



## Not all of critical comments in Chechnya newsletter articles warranted rights interference

In today's Chamber judgment<sup>1</sup> in the case of [Stomakhin v. Russia](#) (application no. 52273/07) 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 Mr Stomakhin's conviction and sentence to five years in jail for newsletter articles he had written on the armed conflict in Chechnya, which the domestic courts said had justified terrorism and violence and incited hatred.

The Court found that some of the articles had gone beyond the bounds of acceptable criticism and had amounted to calls for violence and the justification of terrorism. Other statements, however, had been within acceptable limits of criticism. Overall, there had not been a pressing social need to interfere with Mr Stomakhin's rights by penalising him for some of his comments and the harshness of the penalty had violated his rights.

The Court urged governments to be cautious when considering what was hate speech and what was criticism of the authorities.

### Principal facts

The applicant, Boris Vladimirovich Stomakhin, is a Russian national who was born in 1974 and lives in Vsesvyatskaya (Russia).

Mr Stomakhin was the editor, publisher and distributor of a monthly newsletter between 2000 and 2004 which dealt mainly with the war in Chechnya, which was going on at the time.

The authorities began an investigation into him in December 2003 on suspicion of expressing views in the newsletter which amounted to appeals to carry out extremist activities and to incitement to racial, national, and social hatred. He was convicted of the offences in November 2006, a decision that was upheld on appeal in May 2007.

The domestic courts found that he had made appeals to extremist acts and had justified and glorified acts of terrorism by Chechens. He had also called for violence against the Russian people and had argued that the Orthodox faith was inferior.

Mr Stomakhin argued that he had printed the newsletter for himself and had not distributed it. He had simply expressed his opinion on political events in Russia, in particular the conflict in Chechnya. He denied supporting extremism. He was sentenced to five years in prison and a given a three-year ban on practising journalism. He served the sentence in full and was released in March 2011.

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

He complained about his conviction for views expressed in the newsletters, which he had distributed at various events, under Articles 10 (freedom of expression) and 11 (freedom of assembly). He also complained about his trial under Article 6 (right to a fair trial).

The application was lodged with the European Court of Human Rights on 7 November 2007.

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

Helena Jäderblom (Sweden), *President*,  
Branko Lubarda (Serbia),  
Helen Keller (Switzerland),  
Dmitry Dedov (Russia),  
Pere Pastor Vilanova (Andorra),  
Alena Poláčková (Slovakia),  
María Elósegui (Spain),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

### Article 10

The Court decided that it was appropriate to consider the case under Article 10 alone.

It divided the statements made by Mr Stomakhin into three groups. The first had justified terrorism, vilified Russian servicemen to the extent that they might have become targets for actual attack and had praised Chechen leaders in the context of approving of violence. Those statements had therefore gone beyond the limits of acceptable criticism and the Court found that the Russian courts' treatment of them had been proportionate.

In addition, some of Mr Stomakhin's criticisms of Orthodox believers and ethnic Russians had incited hatred and enmity and the courts' considerations had been "relevant and sufficient".

However, the courts had been too harsh in other aspects. In particular, some statements about the war had not gone beyond acceptable limits of criticism, which were wide when it came to governments. The courts had also taken other comments on Russian servicemen out of context: Mr Stomakhin had been discussing in strong terms the acquittal of an officer for strangling a Chechen woman rather than appealing for any criminal acts or inciting hatred against all soldiers.

The Court added that it was vitally important for States to take a cautious approach when determining the scope of crimes of hate speech. It called on them to strictly construe legislation in order to avoid excessive interference under the guise of action against such speech, when what was in question was actually criticism of the authorities or their policies.

Lastly, the Court found that the courts' reasons for the penalty imposed on Mr Stomakhin had been limited to his personality and the social danger he had presented. Such considerations might have been relevant, but they were not sufficient to justify the severity of the sentence. The punishment had therefore not been proportionate to the legitimate aims pursued, such as protecting the rights of others, national security or preventing disorder and crime.

### Other articles

It declared Mr Stomakhin's complaints under Article 6 § 1 of the Convention inadmissible as manifestly ill-founded. His allegations had not disclosed any appearance of a violation of the Convention's fair trial guarantees.

### Just satisfaction (Article 41)

The Court held by four votes to three that Russia was to pay the applicant 12,500 euros in respect of non-pecuniary damage and rejected his claim in respect of costs and expenses by six votes to one.

### Separate opinions

Judge Jäderblom expressed a concurring opinion, which was joined by Judge Keller, who also issued a separate concurring opinion. Judge Pastor Vilanova expressed a partly dissenting opinion, which related to the costs and expenses decision. These opinions are annexed to the judgment.

*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.