

IRIS 2018-9/3

European Court of Human Rights: Savva Terentyev v. Russia

In its judgment in *Savva Terentyev v. Russia*, the European Court of Human Rights (ECtHR) recognised a very high level of protection of freedom of speech concerning insulting comments about police officers published on a weblog. The ECtHR confirmed that some of the wording in the blog post was offensive, insulting and virulent, but it found that the (emotional) comments, as a whole, could not be seen as inciting to hatred or violence against police officers. The applicant in this case, Savva Terentyev, a resident of the Komi Republic of Russia, had a blog hosted by livejournal.com, a popular blog platform. Police action on the premises of a local newspaper during a pre-election period had resulted in sharp criticism on social media and websites. Savva Terentyev also posted a comment on his website entitled “I hate the cops, for fuck’s sake”. In his blog post, he compared police officers to pigs, and he went on to say that “only lowbrows and hoodlums - the dumbest and least educated representatives of the animal world” become police officers in Russia. He also suggested that it would be great “if in the centre of every Russian city, in the main square ... there was an oven, like at Auschwitz, in which ceremonially (...) 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.” Soon afterwards, criminal proceedings were brought against Terentyev under Article 282, section 1 of the Russian Criminal Code. Terentyev was found guilty of “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 town court found that he had “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”. It considered that the crime committed by Terentyev was “particularly blatant and dangerous for national security [as] it [ran] against the fundamentals of the constitutional system and State security”. Terentyev was given a suspended sentence of one year’s imprisonment. He complained to the ECtHR that this criminal conviction had violated his right to freedom of expression, as provided in Article 10 ECHR. The ECtHR assumed that the interference with Terentyev’s right to freedom of expression was “prescribed by law” and aimed to protect the rights of others, namely Russian police personnel. With regard to the assessment of the question of necessity in a democratic society, the ECtHR first recalled that “there is little scope under Article 10 § 2 ECHR 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”. The ECtHR accepted that it may be necessary in democratic societies to sanction or even prevent 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. Next, the ECtHR examined 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.

The ECtHR reiterated 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: 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. The ECtHR stressed 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. It is only through careful examination of the context in which the insulting or aggressive words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 ECHR and that which forfeits its right to tolerance in a democratic society. The key issue in the present case was whether Terentyev’s statements, when read as a whole and in their context, could be seen as promoting violence, hatred or intolerance. It was also emphasised that the statements had raised the issue of the alleged involvement of the police in silencing and oppressing political opposition during the period of an electoral campaign and therefore touched upon a matter of general and public concern, a sphere in which restrictions of freedom of expression are to be strictly construed. With regard to the content of the statements, the ECtHR noted that the passage about “[ceremonial]” incineration of “infidel cops” in “Auschwitz-[like]” ovens was particularly aggressive and hostile in tone. However, contrary to the domestic courts’ construal, it was not convinced that that passage could actually be interpreted as a call for “[the police officers’] physical extermination by ordinary people”. Rather, it was used as a provocative metaphor, which frantically affirmed Terentyev’s wish to see the police “cleansed” of corrupt and abusive officers (“infidel cops”). It is furthermore of relevance that the remarks in Terentyev’s blog did not personally attack any identifiable police officers, but rather concerned the police as a public institution. A certain degree of immoderation may be acceptable, particularly where it involves a reaction to what is perceived as the unjustified or unlawful conduct

of civil servants. In the Court's view, as a member of the state's security forces, 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 its personnel and expose them to a real risk of physical violence. The ECtHR was not convinced that Terentyev's comment was likely to encourage violence capable of putting the Russian police officers at risk. Furthermore, his blog had only a minor impact, as it drew seemingly very little public attention, and the comments had remained online for only one month, as Terentyev removed them from the Internet after he found out the reasons for a criminal case being brought against him. Finally, the Court reiterated that a criminal conviction is a serious sanction; moreover, the imposition of a prison sentence for an offence in the area of a debate on an issue of legitimate public interest is compatible with freedom of expression as guaranteed by Article 10 ECHR 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. The ECtHR was not convinced that Terentyev's comment had the potential to provoke any violence with regard to the Russian police officers, thus posing a clear and imminent danger which required his criminal prosecution and conviction. The ECtHR stressed "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". On the basis of these considerations, the ECtHR came to the conclusion that Terentyev'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" and accordingly violated Article 10 ECHR.

• Judgment by the European Court of Human Rights, Third Section, case of Savva Terentyev v. Russia, Application No. 10692/09, 28 August 2018
<http://merlin.obs.coe.int/redirect.php?id=19231>

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