[UA] Supreme court on freedom of access to Russian social media

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On 4 November 2020, the Grand Chamber of the Supreme Court of Ukraine upheld the decision taken earlier by the Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, in the case challenging the Decree of the President of Ukraine on sanctions in relation to certain Russian social media and electronic mail services.

The Decree of the President of 14 May 2020 introduced the decision of the Council on National Security and Defence of Ukraine, which superseded, extended and amended earlier sanctions against Russian legal and physical persons (see IRIS 2017-7/33). In particular, it maintained sanctions against certain Internet companies, including the popular email service Mail.ru and the social networks Odnoklassniki (OK.ru) and Vkontakte (VK). The sanctions mean, inter alia, that any of these companies shall not use telecommunication networks in Ukraine.

The Decree was appealed by a citizen of Ukraine, who proved to be a user of OK.ru and VK, as well as in possession of an email account on Mail.ru, and claimed that the sanctions violated his right to receive information and freedom of expression, as guaranteed by Article 10 of the Convention on Human Rights.

The Supreme Court said that the Decree has a legitimate aim of an “urgent and effective response to the threats to the national security of Ukraine” (para 42), which corresponds to the provisions of Article 10 of the Convention. They are prescribed by the national law, including the 2014 Statute “On Sanctions”. They are “necessary in a democracy”, as there was an urgent need to introduce and continue the sanctions in view of the “facts of aggression against Ukraine” (para 44).

The Supreme Court said that the claimant did not substantiate a violation of his rights by sanctions against these particular services while other “analogous” online services remain free of governmental interference in Ukraine (para 45).

Therefore the President of Ukraine acted in a lawful and legal manner while introducing these necessary and proportionate restrictions (para 48).

The Grand Chamber dismissed the application. This decision is final and may not be further appealed.

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Decision of the Grand Chamber of the Supreme Court, case No. 9901/138/20, 4 November 2020

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