

Press release issued by the Registrar

**CHAMBER JUDGMENT
KARMAN v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Karman v. Russia* (application no. 29372/02).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights, and that there was no need for a separate examination of the complaint under Article 6 § 1 (right to a fair hearing) of the Convention.

Under Article 41 (just satisfaction), the Court awarded the applicant 1,000 euros (EUR) for non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The applicant, Anatoliy Vladimirovich Karman, is a Russian national who was born in 1957 and lives in Volgograd (Russia). He is the director-general and editor-in-chief of the newspaper *Gorodskiye Vesti*.

In September 1994 the applicant published an article under the headline “In a Blind Frenzy” (“*V slepom ugare*”). In the article the author gave his personal account of talking to a partisan of the Russian National Unity movement whom he had heard speak at a meeting organised by Mr Terentyev, who he described as “the local neofascist”. The woman was aggrieved by her precarious living conditions, resulting from the profound social and economic changes in Russia, and blamed the worsening of her situation on Jews. She confessed to being an avid reader of Mr Terentyev’s newspaper, *Kolokol*, also criticised in the piece. The article concluded with the applicant’s analysis of the current political situation, critical of social parasitism and witch-hunting.

Mr Terentyev successfully brought proceedings before Sovetskiy District Court of Volgograd for defamation against the applicant and his newspaper concerning the description of him as a “neofascist”. The applicant appealed.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

His appeal was supported by the Sovetskiy district prosecutor who submitted, in particular, that the Volgograd regional prosecutor had opened a criminal investigation on charges of incitement of ethnic hatred by the *Kolokol* newspaper.

The applicant also asked the court to examine ten issues of the *Kolokol* newspaper and compile an expert report and requested that the proceedings be adjourned pending investigation of the criminal case against Mr Terentev. His request was refused, the court finding that such a study was not necessary, preferring to rely on the expert reports made during the criminal proceedings against Mr Terentyev.

The criminal proceedings were later discontinued, the court finding that Mr Terentyev's actions lacked the constituent elements of a criminal offence.

On 10 August 2001 Sovetskiy District Court of Volgograd gave a new judgment in the defamation case. It found that being designated a "neofascist" was defamatory for Mr Terentyev as a public figure and the son of the Second World War veteran. As Mr Terentyev was not a member of any neofascist party and the criminal charge of incitement to ethnic hatred was not maintained against him, they held the applicant responsible for having failed to prove the truthfulness of that expression.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 28 May 2002.

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

Peer **Lorenzen** (Danish), *President*,
Snejana **Botoucharova** (Bulgarian),
Karel **Jungwiert** (Czech),
Rait **Maruste** (Estonian),
Anatoli **Kovler** (Russian),
Javier **Borrego Borrego** (Spanish),
Renate **Jaeger** (German), *judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant relied on Article 10 and Article 6 § 1 of the Convention.

Decision of the Court

Article 10

¹ This summary by the Registry does not bind the Court.

The Court noted that the subject matter of the publication at issue was part of a political debate on a matter of general and public concern, and that very pressing reasons would need to be given to justify any restriction.

The Court could not subscribe to the narrow definition of the term “neofascist” adopted by the Russian courts, as solely designating membership of a neo-fascist party. It particularly noted in that respect that, according to the regional prosecutor, the publications in Mr Terentyev's newspaper targeted the Jewish religion and symbols, describing them in an inimical way, and propagated fallacious stories about the “world Jewish masonry”. Against that background, the Court considered that the term “local neofascist”, should be understood in the sense given to it by the applicant, namely describing a general political affiliation with the ideology of racial distinctions and anti-Semitism.

Contrary to the view of the Russian courts, the Court considered that the term “local neofascist” was to be regarded as a value-judgment rather than a statement of fact. The Court reiterated that it had constantly held that, while the existence of facts could be demonstrated, the truth of value judgments was not susceptible of proof. The requirement to prove the truth of a value judgment was impossible to fulfil and infringed freedom of opinion itself. Nevertheless, even a value-judgment without any factual basis to support it might be excessive. The Court however noted that the applicant offered documentary evidence, including the past issues of the *Kolokol* newspaper published by Mr Terentyev and several reports by independent experts. Having examined those publications, the experts unanimously found that they were anti-Semitic in nature and that their ideals were similar to those of National Socialism.

In the Court's view, that material might have been relevant when proving that the value-judgment expressed by the applicant had been an acceptable comment. Apart from that documentary evidence, the applicant also proposed that a further expert opinion be sought. The domestic courts, however, refused to consider that evidence and relied instead on a study carried out in the criminal proceedings against Mr Terentyev on the charge of incitement to ethnic hatred. The Court was struck by the inconsistent approach of the Russian courts, on the one hand, requiring proof of a statement, and, on the other hand, refusing to consider the readily available evidence. It further recalled that the degree of precision for establishing the well-foundedness of a criminal charge by a competent court could hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, for the standards applied when assessing someone's political opinions in terms of morality were quite different from those required for establishing an offence under criminal law.

In the light of those considerations and taking into account the role of a journalist and the press to impart information and ideas on matters of public concern, even those that might offend, shock or disturb, the Court found that the use of the term “local neofascist” to describe Mr Terentyev's political leaning did not exceed the acceptable limits of criticism.

The Court found that the standards applied by the Russian courts were not compatible with the principles embodied in Article 10 since they did not adduce “sufficient” reasons justifying the interference at issue. It therefore considered that the interference was disproportionate to the aim pursued and was not necessary in a democratic society and held unanimously that there had been a violation of Article 10

Article 6 § 1

In view of its finding under Article 10, the Court held that it was not necessary to consider those matters again from the standpoint of Article 6.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.