



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

Communicated on 29 August 2017

### THIRD SECTION

Application no. 1097/10  
Rafis Rafailovich KASHAPOV  
against Russia  
lodged on 26 November 2009

### SUBJECT MATTER OF THE CASE

The applicant was the principal officer of the local branch of the Tatar Civic Centre (TCC), a Russian non-governmental organisation. In 2009 he was convicted under Article 282 of the Criminal Code and sentenced to a suspended prison term of eighteen months in relation to the publication of six blogposts on a popular Internet blog, apparently put in place by the TCC's local branch and operated by the applicant. The courts considered that the applicant had disseminated information inciting hatred and enmity as well as debasing human dignity of a group of people, on account of their ethnicity and religious beliefs.

### QUESTIONS TO THE PARTIES

1. Did the applicant have a fair trial as required by Article 6 § 1 of the Convention? In particular:

- Was there a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the lack of opportunity to question the experts (Zla., Kre., Nik. and Flo.) whose pre-trial reports commissioned by the prosecution were then used as adverse evidence (compare *Matytsina v. Russia*, no. 58428/10, §§ 1681-95, 27 March 2014; *Constantinides v. Greece*, no. 76438/12, §§ 37-38 and 47-51, 6 October 2016; and *Seton v. the United Kingdom*, no. 55287/10, §§ 59-66, 12 September 2016)? Was the applicant given an opportunity to effectively contest the expert evidence, in accordance with the principle of equality of arms and the requirement of adversarial procedure? Were sufficient procedural safeguards available to the applicant (during the investigative or judicial stage of the proceedings), counterbalancing his inability to examine the experts in open court?

- Was the applicant afforded an adequate opportunity to adduce evidence in support of his position (for instance, as regards a favourable statement from one article’s author)? Was the applicant able to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him, as required by Article 6 § 3 (d) of the Convention?

- Was the applicant able to defend himself through legal assistance of his own choosing during the preliminary investigation, as required by Article 6 § 3 (c) of the Convention?

2. Was there a violation of Article 10 of the Convention? In particular:

- Did the domestic courts adduce “relevant and sufficient” reasons for the interference and base their conclusions on an acceptable assessment of the facts (see, as regards the applicable principles, *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 204-08 and §§ 212-20, ECHR 2015 (extracts) as regards pertinent factors, and *Terentyev v. Russia*, no. 25147/09, §§ 20-24, 26 January 2017 as regards the approach)? Did they specify which parts of the impugned materials were problematic? Did they draw their own conclusions from the linguistic studies of the material (see paragraph 23 of the Plenary Supreme Court’s ruling no. 11 of 28 June 2011)?

- Was it appropriate to apply the Court’s jurisprudence relating to the press and journalism in the present case, as claimed by the applicant?