



## Two State employees penalised for publicly raising matters of general interest: violation of freedom of expression

In today's **Chamber** judgment<sup>1</sup> in the case of [Gadzhiyev and Gostev v. Russia](#) (applications nos. 73585/14 and 51427/18) the European Court of Human Rights held, unanimously, that there had been a **violation of Article 10 (freedom of expression)** of the European Convention on Human Rights in respect of both applicants.

The case concerned disciplinary measures taken against the applicants, resulting in the dismissal of Mr Gadzhiyev (a police officer) and of Mr Gostev (a metro worker and chairman of a metro workers' trade union) for having publicly raised matters of general interest.

The Court noted in particular that Mr Gadzhiyev had made allegations about acts of corruption which were jeopardising the effectiveness and security of police operations, matters which were clearly of great interest to society as a whole. It also noted that Mr Gostev's allegations concerned the safety of the Metro and had been of interest to a large group of people (the Moscow residents who regularly used this essential means of transport). In both cases, the Court found that the interference with the applicants' freedom of expression had not been "necessary in a democratic society".

### Principal facts

The applicants, Salikh Nabiyevich Gadzhiyev and Nikolay Gostev, are Russian nationals who were born in 1956 and 1971 respectively. They live in Russia.

Mr Gadzhiyev, a police colonel in a mobile security unit of the Dagestan Ministry of the Interior, was dismissed in 2013 following a disciplinary investigation, which established that he had made public statements to the media on four occasions alleging corruption in the regional police force. He was reprimanded for having failed to liaise with the Information and Public Relations department of the Ministry of the Interior in advance.

Mr Gostev, who had been an employee of the Moscow Metro since 1992, became chairman of a Metro workers' trade union in 2014. In 2016, following a number of technical incidents that had led to service disruptions, the trade union organised a demonstration and a number of solo pickets to draw the attention of the authorities, and of the public at large, to safety failures. Subsequently, on the occasion of further incidents, Mr Gostev gave two interviews to internet media portals in his capacity as chairman of the trade union. In 2017 the Moscow Metro authority imposed two separate disciplinary sanctions for having given those interviews. Given that the second sanction was for repeated misconduct, it resulted in his dismissal.

Both applicants lodged unsuccessful appeals before the domestic courts.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying, in particular, on Article 10 (freedom of expression) of the Convention, Mr Gadzhiyev complained that he had been dismissed for having publicly expressed his opinion on matters of general interest; under the same provision, Mr Gostev submitted that he had been prevented from fulfilling his mandate as chairman of a trade union effectively.

The applications were lodged with the European Court of Human Rights on 14 November 2014 and 16 October 2018 respectively.

Two non-governmental organisations, International Trade Union Confederation and European Trade Union Confederation, were given leave to intervene in the procedure as third parties.

The Court's procedure for processing of applications against Russia can be found [here](#).

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,  
Jolien **Schukking** (the Netherlands),  
Georgios A. **Serghides** (Cyprus),  
Darian **Pavli** (Albania),  
Peeter **Roosma** (Estonia),  
Ioannis **Ktistakis** (Greece),  
Diana **Kovatcheva** (Bulgaria),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Mr Gadzhiyev

The Court noted that Mr Gadzhiyev had been penalised for having made public allegations concerning failures within the organisation for which he worked. The penalty was prescribed by law and pursued a legitimate aim, namely the protection of the rights of others.

The Court noted, however, that Mr Gadzhiyev had raised matters of major public interest, using information obtained through his position as an insider. In his capacity as a State employee, he had made allegations about acts of corruption which were jeopardising the effectiveness and security of police operations; these matters were clearly of great interest to society as a whole.

In the Court's view, one of the key points in this case was the categorical prohibition on public statements by State employees on matters that were not within their remit without prior liaison with the relevant department. Inflexible enforcement of this prohibition, without taking into account the competing interests at stake, was likely to have a chilling effect on State employees' freedom of expression.

Mr Gadzhiyev had maintained that poor decisions by commanders had led to loss of life among members of the security forces; he had also made allegations of undue influence and favouritism in appointments to posts within the police force. His claims had been backed by a police trade union.

The domestic courts, however, had pointed to a lack of evidence supporting the applicant's allegations.

The Court considered that the support expressed by the police union for Mr Gadzhiyev's concerns demonstrated that his statements had not been motivated solely by personal interests or opinions but had reflected a broader concern within the organisation.

It also acknowledged the particular challenges faced by whistleblowers within their own organisations, including the risk of retaliation and possible legal consequences.

With regard to the severity of the penalty, the Court noted that the domestic courts had mainly focused on the supposed lack of basis for the applicant's allegations, without addressing the other relevant criteria emerging from the Article 10 case-law.

Lastly, the Court recognised the importance of reserve and discretion in the performance of official duties. However, the strict application of the domestic law, as in the present case, had acted as a categorical prohibition on comments by police officers, either individually or collectively, on any matter relating to the operations of their organisation, thereby preventing them from expressing a view on anything which fell outside their immediate remit.

Having weighed up the other various interests at stake in the present case, the Court found that the interference with Mr Gadzhiyev's freedom of expression, specifically his right to impart information, had not been "necessary in a democratic society". There had therefore been a violation of Article 10 of the Convention.

### Mr Gostev

The Court noted that Mr Gostev had made two statements to the press criticising what he considered to be faulty equipment being used by the Metro. He had not disclosed any confidential information. His employer and the domestic courts had accused him of having failed in his duty of reserve and discretion.

In his statements, Mr Gostev had mentioned a series of serious and recurrent incidents that he claimed had occurred on the Moscow Metro. He had referred to "a shortage of staff, equipment and resources" and "shortcomings in maintaining and adapting the infrastructure to [the] new equipment", circumstances which, in his view, had led to major disruptions to the Metro service.

These allegations, in so far as they related to the safety of the Metro, were of interest to a large group of people, namely the Moscow residents who regularly used this essential means of transport in the Russian capital. Furthermore, the accuracy of his allegations had never been called into question by either the applicant's employer or the national courts.

The Court considered that the statements were undeniably of public interest. It observed, moreover, that neither the national courts nor the Government had claimed that Mr Gostev had been acting out of malice. Furthermore, none of the statements in question could be regarded as having been offensive or as constituting a gratuitous personal attack on others.

Taking into account the content of the statements in question and the applicant's status as a trade-union representative, the Court had therefore no reason to doubt his motivation for making them, namely, to improve working conditions within the company.

On the other hand, the Court acknowledged that the disclosure of information relating to problems in the Metro's operations could have harmed the reputation of Mr Gostev's employer, the Moscow Metro, and of its suppliers, such as the manufacturers of the Metro carriages and other rolling stock, the quality of which he had queried.

With regard to the risks which, according to the Government, the disclosure had posed to security, the Court noted that in this area even apparently inconsequential details, which were not classed as confidential, could be significant and be used for malicious purposes. That being said, in the absence of any assessment of this point by the domestic courts, those risks appeared hypothetical. It did not therefore appear that the statements in question had harmed the applicant's employer in any way.

As to the severity of the penalty, the Court reiterated that members of a trade union had to be able to express to their employer the demands by which they sought to improve the situation of workers in their company. A trade union that did not have the possibility of expressing its ideas freely in this

regard would be deprived of an essential means of action. In consequence, for the purpose of guaranteeing the meaningful and effective scope of trade union rights, the national authorities had to ensure that disproportionate penalties did not dissuade trade union representatives from expressing and defending their members' interests. There was, moreover, little scope for restricting debate on matters of public interest.

In the present case, however, Mr Gostev had received the most severe penalty provided for under labour law, namely dismissal. The Court considered that such a disciplinary measure was liable to have adverse consequences on his career and his ability to find another job, taking into account the specific nature of his training and his former employer's monopoly on the transport sector in Moscow. The Court also had regard to the chilling effect that the penalty could have on other employees in that sector.

Weighing up the harm done to the applicant's employer against the public's interest in receiving the information disclosed to the press by Mr Gostev, the accuracy of the facts disclosed, and the severity of the penalty imposed on him, the Court concluded that the interference with Mr Gostev's freedom of expression had not been "necessary in a democratic society". There had therefore been a violation of Article 10 of the Convention.

### Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Gadzhiyev 7,500 euros (EUR) in respect of non-pecuniary and EUR 2,450 in respect of costs and expenses, and that it was to pay Mr Gostev EUR 7,500 in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.