

European Court of Human Rights: Conviction for wilful dissemination of “untrue information” relating to Covid-19 violates the right to freedom of expression

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The European Court of Human Rights (Third Section) has held, unanimously, in its judgment in *Avagyan v. Russia* of 29 April 2025 that a conviction for the wilful dissemination of “untrue information” about the existence of Covid-19 cases amounted to a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights. The conviction was the outcome of administrative-offence proceedings concerning comments on Instagram questioning the existence of Covid-19 cases in a particular region in Russia.

In May 2020, the applicant, Mariya Anatolyevna Avagyan, posted a comment on her Instagram account, which she mainly used to promote the services of her nail salon and which at that time had 2 600 followers. The comment claimed that there had not been any reported or diagnosed cases of the coronavirus in Krasnodar or in its surrounding region. The comment included the line: “Think about why our government would need this”. The comment received one like and elicited one comment, which refuted the applicant’s claim, stating that confirmed cases of Covid-19 did exist, even though some individuals denied this. The commenter called on others to “make informed decisions and to consider the safety of their loved ones”. Ms. Avagyan replied that people were afraid to speak up about this matter and suggested that money was to “be had” by reporting the coronavirus as the cause of death on official death certificates.

The Krasnodar police printed out her comments and charged her with disseminating untrue information on the Internet, an offence under Article 13.15(9) of the Code of Administrative Offences (CAO). Article 13.15(9) CAO reads:

The dissemination of socially important information which is known to be untrue, through the media and information and communication networks, under the guise of reliable reports, which has created a risk of harming life or health or property, instigating mass disorders, undermining public security, interfering with, or preventing, the operation of critical infrastructure, transportation links, social services, credit institutions, power plants, industrial or communication facilities ... shall be punishable by an administrative fine of between RUB 30 000 and RUB 100 000 ...

The trial was held before a justice of the peace, who ruled that the applicant was responsible for disseminating untrue information, holding that she had failed to put forward any evidence to disprove the existence of Covid-19 in Krasnodar and the Krasnodar Region. The court fined the applicant RUB 30 000 (approximately EUR 390). The applicant's appeal was summarily dismissed by the district court.

The European Court of Human Rights affirmed that it had jurisdiction to examine the application as the facts giving rise to the alleged violations of the Convention had occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention.

The Court made some observations about the specific context of the Covid-19 pandemic and its implications for freedom of expression and information. The Court reaffirmed that democratic society requires open public debate, "particularly during times of crisis when transparency and accountability are paramount". It pointed out that during the early stages of the Covid-19 pandemic, "information about the virus was still emerging and subject to rapid change". Such circumstances create challenges for ensuring that public debate is nourished by accurate and reliable information. Even if restrictions on freedom of expression are deemed legitimate and "necessary in a democratic society" in the "unprecedented context of a public health emergency", such restrictions must be strictly construed and the need for such restrictions must be established convincingly.

In its assessment of the facts, the Court attached importance to a number of considerations, which the domestic courts had taken into account insufficiently, or not at all: the applicant's comment seemed to be in response to a news article about alleged irregularities in the reporting of Covid-19 cases and deaths; the applicant did not seem to be deliberately disseminating false information, but rather expressing "criticism of a perceived lack of transparency in official reporting"; the applicant's small number of followers on Instagram and the minimal engagement with her comment – and the prompt refutation of her claims; the unlikelihood – due to its limited dissemination – that the comment would cause any serious risks for the public.

The Court also set much store by the fact that the applicant was not a journalist and did not present herself as a source of authoritative information on the Covid-19 virus or pandemic. Rather, she mainly used her Instagram account to promote her nail salon services. The Court therefore found that "holding her to the same standards of verification as professional media would place an unreasonable burden on participation in public debate".

The Court was critical of the domestic courts for not seeking to establish the existence of key elements of the offence under Article 13.15(9) CAO in the present case (i.e., "(a) that the information was "known to be untrue"; (b) that it

was “socially important”; (c) that it was presented “under the guise of reliable reports”; and (d) that it created specific risks to public health, safety or infrastructure”). The Court was particularly critical of how the domestic courts had shifted the burden of proof to the applicant. The courts required the applicant to provide evidence to disprove the existence of coronavirus infection, instead of the authorities having to prove the deliberate falsity of the claim. This, in effect, “transformed the offence [...] into one of strict liability for unproven statements”. In this connection, the Court also pointed to a “structural deficiency in the proceedings”: “the absence of a prosecuting party at trial, where the court assumes the role of a prosecutor”. This meant, the Court observed, that no party was tasked with proving the constituent elements of the offence, which in turn led the courts to shift this burden onto the applicant.

The Court found that while “combating disinformation during a public health emergency may be a valid objective, sanctioning individuals for expressing scepticism about official information or calling for greater transparency does not advance this aim”. It added that the Russian courts’ application of Article 13.15(9) CAO in the present case seemed more calculated to discourage public debate than to protect public health.

The Court also noted that the fine imposed represented a significant financial burden for the applicant, as a small business owner, and would likely have a chilling effect on the exercise of freedom of expression.

In a joint concurring opinion, Judges Ktistakis, Kovatcheva and Đurović contended that the Court should have taken a stronger stance in clearly reaffirming that “State authorities should not act as arbiters of ‘truth’ in public debates”, and regretted that this opportunity had not been seized. The crux of their separate opinion is that they “are not persuaded that the power to sanction allegedly ‘untrue’ statements, even when justified by the need to protect public health, can be said to pursue a legitimate aim” under Article 10(2) of the Convention.

Avagyan v. Russia, No. 36911/20, 29 April 2025.
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