

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

THIRD SECTION

CASE OF MOSEYEV v. RUSSIA

(Application no. 78618/13)

JUDGMENT

STRASBOURG

1 March 2022

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



In the case of Moseyev v. Russia,

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

Darian Pavli, *President,*
Peeter Roosma,
Mikhail Lobov, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 78618/13) 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") on 20 November 2013 by a Russian national, Mr Ivan Ivanovich Moseyev, born in 1965 and living in Arkhangelsk ("the applicant") who was represented by Mr D. Gaynutdinov, a lawyer admitted to legal practice in Russia and living in Bulgaria;

the decision to give notice of the complaint concerning the right to freedom of expression to the Russian Government ("the Government"), represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 1 February 2022,

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

SUBJECT-MATTER OF THE CASE

1. The present case concerns the applicant's conviction for posting an offensive comment, under Article 10. In March 2012 an analytical centre posted an article on its website with the headline "Pomorye in the Eurasian world" dedicated to a large region located in the North of European Russia, and its inhabitants, Pomors, living on the White Sea coast. Any visitor to the website could comment on the article.

2. In April 2012 a visitor posted the following comment:

> "Pomors! Give it a rest. There are one million Russians and only two thousand Pomors in Arkhangelsk Region. How can you, Pomors, Ugrofins, believe that you are 'the spiritual and cultural pivot' of the Arkhangelsk Region? The author of the article and his friends suffer from megalomania. The word 'Pomor' will soon become a vulgarity. We will not let the Pomor leaders exclude this Region from the Russian civilisation."

3. The applicant replied as follows:

> "What will you do to us? There are millions of you, scum («быдло»), and two thousand of us, human beings."

4. In June 2012 an investigator initiated criminal proceedings against the applicant under Article 282 § 1 of the Criminal Code for posting a comment humiliating the Russian nation.

5. In March-May 2013 the domestic courts found the applicant guilty of humiliating the dignity of a group of people on the ground of ethnic origin and fined him 100,000 Russian roubles.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

6. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

7. The general principles concerning statements, verbal or non-verbal, alleged to stir up or justify violence, hatred or intolerance have been summarized in *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 204-08, ECHR 2015 (extracts), and *Kilin v. Russia*, no. 10271/12, §§ 71-72, 11 May 2021. In particular, the outcome of a particular case is determined by an interplay between various pertinent factors 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.

8. In the present case, the applicant's criminal prosecution for posting an offensive comment online amounted to an "interference" under Article 10 of the Convention.

9. As to the nature of the applicant's statements, his comment was a reply to that of another website visitor. As regards the language in the applicant's comment, he used the word "scum" («быдло») which is a vulgar term describing a rude person of a low social status and which could "offend". However, he was criminally convicted for speech which, as the domestic courts adjudged, incited hatred and violence rather than being merely insulting or defamatory.

10. The domestic courts in finding the applicant guilty did not analyse whether the applicant's comment referred to the Russian ethnic group or to the visitor who wrote the comment and people like him. Nor did they take into account the context in which the statement had been made, the political and social background, potential of the statements to provoke any harmful consequences, and the scope of their reach. The conviction did not contain any citation of the impugned comments or detailed analysis of the expert opinions (see *Dmitriyevskiy v. Russia*, no. 42168/06, § 113, 3 October 2017, and *Savva Terentyev v. Russia*, no. 10692/09, § 80-87, 28 August 2018).

11. Without an additional analysis by the domestic courts it is difficult to agree that the impugned remark could be construed as stirring up base emotions or embedded prejudices in an attempt to incite hatred or violence against the Russian people, rather than being directed at the author of the first comment. The applicant's remarks did not attack anyone personally and identifiably and appeared to be rather his emotional reaction in an online debate on a subject where he felt personally involved (compare *Savva Terentyev*, cited above, § 84). The applicant was not a public person and did not have the status of an influential figure. His comment was posted on a local website. In short, the Court discerns no other elements, either in the domestic courts' decisions or in the Government's submissions, which would enable it to conclude that the applicant's comment had the potential to provoke any violence with regard to the Russian people, and thus posed a clear and imminent danger which could justify the extreme sanction of criminal prosecution and conviction.

12. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. The applicant claimed 1,333 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

14. The Government submitted that the above sums were excessive.

15. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage and EUR 1,300 in respect of pecuniary damage incurred on account of the fine, plus any tax that may be chargeable to the applicant.

16. The Court further 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, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 1 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Darian Pavli President