law over a protracted period of time. His reflection also focuses on how the Court dealt with those developments in its case-law; tracing what it has done and asking what else it could have done. His reflection culminates in a set of questions that concern the essence of the Court's role as a "watchdog of democracy": "can it be said that the Court sounded the alarm loudly enough, and early enough? And more importantly for the future, is it now prepared to do so in relation to other European political systems whose democratic protections might be eroding in ascertainable ways?"

Novaya Gazeta and others v. Russia, nos. 11884/22 and 161 others, 11 February 2025 ECLI:CE:ECHR:2025:0211JUD001188422

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