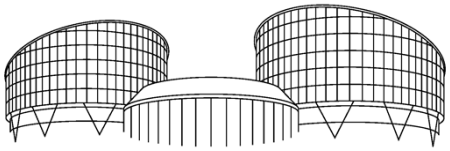

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OOO FLAVUS AND OTHERS v. RUSSIA

(Applications nos. 12468/15 and 2 others – see appended list)

JUDGMENT

Article 10 • Freedom to receive and impart information • Unjustified wholesale blocking of opposition online media outlets in breach of requirement to specify offending content • Prior restraint on publications in absence of judicial decision on the illegality of the impugned content • Wholesale blocking of access to an entire website being an extreme measure comparable to banning a newspaper or television station • Blocking access to an entire website having practical effect of extending scope of blocking order far beyond illegal content originally targeted • Domestic law lacking safeguards against excessive and arbitrary effects of blocking measures • Notification and involvement of website owners in blocking proceedings not required by law • Blocking measures not sanctioned by court or other independent adjudicatory body • No prior assessment of impact and immediate enforcement of the blocking measure depriving interested parties of the opportunity to appeal • Domestic courts' failure to perform a Convention-compliant review considering less intrusive means
Article 13 in conjunction with Article 10 • Effective remedy • Failure of courts to consider the substance of grievance or to examine lawfulness or proportionality of effects of blocking order

STRASBOURG

23 June 2020

FINAL

16/11/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of OOO Flavus and Others v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Helen Keller,
Dmitry Dedov,
María Elósegui,
Gilberto Felici,
Erik Wennerström, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 12468/15, 23489/15 and 19074/16) 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 two Russian limited-liability companies, OOO Flavus and OOO Mediafokus, and a Russian national, Mr Garri Kimovich Kasparov ("the applicants"), on the dates set out in the Appendix;

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

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

the comments submitted by third-party interveners who were granted leave to intervene by the President of the Section;

Having deliberated in private on 26 May 2020,

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

INTRODUCTION

The case concerns the wholesale blocking of three online media outlets on the grounds that some of their webpages featured allegedly unlawful content.

THE FACTS

1. The applicants were represented by Mr D. Gaynutdinov and Ms S. Kuzevanova, lawyers practising in Moscow and Voronezh, respectively.

2. The Government were represented initially by Mr A. Fedorov, head of the office of the Representative of the Russian Federation to the European Court of Human Rights, and then by Mr M. Galperin, the Representative.

3. The facts of the cases, as submitted by the parties, may be summarised as follows.

4. The applicants are owners of online media outlets. The first applicant, OOO Flavus, owns grani.ru, a news and opinion website that has existed since 2000 and has been registered as an electronic periodical since 2003. The second applicant, Mr Kasparov, is the founder of www.kasparov.ru, an independent web publication on social and political subjects and also a platform for independent bloggers. The third applicant, OOO Mediafokus, owns the online *Daily Newspaper* ("Ezhednevnyy Zhurnal") at ej.ru, which since 2004 has been publishing research and analysis by political scientists, economists and journalists, many of whom have been critical of the Russian Government.

5. In December 2013, the Information Act was amended to empower the Prosecutor General to identify websites containing calls for mass disorder, extremist activities, or participation in unauthorised mass gatherings (see section 15.3 in paragraph 12 below). A court order was not required; the Prosecutor General could submit a blocking request directly to the telecoms regulator, Roskomnadzor, which in turn would notify the website's web hosting service provider. The provider would then immediately block access to the webpage and notify its owner within twenty-four hours.

6. On 13 March 2014 the Prosecutor General sent Roskomnadzor a request to block the applicants' online media websites. The request was worded as follows:

> "An examination of the information published on the pages of the said websites revealed a uniform thematic trend towards the coverage of public events of an unlawful nature in Russian territory.
>
> In particular, the *Ezhednevniy Zhurnal* website (www.ej.ru) includes a subsection on the 'Bolotnaya case'[1] which posts and accumulates articles and publications about the protests held in the Russian territory in support of defendants in the criminal proceedings relating to the mass disorder in the Bolotnaya Square in Moscow [on 6] May 2012. It follows from the contents of the publications ... that illegal protests ... are an acceptable and necessary form of expression of one's civic position and [such publications] are essentially a call for participation in such events.
>
> Furthermore, an article entitled 'Participants in a gathering in support of the Bolotnaya victims arrested [in the centre of Moscow]' was found on the www.grani.ru website. The article describes the arrest of participants of an unauthorised public event 'Strategy 6', which involves public performances by a group of individuals on the sixth day of every month in support of the defendants in the criminal case concerning mass disorder in Moscow on 6 May 2012. Unlawful actions by the event participants are represented as being acceptable, with a view to attracting attention to the criminal case and calling for participation in similar actions.
>
> The www.kasparov.ru website features an article entitled 'Property of the [Ukrainian] State to be nationalised in the Crimea'[2], which shows a pamphlet with an image of an armed man, the title 'Red Guerrilla Fighters' and the text 'Wake up,

[1] For detailed information on the Bolotnaya case, see *Frumkin v Russia*, no 74568/12, §§ 7-65, ECHR 2016 (extracts).

[2] The "Crimean secession referendum" was scheduled to be held on 16 March 2014.

> Crimea! The occupiers and their minions are brazenly stealing your money and disfiguring your towns. Do not stay silent! Do not surrender!' Those calls are addressed to Crimean residents and incite them to commit unlawful actions."

7. On 14 March 2014 Roskomnadzor blocked access to the applicants' websites and requested the web hosting service providers to take down the offending material on the grounds that it contained "calls for extremist activities". The notices listed the domain name of the targeted website in the field for the page URL. A copy of the Prosecutor General's blocking request had not been enclosed.

8. The applicants applied for a judicial review of the blocking measure. They submitted that the indiscriminate blocking of access to the entire websites, without giving notice of the specific offending material, was in breach of the established procedure in so far as it prevented the applicants from restoring access to their websites by removing the offending material. The indiscriminate blocking measure had substantially restricted their right to impart information which had not been declared unlawful.

9. On 6 May and 29 August 2014 the Taganskiy District Court, and on 6 August 2014 the Khamovnicheskiy District Court in Moscow, rejected the applicants' complaints. The courts held that a competent official of the Prosecutor General's office had carried out an assessment of the websites and determined that they were unlawful. Roskomnadzor had lawfully implemented the Prosecutor General's blocking request and the regulator's notice had given adequate information about the offending webpages. The courts concluded that the blocking measure had had no incidence on the applicants' rights or freedoms.

10. On 2 September and 28 October 2014 and 28 April 2015 the Moscow City Court dismissed appeals lodged by the applicants in a summary fashion, finding that the District Courts' judgments were essentially correct.

11. Mr Kasparov's website replaced a picture it presumed to be the offending one with a neutral image and repeated its request to Roskomnadzor to restore access to the website. It received no response.

RELEVANT DOMESTIC LEGAL FRAMEWORK

12. Section 15.3 of the Information Act (Law no. 149-FZ of 27 July 2006) establishes the procedure for blocking access to content disseminated in breach of the law (for a translation of section 15.3, see *Kablis v. Russia*, nos. 48310/16 and 59663/17, § 36, 30 April 2019). Subsection (1) defines such illegal content as including calls for mass disorder, extremist activities, and taking part in unauthorised mass gatherings. Upon detecting such illegal content or receiving reports from State authorities or individuals, the Prosecutor General or his deputies request the telecoms regulator, Roskomnadzor, to restrict access to web resources disseminating the illegal

content. Roskomnadzor requires Internet service providers (ISPs) to block access to the website and web hosting service providers to take down illegal content. Roskomnadzor's notification must specify the website's domain name, network address and the URL of the webpages permitting illegal content to be identified (subsection (2)). Within twenty-four hours of receiving the notification, the web hosting service provider must request the website owner to remove the illegal content (subsection (4)). After the website owner has notified Roskomnadzor that the content has been removed, Roskomnadzor verifies that the material has been removed and informs ISPs that access to the website may be restored (subsection (6)).

RELEVANT INTERNATIONAL MATERIAL

13. The Declaration on freedom of communication on the Internet, adopted by the Council of Europe's Committee of Ministers on 28 May 2003, took note of the Member States' commitment to abide by the following principles in the field of communication on the Internet:

Principle 3: Absence of prior state control

> "Public authorities should not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries.
>
> Provided that the safeguards of Article 10, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms are respected, measures may be taken to enforce the removal of clearly identifiable Internet content or, alternatively, the blockage of access to it, if the competent national authorities have taken a provisional or final decision on its illegality."

14. The 2011 Report of the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/17/27) expressed concerns about the excessive scope of blocking measures:

> "29. Blocking refers to measures taken to prevent certain content from reaching an end user. This includes preventing users from accessing specific websites, Internet Protocol (IP) addresses, domain name extensions, the taking down of websites from the web server where they are hosted, or using filtering technologies to exclude pages containing keywords or other specific content from appearing ...
>
> 31. States' use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression ... Firstly, the specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively. Secondly, blocking is not justified to pursue aims which are listed under article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and blocking lists are generally kept secret, which makes it difficult to assess whether access to content is being restricted for a legitimate purpose. Thirdly, even

where justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal. Lastly, content is frequently blocked without the intervention of or possibility for review by a judicial or independent body ..."

15. The Joint declaration on freedom of expression and the Internet, adopted on 1 June 2011 by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, provides in particular:

1. General Principles

"a. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognised under international law (the 'three-part' test) ..."

3. Filtering and Blocking

"a. Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse."

16. In General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights (CCPR/C/GC/34), adopted at its 102nd session (11-29 July 2011), the United Nations Human Rights Committee stated as follows:

"42. The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.

43. Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information-dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of Article 19]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government."

17. Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom, adopted by the Committee of Ministers of the Council of Europe on 13 April 2016, recommended that member States be guided by, and promote, specific Internet freedom indicators when

participating in international dialogue and international policy making on Internet freedom. When adopting this recommendation, the Permanent Representative of the Russian Federation indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with the recommendation, in so far as it referred to the methodology for its implementation at national level. Section 2.2 of the Internet freedom indicators, "Freedom of opinion and the right to receive and impart information", reads:

> "2.2.1. Any measure taken by State authorities or private-sector actors to block or otherwise restrict access to an entire Internet platform (social media, social networks, blogs or any other website) or information and communication technologies (ICT) tools (instant messaging or other applications), or any request by State authorities to carry out such actions complies with the conditions of Article 10 of the Convention regarding the legality, legitimacy and proportionality of restrictions.
>
> 2.2.2. Any measure taken by State authorities or private-sector actors to block, filter or remove Internet content, or any request by State authorities to carry out such actions complies with the conditions of Article 10 of the Convention regarding the legality, legitimacy and proportionality of restrictions.
>
> 2.2.3. Internet service providers as a general rule treat Internet traffic equally and without discrimination on the basis of sender, receiver, content, application, service or device. Internet traffic management measures are transparent, necessary and proportionate to achieve overriding public interests in compliance with Article 10 of the ECHR.
>
> 2.2.4. Internet users or other interested parties have access to a court in compliance with Article 6 of the Convention with regard to any action taken to restrict their access to the Internet or their ability to receive and impart content or information.
>
> 2.2.5. The State provides information in a timely and appropriate manner to the public about restrictions it applies to the freedom to receive and impart information, such as indicating websites that have been blocked or from which information was removed, including details of the legal basis, necessity and justification for such restrictions, the court order authorising them and the right to appeal."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicants complained that the Russian authorities' decision to block access to their websites had breached their rights under Article 10 of the Convention, which reads in its relevant parts:

> "1. Everyone has the right to freedom of expression. This right shall include freedom ... 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 ..."

A. Admissibility

20. The Court considers 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

(a) The Government

21. The Government submitted that calls for mass disorder, extremist activities or unauthorised mass gatherings constituted illegal content which should be prohibited from dissemination on the Internet. The Russian courts had established that the applicants' websites had contained such calls and upheld the Prosecutor General's decision to restrict access to the illegal content. The applicants, in the capacity of website owners, had been legally required to take down the illegal content upon receiving notification from the Russian telecoms regulator, Roskomnadzor, but they had failed to act upon it. The second applicant, who owned www.kasparov.ru, had informed Roskomnadzor that the offending content had been removed. However, upon verification, it had been established that the website had still contained information which had called for blocking access to that site. The Government concluded that the measures which had prevented users from accessing the applicants' websites had been necessary and proportionate.

(b) The applicants

22. The applicants submitted that their online media targeted primarily a Russian audience. The measures preventing users in Russia from accessing their websites had amounted to a *de facto* ban on media activity, even

though the media registration certificate issued to grani.ru had not been formally revoked. The Russian authorities' demands on the applicants had been unforeseeable and inconsistent. The Prosecutor General had requested the blocking of entire websites on account of calls for participation in unauthorised mass gatherings. A copy of the Prosecutor General's request had not been communicated to the applicants. Roskomnadzor's initial notifications had not specified which content had been deemed problematic. In subsequent proceedings, Roskomnadzor had advanced the argument that the websites featured calls for engaging in extremist activities. Since the applicants had not been notified about specific material that contained prohibited information, they had not been able to remove such content and avoid the blocking measure. Contradictory and ever-changing demands by the authorities had not allowed website owners to foresee whether the publication of a particular article would lead to a blocking measure and whether the authorities would block only that article or the entire website.

23. The Russian law did not provide owners of online media with any procedural safeguards capable of protecting them against arbitrary interference. There was no prior review of the blocking measure by a judge or other independent decision-making body. The decision was made by officers of the Prosecutor General's office without any input from media experts. The law did not provide for a judicial review of that decision prior to its implementation, or an assessment of its necessity and proportionality. In practice, it afforded unrestricted discretion to the Prosecutor General in blocking matters, which was contrary to the rule of law in a democratic society.

24. The applicants claimed that the true objective which the Russian authorities had pursued by blocking access to their websites had been to prevent dissemination of independent viewpoints on important social and political events, and actions by the opposition and civic movement. Even assuming that the authorities had genuinely pursued a legitimate aim of safeguarding public order and the websites had contained illegal content, no attempts had been made to achieve a balance between the applicants' right to impart information and the need to maintain public order. Throughout the many years of their existence, the applicants' websites had published tens of thousands of articles on social and political issues, and those archives had become inaccessible overnight to users in Russia (the applicants referred to the Court's position on the importance of Internet archives in *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 45, ECHR 2009). Blocking access to websites of popular online media, including their vast archives, in order to ban a few articles – or one image in the case of www.kasparov.ru – was clearly disproportionate. It had a considerable chilling effect on journalists and civil activists who used online media to voice critical opinions in a public discussion about the state of affairs in Russia.

(c) Third-party interveners

25. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, an independent expert mandated by the Human Rights Council to report on the extent, nature and severity of restrictions and violations of freedom of expression, submitted that individuals should be allowed to enjoy the freedom of expression in online space to the same extent as they enjoyed it offline. States frequently adopted anti-extremism laws that were so broad as to give excessive discretion for authorities to restrict online expression, contrary to the lawfulness requirement. Such legislation prioritised restrictions on, rather than protection of, free expression as the primary State responsibility, and failed to define precisely limitations on online expression and justifications for those limitations. The wholesale blocking of websites rarely, if ever, satisfied the criteria for permissible limitations on freedom of expression, taking into account that permissible restrictions should be content-specific and should not target websites solely because they were critical of the government or political system. Finally, the Special Rapporteur emphasised that digital censorship through unaccountable and excessive website blocking was unacceptable and detrimental to the rule of law in the digital age.

26. ARTICLE 19, a global campaign for freedom of expression, the Electronic Frontier Foundation, a legal and policy organisation safeguarding privacy in the digital world, Access Now, a global civil-society organisation defending the digital rights of users at risk, and Reporters without Borders, a French non-profit organisation defending freedom of the press, emphasised that international law standards applicable to measures for tackling online "extremism" included the requirement to establish a direct connection between online content and the alleged threat of violence. Vague and overly broad definitions of "extremism" had allowed States to suppress legitimate public dissent and criminalise speech and expression in opposition to the government. Blocking access to entire websites was an extreme and disproportionate measure which was incapable of distinguishing between lawful and unlawful content and, as such, should never be required by law. Even where blocking was permissible, the law should provide for the following minimum standards: (i) blocking should be ordered by a court or an independent adjudicatory body; (ii) interested parties should be given the opportunity to intervene in proceedings in which a blocking order was sought; (iii) all victims of blocking orders should have the right to challenge, after the fact, the blocking order; and (iv) anyone attempting to access a blocked website should be able to see the legal basis and reasons for the blocking order and information about avenues of appeal. Finally, the interveners emphasised that the blanket blocking of a website, without reference to specific unlawful content, should always be considered a disproportionate restriction on freedom of expression.

27. The European Information Society Institute, a Slovakia-based non-profit organisation focusing on high-technology law, submitted that any blocking measure which went beyond its target and over-blocked legitimate content, was not acceptable in a democratic society. The authorities had a duty to carry out an individualised assessment of whether the same result could be achieved with a less intrusive measure. The targeted website should be informed and given a reasonable amount of time to remove the offending content and to make submissions before a decision was taken.

2. The Court's assessment

(a) General principles

28. The Court reiterates that owing to its accessibility and capacity to store and communicate vast amounts of information, the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information. The Internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public's access to news and facilitates the dissemination of information in general. Article 10 of the Convention guarantees "everyone" the freedom to receive and impart information and ideas. It applies not only to the content of information but also to the means of its dissemination, for any restriction imposed on the latter necessarily interferes with that freedom (see *Ahmet Yıldırım v. Turkey*, no. 3111/10, §§ 48-54, ECHR 2012).

(b) Existence of interference

29. The applicants are owners of online media outlets which published articles, opinion pieces and research by opposition politicians, journalists and experts, many of which were critical of the Russian Government. On 14 March 2014, the telecoms regulator, Roskomnadzor, blocked access to their websites after the Prosecutor General had identified a portion of the content as being illegal. The Court reiterates that measures blocking access to websites are bound to have an influence on the accessibility of the Internet and, accordingly, engage the responsibility of the respondent State under Article 10 (see *Ahmet Yıldırım*, cited above, § 53). The measure which prevented visitors to the applicants' websites from accessing their content amounted to "interference by a public authority" with the right to receive and impart information, since Article 10 guarantees not only the right to impart information but also the right of the public to receive it (see *Ahmet Yıldırım*, cited above, §§ 51 and 55, and *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 56, ECHR 2015 (extracts)). The Court reiterates that interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in Article 10 § 2 and is "necessary in a democratic society" to

achieve those aims. In the present case the questions of compliance with the law and of the existence of a legitimate aim cannot be dissociated from the question of whether the interference was "necessary in a democratic society". The Court will therefore examine them together (see *Kablis v. Russia*, nos. 48310/16 and 59663/17, § 85, 30 April 2019).

(c) "Prescribed by law"

30. The Court reiterates that the expression "prescribed by law" not only refers to a statutory basis in domestic law, but also requires that the law be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual to foresee the consequences which a given action may entail. 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 afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention, and indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI, and *Ahmet Yıldırım*, cited above, §§ 57 and 59).

31. Access to the applicants' online media was blocked in accordance with section 15.3 of the Information Act. That provision allowed the Prosecutor General or his deputies to request the blocking of three categories of content, including calls for mass disorder or for participation in public events held in breach of the established procedure. However, the Court's scrutiny of the lawfulness requirement is not limited to establishing whether the State agency acted in accordance with the letter of domestic law. The Court must also ascertain whether the quality of the law in question enabled the applicants to regulate their conduct and protected them against arbitrary interference.

32. In the instant case, the Prosecutor General's blocking request mentioned calls for participation in unauthorised mass gatherings, while Roskomnadzor's notice referred to calls for extremist activities (see paragraphs 6 and 7 above). Subsection (2) of section 15.3 set out requirements in respect of the contents of Roskomnadzor's notification, which had to specify, in particular, the URL of the web page permitting illegal content to be identified (see paragraph 12 above). The actual notices which Roskomnadzor had despatched in the instant case deviated from that requirement in that they listed the website's entire domain, rather than a particular problematic webpage (see paragraph 7 above). Not only did that failure run counter to the requirement that the information provided by Roskomnadzor should permit identification of the content to be taken down, but it also deprived the applicants of the opportunity to remedy the

supposed breach by removing the offending content. By failing to specify the URL of the webpages they considered problematic, the Russian authorities acted in an arbitrary manner which prevented the applicants from making an informed choice between taking down or modifying the specific content and formulating a legal objection to the Prosecutor General's demand by reference to particular webpages.

33. To the extent that the grounds for the blocking measure transpired from the Prosecutor General's blocking request, www.ej.ru and grani.ru were held liable for writing approvingly of protests and public performances in support of the defendants in the Bolotnaya case. The Prosecutor General interpreted those articles as amounting to calls for participation in unauthorised public events. The Court has previously found that the concept of "public events held in breach of the established procedure" in section 15.3 is excessively broad. It allows the Prosecutor General to impose a blocking order for any breach of the procedure for conducting public events, no matter how trivial or innocuous, without having to establish a risk of disorder or of any real nuisance to the rights of others (see *Kablis*, cited above, § 93). It has also found that the Prosecutor General invoked that particular ground to target content which did not feature any such calls (ibid., §§ 98-101). Both findings are applicable in the circumstances of the present case.

34. The public protest which had been held in 2012 at Bolotnaya Square against allegedly rigged presidential elections had resulted in a stand-off between protesters and police, and led to multiple sets of penal proceedings against participants (see *Frumkin v. Russia*, no. 74568/12, §§ 81-142, 5 January 2016; *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, §§ 155-83, 4 October 2016; and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, §§ 274-99, 19 November 2019). For many years afterwards, ongoing trials were a matter of intense public interest in Russia. Court hearings were attended by members of the public and politicians; some of them were arrested by the police, without justification, on the charge of participation in an unauthorised public event (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 35-42 and 125-26, 15 November 2018). The applicants' media outlets, www.ej.ru and grani.ru, reported on the developments in the proceedings and the arrests made by the police, consistent with their journalistic duty to keep the public informed on issues of general interest and to offer different perspectives, including those which may be critical of official policy (see *Sürek and Özdemir v. Turkey* [GC], nos. 23927/94 and 24277/94, § 61, 8 July 1999). The Prosecutor General's blocking request failed to identify any parts of the publications mentioning planned public events, whether authorised or otherwise, or inviting the public to participate in them (contrast with *Kablis*, cited above, § 102). Voicing support for people who had been put on trial in connection with the Bolotnaya events or for those who found ways of

showing their solidarity with the defendants cannot be treated as calls for unauthorised public events. Reiterating that expression on matters of public interest is entitled to strong protection, the Court finds that the interpretation adopted by the Prosecutor General had no basis in fact and was therefore arbitrary and manifestly unreasonable.

35. The Prosecutor General also claimed that www.kasparov.ru had reproduced an image of a pamphlet inciting Crimeans to commit "unlawful actions". The pamphlet apparently called on Crimeans not to stay silent and not to surrender. The Prosecutor General's decision did not specify the nature of the allegedly unlawful actions, the elements which rendered them unlawful or the authority that allowed a Russian prosecutor to determine which conduct by non-Russian nationals living outside the Russian jurisdiction should be considered unlawful. In any event, the generic term of "unlawful actions" did not fall within any of the three categories of prohibited content defined in section 15.3. It follows that the Prosecutor General's decision regarding the content on www.kasparov.ru did not have a legal basis.

(d) Legitimate aim and "necessary in a democratic society"

36. The Court has found above that, to the extent that the interference targeted the content which was considered illegal under section 15.3, it did not follow the procedure established in the domestic law and fell foul of the lawfulness requirement. In so far, however, as the Prosecutor General requested, and Roskomnadzor implemented, a blocking order against the applicants' entire websites, the Court will continue its examination to establish whether the blocking of access to the entire websites pursued a legitimate aim and could be considered "necessary in a democratic society".

37. The Court reiterates that the wholesale blocking of access to a website is an extreme measure which has been compared to banning a newspaper or television station (see paragraphs 15 and 16 above). Such a measure deliberately disregards the distinction between the legal and illegal information the website may contain, and renders inaccessible large amounts of content which has not been identified as illegal. Blocking access to the entire website has the practical effect of extending the scope of the blocking order far beyond the illegal content which had been originally targeted (compare *Ahmet Yıldırım*, cited above, § 63).

38. The Court has found above that the decision on the illegal nature of the websites' content had been made in the present case on spurious grounds or outright arbitrarily. However, even if there were exceptional circumstances justifying the blocking of illegal content, a measure blocking access to an entire website has to be justified on its own, separately and distinctly from the justification underlying the initial order targeting illegal content, and by reference to the criteria established and applied by the Court under Article 10 of the Convention (see *Ahmet Yıldırım*, § 66, and *Kablis*,

§ 94, both cited above). Blocking access to legitimate content can never be an automatic consequence of another, more restricted blocking measure in the way in which section 15.3 allows the authorities to extend a limited blocking request to encompass an entire website. Any indiscriminate blocking measure which interferes with lawful content or websites as a collateral effect of a measure aimed at illegal content or websites amounts to arbitrary interference with the rights of the owners of such websites. The Government did not put forward any justification for the wholesale blocking order. They did not explain what legitimate aim or pressing social need the Russian authorities sought to achieve by blocking access to the applicants' online media. The applicants' claim that the true objective of the Russian authorities was to suppress access to the opposition media outlets gives rise to serious concern. The UN Human Rights Committee and Special Rapporteurs have emphasised that targeting online media or websites with blocking measures because they are critical of the government or political system can never be considered a necessary restriction on freedom of expression (see paragraphs 16 and 25 above). Lacking any justification for the wholesale blocking orders targeting the applicants' websites, the Court finds that they did not pursue any legitimate aim.

(e) Safeguards against abuse

39. Turning to the issue of safeguards which domestic legislation must provide to protect individuals from excessive and arbitrary effects of blocking measures, the Court reiterates that the blocking measures taken before a judicial decision was issued on the illegality of the published content amounted to a prior restraint on publications. The dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court and are justified only in exceptional circumstances. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII; *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 118, ECHR 2004-XI; *Ahmet Yıldırım*, cited above, § 47; and *Kablis*, cited above, §§ 90-91). In cases of prior restraints on the operation of media outlets such as the present one, a legal framework is required to ensure both tight control over the scope of bans and an effective Convention-compliant judicial review (see *Ahmet Yıldırım*, § 64, and *Kablis*, § 92, both cited above).

40. The Court finds that the Russian law did not provide owners of online media, such as the applicants, with any procedural safeguards capable of protecting them against arbitrary interference under section 15.3 of the Information Act. It did not require any form of involvement on the part of the website owners in the blocking proceedings. Both the Prosecutor General's original decision and Roskomnadzor's implementing orders had

been made without advance notification to the parties whose rights and interests were likely to be affected. The law did not require the authorities to carry out an impact assessment of the blocking measures prior to their implementation or justify the urgency of their immediate enforcement without giving the interested parties the opportunity to remove the illegal content or apply for a judicial review. The blocking measures had not been sanctioned by a court or other independent adjudicatory body providing a forum in which the interested parties could have been heard.

41. The Court further notes that the Information Act does not require the authorities to justify the necessity and proportionality of the interference with the freedom of expression online or consider the question whether the same result could be achieved by less intrusive means. Nor does it require them to ascertain that the blocking measure strictly targets the illegal content and has no arbitrary or excessive effects, including those resulting from the blocking of access to the entire website.

42. As regards the transparency requirement, the Information Act makes no provision for communicating the blocking request under section 15.3 to the owners of the targeted websites. In the present case, the applicants had been unaware of the grounds for the blocking request until after access to their websites had been blocked and they had applied for a judicial review (see paragraph 7 above).

43. Lastly, as regards the proceedings which the applicants instituted to challenge the blocking measures, the Court has previously found that the breadth of the executive's discretion under section 15.3 is such that it is likely to be difficult, if not impossible, to challenge the blocking measure on judicial review (see *Kablis*, cited above, § 96). There is no indication that the judges considering their complaints sought to weigh up the various interests at stake, in particular by assessing the need to block access to the entire websites. In the Court's view, this shortcoming was a consequence of the domestic courts' failure to apply the Plenary Supreme Court's Ruling no. 21 of 27 June 2013, which required them to have regard to the criteria established in the Convention in its interpretation by the Court (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 217, 7 February 2017). In reaching their decision, the courts confined their scrutiny to establishing that the Prosecutor General and Roskomnadzor had exercised the discretion which the legislation had afforded them (see paragraphs 9 and 10 above). However, in the Court's view, a Convention-compliant review should have taken into consideration, among other elements, the fact that such a measure, by rendering large quantities of information inaccessible, substantially restricted the rights of Internet users and had a significant collateral effect (see *Ahmet Yıldırım*, cited above, § 66).

(f) Conclusion

44. Having regard to the above analysis, the Court concludes that the interference resulting from the application of the procedure under section 15.3 of the Information Act had excessive and arbitrary effects and that the Russian legislation did not afford the applicants the degree of protection from abuse to which they were entitled by the rule of law in a democratic society. In so far as the blocking measures targeted the entire online media beyond the content originally identified as unlawful, the interference had no justification under paragraph 2 of Article 10. It did not pursue any legitimate aim and was not necessary in a democratic society.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 10

46. The Court considers that the issue of whether the applicants had an effective domestic remedy for their grievances relating to the blocking of access to their websites should be examined under Article 13 of the Convention, taken in conjunction with Article 10. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

47. The Court considers 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

48. The Government submitted that the applicants did have domestic remedies at their disposal, such as a cassation appeal, but had not used them.

49. The applicants submitted that the Russian legislation did not require the Prosecutor General to assess the impact of his blocking requests on the rights of the parties involved. Neither the website owners nor a court were involved at any stage of the blocking procedure, and there was no assessment of the various interests involved or the risks of blocking access to legitimate content. In their *ex post facto* review of the blocking measure, the Russian courts had limited the scope of their inquiry to verifying whether Roskomnadzor had formally complied with the procedure for issuing blocking orders. They had not assessed the need for having the

applicants' websites blocked in their entirety or identified specific web pages which might have featured illegal content. Nor had they carried out an assessment of the proportionality of the blocking measures.

50. The third-party intervener, the European Information Society Institute, submitted that both *ex ante* and *ex post* remedies needed to be made available to the affected parties. *Ex ante* remedies should include prior notification to the owners of targeted websites. *Ex post* remedies should ensure that, once a blocking order had been implemented, there were efficient mechanisms for restricting its scope or challenging it on account of new circumstances.

51. The Court notes at the outset that at the material time a cassation appeal was not considered an effective domestic remedy (see *Berkovich and Others v. Russia*, nos. 5871/07 and 9 others, § 69, 27 March 2018, with further references).

52. The Court further notes that the complaint under Article 13 arises from the same facts as those it has examined when dealing with the complaint under Article 10 above. However, there is a difference in the nature of the interests protected by Article 13 of the Convention and those protected under Article 10: the former affords a procedural safeguard, namely the "right to an effective remedy", whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the substantive right to freedom of expression (see *Iatridis v. Greece* [GC], no. 31107/96, § 65, ECHR 1999-II). Having regard to the difference in purpose of the safeguards afforded by the two Articles, the Court considers it appropriate in the instant case to examine the same set of facts under both provisions.

53. The Court finds that the applicants had an arguable claim of a violation of their right to freedom of expression. Accordingly, Article 13 required that they should have had a domestic remedy which was "effective" in practice as well as in law, in the sense of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred.

54. Although the applicants were able to bring proceedings seeking a review of the blocking measures and their effect on the operation of their online media, the Russian courts did not consider the substance of their grievances. They did not address the authorities' failure to comply with the legal requirement to identify the problematic webpages or examine the necessity and proportionality of the blocking measures or their excessive scope. Accordingly, the Court finds that the remedy which the national law provided for was not effective in the circumstances of the applicants' case (see *Elvira Dmitriyeva v. Russia*, nos. 60921/17 and 7202/18, § 64, 30 April 2019).

55. There has therefore been a violation of Article 13 of the Convention, taken in conjunction with Article 10.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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."

57. The first and second applicants claimed 20,000 euros (EUR) each and the third applicant EUR 10,000 in respect of non-pecuniary damage. They submitted that the number of monthly visitors to grani.ru had plummeted from 1.6 million to less than 0.3 million, that their websites had been downgraded in the news rankings, and that links to archived publications had been removed. The third applicant also claimed EUR 1,000 in respect of legal costs.

58. The Government submitted that the claims in respect of non-pecuniary damage were unreasonable and excessive. The third applicant had not produced proof of payment for legal services.

59. The Court awards the applicants EUR 10,000 each in respect of non-pecuniary damage and the third applicant the amount claimed in respect of legal costs, plus any tax that may be chargeable.

60. 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention, taken in conjunction with Article 10;

5. *Holds*
   (a) that the respondent State is to pay, 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 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros) to the third applicant, plus any tax that may be chargeable to it, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President

Appendix

No.	Application no.	Lodged on	Applicant Year of Birth	Represented by
1	12468/15	02/03/2015	**OOO FLAVUS**	Damir Ravilevich GAYNUTDINOV
3	23489/15	24/04/2015	**Garri Kimovich KASPAROV** 1963	Damir Ravilevich GAYNUTDINOV
4	19074/16	25/03/2016	**OOO MEDIAFOKUS**	Svetlana Igorevna KUZEVANOVA