



## Criminal conviction of editor for publication of statements by Chechen leaders was unjustified

In today's Chamber judgment<sup>1</sup> in the case of [Dmitriyevskiy v. Russia](#) (application no. 42168/06) 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.

The case concerned the criminal conviction of the editor-in-chief of a regional newspaper following the publication of statements by two Chechen separatist leaders.

The Court considered in particular that the views expressed in the two statements could not be read as an incitement to violence or hatred liable to result in violence. It was therefore not convinced that the publication of the articles in question could have any harmful effect on preventing disorder and crime or had the potential to undermine territorial integrity or public safety. Moreover, the Russian courts' decisions had been deficient: While they had based their guilty verdict on two expert reports by a linguist, they had failed to assess those reports and had merely endorsed the expert's conclusions. Furthermore, they had not made any meaningful attempt to analyse the statements concerned themselves.

### Principal facts

The applicant, Stanislav Dmitriyevskiy, is a Russian national who was born in 1966 and lives in Nizhny Novgorod (Russia).

In early 2004, Mr Dmitriyevskiy, who at the time was also the director of a non-governmental organisation monitoring human rights violations in the Chechen Republic, obtained two articles from the website Chechenpress. They were published in the issues of March 2004 and April/May 2004, respectively, of *Pravo-Zashchita*, the monthly newspaper edited by him. The newspaper had a circulation of 5,000 and was mainly distributed in the Nizhny Novgorod Region.

The articles presented statements by two separatist Chechen leaders, Aslan Maskhadov and Akhmed Zakayev, who blamed the Russian authorities for the conflict in the Chechen Republic and harshly criticised the authorities. The first article stated, in particular, that as long as the current Government remained in the Kremlin "blood will continue to flow in Chechnya and in Russia". It went on to state that the Russian people could "choose peace by voting against Putin". The second article referred to a European Parliament resolution adopted in February 2004 which recognised Stalin's deportation of the Chechen people in 1944 as an act of genocide. After an account of the history of Russian-Chechen relations and the recent conflict in the Chechen Republic the article stated, in particular, that there was "no doubt" that the Kremlin was "today the centre of international terrorism".

Following an investigation into the articles, Mr Dmitriyevskiy was charged, in September 2005, under a provision of the Criminal Code which made punishable, in particular, "incitement to hatred or enmity". In February 2006 he was convicted under that provision and given a suspended prison

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).

sentence of two years and four years' probation. The judgment relied to a large extent on two expert reports by a linguist, Ms T., who had analysed the two articles and concluded that they contained statements "aimed at inciting racial, ethnic or social discord, associated with violence". The trial court rejected a report by another linguistic expert, obtained by Mr Dmitriyevskiy's defence, which found that the articles could not be regarded as inciting racial or national hatred and discord.

Mr Dmitriyevskiy subsequently applied to the trial court, complaining that Ms T.'s testimony had been distorted in the trial record and asking the record to be amended. The request was rejected by the court. His conviction was upheld on appeal in April 2006.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Dmitriyevskiy complained that his conviction had constituted an unjustified interference with his right to freedom of expression. He further relied on Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 25 September 2006.

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

Branko **Lubarda** (Serbia), *President*,  
Luis **López Guerra** (Spain),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Pere **Pastor Vilanova** (Andorra),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 10

The Court rejected a request by the Russian Government to exclude the articles published in *Pravo-Zashchita* from the statement of facts in the case before it. The Government contended that by reproducing those texts the Court had used its "resources for incitement to hatred or enmity and the humiliation of dignity of a person or a group of persons on the grounds of sex, race, nationality, language, origin, religion and membership of a social group".

However, the Court observed that the publication of these articles had been the basis for Mr Dmitriyevskiy's criminal conviction. In order to be able to make its assessment, the Court had to have due regard to the circumstances of the case. In particular, it had to examine all the material made available to it, of which the articles were of key importance. Moreover, it had to rely on that material when providing reasons for its judgment and thus, irrespective of the conclusions it would reach, could not avoid reproducing the articles.

It was uncontested between the parties that Mr Dmitriyevskiy's conviction had constituted an interference with his right to freedom of expression. The Court was prepared to examine the case on the assumption that that interference had been "prescribed by law" for the purpose of Article 10. Furthermore, noting that at the time Mr Dmitriyevskiy was tried and convicted, matters relating to the conflict in the Chechen Republic had been of a very sensitive nature, the Court accepted that the measures taken against him, at least on the face of it, had pursued the legitimate aims of protecting national security, territorial integrity and public safety, and preventing disorder and crime.

As to the question of whether the interference had been “necessary in a democratic society” within the meaning of Article 10, the Court observed that Mr Dmitriyevskiy’s task, in his capacity as editor-in-chief of a regional newspaper, was to impart information and ideas on matters of public interest. The articles in question, presumably written by two Chechen separatist leaders, who blamed the Russian authorities for the ongoing conflict in the Chechen Republic, were without a doubt part of a political debate on a matter of general and public concern.

The Court was mindful of the sensitive nature of the debate, given the difficult situation in the Chechen Republic at the time, where separatist tendencies leading to serious disturbance between Russian security forces and rebel fighters resulted in a heavy loss of life. However, the fact that statements were made by a person considered to be an outlaw could not in itself justify an interference with the freedom of expression of those who published such statements.

Having regard to the contents and the language of the two articles, the Court considered that, overall, the views expressed in them could not be read as an incitement to violence, or inciting hatred or intolerance liable to result in violence. It could not discern any element other than criticism of the Russian Government and their actions in the Chechen Republic, which did not go beyond the acceptable limits. In that context, the Court underlined that under its case-law, the limits of permissible criticism were wider with regard to the Government than in relation to private individuals.

In particular, the first article was written in a conciliatory tone. While critical of the actions of the Russian authorities in the Chechen Republic, it contained no appeals to violence, rebellion or forcible overthrow of the existing political regime. On the contrary, it suggested that the conflict could be resolved in a peaceful manner if the Russian people voted against President Putin in the upcoming presidential election.

The second article was more virulent in its language. It contained strongly-worded statements describing the Russian authorities’ actions in the Chechen Republic as “genocide”, “criminal madness by the bloody Kremlin regime” or “Russia’s terror”. It accused the Russian Government of “imposing a war” on the Chechen Republic and denounced its practices in the recent armed conflict as “unmotivated mass murders”, “extrajudicial executions” and “groundless detentions”.

However, the Court had previously held in its case-law that it was an integral part of freedom of expression to seek the historical truth, and that a debate on the causes of acts which might amount to war crimes should be able to take place freely. Moreover, it was in the nature of political speech to be controversial. The fact that statements contained strong criticism of the official policy and communicated a one-sided view of the responsibility for a situation was insufficient, in itself, to justify an interference with freedom of expression.

As a whole, the second article could not be regarded as encouraging violence. While taking a highly critical stance on Russia’s actions in the Chechen Republic, it did not call for armed resistance or the use of terrorist attacks.

The Court was therefore not convinced that the publication of the two articles could have any harmful effect on preventing disorder and crime or had had the potential to undermine territorial integrity or public safety. The fact that the articles had been published in a regional newspaper with a low circulation also reduced their potential impact. Moreover, the trial court had expressly acknowledged that there had been no serious consequences of Mr Dmitriyevskiy’s actions.

In the light of those considerations, the Court found that the Russian authorities had had only a narrow leeway (“margin of appreciation” under the Court’s case-law) in establishing whether it was necessary to interfere with Mr Dmitriyevskiy’s right to freedom of expression.

Turning to the Russian courts’ decisions in the case, the Court found them to be profoundly deficient. Notably, while those courts had based their guilty verdict on two expert reports by a

linguist, they had failed to assess those reports and had merely endorsed the expert's conclusions. Indeed, the expert examination had gone far beyond resolving language issues; it had essentially provided the legal qualification of Mr Dmitriyevskiy's action by finding that there had been elements of "hate speech" in the articles. The Court found that situation unacceptable and stressed that all legal matters had to be resolved exclusively by the courts.

Secondly, the Russian courts had made no meaningful attempt in Mr Dmitriyevskiy's case to analyse the statements concerned. They had simply listed the statements examined in the expert reports and had limited their assessment to repeatedly reproducing the conclusions of those reports and the text of the relevant provision of the Russian Criminal Code. While finding that the statements presented in the articles "aimed at inciting enmity and humiliating the dignity of a group of persons on the grounds of race, ethnic origin and membership of a social group", the courts had failed to name any of those groups targeted by the statements, or to specify which statements, in which respect, had any racist, nationalistic, xenophobic or any other discriminatory or humiliating connotations.

In conclusion, the national authorities had failed to base their decision on an acceptable assessment of all relevant facts and to provide relevant and sufficient reasons for Mr Dmitriyevskiy's conviction. Moreover, they had also dismissed all arguments in his defence in a summary manner.

The Court considered that both Mr Dmitriyevskiy's criminal conviction and the severe sanction imposed on him were capable of producing a deterring effect on the exercise of journalistic freedom of expression in Russia and dissuading the press from openly discussing matters of public concern, in particular relating to the conflict in the Chechen Republic. It concluded that the conviction had not been necessary and had been disproportionate to the aims invoked. There had accordingly been a violation of Article 10.

### Other articles

Having regard to its findings under Article 10, the Court did not consider it necessary to examine separately the complaints under Article 6 or Article 13.

### Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Dmitriyevskiy 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,615 in respect of costs and expenses.

*The judgment is available only in English.*

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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.