



Deficiencies in the regulatory framework on anti-extremist legislation in Russia resulted in breach of applicants' freedom of expression

The case [Karastelev and Others v. Russia](#) (application no. 16435/10) concerned complaints brought by the chief officer and deputy chief officer of a human rights NGO about anti-extremist legislation in Russia. The Russian authorities had found that a poster they had displayed during a protest against a law on minors and their encouraging adolescents to participate in further protests against the law had amounted to planning an “extremist activity” under the legislation and could lead to liability for an offence. Three legal procedures were used against them, essentially warning them that they either had to refrain from further protests or face prosecution, and leading to the chief officer's resignation.

In today's **Chamber judgment**¹ in the case 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 the applicants Vadim Karastelev and Tamara Karasteleva.

The Court found that the relevant provisions of the anti-extremist legislation were formulated in broad terms, leaving too wide a discretion to the prosecutor and making their application unforeseeable. Nor had the legislation and practice provided adequate protection against arbitrary recourse to the legal procedures used in the applicants' case.

Indeed, those deficiencies had been highlighted in the applicants' case, the Court finding that it was far-fetched for the authorities to conclude that the poster and the applicants' interaction with two adolescents could be understood as inciting obstruction of the public authorities' lawful activities, combined with violence or a threat of it.

The Court also held, unanimously, that there had been a **violation of Article 6 § 1 (right of access to court)** of the European Convention as regards the judicial review proceedings brought by Mr Karastelev.

Principal facts

The applicants are Vadim Yevgenyevich Karastelev, Tamara Viktorovna Karasteleva, now deceased, and the non-governmental organisation, the Novorossiysk Committee for Human Rights (“the NCHR”).

In April 2009 the first two applicants, who at the time were also deputy chief officer and chief officer of the NCHR, staged public protests in Novorossiysk against a recently law adopted requiring, among other things, minors to be accompanied by an adult in public places at night.

Complaints were subsequently lodged with the Novorossiysk prosecutor's office by the parents of two adolescents who had interacted with the applicants during one of the protests. They alleged in particular that the applicants had been spreading propaganda among minors, during the protests and at their school, encouraging them to participate in future demonstrations against the new law. The applicants submitted that they had simply explained the reason for their protest when the two adolescents had approached them with questions. They had had no further interaction with them.

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.

The two adolescents stated that they had talked to the applicants, who had told them to bring their friends along to the next demonstration, but considered that this could lead to disorder.

In May 2009 the prosecutor's office cautioned the applicants, finding that their conduct amounted to a risk of "extremist activity" under the relevant domestic law, namely "obstruction of the lawful activities of State authorities, combined with violence or a threat of it". In particular, a poster displayed during one of the demonstrations with the slogan "Freedom is not granted, it has to be taken" and the applicants' calls to minors to attend protests had encouraged disobedience to the law and the public authorities.

Both applicants brought judicial review proceedings. In June 2009 the courts dismissed the complaint brought by the second applicant, basing its decision on evidence provided by the prosecution, namely expert reports concluding that the poster and the applicants' actions could be perceived by adolescents as a call to actively resist the authorities. All her subsequent appeals were unsuccessful. The proceedings brought by the first applicant were discontinued because the matter had already been decided in the second applicant's case.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicants alleged that the prosecutor's recourse to anti-extremist procedures in relation to their peaceful protest and their conduct during it had been unlawful and arbitrary. They complained in particular that the anti-extremist legislation was formulated in vague terms and they could not have reasonably foreseen that their criticism of the law on minors would make them liable under the legislation.

The first applicant also complained under Article 6 § 1 (right of access to court) that the proceedings in his case being discontinued had deprived him of any judicial assessment of the warning issued to him personally.

The application was lodged with the European Court of Human Rights on 3 March 2010.

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

Paul Lemmens (Belgium), *President*,
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Alena Poláčková (Slovakia),
María Elósegui (Spain),
Gilberto Felici (San Marino),
Lorraine Schembri Orland (Malta),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

The Court rejected the NGO applicant's complaints as inadmissible and held that Dmitriy Karastelev, the second applicant's son, had standing to pursue his mother's complaints before the Court.

Article 10

The Government accepted that the three legal procedures used against the applicants – a warning, a caution and an order – had interfered with their freedom of expression. The warning indicated that the applicants' conduct, potentially "an extremist activity" under Russian law, could lead to them being found liable for an administrative offence. The applicants had therefore had to choose

between complying with the warning, which essentially meant refraining from further protests, or face prosecution. The second applicant had resigned from her post as chief officer of the NCHR in order to comply with the caution and order procedures and to avoid the NGO's dissolution.

The Court went on to find that those procedures had had a basis in national law, namely the Suppression of Extremism Act and the Prosecutors Act, but that those provisions had been formulated in broad terms, leaving too wide a discretion to the prosecutor and making their application unforeseeable. The exercise of such discretion had not taken into account certain criteria laid down in the Court's case-law under Article 10 of the Convention in this type of case, in particular as regards a risk of harmful consequences arising from one's exercise of the right to freedom of expression.

Moreover, the Government provided no explanation as to the rationale for applying the caution and order procedures in the event where, as in the applicants' case, the conduct at issue had been directly attributable to an individual's personal exercise of that right, rather than to an NGO's activities.

Although judicial review had been available to contest the procedures, there was nothing to show that the legislation and practice at the time had enabled the courts to ascertain whether "interference" with the right to freedom of expression had been "necessary in a democratic society" "to pursue a legitimate aim" and whether the applicable framework had provided adequate safeguards against arbitrariness. The breadth of the prosecutor's powers had been such that there had been formidable obstacles in showing that their decisions had been unlawful or otherwise in breach of the right to freedom of expression.

Such general deficiencies in the regulatory framework had been highlighted in the applicants' case.

Specifically, the definition of a warning under the Suppression of Extremism Act related to certain unlawful actions being "planned" by the person to whom the document was addressed. Yet it was not clear what evidence had justified the prosecutor's finding that the applicants or other persons had been "planning" an extremist activity.

Furthermore, the Suppression of Extremism Act classified as "extremist activity" instances of "obstruction of the lawful activities of the State authorities" only where they were "combined with violence or threats of violence". There was, however, nothing in the prosecutor's warning issued to the applicants substantiating any risk of violence. Nor was it clear what "obstruction" public authorities had been at risk of.

Moreover, the applicants had not sought to interact with any person who was manifestly under the age of majority; it was the two adolescents who had approached the applicants and asked questions.

Indeed, it was far-fetched to conclude that the mere display of the poster in question and the applicants' interaction with the two adolescents could be understood as inciting disobedience to the authorities.

The Court concluded that the domestic legislation and practice had not been foreseeable as to their effects and had not provided adequate protection against arbitrary recourse to the warning, caution and order procedures.

There had therefore been an interference with the first and second applicants' freedom of expression which had not been "prescribed by law", in violation of Article 10.

[Article 6 § 1](#)

The first applicant submitted that he had brought separate proceedings for a judicial review of the warning addressed to him personally, but that they had been wrongly discontinued on the grounds that the matter had already been determined in the proceedings initiated by the second applicant.

The Court noted that the warnings issued to the first and second applicants had been identical and that they had been addressed to them as the chief officers for one and the same NGO.

However, there had been one substantial difference in the warnings: they had specifically pointed to each applicant's personal liability in the event of their non-compliance. The warning to the first applicant was related to his own expressive conduct and had therefore constituted an "interference" with his own right to freedom of expression and, in that sense, had been distinguishable from the warning that had been challenged by the second applicant.

The Court thus concluded that the first applicant's right of access to a court had been reduced in such a way and to such an extent that the very essence of that right had been impaired, in breach of Article 6 § 1.

Other Articles

The Court held that there was no need to examine the remaining complaints under Article 6 (right to a fair trial), Article 13 (right to an effective remedy) and Article 2 of Protocol No. 7 (right of appeal in criminal matters).

Just satisfaction (Article 41)

The Court held that Russia was to pay the first applicant 3,000 euros (EUR) in respect of pecuniary damage, and EUR 850 to the European Human Rights Advocacy Centre in respect of costs and expenses.

Separate opinions

Judges Lemmens and Elósegui each expressed a concurring opinion. 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.