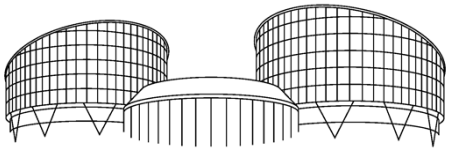

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SAVVA TERENTYEV v. RUSSIA

(Application no. 10692/09)

JUDGMENT

STRASBOURG

28 August 2018

FINAL

04/02/2019

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

In the case of Savva Terentyev v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Jolien Schukking,
María Elósegui, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 3 July 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10692/09) 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 Savva Sergeyevich Terentyev ("the applicant"), on 5 January 2009.

2. The applicant was represented by Mr V. Kosnyrev, a lawyer practising in Syktyvkar. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by Mr V. Galperin, his successor in that office.

3. The applicant alleged, in particular, that his criminal conviction for a comment on the Internet had violated his right to freedom of expression under Article 10 of the Convention.

4. On 7 January 2016 the Government were given notice of the complaint under Article 10 and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and lives in Steiermark in Austria.

6. At the relevant period the applicant lived in Syktyvkar in the Komi Republic of Russia and had a blog hosted by livejournal.com, a popular blog platform.

A. Background to the case

7. In February 2007 an election campaign for election of members of the regional legislature was under way in the Komi Republic.

8. On 14 February 2007 the police arrived with an "unplanned inspection" (*внеплановая проверка*) at the office of a local newspaper in Syktyvkar. The police searched the office, stated that the software installed on the computers was counterfeit, and seized the hard disks.

9. Later that day, a regional non-governmental organisation – the Memorial Human Rights Commission in Komi ("Memorial") – issued a press release which linked the search to the election campaign. The press release mentioned, in particular, that the newspaper in question had published a large amount of material in the context of the election campaign, and that it was in opposition to the current authorities of the Komi Republic, as it actively supported a well-known local politician who had a long-standing conflict with those authorities. The press release also stated that the police officers who had carried out the search had not clearly explained what the legal basis for their actions had been, and that one of them had acted rudely and had thrown out some of the journalist's belongings to get access to the latter's computer during that search.

10. On the same day, the President of Memorial, Mr I.S., published the text of that press release on his blog at livejournal.com. Three comments were left under that publication on that day. One of the comments was left by a certain Mr T. and read as follows:

> "The police, once again, confirm their reputation as 'the regime's faithful dogs'. Unfortunately, police officers still have the mentality of a repressive hard stick in the hands of those who have the power. It feels like they are an instrument of punishment of the recalcitrant rather than being a service to society. What can be done to carry out a rotation of meanings (*ротация смыслов*) in the law-enforcement agencies?"

11. On the same date Mr B.S., a journalist, blogger and the applicant's acquaintance, made a short post on his blog at livejournal.com about the search, stating that the police "[were] seconded for a fight with the political opposition". The post contained a hyperlink to the press release published on Mr I.S.'s blog.

B. The applicant's comment

12. On 15 February 2007 the applicant, who was a subscriber to Mr B.S.'s blog, read his above-mentioned post and then accessed Mr I.S.'s blog using the hyperlink. The applicant read the text of the press release and

the comments, including the one left by Mr T. In the applicant's words, this latter comment made a particularly strong impression on him.

13. He then returned to Mr B.S.'s blog and posted a comment which was entitled "I hate the cops, for fuck's sake" ("Ненавижу ментов, сцуконах") and read as follows:

> "I disagree with the idea that 'police officers still have the mentality of a repressive hard stick in the hands of those who have the power'. Firstly, they are not police officers but cops; secondly, their mentality is incurable. A pig always remains a pig. Who becomes a cop? Only lowbrows and hoodlums – the dumbest and least educated representatives of the animal world. It would be great if in the centre of every Russian city, on the main square ... there was an oven, like at Auschwitz, in which ceremonially every day, and better yet, twice a day (say, at noon and midnight) infidel cops would be burnt. The people would be burning them. This would be the first step to cleansing society of this cop-hoodlum filth."

C. Criminal proceedings against the applicant

1. Preliminary investigation

14. On 14 March 2007 criminal proceedings were brought against the applicant under Article 282 § 1 of the Russian Criminal Code in connection with his comment on the Internet.

15. On 16 March 2007 the police searched the applicant's home in the context of those proceedings. On the same day the applicant, who had found out the reasons for the criminal case against him, removed his comment.

16. A report of 30 April 2007, reflecting the results of an examination carried out during the preliminary investigation, provided a detailed analysis of the language of the applicant's comment. It stated, in particular, that in the text its author had expressed a distinctly negative opinion about all police officers, their personal and professional qualities, in a gross, indecent, aggressive and insulting form, widely using slang and, indirectly, obscene vocabulary typical of young users of the Internet.

2. Proceedings before the courts

(a) Proceedings before the first-instance court

17. In the proceedings before the Syktyvkar Town Court of the Komi Republic ("the Town Court"), the applicant pleaded not guilty. He conceded that he had been the author of the impugned statement, and argued that it had represented his emotional and spontaneous reaction to the press release of Memorial regarding the police search at the office of an opposition newspaper and to Mr B.S.'s relevant post and Mr T.'s comment. In the applicant's words, for him there was a distinction between a "police officer", that is to say an honest and respectable law-enforcement officer, and a "cop", that is to say someone who acted unlawfully and abusively

when performing professional duties. In his comment the applicant had expressed his disagreement with Mr T., who, in the applicant's view, had confused those two notions. The applicant also insisted that his comments had been exclusively addressed to Mr B.S. with whom he had shared his thoughts regarding the police operation of 14 February 2007, and that he had had no intention of making it public, let alone calling for any actions against the police. The applicant further conceded that his comment had been quite provocative, but insisted that he had used exaggeration, in particular, referred to "an oven, like at Auschwitz", only to express an idea that "infidel" police officers should be severely punished. Lastly, he apologised to former prisoners of Nazi concentration camps and to "honest" police officers, who may have felt offended by his comment.

18. The Town Court called and examined a large number of witnesses. In particular, three police officers, who had conducted a pre-investigation inquiry in connection with the applicant's comment on the Internet, stated that they had not seen it as directed against only "infidel" police officers; in their view, it had related to all police officers, had ascribed negative characteristics to them and had proposed to incinerate them in public. Mr B.S. stated that, in his view, the applicant's comment had drawn a distinction between honest police officers and "infidel cops" and had only related to the latter category. Some of the witnesses stated that they had seen the applicant's comment in Mr B.S.'s blog, whereas others stated that they had only become aware of the comment or read it after the criminal proceedings had been instituted against the applicant and his case had attracted the attention of the mass media. Some of the witnesses stated that they considered the applicant's comment and the expressions used therein to be too harsh, and the word "lowbrows" to be immoral or unethical. Mr I.S. pointed out that "the bloggers' community", including his own acquaintances, had been indignant at the applicant's comment which they had considered to be too strongly-worded; however, in that witness's view, the applicant had merely expressed his opinion and had started a public discussion on an important issue. Another witness stated that he had not taken the applicant's comment seriously, let alone seen it as calling for any violent action.

19. At the request of the parties, the first-instance court ordered that a comprehensive socio-humanities forensic expert examination of the impugned text be carried out by a commission of experts.

20. The expert report of 19 June 2008, reflecting the results of that examination, stated, in particular, that the applicant had targeted police officers as a "social group" and that his comment had "aimed at inciting hatred and enmity" towards this group and had "called for their physical extermination".

(b) Judgment of 7 July 2008

21. On 7 July 2008 the Town Court found the applicant guilty under Article 282 § 1 of the Russian Criminal Code for "having publicly committed actions aimed at inciting hatred and enmity and humiliating the dignity of a group of persons on the grounds of their membership of a social group". The court based its findings on, among other evidence, the expert reports of 30 April 2007 and 19 June 2008, stating that it had no reasons to doubt the experts' conclusions as those were consistent with the circumstances of the case as established by the court.

22. The court stated, in particular, that the applicant, acting out of his personal aversion towards police officers, "[had] decided to influence the public with the aims of inciting them to commit violent actions against police officers, of instilling the public with the resolve and aspiration to commit unlawful actions in respect of [the police officers]". According to the court, "the police officers of Russia [were] a large social group – people united by their common activity in protecting the life, health, rights and liberties of people, property, public and State interests from crimes and offences". It also noted that the applicant "[had been] aware of the illegal nature of his actions when he [had] published his text aimed at inciting enmity and hatred, imbued with hostility, hatred and humiliation of the dignity of the police officers of Russia... on a more popular Internet blog than his own ... and thus [he had] made it accessible to a larger readership" and that "... access to the text [had been] unrestricted and it [had] remained accessible ... for approximately one month ..."

23. The Town Court went on to note that the impugned text had been generalised and impersonal and had drawn no distinctions on any grounds; the word "cop" had been used with a negative and insulting meaning. According to the Town Court, the applicant had "argued that the police officers' [had been] inferior on account of their professional grouping", had humiliated their dignity by comparing them with "pigs" and ascribing to them the humiliating characteristics of "lowbrows and hoodlums – the dumbest and most uneducated representatives of the animal world ..." and "cop-hoodlum filth".

24. In the court's view, the applicant "negatively [influenced] public opinion with the aim of inciting social hatred and enmity, escalating social conflict and controversy in society and awakening base instincts in people" and "[set] the community against police officers in calling for [their] physical extermination by ordinary people". According to the trial court, "the text [did] not allow for any ambiguous interpretation of [its] content and meaning, because it [was] understandable to any average native speaker of Russian who [had] basic oral and written language skills".

25. The Town Court also found that the impugned text could not be viewed as a criticism, as it had not been intended as a discussion of any shortcomings or as an analysis or assessment of something specific.

26. Lastly, the court considered that "the crime committed by [the applicant was] particularly blatant and dangerous for national security [as] it [ran] against the fundamentals of the constitutional system and State security", with the result that a sentence involving the deprivation of liberty should be imposed on the applicant. Given the applicant's positive references at the place of residence and work and the absence of a criminal record, the court considered it appropriate to give the applicant a suspended sentence of one year's imprisonment.

(c) Appeal proceedings

27. The applicant appealed against the conviction. He pleaded, in particular, that the trial court had deliberately extended the scope of the term "social group" to encompass police officers and that it had not been shown that his statement had, indeed, posed a danger to society.

28. On 19 August 2008 the Supreme Court of the Komi Republic rejected the applicant's appeal and endorsed the Town Court's conclusions. It also found that the experts had acted within the scope of their competence, and that the applicant's allegation of a loose interpretation of the term "social group" had not affected the objectivity of the first-instance court's findings. The appellate court added that the applicant's statement had not been concerned with any criticism of the law-enforcement bodies but had publicly called for violence against police officers.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Russia

29. Article 29 of the Constitution of Russia states as follows:

> "1. Freedom of thought and speech shall be guaranteed to everyone.
>
> 2. Propaganda or agitation inciting social, racial, national or religious hatred and enmity shall not be allowed. Propaganda of social, racial, national, religious or linguistic supremacy shall be prohibited.
>
> 3. Nobody can be forced to express [her or his] views and convictions or to renounce them.
>
> 4. Everyone shall have the right freely to seek, receive, transmit, produce and disseminate information by any lawful means. The list of [items of] information which constitute State secrets shall be established by a federal law.
>
> 5. Freedom of mass communication shall be guaranteed. Censorship shall be prohibited."

B. Criminal Code

30. Article 282 of the Criminal Code of Russia ("the Criminal Code"), as in force at the relevant time, read as follows:

> "1. Actions aimed at inciting hatred or enmity and humiliating the dignity of an individual or a group of individuals on the grounds of gender, race, ethnic origin, language, background, religious beliefs or membership of a social group, committed publicly or through the mass media, shall be punishable by a fine of 100,000 to 300,000 Russian roubles [RUB], or an amount equivalent to the convicted person's wages or other income for a period of one to two years, by withdrawal of the right to hold certain posts or carry out certain activities for a period of up to three years, by compulsory labour of up to 180 hours or by correctional labour of up to one year, or by a deprivation of liberty of up to two years ..."

C. Court practice

31. On 22 April 2010 the Constitutional Court of Russia declared inadmissible a complaint about the vagueness and unforeseeability of the term "social group" as defined by Article 282 § 1 of the Criminal Code (decision no. 564-O-O of 22 April 2010). The relevant part of the decision read as follows:

> "... Article 282 of the Criminal Code of Russia punishes actions aimed at inciting hatred or enmity, as well as the humiliation of human dignity. This provision ... guarantees recognition and respect for human dignity regardless of any physical or social attributes, and establishes criminal liability only for actions committed with direct intent and aimed at inciting hatred or enmity, as well as the humiliation of dignity of an individual or a group of individuals. Therefore this legal provision does not lack foreseeability and may not be considered as breaching the applicant's constitutional rights."

32. On 28 June 2011 the Supreme Court of Russia adopted resolution no. 11 on Court Practice in respect of Criminal Cases concerning Criminal Offences of Extremist Orientation (*Постановление Пленума Верховного суда РФ от 28 июня 2011 г. № 11 «О судебной практике по уголовным делам о преступлениях экстремистской направленности»*). In particular, its paragraph 7 provided that actions aimed at inciting hatred or enmity were to be understood as comprising statements vindicating and/or affirming the necessity of genocide, mass repressions, deportations and other illegal actions, including the use of violence, in respect of representatives of a certain nationality, race, followers of a certain religion and other groups of individuals. Criticism of political organisations, ideological and religious associations, political, ideological and religious convictions, national and religious customs, should not, as such, be regarded as an action aimed at inciting hatred or enmity.

33. Paragraph 23 of the same resolution stated that when ordering a forensic expert examination in cases concerning a criminal offence of extremist orientation, experts should not be asked legal questions falling

outside their competence and involving an assessment of an impugned act, the resolution of such questions being exclusively within a court's competence. In particular, experts should not be requested to answer questions as to whether a text contains calls for extremist activity, or whether documentary material is aimed at inciting hatred or enmity.

III. RELEVANT INTERNATIONAL INSTRUMENTS AND MATERIALS

A. United Nations

1. Human Rights Council

34. The relevant parts of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted in accordance with Human Rights Council resolution 16/4, A/67/357, of 7 September 2012 read as follows:

> "46. While some of the above concepts may overlap, the Special Rapporteur considers the following elements to be essential when determining whether an expression constitutes incitement to hatred: real and imminent danger of violence resulting from the expression; intent of the speaker to incite discrimination, hostility or violence; and careful consideration by the judiciary of the context in which hatred was expressed, given that international law prohibits some forms of speech for their consequences, and not for their content as such, because what is deeply offensive in one community may not be so in another. Accordingly, any contextual assessment must include consideration of various factors, including the existence of patterns of tension between religious or racial communities, discrimination against the targeted group, the tone and content of the speech, the person inciting hatred and the means of disseminating the expression of hate. For example, a statement released by an individual to a small and restricted group of Facebook users does not carry the same weight as a statement published on a mainstream website. Similarly, artistic expression should be considered with reference to its artistic value and context, given that art may be used to provoke strong feelings without the intention of inciting violence, discrimination or hostility.
>
> 47. Moreover, while States are required to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence under article 20 (2) of the Covenant, there is no requirement to criminalize such expression. The Special Rapporteur underscores that only serious and extreme instances of incitement to hatred, which would cross the seven-part threshold, should be criminalized."

2. Committee on the Elimination of Racial Discrimination

35. The relevant part of General Recommendation No. 35, Combating Racist Hate Speech, of 12 September 2011 reads as follows:

> "20. The Committee observes with concern that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention [on the Elimination of All Forms of Racial Discrimination]. States parties

should formulate restrictions on speech with sufficient precision, according to the standards in the Convention as elaborated in the present recommendation. The Committee stresses that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition."

B. Council of Europe

1. Committee of Ministers Recommendation No. R (97) 20

36. On 30 October 1997 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (97) 20 on "hate speech" and the appendix thereto. The recommendation originated in the Council of Europe's desire to take action against racism and intolerance and, in particular, against all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance.

37. An appendix to that recommendation defined "hate speech" as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin". It went on to lay down a number of principles that applied to hate speech. The relevant ones were:

Principle 2

"The governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.

To this end, governments of member states should examine ways and means to:

– stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;

– review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;

– develop a co-ordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation;

– add community service orders to the range of possible penal sanctions;

– enhance the possibilities of combating hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;

– provide the public and media professionals with information on legal provisions which apply to hate speech."

Principle 3

"The governments of the member states should ensure that in the legal framework referred to in Principle 2, interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others."

...

Principle 5

"National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality."

2. General Policy Recommendation No. 15 of the European Commission against Racism and Intolerance

38. On 8 December 2015 the Council of Europe's European Commission against Racism and Intolerance (ECRI) adopted General Policy Recommendation No. 15 on combating hate speech. In its relevant parts, the recommendation reads as follows:

"The European Commission against Racism and Intolerance (ECRI):

...

Considering that that hate speech is to be understood for the purpose of the present General Policy Recommendation as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status;

...

Recognising also that forms of expression that offend, shock or disturb will not on that account alone amount to hate speech...

...

Aware of the grave dangers posed by hate speech for the cohesion of a democratic society, the protection of human rights and the rule of law but conscious of the need to

ensure that restrictions on hate speech are not misused to silence minorities and to suppress criticism of official policies, political opposition or religious beliefs;

...

Recalling that the duty under international law to criminalise certain forms of hate speech, although applicable to everyone, was established to protect members of vulnerable groups and noting with concern that they may have been disproportionately the subject of prosecutions or that the offences created have been used against them for the wrong reasons;

...

Recommends that the governments of members States:

...

10. take appropriate and effective action against the use, in a public context, of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it through the use of the criminal law provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected, and accordingly:

a. ensure that the offences are clearly defined and take due account of the need for a criminal sanction to be applied;

...

c. ensure that prosecutions for these offences are brought on a non-discriminatory basis and are not used in order to suppress criticism of official policies, political opposition or religious beliefs;

...

e. provide penalties for these offences that take account both of the serious consequences of hate speech and the need for a proportionate response...”

39. The Explanatory Memorandum to the recommendation, in its relevant parts, provides as follows:

“16. ... the assessment as to whether or not there is a risk of the relevant acts occurring requires account to be taken of the specific circumstances in which the hate speech is used. In particular, there will be a need to consider (a) the context in which the hate speech concerned is being used (notably whether or not there are already serious tensions within society to which this hate speech is linked): (b) the capacity of the person using the hate speech to exercise influence over others (such as by virtue of being a political, religious or community leaders); (c) the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination); (d) the context of the specific remarks (whether or not they are an isolated occurrence or are reaffirmed several times and whether or not they can be regarded as being counter-balanced either through others made by the same speaker or by someone else, especially in the course of a debate); (e) the medium used (whether or not it is capable of immediately bringing about a response from the audience such as at a “live” event); and (f) the nature of the audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination).

...

62. ... there is also concern on the part of bodies responsible for supervising the implementation of States' obligations in this regard that such restrictions can be unjustifiably to silence minorities and to suppress criticism, political opposition and religious beliefs.

63. Thus, for example, the Committee on the Elimination of Racial Discrimination, when reviewing reports of States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination, has recommended that the definitions in legislation directed against 'extremism' be amended so as to ensure that they are clearly and precisely worded, covering only acts of violence, incitement to such acts, and participation in organizations that promote and incite racial discrimination, in accordance with Article 4 of that Convention. Similarly, the United Nations Human Rights Committee has expressed concern that such legislation could be interpreted and enforced in an excessively broad manner, thereby targeting or disadvantaging human rights defenders promoting the elimination of racial discrimination or not protecting protect individuals and associations against arbitrariness in its application. In addition, concerns about the use of hate speech restrictions to silence criticism and legitimate political criticism have also been voiced by ECRI and others such as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Advisory Committee on the Framework Convention on National Minorities".

C. Organisation for Security and Co-operation in Europe

40. On 9 March 2009 the OSCE Office for Democratic Institutions and Human Rights ("the ODIHR") published *A Practical Guide on Hate Crime Laws*, in which it made the following observations on the possible scope of victim attributes in hate-crime law (pp. 45-46):

"If a law includes characteristics that are not immutable or in some manner essential to a person's sense of self and shared by persons who as a group have experienced discrimination, exclusion or oppression, it can be discredited as a hate crime law. Further, it can fail to protect those groups which are in fact victimized. People protected under the term "social group" might include members of the police or politicians, neither of whom is typically perceived as an oppressed group or as sharing fundamental bonds of identity. Indeed, if a law includes protected characteristics that are too far away from the core concept of hate crime it may no longer be seen as a hate crime law.

Further, the legal concept of certainty requires that a person be able to reasonably foresee the criminal consequences of his or her actions. The concept of legal certainty is reflected in both domestic laws in the OSCE region and regional and international human rights instruments. A law that imposes increased penalties but is unclear about the circumstances in which those penalties will be applied is likely to fail this fundamental test."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

41. The applicant complained that his criminal conviction for a comment on the Internet had violated his right to freedom of expression, as provided in 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 and regardless of frontiers...
>
> 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. Submissions by the parties

1. The applicant

42. The applicant argued that his conviction had constituted an unjustified interference with his right to freedom of expression. In particular, in the applicant's view, the interference in question could not be said to have been "prescribed by law", as it had been the result of an unforeseeable application of Article 282 of the Russian Criminal Code. He insisted that the said Article had been designed to protect national, racial, linguistic and religious minorities as well as representatives of the most vulnerable social groups, such as, for instance, homosexuals, and that extending its provisions to encompass the police as a social group had amounted to an abusive application of that Article and went beyond what may have reasonably be expected. According to the applicant, his criminal prosecution had been one of the first cases where the notion "social group" had been interpreted by the domestic courts as including civil servants.

43. He also argued that his criminal prosecution and conviction under the above-mentioned provision had been the result of its selective and arbitrary application, as a number of public figures, such as famous Russian pop-musicians, who at the relevant period had publicly performed songs with much more explicit and offensive texts regarding the police, had never been prosecuted under that provision.

44. The applicant further argued that the interference complained of was not "necessary in a democratic society". He insisted, in particular, that his comment had been directed against dishonest and corrupt police officers whom he had called "infidel cops" in his text and had not targeted all Russian police officers. He pointed out that there had been valid grounds for

his criticism given numerous articles in the mass media, including in newspapers, exposing various abuses committed by law-enforcement officers.

45. The applicant pointed out that his comment had been written spontaneously and had been the result of his sudden reaction to the topic raised by the relevant discussion. He further argued that he had never meant it to look as an appeal to violence against police officers. In his words, he mentioned "ceremonial burning" of the "infidel cops" in a metaphoric, figurative sense; it was hyperbole by which he had intended to express an idea that corrupt police personnel should be held responsible and that society must have zero tolerance in respect of their abuses and excesses. At the same time, the applicant conceded that the reference to Auschwitz and allusion to the practices used by the Nazis had been particularly inappropriate; he pointed out that he sincerely regretted having used that reference.

46. He also argued that his comment had posed no public danger. He had posted it on a blog with a small readership and, prior to the institution of the criminal proceedings against him, it had been read by twenty-five Internet users at most, and that none of those had apparently regarded it as a call for violence against the police.

2. The Government

47. The Government insisted that the interference with the applicant's right to freedom of expression had been justified under Article 10 § 2 of the Convention. In particular, it pursed the legitimate aim of protecting Russian police officers' reputation and rights and was "necessary in a democratic society". In the latter connection, the Government pointed out that the applicant had been found criminally liable for publication on the Internet of a text with a direct intent of an incitement of hatred and enmity and humiliation of the dignity of a group of persons – police officers. The said text had been published on a blog with unrestricted access, with the result that any Internet user could read it.

48. The Government further quoted the findings of the expert reports of 30 April 2007 and 19 June 2008 in so far as those had stated that the applicant's comment had been insulting and humiliating in respect of the police officers as a group; that it had influenced public opinion by imposing negative ideas regarding police officers with the aim of stirring up social enmity, escalating social conflict and aggravating contradictions in society. The Government also referred to the witness statements of three police officers, who had pointed out at the trial that they had perceived the impugned text as insulting and targeting all police officers indiscriminately rather than only the "dishonest" ones. The Government also pointed out that some other witnesses had stated that a number of bloggers had been "outraged" by the applicant's comment and had considered it to be

extremely harsh (see paragraph 18 above). The Government thus argued that, in view of the adduced evidence, the domestic courts had been justified in their finding that the applicant's comment could not have been regarded as a criticism of law-enforcement agencies, even expressed in a harsh form, but had aimed at inciting hatred and enmity as it had humiliated the dignity of the police officers as a group and had publicly called for violence against them.

49. The Government also argued that the impugned comment had been a "pure harsh abuse of police officers" and had not contributed to any public discussion. They stressed that the applicant's comment had been generalised, aggressive and aimed at turning a reader against a specific social group – police officers, and therefore the applicant's actions had undoubtedly posed a danger to society. In their view, the authorities' tolerance of such abusive expressions in respect of representatives of law-enforcement agencies could undermine the latter's authority and encourage the public to disregard them and disobey their orders. They furthermore pointed out that the relevant national legislation had conferred on the applicant the right to complain about any actions or omissions of a police officer if he considered that his rights or interests had been breached by such actions or omissions; however, he had never lodged any such complaints but had chosen instead to resort to a public appeal to have police officers physically exterminated.

50. The Government further pointed out that the applicant had been sentenced to a suspended term of one year's imprisonment, and contended that the penalty imposed could not regarded as disproportionate.

B. The Court's assessment

1. Admissibility

51. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

52. The parties agreed that there had been an "interference" with the applicant's exercise of his freedom of expression on account of his conviction. Such interferences infringe Article 10 of the Convention unless they satisfy the requirements of paragraph 2 of that provision. It thus remains to be determined whether the interference was "prescribed by law", pursued one or more legitimate aims as defined in that paragraph and was "necessary in a democratic society" to achieve those aims.

(a) "Prescribed by law"

53. In the present case, it was not in dispute that the applicant's conviction had a basis in national law – Article 282 § 1 of the Russian Criminal Code – and that the relevant provision was accessible. Rather, the applicant called into doubt the foreseeability of that provision as applied by the domestic courts, arguing that his conviction under the above-mentioned provision for his comment on the Internet had gone beyond what could reasonably have been expected (see paragraphs 42 above).

54. The Court reiterates its settled case-law, according to which the expression "prescribed by law" requires that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, which should be accessible to the persons concerned and foreseeable as to its effects, that is formulated with sufficient precision to enable the persons concerned – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct (see, among many other authorities, *Öztürk v. Turkey* [GC], no. 22479/93, § 54, ECHR 1999-VI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; and *Dilipak v. Turkey*, no. 29680/05, § 55, 15 September 2015). Those consequences need not be foreseeable with absolute certainty, as experience shows that to be unattainable (see, as a recent authority, *Perinçek v. Switzerland* [GC], no. 27510/08, § 131, ECHR 2015 (extracts)).

55. The Court has consistently recognised that laws must be of general application with the result that their wording is not always precise. It is true that the need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. The interpretation and application of such enactments depend on practice (see, for instance, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 64, ECHR 2004-I, and *Altuğ Taner Akçam v. Turkey*, no. 27520/07, § 87, 25 October 2011). The scope of the notion of foreseeability depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see, for instance, *Lindon, Otchakovsky-Laurens and July*, cited above, § 41). It may be assumed therefore that, even if generally formulated, the provision in question may be regarded as compatible with the "quality of law" requirement, if interpreted and applied by the domestic courts in a rigorous and consistent manner. The Court is furthermore mindful that its task is not to review domestic law in the abstract but to determine whether the way in which it was applied to the applicant gave rise to a breach of the Convention (see *Perinçek*, cited above, § 136).

56. In the present case, the key issue is whether by deciding to publish the impugned comment the applicant knew or ought to have known – if

need be, with appropriate legal advice – that this could render him criminally liable under the above-mentioned provision of the Criminal Code (ibid., § 137). The Court recognises that in the area under consideration it may be difficult to frame laws with absolute precision and that a certain degree of flexibility may be called for to enable the Russian courts to assess whether a particular action can be considered as capable of stirring up hatred and enmity on the grounds listed in that Article (see *Dmitriyevskiy v. Russia*, no. 42168/06, § 80, 3 October 2017, and the authorities cited therein). It has consistently held that in any system of law, including criminal law, however clearly drafted a legal provision may be, there will inevitably be a need for interpretation by the courts, whose judicial function is precisely to elucidate obscure points and dispel any doubts which may remain regarding the interpretation of legislation (see, for instance, *Öztürk*, cited above, § 55, and, *mutatis mutandis*, *Jorgic v. Germany*, no. 74613/01, § 101, ECHR 2007-III).

57. In this connection, the Court observes that the Government did not adduce or refer to any practice of the national courts which would, at the time when the applicant was tried and convicted, have interpreted the notions referred to in Article 282 of the Russian Criminal Code to define their meaning and scope with a view to giving an indication as to which individuals or groups of individuals it had protected and what "actions" could have resulted in criminal liability under that provision. The applicant, in turn, pointed to a lack of relevant practice of the Russian courts (see paragraph 42 above). Indeed, it was not before 2010-11, several years after the applicant had been convicted at final instance, that the highest courts in Russia addressed the problem with the interpretation of Article 282 of the Criminal Code and provided at least some guidance in that connection for the national courts (see paragraphs 31-32 above). At the same time, the Court notes that the domestic courts' interpretation of Article 282 in the present case, to regard the police as a "social group" which could benefit from the protection of the provision, does not conflict with the natural meaning of the words.

58. Against this background, it appears that in the applicant's criminal case the domestic courts were faced with a legal issue which had not yet been clarified through judicial interpretation. The Court recognises that they cannot be blamed for that state of affairs, and that there will always be an element of uncertainty about the meaning of a new legal provision until it is interpreted and applied by the domestic courts (see *Dmitriyevskiy*, cited above, § 82). As to the criteria applied by the courts in the applicant's case, this question relates rather to the relevance and sufficiency of the grounds given by them to justify his conviction, and should be addressed in the assessment of whether the interference with the applicant's rights secured by Article 10 of the Convention was necessary in a democratic society.

59. In the light of the foregoing consideration, the Court will proceed on the assumption that the interference with the applicant's right to freedom of expression was "prescribed by law", within the meaning of Article 10 § 2 of the Convention.

(b) Legitimate aim

60. The Court is further satisfied that the interference in question was designed to protect "the reputation or rights of others", namely Russian police personnel, and had thus a legitimate aim under Article 10 § 2 of the Convention (see, for instance, *Le Pen v. France* (dec.), no. 18788/09, 20 April 2010, and *Vejdeland and Others v. Sweden*, no. 1813/07, § 49, 9 February 2012).

(c) "Necessary in a democratic society"

(i) General principles

61. The general principles for assessing whether an interference with the exercise of the right to freedom of expression has been "necessary in a democratic society" are well-settled in the Court's case-law and were reiterated in a number of cases. The Court has stated, in particular, that freedom of expression 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 Article 10 § 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 that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, among the recent authorities, *Morice v. France* [GC], no. 29369/10, § 124, ECHR 2015; *Pentikäinen v. Finland* [GC], no. 11882/10, § 87, ECHR 2015; *Perinçek*, cited above, § 196; and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

62. Moreover, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest. It is the Court's consistent approach to require very strong reasons for justifying restrictions on such debate, for broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

63. The adjective "necessary" implies the existence of a "pressing social need", which must be convincingly established (see, for instance, *Erdoğdu v. Turkey*, no. 25723/94, § 53, ECHR 2000-VI). Admittedly, it is first of all for the national authorities to assess whether there is such a need capable of justifying that interference and, to that end, they enjoy a certain margin of

appreciation. However, the margin of appreciation is coupled with supervision by the Court both of the law and the decisions applying the law, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Karataş v. Turkey* [GC], no. 23168/94, § 48, ECHR 1999-IV).

64. The Court's supervisory function is not limited to ascertaining whether the national authorities exercised their discretion reasonably, carefully and in good faith. It has rather to examine the interference in the light of the case as a whole and to determine whether the reasons adduced by the national authorities to justify it were "relevant and sufficient" and whether the measure taken was "proportionate" to the legitimate aim pursued. In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see, among many other authorities, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI).

65. With regard, more specifically, to the interference with freedom of expression in cases concerning expressions alleged to stir up or justify violence, hatred or intolerance, the Court reiterates that tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify violence or hatred based on intolerance provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued (see, *mutatis mutandis*, *Gündüz v. Turkey*, no. 35071/97, § 40, ECHR 2003-XI). It certainly remains open to the relevant State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks (see *Erdoğdu*, cited above, § 62). Moreover, where such remarks incite violence against an individual, a public official or a sector of the population, the State enjoys a wider margin of appreciation when examining the need for an interference with freedom of expression (see, among many other authorities, *Öztürk*, cited above, § 66; and *Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV).

66. In its assessment of the interference with freedom of expression in cases concerning the expressions mentioned in the previous paragraph, the Court takes into account a number of factors, which have been summarised in the case of *Perinçek* (cited above, §§ 205-07). It is the interplay between the various factors rather than any of them taken in isolation that determines the outcome of a particular case (ibid., § 208). The Court will thus examine

the case at hand in the light of those principles, with a particular regard to the nature and wording of the impugned statements, the context in which they were published, their potential to lead to harmful consequences and the reasons adduced by the Russian courts to justify the interference in question.

(ii) Application of the above principles in the present case

67. In the present case, the applicant was prosecuted in criminal proceedings and given a suspended prison sentence for statements which, as the domestic courts found, incited hatred and enmity against police officers as a "social group" and called for their "physical extermination" (see paragraphs 21, 22 and 24 above). The domestic courts found, in particular, that the impugned statements, "generalised, impersonal [and] insulting", were "imbued with hostility, hatred and humiliation of dignity" of police officers, arguing that they were inferior and ascribing to them humiliating characteristics (see paragraphs 22-23 above). The Court observes in that connection, that the text in question is, indeed, framed in very strong words. In particular, its first part refers to police officers as "cops" and largely uses vulgar, derogatory and vituperative terms, labelling them all as "lowbrows and hoodlums" as well as "the dumbest and least educated representatives of the animal world". The second part of the text expresses a wish to see a ceremony of annihilation of "infidel cops" by fire in ovens "like [those] at Auschwitz", with a view to "cleansing society of [the] cop-hoodlum filth" (see paragraph 13 above).

68. The Court reiterates that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration; but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the substance of the ideas and information expressed (see *Gül and Others v. Turkey*, no. 4870/02, § 41, 8 June 2010, and *Grebneva and Alisimchik v. Russia*, no. 8918/05, § 52, 22 November 2016, and the authorities cited therein).

69. The applicant was convicted for speech which, as the domestic courts adjudged, incited hatred and violence rather than being merely insulting (compare and contrast *Janowski v. Poland* [GC], no. 25716/94, § 32, ECHR 1999-I) or defamatory (compare and contrast *Bartnik v. Poland* (dec.), no. 53628/10, § 28, 11 March 2014) in respect of police officers. The Court stresses that not every remark which may be perceived as offensive or insulting by particular individuals or their groups justifies a criminal conviction in the form of imprisonment. Whilst such sentiments are understandable, they alone cannot set the limits of freedom of expression. It is only by a careful examination of the context in which the offending, insulting or aggressive words appear that one can draw a meaningful

distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society (see, for a similar approach, *Vajnai v. Hungary*, no. 33629/06, §§ 53 and 57, ECHR 2008). The key issue in the present case is thus whether the applicant's statements, when read as a whole and in their context, could be seen as promoting violence, hatred or intolerance (see *Perinçek*, cited above, § 240).

70. In that connection, it is noteworthy that the applicant posted his comment in the context of a discussion prompted by a press release of Memorial, which gave information on a search by the police of the office of a newspaper which was supporting an opposition candidate in the regional parliamentary election (see paragraph 9 above). The participants of the discussion expressed their critical views on the alleged practices of those "who [had] the power" whereby the police were "seconded for a fight with the political opposition" and on the police's readiness to be "the regime's faithful dogs" and to participate actively in such actions (see paragraphs 10-11 above). It is thus clear that the discussion raised the issue of the alleged involvement of the police in silencing and oppressing the political opposition in the period of an electoral campaign and therefore concerned a matter of general and public concern, a sphere in which restrictions of freedom of expression are to be strictly construed (see paragraph 62 above). The Court furthermore reaffirms that it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (see *Długołęcki v. Poland*, no. 23806/03, § 30, 24 February 2009).

71. The applicant's comment, made as a part of that debate, shows his emotional disapproval and rejection of what he saw as abuse of authority by the police and conveys his sceptical and sarcastic point of view on the moral and ethical standards of the personnel of the Russian police. Seen in this perspective, the statements in question can be understood as a scathing criticism of the current state of affairs in the Russian police and, in particular, the lack of rigour in the recruitment of their personnel.

72. The Court further notes that the passage about "[ceremonial]" incineration of "infidel cops" in "Auschwitz-[like]" ovens is particularly aggressive and hostile in tone. However, it is not convinced that, as the domestic courts considered, that passage can actually be interpreted as a call for "[the police officers'] physical extermination by ordinary people" (see paragraph 24 above). Rather it was used as a provocative metaphor, which frantically affirmed the applicant's wish to see the police "cleansed" of corrupt and abusive officers ("infidel cops"), and was his emotional appeal to take measures with a view to improving the situation.

73. The Court stresses that its considerations in the previous two paragraphs should not be taken as an approval of the language used by the applicant or the tone of his text. The reference to the Auschwitz

concentration camps and to the Nazis' killing practices as an example to be followed is particularly striking. Arguably, in particular, Holocaust survivors and especially those who escaped Auschwitz might be offended by such a statement. In the latter connection, the Court observes, however, that the protection of the rights of Holocaust survivors was never put forward by the domestic courts among the reasons for the applicant's conviction. Moreover, the text in question does not reveal – and it has never been held otherwise by the domestic courts, nor has it been argued by the Government – any intention to praise or justify the Nazis' practices used at Auschwitz. The Court has previously held that a reference to the Auschwitz concentration camps and the Holocaust alone is insufficient to justify an interference with a freedom of expression, and that its impact on the rights of others should be assessed with due regard to the historical and social context in which that statement was made (see, for that approach, *Annen v. Germany*, no. 3690/10, § 63, 26 November 2015). In the present case, however, no arguments were advanced either by the national courts or by the Government, which would reveal the reasons for which Russian police officers could have considered themselves affected by such a reference.

74. More generally, recourse to the notion of annihilation by fire, in itself, cannot be regarded as incitement to any unlawful action, including violence, either. The Court has previously accepted that symbolic acts of this kind can be understood as an expression of dissatisfaction and protest rather than a call to violence (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 27, 2 February 2010, in which a flag and a picture of a State leader were burnt, and *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, § 39, 13 March 2018, concerning the burning of a photograph of the Spanish royal couple). The Court has observed in paragraph 72 above that in the present case the applicant's reference to "[ceremonial]" incineration of "infidel cops" can be regarded as a provocative metaphor, a symbol of "cleansing" of the police of corrupt officers, rather than an actual call to violence. As noted in paragraph 68 above, Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.

75. It is furthermore of relevance that the applicant's remarks did not attack personally any identifiable police officers but rather concerned the police as a public institution. The Court reiterates that civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens (see *Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII), even more so when such criticism concerns a whole public institution. A certain degree of immoderation may fall within those limits, particularly where it involves a reaction to what is perceived as unjustified or unlawful conduct of civil servants.

76. The Court further considers that the police, a law-enforcement public agency, can hardly be described as an unprotected minority or group that

has a history of oppression or inequality, or that faces deep-rooted prejudices, hostility and discrimination, or that is vulnerable for some other reason, and thus may, in principle, need a heightened protection from attacks committed by insult, holding up to ridicule or slander (compare and contrast *Soulas and Others v. France*, no. 15948/03, §§ 36-41, 10 July 2008; *Le Pen,* cited above; and *Féret v. Belgium*, no. 15615/07, §§ 69-73 and 78, 16 July 2009, where the impugned statements were directed against non-European immigrant communities in France and Belgium respectively; *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, § 78, 4 November 2008, where the impugned statements concerned national minorities in Lithuania shortly after the re-establishment of its independence in 1990; or *Vejdeland and Others*, cited above, § 54, where the impugned statement targeted homosexuals).

77. In the Court's view, being a part of the security forces of the State, the police should display a particularly high degree of tolerance to offensive speech, unless such inflammatory speech is likely to provoke imminent unlawful actions in respect of their personnel and to expose them to a real risk of physical violence. It has only been in a very sensitive context of tension, armed conflict and the fight against terrorism or deadly prison riots that the Court has found that the relevant statements were likely to encourage violence capable of putting members of security forces at risk and thus accepted that the interference with such statements was justified (see, for instance, *Sürek (no. 1)*, cited above, § 62; *Falakaoğlu and Saygılı v. Turkey*, nos. 22147/02 and 24972/03, §§ 32-34, 23 January 2007; and *Saygılı and Falakaoğlu v. Turkey (no. 2)*, no. 38991/02, § 28, 17 February 2009).

78. In the present case, however, there is no indication either in the decisions of the domestic courts or in the Government's submissions that the applicant's comment was published against a sensitive social or political background, or that the general security situation in that region was tense, or that there were any clashes, disturbances, or anti-police riots, or that there existed an atmosphere of hostility and hatred towards the police, or any other particular circumstances in which the impugned statements were liable to produce imminent unlawful actions in respect of police officers and to expose them to a real threat of physical violence. Whilst holding that the police officers were a "social group" by virtue of their "common [professional] activity" (see paragraph 22 above), the domestic courts failed to explain why that group, in their view, needed enhanced protection; nor did they refer to any factors or context which would show that the applicant's comment could have actually encouraged violence and thus put that group, or any of its members, at risk. In the absence of any such explanation in the domestic courts' decision or any other evidence which would enable it to conclude otherwise, the Court is thus not convinced that

the applicant's comment was likely to encourage violence capable of putting the Russian police officers at risk.

79. Turning to the question of a potential impact of the impugned text, the Court is mindful that it was posted on a publicly accessible Internet blog. With regard to online publications, it has previously held that user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 110, ECHR 2015). In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. It is furthermore true that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms is certainly higher than that posed by the press, as unlawful speech, including hate speech and calls to violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain persistently available online (ibid., §§ 110 and 133). At the same time, it is clear that the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages. It is therefore essential for the assessment of a potential influence of an online publication to determine the scope of its reach to the public.

80. In the present case, the applicant posted his comment on an individual blog of his acquaintance, Mr B.S. The domestic courts limited their relevant assessment with finding that that blog "was more popular than [the applicant's one]", with the result that the impugned text, which remained available without restrictions for one month, was "made accessible to a larger readership" (see paragraph 22 above). The courts, however, do not appear to have ever attempted to assess whether Mr B.S.'s blog was generally highly visited, or to establish the actual number of users who had accessed that blog during the period when the applicant's comment remained available.

81. The Court observes in the above connection that the applicant's comment had remained online for one month before the applicant, who found out the reasons for a criminal case against him, removed it (see paragraph 15 above). Although the access to the impugned statement had not been restricted, it drew seemingly very little public attention. Indeed, even a number of the applicant's acquaintances remained unaware of it, and, it appears it was only the criminal prosecution of the applicant for his online publication that prompted the interest of the public towards his comment (see paragraph 18 above). It is also important to note that, at the time of the events under examination, the applicant does not appear to have been a well-known blogger or a popular user of social media (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, ECHR 2016), let alone a

public or influential figure (contrast, *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001, and *Féret*, cited above, §§ 75 and 76), which fact could have attracted public attention to his comment and thus have enhanced the potential impact of the impugned statements. In such circumstances the Court considers that the potential of the applicant's comment to reach the public and thus to influence its opinion was very limited.

82. Turning to the reasoning of the domestic courts, the Court observes that they focused on the nature of the wording used by the applicant, limiting their findings to the form and tenor of the speech. They did not try to analyse the impugned statements in the context of the relevant discussion and to find out which idea they sought to impart. Whilst holding that that the applicant's offence was particularly "blatant and dangerous for national security" as running against "the fundamentals of the constitutional system and State security", the courts provided no explanation for the reasons for that conclusion. They made no attempt to assess the potential of the statements at hand to provoke any harmful consequences, with due regard to the political and social background, against which they were made, and to the scope of their reach. The Court thus finds that, in reaching their conclusions, the domestic courts failed to take account of all facts and relevant factors. Therefore the reasons cannot be regarded as "relevant and sufficient" to justify the interference with the applicant's freedom of expression.

83. It further observes that the applicant was convicted in criminal proceedings and given a suspended sentence of one year's imprisonment. The Court reiterates in this connection that a criminal conviction is a serious sanction, having regard to the existence of other means of intervention and rebuttal (see *Perinçek*, cited above, § 273). Moreover, although sentencing is in principle a matter for the national courts, the imposition of a prison sentence for an offence in the area of a debate on an issue of legitimate public interest will be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (see *Otegi Mondragon v. Spain*, no. 2034/07, §§ 59-60, ECHR 2011); the Court has already found (see paragraph 78 above) that the applicant's text was not likely to encourage violence.

84. The Court has noted in paragraph 66 above that it is the interplay between the various factors rather than any of them taken in isolation that leads it to a conclusion that a particular statement constitutes an expression which cannot claim protection of Article 10. In the present case, although the wording of the impugned statements was, indeed, offensive, insulting and virulent (for which the applicant eventually apologised), they cannot be seen as stirring up base emotions or embedded prejudices in an attempt to

incite hatred or violence against the Russian police officers; as the Court has noted in paragraph 71 above, it was rather the applicant's emotional reaction to what he saw as an instance of an abusive conduct of the police personnel. The Court furthermore discerns no other elements, either in the domestic courts' decisions or in the Government's submission, which would enable it to conclude that the applicant's comment had the potential to provoke any violence with regard to the Russian police officers, and thus posed a clear and imminent danger which required the applicant's criminal prosecution and conviction (compare *Gül and Others*, cited above, § 42).

85. The Court stresses in the above connection that it is vitally important that criminal law provisions directed against expressions that stir up, promote or justify violence, hatred or intolerance clearly and precisely define the scope of relevant offences, and that those provisions be strictly construed in order to avoid a situation where the State's discretion to prosecute for such offences becomes too broad and potentially subject to abuse through selective enforcement.

86. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's criminal conviction did not meet a "pressing social need" and was disproportionate to the legitimate aim invoked. The interference was thus not "necessary in a democratic society".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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."

A. Damage

89. The applicant claimed 3,500 euros (EUR) in respect of non-pecuniary damage.

90. The Government contested that claim, arguing that there had been no violation of the applicant's rights under Article 10 in the present case.

91. The Court finds that in the circumstances of the case a finding of a violation of Article 10 of the Convention will constitute sufficient just satisfaction for the applicants in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts and EUR 3,500 for those incurred before the Court. The latter amount, which as the relevant document reveals, the applicant was liable to pay, included preparation of the application form as well as research, legal analysis and observations by the representative.

93. The Government contested that claim as excessive, arguing that the case was relatively simple, concerned only one violation of the Convention and involved little documentary evidence. In their view, the research and preparation had not been necessary to the extent claimed by the applicant, therefore the requested amounts should be reduced.

94. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads, to be transferred directly to the applicant's representative's bank account.

C. Default interest

95. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that the finding of a violation of Article 10 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

4. *Holds*
   (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, EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the

rate applicable at the date of settlement and to be transferred directly to the applicant's representative's bank account;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 August 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President