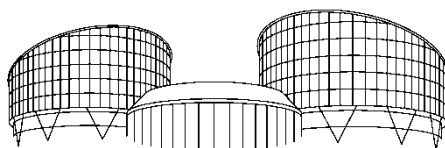


La Corte EDU sull'allontanamento di un giornalista dal seggio elettorale (CEDU, sez. III, sent. 10 gennaio 2023, ric. n. 33513/13)

Il caso deciso dalla Corte EDU ha ad oggetto il ricorso presentato da un cittadino russo, il quale aveva lamentato la violazione dell'articolo 10 della Convenzione per essere stato allontanato - dalle forze di polizia - da un seggio elettorale, così impedendogli di effettuare delle riprese per le quali era stato autorizzato in qualità di giornalista. Nel provvedimento di allontanamento si precisava che il ricorrente aveva violato una decisione presa dalla Commissione elettorale centrale, secondo la quale - senza preavviso - non era consentito filmare le operazioni elettorali. Il tribunale distrettuale di Mosca aveva ritenuto legittimo l'allontanamento del giornalista dal seggio elettorale per violazione della legislazione elettorale federale.

Per la Corte di Strasburgo, invece, il suddetto allontanamento ha impedito al ricorrente di svolgere le sue funzioni giornalistiche e, quindi, di ottenere la conoscenza diretta del processo elettorale e, per conseguenza, di fornire informazioni utili allo svolgimento dello stesso. Ciò, a parere della Corte, ha costituito un'interferenza con i diritti del ricorrente garantiti dall'articolo 10 della Convenzione e, in aggiunta, essa ha altresì ritenuto che tale ingerenza non fosse necessaria in una società democratica e che l'assenza - nelle decisioni delle autorità nazionali - di plausibili ragioni fondanti la misura adottata ha leso l'art. 10 della Convenzione, ritenendo prevalente l'interesse pubblico per elezioni trasparenti.



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

THIRD SECTION

CASE OF XXX v. RUSSIA

(Application no. 33513/13)

JUDGMENT
STRASBOURG
10 January 2023

This judgment is final but it may be subject to editorial revision.

In the case of XXX v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Georgios A. Serghides, *President,*

Jolien Schukking,

Darian Pavli, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 33513/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 16 February 2013 by a Russian national, Mr XXX, born in XXX and living in XXX, Moscow Region (“the applicant”);

the decision to give notice of complaint under Article 10 of the Convention concerning the applicant journalist’s removal from a polling station to the Russian Government (“the Government”), represented initially by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 29 November 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant’s removal for filming at a polling station, allegedly in breach of Article 10 of the Convention.
2. On 14 February 2012 newspaper *Yabloko Rossii* – the press outlet of political party Yabloko – issued the applicant with a press card. He was entrusted with photographing and filming the 2012 Presidential elections in Pushkino, the Moscow Region. He was to report on the election process, the counting of the votes and the presentation of the results.
3. On 4 March 2012 the applicant arrived at polling station no. 2314 in Pushkino and began filming from the entrance. The head of the precinct electoral commission (“the PEC”) ordered him to stop filming. The applicant showed his press card to prove that he had the right to do so, but the head of the PEC still ordered a policeman to remove him from the polling station.
4. About two hours later the PEC provided the applicant with the written removal decision. It stated as follows:
“PEC no. 2314 ruled to remove [the applicant] because he had been in breach of a decision taken by the Central Electoral Commission [“the CEC”] during the elections. It is not permitted to film without a notification to the PEC’s head and to walk around the hall with a camera.”
5. On 17 July 2012 the Pushkinskiy District Court of Moscow dismissed the applicant’s complaint and found lawful his removal from the polling station for a breach of the federal electoral legislation. The court referred to the applicable legal provisions which defined a representative of a mass media outlet as a person having a valid press card and which established the right of mass

media representatives to be present at polling stations and to make photo and video recording of the electoral process. It held as follows:

“The analysis of the above legal norms allows making a conclusion that, in order to exercise the ... rights [granted to representatives of mass media outlets during elections], ... [one] must present respective documents confirming [his/her] powers as a representative of a mass media outlet.

The court has established that the applicant started filming immediately upon the entrance into the premises of the polling station. At the same time the applicant was making comments implying future falsifications with the involvement of third people. Before starting to film [the applicant] did not present the documents confirming his powers as a representative of a mass media outlet to the head of the PEC.”

6. The court further cited a 2011 instruction of the CEC providing that journalists could film only from a specifically designated place and held that “... by having started to film at the polling station [the applicant] failed to present a document confirming his powers and also breached the rules of mass media outlets’ presence during the voting, namely, he [was] filming from a place which had not been designated for those purposes.”

7. The court therefore declared lawful the applicant’s removal from the polling station.

8. On 23 October 2012 the Moscow Regional Court upheld the above judgment on appeal endorsing the first-instance court’s reasoning. In particular, it noted that PEC no. 2314 of 4 March 2012 ruled to exclude the applicant from the polling station for “being in breach of the decision taken by the CEC during elections, prohibiting filming without a notification to the head of the PEC and walking around the hall.”

9. The court referred to the Presidential Elections Act reiterating the right of mass media representatives to be present at polling stations and to make photo and video recording of the electoral process. It noted that a journalist could not interfere with the electoral process and, in order to implement his/her rights as established by the above-mentioned provision, should have “on him/her documents, confirming his/her status (press card) and should comply with his/her journalistic duties ...”.

10. The court therefore found no grounds to quash the first-instance court’s judgment of 17 July 2012.

THE COURT’S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

11. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

12. The relevant general principles have been recently reiterated in *Mándli and Others v. Hungary*, no. 63164/16, § 45, 26 May 2020, with further references, and *Staniszewski v. Poland*, no. 20422/15, §§ 45 and 47, 14 October 2021.

A. Whether there was an interference

13. The applicant’s removal from the polling station prevented him from carrying out his journalistic functions, that is to say from obtaining the first-hand and direct knowledge of the

electoral process in the local electoral commission and of any events taking place in the polling station and to impart that information (see, *mutatis mutandis*, *Mándli and Others*, cited above, §§ 45-46). There has accordingly been an interference with the applicant's rights guaranteed by Article 10 of the Convention.

B. Whether the interference was justified

14. The Court is prepared to assume that the interference did have a legal basis and pursued legitimate aims for the purposes of Article 10 § 2 of the Convention.

15. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a pressing social need. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by independent courts. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were relevant and sufficient and whether the measure taken was proportionate to the legitimate aims pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see *Staniszewski*, cited above, § 45).

16. Furthermore, free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are inter-related and operate to reinforce each other: for example, freedom of expression is one of the "conditions" necessary to "ensure the free expression of the opinion of the people in the choice of the legislature". In certain circumstances the rights under Article 10 of the Convention and Article 3 of Protocol No. 1 may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of the legislature". In striking the balance between the rights under Article 10 of the Convention and Article 3 of Protocol No. 1, the Contracting States have a margin of appreciation, as they do generally with regard to their electoral systems (see *Bowman v. the United Kingdom*, 19 February 1998, § 43, *Reports of Judgments and Decisions* 1998-I, and *Orlovskaya Iskra v. Russia*, no. 42911/08 § 111, 21 February 2017).

17. In the present case the national courts established the relevant facts, reiterated the applicable legal provisions and concluded that the applicant's actions had been in breach of the requirements set by those provisions (see paragraphs 4-10 above).

18. However, apart from the formal legality of the impugned measure, there was nothing in the national courts' reasoning relating to the question of its necessity or proportionality. The courts had no regard to the importance of the public interest in transparent elections and the journalist's function of a public watchdog, both in the interests of the general public as well as in the interests of the political party, whose newspaper had assigned the applicant to cover the Presidential elections. The courts did not assess whether and, if so, how, the applicant's actions had interfered with the electoral process or the work of the local electoral commission or other protected interests. The courts also did not consider whether the local electoral commission could have applied less restrictive measures to the applicant, for example, giving him a warning, and/or suggesting

moving to the place assigned to journalists, and/or restricting videorecording without his removal from the polling station.

19. Based on the above the Court considers that the domestic courts failed to provide relevant and sufficient reasons to justify the applicant's removal from the polling station and, therefore, did not apply standards which were in conformity with the principles embodied in Article 10 of the Convention (see *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017, with further references).

20. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

22. The Government considered the claimed sums to be unreasonable and excessive.

23. Having regard to the documents in its possession, the Court considers it reasonable to award 7,500 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
 2. *Holds* that there has been a violation of Article 10 of the Convention;
 3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 7,500 (seven thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
 4. *Dismisses* the remainder of the applicant's claim for just satisfaction.
- Done in English, and notified in writing on 10 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar

Georgios A. Serghides President

