



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

FIRST SECTION

Application no. 54328/08
Yevgeniy Vitalyevich BOLSHAKOV
against Russia
lodged on 25 August 2008

STATEMENT OF FACTS

1. The applicant, Mr Yevgeniy Vitalyevich Bolshakov, is a Russian national, who was born in 1965 and lives in Pechora, Komi Republic.

A. The circumstances of the case

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

3. On 20 November 2007 the applicant was apprehended by police on one of the streets of Pechora. The ground for apprehension was that the applicant, while being allegedly intoxicated with alcohol, was shouting “Hail Russia!” and saluting by extending his right arm forward.

4. In a police precinct a number of items bearing symbols of the *Civic Movement “Russian National Unity”* (Общественное движение “Русское национальное единство”) (RNU) were found in his pockets and seized. The items included a red armband having the emblem of RNU, which consists of combined right-facing swastika and Star of Bethlehem, a badge with an inscription “Russian National Unity”, five stickers with relevant symbols and contact phone numbers, and four business cards with relevant symbols and contact details.

5. On 25 December 2007 the Justice of the Peace for the Privokzalniy Judicial Circuit of Pechora, Komi Republic found the applicant guilty of propaganda and public display of Nazi paraphernalia and symbols prohibited by Article 20.3 of the Code of Administrative Offences of 2001 (CAO) (see paragraph 10 below). He was fined 500 Russian roubles (13 euros) and all items mentioned above were seized. The Justice of the Peace dismissed the applicant’s argument that the basis of the RNU’s emblem is swastika being an ancient symbol used extensively throughout the history. The argument that the symbols were not publicly displayed, because they were kept in the pockets was also dismissed. Finally, the Justice of the Peace concluded that

the extension forward of the right arm and the slogan “Hail Russia!” were of “nationalistic nature”.

6. The applicant appealed.

7. On 21 February 2008 the Pechorskiy Town Court of Komi Republic annulled the judgment of the Justice of the Peace due to failure to indicate under which section of Article 20.3 of the CAO the applicant was convicted. It also terminated the proceedings due to expiry of the statute of limitations. At the same time the Town Court ordered destruction of the items seized from the applicant. The relevant parts of the judgment read as follows:

“The symbols present on the armband, the badge, stickers and business cards due to their similarity to Nazi symbols may be confounded with them.

Therefore the red armband with display of the [abovementioned] symbols, the badge with display of symbols and inscription “Russian National Unity”, five stickers... and four business cards ... belonging to Mr Bolshakov [the applicant] must be seized and destroyed under section 3, Article 3.7 of the CAO.”

8. The applicant lodged a supervisory review complaint.

9. On 31 March 2008 the complaint was dismissed by the Supreme Court of Komi Republic. The relevant parts of the decision read as follows:

“The order to seize and destroy Nazi symbols and paraphernalia is well-founded.

This order by no means contradicts the decision to terminate the proceedings. Since seizure from unlawful possession by a person, who committed an administrative offence, of an object of an offence, which is excluded from circulation and is subject to taking by the State and destruction, is not a confiscation (section 3, Article 3.7 of the CAO). The judge considering an administrative offence case under section 3, Article 29.10 of the CAO must reach a decision on such possessions irrespective of holding a person administratively liable [and] *inter alia* while terminating proceedings on any ground.

The arguments of Mr Bolshakov that the symbols and paraphernalia seized from him are not Nazi [symbols] or may not be confounded with Nazi [symbols] is ill-conceived...

While criteria of Nazi symbols and attributes are not statutorily defined they are common knowledge. In the present case there was no need for special knowledge to establish existence of traits of Nazi symbols and paraphernalia, since red armband with ‘swastika’, badge with ‘swastika’ and other items clearly demonstrated their belonging to Nazi symbols and attributes.

The argument that the seized armband and badge were not displayed to anyone and thus are not objects of an administrative offence is ill-conceived. According to section 6 of the Act on Commemoration of the Soviet People’s Victory in the Great Patriotic War of 1941-1945 (*Федеральный закон “Об увековечении победы советского народа в Великой Отечественной войне 1941-1945”*) any use of Nazi symbols is prohibited in the Russian Federation as insulting [to its] multinational people and the memory of the victims of the Great Patriotic War. On the basis of this norm any circulation of Nazi symbols and paraphernalia is prohibited.”

B. Relevant domestic law

10. The Code of Administrative Offences of the Russian Federation of 2001 prohibits in Article 20.3, section 1 propaganda and public display of Nazi paraphernalia and symbols. In the relevant part, as in force at the material time, it read as follows:

Article 20.3 Propaganda and public display of Nazi paraphernalia and symbols

“1. Propaganda and public display of Nazi paraphernalia and symbols or paraphernalia and symbols, which due to their similarity with Nazi paraphernalia and symbols may be confounded with them, -

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.”

11. Article 3.7 of the Code regulates confiscation and seizure of instruments and objects of administrative offences. It reads in the relevant part:

Article 3.7 Confiscation of an instrument or object of the administrative offence

“3. Seizure from unlawful possession by a person, who committed an administrative offence, of an instrument or object of an administrative offence [may not be considered confiscation]...

[if such instrument or object is] excluded from circulation or for any other reason is in unlawful possession of a person, who committed an administrative offence, and on that ground shall be subject to taking by the State or destruction.”

12. Article 29.10, section 3 of the Code stipulates that the decision in an administrative case shall necessarily resolve issues concerning seized possessions. It reads as follows:

Article 29.10 Decision in an administrative case

“3. A decision in an administrative case shall resolve the issues concerning seized possessions and documents and attached possession, if administrative punishment does not or can not include their confiscation... Provided that:

2) items excluded from circulation shall be transferred to relevant institutions and destroyed.”

13. The Act on Commemoration of the Soviet People’s Victory in the Great Patriotic War of 1941-1945 (*Федеральный закон “Об увековечении победы советского народа в Великой Отечественной войне 1941-1945”*) adopted in 1995 in section 6 prohibits any use of Nazi symbols in Russia. The section reads as follows:

Section 6. Struggle with fascism

“The utmost important state policy of the Russian Federation in commemoration of the Victory of the Soviet People in the Great Patriotic War is decisive struggle with manifestations of fascism. The Russian Federation assumes an obligation to take measures necessary to prevent establishment and activities of fascist organizations and movements on its territory.

Any use of Nazi symbols is prohibited in the Russian Federation as insulting [to its] multinational people and the memory of the victims of the Great Patriotic War.”

COMPLAINTS

14. The applicant complains under Article 10 of the Convention and Article 1 of Protocol No. 1 about seizure and destruction of his belongings bearing symbols of his political affiliations.

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 so, was that interference prescribed by law? In answering the question the parties are invited to have regard to the statement of the Supreme Court of Komi Republic in the decision of 31 March 2008 regarding existence of statutory criteria defining Nazi symbols.

Did the Russian legislation in force or judicial practice distinguish between Nazi paraphernalia and symbols and paraphernalia and symbols, which due to their similarity with Nazi paraphernalia and symbols may be confounded with them? What were the criteria allowing to conclude that a certain symbol may be confounded with a Nazi symbol? Specifically, did the regulatory instruments or practice distinguish between various degrees to which a symbol may be confounded with a Nazi symbol and what was the legal effect of such distinction?

Having regard to the circumstances of the case was the interference necessary in terms of Article 10 § 2? Was it proportionate to the aim pursued?

2. Has the applicant been deprived of his possessions in the public interest, and in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1?

If so, what was the legal basis for seizure and destruction of the applicant's possessions as bearing symbols similar to Nazi symbols? Was "common knowledge" referred to by the Supreme Court of Komi Republic in the decision of 31 March 2008 sufficient to determine whether the symbols in question were Nazi symbols?

Did the legal provisions referred to by the domestic courts as the grounds for seizure and destruction of the applicant's belonging prohibit exclusively the use of Nazi symbols or also of other symbols, which may be confounded with Nazi symbols? In particular, did the domestic courts in the applicant's case consider the symbols displayed on the applicant's possessions consider them Nazi symbols? If not, did they consider various degrees to which a symbol may be confounded with a Nazi symbol and possible diverging applicability of the legal provisions prohibiting the use of Nazi symbols?

3. The Government are invited to submit copies of the apprehension record (*протокол задержания*) of 20 November 2007 and the judgment of the Justice of the Peace for the Privokzalniy Judicial Circuit of Pechora, Komi Republic delivered on 25 December 2007.