European Court of Human Rights: Orlovskaya Iskra v. Russia

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In Orlovskaya Iskra v. Russia the European Court of Human Rights (ECtHR) has further developed its case law regarding freedom of expression and press freedom during election periods. The case concerns the application of a specific provision in Russian electoral law restricting the freedom of media reporting at election time. The Court's judgment deals with the applicant's conviction for an administrative offence for publishing critical articles about a politician during the 2007 parliamentary election campaign in Russia.

The applicant is a non-governmental organisation that publishes Orlovskaya Iskra, a newspaper in the Orel Region, a region south-west of Moscow. The Communist Party of the Russian Federation and the People's Patriotic Union of Russia were listed as the Orlovskaya Iskra's founders. This information was specified on the front page of the newspaper. During the 2007 parliamentary election campaign the newspaper published two articles criticising the then governor of the Orel Region, who stood as first candidate on the regional list of the United Russia political party. The Communist Party was one of the main opposition parties at those elections. The articles contained accusations of corrupt and controversial practices and focused on the fact that the governor had closed down a publicly-owned newspaper. The Working Group on Informational Disputes of the regional Electoral Committee examined both articles and concluded that the articles contained elements of electoral campaigning, because they were critically focused on one candidate. It found that the articles had not been paid for by the official campaign fund of any political party participating in the election campaign, as was required by the Russian Electoral Rights Act. For that reason Orlovskaya Iskra was found guilty of an administrative offence and fined. It complained under Article 10 of the European Convention of Human Rights (ECHR) about the classification of the material it published as "election campaigning" and the fine imposed for failure to indicate who had commissioned the publication of this material. Joint submissions as third-party interventions in support of Orlovskaya Iskra were produced by the Media Legal Defence Initiative and the Mass Media Defence Centre.

The ECtHR accepted that the applicable provisions of the Russian Electoral Rights Act were aimed at transparency of elections, including campaign finances, as well as at enforcing the voters' right to impartial, truthful and balanced information via

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mass media outlets. The Court found however that the application of the Electoral Rights Act impinged upon Orlovskaya Iskra's freedom to impart information and ideas during the election period, and that the interference with its freedom of expression was not shown to achieve, in a proportionate manner, the aim of running fair elections.

The ECtHR reiterated that free elections, as guaranteed by Article 3 of Protocol No. 1 to the EHCR, and freedom of expression, together form the bedrock of any democratic system. The two rights are inter-related and operate to reinforce each other, freedom of expression being one of the "conditions" necessary to ensure free elections. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely. According to the ECtHR in the case at issue there was little scope for restrictions, especially on account of the strong interest of a democratic society in the press exercising its vital role as a public watchdog. The content of the publications was part of the normal journalistic coverage of a political debate in the print media. The ECtHR stated that it saw no reason to consider that any candidates or political parties were at the origin of the impugned articles and it considered that that the publication of the articles constituted a fully-fledged exercise of Orlovskaya Iskra's freedom of expression, namely the choice to publish the articles, thus imparting information to the readers and potential voters. According to the ECtHR it has not been convincingly demonstrated, and there was certainly no sufficient basis for upholding the Government's argument, that the print media should be subjected to rigorous requirements of impartiality, neutrality and equality of treatment during an election period. The ECtHR recognised however that in certain circumstances the rights under Article 10 ECHR and Article 3 of Protocol No. 1 may conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions on freedom of expression, of a type which would not usually be acceptable, in order to secure the "free expression of the opinion of the people in the choice of the legislature". It also considers that unfavourable publications before Election Day can indeed damage one's reputation. However the focus of the domestic legislation was not on the falsity or truth of the content or its defamatory nature. In the opinion of the ECtHR the "public watchdog" role of the press, also at election time, 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. In addition, the ECtHR stated that any damage caused to reputation could be addressed, possibly before Election Day, by way of other appropriate procedures.

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The ECtHR concluded that, in view of the regulatory framework, Orlovskaya Iskra was restricted in its freedom to impart information and ideas. 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 Orlovskaya Iskra’s editorial choice to publish a text taking a critical stance and to impart information and ideas on matters of public interest. The Court affirmed that no sufficiently compelling reasons had been shown to justify the prosecution and conviction of Orlovskaya Iskra for its publications at election time. Therefore the ECtHR concluded that there had been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Third Section, Orlovskaya Iskra v. Russia, Application no. 42911/08, 21 February 2017

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