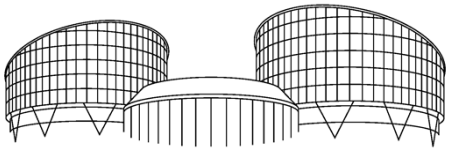

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF AVAGYAN v. RUSSIA

(Application no. 36911/20)

JUDGMENT

Art 10 • Freedom of expression • Applicant's conviction, in administrative-offence proceedings, for wilful dissemination of "untrue information" with regard to comments questioning the existence of COVID-19 cases in her region, posted on her Instagram account used for her small business • Comments expressed criticism of perceived lack of transparency and not purporting to provide verified factual information • Limited dissemination of comments • Domestic courts' failure to establish deliberate falsity • Absence of prosecuting party amounting to a structural deficiency in the proceedings, compounding the perfunctory approach to the establishment of culpability • Lack of relevant and sufficient reasons • While combating disinformation during a public health emergency might be a valid objective, sanctioning individuals for expressing scepticism about official information or calling for greater transparency was not • Fine imposed representing a significant financial burden for the applicant and capable of having a chilling effect • Interference not "necessary in a democratic society"
Art 6 § 1 (criminal) • Impartial tribunal • Absence of prosecuting party in administrative-offence proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 April 2025

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

In the case of Avagyan v. Russia,

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

Lətif Hüseynov*, President*,
Ioannis Ktistakis,
Peeter Roosma,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 36911/20) 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 a Russian national, Ms Mariya Anatolyevna Avagyan ("the applicant"), on 6 August 2020;

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

the parties' observations;

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

Having deliberated in private on 18 March 2025,

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

INTRODUCTION

1. The case concerns the applicant's prosecution for the comments she posted on social media questioning the existence of COVID-19 cases in her region. She complains under Article 10 of the Convention about her conviction for wilful dissemination of "untrue information" and under Article 6 § 1 about unfair trial in the absence of a prosecuting party from the administrative proceedings against her.

THE FACTS

2. The applicant was born in 1985 and lives in Krasnodar. She was represented by Ms Olga Timireva, a lawyer practising in Moscow.

3. The Government were represented by Mr M. Vinogradov, Representative of the Russian Federation before the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

5. The applicant is an Instagram user employing the platform to promote the services of her nail salon. At the material time her account had 2,600 followers. On 13 May 2020 she posted the following comment:

> "There have been no reported cases of coronavirus in Krasnodar or its surrounding region, and no patients with a coronavirus diagnosis have received test results confirming it. Think about why our government would need this."

One person liked her comment, while another user responded, stating that confirmed cases of infection did exist, despite some individuals denying it. The commenter urged others to make informed decisions and to consider the safety of their loved ones.

The applicant replied to the comment as follows:

> "People are afraid to speak up about it because they fear for their jobs or even lives. Everyone knows that there is money to be had for reporting coronavirus as the cause of death on official death certificates."

6. On 18 May 2020 the Krasnodar police printed out her comments and charged her with disseminating untrue information on the Internet, an offence under Article 13.15(9) of the Code of Administrative Offences ("the CAO"). The case was submitted for trial to a justice of the peace in the Tsentralnyy District of Krasnodar.

7. The applicant pleaded not guilty. She explained to the judge that her opinion was based on information from publicly available sources such as online media. Her claims could not be considered "known to be untrue" because the presence of coronavirus in the Krasnodar Region had not been officially confirmed or denied.

8. On 8 June 2020 the justice of the peace found the applicant responsible for disseminating untrue information, namely claiming that there was no coronavirus infection in the Krasnodar Region. The judgment relied on a police report of an administrative offence, a print-out of the applicant's Instagram comments and her statement to the police as evidence. It held as follows:

> "Before the court, [the applicant] failed to put forward any evidence to disprove the existence of the coronavirus infection (COVID-2019) in Krasnodar and the Krasnodar Region. Such evidence could have shown the truth of the information she had shared online. Consequently, the court finds [the applicant] guilty of committing an administrative offence under Article 13.15(9) of the Code of Administrative Offences."

9. The court sentenced the applicant to a fine of 30,000 Russian roubles (RUB, approximately 390 euros on the day of the judgment).

10. The applicant filed an appeal, alleging that the court had failed to consider the context of her publication and improperly shifted the burden of proof onto her. She pointed out that the court did not require the police to present any evidence that her claims were untrue and took on the role of the prosecution during the trial, despite the absence of a public prosecutor. The applicant's argument that she did not pass untrue information as a reliable

report and that her comments did not pose a risk to anyone's health or life were not addressed in the judgment. Finally, the applicant claimed that the imposed fine was excessive.

11. On 8 July 2020 the Oktyabrskiy District Court in Krasnodar summarily dismissed the appeal, referring to the regional regulations for preventing the spread of the COVID-19 infection as evidence of the fact that the applicant's claims were untrue.

RELEVANT LEGAL FRAMEWORK

12. An individual may be held accountable for administrative offences only where their culpability has been established. The defendant is not required to prove their innocence (Article 1.5 of the CAO).

13. On 18 March 2019 the CAO was amended by Federal Law no. 28-FZ, which introduced a new offence of deliberately disseminating untrue information. A new paragraph, Article 13.15(9), was added, which reads as follows:

> "The dissemination of socially important information which is known to be untrue [*заведомо недостоверная общественно значимая информация*], through the media and information and communication networks, under the guise of reliable reports, which has created a risk of harming life or health or property, instigating mass disorders, undermining public security, interfering with, or preventing, the operation of critical infrastructure, transportation links, social services, credit institutions, power plants, industrial or communication facilities ... shall be punishable by an administrative fine of between 30,000 and 100,000 Russian roubles ..."

THE LAW

I. JURISDICTION

14. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, §§ 75-76, 6 June 2023).

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

15. The applicant complained that her conviction for disseminating "knowingly untrue information" had violated her right to freedom of expression under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to ... impart information and ideas without interference by public authority ...
>
> 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 ... for the protection of health or morals [or] for the protection of ... rights of others ..."

A. Admissibility

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

B. Merits

1. Submissions by the parties

(a) The applicant

17. The applicant submitted that her comments had been made in the context of an important public debate concerning the authorities' response to the COVID-19 pandemic. She submitted that, as a private individual with approximately 2,600 followers on Instagram, which she primarily used to promote her nail salon services, her comment had received only one reaction and had therefore reached a very limited audience. She further argued that the domestic courts had made no attempt to assess the actual impact of her statements on public safety.

18. The applicant further maintained that her comments had been based on information from reputable media sources reporting on alleged irregularities in COVID-19 death registrations. She had expressed legitimate concerns about the lack of official information during the early stages of the pandemic when the virus was just beginning to spread in Russia. Her intention had not been to deny the existence of coronavirus or to cause panic, but rather to contribute to public debate about the authorities' information policy.

19. In the applicant's view, Article 13.15(9) of the CAO lacked sufficient clarity and foreseeability, as it contained no criteria for determining what constituted "knowingly untrue" information. The domestic courts had improperly required her to prove the truth of her statements, which had been impossible given the lack of publicly available information at the time.

20. The applicant further argued that her statements constituted value judgments rather than statements of fact and therefore should not have been subject to proof. She maintained that the vague wording of Article 13.15(9) of the CAO opened the way to arbitrary enforcement and created a chilling effect on public discussion. She also argued that she was entitled to rely on

information from reputable sources without conducting additional fact-checking.

21. Lastly, she argued that the fine of RUB 30,000 had been disproportionate, particularly given her situation as a single mother of three children whose income from her small business had been affected by the pandemic restrictions. The courts had failed to consider less restrictive measures or the possibility of reducing the fine.

(b) The Government

22. The Government submitted that the applicant's comments had constituted "textual material" which, under the guise of reliable information, had contained a deliberately untrue assertion about the absence of COVID-19 cases in the Krasnodar Region. At the material time, a high-alert regime had been in force in the Krasnodar Region pursuant to the regional authorities' decision of 13 March 2020 to prevent the spread of the infection.

23. In the Government's view, the dissemination of inaccurate information about the situation with COVID-19 had created prerequisites for social tension and posed a threat to public health, safety and well-being. They referred to the Concept of Public Safety in the Russian Federation, approved by the Russian President on 14 November 2013, which defined a threat to public safety as a direct or indirect possibility of harm to human rights and societal values.

24. The Government emphasised that the administrative offence under Article 13.15(9) of the CAO required both objective elements (public dissemination) and subjective elements (direct intent). They maintained that a person acting without intent who was genuinely mistaken about the reliability of information would not be held responsible. However, in the present case, the applicant's statements constituted factual claims rather than subjective opinions or personal views.

25. The Government maintained that the applicant had not been required to prove her innocence, in accordance with Article 1.5 of the CAO. They argued that any irremovable doubts that could have been interpreted in the applicant's favour had not been established in the case. Her allegations constituted statements of fact which she had failed to substantiate.

26. As regards the sanction, the Government pointed out that the fine of RUB 30,000 represented the minimum penalty under Article 13.15(9) of the CAO. The domestic courts had taken into account mitigating circumstances when determining the minimum amount.

2. The Court's assessment

27. The Court notes that the applicant's conviction for an administrative offence and the imposition of a fine constituted an interference with her right to freedom of expression. Such interference will breach Article 10 unless it is

"prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims.

28. The Court observes that the interference had a basis in domestic law, namely Article 13.15(9) of the CAO. However, the Court reiterates that the expression "prescribed by law" in Article 10 § 2 of the Convention not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable a person to regulate their conduct. That person must be able – 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 (see *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 120-21, ECHR 2015). The Court will examine below whether the impugned provision was applied in practice in a foreseeable manner.

29. As to whether the interference pursued a legitimate aim, the Government relied on the need to protect public health and safety during a pandemic. The Court acknowledges that combating the spread of false information about COVID-19 could, in principle, relate to the legitimate aims of protecting health and public safety under Article 10 § 2, and the protection of public health has been recognised as a legitimate aim justifying certain restrictions on Convention rights (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 272, 8 April 2021 (in the context of Article 8), and *Bielau v. Austria*, no. 20007/22, § 39, 27 August 2024).

30. Assuming that the interference pursued a legitimate aim, the Court must determine whether it was "necessary in a democratic society". In making this assessment, the Court will have particular regard to the unprecedented context of a public health emergency, while bearing in mind that exceptions to freedom of expression must be construed strictly and that the need for restrictions must be established convincingly (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 187, 8 November 2016).

31. In the present case, the applicant maintained a personal Instagram account primarily used to advertise her nail salon services. She was not a professional journalist, nor did she position herself as a source of authoritative information about the pandemic (contrast with *Bielau*, cited above, where the applicant was a medical doctor publishing scientifically untenable statements about vaccines on his professional website in connection with his medical practice). Her comments were made in response to a news article about alleged irregularities in COVID-19 reporting, expressing criticism of perceived lack of transparency rather than purporting to provide verified factual information. In these circumstances, holding her to the same standards of verification as professional media would place an unreasonable burden on participation in public debate.

32. On the issue of whether the domestic courts gave relevant and sufficient reasons for the interference, the Court notes the criteria established by domestic law. Article 13.15(9) of the CAO requires proof of several distinct elements: (a) that the information was "known to be untrue"; (b) that it was "socially important"; (c) that it was presented "under the guise of reliable reports"; and (d) that it created specific risks to public health, safety or infrastructure. The Court observes that these requirements set a high threshold, which presumably reflected the legislator's intention to target only the most serious cases of disinformation that pose concrete dangers to society.

33. However, as regards the application of these criteria in the present case, the Court notes with concern that the domestic courts effectively dispensed with establishing the existence of most of these elements. Despite the law requiring proof that the information was "known to be untrue" and presented "as a reliable report", the courts made no attempt to establish the applicant's intentions in sharing that information or examine her explanation that she relied on previously published online sources. The justice of the peace's judgment simply observed that the applicant "failed to put forward any evidence to disprove the existence of coronavirus infection". This approach effectively transformed the offence from one requiring proof of deliberate falsity into one of strict liability for unproven statements.

34. As regards what constitutes "socially important information" in the meaning of Article 13.15(9) of the CAO, the Court observes that comments on the authorities' response to a health emergency and the accuracy of official statistics undoubtedly related to matters of public interest. However, this very characteristic that makes that expression "socially important" also brings it within the category of protected expression under Article 10. The domestic courts' approach effectively penalised the applicant for engaging in the kind of debate that democratic society requires, particularly during times of crisis when transparency and accountability are paramount. The comments were posted in April 2020, during the early stages of the COVID-19 pandemic, when information about the virus was still emerging and subject to rapid change. They appear to have been made in response to a news article concerning alleged irregularities in the reporting of COVID-19 cases and deaths. Rather than appearing to deliberately spread false information, the statements seemed to express criticism of a perceived lack of transparency in official reporting.

35. Furthermore, regarding the requirement that the information create specific risks, the courts failed to take into account that the applicant maintained an Instagram account primarily for advertising her nail salon services, with a small number of followers. Her comment received minimal engagement and was promptly contradicted by another user. Yet the courts simply stated that the information went beyond a limited number of persons, without examining whether this limited dissemination could realistically create the kind of risks envisaged in Article 13.15(9) of the CAO.

36. The Court further observes that this perfunctory approach to the establishment of culpability was compounded by a structural deficiency in the proceedings – the absence of a prosecuting party at trial, where the court assumes the role of a prosecutor. The Court has previously found that this arrangement may undermine the adversarial nature of the proceedings and compromise judicial impartiality (see, among other authorities, *Karelin v. Russia*, no. 926/08, §§ 51-65, 20 September 2016; *Makarashvili and Others v. Georgia*, nos. 23158/20, 31365/20 and 32525/20, §§ 60-63, 1 September 2022; and *Figurka v. Ukraine*, no. 28232/22, § 29, 16 November 2023). In the present case, this structural defect meant that no party was tasked with proving the constituent elements of the offence, leading the courts to shift this burden onto the applicant.

37. In these circumstances, the Court is not convinced that the interference was based on relevant and sufficient reasons or genuinely pursued the legitimate aims invoked by the Government. While combating disinformation during a public health emergency may be a valid objective, sanctioning individuals for expressing scepticism about official information or calling for greater transparency does not advance this aim. Indeed, such application of Article 13.15(9) appears more calculated to discourage open debate about matters of public concern than to protect public health.

38. Finally, the Court notes that the amount of the fine imposed which represented a significant financial burden for the applicant, a small business owner, was not negligible and was capable of having a chilling effect on the exercise of freedom of expression (compare with *Kasabova v. Bulgaria*, no. 22385/03, § 71, 19 April 2011, and *Rashkin v. Russia*, no. 69575/10, §§ 19-20, 7 July 2020).

39. Having regard to these considerations, particularly the perfunctory approach to the establishment of culpability and the courts' failure to establish deliberate falsity, the Court finds that the interference with the applicant's freedom of expression was not "necessary in a democratic society".

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. Having examined the applicant's complaint under Article 6 § 1 of the Convention concerning the absence of a prosecuting party from the administrative proceedings in light of its well-established case-law on this matter (see the authorities cited in paragraph 36 above), the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds, and that it discloses a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

43. The applicant claimed 350 euros (EUR) in respect of pecuniary damage, corresponding to the fine she had to pay following her conviction, EUR 10,000 in respect of non-pecuniary damage, and EUR 2,000 in respect of legal fees in the domestic and Court proceedings, plus EUR 8 for postal expenses.

44. The Government submitted that no sums should be awarded because there had been no violation of the applicant's rights.

45. The Court awards the applicant the amounts claimed, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicant's complaints in so far as they relate to facts that took place before 16 September 2022;

2. *Declares* the application 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 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, 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 350 (three hundred and fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,008 (two thousand and eight euros), plus any tax that may be chargeable to the 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.

Done in English, and notified in writing on 29 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Lətif Hüseynov
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Ktistakis, Kovatcheva et Đurović is annexed to this judgment.

JOINT CONCURRING OPINION OF JUDGES KTISTAKIS, KOVATCHEVA AND ĐUROVIĆ

1. We voted in favour of finding a violation of Article 10 of the Convention. Nevertheless, we believe that the specific facts of the present case presented the Chamber with an opportunity to clearly reaffirm that State authorities should not act as arbiters of "truth" in public debates, and we regret that it chose not to do so.

2. It is true that Article 10 does not guarantee wholly unrestricted freedom of expression, even in respect of matters of serious public concern, and anyone who exercises their freedom of expression undertakes "duties and responsibilities" the scope of which depends on their situation and the means used (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). As regards the Article 10 "duties and responsibilities", the Court has drawn a distinction between, on one hand, journalists, media or non-governmental organisations with a public watchdog function and, on the other, private individuals, the latter not being bound to the same extent as the former by the obligation to provide accurate and reliable information or to verify factual statements, if such statements were being made (see *Wojczuk v. Poland*, no. 52969/13, § 102, 9 December 2021).

In this regard, the applicant in the present case was an ordinary citizen: the owner of a small business (nail salon) who was convicted for a comment posted on her Instagram account, which she used to advertise her beauty services, questioning whether there were confirmed COVID-19 cases in her region (Krasnodar) in April 2020, during the early stages of the pandemic. Clearly, then, since the (Russian) legislation in question subjects ordinary citizens who engage in online discussions to verification requirements that are appropriate for professional media, it will inevitably have a chilling effect on public debate (compare *Steel and Morris v. the United Kingdom*, no. 68416/01, § 89, ECHR 2005-II, and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, 8 November 2016).

3. Moreover, we certainly acknowledge that combating the spread of false information about COVID-19 could, in principle, relate to the legitimate aims of protecting health and public safety under Article 10 § 2 and that the protection of public health has been recognised as a legitimate aim justifying certain restrictions on Convention rights (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 272, 8 April 2021, in the context of Article 8, and *Bielau v. Austria*, no. 20007/22, § 39, 27 August 2024).

However, legislation allowing State authorities to restrict expression on the grounds that it is "untrue" undermines the very point of adopting laws targeting fake news and raises serious concerns as to the compatibility of such legislation with the concept of a democratic society governed by the rule of law. Addressing this issue has become even more important in contemporary

society, where the deployment of new technologies has enabled information to spread much faster, in particular through diverse social networks. In this context, laws targeting "fake news" can easily become instruments for suppressing legitimate criticism and debate, particularly on matters of public interest, which often encompass not only information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb (see *Magyar Helsinki Bizottság*, cited above, § 187). While States may legitimately take measures to combat deliberate disinformation campaigns that directly threaten public safety – such as malicious instructions regarding fake cures during a pandemic – the notion that State authorities should serve as arbiters of "truth" in public debate is fundamentally at odds with the principles enshrined in Article 10.

4. In conclusion, we are not persuaded that the power to sanction allegedly "untrue" statements, even when justified by the need to protect public health, can be said to pursue a legitimate aim within the meaning of Article 10 § 2 of the Convention.