



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

Communicated on 14 May 2018

THIRD SECTION

Application no. 56317/16
Mikhail Borisovich KASIMOV against Russia
and 10 other applications
(see list appended)

SUBJECT MATTER OF THE CASES



These applications concern various restrictions imposed in relation to prosecuting the applicants for the offence under Article 20.3 § 1 of the Code of Administrative Offences (CAO), namely sentences ranging from 1,000 Russian roubles¹ to fourteen-day detention, *inter alia*, in the following contexts:

- The applicant “reposted” on his Facebook page collages pairing propaganda posters from the Nazi Germany and the USSR in the 1930-40s with the applicant’s comment “They were stealing from each other, thinking no one would notice.”, arguably, aiming at underscoring historical similarities of the regimes seen via their propaganda tools (Application no. 56317/16);
- The applicant posted on his VKontakte (VK) an image of an eagle holding a wreath with a swastika (Application no. 57400/16);
- The applicant (re)posted a number of collages (for instance, Mr Putin’s face with the Hitler’s haircut and moustache, a photograph showing the Russian Orthodox Church’s Patriarch, a swastika and a note “We are building a new Russia!”, the RSFSR coat of arms interposed with a swastika) aiming, arguably, at deriding fascism and what the applicant perceived as its contemporary manifestations (Application no. 37230/17);
- In July 2010 and October 2014 the applicant reposted pictures and photographs of people, mostly women, wearing uniforms resembling Nazi uniforms, namely having a swastika armbands (Application no. 48099/17);
- The applicant shared a post on his VK page consisting of a text and an interposed visual representation of a Russian/Soviet coat of arms and a

¹ 10-15 euros (depending on the Bank of Russia exchange of rate at the material time)

solar-type symbol resembling a swastika. According to the applicant, it was a satirical publication deriding the Nazi regime. He also posted a photograph made at a book fair in Kiev and showing a book cover with a Nazi symbol, the Soviet sickle and hammer (Application no. 62413/17);

- In 2012 the applicant posted on his VK account a photo collage showing Mr Putin with a swastika background; allegedly, the collage resembled a famous photo showing Hitler in a similar setting, and was aimed at criticising Putin's policies and his running in 2012 for a third mandate (Application no. 64196/17);

- In October 2014 the applicant disseminated on his VK page a film, which, allegedly, had some documentary/historical value (Application no. 70361/17);

- During a football match the applicant swayed a banner saying "Zarya Kazan: Human will powers victory" and showing symbols resembling a swastika (allegedly, it was an ancient Slavic solar symbol, "Kolovrat") (Application no. 70805/17);

- Via his VK page the applicant watched two videos and "liked" one of them (a film concerning relations between the fascist Germany and the USSR in the first half of the 20th century, and showing a swastika as well as the Soviet symbols of sickle and hammer) (Application no. 4284/18).

COMMON QUESTIONS

1. Were there "interferences" under Article 10 of the Convention – namely, as regards the applicants' freedom to hold opinions and/or to receive and impart information and ideas – on account of (i) their prosecution and respective sentences to fines or administrative detention (*административный арест*), and (ii) other circumstances referred to by some of them such as administrative escorting and/or arrest and ensuing pre-trial detention, or, for Application no. 5467/18, seizure and destruction of an external hard drive?

If yes:

2.1. Was this "interference" "prescribed by law"? In particular:

(a) As regards posts, reposts and the like made (public) prior to November 2014 when the amended Article 20.3 § 1 of the CAO became applicable, had the phrase "propaganda and public dissemination" been consistently interpreted up to November 2014 by the Russian courts as necessarily requiring the proof of the fact of or the aim of advocating in favour of Nazism or alike?

(b) As to the situation after November 2014, was it foreseeable that

- the related offence no longer required the proof of the element of “propaganda” in one’s actions and that mere “public dissemination” of prohibited material sufficed;

- the offence was constituted by reference to the legislation other than the CAO, namely section 6 §§ 3-5 of Federal Law No. 80-FZ of 19 May 1995 “On perpetuating the Victory of the Soviet People in the Great Patriotic War of 1941-45” as amended in November 2014, and section 1(1) of Federal Law no. 114-FZ of 25 July 2002 “On Countering Extremist Activities”;

- the offence, as construed above, would be constituted by actions predating November 2014; those actions would be treated as a continuing offence (compare with section 6.1 of Ruling no. 11 of 28 June 2011 by the Plenary Supreme Court of Russia, as amended in November 2016); by implication, the statutory prosecution period would not bar prosecution?

2.2. What legitimate aim in terms of Article 10 § 2 of the Convention was pursued by:

(a) where applicable, the applicants’ arrest and pre-trial detention;

(b) prosecuting and sentencing them to fines or detention under Article 20.3 of the CAO read with the above Federal Law No. 80-FZ (in particular, its preamble)? In particular, did the interference pursue the aim of preventing disorder (that is situations of riots or other forms of public disturbance: see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 146-151 *in fine*, 15 October 2015, and *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 136, 26 April 2016)?

2.3. Was the interference in each application “necessary in a democratic society” (compare with *Nix v. Germany* (dec.), no. 35285/16, 13 March 2018)? In particular:

(a) Did the applicable legislative framework make it irrelevant for the purpose of Article 20.3 of the CAO to take account of the context or actual aim of publicly disseminating the impugned material?

(b) If not, did the courts adduce relevant and sufficient reasons relating to the existence of the “interference” and the justification for it, and base their conclusions on an acceptable assessment of the facts and applicable principles relating to Article 10 of the Convention, also having regard to the requirements imposed by the Plenary Supreme Court of Russia in Ruling No. 21 of 27 June 2013 (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 359, 7 February 2017)?

ADDITIONAL CASE-SPECIFIC QUESTIONS

Were there also violations of the Convention or Protocols thereto as listed below?

1. Article 5 § 1 of the Convention on account of the deprivation of liberty before and during the trial (Application no. 61387/17 arrest and detention pending trial on 10 and 11 February 2017; Application no. 70805/17 retention in the police station overnight from 11 to 12 June 2017);

2. Article 6 §§ 1 and 3 of the Convention:

(a) Application no. 57400/16: the applicant was not notified of the appeal hearing and did not attend it;

(b) Application no. 37230/17: unavailability of free legal assistance for the trial and on appeal;

(c) Application no. 64196/17: the applicant *de facto* could not benefit from legal assistance of his choosing in view of the short notice of the appeal hearing date given to counsel; not being taken to the appeal hearing from the detention centre, the applicant was not able to defend himself and instruct counsel appointed by the appeal court or object to this appointment;

(d) Application no. 70805/17: lack of free legal assistance, lack of a prosecuting party and the active role of the court in the CAO case; the applicant was not afforded an opportunity to take part in the appeal hearing (no oral hearing was held on appeal);

(e) Application no. 5467/18: after his arrest the applicant was prevented from seeking legal assistance and was interviewed without such assistance; the pre-trial and trial proceedings were completed within several hours, thus depriving him of the adequate time and facilities to prepare his defence, to defend himself in person or through legal assistance of his own choosing;

3. Article 8 of the Convention (Application no. 5467/18 on account of the “inspection” in his home and seizure of an external hard drive);

4. Article 8 of the Convention (Application no. 61387/17 on account of the unlawful non-authorized access to the applicant’s VK account, which was not “directly accessible” (as affirmed by the CAO court) without registering on the VK website as a user and, in any event, had “private” settings on);

5. Article 10 of the Convention (Applications nos. 61387/17, 62413/17 and 4284/18 on account of the specific procedural grievances relating to the decision-making process leading to the sentence: cf. *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II, and *Baka v. Hungary* [GC], no. 20261/12, §§ 161 and 174, ECHR 2016);

6. Article 10 of the Convention (Application no. 5467/18 on account of a photograph showing the flag of “Praviy Sektor”, an Ukrainian political movement, which had been banned as extremist in Russia in 2014);

7. Article 3 of Protocol No. 1 to the Convention (Application no. 56317/16 as regards the applicant's right to stand as a candidate in elections to the legislature, namely in the 2016 election to the State Duma; Application no. 70361/17 as regards a risk of being prevented from standing as a candidate in eventual legislative elections, for a year following the payment of the fine under Article 20.3 of the CAO, that is in 2017 and January-March 2018);

8. Article 2 of Protocol No. 7 to the Convention on account of the absence of suspensive effect of an appeal against the sentence of administrative detention vis-à-vis its immediate execution (Applications nos. 37230/17, 48099/17, 64196/17 and 70805/17).

APPENDIX

No.	Application no.	Lodged on	Applicant Date of birth Place of residence Nationality	Represented by
1.	56317/16	06/09/2016	Mikhail Borisovich KASIMOV 15/07/1961 Perm Russian	
2.	57400/16	25/09/2016	Damir Anatolyevich GAYFULLIN 11/09/1981 Kazan Russian	
3.	37230/17	15/05/2017	Ivan Mikhaylovich GORODISKIY 27/10/1975 Kamenka Russian	Aleksey Vladimirovich GLUKHOV
4.	48099/17	22/06/2017	Andrey Petrovich LINEV 30/01/1988 Zlatoust Russian	Andrey Gennadyevich LEPEKHIN
5.	61387/17	11/08/2017	Pavel Pavlovich ZOREV 18/11/1983 Arkhangelsk Russian	
6.	62413/17	08/08/2017	Maksim Sergeyevich SIMONOV 15/12/1997 Perm Russian	
7.	64196/17	14/08/2017	Aleksey	Mikhail Mikhaylovich

No.	Application no.	Lodged on	Applicant Date of birth Place of residence Nationality	Represented by
			Nikolayevich MANDRIGELYA 18/09/1989 Krasnodar Russian	BENYASH
8.	70361/17	12/09/2017	Valentin Gennadyevich MURZAYEV 01/10/1972 Perm Russian	
9.	70805/17	07/09/2017	Artur Igorevich GIMAYEV 14/01/1986 Kazan Russian	Igor Nikolayevich SHOLOKHOV
10.	4284/18	28/12/2017	Rustem Alfredovich GAREYEV 13/10/1960 Chebokasary Russian	
11.	5467/18	10/01/2018	Sergey Pavlovich DERKACHEV 20/12/1982 Vladivostok Russian	Polina Aleksandrovna SIDELNIKOVA