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Helga Pedersen
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CASE

Novak and the Meliora Party v. Haberland

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HELGA PEDERSEN

MOOT COURT COMPETITION



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NOVAK and THE MELIORA PARTY v. HABERLAND

Facts

1. The first applicant, Ms Elena Novak, was born in 1998. She is a national of Haberland, a Council of Europe Member State, and lives in Tirnopolis, the capital of Haberland.
2. In 2019, Ms. Novak co-founded “the Meliora Party”, the second applicant. Meliora is a small political party active at the municipal level in Tirnopolis and to date has fielded candidates only in elections for the Tirnopolis municipal council and not for the national Parliament. Ms. Novak has served as an elected member of the Tirnopolis municipal council since 2020, chairing the council's committee on budget transparency. Ahead of the parliamentary elections scheduled for 19 May 2025, the party announced that it would, for the first time, field a national list of candidates, led by Ms. Novak. Meliora’s programme was built around the issues of anti-corruption reform and transparency in public procurement.
3. In the months preceding the elections, opinion polls indicated an unexpected rise in support for Meliora at the national level. Independent polling conducted in April 2025 had placed the party’s support at 9-10%. Political analysts noted that support for new national parties in Haberland was often volatile. They nevertheless attributed Meliora’s rise in part to Ms. Novak’s public campaign focusing on fighting corruption and highlighting alleged irregularities in contracts awarded by the Tirnopolis municipal administration (controlled by the governing party “Green and Democratic Future” (GDF)), and also to broader public dissatisfaction with established political parties.

Use of AI in the national elections campaign

4. Ahead of the 2025 parliamentary elections, GDF deployed an AI-driven political communication system called “Agora”. Agora was developed by a private company and fully paid for by GDF. Agora’s purpose was to identify voters’ interests and provide them with campaign information most relevant to them. It analysed information obtained from data brokers (relying on public data), social media platforms, and other publicly available sources. The information included the users’ browsing habits, online purchases, approximate location data, demographic indicators, and political and social interests. As required by the 2022 Election Law, GDF registered Agora’s use with the State Electoral Commission and reported all funds spent for its development, maintenance, and use as part of its campaign, totalling EUR 1,000,000. In total, GDF spent EUR 5,000,000 on the campaign.



5. Other political parties, including the two largest opposition parties, also employed data-driven advertising tools. However, Agora was widely regarded as substantially more sophisticated and resource-intensive than any other existing competing system. Meliora, as a new political party campaigning in the national elections for the first time, had limited funding and did not use any AI tools in the campaign. It used social media advertising, public rallies, interviews, and volunteer networks. It also received significant media attention due to Ms. Novak's anti-corruption platform. Overall, Meliora spent a total of EUR 100,000 on the campaign.
6. During the election campaign running from 20 March 2025 until 17 May 2025, 23:00, numerous Haberland citizens reported receiving GDF's highly personalised political advertisements through social media, video-sharing platforms, and online search engines. For example, messages directed at young urban voters emphasised environmental policies, digital innovation, and access to the labour market. Messages directed at industrial regions stressed economic growth and support for domestic energy production.
7. Several journalists published articles suggesting that certain campaign messages by GDF contained promises that appeared difficult to reconcile with messages sent to other groups of voters, particularly in relation to taxation, or environmental regulation. GDF responded that all messages reflected different aspects of the same political ideas and were consistent with the party's programme.
8. Meliora obtained copies of such campaign messages from some of its supporters, journalists, and civil society organisations. The applicants made a public statement as part of Meliora's campaign and condemned GDF's campaign approach. They argued, among other things, that advertisements delivered to different categories of voters presented substantially different priorities.

Video depicting Ms. Novak

9. On 2 May 2025, a video began circulating on social media platforms and messaging applications appearing to depict Ms. Novak in a private meeting with a municipal contractor. The video shows Ms. Novak accepting an envelope containing cash in exchange for an oral undertaking to award a public contract to the contractor in question.
10. The video was first posted from an anonymous social media account named "Tirnopolis Watch", created nine days earlier and with no prior posting history. Within 48 hours it had been viewed several hundred thousand times and shared by, among others, two local news outlets known to be sympathetic to GDF. These outlets reported on the video's contents as an unverified but "serious allegation requiring clarification".



11. Ms. Novak immediately denied that the meeting had taken place and stated that the video in question had been entirely fabricated. On 4 May 2025, Ms. Novak and Meliora submitted an urgent complaint to the State Electoral Commission, requesting that it review the video as a potential electoral irregularity and take immediate measures to prevent its further dissemination.
12. On 6 May 2025, within the statutory deadline, the State Electoral Commission issued a preliminary finding that the authenticity of the video could not be established on the evidence then available. It nevertheless ordered the three largest social media platforms operating in Haberland to attach a prominent warning stating that the authenticity of the video was disputed and under review. The State Electoral Commission considered that it did not yet have sufficient evidence to order the video's removal.
13. On 8 May 2025, Ms. Novak and Meliora lodged an urgent application with the Administrative Court of Tirnopolis, claiming that the State Electoral Commission had failed to act on their motion. The applicants requested that the court issue an interim order to immediately remove the video and identify the account holder responsible for its dissemination. According to a forensic examination commissioned by Meliora and submitted to the court as evidence, the video had not been generated using artificial intelligence. On the other hand, footage of Ms. Novak had been digitally superimposed onto a different scene, and the audio with Ms. Novak's voice had been created from several unrelated recordings. The State Electoral Commission did not accept the report as conclusive at that stage, noting that it had been provided by the applicants and had not yet been tested by an independent expert.
14. On 12 May 2025, the Administrative Court declined to order removal of the video, holding that the State Electoral Commission had not yet made a final determination whether the video had unlawfully interfered with the campaign. It nevertheless ordered the relevant internet service provider to preserve subscriber data associated with the Tirnopolis Watch account pending identification. The video continued to circulate online and was reproduced without the warning label on platforms and messaging groups not covered by the State Electoral Commission's interim decision.
15. On 15 May 2025, a national newspaper closely aligned with GDF published an article referring to "hypocrisy and controversies" about Ms. Novak's "conduct in relation to municipal contracts".

Parliamentary election and expert reactions

16. The election took place on 19 May 2025 from 7:00 to 23:00. International election observers concluded that voting procedures had been free, secret, and generally compliant with democratic standards. No irregularities affecting ballot casting or ballot counting were identified.



17. GDF won the election with 39% of the vote and formed a coalition with two smaller parties, Democratic Alternative and Green Action, together obtaining a majority of 51% seats in Parliament. Meliora obtained 4.1% of the national vote, narrowly below the 5% threshold required for parliamentary representation. Several other small parties also failed to cross the threshold. Political analysts suggested various reasons for Meliora's result, some emphasising GDF's unprecedented use of Agora and the video depicting Ms. Novak, while others considered that voter turnout, GDF's strong and established position, and the electorate's reluctance to trust inexperienced politicians may also have contributed to Meliora's result. Asked to comment on Meliora's underwhelming results, GDF's spokesperson stated, *inter alia*, "Voters can recognise hypocrisy. GDF remains truly committed to our programme, including to fighting corruption."
18. On 30 May 2025, the State Electoral Commission concluded its proceedings and determined that the video depicting Ms. Novak had been fabricated. In its review process, it considered the report provided by the applicants, as well as a corroborating report by an independent expert appointed by the State Electoral Commission. It ordered the video's removal from all platforms and imposed an administrative fine of EUR 10,000 on Mr. X, the holder of the 'Tirnopolis Watch' social media account who was identified as the individual responsible for the video's initial publication. Mr. X was a communications consultant engaged by GDF to provide campaign communication services in the 2008 election campaign but had not been formally engaged by GDF in the 2025 campaign. The State Electoral Commission concluded that the available evidence was insufficient to establish that GDF or another political party, or any other private individual, had commissioned the video's production or dissemination.

Domestic proceedings

19. On 1 June 2025, Ms. Novak and Meliora initiated one set of proceedings before the Administrative Court of Tirnopolis, alleging violation of their right to free elections guaranteed by the Constitution and the Convention. They argued that (i) the State, by insufficiently regulating AI-driven political microtargeting, had failed to ensure transparency and pluralism in democratic debate, and (ii) the procedure put in place to protect their right to stand for election before the State Electoral Commission had failed to provide effective and timely protection against a serious electoral irregularity capable of materially influencing voters' choices.
20. The Ministry of Justice, acting as the respondent, submitted that Ms. Novak and Meliora could not claim to be directly affected by the voters' microtargeting as such, that political parties were free to tailor campaign communication to different audiences, that other parties had access to comparable technologies, and that no evidence supported their allegation of distorted election result. Regarding the second issue raised by the applicants, it argued that the State Electoral Commission had acted diligently and within the powers conferred upon it by law. Neither Ms. Novak nor Meliora demonstrated that the video had been the main reason for Meliora's falling short of the parliamentary threshold or Ms. Novak's failure to be elected to the Parliament.



21. On 1 July 2025, the Administrative Court found that both Ms. Novak and Meliora had legal standing. It accepted that the use of Agora had not been shown to be unlawful under the Election Law. It nevertheless held that limited effective oversight of personalized AI-driven campaign messages had undermined equality of opportunity between political competitors and fell short of the right to free and democratic elections. GDF, a large and well-funded political party, gained an unacceptable advantage over a newly established party with limited financial resources, and was capable of affecting the overall fairness of the electoral process. The court declared the election null and void and ordered that a new election take place within six months. In view of that finding, it declared the remaining allegations moot. This decision was not final and enforceable. The Ministry of Justice appealed on 13 July 2025.
22. On 1 September 2025, the Court of Appeal quashed the Administrative Court's judgment. It held that AI-driven campaign tools must be regarded as an integral part of modern digital democracy. Such tools were not incompatible with fair elections solely because they allowed more sophisticated voter outreach. In the absence of proof of false information or other violations of local laws, the use of Agora remained within the permissible scope of political communication. Differences in financial resources between political parties, while relevant to the overall electoral fairness, did not in themselves justify annulling the election. The Court of Appeal also held that the State Electoral Commission had acted within its statutory powers and had taken reasonable measures in response to the request for interim measures. Neither domestic law nor the Convention required the State to guarantee the removal of contested electoral material within a particular period before an election. It observed, however, in an obiter dictum that “the capacity of the existing electoral oversight framework to respond effectively to rapidly disseminated manipulated electoral content during the final stages of an election campaign may warrant future legislative attention.”
23. On 28 September 2025, Ms. Novak and Meliora lodged a constitutional complaint, arguing that Haberland had violated their rights under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention in conjunction with Article 3 of Protocol No. 1.
24. In December 2025, independent researchers from the University of Tirnopolis published their analysis of a sample of approximately 50,000 personalised campaign messages created by Agora. Their report concluded that some voter groups were exposed to substantially different and, in some cases even opposing, narratives regarding certain issues, such as taxation, migration, and environmental regulation. The researchers also observed that first-time voters (18-21 years' old) and a small category of voters identified as politically undecided received significantly higher volumes of political advertisements than other groups. At the same time, the report found no evidence that any of the analysed advertisements/messages contained false factual information.



25. In early 2026, several academics and civil society organisations called for stricter regulation of AI-assisted campaigning. Others argued that the targeted means of communication represented a natural evolution of political speech and voter outreach. According to all seven parties elected to Parliament in 2025, there was no need for any such regulation, as it would excessively interfere with free and democratic elections.
26. On 30 June 2026, the Constitutional Court, by a majority of five to four, rejected the complaint in its entirety. The Constitutional Court concluded that while AI-driven campaigning could potentially raise legitimate concerns, the Convention did not require States to prohibit political microtargeting or to ensure strict equality of campaign resources between political parties. It emphasised that, in the particular case, no misinformation by Agora had been proven, all parties could use similar tools, political advertisements were clearly labelled, and independent monitoring bodies had concluded that the election itself had been free and fair. The majority further held that there was not a sufficient causal link between the use of Agora and Meliora's failure to reach the electoral threshold. Four judges issued a dissenting opinion, arguing that the majority had failed to consider the big picture and had over emphasised the absence of false statements. The dissenting judges reasoned that democratic debate was at stake and that the reliance on AI profiling of voters could threaten electoral pluralism even in the absence of misinformation.
27. The Constitutional Court also found no violation in the State Electoral Commission's handling of Ms. Novak's request to remove the video. The State Electoral Commission had imposed the warning about the video's disputed authenticity at an early stage and Ms. Novak had remained free to publicly contest the video's authenticity. There was no sufficient causal link between the video and Meliora's electoral result. The Constitutional Court found no violation of Article 3 of Protocol No. 1 to the Convention nor Article 13 of the Convention. The four dissenting judges considered that the electoral oversight framework had failed to provide effective protection against a fabricated communication capable of materially influencing voters immediately before an election. In their view, the fact that the video had been conclusively determined to have been fabricated only after the election day, rendered the available protection mechanism ineffective in practice. They considered this particularly troubling in view of the circumstances suggesting that the video had been disseminated by an individual previously engaged by a rival political party.
28. On 10 August 2026, Ms. Novak and Meliora lodged an application with the European Court of Human Rights, asserting violations of their rights guaranteed under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention in conjunction with Article 3 of Protocol No. 1.



Law

29. Haberland is a Council of Europe Member State with a population of 6 million. It is not a Member State of the European Union. It has ratified all major Council of Europe treaties, all additional protocols to the Convention, and the core United Nations human rights treaties. Haberland has signed, but not ratified, the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. Haberland has a civil law system.
30. On average, there are around 5-7 political parties in Parliament. Coalition governments have been the norm, with a single party achieving a parliamentary majority and governing independently on only three occasions (one of them being GDF). GDF is one of the oldest and most established parties in Haberland. GDF has the largest number of members, an established network of long-term donors, and the largest annual budget among political parties in Haberland.

Constitution

31. The Constitution of Haberland guarantees all rights protected by the Convention and its Protocols.

The 2022 Election Law

32. Article 31 states that political parties may use automated data-analysis systems during election campaigns.
33. Article 33 requires that online political advertisements contain a visible label identifying the political party/advertiser (e.g. a “paid for by” tag).
34. Any AI tools used in the campaign must be based on an open-source code and publicly available data, and must be registered with the State Electoral Commission. Registration requests must include a general description of the system’s purpose, the categories of data used, and the campaign expenditure. Use of data obtained from commercial data brokers is not prohibited, provided that brokers rely only on publicly available data.
35. According to Article 56, political parties must transparently record their financial resources, including all individual donors, as well as the parties’ itemized spending for the campaign. There is no campaign spending limit. However, all campaign income and expenditure must be reported to the State Electoral Commission within 30 days after election day and is subsequently published online. The State Electoral Commission may impose sanctions for inaccurate or untransparent reporting.



36. Article 100 provides that the election campaign starts 60 days before election day and ends when the election moratorium begins. The election moratorium starts 48 hours before the close of polls and remain in force until the voting closes.
37. Political parties that receive at least 4% votes in the national elections qualify to receive State funding which is paid out after each election, based on the votes received. Parties that do not qualify for public funding are primarily financed through membership fees and private donations that must be transparently recorded and reported.

The State Electoral Commission

38. The State Electoral Commission is a body independent from the Government. It consists of nine members appointed for a single non-renewable term of nine years: three members are nominated by the Parliament, three by the President, two by the Judicial Council (Haberland's judicial self-governing body) and one by the Ombudsperson. Members may not hold elected office, be affiliated with a political party, or participate in electoral campaigns.
39. The State Electoral Commission is responsible, inter alia, for maintaining and updating electoral registers, managing voter registration and verification, organizing voting operations, supervising voting and counting procedures, and monitoring electoral campaigns including digital campaigning. Its functions also include reviewing complaints concerning electoral irregularities or conduct capable of materially affecting the fairness or integrity of an election. In doing so, it may take appropriate corrective and interim measures, including warning labels, orders to preserve data, orders to remove campaign material to prevent or remedy such irregularities and/or impose appropriate administrative sanctions up to EUR 20,000 for individuals and EUR 1,000,000 for political parties. Removal orders may be issued, for example, where the State Electoral Commission has sufficiently reliable evidence that the material is false or where removal is necessary to preserve fairness of the election.
40. Complaints concerning alleged electoral irregularities submitted during the final fourteen days before an election shall be dealt with as a matter of urgency. In such cases, the State Electoral Commission shall decide on interim measures within 48 hours. Decisions and omissions of the State Electoral Commission may be challenged before an administrative court. Where necessary to prevent irreversible harm before the election day, the court may grant appropriate interim relief.



Court system

41. Administrative courts have jurisdiction to consider alleged violations of all aspects of the right to free elections. In cases concerning alleged violation of the right to free election by the State, the Ministry of Justice acts as a respondent in the domestic proceedings. In Haberland, the administrative court system consists of administrative courts and the Court of Appeal acting as the court of second instance. Decisions of administrative courts may be challenged before the Court of Appeal within 15 calendar days from the date when the decision was adopted. The decisions of the Court of Appeal are immediately final and enforceable and are not subject to further appeal (except for the possibility of filing a constitutional complaint set out below).

Constitutional complaint

42. If a natural or a legal person considers that their human rights guaranteed by the Constitution and/or the Convention and its Protocols were violated by final decisions of the Court of Appeal, they can file a complaint with the Constitutional Court. In their constitutional complaints, applicants cannot request the Constitutional Court to review general compliance of the Haberland legislation with the Constitution or the Convention.
43. The deadline for filing a constitutional complaint is 30 days after the adoption of the Court of Appeal's judgement. The Constitutional Court will examine the individual complaints and adopt judgments by majority vote. If the Constitutional Court finds a violation of one or more of the applicant's rights, it may quash the challenged decisions, order the court or the relevant State authorities to act or to refrain from acting in a certain way, and order just satisfaction for material or non-material damage suffered. The European Court of Human Rights has accepted the constitutional complaint in Haberland as an effective remedy for the alleged violations of rights guaranteed by the Convention that needs to be exhausted before reverting to the European Court of Human Rights. The European Court of Human Rights has not yet considered a case against Haberland where an applicant argued a violation of their right to free elections.