diritti fondamentali.it

La CEDU su norme russe anti-dissenso sulla guerra in Ucraina: plurime violazioni della Convenzione

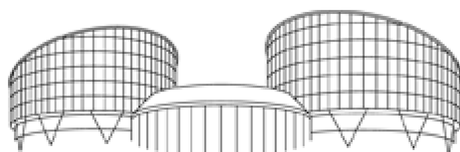
(CEDU, sez. III, sent. 11 febbraio 2025, ricc. nn. 11884/22 e altri 161)

La Corte Edu si pronuncia sui ricorsi presentati da un quotidiano, una emittente tv e 178 individui contro le disposizioni legislative adottate in Russia in seguito all'invasione dell'Ucraina nel 2022, che rendevano reato "screditare le forze armate" o diffondere "false informazioni" sul loro operato.

I Giudici di Strasburgo hanno riscontrato un modello sistemico e generalizzato di restrizioni sui resoconti sulla guerra in Ucraina, che rivela uno sforzo coordinato al fine di mettere a tacere le critiche, piuttosto che affrontare una qualsiasi minaccia alla sicurezza nazionale. In sostanza, i tribunali nazionali hanno considerato reati anche semplici slogan pacifisti, espressioni satiriche, oltre ai resoconti fattuali sui presunti crimini di guerra commessi dall'esercito russo, ogni rapporto e dichiarazione che contraddicesse la narrazione ufficiale secondo cui l'invasione dell'Ucraina sarebbe una "operazione militare speciale"; essi non hanno cercato di bilanciare gli interessi concorrenti in gioco, né, in particolare, di prendere in considerazione il cruciale interesse pubblico per l'argomento in questione, vale a dire un grave conflitto armato e le accuse di crimini di guerra. Di qui la riscontrata violazione dell'art.10 della CEDU che tutela la libertà di espressione.

La Corte ha, inoltre, concluso che vi è stata violazione del diritto al ricorso individuale (art.34) a causa della revoca dell'autorizzazione alla pubblicazione del quotidiano N.G. e del blocco dell'accesso ai suoi siti web in violazione delle misure provvisorie da essa indicate.

Infine, ha riscontrato numerose altre violazioni della Convenzione nei confronti di ricorrenti singoli (a seconda dei casi, violazione dell'art.3 - divieto trattamenti inumani o degradanti - a causa della reclusione degli interessati in una gabbia di metallo e in un angusto box di vetro durante le udienze relative alla loro detenzione; violazione dell'art. 5 §§ 1, 3 e 4 - diritto alla libertà e alla sicurezza - a causa dell'arresto delle persone interessate, della loro custodia cautelare e del ritardo nell'esame dei ricorsi presentati contro le decisioni di detenzione; violazione dell'art. 8 - diritto al rispetto della vita privata e familiare - a causa di perquisizioni ingiustificate delle abitazioni degli interessati).



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

THIRD SECTION

CASE OF XXXXX AND OTHERS v. RUSSIA

(Applications nos. 11884/22 and 161 others – see appended list)

JUDGMENT

STRASBOURG

11 February 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX and Others v. Russia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva, Mateja Đurović, *judges*,

Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the one hundred and sixty-one applications (see application numbers in the appendix) 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") by media organisations and individual applicants ("the applicants") on the dates listed in the appendix;

the decision to grant interim measures under Rule 39 of the Rules of Court in application no. 11884/22 (see paragraph 12 below);

the partial inadmissibility decision concerning applications nos. 2156/23 and 7800/23 (see *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, 6 June 2023);

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the applicants' right to freedom of expression and related complaints, and to declare inadmissible the remainder of the applications;

the applicants' observations;

the Ukrainian Government's comments submitted under Article 36 § 1 of the Convention in applications nos. 45470/22, 464/23 and 1385/23;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 14 January 2025,

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

INTRODUCTION

1. The case concerns the applicants' prosecution in criminal and administrative proceedings and the shutdown of applicant media organisations for "discrediting" the Russian military and spreading "fake news" about its actions.

THE FACTS

I. REPORTING RESTRICTIONS

2. On 24 February 2022 the President of Russia announced the launch of a full-scale military invasion of Ukraine which he described as a "special military operation".
3. On the same day the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor, "the RKN") posted the following information on its website:
"... the RKN reminds the media and information resources that, when preparing materials and publications related to the special operation ... they are obliged to use information and data obtained only from official Russian sources ... Disseminating knowingly false information on the Internet will result in the immediate blocking of such materials ... It is recalled that only Russian official information sources have reliable and up-to-date information."
4. On 26 February 2022 the Prosecutor General's Office ("the PGO") issued a demand to the RKN and service providers to restrict access to war reports published by Russian independent media outlets. This demand was justified by the assertion that "the aforementioned news resources disseminate information, which is presented as reliable reports but does not correspond to reality, about the shelling of Ukrainian cities and the death of civilians as a result of actions by the Russian Army, and also characterise the ongoing operation as an attack, invasion, or declaration of war".
5. On 4 March 2022, within a single working day, the State Duma held an extraordinary meeting to approve in three readings, the Federation Council validated, and the President signed into law, amendments to the Code of Administrative Offences ("the CAO") and the Criminal Code concerning the dissemination of knowingly false information about the deployment of the Russian Armed Forces, and public calls to prevent their deployment (Federal Law no. 31-FZ of 4 March 2022, see Domestic law below).
6. On 6 March 2022 websites of independent Russian media, including 7x7, *Mediazona*, *Sobesednik*, *Agentstvo* and others, were blocked for their coverage of the war in Ukraine. Subsequently the RKN also blocked the websites of the Voice of America, Deutsche Welle, BBC Russian Service, Radio Free Europe/Radio Liberty and other foreign media with Russian-language content.
7. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from that date.

II. SHUTDOWN OF MEDIA ORGANISATIONS (no. 11884/22)

A. *Novaya Gazeta* and Dmitriy Muratov

8. *Novaya Gazeta* was a Russian independent newspaper with an average weekly circulation of 300,000 copies and an online daily audience of about 3 million people. Mr Muratov was its editor-in-chief. In 2021 he was awarded the Nobel Peace Prize, jointly with Maria Ressa of the Philippines, "for their efforts to safeguard freedom of expression". The Nobel Committee specifically commended *Novaya Gazeta* as being "the most independent newspaper in Russia today, with a fundamentally critical attitude towards power".
9. On 26 February 2022 *Novaya Gazeta* received take-down requests ("TDR") from the RKN and PGO concerning an editorial by Mr Muratov, "*Novaya Gazeta* against the war", and a syndicated statement by independent media, "Pain, Anger and Shame. This War is Folly". It was stated that the

content of the publications was illegal because they contained "untrue information of public significance that the Russian Federation had launched full-fledged military hostilities. Whereas, according to the Ministry of Defence, the combined troops of the Donetsk and Luhansk People's Republics, with the support of the Armed Forces of the Russian Federation, are conducting a special military operation for the protection of the population of the region, and strikes are targeting only military infrastructure". A judicial challenge to the TDRs was dismissed at first instance by the Tverskoy District Court of Moscow on 5 August 2022 and by the Moscow City Court on appeal on 13 June 2023.

10. Between 26 February and 2 March 2022 *Novaya Gazeta* received four additional TDRs from the RKN. They mandated the removal of two daily live feeds about the war in Ukraine, a five-day summary of events and the news about the shelling of Kharkiv and Chernihiv. According to the RKN, the materials contained false information "about the alleged invasion of Russian troops into Ukraine". The RKN stated that, "according to official Russian sources, including the Ministry of Defence, that information does not correspond to reality, instils panic among people and creates conditions for mass disorders and violations of public safety". On 15 June 2022 the Tverskoy District Court, and on 25 April 2023 the Moscow City Court on appeal, dismissed an appeal against the TDRs.

11. On 4 March 2022 *Novaya Gazeta*, faced with the threat of complete blocking and criminal prosecution, was compelled to remove independently the remaining materials published from 24 February to 4 March which contained coverage of the military hostilities or used the term "war" for its description.

12. On 8 March 2022 the Court examined *Novaya Gazeta*'s request for interim measures under Rule 39 of the Rules of Court. The Court decided, in the interests of the parties and the proper conduct of the proceedings, considering the exceptional context in which the request was lodged, to indicate to the Government of Russia "to abstain until further notice from actions and decisions aimed at fully blocking and terminating the activities of *Novaya Gazeta*, and from other actions that, in the current circumstances, could deprive *Novaya Gazeta* of the enjoyment of its rights guaranteed by Article 10 of the Convention".

13. On 28 March 2022 the editorial office of *Novaya Gazeta* decided to temporarily suspend the production of both printed and electronic editions, citing the impossibility of operating under current reporting restrictions.

14. In May 2022 the RKN charged *Novaya Gazeta* with disseminating "fake news", an offence under Article 13.15(9) of the CAO. The charges related to Mr Muratov's editorial and the syndicated appeal which referred to "war" instead of the official term "special military operation" (see paragraph 9 above) and to a first-person account by journalist Ms Kostyuchenko, who had witnessed the shelling of residential areas in Kherson and seen Russian troops shoot at and abduct protesters at an anti-occupation rally. On 6 July, 10 August and 14 September 2022 the Simonovskiy District Court of Moscow found the newspaper guilty as charged and imposed fines ranging from 300,000 to 350,000 Russian roubles (RUB). On 9 and 20 June and 27 July 2023 the Moscow City Court dismissed the appeals.

15. On 22 July 2022 and other dates the RKN blocked access to the websites www.novayagazeta.ru, www.novaya.no and www.novaya.media, alleging a "repeated publication of information aimed at

discrediting the actions of the Russian State authorities in the special operation in Ukraine", without further details. The blocking measures were appealed against to the Tverskoy District Court of Moscow, which upheld them as lawful on 15 December 2022 and 4 and 18 April 2023. On 19 October 2023 and 31 January and 27 February 2024 the Moscow City Court dismissed the appeals.

16. On 5 September 2022 the Basmannyy District Court of Moscow suspended the publishing licence of *Novaya Gazeta* for an alleged failure to submit a copy of the editorial office's charter twenty years ago. On 7 February 2023 the Moscow City Court dismissed the appeal against the suspension decision.

17. On 15 September 2022 the Supreme Court of Russia granted the RKN's application to terminate the operation of the online version of *Novaya Gazeta* due to the editorial office receiving two warnings. On 22 December 2022 the appellate board of the Supreme Court rejected the appeal from the founder and the editorial office of the online media.

B. Dozhd TV and Natalya Sindeyeva

18. Dozhd TV (Rain TV) was a Russian independent television channel launched in 2010 with an annual audience of about 18 million people. It had a website, a YouTube channel, and a presence on major social media platforms. Ms Sindeyeva was its founder and director general.

19. On 26 February 2022 the RKN notified Dozhd TV that, based on a TDR, it was restricting access to a publication on its website concerning the first civilian casualties of the Russian shelling of Ukrainian cities. It was stated that the "publications ... contained knowingly untrue information about the use of the Russian Armed Forces, their shelling of cities, and civilian casualties, including minors".

20. On 1 March 2022 the RKN sent another TDR, alleging that the channel's website contained untrue information about "the goals of the special military operation on the territory of Ukraine, the forms and methods of conducting combat operations, the losses among the Russian troops, shelling, and casualties among [Ukrainian] civilians." On the same day the RKN blocked access to the tvrain.ru website.

21. On 3 March 2022 the police visited Dozhd TV's premises and handed over two warnings from the Moscow City Prosecutor against disseminating extremist materials in the media. According to the text, the prosecutors identified materials on Dozhd TV's YouTube channel that contained "public calls for extremist and terrorist activities, violence against citizens, and incitement to hatred and enmity, including on the basis of ethnic origin".

22. On 3 March 2022 the RKN began sending letters to satellite and cable communication operators, indicating that the Dozhd TV channel should be removed from their packages pursuant to the PGO's demand. In its letters to operators, the RKN demanded that "measures be taken to stop the dissemination of unreliable information through the broadcasting of the Dozhd TV channel on their networks". As a result, network operators ceased retransmitting the Dozhd TV channel.

23. On the same day the TV channel's editorial office stopped producing and releasing media products. This decision was due to two main reasons: the inability to continue network broadcasting, and the fears of the management that the journalists and staff could be prosecuted for the organisation of, and participation in, extremist activities.

24. By a judgment of 23 May 2022, as upheld on appeal on 9 February 2023, the Tverskoy District Court of Moscow upheld the decision of 1 March about the blocking of access to the website.

III. PROSECUTION OF INDIVIDUAL APPLICANTS

A. Criminal proceedings

1. Vladimir Kara-Murza (no. 43083/22)

25. On 11 April 2022 the police detained Mr Kara-Murza, an opposition politician and journalist, in front of his apartment block in Moscow. He was charged with disobedience on the grounds that he had "changed his trajectory of movement and hastened his step upon seeing police officers" and refused to produce identity documents upon their request. The following morning he was taken to the Khamovnicheskiy District Court, which found him guilty as charged and sentenced him to fifteen days of detention, enforceable immediately. On 25 April 2022 the Moscow City Court rejected his appeal.

26. In the meantime, on 12 April 2022, investigators instituted criminal proceedings against Mr Kara-Murza for disseminating "fake news" about the Russian Army, committed for pecuniary gain and for motives of "political hate", an offence under Article 207.3 § 2 (d) and (e) of the Criminal Code. The charges related to his speech before members of the Arizona State House of Representatives on 15 March 2022, made available online on the Arizona House GOP's YouTube channel. In his speech, he was alleged to have imparted "knowingly false information" about the Russian troops bombing residential areas and critical infrastructure, including maternity wards, hospitals and schools, using cluster munitions, and unleashing a war of aggression against Ukraine. He had also "negatively referred" to the Russian authorities, including the President of Russia. For that speech, he had received a speaking fee from the Free Russia Foundation (FRF), an organisation designated as "undesirable" in Russia (see *Andrey Rylkov Foundation and Others v. Russia*, nos. 37949/18 and 84 others, §§ 6-12, 18 June 2024).

27. On 22 April 2022 Mr Kara-Murza was designated as a "foreign agent". On the same day the Basmannyy District Court authorised his detention on remand which was subsequently extended on 9 August, 10 October and 8 December 2022. The Moscow City Court dismissed all appeals against the detention and extension orders.

28. On 13 July 2022 Mr Kara-Murza was additionally charged with involvement in the activities of an "undesirable organisation", a criminal offence under Article 284.1 of the Criminal Code (ibid., § 61). The charge referred to the fact that, despite having incurred administrative liability for his involvement with Open Russia, another "undesirable organisation", in 2021 (ibid., §§ 46-50 and a summary of application no. 59894/21 in the appendix to that judgment), he had organised a round-table on prisoners of conscience in Russia in cooperation with the FRF.

29. On 29 August 2022 a third and most serious charge was added: high treason under Article 275 of the Criminal Code, described as "providing consulting or other assistance to a foreign organisation in activities undermining the security of the Russian Federation". This charge referred to his membership of the FRF board of directors and his three speaking engagements before the Parliamentary Assembly of the North Atlantic Treaty Organization, the Norwegian Helsinki Committee and the US Helsinki Commission, for which he had received speaking fees from the FRF. His speeches criticised the legitimacy of the 2024 presidential election, exposed State terror and political killings in Russia, and referred to an "information iron curtain" preventing the people of Russia from knowing the truth about the war in Ukraine. Such statements were alleged to have harmed the constitutional foundations and sovereignty of Russia, undermined the people's trust in

its authorities, escalated protest sentiment, and damaged the international standing of Russia by portraying it as a persistent violator of human rights and an "aggressor State", which may have given cause to increase external political and economic pressure.

30. On 17 April 2023 the Moscow City Court, following a closed trial, found Mr Kara-Murza guilty of all three charges and sentenced him to twenty-five years' imprisonment in a strict-security facility. The court relied on video footage of his speeches, which the prosecution sourced online, and on invoices for speaking engagements issued to the FRF, which the prosecution acquired from his mobile phone. To establish the falsity of Mr Kara-Murza's statements, the court referred to a document obtained by the prosecution from the General Staff of the Armed Forces. According to it, "Russia was not at war with Ukraine" and "during the special military operation, the Russian troops did not use any prohibited means or methods of warfare" such as cluster munitions against civilians. On 31 July 2023 the First Appellate Court upheld the conviction.

2. *Dmytro Gordon (no. 45470/22)*

31. On 16 March 2022 Mr Gordon, a well-known Ukrainian journalist and political commentator, made the following remarks during an interview with a Ukrainian news channel:

"With Russia, you've got to speak the language of force. That's the only language they understand well ... If [Putin] threatens the US with nukes, [the US] will drop them on him and bury him along with his fascist country ... Russians need to be beaten – not the ordinary people, but Putin's State and those bastards who invaded our land. Take them down hard, spare no one. They bomb our theatres where women and children are sheltering. They bomb our houses and kill civilians. No pity – kill them all without mercy, get to Putin and kill him. That's the most important job for the whole civilised world".

32. On the following day Russia's Investigations Committee ("the ICRF") announced that its chairman had personally ordered a review of Mr Gordon's interview on the grounds that Mr Gordon had called for "violence against the Russian authorities and military personnel" and "the use of nuclear weapons against the Russian Federation". On 21 March 2022 the ICRF announced in a press release and video that it had opened a criminal investigation into Mr Gordon on three charges. The ICRF stated that Mr Gordon had appealed "for an armed attack on the Russian Federation using nuclear weapons", an offence under Article 354 § 2 of the Criminal Code (Public calls to unleashing a war of aggression), that he had called "for the destruction of Russian citizens on the basis of nationality, language and origin", a hate-speech offence under Article 282 § 2 (a) of the Criminal Code, and also had disseminated "deliberately false information about the bombing by the Russian Armed Forces of civilian infrastructure and civilians on the territory of Ukraine" for reasons of "political hate", an offence under Article 207.3 § 2 (e) of the Criminal Code.

33. On 6 April 2022 the Russian financial monitor added Mr Gordon's name to the List of Terrorists and Extremists on the grounds that he was charged with "extremist" offences (see, on the legal and financial consequences of the inclusion, *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, §§ 26 and 37, 7 December 2021).

34. By decision of 22 July 2022, as upheld on appeal on 10 August 2022, the Basmannyy District Court granted the investigators' application for an arrest warrant against Mr Gordon.

35. No documents have been served on Mr Gordon by any Russian authority, as part of the criminal proceedings or otherwise. On 29 August and 2 September 2022 he asked the ICRF, the courts and

the lawyer who had been appointed to represent him in the detention proceedings for copies of all documentation generated by the proceedings. No responses were received.

36. On 2 September 2022 Mr Gordon was designated as a "foreign agent".

37. On 1 July 2024 the Second Western Circuit Military Court in Moscow sentenced Mr Gordon *in absentia* to fourteen years' imprisonment in connection with the charges listed in paragraph 32 above.

3. Aleksandra Skochilenko (no. 45953/22)

38. On 30 March 2022 Ms Skochilenko, an artist and musician, replaced five price tags in a supermarket in St Petersburg with look-alike tags of her making that carried the following messages:
"The Russian army bombed an art school in Mariupol with four hundred people sheltering there";
"Russian conscripts are sent to Ukraine. This war will cost us the lives of our children";
"Stop the war! 4,300 Russian soldiers died in the first three days. Why do they say nothing about it on television?";
"For twenty years, Putin has been lying to us on TV. These lies have prepared us to justify the war and the senseless deaths";
"My great-grandfather did not spend four years fighting in the Great Patriotic War for Russia to become a fascist state attacking Ukraine".

39. On 11 April 2022 she was arrested and charged under Article 207.3 § 2 (e) of the Criminal Code with the aggravating circumstance of acting out of "political hate". On 13 April 2022 the Vasileostrovskiy District Court in St Petersburg remanded her in custody, citing the gravity of the charges, a lack of permanent employment, the existence of friends in Ukraine, and her sister living in France. On 17 May 2022 the St Petersburg City Court rejected an appeal against the detention order.

40. The District Court further extended Ms Skochilenko's detention on 30 May, 30 June, 29 July, 30 August, 28 September and 25 October 2022 and 22 March, 6 July and 2 October 2023. These extensions were upheld by the appeal court on 22 July, 11 August, 29 August, 26 September, 27 October and 12 December 2022 and 21 April, 11 August and 10 November 2023. At each detention hearing, she was placed in a metal cage in the courtroom.

41. On 16 November 2023 Ms Skochilenko was found guilty as charged and sentenced to seven years' imprisonment.

4. Mikhail Afanasyev (no. 48520/22)

42. On 4 April 2022 Mr Afanasyev, the editor of the online media outlet *Novyy Fokus*, reported that eleven National Guard officers had refused to take part in the "special military operation" in Ukraine.

43. On 13 April 2022 he was charged under Article 207.3 § 2 (a) of the Criminal Code for that publication, with the aggravating element of committing the offence through the use of his office. His three residences were searched on the same and following days and he was remanded in custody. The court warrants authorising the searches contained no specific indication of items to be found or their relevance to the investigation. The investigators seized his electronic devices, documents, money and materials containing information about his private life and confidential journalistic sources. Mr Afanasyev's appeals against the search warrants highlighted their vague formulation and lack of safeguards for journalistic materials, noting that despite the court being

aware of his role as a journalist and editor-in-chief of an online publication, no special protection was provided for confidential source materials. The appeals were dismissed in a summary fashion.
44. On 7 September 2023 the Abakan City Court of the Republic of Khakassia found Mr Afanasyev guilty as charged and sentenced him to five years and six months' imprisonment, with an additional prohibition on holding journalistic, editorial or publishing jobs for two and a half years after release.

5. *Olga Smirnova (no. 50247/22)*

45. Between 4 and 9 March 2022 Ms Smirnova, a civil society activist, shared posts against the war in Ukraine in the social media group War Chronicles. One of these posts, promoting an anti-war rally on 6 March, read:
"The gravity of war crimes committed by Russian aggressors within just a few days of this year is comparable only to the atrocities of the German Nazis during World War II. This war is a crime against all mankind! Our views are on our banners".
46. On 5 May 2022 she was charged under Article 207.3 § 2 (e) of the Criminal Code for dissemination of false information for reasons of "political hate" and remanded in pre-trial detention.
47. On 30 August 2023 the Kirovskiy District Court of St Petersburg found her guilty as charged and sentenced her to six years' imprisonment, with an additional four-year prohibition on administering web pages. On 20 March 2024 the St Petersburg City Court upheld the conviction on appeal.

6. *Maikl Sidney Naki (no. 57229/22)*

48. Mr Naki is a Russian videoblogger with over a million followers on his YouTube channel. In March 2022 he settled in Lithuania.
49. On 16 March 2022 Mr Naki and his co-host, Mr Karpuk (Leviyev), were charged under Article 207.3 § 2 (b) and (c) of the Criminal Code, with the aggravating elements of acting in a co-ordinated group and "fabricating evidence to support accusations". The charges were related to their YouTube video uploaded on 5 March 2022, titled "WAR. SUMMARY OF DAY NINE. Strikes on a nuclear power plant, Syria-style clean-up tactics, three Russian war planes downed". The investigators stated that they had knowingly disseminated false claims that the Russian Army was destroying cities, killing civilians and shelling a nuclear power plant, using video footage to support their allegations. On 12 May 2022 Mr Naki was declared a fugitive from justice with an international warrant for his arrest.
50. On 26 May 2022 the Basmannyy District Court of Moscow granted a prosecutor's application to attach Mr Naki's bank accounts for up to RUB 5,000,000, described as an amount "commensurate to the damage caused by the offence". On 3 August 2022 the Moscow City Court dismissed an appeal against the attachment order.
51. On 9 September 2022 Mr Naki and Mr Karpuk were designated as "foreign agents".
52. On 29 August 2023 the Basmannyy District Court found Mr Naki and Mr Karpuk guilty as charged *in absentia* and sentenced each of them to eleven years' imprisonment. On 13 December 2023 the Moscow City Court dismissed an appeal against the conviction.

7. *Vsevolod Korolev (no. 2156/23)*

53. In March and April 2022 Mr Korolev, a documentary filmmaker, posted on social media that ten thousand people had died in Mariupol, that Donetsk had been shelled with cluster munitions from

Russian-controlled territory, and that "people who refused to believe that the massacres in Bucha and Borodyanka had been perpetrated by Russian troops displayed a remarkable degree of naiveté".

54. On 11 July 2022 he was charged under Article 207.3 of the Criminal Code in connection with his social media posts and remanded in custody. On 8 September and 10 October 2022 the Vyborgskiy District Court in St Petersburg extended his detention. At every detention hearing, Mr Korolev was held in a fully enclosed glass booth which was narrow and stifling.

55. On 20 March 2024 the Vyborgskiy District Court found Mr Korolev guilty as charged and sentenced him to three years' imprisonment. On 2 July 2024 the St Petersburg City Court dismissed his appeal and increased the sentence to seven years' imprisonment.

B. Administrative proceedings

56. Except where otherwise specified, all the other individual applicants were prosecuted and convicted under Article 20.3.3 of the CAO for the offence of "discrediting" the Russian military. The facts giving rise to their convictions and the penalties imposed are summarised below and set out in detail in the appendix.

57. The most common form of the applicants' anti-war expression, in approximately one third of individual cases, was a direct and straightforward message "NO TO WAR" («НЕТ ВОЙНЕ») or its close variations. The applicants used that phrase on their signs, placards, clothing, stickers, social media posts, hashtags and drawings. For instance, Mr Kurkov held a sign stating "NO TO WAR" in central St Petersburg (no. 46061/22). Ms Chubinidze was arrested at an airport for wearing a backpack with a sign "No to War" (no. 1699/23). Mr Berdnikov used the hashtags #NoToWar, #IAmAgainstWar, and #NoWar on his social media account (no. 55820/22), and Ms Bashmakova placed a "NO TO WAR" sign on her car (no. 55543/22).

58. The phrase became so recognisable that domestic courts penalised its reproduction even in masked but easily identifiable forms. Mr Kallas was fined for attaching a series of asterisks to his car's rear window, their layout matching the number of letters in the Russian phrase "No to war" (no. 2867/23). The domestic courts reasoned that the mere use of the word "war" was damaging to the reputation of the Russian Army, as the official narrative characterised the situation as a "special military operation" rather than a "war".

59. Applicants who did not use the word "war" and whose message was essentially pro-peace were also convicted. Ms Svalova was fined for holding a sign featuring a white dove alongside the words "I stand for peace" (no. 4828/23) and Ms Feygina for stencilling a peace dove image onto a public thoroughfare (no. 2867/23).

60. Expressions of support or solidarity with Ukraine, including references to the distinctive blue and yellow colours of the Ukrainian national flag, were sanctioned. Ms Shlosberg and Mr Olkhovik were prosecuted for posting online, even before the start of the invasion, respectively, selfies in Ukrainian-themed clothing (no. 48958/22) and a picture of the Ukrainian national flag with an anti-war comment (no. 1200/23). Mr Nadein was arrested twice for jogging outdoors in a hoodie with the Ukrainian flag (no. 45083/22), while Ms Sokolova was detained for wearing a blue-and-yellow hat with a peace sign and a heart-shaped badge (no. 44505/22).

61. Several applicants were punished for defacing the "Z" symbol, an emblem of Russia's invasion of Ukraine, or for juxtaposing it with Nazi symbols to highlight their apparent similarity. Ms Kislyakova tore down a "Z" sign from a university wall (no. 121/23). Mr Balyasin defaced a "Z"

in a city road sign that the authorities had modified to include the invasion symbol (no. 7824/23). Ms Sveshnikova transformed the "Z" into a warning traffic signal (no. 39003/22). Ms Stativka and Ms Olkhova either combined the "Z" with a derogatory term in graffiti (no. 925/23) or posted a picture of a dog defecating on it (no. 464/23). Mr Otradnov compared the "Z" with the Wolfsangel, a Nazi symbol (no. 51325/22), and Mr Broy compared it with the swastika (no. 45045/22).

62. Drawing historic parallels between the Nazi invasion of the USSR during World War II and the Russian invasion of Ukraine also constituted forms of expression liable to be suppressed. Mr Sukhorukov and Mr Samusev referred in different ways to the tragic fate of a survivor of Nazi concentration camps who had been killed by Russian shelling of Kharkiv (nos. 54147/22 and 1750/23). Mr Moyseyenko, an 86-year-old survivor of the Nazi occupation himself, expressed support for anti-war protest (no. 860/23). Mr Glushkov put side by side images of people sheltering in metro stations in 1941 Moscow and 2022 Kharkiv (no. 57672/22). Ms Vedyagina shared a post comparing a protesting Russian journalist to a man who refused to give the Nazi salute in 1936 (no. 1572/23). Challenging the patriotic narrative of Russia's Victory Day parade, Mr Litvinenko and Mr Saltevskiy raised signs claiming that Russia's policies represented a new form of fascism that needed to be defeated, just as the old fascism was (nos. 3733/23 and 14801/23), and Mr Akhunov held up a photograph of his great-grandfather with the text stating that he had given "his life so we could have peace" (no. 4920/23).

63. Some applicants used their positions and access to audiences to convey anti-war messages. An Orthodox priest, Mr Burdin, shared an anti-war sermon on his parish website and read it to his parishioners before the lithurgy, reminding them of the Christian duty to oppose the killing of brethren (no. 43213/22). Ms Yanovskaya, a newspaper editor, published an opinion piece expressing anti-war sentiments (no. 48104/22). Ms Bezaziyeva, a Crimean Tatar teacher in Crimea, told her secondary-school students about atrocities committed by Russian soldiers (no. 1385/23). Mr Nefedov, the head of a Moscow municipal district, signed and published a statement calling for an end to war and for Putin's resignation (no. 47616/22), and municipal councillors in St Petersburg voted for an appeal to Parliament to have Putin indicted for treason (nos. 16711/23, 16717/23 and 16721/23).

64. While many applicants resorted to traditional forms of anti-war expression such as individual vigils with placards or social media posts, a few found creative ways of conveying their opposition to war. Ms Derisheva replaced supermarket price tags with protest messages similar to those used by Ms Skochilenko (no. 47115/22), while Ms Kulikovskaya stamped anti-war text on money, hoping to give wider circulation to her message (no. 280/23). Mr Malinovskiy wore an anti-war sticker on his coat and projected the text "NO.WAR.RUSSIA" onto a building façade at night (no. 53823/22). Mr Mitrofanov crafted a cardboard box shaped like a cigarette pack with the warning message "Common sense warning: special military operation kills" (no. 44304/22). Ms Panina designed a sign made up of eight squares, each containing a different scenario of how the war affected various individuals (no. 50659/22), and Ms Isayeva poured red paint over herself while shouting "My heart is bleeding" to create a visceral representation of the war's impact (no. 39794/22). Mr Krivtsov put up crosses in a public park in Moscow, displaying the question "How many died in Mariupol? And what for?" (no. 13844/23).

65. Expressing anti-war views outside of public sphere, even in private or professional settings, also resulted in prosecutions and convictions. Mr Pistsov faced legal consequences for stating his opposition to the "unjust war" during a military service medical examination (no. 37076/22). Ms Chernyakevich was reported to the police by her own spouse for sharing anti-war content from Ukrainian sources in private family exchanges (no. 57642/22), while Mr Shabanov was denounced by his work colleagues for sharing anti-war videos among them (no. 55460/22).

66. On 5 March 2022 Mr Arinichev posted a video to his YouTube channel (no. 8102/23). It was the only video on a channel with one follower. In the video, he spoke approvingly of the sanctions against Russian companies and politicians due to Russia's full-scale invasion of Ukraine. Administrative proceedings were instituted against Mr Arinichev under Article 20.3.4 of the CAO. By judgment of 8 March 2022, as upheld on appeal on 21 September 2022, the Lefortovskiy District Court of Moscow found him guilty as charged and imposed a fine of RUB 35,000.

RELEVANT LEGAL FRAMEWORK AND MATERIAL

I. DOMESTIC LAW

A. Criminal Code

67. Article 207.3, as introduced on 4 March 2022, stipulated that "public dissemination of knowingly false information, presented as reliable reports, about the deployment of the Armed Forces of the Russian Federation for the protection of the interests of the Russian Federation and its citizens and maintenance of international peace and security" shall be punishable with a fine of up to RUB 1,500,000, correctional or compulsory labour, or imprisonment for up to five years.

68. Paragraph 2 of this provision provided for harsher penalties for aggravated forms of the offence, including its commission (a) through the use of one's office, (b) in an organised or co-ordinated group, (c) "using evidence specifically fabricated to support accusations" (*с искусственным созданием доказательств обвинения*), (d) for pecuniary motives, and (e) "for reasons of political, ideological, racial, ethnic or religious hate". The possible penalties include a fine of between RUB 3,000,000 and 5,000,000 or imprisonment for a period of between five and ten years.

B. Code of Administrative Offences

69. Article 13.15(9) establishes liability for "dissemination of knowingly false information of public significance presented as reliable reports" (*заведомо недостоверной общественно значимой информации под видом достоверных сообщений*) in the media or in telecommunication networks that creates a risk of harm to citizens' life and health or property, a risk of widespread disturbances of public order and safety or a risk of disruptions or halting of operations of critical infrastructure, transport, social infrastructure, financial institutions, energy plants, industry, or communication systems". These actions are punishable with a fine of between RUB 30,000 and 100,000 for individuals, RUB 60,000 to 200,000 for officials, and RUB 200,000 to 500,000 for legal entities.

70. Article 20.3.3, as originally introduced on 4 March 2022, stipulated, in part 1, that "public actions aimed at discrediting the deployment of the Armed Forces of the Russian Federation for the protection of the interests of the Russian Federation and its citizens and maintenance of international peace and security, including public calls to obstruct the deployment of the Armed Forces of the Russian Federation for these purposes" would be punishable with a fine of between RUB 30,000 and 50,000 for individuals, RUB 100,000 to 200,000 for officials, and RUB 300,000 to 500,000 for legal entities.

71. Part 2 provided for higher fines in situations where such actions "were accompanied by calls for unauthorised public assemblies" or "created a risk of harm to citizens' life and health or property, a risk of widespread disturbances of public order and safety or a risk of disruptions or halting of operations of critical infrastructure, transport, social infrastructure, financial institutions, energy plants, industry, or communication systems".

72. Article 20.3.4 establishes that a Russian citizen or legal entity calling for a foreign State or a group of States to implement restrictive measures, such as the introduction or extension of political or economic sanctions against the Russian Federation, Russian nationals or companies, shall incur a fine of between RUB 30,000 and 50,000 for individuals, RUB 100,000 to 200,000 for officials, and RUB 300,000 to 500,000 for legal entities.

II. INTERNATIONAL MATERIAL

73. Joint Statement on the Invasion of Ukraine and the Importance of Freedom of Expression and Information, issued by the monitors for freedom of expression and freedom of the media for the United Nations, the African Commission of Human Rights, the Inter-American Commission for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) on 2 May 2022, noted that "the erosion of the right to freedom of expression and other human rights over a prolonged period of time and the silencing of critical voices in the Russian Federation have contributed to create an environment that facilitates Russia's war against Ukraine". The monitors were "alarmed at the further tightening of censorship and repression of dissent and pluralist sources of information and opinion in the Russian Federation, including the blocking of social media platforms and news websites, interruption of services from foreign content and service providers, massive labelling of independent journalists and media as 'foreign agents', introduction of criminal liability and imprisonment of up to fifteen years for spreading so-called 'fake' information about the war in Ukraine or questioning Russian military actions in Ukraine or simply standing for peace or even mentioning the word 'war'".

74. The Second Report of the OSCE Moscow Mechanism's mission of experts dated 14 July 2022 noted that "the Russian State-owned media continue to deny that the Russian Federation wages a full-fledged war against Ukraine, adhering to the special military operation label. They also fail to inform about the allegations of crimes committed by the Russian armed forces ...".

75. In its concluding observations on the eighth periodic report of the Russian Federation (CCPR/C/RUS/CO/8, 1 December 2022), the United Nations Human Rights Committee stated that it was "deeply concerned" about the amendments to the Criminal Code made in March 2022, which criminalised the public dissemination of knowingly false information about the Russian Army. The Committee was also concerned about the decision of the telecoms regulator, made at the PGO's request, which mandated that, with regard to the war in Ukraine, journalists were to report only information provided by the Government of the Russian Federation or face fines and being blocked on the Internet. It was likewise concerned about "reports that thousands of Internet sites and resources and a number of social media platforms (Twitter, Facebook, and Instagram) have been blocked and that more than 20 media outlets, both national and international, have been suspended, including the major independent news outlet Novaya Gazeta". The Committee expressed its "substantial concern" about "limitations on freedom of expression, in particular with respect to anti-war statements, including in educational institutions, as well as in public".

III. STATISTICS SUBMITTED BY THE APPLICANTS

76. OVD-Info, a Russian independent human-rights monitor and media project, has tracked criminal and administrative convictions for anti-war expression since the first day of the Russian invasion of Ukraine. As of May 2024, when the most recent tally was published, 935 criminal cases had been instituted in connection with anti-war statements, including 296 cases under Article 207.3 of the Criminal Code. A total of 9,495 administrative cases were instituted, the majority under Article 20.3.3 of the CAO.

THE LAW

I. Preliminary Issues

A. Joinder of the applications

77. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

B. Consequences of the Government's failure to participate in the proceedings

78. The Court further notes that the respondent Government, by failing to submit any written observations, manifested an intention to abstain from participating in the examination of the case. However, the cessation of a Contracting Party's membership in the Council of Europe does not release it from its duty to cooperate with the Convention bodies. Consequently, the Government's failure to engage in the proceedings cannot constitute an obstacle to the examination of the case (see *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023).

C. The Court's jurisdiction

79. The Court observes that the facts constitutive of the alleged interference with the applicants' rights occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention (see paragraphs 94-96 below). The Court therefore has jurisdiction to examine the present applications (see *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, §§ 75-77, 6 June 2023).

80. The Court further notes, with regard to the applicants Anzhelika Kosareva (no. 38123/22) and Susana Bezaziyeva (no. 1385/23) who were convicted by courts in Crimea, that the Russian Federation has exercised jurisdiction over Crimea at least since 18 March 2014 (see *Ukraine v. Russia (re Crimea)* [GC], nos. 20958/14 and 38334/18, § 873, 25 June 2024). Accordingly, the events these applicants complained of fall within the "jurisdiction" of the respondent Government and the Court has competence to examine them.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

81. The applicants complained that the shutdown of media organisations and the prosecution of individual applicants in connection with their war reporting or statements advocating for peace and against the war had violated their right to freedom of expression under Article 10 of the Convention, the relevant parts of which read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary

in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ...”

A. Admissibility

82. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties and third-party intervener

(a) The applicants

(i) The applicant media organisations

83. The media organisations submitted that the overnight introduction of criminal liability for “fakes” about the Russian military and for their “discrediting” had a significant chilling effect, leading to self-censorship and the eventual suspension of both printed and online media outlets. Liability for “fakes” was imposed solely because the publications did not align with the official information about the “special military operation” from the Ministry of Defence. Only information from the Ministry was considered “reliable”; any other information was treated as deliberate “fakes”. While the former “fake-news” provision, Article 13.15(9) of the CAO, required at least the existence of some facts, the new “discreditation” provision, Article 20.3.3 of the CAO, dispensed with such appearances and allowed the domestic authorities to penalise any opinions about the Armed Forces. In June 2022 the Ministry of Justice issued guidelines stating that asserting facts amounts to “dissemination of fakes” and voicing negative opinions constitutes “discreditation”.

84. Regarding the termination of media registration, the alleged failure to submit an updated charter had not been an issue for more than twenty years. However, in 2022, this became an insurmountable obstacle to the continued existence of the media, leading the RKN to seek the annulment of *Novaya Gazeta*’s registration. The national courts did not specify which rights and legitimate interests were being protected by cancelling the registration, whether this measure was proportionate and adequate, or whether the alleged violations could be addressed otherwise without severely curtailing the right to freedom of expression.

(ii) The applicants convicted in criminal proceedings

85. The applicants noted that, according to information from the PGO published by the independent news outlet *Mediazona*, 187 cases were filed under Article 207.3 of the Criminal Code just in the first year of the Russian invasion. The defendants were primarily individuals who mentioned on social media the shelling of a maternity hospital in Mariupol, the killing of civilians in Bucha or the missile attack on the train station in Kramatorsk. The criminal prosecution, applied in conjunction with other restrictive provisions of Russian law, such as those governing the designation as “foreign agents” and “extremists”, created a *de facto* situation of “military censorship” which prohibited criticism of Russian military actions and State policy in general. The applicants incurred penalties solely for disseminating information that did not correspond to the official position of the Russian authorities.

86. In the applicants’ submission, the definition of information as “false” was not specific enough to withstand judicial scrutiny. Among other guarantees of freedom of expression, international and national courts tested whether there was actual intent to cause harm by false information, accidental

error or honest mistake. Relevant international case-law indicated that even if the information disseminated was wrong, it might be considered a wrongdoing only when false statements were made with actual malice, that is, with knowledge of their falsity or with a "reckless disregard for the truth" (*New York Times Co v Sullivan*, 376 US 254 (1964)). The statements made had to be objectively false, obviously inaccurate, or misleading, which excluded opinions, parodies, partial inaccuracies and simple exaggerations. The dissemination of such statements had to be "artificial or automated, massive, and intentional" (France's *Conseil Constitutionnel*, decision no. 2018-773-DC, § 21, 20 December 2018). In many cases, legal provisions against the "dissemination of false information" were incompatible with basic human rights due to overly broad wording, leading to an unacceptable "chilling effect" on freedom of expression.

87. During wartime, when information warfare techniques are employed and communications are difficult, even the most diligent publicists may mistakenly disseminate inaccurate information. Yet it is in wartime that freedom of speech becomes especially valuable, for it allows people to verify information, present alternative versions and point out errors. However, Article 207.3 of the Criminal Code, as interpreted by Russian courts, meant that any statement concerning the actions of the Russian army in Ukraine was punishable if it differed from the official statement of the Ministry of Defence. If the events in question were not mentioned in a statement of the Ministry of Defence, statements concerning such events were also deemed "fake". This clearly demonstrated that the Russian authorities had never pursued the goal of protecting reliable information about the war. Quite the contrary, they sought to become the sole controller of the narrative so that no independent publicist would challenge the information disseminated by official authorities. The "fake news" legislation was adopted precisely to silence those who opposed the so-called "special military operation" against Ukraine and other critics of the Russian authorities. The applicants were unaware of any case where Article 207.3 of the Criminal Code was applied against anyone aside from pacifists and individuals who spoke against the invasion of Ukraine, whether actual or perceived as such. The practice of application of that provision showed that the Russian authorities did not seek to strike a balance between the defendants' right to freedom of expression and the other rights which the authorities allegedly protected. Actions of persons charged under that provision were not assessed in terms of actual harm to any protected interests. For that reason, the applicants submitted that their prosecution and conviction could not be regarded as "necessary in a democratic society".

(iii) The applicants convicted in administrative proceedings

88. On the "prescribed by law" requirement, the applicants submitted that Article 20.3.3 of the CAO lacked clear and specific definitions of key terms such as "discrediting" and "[actions aimed to] protect the interests of the Russian Federation and its citizens". This lack of clarity left room for subjective interpretation and arbitrary enforcement. Without precise definitions, it became impossible to understand the boundaries of acceptable speech and behaviour, leading to a chilling effect on freedom of expression. The absence of specific criteria allowed for broad interpretations and potential misuse of the law, as individuals could not be certain whether their expressions fell within its scope. Article 20.3.3 was routinely applied to punish individuals for innocent and symbolic gestures, including proclaiming basic pacifist slogans and displaying Ukrainian or anti-

war symbols. The vague and overly broad legal provision of Article 20.3.3 permitted the punishment of any individual who spoke out against the war, no matter how delicately or carefully.

89. The applicants further submitted that Article 20.3.3 did not pursue any legitimate aim within the meaning of Article 10 of the Convention because its true purpose was to suppress any legitimate discussion of Russia's invasion of Ukraine. While the protection of national security can be a legitimate aim for restricting expression, this was not the genuine motive behind that provision. Its true purpose, and evident effect, was to stifle any form of public protest or critical journalism, obfuscate the truth, censor legitimate criticism of the war, and punish those who questioned the official narrative of the war.

90. Finally, the applicants submitted that the domestic authorities did not attempt to prove that their statements caused any damage or violated anyone's rights. It was sufficient that the statement criticised the Russian Armed Forces or contained abstract calls to hold an unauthorised public event. The authorities did not even analyse whether the event had actually taken place. Thus, the applicants submitted that not only their convictions but the criminalisation of anti-war speech as such could not be considered "necessary in a democratic society" and compatible with the Convention. In a democratic society, individuals should have the right to express their opinions and engage in peaceful public discussion, including criticising government policies or expressing opposition to war, as long as it does not incite violence or hatred.

(b) Ukrainian Government, third-party intervener

91. The Ukrainian Government, intervening as a third party in the three applications lodged by Ukrainian nationals, submitted that their prosecution formed part of a widespread and systematic administrative practice by Russia, targeting those who expressed dissident opinions, criticised Russian official policy, and opposed Russia's aggression against Ukraine and its systematic human rights violations. The Ukrainian Government highlighted consistent criticism of Russian laws and their implementation by international organisations and independent observers. In their view, these elements demonstrated the existence of a "repetition of acts" and "official tolerance" of human rights violations which the Court established in the inter-State case regarding Crimea (see *Ukraine v. Russia (re Crimea)*, cited above, §§ 1092-104).

(c) The applicants' reply to the Ukrainian Government's submissions

92. The applicants replied that they agreed in full with the observations of the Ukrainian Government, particularly regarding the need to address, explicitly and separately, the alleged violations affecting Ukrainian citizens in occupied Crimea, as the situation of victims in occupied Crimea was qualitatively different from those in Russian sovereign territory.

2. *The Court's assessment*

(a) Existence of interference

93. The Court reiterates that the State actions which have been found to amount to an interference with the right to freedom of expression may encompass a wide variety of measures in the form of a "formality, condition, restriction or penalty" (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 43, ECHR 1999-VII).

94. Regarding criminal proceedings against seven individual applicants, their convictions were pronounced after the termination date in respect of the respondent State, 16 September 2022. Nevertheless, the arrest and prolonged detention on remand of five of those applicants before the

termination date, in connection with their statements about the atrocities of the Russian invasion in Ukraine, constituted an interference with their right to freedom of expression (see *Nedim Şener v. Turkey*, no. 38270/11, §§ 95-96, 8 July 2014, and *Döner and Others v. Turkey*, no. 29994/02, § 88, 7 March 2017). Two of the applicants, Mr Gordon and Mr Naki, had not been arrested as they were outside the reach of Russian authorities. However, their designation as "foreign agents", the freezing of Mr Naki's bank accounts, and the inclusion of Mr Gordon's name on the list of terrorists and extremists amounted to a manifestation of the "chilling effect" resulting from criminal prosecution in connection with their expressive conduct and likewise constituted an interference with their Article 10 rights (see *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, § 37, 7 December 2021).

95. Regarding the administrative proceedings, the Court notes that they concluded with the applicants' convictions, which were pronounced while the Convention was still in force in respect of the respondent State, although some of the judgments became final after the termination date. Since these proceedings were initiated in connection with the applicants' anti-war expressive activity, they constituted an interference with their right to freedom of expression (see *Pivkina and Others*, cited above, § 77).

96. Finally, regarding the complaints by the applicant media organisations and their editor and director general, the Court finds that the blocking of their websites, the finding of *Novaya Gazeta*'s liability in administrative-offence proceedings, and the revocation of its publishing licence, all of which occurred before the termination date, amounted to interference with their right to freedom of expression, as these actions were the domestic authorities' reaction to the war reporting in these media outlets.

(b) Justification for the interference

97. The Court reiterates that an interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims listed in Article 10 § 2 and is "necessary in a democratic society" to achieve such aim or aims.

(i) "Prescribed by law"

98. With regard to the applicants Anzhelika Kosareva (no. 38123/22) and Susana Bezaziyeva (no. 1385/23) who were convicted by the "courts" in Crimea, installed by Russia within the internationally recognised sovereign territory of Ukraine, the Court reiterates that the application of Russian law has been extended to Crimea in contravention of the Convention, as interpreted in the light of international humanitarian law, and that, accordingly, Russian law cannot be regarded as "law" within the meaning of the Convention (see *Ukraine v. Russia (re Crimea)*, cited above, § 946). Accordingly, the interference resulting from the applicants' conviction on the basis of Russian law cannot be regarded as "lawful" within the meaning of Article 10 § 2 of the Convention (ibid., § 1099).

99. As regards the other applications by individual applicants, the Court notes that their convictions were based on provisions of the Russian Criminal Code and Code of Administrative Offences which were introduced or amended shortly after the commencement of Russia's full-scale military invasion of Ukraine. The expression "prescribed by law" within the meaning of Article 10 § 2 of the Convention requires not only a basis in domestic law, but also that the law is foreseeable in its consequences and compatible with the rule of law. For domestic law to meet the requirement of lawfulness, it must therefore provide adequate protection against arbitrariness and be sufficiently

clear in its terms to offer individuals a proper indication of the circumstances and conditions under which public authorities are empowered to implement measures restricting their rights under the Convention (see *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 59, ECHR 2012).

100. The Court takes note of the applicants' argument that the terms "discrediting" and "knowingly false information" used in the relevant provisions were not sufficiently clear and that the domestic courts' interpretation of these terms was excessively broad, covering a wide range of statements critical of the Russian military action in Ukraine, including expressions of pacifist views and factual information from non-official sources.

101. In these circumstances, the Court has serious doubts as to whether the interference with the applicants' freedom of expression was "prescribed by law" within the meaning of Article 10 § 2 of the Convention. However, in light of its findings below on the necessity of the interference in a democratic society, the Court does not consider it necessary to reach a definitive conclusion on this point. It will also address the issues relating to the shutdown of the applicant media organisations from the standpoint of the necessity requirement.

(ii) Legitimate aim

102. The Court notes that the Government did not submit any observations on the aims pursued by the impugned measures. It appears however that the domestic courts and authorities referred to the protection of national security, territorial integrity and public safety as the ostensible aims of the legislation under which the applicants were prosecuted.

103. The Court reiterates that while the protection of national security, territorial integrity and public safety may in principle constitute legitimate aims, these concepts must be applied with restraint and interpreted restrictively, and should only be brought into play where it has been shown to be necessary to suppress the release of information (see *Stoll v. Switzerland* [GC], no. 69698/01, § 54, ECHR 2007-V).

104. The Court observes 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 finds it difficult to discern how expressions of pacifism or independent reporting could pose a genuine threat to national security, territorial integrity or public safety. Moreover, the Court notes that the domestic authorities made no attempt to demonstrate how the applicants' specific statements or actions harmed or threatened these interests. The mere fact that the expressions diverged from the official narrative was deemed sufficient to warrant prosecution.

105. In these circumstances, the Court is not satisfied that the interference genuinely pursued the legitimate aims invoked by the domestic authorities. However, even assuming that the interference pursued the stated aims, the Court will examine whether it was "necessary in a democratic society" to achieve those aims.

(iii) "Necessary in a democratic society"

(α) General principles

106. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to

those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society" (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24).

107. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of 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 an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

108. The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts)).

109. The Court has consistently emphasised that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). The limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236). Moreover, even harsh criticism of the government, using caustic language, would still be protected by Article 10, provided that it does not incite to violence or hatred (see *Perinçek*, cited above, § 206, and *Özgür Gündem v. Turkey*, no. 23144/93, § 64, ECHR 2000-III).

110. The Court has also held that in a democratic society even small and informal campaign groups must be able to carry on their activities effectively. There exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 89, ECHR 2005-II).

(β) Application of the principles

111. In the present case, the Court observes 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 expressions for which the applicants were sanctioned fell into several categories: 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.

112. The Court observes that all the aforementioned 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. Public debate on such issues is crucial in a democratic society, and any restrictions on such debate warrant the Court's closest scrutiny. It has been the Court's constant approach to require very strong reasons for justifying restrictions on political speech, since broad restrictions imposed in individual cases would undoubtedly affect respect for freedom of expression in general in the State concerned (see, for example, *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII). Furthermore, even in situations of derogation from the Convention under Article 15, the existence of a "public emergency threatening the life of the nation" must not serve as a pretext for limiting freedom of political debate, which is at the very core of the concept of a democratic society. In the Court's view, even in a state of emergency the Contracting States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness (see *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 210, 20 March 2018).

113. Turning to the content of most applicants' expression, the Court notes that their statements did not contain calls to violence, hatred, discrimination or any unlawful activity. The mere use of the term "war" does not indicate an intention to incite violence, as all expression must be assessed within its specific context. Even strong words such as "war", though they may add a certain virulence to political criticism, do not in themselves justify interference with the conduct of a vigorous public debate (see *Erdoğdu v. Turkey*, no. 25723/94, § 67, 15 June 2000). The applicants were prosecuted for using the term "war" in their pacifist statements solely because the Russian authorities' official narrative described the aggression against Ukraine as a "special military operation". This appeared to be a semantic choice intended to diminish the perceived scale and nature of the hostilities, portraying the conflict as limited and justified rather than as large-scale aggression. The prosecution of individuals for the mere use of the word "war" in opposition to this narrative represents a misuse of legal mechanisms to enforce ideological conformity and suppress legitimate public debate.

114. The prosecution of applicants for expressing solidarity with Ukraine or displaying Ukrainian national colours is of particular concern to the Court. It reiterates that the display of foreign national symbols is a form of expression protected under Article 10, and that any restriction must be examined carefully within its specific context to distinguish between protected expression and that which may forfeit protection in a democratic society (see *Fáber v. Hungary*, no. 40721/08, § 36, 24 July 2012). While the prohibition of certain symbols has been found justified on account of their close association with military aggression or occupation in specific historical and contemporary contexts (see *Borzykh v. Ukraine* (dec.), no. 11575/24, §§ 49-51 et passim, 19 November 2024), expression of support for a neighbouring country under attack and its people does not inherently threaten national security or public order, nor does it imply endorsement of any extremist ideology. The prosecution of applicants for engaging in such symbolic expression reveals a policy aimed at suppressing and stigmatising any sentiment perceived as sympathetic to Ukraine, thereby imposing a one-sided

Russia-dominated reading of the conflict. By sanctioning even these innocuous expressions of solidarity, the Russian authorities demonstrated a level of intolerance towards dissenting views that is fundamentally incompatible with the pluralism and open debate essential to a democratic society.
115. The Court further observes that certain applicants employed satirical or provocative forms of expression to convey their anti-war messages. For instance, Ms Olkhova utilised an image of a defecating dog to express her contempt for the invasion symbol (no. 464/23), while Mr Mitrofanov employed a "smoking kills" style warning against the "special military operation" to mock the official euphemism for the war (no. 44304/22). The Court reiterates that satire constitutes a form of artistic expression and social commentary, which, through its inherent features of exaggeration and distortion of reality, is naturally intended to provoke and agitate (see *Handzhiyski v. Bulgaria*, no. 10783/14, § 51, 6 April 2021). The applicants' creative forms of expression, even if occasionally crude and shocking to some, contributed to a debate on matters of public interest and ought to have been afforded protection under Article 10 of the Convention.
116. 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, Mr Otradnov (no. 51325/22) and Mr Broy (no. 45045/22) drew comparisons between the "Z" symbol used by Russian forces and Nazi emblems, including the swastika. While some States have a special moral responsibility stemming from their historical experience to maintain a prohibition on the use of Nazi symbols (see *Nix v. Germany* (dec.), no. 35285/16, § 47, 13 March 2018), the Court must examine how such imagery is used in its overall context, including whether it forms part of analytical reporting or criticism of contemporary phenomena (see *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, §§ 107-09, 11 May 2021). In the present case, by associating the invasion's emblem with universally recognised symbols of past atrocities, the applicants sought to transfer the stigma attached to Nazi imagery onto contemporary symbols of aggression. Unlike in *Nix*, where the use of Nazi symbols was found to be gratuitous and disconnected from any clear message opposing Nazi ideology (§§ 53-54), the applicants' use of such imagery was intrinsically linked to their criticism of current military actions. While such comparisons may be deeply offensive to some, the Court considers that they represented a powerful method of political criticism, intended to provoke reflection on the nature of the conflict.
117. Several applicants were sanctioned for expressing outrage at, or sharing factual information about, alleged Russian war crimes, including the Bucha massacre and the Mariupol theatre bombing. For example, Ms Skochilenko spread messages about the victims of the Mariupol bombing (no. 45953/22); Ms Markus called on President Putin to account for Bucha (no. 55435/22), and Ms Vorobyeva questioned the official Russian account of Bucha (no. 13844/23). The Court observes that these events were widely reported and investigated internationally and finds that sharing such information was of legitimate public interest. It emphasises the public's right to be informed of a different perspective on the situation in Ukraine, irrespective of how unpalatable that perspective may be for some members of the public (see *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 58, 8 July 1999). While the authorities must remain vigilant against acts capable of fuelling violence in sensitive contexts (see *Erdoğdu*, cited above, § 50), debate about acts which may amount to war crimes or crimes against humanity must be able to take place freely (see *Fatullayev v. Azerbaijan*, no. 40984/07, § 87, 22 April 2010). The domestic authorities, however, automatically classified any information

contradicting official accounts as "fake news", regardless of its source or potential accuracy. They made no effort to verify the applicants' statements or to balance the protection of national security with the public's right to be informed of serious war crime allegations. Restricting the dissemination of reports about alleged atrocities serves only to shield potential wrongdoing from scrutiny and undermine accountability, while blanket prohibitions on discussing alleged war crimes are incompatible with Article 10 of the Convention.

118. In sum, the Court observes a systemic and widespread pattern of unjustified restrictions on expression related to the war in Ukraine. The measures imposed on the applicants extended well beyond addressing expressions that might genuinely threaten national security or public safety. Instead, they targeted a wide range of statement, from simple pacifist slogans to detailed reports on alleged war crimes, indicating a coordinated effort by the Russian authorities to suppress dissent rather than mitigate specific security threats. These restrictions appeared to be part of a broader campaign to stifle criticism or dissent concerning military actions in Ukraine. This is evidenced by the variety of targeted expressions and the manner in which the relevant legislation was formulated and applied, enabling a broad interpretation of terms such as "discrediting" the armed forces or disseminating "knowingly false information". Such an approach 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 finds no justification for restricting peaceful, non-violent expression, particularly through the imposition of criminal sanctions involving pre-trial detention and deprivation of liberty. The use of such measures, as in the present case, inevitably exerts a chilling effect on freedom of expression, intimidating civil society and silencing dissenting voices (see *Mehmet Hasan Altan*, cited above, §§ 211-12).

119. The domestic courts appeared to have considered the charges against the applicants on the premise that any criticism of military actions or divergence from official narratives was inherently detrimental to national interests. No genuine effort was made to balance the applicants' right to freedom of expression with the purported aims of protecting national security or public safety. Instead, 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. In cases involving the dissemination of information on alleged war crimes or civilian casualties, the domestic courts made no attempt to assess the accuracy of the information or the applicants' good faith in sharing it. Instead, they relied exclusively on official denials, effectively criminalising the reporting of any information that contradicted the official narrative.

120. The Court needs to address specifically the case of Mr Gordon, whose statements may be interpreted as advocating violence against Russian military personnel and leadership, including the phrase "kill them all without mercy". The Court reiterates that States enjoy a broad margin of appreciation in regulating expressions that amount to the glorification of violence (see *Sürek (no. 1)*, cited above, § 62 *in fine*). Nevertheless, when assessing whether such statements amount to incitement to violence, domestic courts are required to conduct a thorough examination of both their content and the context in which they were made (see *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, § 52, 6 July 2010).

121. In the present case, while certain statements made by Mr Gordon were undeniably violent in their content, the domestic courts failed to undertake any analysis of these statements within their specific context. They did not take into account that the remarks were made by a Ukrainian journalist shortly after the commencement of Russia's full-scale invasion of his country, during a time when Ukrainian cities were shelled and bombarded and civilian casualties were rising. When viewed in their proper context, it is evident that his statements were specifically directed at Russian military personnel engaged in active combat operations and the political leadership responsible for initiating the hostilities, rather than at Russian civilians or the Russian population as a whole. His comments concerning nuclear weapons were made in direct response to nuclear threats issued by Russia's leadership and were framed in the context of deterrence. The domestic courts did not assess whether, despite their violent rhetoric, the statements were capable of directly inciting unlawful acts of violence, or whether they were actually instead expressions of emotional support for Ukraine's legitimate right to self-defence under international law (see, *mutatis mutandis*, *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 65, ECHR 1999-IV). Such an undifferentiated approach indicates that the prosecution was not directed at preventing genuine incitement to violence but rather at suppressing any criticism of Russian military actions, irrespective of its nature or context (see *Karataş v. Turkey* [GC], no. 23168/94, § 52, ECHR 1999-IV).
122. The Court also notes with concern that certain applicants were held accountable for online expressions which had been posted prior to the enactment of the "discreditation" laws on 4 March 2022 but remained accessible thereafter. For instance, Mr Dorokhov (no. 41428/22) was convicted for sharing the text "NO TO WAR" on 24 February 2022; Ms Shlosberg (no. 48958/22) for posting a photograph of herself wearing a Ukrainian embroidered shirt and other items between 26 January and 2 March 2022; and Mr Olkhovik (no. 1200/23) for sharing anti-war messages on 23 and 25 February 2022. The Court has already held that the retrospective application of the law, and the expectation placed upon applicants to anticipate future legal prohibitions not yet in force at the time of their actions, raises a fundamental problem (see *Andrey Rylkov Foundation and Others*, cited above, § 111). This principle applies equally in the present case, where the applicants' expressions were not in breach of any law at the material time. Consequently, they could not have realised that they were committing any transgression, whether with intent or negligence. Imposing an obligation on the applicants to anticipate future legislative changes or to monitor continually their accounts and remove past online content that might have later become unlawful due to subsequent legal developments constitutes an unreasonable and disproportionate burden, resulting in a "chilling effect" on freedom of expression (ibid.).
123. In light of the above considerations that the applicants' prosecution lacked justification in a democratic society, the Court need not separately address the proportionality of the sanctions. Nevertheless, it cannot overlook the exceptional and disproportionate severity of the penalties imposed. Mr Kara-Murza (no. 43083/22) was sentenced to twenty-five years' imprisonment, Ms Skochilenko (no. 45953/22) to seven years, and Mr Afanasyev (no. 48520/22) to five years and six months. Even in administrative proceedings, the fines imposed were substantial, ranging from 30,000 to 150,000 Russian roubles, amounting to several months' or even years' worth of subsistence income (see *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, §§ 181-82, 14 June 2022). The Court considers that the nature and severity of these penalties appear intended not merely to punish

the individual applicants, but to send a clear and intimidating message to society at large, thereby stifling public debate on matters of vital public interest. Such an approach inevitably fosters an environment of self-censorship, deterring others from exercising their right to freedom of expression, which is essential for the functioning of a democratic society (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 114, ECHR 2004-XI, and *Morice v. France* [GC], no. 29369/10, § 176, ECHR 2015).

124. Lastly, with regard to the closure of applicant media outlets in connection with their war coverage, the Court has previously addressed the termination of a media outlet's registration in *Mukhin v. Russia* (no. 3642/10, §§ 178-181, 14 December 2021). In that case, the Court found that when such a measure is based solely on the formal issuance of warnings, without any assessment of its necessity and proportionality, it fails to meet the standards required under Article 10 of the Convention. A similar situation arises in the present case, where *Novaya Gazeta*'s publishing licence was terminated without judicial consideration of whether there was a pressing social need for such a drastic measure or whether it was necessary in a democratic society. As regards the blocking of websites of Dozhd TV and *Novaya Gazeta*, the domestic courts also failed to provide a separate justification beyond a reference to the previous warnings or establish any exceptional circumstances justifying the termination of a media outlet. There was no evaluation of whether the termination pursued a legitimate aim or was proportionate to that aim, as required for such a severe restriction on freedom of expression. The blocking of the websites of Dozhd TV and *Novaya Gazeta* and the revocation of the latter's publishing licence 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. Such sweeping restrictions on press freedom are incompatible with the Court's consistent emphasis on the essential role of the press as a "public watchdog" in a democratic society (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 126, 27 June 2017).

(iv) Conclusion

125. In light of the above considerations, the Court finds that the reasons given by the domestic authorities to justify the interference with the applicants' freedom of expression were neither relevant nor sufficient. The measures imposed were disproportionate to any legitimate aims pursued and were not necessary in a democratic society. Rather, the cumulation of so many similar cases shows that they were part of a broader campaign to suppress dissent regarding the military action in Ukraine.

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

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

127. The applicants in the case of *Novaya Gazeta and Others* (no. 11884/22) complained that the Russian authorities had breached the terms of the Court's indication of interim measures by pursuing and obtaining the cessation of the newspaper's publication and blocking access to its websites.

128. Article 34 of the Convention provides:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the

rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

129. The Court reiterates that by virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 128, ECHR 2005-I).

130. In the present case, on 8 March 2022 the Court, under Rule 39 of the Rules of Court, indicated to the Russian Government to refrain from blocking or terminating *Novaya Gazeta*'s activities or taking any actions that could deprive it of the enjoyment of its rights guaranteed by Article 10 of the Convention (see paragraph 12 above).

131. Notwithstanding the interim measure, on 5 and 15 September 2022 the Russian courts suspended the publishing licence of *Novaya Gazeta* and granted an application to terminate the operation of its online version (see paragraphs 16 and 17 above).

132. The Court considers that these actions by the Russian authorities were in direct contradiction to the interim measure indicated by the Court. By filing a termination claim against *Novaya Gazeta* and obtaining court orders terminating its activities, the Russian authorities deliberately disregarded the Court's interim measure and deprived it of its purpose and effect.

133. The Court concludes that, by failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, Russia is in breach of its obligations under Article 34 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

134. Mr Kara-Murza, Ms Skochilenko, Mr Afanasyev, Ms Smirnova and Mr Korolev further complained under Article 5 § 3 of the Convention that they had been placed in pre-trial detention without relevant and sufficient reasons. Additionally, Ms Skochilenko and Mr Korolev complained that their confinement to a metal cage and a narrow glass cabin, respectively, during detention hearings had breached Article 3 of the Convention. Mr Kara-Murza complained under Article 5 of the Convention that his arrest on 11 April 2022 and subsequent detention had been arbitrary, as he had committed no offence. Ms Skochilenko also complained of excessive delays in the examination of her appeal against the detention orders of 13 April and 30 May 2022, in breach of Article 5 § 4. Mr Afanasyev complained under Article 8 about unwarranted searches of his residences. Further alleged violations concerned Articles 6 and 18 of the Convention and Article 3 of Protocol No. 1 (Mr Kara-Murza), Article 13 (Ms Skochilenko), and Articles 6, 14 and 18 (some applicants convicted in administrative proceedings and the applicant media organisations).

135. The Court notes that the above complaints are not manifestly ill-founded or inadmissible on any other grounds. Accordingly, they must be declared admissible.

136. The Court considers that in cases involving non-violent expression, pre-trial detention should be resorted to only in exceptional circumstances, if at all (see *Mehmet Hasan Altan*, cited above, § 212). The applicants were prosecuted for expressions that did not involve violence or incitement, and the domestic authorities failed to provide relevant and sufficient reasons to justify the imposition of such an exceptional measure, thereby breaching Article 5 § 3 of the Convention. In respect of

Mr Kara-Murza's complaint concerning the arbitrariness of his arrest and detention, the Court reiterates that detention will be regarded as "arbitrary" where, notwithstanding formal compliance with national law, there has been an element of bad faith or deception on the part of the authorities (see *Mooren v. Germany* [GC], no. 11364/03, § 78, 9 July 2009). In the present case, the circumstances of Mr Kara-Murza's arrest and the timing of the criminal charges against him strongly suggest that these measures were employed as a pretext to silence his expression of critical opinions, indicating bad faith and revealing a violation of Article 5 § 1 of the Convention.

137. Regarding other complaints, the Court refers to its established case-law finding violations in similar circumstances: confinement in metal cages or small and poorly ventilated glass cabins during hearings (Article 3: *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, §§ 138-39, ECHR 2014 (extracts), and *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, §§ 125-28, 4 October 2016); excessive delays in examining detention appeals (Article 5 § 4: *Shcherbina v. Russia*, no. 41970/11, § 62, 26 June 2014), and unjustified searches of journalists' homes (Article 8: *Ernst and Others v. Belgium*, no. 33400/96, §§ 115-16, 15 July 2003). The Court sees no reason to depart from these findings in the present case.

138. Finally, the Court considers that it is not necessary to examine separately the remaining complaints under Articles 6, 13, 14 and 18 of the Convention and Article 3 of Protocol No. 1 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

139. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured part".

140. The applicants' claims for damages and costs are itemised in the appendix. Their claims in respect of pecuniary damage represent the amount of fines they paid, converted into euros on the dates of the final judgment.

141. Regard being had to the supporting documents and its case-law in similar cases, the Court awards the amounts claimed as per the appendix in respect of pecuniary damage, 7,500 euros (EUR) each or such smaller amount as was actually claimed in respect of non-pecuniary damage, and EUR 850 each or such smaller amount as was actually claimed, per applicant, in respect of costs and expenses, plus any tax that may be chargeable to the applicants (see, for a similar approach, *Taganrog LRO and Others v. Russia*, nos. 32401/10 and 19 others, § 300, 7 June 2022).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that the Court has jurisdiction to examine the case and the Government's failure to participate in the proceedings presents no obstacles for the examination of the case;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 10 of the Convention;
5. *Holds* that Russia has failed to comply with its obligations under Article 34 of the Convention in respect of *Novaya Gazeta*;

6. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of Mr Kara-Murza, Ms Skochilenko, Mr Afanasyev, Ms Smirnova and Mr Korolev;
7. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of Mr Kara-Murza;
8. *Holds* that there has been a violation of Article 3 of the Convention in respect of Ms Skochilenko and Mr Korolev;
9. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of Ms Skochilenko;
10. *Holds* that there has been a violation of Article 8 of the Convention in respect of Mr Afanasyev;
11. *Holds* that there is no need to examine the remainder of the complaints;
12. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) the amounts claimed as per the appendix in respect of pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 7,500 (seven thousand five hundred euros) or such smaller amount as was actually claimed in respect of non-pecuniary damage, plus any tax that may be chargeable;

(iii) EUR 850 (eight hundred and fifty euros) or such smaller amount as was actually claimed, per applicant, in respect of costs and expenses, plus any tax that may be chargeable to the applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

13. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Ioannis Ktistakis
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pavli is annexed to this judgment.

CONCURRING OPINION OF JUDGE PAVLI

1. In the lead-up to the 2012 Russian presidential election, Valeriy Lyutarevich, an ordinary resident of Rodniki, was prosecuted for having the following phrase handwritten on the rear window of his car: "United Russia is a party of crooks and thieves". His crime, under the provisions of Russia's already Orwellian laws on electoral propaganda, was to have engaged in "unlawful pre-election campaigning"[1]. One of the applicants in the present case was Olga Svalova, another ordinary

Muscovite who was prosecuted in the aftermath of the 2022 attack on Ukraine for holding up a sign with the image of a white dove and the words "I stand for peace". Her crime: the brand-new offence of having "discredited" the Russian military (see paragraph 59 of the judgment). The path from Mr Lyuaterevich's ordeal to that of Ms Svalova, a mere decade later, has been brutish and short.

2. Has the case-law of the European Court of Human Rights taken proper notice of the trajectory followed by the Russian Federation? And could it have done something (more) about it? These are the questions that this separate opinion seeks to address, at a distance of more than two years since Russia's expulsion from the Council of Europe, and with the benefit of having sat in dozens of cases against Russia heard by the Court in the past several years. (As to the merits of the present case, which is among the most discouraging in respect of *any* State during my time on this bench, I share the Chamber's analysis and conclusions in full).

Democracy and the Convention

3. The notion of democracy is fundamental to the Convention. As an overarching value, it is firmly enshrined in both the text itself and the Court's interpretation thereof. The preamble notes that the fundamental freedoms protected by the Convention "are best maintained ... by an effective political democracy" and speaks of a "common heritage of political traditions, ideals, freedom and the rule of law". The Contracting Parties that have ratified the Convention in the successive waves of democratisation that followed its original adoption presumably consider themselves to share this "common heritage" and aspire to remain true to its ideals. In its case-law, the Court has gone even further. It has relied on this special bond to hold, perhaps uniquely among international human rights bodies, that democracy "appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it"[2].

4. Beyond such value-based references, the Convention provisions on civil and political rights and freedoms (Articles 8 to 11, together with Article 2 of Protocol No. 4 that safeguards freedom of movement) expressly require the Court to determine whether interference with such rights is "necessary in a democratic society". In this aspect as well the drafters of the Convention were trailblazers, as no such express clauses are to be found in the Universal Declaration of Human Rights[3] and similar clauses were later included in only a handful of the political-rights provisions of the International Covenant on Civil and Political Rights (namely, the right of peaceful assembly and right to freedom of association, but not, for example, the right to freedom of expression).

5. At the same time, the drafting history of the Convention does not shed a great deal of light on how the notion of "democratic society" is to be interpreted in this context. Admittedly, the Court's case-law has made the rather obvious point that "the only type of necessity capable of justifying an interference with any of those rights is ... one which may claim to spring from 'democratic society'"[4]. However, other questions of method and approach are less settled.

Of trees and forests

6. In particular, is the necessity clause to be construed as an abstract yardstick, derived from a sort of idealised form of democracy, against which any interference with these fundamental rights is to be judged? Or should the Court also take account of the specific national context – the *particular* "democratic society" – in which such interference has taken place? Put another way, can an individual form or instance of interference be deemed to have been "necessary in [an abstract] democratic society" if the general democratic credentials of a particular political system, at a

particular moment in time, are in serious doubt? Presumably, it makes little sense, from a prophylactic perspective, to focus on the health of individual trees if a fire is raging in the forest. Worse still, were the Court to adopt such an approach, might it be seen as providing false assurances about the state of the forest as a whole?

7. Returning to the Court's case-law in respect of Russia over the past two decades, it amounts, on my reading, to a sad chronicle of the incremental but systematic shrinking of democratic spaces in that country. While it has been possible for outsiders to use the Court's findings in individual cases (among other sources) to piece together a composite picture of the state of Russian democracy – and some have done so[5] – the Court itself has rarely "taken stock" of the situation as a whole.

8. In fact, there has been a great deal to take stock of. Under the two prongs of Article 11 of the Convention – the freedoms of assembly and association – the Court has, in scores of cases, documented sustained restrictions of virtually every aspect of those freedoms, from the ability to hold solo demonstrations with handwritten signs to the mass crackdown on the many groups of "foreign agents" so designated under Russian laws[6]. Under Article 10 of the Convention, the impermissible restrictions imposed have been equally varied and comprehensive: in times of election campaigns and outside them; against ordinary citizens, opposition leaders and Nobel Prize winners alike; in both online and offline environments; against domestic and international "extremists" of all stripes; from the Red Square to the frozen waters of the Arctic Ocean to the general lawlessness of Chechnya[7]. This heavy-handed approach has included a crackdown on groups – such as the widely respected Memorial network founded by Andrei Sakharov as early as 1987 – that sought to document and shed light on the crimes of the Soviet era: they were increasingly denied access to the archives, their activists were harassed and the groups themselves were eventually shut down. They thus lost the fight on behalf of historical truth.

9. Under Article 9, which protects the hard-earned freedom of religion, the Court's case-law has documented how the members and congregations of various religious minorities – Jehovah's Witnesses, Muslims, Mormons and even Christian Orthodox sects not favoured by the mainstream religious authorities – have been widely harassed, prosecuted and sometimes driven out of the country entirely[8]. While this may be a good time for self-critical reflection, we cannot ignore the contribution that this large body of Russia-related case-law – and above all the applicants and lawyers who brought these cases to Strasbourg – has made to the development of the Court's "democratic society" doctrine.

10. Lastly, in a small number of high-profile cases, the Court has found violations of Article 18 of the Convention by the Russian authorities, based on the existence of "ulterior motives" – typically seeking to suppress political dissent – in restricting fundamental rights such as personal liberty and freedom of protest. However, only two of these cases, both involving applications brought by the late Alexei Navalnyy, were decided prior to Russia's expulsion from the Council of Europe[9] in what is arguably an instance of "too little too late"[10]. The mere granting of financial compensation to the victims in case after case decided by the Court against Russia seems to have been treated in Moscow purely as an exercise in setting the price for ongoing repression (a price the national authorities have seemed content to pay in the great majority of cases). It was only in the most recent of its "foreign agent" rulings that the Court included the strongly-worded finding that the relevant legislation "bears the hallmarks of a totalitarian regime"[11].

11. The Court's case-law in respect of Russia reveals another, more disturbing pattern, if one tries not to miss the forest for the trees. The widespread restrictions on political freedoms over the past two decades have often been facilitated, and "justified", by fairly elaborate legal frameworks that have tended to employ respectable human-rights language, such as the concepts of necessity and proportionality, in line with the country's supposed level of democratic development. The national Constitutional Court has – at least some of the time – made careful pronouncements about the need for moderation, only to be systematically ignored in the practice of the ordinary courts and law-enforcement agencies. A favoured method of the Russian authorities has been to identify, on any given topic, the most restrictive models they could find around the democratic world and to combine and supercharge them into a toxic and distinctly anti-democratic mix. This can perhaps be seen most clearly in the cases stemming from the application of the "foreign agent" laws, which, moreover, were pending before the Court for an unjustifiably long time before they were decided.

12. And yet, this massive legal edifice of "rule *by* law" – of gradual suffocation through a thousand regulations devised and tightened over time to control every inch of Russian political space[12] and much of the personal space of ordinary Russians – is hard to gauge by focusing exclusively on individual cases. It requires a bird's-eye view for which the Court has arguably not equipped itself sufficiently in its working methods and overall approach. This is true even in Article 18 cases, which still tend to focus on the specifics of the application immediately before the Court.

The Court as watchdog of democracy

13. To remedy this deficiency the Court could have made greater use of existing procedures, such as more extensive Article 46 indications; more in-depth review of allegations of Article 18 violations or of the governmental "legitimate aims" claimed under the qualified rights provisions; granting Rule 39 measures in a broader range of situations; or making greater use of referrals to the Committee of Ministers under the Rules of the Court as they currently stand. But it may also be necessary for the Court to develop entirely new "stock-taking tools" in relation to democratically-challenged national systems.

14. It is worth recalling that part of the foundational mission of the Court, an institution born of post-authoritarian trauma, has always been to sound the alarm at the first hint of *déjà vu*. The drafting history of the Convention reveals the founders' hopeful intent to create a tribunal that would help "prevent rebirth of totalitarianism", "defend our people from dictatorship" and "strengthen the resistance in all our countries against insidious attempts to undermine our way of life"[13]. It is hard to imagine that, in so doing, the founders meant this new court to deal exclusively with the rights of isolated individuals, at isolated points in time, without concerning itself with the state of the "democratic forest" as a whole.

15. In the case of the Russian Federation, with the benefit of some hindsight and a large body of case-law behind us, 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? It is possible, in my view, to adopt such an approach without prejudging in any way the outcome of individual cases, or undermining the Court's overall impartiality, as these assessments would be based primarily on its *own* prior judicial findings. The additional work (and value) would be simply a matter of connecting the dots.

16. I would concede, in conclusion, that it is not for an international human rights court to make final pronouncements as to which countries deserve to be called democracies and which do not; that is *not* what this separate opinion is advocating. There is an obvious political dimension to such an exercise, and a number of value judgments that are ultimately for the collective membership of the Council of Europe to make. Furthermore, as judges, we should always be realistic about the limits of the Court's potential impact, despite the sometimes impossible expectations of the outside world. At the same time, it is implausible, in my view, that the Court should have nothing to say on the matter of democratic health among the States Parties, while staying true to the mission entrusted to it by its founders.

APPENDIX

List of applications:

OMISSIS

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[1] See *Teslenko and Others v. Russia*, nos. 49588/12 and 3 others, § 131, 5 April 2022.

[2] See *United Communist Party of Turkey and Others v. Turkey*, no. 19392/92, § 45, 25 May 1998.

[3] The Declaration contains a single reference to democracy, in Article 29 § 2, which can nevertheless be seen as a precursor to the European Convention's "necessary in a democratic society" clauses: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

[4] See *United Communist Party of Turkey*, cited above, § 45.

[5] This includes former judges of the Court, who have addressed the question after leaving the bench. See, for example, Prof. Angelika Nussberger, "Human Rights and Peace – Disillusionment or Hope? The Russian Example", in *Liber Amicorum Robert Spano* (Anthemis, 2022), pp. 511-22.

[6] See, among other leading cases, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, 7 February 2017; *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018; and *Pleshkov and Others v. Russia*, nos. 29356/19 and 31119/19, 21 November 2023.

[7] On anti-extremism legislation, see, in particular, *Karastelev and Others v. Russia*, no. 16435/10, 6 October 2020; *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, 11 May 2021; *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, 7 December 2021; and *Mukhin v. Russia*, no. 3642/10, 14 December 2021. On "foreign agents" and "undesirable organisations", see *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022; *Andrey Rylkov Foundation and Others v. Russia*, nos. 37949/18 and 83 others, 18 June 2024; and *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024. On restrictions of speech online, see *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, 23 June 2020; *Engels v. Russia*, no. 61919/16, 23 June 2020; and *Bulgakov v. Russia*, no. 20159/15, 23 June 2020. On repressive use of new technologies, including real-time facial recognition, see *Glukhin v. Russia*, no. 11519/20, 4 July 2023.

[8] See, among other leading cases, *Taganrog LRO and Others v. Russia*, nos. 32401/10 and 19 others, 7 June 2022, and *Ossewaarde v. Russia*, no. 27227/17, 7 March 2023.

[9] See *Navalnyy v. Russia*, cited above, and *Navalnyy v. Russia (no. 2)* [GC], no. 43734/14, 9 April 2019.

[10] Since the Russian Federation ceased being a party to the Convention in September 2022, the Court has found violations of Article 18 in another four cases, including one inter-State case and three individual cases (two of which involved deprivation of the applicants' liberty by the Chechen authorities). In the words of

Prof. Nussberger, a former Vice-President of the Court: "…the condemnation of the authorities' war against civil society was too late and probably not effective enough. When violations of freedom of expression and freedom of assembly were already widespread, finding violations in individual cases and granting compensation could no longer change the course of events". Op. cit., p. 520.

[11] See *Kobaliya and Others v. Russia*, cited above, § 86.

[12] For an illustration of this point in the field of electoral speech, see the Court's analysis of the increasingly Byzantine national legal framework in a string of cases involving print media, independent electoral watchdogs and even individual voters: *Orlovskaya Iskra v. Russia*, no. 42911/08, 21 February 2017; *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*, no. 43351/12, 18 May 2021; *Assotsiatsiya NGO Golos and Others v. Russia*, no. 41055/12, 6 November 2021; and *Teslenko and Others v. Russia*, nos. 49588/12 and 3 others, 5 April 2022. See also my Concurring Opinion in the latter case.

[13] Council of Europe, Collected Edition of the "*Travaux préparatoires*" of the European Convention on Human Rights, vol. 1, 30, 192; vol. 5, 332 (1975-1985).

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[1] All amounts are expressed in euros.

[2] The amount to be determined by the Court.