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

THIRD SECTION

CASE OF RID NOVAYA GAZETA AND ZAO NOVAYA GAZETA v. RUSSIA

(Application no. 44561/11)

JUDGMENT

Art 10 • Freedom of expression • Use of caution procedure under anti-extremist legislation against applicant organisations concerning an article with quotations from manifesto of controversial nationalist group and symbols resembling Nazi ones • Recourse to this procedure designed to have a non-negligible chilling effect directly affecting freedom of expression, and particularly, in the present case, the freedom of the press • Domestic authorities' failure to apply standards in conformity with principles embodied in Article 10 or to base their decisions on an acceptable assessment of the relevant facts • Interference with applicant organisations' right to freedom of expression not "necessary in a democratic society"

STRASBOURG

11 May 2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 44561/11) against the Russian Federation lodged with the Court on 25 May 2011 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two organisations: Redaktsionno-izdatelskiy dom *Novaya Gazeta*, (hereinafter "RID" or "the first applicant organisation") and Izdatelskiy dom *Novaya Gazeta* (hereinafter "ZAO" or "the second applicant organisation");

the decision to give notice to the Russian Government ("the Government") of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Media Legal Defence Initiative and the Mass Media Defence Centre, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 30 March 2021,

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

INTRODUCTION

1. The applicants alleged, in particular, that the caution procedure used against them under the anti-extremist legislation had amounted to an unlawful and disproportionate interference with their right to freedom of expression and that they had had no effective remedies in that respect.

THE FACTS

2. The applicants were represented by Mr Y. Kozheurov, a lawyer practising in Moscow.

3. The Russian Government were represented by Mr A. Fedorov, Head of the Office of the Representative of the Russian Federation to the European Court of Human Rights; Mr G. Matyushkin, Representative of the

Russian Federation to the European Court of Human Rights; and then by his successor in that office, Mr M. Galperin.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The first applicant organisation is a non-governmental organisation, namely a publishing house. The second applicant organisation is a closed joint stock company.

6. The second applicant organisation was the founder of the *Novaya Gazeta* newspaper that it registered as a mass media outlet in 2006. In 2007 the second applicant organisation signed a contract with the first applicant organisation. Under that contract the first applicant organisation exercised the combined functions of the editorial board and publisher of the *Novaya Gazeta* newspaper.

I. ARTICLE ENTITLED "GANG, AGENCY, PARTY. WHO ARE THE 'LEGAL NATIONALISTS'?"

7. On 19 January 2009 a lawyer named Stanislav Markelov and a *Novaya Gazeta* correspondent named Anastasia Baburova were shot in the centre of Moscow. They had been known for their antifascist positions and they had cooperated in different ways with the editorial board of *Novaya Gazeta*. The matter received extensive media coverage. Two individuals who were allegedly close to ultra-right-wing nationalist organisations and associations were arrested as suspects and then charged with murder with motives based on political, ideological, racial, national or religious hatred or enmity.

8. On 20 January 2010 on the first anniversary of the above events, the *Novaya Gazeta* newspaper published an article entitled "Gang, agency, party. Who are the 'Legal Nationalists' ['*легальные националисты*']?" written by Mr N.

9. The article was published in the section of the newspaper entitled "Investigation". It consisted of two parts: a journalistic part authored by Mr N. and a part entitled "Verbatim", reporting an interview with Mr Go., coordinator of an organisation or group calling itself Russkiy Obraz ("RO" hereinafter).

10. The journalistic part of the article contained the following introduction:

> "Prior to the arrest of [two suspects] in relation to the murder of Markelov and Baburova, RO, a Slavophile organisation, was not known beyond a narrow circle of specialists studying fascism. [Suspect 1] is a co-founder of RO's magazine, [suspect 2] is an activist with Russkiy Verdikt, [a group] which is affiliated with RO and which deals with legal and public relations issues around criminal proceedings against ultra-rightists. *Novaya Gazeta* decided to find out what the organisations, to which the suspects in the public political execution of 19 January 2009 have been linked, actually are."

11. Exploring RO's gradual transformation from a small secretive and informal grouping into a more structured and visible association, the article pointed out that since 2008 RO and "legal nationalists" had been taking various measures aimed at laying claim to legal status and a place in public politics. According to the author of the article, they had been seeking to implement that transformation in order to reinforce their propaganda of racist ideas (such as "Russia for Russians") by seeking support and legitimation from people having the power; some of them were interested in interacting with those "legal nationalists" for "pacifying" the left-wing and liberal non-systemic opposition. Accordingly, RO had started to serve as an intermediary between the power and extremists and to present itself as being friendly with the Kremlin unlike some other (ultra-right-wing) organisations.

12. The journalistic part of the article included unedited quotations from RO's official policy statement, which had been obtained through direct access to RO's website. They read as follows:

> "Within their confined living areas the members of the aborigine non-Slavic population have a right to pursue their lives on the basis of their national and religious traditions. Outside such areas the inhabitants are restricted in their civil rights."
>
> "Male householders who join the self-defence groups are considered fully-fledged citizens."
>
> "As to women, political rights are granted to those of them who take part in community life or, according to their own wishes, join the Guard Service."
>
> "Inter-racial marriage is prohibited, being perceived as a full disregard for the fate of one's own race."

Those quotes were preceded by the following statement:

> "RO asserts that it is not a fascist structure but a nationalist one. It threatens to sue anyone who calls them fascist. But so far it has not sued anyone. A political manifesto is posted on RO's site. It is rather vague, but certain passages in it are not very supportive of the current legislation in Russia".

13. The article also contained photographs which, according to the author, were intended to demonstrate the close connections between RO activists and openly fascist organisations, and show their use of fascist symbols and greetings, or symbols and greetings which could be perceived as similar to fascist ones. One photograph showed people with their right arms being extended upwards with straight palms, and was accompanied by the following caption: "Y.V., RO's press officer, performing a 'Roman salute'". Another photograph showed three people holding a flag with a symbol resembling the swastika, and was accompanied by the caption identifying them as members of S. and K., music bands that had taken part in concerts organised by RO.

14. The interview part of the article was accompanied by the following statement from the newspaper:

"While carrying out research into RO, which is being linked to the murder of Markelov and Baburova, we decided to interview RO's coordinator who was also interviewed as a witness in [the related criminal] proceedings. We consider his views unacceptable. Nevertheless, we are publishing an unedited extract of his interview for the newspaper (for the full version, see our website). We do this so that our readers can see for themselves who those 'legal nationalists' are ..."

II. ANTI-EXTREMISM CAUTION PROCEDURE AGAINST THE APPLICANT ORGANISATIONS

A. Caution issued by the media regulator

15. On 22 March 2010 two officials of the Rozkomnadzor, a federal executive agency regulating mass media outlets, issued a report (*заключение*) in relation to the above article. It read as follows:

"[The article] describes the origin and the functioning of RO. The article is accompanied by two photographs, one of which shows people with their right arms being extended upwards with straight palms. That photograph is accompanied by the following caption: 'Y.V., RO's press officer, performing a "Roman salute".' That phrase refers to a gesture of welcome used by Italian fascists. The other photograph shows three men holding a poster showing symbols that are indistinguishable from Nazi symbols and attributes.

The article contains provisions from RO's political manifesto. The author provides no comment on those provisions. The only marker disclosing the author's attitude toward them is the phrase 'not very supportive of the current legislation in Russia'. However, some provisions of RO's manifesto are contrary to Russian legislation rather than merely 'not supportive' of it ...

Moreover, the article contains a direct quotation from the 'Ethical code of a Russian nationalist', one of RO's charter documents. This quotation is placed together with photographs showing Nazi symbols; it is not connected to the content of the article and is not commented on in it.

The above is contrary to the Russian Constitution ... The photograph and the information accompanying it contain indications of extremism ..."

16. On 31 March 2010 the Rozkomnadzor issued a caution (*предупреждение*) in relation to the above article. That document was based on the Mass Media Act and the Suppression of Extremism Act (see paragraphs 29-30 and 34-35 below). The caution was addressed both to *Novaya Gazeta*'s editorial board (that is the first applicant organisation) and to the second applicant organisation.

17. The caution read as follows:

"The impugned article was examined by experts who concluded that it contained statements aimed at inciting social, racial and ethnic discord and propagated the concept of superiority or inferiority on account of one's social, ethnic or racial origin:

'Within their confined living areas the members of the aborigine non-Slavic population have a right to pursue their lives on the basis of their national and religious traditions. Outside such areas the inhabitants are restricted in their civil rights.'

> ‘Male householders who join the self-defence groups are considered fully-fledged citizens.’
>
> ‘As to women, political rights are granted to those of them who take part in community life or, according to their own wishes, join the Guard Service.’
>
> ‘Inter-racial marriage is prohibited, being perceived as a full disregard for the fate of one’s own race.’
>
> In the experts’ view, the photographs accompanying the article contained elements of propaganda and public visual presentations of symbols resembling Nazi symbols ...
>
> Section 1 of the [Suppression of Extremism Act] defines extremist activity as inciting racial, ethnic, religious or social discord; the promotion and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming indistinguishable.
>
> Thus, *Novaya Gazeta*’s editorial board has disseminated information containing indications of extremism ... Section 4 of the Mass Media Act and section 11 of the Suppression of Extremism Act prohibit using mass media outlets for engaging in extremist activities ... [Roskomnadzor] has the competence to apply measures of a preventive nature in order to avoid violations of the requirements in this area and to remedy the consequences of such violations ...”

18. The caution concluded as follows:

> “Thus, pursuant to section 16 of the Mass Media Act and section 8 of the Suppression of Extremism Act we issue this Caution to *Novaya Gazeta*’s editorial board, stating that it is not acceptable to violate the law.”

B. Judicial review

19. The applicant organisations sought judicial review of the Rozkomnadzor’s caution under Chapter 25 of the Code of Civil Procedure. The applicant organisations argued that it was necessary to take into account the context and the legitimate purpose and aim of the article, and that the statements which the applicant organisations had been accused of making constituted carefully chosen verbatim quotes used in order to support the proposition that RO’s activity had an unlawful character. The purpose of the article had been to counteract the views professed by nationalist organisations, to expose them, to demonstrate their antisocial and unlawful essence, and thus to draw the attention of the public and the law-enforcement agencies to the activities of associations promoting such views.

20. According to the Government, at that stage of the court proceedings, the Roskomnadzor had adduced in evidence the expert report relied on in the caution (see paragraph 15 above). According to the applicant organisations, that report had first been adduced in evidence at a later stage, during the appeal hearing.

21. In its judgment of 20 September 2010 the Taganskiy District Court of Moscow dismissed the claim. The court endorsed the regulator’s conclusions, finding that the impugned parts of the article had aimed to

incite social, racial and national discord and to put forward ideas of superiority or inferiority on the grounds of a person's social status, race or membership of a national group. The court was satisfied that the impugned parts of the article fell within the scope of "extremist material" under the Suppression of Extremism Act. The court concluded that the applicant organisations' "rights or freedoms" had not been violated by the issuing of the caution.

22. The applicant organisations lodged an appeal with the Moscow City Court.

23. That court granted the applicant organisations' motion and admitted into evidence an expert report dated 7 November 2010 prepared by a panel of three renowned specialists in philology and linguistics, in collaboration with the Guild of Expert Linguists for Documentary and Information Disputes. The panel's report contained the following conclusions:

> "1. The article is written in the genre of journalistic investigation and can be categorised as political discourse in the journalistic style of written speech. One particularity of the investigative genre is that the journalist uncovers information on certain events or situations which have a social significance that the participants would like to conceal from broad publicity.
>
> 2. The functional purpose of the article is to achieve critical and analytical goals and exposure, first and foremost by drawing the attention of the public and the authorities to a politically significant problem – namely the existence and active functioning of RO in a way which the author assumes violates current legislation, and also by reviewing the fascist (according to the author's hypothesis) essence of that organisation.
>
> 3. Examined in the context of the article, the statements published in the article and which are quoted in the caution ... aimed to achieve the goal of drawing the attention of the public and the law-enforcement authorities to one of the manifestations of RO's activity which the author considers to be illegal.
>
> The disputed statements quoted in the caution form part of RO's political manifesto and they are laid out in the text to provide a basis for the arguments in favour of the author's hypothesis that RO's ideology is actually fascist, and that the activity of RO is unlawful in nature. Thus, in the informational structure of the text being studied, the disputed statements perform the function of documentary illustration – one of the elements with the assistance of which the author justifies his hypothesis regarding the unlawful character of RO's activity. Without such justification, the author's hypothesis would appear to be purely conjecture, and it would be unclear to a reader what the author was talking about and why he considered RO's activity to be unlawful. In the context of the article, these statements cannot be considered as intending to incite social, racial or national discord, or to promote the exclusivity, superiority or inferiority of a person on the basis of his or her social, national or racial identity/origin.
>
> The use of a widely known slogan in the text – the well-established phrase "Russia for Russians" – is not accompanied by any positive evaluation; there is no information which justifies or clarifies its content. The slogan has been used as part of the statements necessary for the reader to understand the reasons for the author's view that RO has crossed over and taken a place among independently acting political

forces. Such usage cannot be considered to be an aspect of promoting the idea expressed by the slogan.

The text of the article did not quote other statements, words or phrases which have any characteristics aiming to incite social, racial or national discord or to promote the exclusivity, superiority or inferiority of a person on the basis of his or her social, national or racial identity/origin, or to create a real threat of harming public safety.

4. When examined in context, the photographs, which were published to illustrate the text of the article, seek to achieve the following purposes:

• drawing the attention of the public and the law-enforcement authorities to one of the manifestations of RO's activity which is considered to be unlawful in the opinion of the author – namely Combat 18 – as well as to the individuals depicted in the photographs;

• assisting in the recognition of RO as a secret Nazi organisation which possesses a definite style characterised by the entire range of associated Nazi emblems.

In the informational structure of the article, the photographs perform the function of an element assisting the author in justifying his hypothesis regarding the unlawful character of RO's activity, along with that of related organisations. Without such a justification, the author's hypothesis would appear to be purely conjecture, and it would be unclear to a reader what the author was talking about and why he considered the activity of these organisations to be unlawful.

The gestures and graphic forms which are represented in the photographs are used in the article to expose them for critical and analytical purposes, which differ from the public demonstration of such gestures and graphic forms, and in the overall context they cannot be considered to be elements promoting Nazi symbols or symbols which are confusingly similar to Nazi ones."

24. On 30 November 2010 the Moscow City Court upheld the first-instance judgment. Having quoted the relevant provisions of the legislation, it held as follows:

"... [the appeal court] finds no reason to set aside the first-instance judgment ... The report submitted by the Rozkomnadzor confirms that the article contained elements of an extremist activity ... The claimants' disagreement with the court's assessment of the evidence is not sufficient for setting aside the judgment."

25. On 1 February and 19 April 2011 a judge of the City Court and the Supreme Court of the Russian Federation dismissed, in a summary manner, the applicants' applications for supervisory review in respect of the above court decisions.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN LAW

A. Freedom of expression

1. Constitution of the Russian Federation

26. Article 29 of the Constitution of the Russian Federation guarantees the right to freedom of thought and expression, as well as freedom to freely seek, receive, transfer and spread information by any legal means.

27. Article 55 of the Constitution provides that rights and freedoms may be limited by federal statute only in so far as is necessary to protect the foundations of the constitutional regime, the morals, health, rights and legitimate interests of others, and to ensure national defence and security.

2. Mass Media Act 1991

28. Subject to the exceptions set out in the provisions of the legislation concerning the mass media, section 1 of Federal Law no. 2124-1 of 27 December 1991 (the "Mass Media Act") prohibits restrictions on the freedom to seek, receive, produce and disseminate mass information or to found and manage a mass media outlet.

29. Section 4 prohibits the use of media outlets for the commission of criminal offences, for disclosing State secrets or other protected categories of secret information, for disseminating material containing public calls to engage in terrorist activity or calls publicly justifying terrorism or other extremist material or information containing propaganda of the cult of violence and cruelty.

30. Section 16 provides that the activity of a media outlet may be terminated or suspended only by a decision of its founder or by a court acting at the request of the regulatory authority on account of repeated violations, over a period of twelve months, of the requirements set out in section 4 of the Act, in respect of which the regulatory authority has issued a caution (*предупреждение*) to the founder and/or the editorial board (or the editor-in-chief) in writing. The activities of media outlets may also be terminated using the procedures and on the grounds provided for in the Suppression of Extremism Act.

31. Pursuant to Ruling no. 16 of 15 June 2010 by the Plenary Supreme Court of Russia (paragraph 28 of the Ruling), the question of an alleged abuse of media freedom should be decided by taking into account the wording of the article and the context in which the impugned statements were made, together with the purpose, genre and style of the article and whether the statements could be deemed to constitute an expression of opinion in the field of political discussion or to draw attention to the

discussion of socially significant issues. The answer to that question will also depend on whether the article was based on an interview and on the attitude taken by the interviewer or the representatives of the media outlet's editorial board to the opinions, judgments and assertions thereby expressed. It should also take into account the social and political situation in the country as a whole or in an individual part of it (depending on the region where the publication in question is distributed).

B. Suppression of Extremism Act 2002

32. The preamble to Federal Law no. 114-FZ on Combating Extremist Activity, 25 July 2002 (the "Suppression of Extremism Act") explains that the Act provides for liability for extremist activity and aims to protect individual rights and freedoms, the foundations of the constitutional regime and ensure the integrity and security of the Russian Federation.

33. Section 1 of the Suppression of Extremism Act defines extremist activity as, *inter alia*, inciting racial, ethnic, religious or social discord, as well as the promotion and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming indistinguishable.

34. Section 8 of the Act authorises a competent public agency to issue the founder of a mass media outlet and/or its editorial board (via the editor) with a caution (*предупреждение*) indicating that it is not acceptable to disseminate extremist materials or engage in extremist activities. The caution has to indicate specific grounds for its issue, including details of specific violations committed by the mass media outlet. Where it is possible to take measures to remedy the violations, the caution has to set a time-limit for doing so. If it fails to remedy the violations or where another caution is issued within twelve months, the mass media outlet's activity must be blocked in accordance with the applicable procedure.

35. Section 11 of the Act provides that it is prohibited to disseminate – via mass media outlets – extremist materials or to carry out extremist activities. In the circumstances outlined in section 8 of the Act the activity of a mass media outlet can be discontinued. In order to put an end to the dissemination of extremist materials a court may suspend the operation of a mass media outlet.

36. In decision no. 2480-O of 23 October 2014 the Constitutional Court of Russia considered that the prohibition of the display of Nazi or Nazi-like symbols aimed to counter Nazism, extremism, fascism and other actions which are offensive to the memory of the victims who died in the Great Patriotic War and which are associated with that prohibited ideology. The mere use of such symbols, irrespective of their genesis, could cause suffering to family members of the people who had died in the Great Patriotic War. The relevant legislation aimed to ensure peace between

national groups, harmonise inter-ethnic relations and protect the rights of others.

37. The Constitutional Court stated that, while the Russian Constitution did indeed protect freedom of expression, it also expressly prohibited propaganda inciting social, racial, ethnic or religious discord as well as the promotion of the concept of social, racial, ethnic, religious or linguistic superiority. The legislation in question therefore could not and did not offend individual rights or freedoms (decisions nos. 940-O-O of 18 December 2007, and 1271-O-O of 19 June 2012). Courts should take into account the actual or implied contradiction between the impugned actions (or, in the present case, documents) and the constitutional prohibition of incitement of discord and the like, bearing in mind the content and form of the impugned activities or information, its target audience and the intended message, the social and political context, and the presence of real danger, for instance, in relation to calls for unlawful interferences with constitutional values (decision no. 1053-O of 2 July 2013). As such and as applied, restrictions on the freedom of expression and the freedom to impart information should not ensue merely because the impugned activity or information does not conform with mainstream, well-established or traditional views or opinions, or conflicts with moral or religious preferences (ibid.).

C. Judicial review

38. For a summary of the applicable legislative provisions and judicial practice in relation to judicial review under Chapter 25 of the Russian Code of Civil Procedure ("the CCP"), see *Roman Zakharov v. Russia* ([GC], no. 47143/06, §§ 92-100, ECHR 2015), and *Lashmankin and Others v. Russia* (nos. 57818/09 and 14 others, §§ 276-88, 7 February 2017).

II. OTHER MATERIAL

39. On 8 December 2015 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted General Policy Recommendation No. 15 on combating hate speech (for relevant summaries, see among others, *Atamanchuk v. Russia*, no. 4493/11, § 29, 11 February 2020, and *Karastelev and Others v. Russia*, no. 16435/10, §§ 44-45, 6 October 2020).

40. Opinion no. 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation was adopted by the European Commission for Democracy through Law (the Venice Commission) at its 91st Plenary Session held in Venice on 15-16 June 2012, CDL-AD(2012)016-e (Opinion of the Venice Commission) (for relevant summaries, see among others, *Mariya Alekhina and Others v. Russia*,

no. 38004/12, § 102, 17 July 2018, and *Karastelev and Others*, cited above, § 46).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

41. Referring to Article 10 of the Convention, the applicant organisations complained that the anti-extremism caution issued to them had amounted to an unlawful and disproportionate interference with their freedom of expression, and in particular their freedom to impart the results of investigative journalistic work intended to describe, by adopting a critical stance, ideologies and activities pertaining to the object of the investigation. They also complained that the domestic authorities, including the courts, had failed to establish the relevant facts and to provide relevant and sufficient reasoning in compliance with the standards set out in Article 10 of the Convention and that the courts had confined their review to formal and procedural legalities without considering the issues of necessity and proportionality.

42. Article 10 of the Convention in its relevant parts reads as follows:

> "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 and regardless of frontiers ...
>
> 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

43. It has not been contested that each applicant organisation's right to freedom of expression was at stake in the domestic proceedings. The Court finds no reason to reach a different conclusion. In particular, as regards the second applicant, the Court notes that the anti-extremism caution was addressed to it as the founder of a media outlet (a newspaper) on account of the content published by the outlet's editorial board (that is, by the first applicant). By providing the first applicant with a medium in the form of that media outlet the second applicant participated in the exercise of the freedom of expression as protected by Article 10 § 1 of the Convention (compare *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, §§ 4 and 29, 23 June 2020).

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

B. Merits

1. The parties' submissions

(a) The applicant organisations

45. The applicant organisations argued that the notions of "extremist activity" and "extremist material" were vague and therefore that the Suppression of Extremism Act afforded unfettered discretion to the media regulator to interpret and apply them. The applicant organisations could not have reasonably foreseen that a newspaper article unmasking the extremist activities of a neo-Nazi organisation would itself be classified as "extremist".

46. The caution procedure did not pursue the legitimate aims of preventing disorder, the protection of order (*общественный порядок*) or of safety or public morals. The authorities had adduced no evidence that the article was, at the very least, capable of giving rise to any public disturbances or any affront to public morals. Neither the national authorities, nor the Government in their submissions before the Court, had substantiated their assertion that the article could incite the creation of organisations that would disseminate ideas of superiority or inferiority on account of one's social, ethnic or racial origin.

47. The quotations from RO's manifesto and the photographs of its members had been used in the article with the aim of focusing the attention of the reader and the law-enforcement agencies on the extremist nature of RO's activities and of supporting the message put forward in the article. The photographs had been taken from RO's website and had been meant to be evidence of RO's adherence to an ideology that was close to the Nazi ideology.

48. Both the author of the article and the applicant organisations had displayed due diligence by clearly distancing themselves from the Nazi ideology and from RO's ideas and principles. The *Novaya Gazeta* newspaper had demonstrated a longstanding and consistent anti-Nazi and anti-nationalist position that had been stated in numerous articles. The article in question had aimed to investigate RO's activities in the context of the cooperation between its members and those persons who were suspected of murdering *Novaya Gazeta*'s journalist and a lawyer who had had a close relationship with the newspaper. Beyond that, the article had contained multiple passages clearly indicating the newspaper's disapproval of RO. Thus even a first-time reader of the newspaper could not have perceived

even a neutral attitude toward RO on the part of the newspaper from the content of the article.

49. The complete and automatic ban on the public representation of Nazi or similar symbols or attributes did not take into account any specific context or aim being pursued by such representation. Such a ban could – and actually did in the present case – impede the legitimate aim of combating manifestations of neo-nationalism. The anti-fascist and anti-nationalist stance of *Novaya Gazeta* was well known and had been expressed in numerous editions that had alerted society to the rise of nationalist trends and to related offences committed by people affiliated with nationalist or fascist movements. *Novaya Gazeta* had been one of the first media outlets to highlight the dangers of the authorities' "play" with such organisations, including by way of granting them legal status. Moreover, the article had been the result of a journalistic investigation into the murder of people who had collaborated with the newspaper. Thus there could be no mistake as to the newspaper's opposition to fascist, nationalist or Nazi ideas or as to its negative attitude toward RO. The activities of RO's members had been described as "nationalist", "Nazi", "fascist", "Hitler-type" and "military". The plain meaning of those words had a manifestly negative connotation, underscoring the unlawful nationalist sentiments of the movement.

50. While in justifying the findings contained within the caution the media regulator had referred to "expert conclusions", no such evidence had been presented prior to the appeal stage of the review proceedings against the caution (see paragraph 15 above).

51. The judicial review of the caution had been confined to ascertaining formal compliance with the rules relating to competence and procedure and had overlooked all aspects pertaining to necessity and proportionality *vis-à-vis* freedom of expression.

52. The damaging "chilling effect" of such a caution consisted in the assessment of the applicant organisations' activity as unlawful and also the threat of further penalties or prosecution. A second caution within the same year could have put an end to the newspaper's circulation. The resulting position undermined the "public watchdog" role of the press, increased the fear of self-censorship and impeded investigative journalism aiming to fight neo-nationalist tendencies.

(b) The Government

53. The author of the article had not put forward a clearly negative attitude toward the circumstances described in the article. It was only in the commentary to the interview, which did not form an integral part of the impugned article, of the presumed leader of RO that the author of the article had expressed his disapproval of that person's ideas. In line with the requirement of responsible journalism, the author should have expressed

clear disagreement with the extremist ideas discussed in the article. Thus, the author of the article and the applicant organisations had not complied with their respective "duties and responsibilities" by distancing themselves from the extremist ideology, and its ideas and principles. The article could incite the creation of organisations that would disseminate ideas of superiority or inferiority on account of one's social, ethnic or racial origin.

54. The caution procedure pursued the aims of protecting the foundations of the constitutional regime, order (*общественный порядок*), the prevention of disorder, the protection of morals and the rights of others.

55. The impugned caution had not required the applicant organisations to take any particular action. The alleged interference with their right to freedom of expression had thus been proportionate.

56. The Government argued that the legislative ban on publicly displaying Nazi or similar symbols aimed to avoid "suffering on the part of people whose relatives had died during the Great Patriotic War" and to "fight Nazism, extremism, fascism and other actions insulting the memory of victims of the Great Patriotic War".

(c) Third parties

57. The Media Legal Defence Initiative and the Mass Media Defence Centre submitted that the free press has a particular importance in reporting on extremist or controversial views or behaviour. Reportage in respect of such views was to be distinguished from the promotion or validation of such views. Media self-regulation should be preferred as a less restrictive means of regulating the exercise of freedom of expression by media outlets. There is international consensus that States should secure the independence of media self-regulators in order to safeguard the right to freedom of expression, *inter alia*, as regards appointment of members of such organisations. Media regulation, through agencies established and run by the State, threatened the free press; measures such as cautions issued by the Russian media regulator produce a substantial "chilling effect" on journalists and media organisations. Such measures are designed to put pressure on media outlets to refrain from reporting on certain sensitive issues as they expect that this might trigger another warning or caution or lead to other adverse consequences such as suspension or revocation of a media outlet's licence.

2. *The Court's assessment*

(a) Nature and scope of the "interference"

58. The Court reiterates that "interference" by the authorities with the exercise of the freedom of expression may take various forms by way of "formalities, conditions, restrictions [and] penalties" under Article 10 § 2 of the Convention (see *Novikova and Others v. Russia*, nos. 25501/07

and 4 others, § 106, 26 April 2016). For instance, a prior ban can have a chilling effect on those who may intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 103, 15 November 2018). A penalty consisting in a warning issued to a private broadcasting company for disseminating content in breach of an applicable statute constituted an "interference" under Article 10 § 1 of the Convention on account of, *inter alia*, its effect of putting pressure on the applicant company so that it abstained from broadcasting content which might be perceived as contrary to the interests of the State (see *Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey (no. 1)*, nos. 64178/00 and 4 others, § 73, 30 March 2006). In addition, the Court noted in that case that a second warning could have entailed a temporary suspension of all broadcasting by that applicant company (compare with *Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland* (dec.), no. 68995/13, §§ 70-81, 12 November 2019 as regards the existence of an "interference").

59. Furthermore, even in the absence of any actual penalty or the like, an individual may nevertheless argue that a law breaches his or her rights in the absence of a specific instance of enforcement, and thus claim to be a "victim", within the meaning of Article 34 of the Convention, if he or she is required either to modify his or her conduct or risk being prosecuted, or if he or she is a member of a category of persons who risk being directly affected by the legislation (see *S.A.S. v. France* [GC], no. 43835/11, §§ 57 and 110, ECHR 2014 (extracts)).

60. In the present case the applicant organisations were issued with a caution under the provisions of the Suppression of Extremism Act and the Mass Media Act (see paragraph 17 above). While the caution document was addressed to both organisations, it was the first applicant organisation that was its direct target in so far as that organisation acted as the newspaper's editorial board (see paragraphs 6 and 18 above). Both applicant organisations had the standing to challenge it by means of judicial review and did so.

61. While they were not found guilty of any administrative or criminal offence, the first applicant's conduct was considered unlawful in a broader sense as amounting to disseminating "extremist material" inciting racial, ethnic, religious or social discord. Both applicant organisations were put on notice of that finding of unlawfulness which arose from a particular statute that was designed to provide for liability for extremist activity and that aimed to protect individual rights and freedoms, the foundations of the constitutional regime and to ensure the integrity and security of the Russian Federation (see paragraph 32 above).

62. The Court cannot agree with the Government's submission that the caution did not require the applicant organisations, especially the first

applicant organisation, to take any particular course of action. If, indeed, it did not seek to alter the first applicant organisation's conduct, it must have had some other rationale which the Government have failed to identify. In the absence of such information, the Court finds that the document must have had a chilling effect on their freedom of expression because it warned them against covering certain matters (in a certain manner) or reproducing specific materials. In substance, it presented the first applicant organisation with a dilemma: either they heeded the terms of the document and refrained from writing (using certain journalistic techniques) about groups of Russian nationalists or they ignored the document and faced "penalties" within the meaning of Article 10 § 2 of the Convention (compare *Ottan v. France*, no. 41841/12, §§ 49 and 73, 19 April 2018, concerning the disciplinary penalty of issuing a lawyer with a warning). Thus, it is reasonable to assume that having recourse to the caution procedure under the anti-extremism legislation was designed to have a non-negligible chilling effect directly affecting freedom of expression, namely the freedom of the press in the present case.

63. As to the second applicant organisation, the Court also reiterates that it interprets the concept of "victim" under Article 34 of the Convention autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act, even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 52, ECHR 2012 and cases cited therein). Article 34 concerns not just the direct victim or victims of an alleged violation, but also any indirect victim to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts) and cases cited therein; compare *Margulev v. Russia*, no. 15449/09, §§ 36-38, 8 October 2019).

64. The Mass Media Act provided that the activity of a media outlet could be terminated or suspended on account of a repeated violation of the requirements set out in section 4 of the Act within a period of twelve months where the competent authority had already issued the founder and/or the editorial board with a caution for such activities (see paragraphs 29 and 30 above).

65. Thus, irrespective of whether the caution document directly "interfered" with the second applicant organisation's freedom of expression exercised by way of providing a medium for publishing the impugned article, the Court considers that that organisation had a "valid and personal interest" in lodging before the Court a complaint under Article 10 of the Convention in relation to the anti-extremism caution in the present case.

66. The Court concludes that the caution document and its effects can be considered as having "interfered", albeit to a different extent, with both

applicant organisations' freedom of expression as protected by Article 10 § 1 of the Convention (compare *Karastelev and Others v. Russia*, no. 16435/10, § 75, 6 October 2020).

67. The Court will now turn to the assessment of the justification put forward by the domestic authorities for using the caution procedure in the present case.

(b) Justification of the "interference"

68. An "interference" infringes Article 10 of the Convention unless it satisfies the requirements of paragraph 2 of that provision. It thus remains to be determined whether the interference was "prescribed by law", sought to pursue one or more legitimate aims as defined in that paragraph, and was "necessary in a democratic society" to achieve those aims.

69. The caution issued by the media regulator to the applicant organisations in relation to the impugned article was based on two distinct elements: the quotations from RO's manifesto and the presence of Nazi or similar symbols in the photographs accompanying the article. The text quoted in the article was considered as "extremist material" inciting racial, ethnic, religious or social discord, and thus its presence within the article was regarded as the dissemination of such "extremist material". The public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming indistinguishable, was a separate ground for classifying the article as containing "extremist material".

70. The Court will first proceed to examine the matters relating to quotations from a manifesto of a controversial group.

(i) Quotations from a policy document of a controversial grouping

(1) "Prescribed by law"

71. The Court reiterates that the expression "prescribed by law" requires that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, which should be accessible to the persons concerned and foreseeable as to its effects, that is it must have been formulated with sufficient precision to enable the persons concerned – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct accordingly (see *Öztürk v. Turkey* [GC], no. 22479/93, § 54, ECHR 1999-VI).

72. For domestic law to meet those requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for

a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see *Ivashchenko v. Russia*, no. 61064/10, § 73, 13 February 2018, and the cases cited therein). The existence of sufficient procedural safeguards may be particularly pertinent, having regard to, to some extent at least and among other factors, the nature and extent of the interference in question (ibid., § 74).

73. In the present case, it was not in dispute that the caution had a basis in national law, namely sections 8 and 11 of the Suppression of Extremism Act and sections 4 and 16 of the Mass Media Act (see paragraphs 29-30 and 34-35 above), and that those provisions were accessible. Rather, the applicant organisations called into doubt the foreseeability of those provisions as applied by the domestic authorities, including the courts. They argued that they could not have reasonably expected that simply reporting on the extremist activities of an NGO could fall within the scope of those provisions, and that certain terms used in those provisions were vague.

74. The Government have not adduced evidence of or referred to any practice of the national courts which would, at the relevant time (that is in 2010), have interpreted the notions referred to in the Mass Media Act and the Suppression of Extremism Act so as to define their meaning and scope with a view to giving an indication as to which individuals or groups of individuals it protected and what "actions" could have resulted in a caution under those provisions.

75. However, in view of the findings below on whether the interference was "necessary in a democratic society" in the pursuance of a legitimate aim, the Court considers that it is not necessary to decide whether the same interference was "prescribed by law".

(2) Legitimate aim(s)

76. The media regulator did not address the matter of legitimate aims, at least in substance. Before the Court the Government alleged that the "interference" had pursued the legitimate aims of protecting the foundations of the constitutional regime, ensuring public safety and maintaining order (*общественный порядок*), preventing disorder, and protecting morals and the rights of others.

77. The Court notes that the legal basis for the measure against the applicant organisations was the classification of an article that they had published as containing "extremist material", inciting racial, ethnic, religious or social discord (see paragraphs 17 and 35 above).

78. The Court will now examine in turn the respondent State's alleged legitimate aims.

– *Prevention of disorder*

79. As to the aim of preventing disorder, it must be demonstrated that an applicant's statements were "capable of leading" or actually led to disorder – for instance in the form of public disturbances such as riots – and that the domestic authorities had that in mind when acting, for instance, to penalise him or her (see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 146 and 151-53, ECHR 2015 (extracts)). In cases relating to "hate speech" and calls to violence, regard must be had to the manner in which the statements were made, and their capacity – direct or indirect – to lead to "harmful consequences" (ibid., § 207, and the cases cited therein).

80. While the Court finds it conceivable that the caution procedure could have aimed to prevent disorder, and in particular to avert a risk arising from incitement to carry out extremist activities (see paragraph 35 above), it cannot but note already at this juncture that when making the quotations from RO's manifesto the author of the article did not endorse or otherwise associate himself with the content of the manifesto. His principal purpose appeared to be directed at uncovering a racist or otherwise reprehensible agenda pursued by RO. Having said this, the Court considers that whether the risk of disorder on account of disseminating those quotations inciting racial, ethnic or social discord was a real one and was properly substantiated in the present case is related to the assessment of whether the interference was "necessary in a democratic society".

– *Other legitimate aims*

81. The classification of the impugned article as containing (quoting from) statements inciting racial, ethnic, religious or social discord could also have meant that the intended aim of the caution procedure in that instance was to protect the "rights of others", namely those who had been targeted by those statements (see *Atamanchuk v. Russia*, no. 4493/11, § 42, 11 February 2020). Having said this, as for the risk of disorder, the Court considers that the (risk of) harm to those rights, including whether the domestic authorities sufficiently specified the targeted group(s) or the rights that they sought to protect, should be examined when assessing whether the interference was "necessary in a democratic society".

82. The Government have not explained, and the Court does not discern, the relevance of the aim of protecting public morals in the context of the present case. In the present case the Court will proceed on the assumption that the interference, on the face of it, sought to pursue the aims of preventing disorder and protecting the "rights of others".

(3) "Necessary in a democratic society"

83. The Court will now assess whether having recourse to the caution procedure on account of the dissemination of quotations from the manifesto

of a controversial group was convincingly shown to be "necessary in a democratic society" to achieve those aims.

– *General principles*

84. The general principles concerning the question whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows (see, for instance, *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016):

> "(i) 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'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) 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.
>
> (iii) 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'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

85. The vital role of the media in facilitating and fostering the public's right to receive and impart information and ideas has been repeatedly recognised by the Court. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role as "public watchdog" (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 165, 8 November 2016, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 126, 27 June 2017).

86. Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see

Bédat, cited above, § 48). It is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (see, as a recent authority, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 127). The approach to covering a given subject is a matter of journalistic freedom. Article 10 of the Convention also leaves it to journalists to decide what details ought to be published in order to ensure an article's credibility. In addition, journalists enjoy the freedom to choose, from the news items that come to their attention, which they will deal with and how. This freedom, however, is not devoid of responsibilities. The choices that they make in this regard must be based on their profession's ethical rules and codes of conduct (ibid., § 186).

87. At the same time, it is reiterated that methods of reporting may vary considerably, depending on, among other things, the type of media in question (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). The Court has considered that "punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so" (see *Jersild*, cited above, § 35, and, subsequently in the defamation context, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 77, ECHR 2004-XI, and *Magyar Jeti Zrt v. Hungary*, no. 11257/16, § 80, 4 December 2018). A general requirement for journalists to systematically and formally distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas (see, also in the defamation context, *Thoma v. Luxembourg*, no. 38432/97, § 64, ECHR 2001-III). With these principles in mind, the Court would not rule out the possibility that, in certain particular constellations of circumstances, even the mere repetition of a statement, for example in addition to a hyperlink, may potentially engage the question of liability. This could include situations where a journalist does not act in good faith in accordance with the ethics of journalism and with the diligence expected in responsible journalism dealing with a matter of public interest (see *Novaya Gazeta and Milashina v. Russia*, no. 45083/06, § 72, 3 October 2017).

88. Lastly, the fairness of proceedings and the procedural guarantees afforded are factors which in some circumstances may have to be taken into account when assessing the proportionality of an interference with freedom of expression (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 133, 17 May 2016, and *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 263-68, 17 July 2018).

– *Application of the principles in the present case*

89. The media regulator considered that the editorial board of the newspaper had disseminated information containing indications of extremism because the article contained statements (namely, quotations from a political manifesto of a controversial organisation) that incited or could incite social, racial and ethnic "discord" within the meaning of Russian law (see paragraphs 17 and 33 above).

90. The Court would emphasise at the outset that it is particularly conscious of the vital importance of combating racial discrimination in all its forms and manifestations (as stated in *Jersild*, cited above, § 30).

91. In the assessment of the interference with freedom of expression in cases of this type, alongside the general principles formulated in the Court's case-law under Article 10 of the Convention (see paragraphs 84-87 above and *Perinçek*, cited above, §§ 196-97), various factors may prove to be pertinent and have to be taken into account, including: the social and political background against which the statements were made; whether the statements, fairly construed and seen in their immediate or wider context, can be seen as a direct or indirect call to violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences (*Perinçek*, §§ 205-07). It is the interplay between the various factors, rather than any of them taken in isolation, that determines the outcome of a particular case (ibid., § 208), including where the balance had to be struck between freedom of expression and the rights of others (ibid., §§ 228 and 274-80). The Court will examine the present case in the light of those principles and factors, with a particular regard to the context in which the article was published, its nature and wording, its potential to lead to harmful consequences (namely, incitement of social, racial and ethnic discord) and the reasons adduced by the Russian authorities to justify the interference in question.

92. The article was published on the first anniversary of the brutal murder of two persons affiliated with the newspaper. The matter received extensive media coverage. Two individuals who were allegedly close to ultra-right-wing nationalist organisations and associations had been arrested and proceedings against them were pending at that time.

93. The article was written in the genre of journalistic investigation and, as declared in the introduction, aimed to uncover the true nature of RO (which the author hypothesised was essentially fascist) and similar organisations and to draw the attention of the public and the authorities to matters of public interest, namely the existence and active functioning of RO as well as legitimation or "legalisation" of their extremist discourse and actions through various forms of interaction with public authorities or public officials.

94. The disputed statements quoted in the caution form part of RO's political manifesto and were set out in the text of the article as one of the factors in support of the author's hypothesis that RO's ideology was actually fascist, and that the activity of RO was unlawful. The disputed statements performed the function of documentary illustration, as one of the elements used by the author to justify his hypothesis regarding the unlawful character of RO's activity. Without such justification, the author's hypotheses would appear to be purely conjecture, and it would be unclear to the ordinary reader what the author was talking about and why he considered RO's activity to be unlawful.

95. Given the nature and purpose of the publication and its context, the Court has no reason whatsoever to question the journalist's choice of reporting technique, including the choice to quote from RO's manifesto and the specific choice of the parts to be quoted. Including a direct quotation from an "official" statement of an organisation was conducive to ensuring the article's credibility. In addition, journalists enjoy the freedom to choose, from the news items that come to their attention, which they will deal with and how.

96. The journalistic part of the publication had an introduction which classified RO together with fascist and ultra-rightist groups (see paragraph 10 above). Furthermore, in various parts of the publication, including in a separate statement preceding the quotes from RO's manifesto, the journalist pointed to the unlawful nature of RO's activities (see paragraph 12 above). The interview part of the publication was also accompanied by text amounting to an editorial statement. That indicated that the newspaper considered the views expressed by RO's coordinator unacceptable (see paragraph 14 above).

97. The impugned quotations, when considered in the context of the journalistic and interview parts of the article, did not appear from an objective point of view to have had as their purpose the promotion of extremist ideas. Nor did they have – or could be reasonably expected to have – in this context the effect of stirring up hatred or intolerance or, within the meaning of Russian law, the effect of inciting social, racial or ethnic "discord". The media regulator adduced no specific reasons in that connection. In particular, the media regulator did not argue that the publication of the article had created an imminent risk of acts of violence, intimidation, hostility or discrimination vis-à-vis any ethnic or another group sought to be protected by way of issuing the anti-extremism caution in the present case (see also paragraph 81 above). For its part, the Court considers that the content of the article was capable of contributing to the public debate on a matter of public interest and that the article's principal purpose was to do so.

98. The applicant organisations submitted that the article had been the product of research into formal and informal associations with a nationalist

bent; the primary focus of the article had been the organisation Russkiy Obraz (RO), with which the murder suspects had allegedly had connections. The main aim of the article had been to show the kind of organisations that were laying claim to legal status and a place in public politics whilst embracing an ideology that was actually extremist and aimed to incite racial and national discord, promoting the exclusivity, superiority or inferiority of a person on the basis of his or her social, racial or ethnic origin. The purpose of the article had not been to approve or promote the views professed by those ultra-right-wing nationalist organisations but rather to counteract them, to expose them, to demonstrate their antisocial and unlawful essence, and thus to draw the attention of the public and the law-enforcement agencies to the activities of associations which were espousing and disseminating such ideas and related information.

99. The Court considers that the media regulator's assessment of the editorial board's conduct under the anti-extremist legislation and the decision-making process were deficient and ran counter to the principles of Article 10 of the Convention (see paragraphs 84-87 and 91 above). The reasons given by the media regulator to justify the interference were not relevant and sufficient. Overall, the Court is not satisfied that the interference was shown to answer any "pressing social need".

100. The deficiencies identified above were not remedied on judicial review (see *Karastelev and Others*, cited above, §§ 94-97; compare *Ivashchenko*, cited above, § 88; *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, §§ 110-14, 7 March 2017; *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 356, 7 February 2017; and *Ustinova v. Russia*, no. 7994/14, §§ 51-52, 8 November 2016, concerning the same type of judicial review procedure under Russian law).

(ii) Public display of symbols resembling Nazi symbols

101. It remains to be examined whether the "interference" in the form of an anti-extremism caution on the basis of the second factual element held against the applicant organisations, namely the public display of symbols resembling Nazi symbols, was necessary in a democratic society.

102. It is common ground between the parties, and the Court accepts, that that aspect of the "interference" also had a basis in national law, namely sections 8 and 11 of the Suppression of Extremism Act and sections 4 and 16 of the Mass Media Act (see paragraphs 29-30 and 34-35 above), and that those provisions were accessible. Similarly to its approach in respect of the quotations (see paragraph 75 above), the Court considers that, in view of the findings below on whether this aspect of the interference was "necessary in a democratic society" in the pursuance of a legitimate aim, it is not necessary to decide whether that interference was "prescribed by law", including whether the applicable provisions were foreseeable as to their effects. For the purpose of the present case the Court will proceed on the

assumption that the "interference" was aimed at protecting the "rights of others" (compare *Perinçek*, §§ 156-57).

103. The Court has previously declared inadmissible a similar complaint in respect of an applicant's conviction under the German Criminal Code (see *Nix v. Germany* (dec.), no. 35285/16, 13 March 2018). The Court highlighted that in the light of their historical role and experience, States which had experienced Nazi horrors could be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis. The Court considered that the legislature's choice to criminally punish the use of Nazi symbols, to ban the use of such symbols from German political life, to maintain political peace (also taking into account the perception of foreign observers), and to prevent the revival of Nazism had to be seen against that background (§ 47). Reiterating that the historical experience of Germany was a weighty factor to be taken into account when determining, when it came to having recourse to symbols such as those at issue in that case, whether there existed a pressing social need for interfering with an applicant's right to freedom of expression, as guaranteed by Article 10 of the Convention, the Court found, in the light of all the circumstances of the case, that the domestic authorities had adduced relevant and sufficient reasons and had not overstepped their margin of appreciation. The interference had therefore been proportionate to the legitimate aim pursued and had thus been "necessary in a democratic society" (§ 56).

104. Turning to the present case, the Court notes that the Suppression of Extremism Act defined as "extremist activity" acts consisting of the promotion and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming indistinguishable.

105. The Court observes that, unlike German law as interpreted by the German courts, Russian law – at least as interpreted and applied at the time – did not appear to leave any room for any lawful use of such symbols even when it was meant, for instance, to report on current events or to combat unconstitutional movements (contrast *Nix*, cited above, § 48). Nor did the national courts seem to restrict the scope of the application of section 1 of the Suppression of Extremism Act by way of exempting such uses of the relevant symbols that did not contravene the Act's purpose – such as for instance, where opposition to the ideology embodied by the symbol used was obvious and clear (ibid.) – at least in order to permit sufficient respect for the right to freedom of expression in protesting against the revival of Nazi ideas.

106. However, in the present case the Court is not called upon to assess all the aspects pertaining to what might be classified as a total ban on the public presentation (coupled with promotion) of prohibited symbols or attributes.

107. The Court has already found that the text of the article (including the quoted parts) read together with the interview could not be reasonably perceived as inciting hatred or discord. It is in this context that the photographs have to be assessed too. Unlike in *Nix*, in the present case it was immediately clear to a reader of the article that the photographs were part of it and, like the article itself, were intended to contribute to a public debate.

108. It is also common ground between the parties that the impugned symbols and attributes were not actually Nazi symbols and attributes but were similar to them to some extent or to the point of becoming indistinguishable. The caution does not contain any factual details relating to the photographs accompanying the impugned article. Nor does that document contain any legal reasoning relating to the assessment of any "attributes" or "symbols" in those photographs. The caution confirmed that the photographs (or perhaps their public presentation within the article) constituted "promotion" of attributes or symbols which were similar to Nazi attributes or symbols to the point of becoming indistinguishable. However, the caution omitted to clarify how the presence of certain symbols in the photographs constituted "promotion" of such symbols or attributes.

109. The Court has taken note of the findings made in the expert report adduced in evidence by the applicant organisations in the domestic proceedings. According to that report, the photographs were published to illustrate the text of the article and sought to draw the attention of the public and law-enforcement authorities to one of the manifestations of RO's activity which was unlawful in the opinion of the author and to assist in the recognition of RO as a secret Nazi organisation which possessed a definite style characterised by the entire range of associated Nazi emblems. The author's use of the photographs assisted in justifying his hypothesis regarding the unlawful character of RO's activity, along with that of the organisations related to it. Without such a justification, the author's hypotheses would appear to be purely conjecture, and it would be unclear to a reader what the author was talking about and why he considered the activity of these organisations to be unlawful. The gestures and symbols which were shown in those photographs were used in the article to expose them for critical and analytical purposes, which is different to the public demonstration of such gestures and symbols, and in the overall context of the article they could not be considered to be elements promoting either Nazi symbols or symbols which were confusingly similar to Nazi ones.

110. It suffices for the Court in the present case to note that the domestic courts did not attempt any adequate assessment of the above elements. Thus, the Court is not satisfied that there was a convincing justification for the use of the anti-extremism caution procedure in the present case with reference to the public presentation and promotion of prohibited symbols.

(iii) Overall conclusion

111. The Court reiterates that the Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto (see *Correia de Matos v. Portugal* [GC], no. 56402/12, § 116, 4 April 2018). As to cases relating to Article 10 of the Convention, exceptions under Article 10 § 2 of the Convention must be construed strictly, and the need for any restrictions must be established convincingly (see *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 124).

112. Indeed, if the balancing exercise has been carried out by the national courts in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for theirs (see *Perinçek*, cited above, § 198, and *Lilliendahl v. Iceland* (dec.), no. 29297/18, § 31, 12 May 2020). The Court finds that the domestic authorities in the present case, including the courts, cannot be said to have "applied standards which were in conformity with the principles embodied in Article 10 of the Convention" (see paragraphs 84-87 and 91 above) or to have "based [their decisions] on an acceptable assessment of the relevant facts". Therefore, the "interference" in the present case was not convincingly shown to have been "necessary in a democratic society" (see *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017; *Ringier Axel Springer Slovakia, a.s. v. Slovakia (no. 2)*, no. 21666/09, § 54, 7 January 2014; *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, §§ 67-69, 8 October 2013; and *Novaya Gazeta and Milashina*, cited above, § 75). The Court thus concludes that the interference with the applicant organisations' right to freedom of expression was not "necessary in a democratic society".

113. There has therefore been a violation of Article 10 of the Convention in the present case.

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

114. The applicant organisations also argued, in substance under Article 13 of the Convention in conjunction with Article 10, that the domestic courts during the judicial review process had failed to carry out a necessity and proportionality assessment, confining their review to formal legality and the observance of relevant procedures.

115. The Court considers that the complaint under Article 13 is linked to the complaint under Article 10, and that it is likewise admissible. However, having regard to the nature and scope of the finding of a violation under Article 10 of the Convention, it considers that it is not necessary to examine the merits of that complaint in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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 party."

A. Damage

117. The applicant organisations claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

118. The Government contested the claims.

119. The Court reiterates that there is a possibility under Article 41 of the Convention that a commercial company may be awarded monetary compensation for non-pecuniary damage (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV; see also *Orlovskaya Iskra v. Russia*, no. 42911/08, §§ 140-41, 21 February 2017, and *OOO Regnum v. Russia*, no. 22649/08, § 91, 8 September 2020). Non-pecuniary damage in this context may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (ibid.; see also *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 221-22, ECHR 2012). The Court awards the first applicant organisation EUR 2,000 on that account, plus any tax that may be chargeable. The Court also considers that in the circumstances of the present case the finding of a violation under Article 10 of the Convention in respect of the second applicant organisation constitutes in itself sufficient just satisfaction for any non-pecuniary damage.

B. Costs and expenses

120. The first applicant organisation claimed EUR 1,237 on account of the cost of the expert report they had submitted in the domestic proceedings (see paragraph 23 above) and EUR 2,096 for some translation expenses in 2011 in relation to the proceedings before the Court.

121. The Government contested the claims as excessive, unsubstantiated and unrelated to the case.

122. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award to the first applicant organisation the sum of EUR 2,237 under all heads.

C. Default interest

123. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention in respect of each applicant organisation;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the second applicant organisation;

5. *Holds*
   (a) that the respondent State is to pay the first applicant organisation, 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) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,237 (two thousand two hundred and thirty-seven euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;
   (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;

6. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 11 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Paul Lemmens President