



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

FIRST SECTION

Application no. 44900/06
by Sergey PUTINTSEV
against Russia
lodged on 14 October 2006

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Sergey Anatolyevich Putintsev, is a Russian national who was born in 1954 and lives in Novorossiysk.

A. The circumstances of the case

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

The applicant edited and published a newspaper called *For Russia!* («3a Pycb!»). It is a newspaper published since 1992 and which claims to be a bulletin of a so-called “Russian national liberation movement” (also known as the “Motherland: Russian Culture Society”).

One of the 2006 editions contained on the front page a photograph showing an equilateral cross with its arms bent, in left-facing (anti-clockwise) form. This cross was painted on a rock; a man sitting hereby was extending his right arm straight in front of himself. The following text accompanied this photograph: “*Perun’s* heathen temple next to the *Sakharnaya Golova* hill in Novorossiysk”. This photograph preceded a short article entitled “*Who blew up the {Twin} Towers: Zionists or Ben-Ladenists?*”.

One could also see on another page a graphic representation of two parallel thunder/lightning bolts. This visual representation accompanied the subtitle to a compilation of views expressed by various persons in relation to a public event held by the Russian Culture Society Motherland and others.

In April 2006 Novorossiysk town mayor wrote to the Regional parliament complaining about the activities of *inter alia* the Russian national liberation movement led by the applicant. According to the mayor,

these groups aimed at the extermination of persons of the Jewish origin and those from the Caucasus region.

Following an inquiry in relation to the above complaint, Novorossiysk town prosecutor accused the applicant of an administrative offence under Article 20.3 of the Code of Administrative Offences, which proscribes propaganda or public exhibition of Nazi symbols or other symbols which closely resemble them.

The case was examined by the justice of peace in the Tsentralniy Administrative Circuit of Novorossiysk. The court relied on the conclusions made by two persons teaching criminal and forensic science at a local law school. They considered that a posture consisting of extending one's right arm straight could be perceived as the Nazi salute. In their opinion, the global perception of this salute together with "the graphic symbol and the text of the call" could be clearly linked to the Nazi symbols, in the eyes of non-savvy lay men. The thunder/lightning bolts resemble those used on Nazi uniforms, in particular for SS officers.

The court also mentioned a deposition made by a professor at the Chair of Public Relations of a local University. He stated that the symbols used in the publication were "Slavic-Aryan" unrelated to Nazi symbols. However, the court considered that this deposition was in contradiction with this person's earlier statement in an unspecified criminal case.

The court dismissed the applicant's argument concerning the expiry of the statutory time-limit, considering that the offence in question was a continuing one.

By a judgment of 31 July 2006 the court found the applicant guilty of the above offence and ordered him to pay a fine of 1,000 Russian roubles.¹ The court also ordered seizure of the relevant edition. The applicant appealed.

On 25 August 2006 the Oktyabrskiy District Court of Novorossiysk upheld the decision taken by the justice of peace.

It appears that only one newspaper was seized; by that time the remainder of the edition had already been distributed.

B. Relevant domestic law and practice

Under Article 4.5 of the Code of Administrative Offences, a decision on an administrative offence cannot be issued after the expiry of two months from the date when the offence was committed (§ 1). For a continuing offence, the time-limit should be calculated from the date when the offence was discovered. Article 20.3 of the Code proscribed propaganda or public exposure of Nazi attributes or symbols or other symbols/attributes, which closely resemble them. This offence punishable by a fine with confiscation of symbols/attributes or by an administrative arrest of up to fifteen days with such confiscation.

¹ EUR 29 per Bank of Russia rate on 31 July 2006

COMPLAINTS

The applicant alleges that he was punished for having published a photograph showing a symbol relating an ancient Salvic cult, and information discussing unlawful actions of local public officials. He referred to Articles 6, 9, 10, 14 and 17 of the Convention and Article 1 of Protocol no. 12.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention? If yes, was that interference prescribed by law and necessary in terms of Article 10 § 2? Did the national courts carry out any proportionality analysis, as required by that provision (see for comparison *Vajnai v. Hungary*, no. 33629/06, §§ 48-58, ECHR 2008; *Leroy v. France*, no. 36109/03, § 38, 2 October 2008, and *Gündüz v. Turkey*, no. 35071/97, §§ 42-53, ECHR 2003-XI)?

2. Were the acts of the applicant in the present case aimed at the destruction of rights and freedoms, within the meaning of Article 17? If so, may he claim to enjoy the protection of Article 10 of the Convention?