



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

Communicated on 17 June 2014

FIRST SECTION

Application no. 56109/07
Vladimir Ivanovich KARATAYEV
against Russia
lodged on 2 November 2007

STATEMENT OF FACTS

1. The applicant, Mr Vladimir Ivanovich Karatayev, is a Russian national, who was born in 1953 and lives in Maykop. He is the chief editor and author in the regional newspaper *Zakubanye*. The newspaper was established and registered by the Union of Slavs of Adygeya (*Союз Славян Адыгеи*) in 2009 and has fortnightly circulation of 1,000 to 2,000 copies.

A. The circumstances of the case

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

3. In the edition No. 3 (191) in February 2007 the newspaper featured a short editorial publication entitled ‘In Defence of Swastika’ (*«В защиту свастики»*). The full text of the publication read as follows:

“British Hindu organizations are beginning a social campaign in defense of swastika symbol, which in the last century has turned for the majority of people into the main symbol of fascism.¹

‘It is one of the holiest symbols in Hindu tradition, it has been used for 5,000 years to deter the evil’ said Ramesh Kallidai, the Secretary General of the Hindu Forum of Britain.

Apart from that he reminded that in Hindu tradition swastika is customarily considered to bring good luck. Kallidai’s Forum intends to hold public awareness raising campaigns and seminars all across the Great Britain to obliterate the negative stereotype, which has formed around swastika, and to secure the support of politicians to abolish the existing ban on display of swastika. Swastika has been used by many people, it was placed on weapons, household objects of daily use,

¹ In Russia the terms ‘fascism’ and ‘Nazism’ are used interchangeably and are treated as synonymous.

clothing, banners, coats of arms, and also used in decoration of churches and houses. For the majority of ancient people it has been a symbol of dynamics of life, the Sun, the light, and good fortune.

However, Germany, which took the presidency in the EU for the next half of a year, intends to introduce the ban on display of swastika as a Nazi symbol as well as ban on Holocaust denial in all 27 states of the EU. This information was provided by *Interfax* with reference to the recent publication on the website *RITNews*.

From the editor: In Slavic culture of both Vedic and Christian periods swastika played an important role. In particular it had been placed on icons.”

4. Two images were placed under the text of the editorial, both of them being reprints from the book of R. Bagdasarov ‘Swastika – The Holy Symbol’ published in Moscow in 2001. The first image was a XIV century shroud from a Greek-Orthodox monastery in Romania depicting multiple swastikas above portrayal of a saint. The second image was a fragment of XIX century gold embroidery from Vologda region in Russia containing swastika surrounded by abstract floral pattern.

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

6. On 28 May 2007 the Justice of the Peace for the 7th Circuit of Maykop, Adygeya 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 (see paragraph 10 below). He was fined 1000 Russian roubles (RUB) (approximately 25 euros (EUR)) and all prints of the newspaper edition were seized and confiscated. The applicant’s argument that he did not display Nazi symbols in his editorial, but rather images of ancient Slavic sacred symbols reprinted from a book was dismissed. The argument that the editorial focused predominantly on current public awareness raising campaign of Hindus in Europe was also dismissed. In the relevant parts the judgment read as follows:

“The newspaper... presented to the court [contains] an article ‘In Defense of Swastika’, which is illustrated by fragments of a book, which depict graphic signs similar to depictions of swastika analogous to the state symbol of [Nazi] Germany. Having regard to the ignorance of the majority of population in minutiae of fascist symbolism, visual perception of these illustrations provokes persistent and unambiguous association with paraphernalia of National Socialism (fascism). Swastika in the XX century has become the official state symbol of [Nazi] Germany. It was under that symbol that the crimes against humanity were perpetrated and [these crimes] were condemned by the whole world community. And now in the modern world swastika is linked to [Nazism]. The editorial [in question] does not target an audience professionally trained in history, and thus may not be considered an academic account of the origins and the use of that symbol (swastika). Accordingly it may provoke inappropriate reaction from the audience lacking professional training in history and that might be exceptionally dangerous in a multinational state.

... the court cannot entertain the applicant’s position that [the article contains] sacred Slavic symbols, which might not invoke associations with paraphernalia of National Socialism...”

7. The applicant appealed raising essentially the same arguments; however his appeal was dismissed by the Maykop Town Court on 29 June 2007.

8. On 4 September 2007 the regional directorate of the federal service responsible for supervision of mass media (*Росохранкультура*) informed the applicant of the results of the editorial's expert examination. The relevant parts of the letter read as follows:

“The extended comment ‘In Defense of Swastika’ does not contain information, which could allow to state that the newspaper had engaged in propaganda of Nazi paraphernalia. The comment dealt with the primary, historical nature of the symbol... which has deep roots in many cultures including Slavic culture; demonstrated artefacts of ancient provenance, which had no connection to the fascist [Nazi] nature of swastika... therefore the notions ‘propaganda’, ‘public display’, ‘may be confounded with them’ are not applicable. Clearly the consideration must focus on propaganda of Nazi symbols and paraphernalia, which are ideologically tied to Nazism and Hitlerism. Confusion of the notions is not acceptable...”

However, despite of the conclusions above the editorial board of *Zakubanye* ... was issued a warning on undesirability of further coverage of the issue.”

B. Relevant domestic law

9. 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.”

10. 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.”

11. 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 cannot include their confiscation... Provided that:

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

COMPLAINT

12. The applicant complains under Article 10 of the Convention that his prosecution for publication of an editorial about swastika was disproportionate and thus violated his freedom of speech.

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?

2. If so, was that interference prescribed by law? Did the Russian legislation in force or judicial practice attach any significance to the context of display or to the intent of a person displaying Nazi paraphernalia and symbols and paraphernalia and symbols, which due to their similarity with Nazi paraphernalia and symbols may be confounded with them?

In respect of symbols and paraphernalia, which due to their similarity with Nazi paraphernalia and symbols may be confounded with them, did the regulatory instruments or practice require the national courts to conduct a comprehensive analysis of symbols beyond their graphic features? If yes, what has been the assessment of the courts in the present case?

3. 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?