



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

THIRD SECTION

CASE OF KARATAYEV v. RUSSIA

(Application no. 56109/07)

<http://hudoc.echr.coe.int/eng?i=001-211014>

JUDGMENT

STRASBOURG

13 July 2021

This judgment is final but it may be subject to editorial revision.

In the case of Karatayev v. Russia,

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

Darian Pavli, *President*,

Dmitry Dedov,

Peeter Roosma, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 56109/07) 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, Mr Vladimir Ivanovich Karatayev (“the applicant”), on 2 November 2007;

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

the parties’ observations;

Having deliberated in private on 22 June 2021,

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

INTRODUCTION

1. The applicant in the present case is an editor and a journalist of a regional newspaper. The case concerns his administrative liability for publication of images of swastika in the newspaper as an alleged violation of his right to freedom of expression.

THE FACTS

2. The applicant was born in 1953 and lives in Maykop. He was represented by Mr E.V. Markov, a lawyer practising in Strasbourg.

3. The Government were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr A. Fedorov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. In February 2007 the newspaper featured a short editorial publication entitled “In Defence of Swastika” («В защиту свастики»). The publication concerned a recent public awareness campaign run by Hindu organisations in Europe aimed to exonerate the swastika symbol. It succinctly described the historical significance of the symbol in Hindu, Slavic and other cultures.

6. To illustrate the latter statement, the applicant placed two images under the text of the editorial, both of them being reprints from a historical book about swastika. The first image was a fourteenth century shroud from a Greek-Orthodox monastery in Romania depicting multiple swastikas above portrayal of a saint. The second image was a fragment of nineteenth century

gold embroidery from the Vologda region in Russia containing swastika surrounded by abstract floral pattern.

7. On 26 April 2007 a record of an administrative offense was drawn in respect of the applicant for “public display of Nazi swastika (symbols)”.

8. On 28 May 2007 the Justice of the Peace for the 7th Circuit of Maykop, Adygeya Republic found the applicant guilty of promotion and public display of Nazi attributes and symbols prohibited under Article 20.3 § 1 of the Code of Administrative Offences (“the CAO”). He also referred to Article 1 § 1 of the Suppression of Extremism Act. The applicant’s argument that he had not displayed Nazi symbols in his editorial, but rather images of antique relics with ancient Slavic sacred symbols, was dismissed. Another argument that the editorial focused predominantly on current public awareness raising campaign of Hindus in Europe was also dismissed. In particular, the Justice of the Peace found that the symbols represented on the images, though not amounting to Nazi ones, were similar to them. He did not examine the images or the content of the article.

9. The applicant was fined 1,000 Russian roubles (approximately 25 euros at the material time) and all prints of the newspaper edition were seized and confiscated.

10. The applicant appealed raising essentially the same arguments. On 29 June 2007 the Maykop Town Court dismissed the appeal. It found that the symbols directly amounted to Nazi ones. Similarly to the Justice of the Peace, the court did not examine the content of the images or of the article.

11. On 4 September 2007 the regional department of the Russian Ministry of Culture informed the applicant of the results of the editorial’s expert examination. The department found that the images definitely did not amount to Nazi symbols and even tenuously could not be confounded with them.

RELEVANT LEGAL FRAMEWORK

12. The CAO of 2001 prohibited in Article 20.3 § 1 promotion and public display of Nazi paraphernalia and symbols. In the relevant part, as in force at the material time, it read as follows:

“1. Promotion and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming indistinguishable., -

is punishable by an administrative fine of 500 to 1,000 roubles with confiscation of Nazi or other abovementioned paraphernalia and symbols, or by an administrative arrest up to fifteen days with confiscation of Nazi or other abovementioned paraphernalia and symbols.”

13. The provision has been amended on 4 November 2014. From then on, apparently, it also covers the use of different attributes and symbols prohibited under other federal laws.

14. The relevant part of Article 1 § 1 of Federal Law no. 114-FZ on Combatting Extremist Activity of 25 July 2002 (“the Suppression of Extremism Act”), as in force at the material time, defined “extremist activity/extremism”, among many other ways, as follows:

“... promotion and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming indistinguishable.”

15. That part of the provision was amended on 2 December 2019. Most notably, from then on it renders the use of Nazi attributes and symbols permissible given that it promotes negative attitude to Nazi ideology or shows no sign of its promotion or exoneration.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

16. The applicant complained that his administrative conviction for the display of swastika in the newspaper had violated his right to freedom of expression, as provided in 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 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

17. 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

18. The applicant submitted, among other things, that the domestic law imposed a blanket ban on any display of Nazi and similar symbols regardless of its context in violation of the provision, which made its application unforeseeable and disproportionate in his case.

19. The Government conceded that the domestic law (as stood at the material time) prohibited display of Nazi symbols in any way. They further admitted that the law drew no distinction in this respect between Nazi

symbols and ones similar to them to the point of becoming indistinguishable. They contended, however, that such a prohibition was lawful, proportionate and necessary in order to restrict the use of symbols which were insulting in public perception.

20. There is no disagreement between the parties that the administrative fine imposed on the applicant constituted an interference with his right under Article 10 of the Convention. It is further not in dispute that it had a basis in national law and that the relevant provisions were accessible. The Court considers that, in view of the findings below on whether this aspect of the interference was “necessary in a democratic society” in the pursuance of a legitimate aim, it is not necessary to decide whether that interference was “prescribed by law”, including whether the applicable provisions were foreseeable as to their effects. For the purpose of the present case the Court will proceed on the assumption that the interference was aimed at protecting the “rights of others” (compare *Perinçek v. Switzerland* [GC], no. 49139/11, § 156-57, ECHR 2015 (extracts)). It thus remains to be determined whether the interference was “necessary in a democratic society” to achieve those aims.

21. The applicable legal principles have been summarised, for instance, in *Bédat v. Switzerland* [GC] (no. 56925/08, § 48, 29 March 2016). The Court also reiterates that in the assessment of the interference with freedom of expression in cases of this type, alongside those principles, various factors may prove to be pertinent and have to be taken into account, including: the social and political background against which the statements were made; whether the statements, fairly construed and seen in their immediate or wider context, can be seen as a direct or indirect call to violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences (see *Perinçek*, cited above, §§ 205-07). It is the interplay among the various factors, rather than any of them taken in isolation, that determines the outcome of a particular case (*ibid.*, § 208), including where the balance had to be struck between freedom of expression and the rights of others (*ibid.*, §§ 228 and 274-80).

22. Turning to the present case, the Court notes that the Russian law at that time generally prohibited any use of Nazi or other symbols similar to them to the point of becoming indistinguishable. (see paragraphs 12 and 14 above). The Court further notes that the provisions in question have been amended since the material time (see paragraphs 13 and 15 above). Without any prejudice to those developments, the Court will examine the way the prohibition was applied in the applicant’s case.

23. The Court observes that the Russian law at the time – at least as interpreted and applied in the applicant’s case – did not appear to leave room for any lawful use of such symbols even when it was meant, for instance, to report on current events or to combat unconstitutional movements (contrast

Nix v. Germany (dec.), no. 35285/16, § 48, 13 March 2018). Nor did the national courts seem to restrict the scope of its application by way of exempting such uses of the relevant symbols that did not contravene the aim of combatting extremist activities— such as for instance, where opposition to the ideology embodied by the symbol used was obvious and clear or even when it was used for artistic or other protected forms of expression (see, *mutatis mutandis*, *Vajnai v. Hungary*, no. 33629/06, § 56, ECHR 2008).

24. Most importantly, the Court observes that in the present case the domestic courts conducted no assessment of the context and nature of the depicted symbols. They did not examine the content and purpose of the article or the actual images in question, undisputedly depicting religious objects of fourteenth and nineteenth centuries (paragraph 8 and 10 above). The courts merely confirmed that the symbols were similar or identical to Nazi ones, and that finding sufficed to find that the images fell under the prohibition. The courts thus failed to carry out a contextual assessment as to whether the article or the accompanying images could be seen either as promoting an extremist ideology or otherwise lead to harmful consequences (see *Perinçek*, cited above, §§ 205-07).

25. The Court also takes note of the report by the regional department of the Ministry of Culture (see paragraph 11 above) which concluded that the article concerned the history of swastika in different cultures and a corresponding public debate. Further, it stated that the images displayed ancient relics which had no link with the “fascist” aspect of the symbol. The report finally recalled that the purpose of the prohibition was only to restrict promotion of Nazi ideas. The department thus found that the publication was compatible with the national law as not promoting such ideas.

26. Accordingly, the Court finds that in the present case the domestic courts did not attempt any adequate assessment of the relevant factors. Thus, it is not satisfied that there was a convincing justification for the applicant’s administrative conviction with reference to the public presentation of prohibited symbols.

27. Therefore, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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.”

A. Damage

29. The applicant claimed 300 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

30. The Government considered the claims to be unsubstantiated.

31. The Court notes the absence of the specific proof regarding the pecuniary damage sustained by the applicant and awards him under this head the amount equal to the administrative fine imposed on him, i.e. EUR 25.

32. As regards non-pecuniary damage, the Court, having regard to all the circumstances of the present case and the nature of the established violation, awards him EUR 2,000 under this head.

B. Costs and expenses

33. The applicant further claimed EUR 2,550 in respect of costs and expenses incurred in the domestic proceedings and before the Court. The applicant's representative requested that the sums awarded be paid directly into his bank account.

34. The Government submitted that the amount claimed was unjustified.

35. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the material in its possession, the Court considers it reasonable to award the applicant EUR 1,000, plus any tax that may be chargeable to the applicant. That sum is to be paid directly into the bank account of the applicant's representative.

C. Default interest

36. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant the following amounts within three months, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

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- (i) EUR 25 (twenty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses. This amount should be paid directly into the representative's bank account;
- (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Darian Pavli
President