



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

THIRD SECTION

CASE OF KARUYEV v. RUSSIA

(Application no. 4161/13)

JUDGMENT

Art 10 • Freedom of expression • No clear and foreseeable basis in domestic law for conviction for spitting on a portrait of the President of Russia, where specific offence elements had not been shown to exist

STRASBOURG

18 January 2022

FINAL

18/04/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karuyev v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Georges Ravarani, *President*,

Dmitry Dedov,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Andreas Zünd,

Frédéric Krenc, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 4161/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Dmitriy Sergeyeovich Karuyev (“the applicant”), on 30 November 2012;

the decision to give notice of the application to the Russian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 23 November and 7 December 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the applicant’s conviction for spitting on a portrait of the President of Russia.

THE FACTS

2. The applicant was born in 1992 and lives in Cheboksary. He was represented by Mr A. Glukhov, a lawyer practising in Novocheboksarsk. The applicant is an activist with the Other Russia opposition party.

3. The Government were initially represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 6 May 2012, on the eve of Mr Vladimir Putin’s inauguration following his election as President of Russia, the applicant and others installed a portrait of President Putin in front of the Prime Minister Putin’s Public Reception Centre in Cheboksary. They marked his years in power in the manner of marking the years of a person’s life on a tombstone and laid two carnations at the portrait – following the Russian tradition of leaving an

even number of flowers next to the image of the deceased – to express their hope for an end to Mr Putin’s continued rule.

6. About thirty minutes into the performance, the applicant approached the portrait, picked it up and spat on it. Police officers witnessed the action without intervening.

7. Four hours after the performance, the police arrested the applicant and charged him with a minor breach of public order under Article 20.1 § 1 of the Code of Administrative Offences. The report on the administrative offence noted as follows:

“[The applicant] approached the portrait of President Putin ... and, showing flagrant disrespect for society, defiantly spat on the portrait of President Putin. The assembled citizens and passers-by witnessed the incident”.

8. On 30 May 2012 a magistrate in the Moskovskiy District in Cheboksary found the applicant guilty as charged. The magistrate held that the applicant’s conduct constituted a breach of public order because “he was holding himself arrogantly” showing “flagrant disrespect for society” in the presence of many people and “defied generally accepted standards of public behaviour and morals” by spitting “on a portrait of President Putin elected in the 4 March 2012 election”. The applicant was sentenced to a fifteen-day detention, effective immediately.

9. Counsel lodged an appeal, arguing that the applicant’s act was an expression of his political opposition to President Putin and that he should not be punished for exercising his right to freedom of expression. Relying on Article 10 of the Convention, he recalled that political speech enjoyed the highest level of protection and that the limits of criticism were much wider in respect of politicians and State officials. He stressed that the applicant would not have been sentenced to imprisonment if he had spat on a photograph of a private individual.

10. On 31 May 2012 the Moskovskiy District Court in Cheboksary dismissed the appeal, reiterating that the applicant had shown “flagrant disrespect for society which voted in general elections for its head of State, President Putin”. It added that “the form of expression should not degrade the honour and dignity of an individual, especially the honour and dignity of the popularly elected President of Russia”.

RELEVANT LEGAL FRAMEWORK

11. Article 20.1 § 1 of the Code of Administrative Offences defines a minor breach of public order (“petty hooliganism”, *мелкое хулиганство*) as “a breach of public order manifesting a flagrant disrespect for society accompanied by obscene language in a public place, offensive harassment of others, and destruction or damage to property of others”. It may be punishable with a fine or up to fifteen days’ detention.

12. The particularity of the offence of petty hooliganism lies in the fact that its *actus reus* comprises a mandatory combination of two elements. The main element, “a breach of public order manifesting a flagrant disrespect for society”, must be accompanied by one of the three additional elements, “obscene language”, “offensive harassment of others” or “destruction or damage to property of others” (see the Moscow City Court’s judgments of 4 October 2017 (case no. 7-13528/2017) and 8 June 2018 (case no. 7-7337/2018)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

13. The applicant complained of a violation of his right to freedom of expression under Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ...”

A. Admissibility

14. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

15. The applicant emphasised that the Russian authorities were not concerned about his public spitting but rather with the object of his spitting, which they referred to in every decision as “a portrait of the popularly elected President Putin”. The real purpose of the interference was to suppress any criticism of President Putin and his method of governance. By relying on judgments in which defendants were convicted of throwing excrement at others, the Government established a false equivalence between a real person and a photographic image. The applicant had not insulted or offended anyone; he had been convicted for spitting on the image of a politician he had campaigned against. He did have a history of administrative convictions, each time being punished for lawfully exercising his right to freedom of assembly.

16. The Government submitted that the interference was prescribed by law and was necessary in a democratic society for the prevention of

disorder. The applicant had breached public order and moral standards in a public and defiant manner, in front of many people. Spitting on the portrait of the President of Russia had been a form of immoral conduct rather than political expression. The applicant had been found guilty for a breach of public order, not for insulting the President of Russia. The penalty had not been excessive in the light of the applicant's history of administrative convictions. The Government attached four judgments in which defendants had been given custodial sentences for spitting or throwing excrement at others.

17. According to the Court's well-established case-law, freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". Moreover, Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204).

18. The protection of Article 10 is not limited to spoken or written word, for ideas and opinions are also capable of being communicated by non-verbal means of expression or through a person's conduct (see, among others, *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, §§ 9 *in fine* and 27, 2 February 2010, concerning the public burning of the Russian flag and of a picture of the President of Russia; *Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08, 12 June 2012, concerning a public display of dirty clothes; *Murat Vural v. Turkey*, no. 9540/07, 21 October 2014, and *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, 13 February 2020, concerning the pouring of paint on statues of historical figures; *Shvydka v. Ukraine*, no. 17888/12, 30 October 2014, concerning the detaching of a ribbon from a wreath laid by the head of State; *Sinkova v. Ukraine*, no. 39496/11, 27 February 2018, concerning the frying of eggs and sausages over the "eternal flame" at a war memorial; *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, 13 March 2018, concerning the setting of fire to an upside-down photograph of the royal couple; and *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, 15 January 2019, concerning the installing of genital-shaped sculptures on the stairs of a government office).

19. In deciding whether a certain act or conduct falls within the ambit of Article 10 of the Convention, the Court must consider the nature of the act or conduct in question, in particular its expressive character as seen from an objective point of view, and also the purpose or the intention of the person

performing the act or carrying out the conduct in question (see *Murat Vural*, cited above, § 54).

20. The Court considers that the act of spitting on a photograph of a politician in the wake of his re-election should be considered an expression of political opinion (see *Shvydka*, cited above, § 38). It is furthermore not in doubt that the applicant's conviction of a minor breach of public order in relation to that act and the ensuing fifteen days' imprisonment amounted to interference with his right to freedom of expression (see *Cholakov v. Bulgaria*, no. 20147/06, § 25, 1 October 2013). The interference will constitute a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in Article 10 § 2 and is "necessary in a democratic society" to achieve those aims.

21. On the issue whether the interference was "prescribed by law", the Court notes that Article 20.1 § 1 of the Code of Administrative Offences (CAO) under which the applicant was prosecuted requires – consistent with its plain language and its application in national jurisprudence (see paragraph 12 above) – the establishment of a mandatory combination of two elements relating to the offender's conduct. The main element, "a breach of public order manifesting a flagrant disrespect for society", must be accompanied by at least one of the three additional elements including "obscene language", "offensive harassment of others" or "destruction or damage to property of others" (see paragraphs 11 and 12 above).

22. However, on the facts, the Court finds no indication to regard the performance in which the applicant took part as other than essentially peaceful and non-violent. The domestic authorities produced no evidence that the performance punished as "petty hooliganism" caused or was likely to cause any public disturbances or violence; or that the act of spitting on the portrait provoked any outrage, indignation or negative comments from passers-by. As it happened, the police officers present at the scene saw no reason to intervene at any point in time during the performance, including when they witnessed the applicant spitting on the portrait (see paragraph 6 above) and the applicant was not arrested until four hours after the end of the performance.

23. The Court further notes that the domestic courts did not specify the factual and legal basis for concluding that the applicant's act led to any public disturbance or that he used foul language, harassed anyone or damaged property of others during the performance.

24. In these circumstances, the Court is not satisfied that the specific elements of an offence under Article 20.1 § 1 of the CAO have been shown to exist. Accordingly, the applicant's prosecution under that provision cannot be said to have had a clear and foreseeable basis in domestic law (compare *Steel and Others v. the United Kingdom*, 23 September 1998, §§ 64 and 110, *Reports of Judgments and Decisions* 1998-VII, and, by contrast, *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003).

25. As the applicant's conviction under Article 20.1 § 1 of the CAO was found to be incompatible with the lawfulness requirement, the Court does not need to consider whether the interference pursued any legitimate aim and was "necessary in a democratic society".

26. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

28. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,400 in respect of legal costs.

29. The Government submitted that the claims were excessive, that the applicant had not produced receipts, and that the legal-services contract provided for payment to be made after delivery of the Court's judgment.

30. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. It further notes that the applicant is legally liable to pay a fee for legal services. The stipulation in the legal-services contract that fees are payable after the judgment has been issued determines the date on which they become due rather than the issue whether or not they are due. This arrangement is distinct from a conditional fee which is payable only if the application is successful or if the Court makes an award (see *MGN Limited v. the United Kingdom*, no. 39401/04, § 90, 18 January 2011). The Court is satisfied that the expenses were actually and necessarily incurred and also reasonable as to quantum and awards the amount claimed to the applicant, plus any tax that may be chargeable to him.

31. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by six votes to one,
- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Pavli;
- (b) dissenting opinion of Judge Dedov.

G.R.
M.B.

CONCURRING OPINION OF JUDGE PAVLI

1. The Court has found a violation of the applicant’s Article 10 rights on the ground that the interference was not “prescribed by law”. While I agree with that conclusion, I regret that the Chamber did not go on to consider the question of necessity in a democratic society, which in my view would have been justified by compelling reasons in this case.

2. It is an established principle of our jurisprudence that symbolic or other speech that may be offensive to senior political figures, including heads of State, is protected by Article 10 of the Convention (see in particular *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, 13 March 2018, which involved the burning of a large, upside-down portrait of the Spanish royal couple during an anti-monarchist protest against their official visit to Girona; and *Eon v. France*, no. 26118/10, 14 March 2013, involving an applicant who was fined thirty euros for holding up an insulting and slightly obscene sign during a rally attended by the incumbent French president).

3. The current applicant, in contrast, was given a 15-day prison sentence for spitting at a photograph of the Russian president-elect, as part of a political street performance held on the eve of the presidential inauguration. Unlike in the Spanish and French cases cited above, the president-elect was nowhere in the vicinity. There is no indication that the largely satirical protest attracted a large audience or that it led to any breach of public order; in fact, the police did not intervene in any fashion during the event and the applicant was arrested several hours later at his home. This makes the offence, in my view, no more than a crime of political opinion.

4. It was not very long ago that people in the Eastern half of Europe were sent to labour camps simply for telling disrespectful jokes about Politburo members. One hopes that those days will be a thing of the past, considering the high price that has been paid for the right to disapprove of our political leaders. The Chamber has chosen today not to go beyond the more formal finding of a breach of the legality principle. I wish it had provided a more robust message and maintained the principled position of our case-law that, in a European democracy, political leaders are not immune to criticism or even ridicule – and respect for their person or office should not be founded on a threat of imprisonment.

DISSENTING OPINION OF JUDGE DEDOV

I regret that I am unable to agree with the majority in finding a violation of Article 10 in the present case. I believe that any opinion should be expressed respectfully. This principle is universal and fundamental. It covers everything – from codes of judicial ethics to political debate – in order to prevent civil confrontation and to maintain a peaceful atmosphere in society. It applies to politics in general and to elections in particular. It applies to expression through conduct or through verbal value judgments.

I previously expressed my opinion in the case of *Magyar Kétfarkú Kutya Párt v. Hungary* (no. 201/17, 20 January 2020), where I referred to the relevant case-law of the Court. The present case is again about showing disrespect for the democratic decision-making process in an insulting manner close to hate speech, so the authorities' reaction was lawful, adequate and foreseeable by the applicant.

In my view it was not just a small political performance (due to an allegedly limited number of observers in the street), because if such a performance is filmed and disseminated via the Internet and social media, in the digital age it may become influential and thus powerful.

State officials, whether elected by the majority or appointed to public office, are human beings, and they deserve respectful treatment, even though members of society have the right to criticise them for their actions. Such officials are also members of society, and the Court, in acting as a guardian of responsible expression of opinion, preserves the fragile peace in society, especially between those in power and those in opposition, between the majority and the minority. The performance in question was disrespectful towards a State official, but every person – everybody's personal dignity – deserves to be respected regardless of civil status. This is why Article 10 of the Convention protects the rights of others and allows a limitation of freedom of expression.