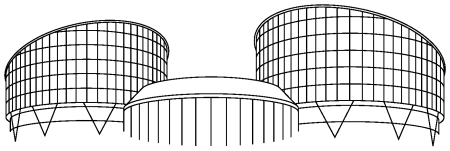

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF STOMAKHIN v. RUSSIA

(Application no. 52273/07)

JUDGMENT

STRASBOURG

9 May 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stomakhin v. Russia,

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

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

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 3 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 52273/07) 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 Boris Vladimirovich Stomakhin ("the applicant"), on 7 November 2007.

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

3. The applicant alleged that his conviction for articles in his newsletter, of which he had been the founder, owner, publisher and editor-in-chief and which he had distributed at various public events, had violated his right to freedom of expression and to peaceful assembly, as guaranteed by Articles 10 and 11 of the Convention.

4. On 14 June 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Vsesvyatskaya.

6. At the material time the applicant was a journalist at a Lithuanian weekly publication.

7. He was also a civil activist. As was later established by the domestic courts, since approximately the summer of 1998 the applicant had identified himself as a member of an informal liberal democratic movement, *Revolyutsionnoye Kontaktnoye Obyedineniye* ("the Revolutionary Contact Union" – hereinafter "the RKO"). Also, in the period from 2000 until 2004 the applicant was the founder, owner, publisher and editor-in-chief of a monthly newsletter entitled *Radikalnaya Politika* ("Radical Politics"). He determined the contents of the newsletter and published his own articles in it, as well as articles by people with similar views and excerpts from official and non-official sources of information and the mass media. He, himself, prepared each issue of the newsletter at his home address by typing it up on his personal computer, and then had it printed out and reproduced in multiple copies. The exact number of copies of each issue is unknown. The applicant then distributed the newsletter in person or through other unidentified individuals by selling it or giving it out for free at various places in Moscow. The articles touched, to a great extent, on the events in the Chechen Republic.

A. Published issues of *Radikalnaya Politika*

1. Issue no. 1 (27) of January 2003

8. An article headlined "From the interview given by M. Udugov[1] to the *Kavkaz Center* press agency" (*"*Из интервью М. Удугова агенству Кавказ Центр") mentioned the large-scale hostage-taking at the Dubrovka Theatre in Moscow in October 2002[2] referring to it as "the action of Movsar Barayev's heroic Chechen rebels in Moscow" ("акция героических

1. Movladi Udugov is said to have been the First Deputy Prime Minister of the self-proclaimed Chechen Republic of Ichkeria ("CRI" – the title of the republic used by the Chechen rebel separatists), also responsible for the information support of the first armed conflict in the Chechen Republic (December 1994 – August 1996) from the side of the separatist fighters.

2. During the second armed conflict in the Chechen Republic (August 1999 – April 2009), on the evening of 23 October 2002 a group of terrorists belonging to the Chechen separatist movement (over 40 people), led by Movsar Barayev – a Chechen militia leader – armed with machine-guns and explosives, took hostages in the Dubrovka theatre (also known as the "Nord-Ost" theatre, from the name of a musical that was performed there at that time) in Moscow. For three days more than 900 people were held at gunpoint in the theatre's auditorium; the theatre building was booby-trapped and eighteen suicide bombers were positioned in the hall among the hostages. The terrorists demanded the withdrawal of Russian troops from the Chechen Republic and direct negotiations involving the political leadership of the federal authorities and the separatist movement. On 26 October 2002 the Russian security forces started storming, having pumped an unknown narcotic gas into the main auditorium through the building's ventilation system; as a result of the rescue operation the majority of the hostages were released (over 730 people); 129 hostages died (for more details, see *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, ECHR 2011 (extracts)).

чеченских повстанцев Мовсара Бараева в Москве"). It stated, in particular:

> "Russia has clearly demonstrated that it is at war and permanently in danger of being hit by retaliatory blows, because its rulers have perpetrated a despicable attack on a sovereign State and are killing innocent civilians there. Even the western community is compelled to admit that Putin's Russia is waging a war aimed at the physical extermination of Chechens as an ethnic group."

9. An article entitled "Insanity [defence] of Budanov[3] [is] a guarantee of victory for Basayev[4]" ("Невменяемость Буданова – залог победы Басаева") commented on the case of a high-ranking Russian officer who was standing trial on charges of torture and murder for the strangulation of an 18-year-old Chechen woman and, in particular, on the judgment of the first-instance court by which the defendant had been found not guilty by reason of temporary insanity. The article, of which the applicant was one of the authors, stated, in particular:

> "... The whole of Chechnya is filled now with the same Budanovs – maniacs, bloodthirsty sadists, murderers and degenerates in epaulettes. Russia's whole occupying army consists of those Budanovs."

10. It also stated that:

> "... The fact that a [someone who posed a] danger [to] society, an insane maniac was in command of a regiment ... sets a new task before the revolutionary-democratic forces of Russia. From now on we should require immediate compulsory psychiatric examination of all commanders of the military and naval forces, service personnel of the Ministry of the Interior, the border guard, the police and the FSB, starting from a captain and finishing with the Commander-in-Chief – V.V.Putin."

11. It also appealed:

> "Let dozens of Chechen snipers take up their positions in the hills and the city ruins and hundreds and thousands of aggressors perish from their holy bullets! No mercy! Death to the Russian invaders!"

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3. Yuriy Budanov was a Russian military officer in the rank of colonel in command of a regiment during the second armed conflict in the Chechen Republic (officially known as "a counter terrorist operation"). From 2001 to 2003, in several rounds of the proceedings, Russian courts tried him on the charges of kidnapping, rape (later withdrawn by the prosecution) and murder of an 18-year-old Chechen woman. The case attracted wide public and mass media attention. At the first round of proceedings, in a judgment of 31 December 2002, the first-instance court found the defendant not guilty by reason of temporary insanity; he was committed to a psychiatric hospital for further evaluation. That decision was set aside by an appellate court and eventually he was convicted and sentenced to 10 years of imprisonment. He was released on parole in 2009. On 10 June 2011, Mr Budanov was shot dead in Moscow by an unknown perpetrator.

4. Shamil Basayev is considered to have been one of the leaders of the Chechen rebel separatist movement, who masterminded and led a number of guerrilla attacks on the Russian security forces and civilians, including the seizure of a school in Beslan in September 2004 (see Tagayeva and Others v. Russia, nos. 26562/07 and 6 others, ECHR 2017 (extracts)).

12. An article headlined "Accomplices to the murderers of the Chechen people" ("О соучастниках убийства чеченского народа"), authored by a third person, commented on the hostage-taking at the Dubrovka Theatre in Moscow in October 2002 and contained the following paragraph:

> "I, as a national of the Chechen Republic of Ichkeriya (CRI), who is daily suffering from the Russian State Terror, can understand the reasons which pushed Chechen patriots to this extraordinary act. It had been brought about by the continuing attacks by Russia on the Chechen State and [the Chechen] people. There are no documents condemning the mass murder of nationals of the CRI, to say nothing of Russia's aggression against the Chechen State ... Chechen patriots, reduced to a state of despair by Russia's Terror, were compelled to commit this guerrilla act in Moscow, the capital of Russia. In so doing they pursued their sole goal, namely to alert the international community to the total genocide of the Chechen people being cynically committed by the Russian invaders".

13. The same article mentioned the "national liberation struggle of the Chechen people against the colonial expansion of Russia".

14. In an article headlined "The Chechen resistance is alive! Maskhadov has visited Dzhokhar and Argun" expressions such as "President Maskhadov", "President of the CRI", "Commander-In-Chief of the CRI Maskhadov", "the capital of the CRI, Dzhokhar" were used.

15. In an article headlined "*In memoriam,* Salman Raduyev[5]" ("Памяти Салмана Радуева") the applicant wrote:

> "Chechen heroes are leaving ... Dudayev, Atteriyev, Khattab and today – Raduyev. As if they would be devoured by a scary black noisome abyss. And the name of this abyss is Russia."

16. In the same article the applicant stated:

> "... Salman Raduyev fought against Russia to his last breath, without making compromises with the murderers of his people. His life was an example of how one should fight against Russia. His death has become an example, amongst a million of such examples, of the immeasurable scoundrelism and perfidy of Russia, the pathological falsity and criminality of Russia as a State, as a civilisation, as a subject of history.
>
> ...
>
> Salman Raduyev is the brightest page [in the history] of the heroic Chechen Resistance movement. He was a hero of an entire generation, not only in Chechnya, but also in Russia. His life and death are a guarantee that damned imperial Russia will be destroyed and the Chechens and all other peoples oppressed by it will finally obtain freedom. We will avenge you, Salman!"

17. In an article entitled "A new joke by Vova" ("Новая шутка Вовы") the applicant stated:

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5. Salman Raduyev is considered to have been one of the most radical and notorious Chechen rebel separatist warlords in the period between 1994 and 1999. He is believed to have led a number of guerrilla campaigns against the Russian security forces and civilians, such as the large-scale Kizlyar hostage taking in 1996. In 2001 he was tried on a number of charges, including terrorism, hostage-taking, organisation of illegal armed formations, and given a life prison sentence. He died in prison in 2002.

> "Lawful convictions issued by the Sharia court of the CRI against national traitors are being executed rigorously."

18. In the same issue of the newsletter the applicant reproduced information from the website regions.ru regarding a police operation by a unit of the regional Department of the Interior aimed at setting free Uzbek nationals who had been held in slavery by Russian nationals. The applicant headlined that article with the words "Russians have slaves and dare to squawk something about Chechens" ("Русские держат рабов и еще смеют что-то вякать в адрес чеченцев").

19. In the same issue the applicant published an article headlined "Orthodox [believers] went completely nuts" ("Православные совсем охренели") in which information had been given about some unidentified "Orthodox theologians" who, in a booklet called "Foundations of the Orthodox Faith" had allegedly claimed that "Jesus Christ [had been] crucified not by Jews but by Chechens".

2. Issue no. 9 (35) of September 2003

20. In an article headlined "'Chechen syndrome' inside out" ("Чеченский синдром навыворот"), the applicant wrote:

> "... Most importantly, we realised with our hearts and skin that Freedom is, indeed, the most precious thing that a man has, the most precious treasure, the only thing worth dying for. And if [an individual is] lucky[, he or she will] take with [him or her]self to the other world at least some enemies, as selfless Chechen women do when they put on their '*shaheed* belts'. The life of a human is in any event brief and fragile and is only worth living if you are free. Otherwise it is better to die at once. As these Chechen women die."

21. He went on as follows:

> "... In supporting Chechnya at war, demonstrating our solidarity with Basayev, openly supporting Movsar Barayev in Moscow on the days of the 'Nord-Ost' [theatre siege], we crossed a line, a certain border, past which all connections to our past and the environment and people among which we had been born and grown up and lived broke down; we had trustingly considered ourselves to be part of them, until we read on a foreign, enemy website, and saw with our own eyes, all the awful details of the atrocities committed by [our] people in a tiny neighbouring mountain country. Hence, the Rubicon has been crossed, the choice has been made and there is no room to back off – we no longer have any other family than all peoples oppressed by 'our' Empire, than partisans fighting to be freed from its yoke, than famous warlords like Basayev and political parties which claim monetary compensation [from Russia] for their occupation and return of the territories Russia has annexed ..."

22. In the same article the applicant stated:

> "... It is the bloody cannibalistic atrocity of this State towards a tiny and helpless mountain people that first brought this thought into our conscience: Russia must be destroyed forever, a State doing similar things to an entire nation should not exist at all!"

23. An article headlined "Chechnya shielded the Caucasus" ("Чечня заслонила собою Кавказ"), authored by a third person, stated:

"... Maskhadov, Basayev, Khattab[6] and other heroes of the Chechen resistance courageously and firmly got in the way of Russia's aggression and, in fact, saved not only the independence of Chechnya but also its very existence, as well as the existence of other States in the Caucasus ..."

24. In an article entitled "No comments" the applicant stated:

"... Putin's cheap propaganda can jabber as long as it wishes that Maskhadov is a bandit and that he is responsible for the 'Nord-Ost' [theatre siege] and the recent explosions in Tushino[7]. Anyone who shows at least some interest in contemporary Chechnya knows that it is Maskhadov who is the legitimate President of Chechnya. And until he is re-elected in accordance with the constitution of the CRI, and not the Russian constitution, any other 'presidents of Chechnya' are out of the question. Lawful elections of the president of the CRI under the constitution of the CRI of 1992 will only be possible when the CRI army, headed by Commander-in-Chief Maskhadov, defeats occupying Russia's illegal armed groups of the Ministry of Defence, the Ministry of the Interior and the Federal Security Service, and chucks them out of the territory of independent Ichkeriya ..."

3. Issue no. 2 (40) of February-March 2004

25. In an article headlined "Retribution-2" ("Возмездие-2") the applicant stated:

"... Retribution for genocide will take place sooner or later. If we live up to it, we will be its witnesses and it would be good to become its punishing sword. Until then we are only capable of organising lamentably small candlelight vigils to commemorate all those killed and tortured in Chechnya, Ukraine, Lithuania and Poland – from the White (Baltic) to the Black Seas – by our State which has become frenzied because of blood. It is impossible to live with this heavy burden in the soul, as the terrible knowledge of Russia's history requires retribution from all those who remain conscious. It is possible that the hands which hold a commemoration candle today will hold a gun tomorrow – it is hard to believe that but Lord help us to live in the happy time when this happens. For the time being we don't have any other weapons, except for the alarm bell of our words.

... We remember and grieve for all those killed and tortured by 'our' Empire, hated by us. However, a better gift to all Chechens being exterminated will be not [to have] yet another meeting with candles to commemorate their genocide, but each blow struck – even though they are still weak, for now – against the criminal State which is killing them and depriving us of our freedom, mutilating our souls, striving to turn us into butchers and binding us with blood. 'Less words and more action' – this is the slogan of slogans of the day! Particularly given that there is much to be done for the radical anti-imperial opposition in the country!"

26. The article also read:

"... let Russia spit blood for yesterday's and today's genocide of the Chechen people – it serves it right, it deserved it. Let our commemoration candles at the meetings of

6. Khattab is said to have been a guerrilla field commander who participated in a number of attacks on the Russian security forces during the armed conflicts in the Chechen Republic.

7. On 5 July 2003 two Chechen women blew themselves up at a rock festival at the Tushino airfield near Moscow. The attack killed 11 people on the spot, while at least 60 people were injured and four of them later died in hospital.

23 February turn into flaming torches, in whose purgatorial flames this rotten block, lying in the way of humankind, will burn!"

27. In the same article the applicant wrote:

"... As to the writing of inscriptions on the walls of buildings, fences and bus stops, one cannot overestimate the importance of those acts. From today on and until 14 [March 2004[8]] we have to strike persistently at one point: slaves, become free for at least a moment, do not participate in fake 'elections'! We need not campaign among the limited circle of revolutionaries, human-rights activists, extremists, and members of radical and marginal social groups – they already know everything. Each direct and open appeal to ... the people other than politicised consumers of ... TV cud [*тележвачки*] is an open and powerful blow to the regime and will hasten its end ..."

28. In the same article the applicant also issued the following call:

"... We have to accumulate, hate and keep record of their crimes – the endless list of all those 'sweep operations', 'identity checks', 'counter-terrorist operations', gagging laws, unlawful searches and politically motivated criminal prosecutions. It would also be good to make lists of all those who carried out a particular 'sweep operation' in a particular village, who instituted criminal proceedings, on whose information and on which date. It is known from the historical perspective that those people are most of all afraid of personal responsibility, which they would not be able to shift on to their commanders who had given illegal orders. One day executioners in uniforms and narks without uniforms in Moscow, as well as in Chechnya, will be held accountable to us for everything ..."

29. An article headlined "Kremlin looters" ("Кремлевские мародеры"), authored by a third person, criticised the actions of the Russian Army in the Chechen Republic and, in particular, accused them of a large-scale extra-judicial executions of civilians during a "sweep" operation in a Chechen village in 1995. It also stated:

"In Chechnya the Russian Army stopped existing as a military force of the State, having, once and for all, turned itself into a frenzied gang of looters and murderers; a herd intoxicated with drugs."

30. In his "editorial note" to the "Declaration of the Committee '2008: a free choice'" the applicant stated:

"We, [the RKO] and *Radikalnaya Politika*, are united with the Committee and prepared to cooperate with them. Obviously, we are much more radical than them. We consider that we should not wait until 2008[9] and be worried about the Constitution but call on the people to overthrow and liquidate Putin's regime as soon as possible. We also don't consider it possible to preserve the contemporary Russian Federation as an integral State. However, we are for a common ground with all our allies, even those who are much more moderate."

4. Issue no. 3 (41) of March 2004

31. On the front page the following statement was published on behalf of the "editorial team":

8. The date of the election of the President of Russia.
9. The year of the election of the President of Russia.

> "Zelimkhan Yandarbiyev[10] died a hero and he will remain [a hero] in the memory of humankind, historians and grateful future generations. He fought the bloody *Rusnya*[11] as long as he could".

32. In an article headlined "The price to be paid for genocide" ("Расплата за геноцид") the applicant wrote:

> "The explosion in the Moscow metro[12] is justified, natural and lawful ... Chechens have a moral right to blow up everything they want in Russia, after what Russia and Russians have done to them; no objections regarding humanism or love for humankind can be accepted."

33. In the same article the applicant stated:

> "It has been ten years since the Russian Federation and its people [began] a totally destructive genocidal war against the Chechen people, who before the war numbered only one million people".

34. In an article headlined "Will Russia be allowed to participate in the Summer Olympics in Athens?" ("Пустят ли Россию на летнюю олимпиаду в Афинах?") the applicant wrote:

> "Russia's bloody attack on the CRI led to, among millions of other similar bloody consequences, Russia's security forces' killing of the ex-President of the CRI, Zelimkhan Yandarbiyev, who had helped his people to repel this attack."

5. Other articles

35. In eight issues of the *Radikalnaya Politika* newsletter, in a column entitled "The Good News" ("Благие вести"), the applicant published information which he had copied from various news agencies' websites, such as Interfax, or websites like strana.ru and KMNews.ru. The information mostly concerned events such as deaths of federal servicemen or law-enforcement officers in the Chechen Republic; violent attacks and assaults on public officials or police officers in various regions of Russia; and so forth.

B. The applicant's participation in public events

36. On 23 February 2004 the applicant took part at an unauthorised meeting, where he displayed banners with slogans condemning the current political regime, such as: "Zakayev is not a terrorist, unlike Putin and Co." (*Закаев не террорист, в отличие от Путина и К*), "Europe! Do not

10. Zelimkhan Yandarbiyev was a Chechen writer and politician who served as acting president of the Chechen Republic of Ichkeriya between 1996 and 1997. He was killed in 2004 in Qatar; two officers of the Russian intelligence services were tried and convicted for that murder by the Qatar authorities.

11. "Rusnya" is a pejorative denomination for Russians.

12. On 6 February 2004 a man from the Republic of Karachay-Cherkessia blew himself up on a train in the Moscow metro. The attack killed 41 people on the spot; 250 people were, reportedly, wounded.

betray the Chechen resistance!" (*Европа! Не предай Чеченское сопротивление!*), "Russian invaders – get out of Chechnya" (*Русские оккупанты – вон из Чечни!*), "When will the Chechen people be freed and rehabilitated?" (*Когда будет освобожден и реабилитирован чеченский народ?*) and also a flag with the words "Radical Party".

37. On 10 March 2004, while participating in a meeting at Pushkin Square in Moscow, the applicant, personally and with the participation of an unidentified person, disseminated issues nos. 2 (40) and 3 (41) of the *Radikalnaya Politika* newsletter and informed people interested in it about the forthcoming issues, how to subscribe and other ways to financially support the newsletter, of which he was the editor-in-chief.

C. Criminal proceedings against the applicant

1. Pre-trial investigation

38. On 18 December 2003 criminal proceedings were instituted against the applicant on suspicion that the views expressed in the *Radikalnaya Politika* newsletter amounted to appeals to extremist activities and incitement to racial, national, social and other hatred.

39. A psychological-linguistic expert examination of the texts published by the applicant was carried out. In a report of 13 April 2004 the expert stated, in particular, that the impugned texts contained negative emotional assessments of Russia's servicemen; of people of Russian ethnicity; and of Orthodox believers. The report further mentioned that, by criticising Russia's actions in the Chechen Republic, the texts gave negative assessments of Russia, as a State; of the existing political regime; of Russia's army as a part of the machinery of the State. The report also pointed out numerous expressly negative words and expressions used by the applicants when describing Russia. It also mentioned that the impugned texts positively assessed and justified the actions and activities of a number of Chechen separatist leaders and fighters; terrorist attacks, including explosions, within the territory of Russia.

40. On 26 April 2004 the applicant was formally charged with the above-mentioned offences and on an unspecified date the case was transferred to the Butyrskiy District Court of Moscow ("the District Court") for trial.

2. Conviction of the applicant at the first level of jurisdiction

(a) Proceedings before the trial court

41. At the trial, the applicant pleaded not guilty. He confirmed that he had been the editor-in-chief and publisher of the *Radikalnaya Politika* newsletter but argued that he had printed the newsletter only for himself and had not distributed it. He further argued that he had merely expressed his

opinion regarding various political events in Russia, and, in particular, his civic position regarding the ongoing armed conflict in the Chechen Republic. In his words, he had never called for extremist activities or violent overthrow of the existing political regime in Russia; he had only called for a change of the leadership in the country.

42. The District Court called and examined a number of witnesses, who submitted that they had bought the applicant's newsletter or seen him distribute it for free in public. It also examined the expert who had drawn up the report of 13 April 2004. The expert confirmed his conclusions made in the report. A number of witnesses on the applicant's behalf were also called and examined.

43. The trial court further examined other pieces of evidence, including the expert report of 13 April 2004; written complaints from eight private individuals in which they had stated that the applicant's articles had aimed at inciting hatred and had contained insulting language in respect of Russians, Orthodox believers and law-enforcement officers; reports of seizure of issues of the applicant's newsletter; reports of a search of the applicant's flat and seizure of his computer; a report on the applicant's forensic psychiatric examination, which confirmed that he was fully able to understand the meaning of his actions and to control them.

44. The District Court examined the applicant's arguments and those raised by his defence counsel and dismissed them as untenable on the facts of the case, with reference to the witness statements and other pieces of evidence.

(b) Judgment of 20 November 2006

45. In a judgment of 20 November 2006 the District Court found the applicant guilty of "having publicly appealed to extremist activities through the mass media" (Article 280 § 2 of the Russian Criminal Code) and of having committed "actions aimed at inciting hatred and enmity as well as at humiliating the dignity of an individual or group of individuals on the grounds of ethnicity, origin, attitude towards religion and membership of a social group, through the mass media" (Article 282 § 1 of the Russian Criminal Code).

46. The trial court established the circumstances of the case, as summarised in paragraphs 6-7 above, and referred to the texts mentioned in the expert report of 13 April 2004 (see paragraph 39 above). It considered that the impugned texts had had a clear extremist leaning and incited actions prohibited by the Suppression of Extremism Act (see paragraph 69 below). In particular, in those texts the applicant had called for extremist acts, such as a forcible overthrow of the constitutional order and the President of Russia; had called for a breach of the territorial integrity of Russia; had justified and glorified terrorist acts; had called for violence against the Russian people and abased their dignity; and had incited religious discord by arguing that the Orthodox faith had been inferior and by insulting its

followers. In those texts the applicant had used insulting language in respect of Russia as a State, the political regime in the country, and servicemen of Russia's armed and security forces.

47. More specifically, the District Court observed that in various issues of his newsletter the applicant had represented the conflict in the Chechen Republic as a war between two States – Chechnya and Russia; had approved of terrorist attacks carried out in Russia, and of the actions of criminals and terrorists aimed at the extermination of the Russian people as a nation. In this respect, the District Court referred to the applicant's relevant texts in issue no. 1 (27) (see paragraph 16 above) and in issue no. 9 (35) (see paragraphs 21 and 23 above), stating that in those texts, while "mentioning a number of persons implicated in terrorist and extremist activities", the applicant had used words and expressions aimed at creating positive public opinion about those persons and their criminal acts.

48. The District Court also pointed out that "the texts of the applicant's articles contain[ed] positive assessment of the bombings in Russia perpetrated by Chechen terrorists as well as the acts of Chechen snipers from illegal armed groups who kill[ed] Russia's servicemen in Chechnya". In this respect, it quoted an extract from issue no. 1 (27) (see paragraph 11 above) and extracts from issue no. 3 (41) (see paragraphs 31-32 above).

49. The trial court went on to note that the applicant had qualified Russia's actions in the Chechen Republic as aggression and had considered the Russian Army to be an occupying force. Accordingly, he "[had] negatively assessed Russia's actions and those of Russia's armed forces; similarly negatively [the applicant had] assessed Russia as a State, the Russian Army as a part of the machinery of the State and Russia's servicemen as a social group". The District Court continued to state that, on the other hand, the applicant "[had] represented the events in the Chechen Republic as a war waged by Russia against the Chechen people (the Chechen ethnic group) and as genocide against the Chechen people". The court corroborated these findings with reference to relevant texts published in issue no. 1 (27) (see paragraphs 8 and 12 above) and in issue no. 3 (41) (see paragraphs 33 and 34 above).

50. The District Court also observed that the applicant had justified and positively assessed the acts of Chechen rebel fighters, and that he had regarded the Chechen Republic as an independent State with its own President (A. Maskhadov), capital (Dzhokhar), constitution, armed forces and Commander-in-Chief, courts (Sharia courts) and legislation. In particular, in issue no. 1 (27), the applicant had interpreted the events in the Chechen Republic as "a national liberation struggle of the Chechen people against the colonial expansion of Russia" (see paragraph 13 above), referred to "lawful convictions of the Sharia court of the CRI" (see paragraph 17 above), and mentioned "President Maskhadov", "President of the CRI", "Commander-In-Chief of the CRI Maskhadov", "the capital of the CRI, Dzhokhar" (see paragraph 14 above). Also, in issue no. 3 (41) the applicant

published a "decree by President Maskhadov" and in the article "No comments" he praised "President Maskhadov" as "the legitimate President of Chechnya" (see paragraph 24 above).

51. The District Court further referred to the texts in eight issues of the applicant's newsletter published in the column entitled "Good news" (see paragraph 35 above). It pointed out that the applicant had represented bad events in a positive way, that is to say as actions approved by the authors and by the applicant himself and as an example to be followed. The court pointed out that another example to be followed, according to the applicant, had been actions of Chechen women putting on "*shaheed* belts"; in the latter respect, the court quoted a relevant extract from the article "'Chechen syndrome' inside out" (see paragraph 20 above).

52. The District Court went on to observe that "in all issues of his newsletter ... [the applicant had] wilfully made use of insulting characteristics, negative emotional assessments and attitudes towards ethnic, racial, national, religious and social groups". In particular, in respect of Russia as a State he had employed such negative emotional references as metaphors "scary noisome abyss", "bloody cannibalistic atrocity", "rotten block"; humiliating characteristics "immeasurable scoundrelism, perfidy, pathological falsity" and negative attitudes aimed at destruction (the metaphor "to spit blood"), which, according to the trial court, was a clear indication of an attitude aimed at inciting bloodshed. The court corroborated these findings with reference to relevant extracts from issue no. 1 (27) (see paragraph 15 above), issue no. 9 (35) (see paragraph 22 above) and issue no. 2 (40) (see paragraph 26 above).

53. The District Court also considered that in the article headlined "Insanity of Budanov, a guarantee of victory for Basayev", "the applicant [had] insult[ed ...] servicemen of the Russian Army and law-enforcement officers by launching an appeal to act criminally against them". In particular, the court stated that "in that article [the applicant gave] an emotional and negative description of the servicemen of the Russian Army as a social group" (see paragraph 9 above) and "[made] an appeal for actions against [army] servicemen ..., such as requiring an immediate compulsory psychiatric examination of its commanders" (see paragraph 10 above). In support of its relevant findings, the District Court also relied on an extract published in issue 2 (40) (see paragraph 29 above).

54. It went on to state that "by publishing and disseminating the *Radikalnaya Politika* newsletter [the applicant had] wilfully acted with a view to stirring up enmity and conflict, including armed conflict, on national, racial and religious grounds between citizens living in the European and Asian parts of the country and people living in the Caucasus". In this respect, the trial court referred to the applicant's "editorial note" published in issue no. 2 (40) (see paragraph 30 above), observing that in that publication the applicant had "demonstrated a negative attitude towards the existing political system and Russia as a State". The trial court pointed out

that "the stance taken by [the applicant] concerning the liquidation of the existing State regime ("Putin's regime") presuppose[ed] not only actions in conformity with the constitution but also the possibility of deviating from it ("to overthrow the regime, without really caring about the Constitution")".

55. The court further noted that in the article "Retribution-2" the applicant had referred to "the following acts aimed against the State and the existing political regime in Russia: organisation of meetings concerning events in the Chechen Republic, participation in those meetings, writing inscriptions on the walls of buildings, fences and bus stops" with the contents reflected in the relevant extracts of that article (see paragraph 25 above). The court also stated that "the applicant [had] also suggested carrying out other unlawful acts against the State and the political regime in the texts of his newsletters but [had] failed to specify which".

56. The District Court then observed that in various issues of his newsletter the applicant had "intentionally appealed for records to be kept of such acts as 'sweep operations', 'identity checks', 'counter-terrorist operations', 'unlawful searches and politically motivated criminal prosecutions', which he [had] qualified as 'crimes' and the persons who [had] carried them out as 'executioners in uniforms' and 'narks without uniforms'". The court referred, in particular, to the applicant's appeal made in the relevant extract from the article "Retribution-2" (see paragraph 28 above).

57. The trial court went on to note that in the article "Orthodox [believers] went completely nuts" (see paragraph 19 above) the applicant had made use of a heading carrying a negative and emotional assessment of the followers of the Orthodox denomination ("went nuts"). However, in the court's words, "the content of the article [did] not correspond to its title, because it concern[ed] an isolated case (a statement that "Jesus Christ was crucified not by Jews but by Chechens", contained in a booklet called "Foundations of the Orthodox Faith"); this isolated case [was] generalised from and represented as a typical situation of Orthodox believers by virtue of using the impugned heading". In the same vein, the District Court pointed out that in issue no. 1 (27) the applicant had reproduced information concerning certain Uzbek nationals held in slavery by certain Russian citizens (see paragraph 18 above). The court noted that the applicant had entitled that article "Russians have slaves and dare squawk something about Chechens" and had represented an isolated fact to the readers as typical and characteristic of all Russians, whereby he had "made a negative and emotional assessment ('to squawk') in respect of Russian citizens as a nation".

58. Moreover, in issues nos. 1 (27) and 9 (35) the applicant had argued that "Orthodox people [*православный народ*] had been inferior by using insulting characteristics and negative emotional assessments of believers, discriminatory expressions in respect of the Orthodox denomination as a religion and stating that this religion, practised by Russians, should be

abolished, thereby abasing the national dignity of the people practising [it]". According to the trial court, statements regarding the inferiority of the Orthodox faith had been made by the applicant in an attempt to stir up inter-ethnic and racial conflicts in society so as to cause indignation in society and eventually to call for a change of the existing political regime. The court did not specify which particular articles in the above-mentioned issues contained those characteristics and assessments.

59. Lastly, the court referred to the fact that "at an unauthorised meeting on 23 February 2004 the applicant [had] called on individuals to support his movement by openly displaying banners with slogans condemning the regime" (see paragraph 36 above) and during the meeting of 10 March 2004, "to continue to commit crimes aimed at incitement to hatred and enmity among the population, abasement of dignity of an individual or group of individuals on the grounds of gender, nationality, language, origin or religious beliefs and membership of a social group, the applicant, personally and with a participation of an unidetified person, had distributed issues nos. 2 (40) and 3 (41) of the *Radikalnaya Politika* newsletter and had informed the persons interested in it about the forthcoming issues, how to subscribe and other ways to financially support the newsletter, of which he had been the editor-in-chief". In the trial court's view the applicant thus had called for extremist activities to be supported by way of their financing on a charitable basis.

60. The District Court rejected the applicant's argument that in the relevant articles he had made no appeals to extremist activities, and, in particular, that he had not called for the overthrow of the constitutional order nor stirred up inter-ethnic discord; and that he supported the constitutional order, the Russian Constitution and the Chechen people's right to self-determination and had merely availed himself of the right to freedom of expression. The trial court noted, with reference to the expert report of 13 April 2004, that the language used by the applicant in the impugned texts enabled the court to conclude that the applicant's actions had constituted criminal offences and that he had clearly abused his right to freedom of expression secured by the Russian Constitution.

61. The District Court furthermore dismissed the applicant's argument that he had been the author of only some of the articles held against him whereas the others had been written by other individuals. The court observed in this connection that the applicant had been the editor-in-chief of the newsletter and, in this capacity, had had the power to shape its editorial direction and he had been responsible for its content.

62. As regards the punishment to be imposed on the applicant, the District Court had regard to the state of his health and the fact that he had no criminal record, had positive references and had a dependant mother. At the same time it stressed the "high social danger" posed by the applicant's offences and his personality and sentenced him to five years' imprisonment.

The court also prohibited the applicant from practising journalism for three years to run concurrently.

3. Appeal proceedings

63. The applicant appealed, referring, among other things, to Article 10 of the Convention and stating that as the editor-in-chief of the impugned newsletter he had expressed in it his personal views concerning political events in Russia and his attitude, as a citizen of that country, to the war in the Chechen Republic. He had not made any appeals for extremist activities and had not declared the superiority of any one religion over another. Nor had he called for the overthrow of the constitutional order, but he had expressed the view that the Government should be changed. The applicant further pointed out that the number of copies of the newsletter in question had been so miniscule that the statements published therein had presented no public danger. He also argued that the measure of punishment imposed on him was excessively severe, given, in particular, the fact that he had no criminal record and had positive references from the place where he lived.

64. On 23 May 2007 the Moscow City Court upheld the applicant's conviction on appeal. It stated, in particular, that the applicant's newsletter had been a mass medium despite the low number of copies produced. It also considered that the first-instance court had correctly established the facts and assessed the adduced evidence and that the punishment imposed on the applicant had been justified in the circumstances of the case.

65. The applicant was released on 21 March 2011 after he had served the prison sentence in full. In his submission, numerous requests by him for release on parole had been refused.

II. RELEVANT DOMESTIC LAW

A. Constitution of Russia

66. 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

67. Article 280 § 2 of the Criminal Code of Russia ("the Criminal Code"), as in force at the relevant time, provided as follows:

> "1. Public appeals for extremist activities shall be punishable by a fine of up to 300,000 Russian roubles [RUB], or an amount equivalent to the convicted person's wages or other income for a period of up to two years, or by an arrest for a period of four to six months, or by deprivation of liberty for a period of up to three years;
>
> 2. The same acts committed through the mass media shall be punishable by deprivation of liberty for a period of up to five years, accompanied by a withdrawal of the right to hold certain posts or carry out certain activities for a period of up to three years."

68. Article 282 of 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 RUB 100,000 to RUB 300,000, 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 deprivation of liberty of up to two years ..."

C. Suppression of Extremism Act

69. Federal Law of 25 July 2002 no. 114-FZ on Suppression of Extremist Activities (*Федеральный закон 25 июля 2002 г. № 114-ФЗ «О противодействии экстремистской деятельности*, – hereinafter "the Suppression of Extremism Act"), as in force at the relevant time, provided as follows:

Section 1: Basic concepts

> "For purposes of the present Federal Law the following basic concepts shall apply:
>
> 1. Extremist activity (extremism) is:
>
> (a) activity of non-governmental, religious or other organisations, the media, editorial boards or individuals, consisting in planning, directing, preparing and committing acts aimed at:
>
> – forcible change of the constitutional foundations of the Russian Federation and breach of its territorial integrity;
>
> – undermining the national security of the Russian Federation;
>
> ...
>
> – carrying out of terrorist activities or public justification of terrorism;
>
> – inciting racial, ethnic, religious or social discord associated with violence or calls to violence;

– humiliation of dignity on the grounds of ethnic origin;

– creation of mass disorder, commission of disorderly acts or acts of vandalism out of ideological, political, racial, ethnic or religious hatred or enmity, or out of hatred or enmity towards a social group;

– propaganda of exceptionality, superiority or inferiority of citizens because of their attitude towards religion, social position, race, ethnic origin, religion or language;

...

– creation and/or dissemination of printed, audio, audio-visual and other materials (works) designed for public use and containing at least one of the elements listed in this section;

...

(c) public appeals to carry out the above-mentioned activities as well as public appeals and addresses inciting [people] to carry out the above-mentioned activities, giving grounds or justifying the carrying-out of the above-mentioned acts;

(d) financing of the above-mentioned activities or other assistance in planning, organising, preparing and carrying out the above-mentioned acts, including by providing financial support ... or other facilities ..."

III. RELEVANT COUNCIL OF EUROPE INSTRUMENTS AND MATERIALS

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

70. 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. The Committee of Ministers recommended that the member States' governments be guided by certain principles in their action to combat hate speech. The relevant one reads as follows:

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."

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

71. 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 part, the recommendation reads as follows:

> "The European Commission against Racism and Intolerance (ECRI):
>
> ...
>
> Recommends that the governments of member 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;
>
> b. ensure that the scope of these offences is defined in a manner that permits their application to keep pace with technological developments;
>
> 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;
>
> d. ensure the effective participation of those targeted by hate speech in the relevant proceedings;
>
> e. provide penalties for these offences that take account both of the serious consequences of hate speech and the need for a proportionate response;
>
> f. monitor the effectiveness of the investigation of complaints and the prosecution of offenders with a view to enhancing both of these;
>
> g. ensure effective co-operation/co-ordination between police and prosecution authorities..."

72. The Explanatory Memorandum to the recommendation, in its relevant part, 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)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

73. The applicant complained that his conviction for views expressed in his newsletter which he had distributed at various public events had violated his right to freedom of expression and to peaceful assembly, as guaranteed by Articles 10 and 11 of the Convention. These Articles read as follows:

Article 10

"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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Submissions by the parties

74. The applicant argued that the domestic authorities had arbitrarily expanded the list of charges on which he had been convicted by including in

their number actions that had not constituted a criminal offence, such as his participation in peaceful demonstrations and meetings. He also contended that the severity of his sentence had rendered the interference with his relevant rights disproportionate. He pointed out that the circulation of his newsletter had only included copies which he had printed out himself and whose number had been negligible. Therefore, in the applicant's view, his actions had posed no danger to the public and should not have entailed such a severe punishment.

75. The Government suggested that the applicant's conviction had been justified under Articles 10 § 2 and 11 § 2 of the Convention.

76. They argued, with reference to the findings of the expert report (see paragraph 39 above) and those of the domestic courts (see paragraphs 45-61 and 64 above), that the impugned texts in the applicant's newsletter had contained public calls for extremist activities and had clearly aimed at inciting hatred, enmity and humiliating the human dignity of an individual or a group of individuals on the grounds of ethnic origin, attitude towards religion and membership of a social group. Such speech had been clearly prohibited by the relevant provisions of domestic law and had been punishable under Articles 280 and 282 of the Criminal Code (see paragraphs 67-69 above). All those provisions had been accessible to the applicant and had enabled him to foresee the consequences which his actions would entail. The Government thus insisted that the measure complained of had been "prescribed by law".

77. They further stressed that it had not been the applicant's membership of an unregistered and thus informal movement or his participation in two unauthorised meetings that had lain at the heart of his conviction, but rather the publication of inflammatory hateful statements in the newsletter as well as exhibiting posters with xenophobic texts at public events in which he had called other individuals to support his movement and to commit extremist actions, such as overthrow using force of the fundamentals of the constitutional order, a breach of Russia's territorial integrity, undermining national security and terrorist activities. The Government submitted that the applicant's actions had breached the domestic legislation aimed at protecting national security, territorial integrity and public order and concluded that his conviction had been "necessary in a democratic society", within the meaning of Articles 10 § 2 and 11 § 2 of the Convention, for the protection of "the interests of Russian nationals and the fundamentals of Russia's constitutional order".

B. The Court's assessment

78. The Court observes at the outset that whilst the applicant relied on two Convention provisions – Articles 10 and 11 of the Convention – his complaint mainly concerned his criminal conviction for publication and dissemination of texts that were found to have contained appeals to

extremist activities and to have incited hatred and enmity on various grounds. The applicant's membership of an unregistered movement and his participation in unauthorised meetings were not the grounds for his conviction and were only relied on by the domestic courts as a general background to his case and factual elements showing the dissemination of the impugned information. The Court therefore considers it appropriate to examine the present case from the standpoint of Article 10 of the Convention (see, for a similar approach, *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 26, ECHR 2005-I; *Gül and Others v. Turkey*, no. 4870/02, § 34, 8 June 2010; *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 52, ECHR 2011; and *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 91, 26 April 2016).

1. Admissibility

79. 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

80. It is not in dispute between the parties that the applicant's conviction constituted an interference with his right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. Such interference will infringe the Convention unless it satisfies the requirements of Article 10 § 2. It should therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve those aims.

(a) "Prescribed by law"

81. The Court observes that the applicant's conviction was based on Articles 280 § 2 and 282 § 1 of the Russian Criminal Code. It thus accepts that the resultant interference with the applicant's relevant rights may be regarded as having been "prescribed by law".

(b) "Legitimate aim"

82. The Government argued that the applicant's actions had breached the domestic legislation aimed at protecting national security, territorial integrity and public order. They also submitted that the disputed measure had been necessary for the protection of "the interests of Russian nationals and the fundamentals of Russia's constitutional order" (see paragraph 77 above).

83. The Court observes at the outset that whilst referring to the need to protect "the interests of Russian nationals", the Government did not specify

which individuals, groups of individuals or sectors of the population they sought to protect so as to engage the aim of "the protection of the ... rights of others" enshrined in Article 10 § 2 of the Convention. At the same time the Court notes that, as is apparent from the first-instance judgment as upheld on appeal, the domestic courts considered that a number of the impugned statements had been directed against such groups as the Russian people, Orthodox believers and Russia's servicemen and law-enforcement officers (see paragraphs 53 and 57-58 above). The Court is therefore prepared to assume that the interference in question was designed to protect those groups and thus pursued the aim of "protection of the ... rights of others".

84. The Court further considers that the Government's reference to the fundamentals of Russia's constitutional order and to the breach by the applicant of the legislation aimed at protecting national security, territorial integrity and public order, corresponded to the aims of protecting "national security", "territorial integrity" and "public safety" and preventing "disorder or crime" established by the above-mentioned provision.

85. The Court reiterates that the concepts of "national security" and "public safety" in Article 10 § 2, that permit interference with Convention rights, must be interpreted restrictively and should be brought into play only where it has been shown to be necessary to suppress the release of information for the purposes of protecting national security and public safety (see *Stoll v. Switzerland* [GC], no. 69698/01, § 54, ECHR 2007-V, and *Görmüş and Others v. Turkey*, no. 49085/07, § 37, 19 January 2016). It has also previously stressed the sensitivity of the fight against terrorism and the need for the authorities to stay alert to acts capable of fuelling additional violence (see, among other authorities, *Öztürk v. Turkey* [GC], no. 22479/93, § 59, ECHR 1999-VI; *Erdoğdu v. Turkey*, no. 25723/94, § 50, ECHR 2000-VI; and *Leroy v. France*, no. 36109/03, § 36, 2 October 2008).

86. In the Russian context, the Court has on a number of occasions noted the difficult situation in the Chechen Republic, which obtained at the relevant time and called for exceptional measures on the part of the State to suppress the illegal armed insurgency there (see, among many other authorities, *Khatsiyeva and Others v. Russia*, no. 5108/02, § 134, 17 January 2008; *Akhmadov and Others v. Russia*, no. 21586/02, § 97, 14 November 2008; and *Kerimova and Others v. Russia*, nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, § 246, 3 May 2011). The Court therefore accepts that in the period when the applicant was tried and convicted, matters relating to the conflict in the Chechen Republic were of a very sensitive nature and required particular vigilance on the part of the authorities (see *Dmitriyevskiy v. Russia*, no. 42168/06, § 87, 3 October 2017).

87. The Court accepts, accordingly, that the applicant's conviction can be seen as having pursued the aims of protecting the rights of others as well

as protecting national security, territorial integrity and public safety and preventing disorder and crime.

(c) "Necessary in a democratic society"

88. 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 have been 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 v. Switzerland* [GC], no. 27510/08, § 196, ECHR 2015 (extracts); and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

89. 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 (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). Furthermore, the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries (*Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV).

90. The adjective "necessary" implies the existence of a "pressing social need", which must be convincingly established (see, for instance, *Erdoğdu*, cited above, § 53). 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).

91. 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).

92. In the present case, the applicant was prosecuted in criminal proceedings and punished for publishing texts which, as the domestic courts found, had contained appeals to extremist activities, and, in particular, statements amounting to appeals to violence, justification and glorification of terrorism as well as statements inciting hatred and enmity on various grounds (see paragraphs 45-59 and 64 above). The Court reiterates in that connection 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, hatred or 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, for instance, *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*, cited above, § 34).

93. In its assessment of the interference with freedom of expression in cases concerning expressions alleged to stir up or justify violence, hatred or intolerance, the Court takes into account to a number of factors, which have been summarised in the case of *Perinçek* (cited above, §§ 205-08). The Court will examine the present case in the light of those principles, with a particular regard to the context in which the impugned statements were published, their nature and wording, their potential to lead to harmful consequences and the reasons adduced by the Russian courts to justify the interference in question.

(i) "Pressing social need"

94. The Court will first examine whether the interference complained of corresponded to a "pressing social need" and whether the reasons adduced by the domestic courts in that respect were "relevant and sufficient".

95. The Court observes that the texts in question concerned the ongoing conflict in the Chechen Republic, and, in particular, the governmental policies in that region, or events that had happened within and outside the territory of the Chechen Republic that had been linked to that conflict. It is thus clear that, as such, those statements were part of a debate on a matter of general and public concern, a sphere in which restrictions on freedom of expression are to be strictly construed (see paragraph 89 above).

96. The Court further takes into account that the impugned comments were made against the background of the difficult situation prevailing in the Chechen Republic at the time, where separatist tendencies in the region led to serious disturbances between Russia's federal armed and security forces and the Chechen rebel fighters and resulted in a heavy loss of life in that region as well as in deadly terrorist attacks in other regions of Russia. The Court has always been mindful of the difficulties linked to the prevention of public disorder and terrorism (see *Karataş*, cited above, § 51; *Leroy*, cited above, § 38; and *Saygılı and Falakaoğlu v. Turkey (no. 2)*, no. 38991/02, § 25, 17 February 2009) and has acknowledged, in particular, that in situations of conflict and tension particular caution is called for on the part of the national authorities when consideration is being given to the publication of opinions which advocate recourse to violence against the State lest the media become a vehicle for the dissemination of hate speech and the promotion of violence (see, for instance, *Erdoğdu*, cited above, § 62). Yet, a fair balance should be struck between the individual's fundamental right to freedom of expression and a democratic society's legitimate right to protect itself against the activities of terrorist organisations (see *Zana v. Turkey*, 25 November 1997, § 55, *Reports of Judgments and Decisions* 1997-VII, and *Leroy*, cited above, § 37).

97. Turning to the wording of the texts in question, the Court considers that the impugned statements can be divided into three groups. It will examine each group separately (see, for a similar approach, *Tara and Poiata v. Moldova*, no. 36305/03, §§ 27-33, 16 October 2007).

(α) First group of statements

98. The first group comprises the extracts quoted in paragraphs 8, 9, 11-17, 20-26, 29-32 and 35 above.

99. In the Court's view, those extracts promote, justify and glorify terrorism and violence. They reveal an intention to romanticise and idealise the Chechen separatists' cause, referring to a "national liberation struggle of the Chechen people against the colonial expansion of Russia" for "independent Ichkeria" (see paragraphs 13 and 24 above). At the same time they stigmatise the other party to the conflict and represent it as absolute

evil by the use of such labels as "a scary black noisome abyss [whose] name ... is Russia", "immeasurable scoundrelism and perfidy of Russia", "damned imperial Russia", and "bloody *Rusnya*", alongside references to "Russia's aggression", "atrocities" and "genocide of the Chechen people" (see paragraphs 12, 15-16, 21-23, 25-26 and 31 above). The Chechen separatist warlords actively involved in the armed resistance and perpetrators of terrorist attacks against civilians are venerated and praised as "heroes" and "patriots", who showed "an example of how one should fight against Russia" (see paragraphs 12, 15-16, 20, 23 and 31 above), whereas federal servicemen and law-enforcement officers participating in the counter-terrorist operation in the Chechen Republic are brutalised and dehumanised, being portrayed as "maniacs, bloodthirsty sadists, murderers and degenerates in epaulettes" (see paragraph 9 above) as well as "a frenzied gang of looters and murderers" and "a herd intoxicated with drugs" (see paragraph 29 above).

100. Some of the extracts in question reject democratic principles, by inviting the readers "not ... [to] worry about the Constitution", and openly call to violent uprising and armed resistance (see paragraphs 11, 22, 25-26 and 30). They communicate to the readers the general idea that recourse to violence and terrorism is necessary and justified measures of self-defence in the face of the aggressor, stating, in particular, that "Russia ... is ... permanently in danger of being hit by retaliatory blows, because its rulers have perpetrated a despicable attack on a sovereign State and are killing innocent civilians there" (see paragraph 8 above) and that "Chechens have the moral right to blow up everything they want in Russia, after what Russia and Russians have done to them, no objections regarding humanism or love for humankind can be accepted" (see paragraph 32 above).

101. The impugned statements approve of terrorist methods and violent acts as a form of struggle (see paragraphs 20 and 35 above) or openly praise terrorist attacks that had taken the lives of dozens of innocent civilians (see paragraphs 8, 12, 21 and 32 above). In the latter respect, it is also of relevance that the articles commenting on the said terrorist attacks were published within only few months (see paragraphs 8, 12, 21 and 24 above) or even weeks (see paragraph 32 above) after those events, when, most likely, the traumatic memories were still fresh and thus painful for the deceased victims' relatives as well as for the survivors of the attacks. Publication, in this context, of articles justifying and glorifying that deadly violence constituted a particularly cynical attack on the victims' dignity (cf. *Leroy*, cited above, §§ 43 and 45). It is also clear that such a context warranted an enhanced degree of regulation of such statements by the authorities (see *Perinçek*, cited above, § 250).

102. The Court further considers that it matters little in the circumstances of the present case that the applicant was the author of only some of the incriminated texts, whereas others were written by other persons. It was established by the domestic courts and remained undisputed

by the applicant before the Court, that he, being the owner and editor-in-chief of the newsletter, prepared each issue of the newsletter and determined its content (see paragraphs 7 and 61 above), with the result that he was vicariously subject to the "duties and responsibilities" that mass media's editorial and journalistic staff undertake in the collection and dissemination of information to the public and which assume an even greater importance in situations of conflict and tension (see *Sürek (no. 1)*, cited above, § 63*; Sürek v. Turkey (no. 3)* [GC], no. 24735/94, § 41, 8 July 1999; and *Saygılı and Falakaoğlu (no. 2)*, cited above, § 29). Moreover, it is obvious that the applicant associated himself with the views expressed in the impugned extracts, including approval of terrorists and their methods (see paragraphs 21, 41 and 51 above).

103. In so far as the applicant argued that, by publishing the impugned statements in his newsletter, he was merely expressing his critical views and civic position regarding the conflict in the Chechen Republic, the Court notes the following. Whilst the limits of permissible criticism are wider with regard to the government than in relation to a private individual or even a politician (see, among many other authorities, *Ceylan*, cited above, § 34; *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 57, 8 July 1999; and *Sürek and Özdemir v. Turkey* [GC], nos. 23927/94 and 24277/94, § 60, 8 July 1999), and the mere fact that "information" and "ideas" offend, shock and disturb does not suffice to justify the interference with one's right to freedom of expression (see paragraph 88 above), the impugned statements went far beyond the acceptable limits of criticism and amounted to glorification of terrorism and deadly violence.

104. As regards the reasons adduced by the Russian courts to justify the applicant's conviction in respect of the statements under examination, the Court observes that the trial court, as upheld by the appellate court, found that the impugned texts contained words and expressions which had positively assessed, justified and aimed at creating a positive public opinion about persons implicated in terrorist activities; their criminal acts and terrorist attacks, and that they had thus justified and glorified terrorists and their acts (see paragraphs 46-48 and 51 above). The national courts furthermore noted that the impugned texts had referred to the Chechen Republic as an independent State, with its own president, political and legal system; had interpreted the events in the Chechen Republic as a war between two separate States, and that they had thus aimed at breaching the territorial integrity of Russia (see paragraphs 46 and 50 above). They also pointed out that some publications had openly called for violence and envisaged a possibility of deviating from the Constitution, thereby clearly inciting bloodshed and the overthrow by force of the political regime and constitutional order of Russia (see paragraphs 46, 52 and 54 above). In addition, the domestic courts, as the texts of their decisions reveal, considered that the impugned statements had incited hatred and enmity against Russia's servicemen and law-enforcement officers as a "social

group" by ascribing to them insulting characteristics and making negative emotional assessments of them (see paragraphs 46 and 53 above).

105. In the latter respect, in so far as the domestic courts considered that the impugned statements, *inter alia*, incited hatred against Russia's servicemen and law-enforcement officers by describing them as "maniacs, bloodthirsty sadists, murderers and degenerates in epaulettes" (see paragraph 9 above) as well as "a frenzied gang of looters and murderers" and "a herd intoxicated with drugs" (see paragraph 29 above), the Court observes that the impugned statements were made in two articles, one of which commented on the case of a high-ranking officer of the Russian Army, who at that time was standing trial on charges of torturing and killing an 18-year-old Chechen woman (see paragraph 9 above), whilst the other one accused Russia's security forces of extra-judicial executions of civilians during a "sweep" operation in a Chechen village (see paragraph 29 above). The articles then expressed the view that "Russia's whole ... army consist[ed] of such [criminals]" and that it "[had] stopped existing in Chechnya as a military force of the State, having turned into a frenzied gang of looters and murderers". In other words, the articles vehemently accused Russia's servicemen and law-enforcement officers participating in the counter-terrorist operation in the Chechen Republic of serious abuses and excesses. It is in this context that the said words and expressions were employed.

106. In the above connection, the Court considers it important to note that, firstly, those accusations may not have been without foundation. The facts of acts of particular seriousness, such as extrajudicial executions, mass murders, tortures, enforced disappearances, or similar, committed by representatives of Russia's armed and security forces during the armed conflict in the Chechen Republic have been established by the Court in a significant number of cases which have been brought to its attention and where violations of various Convention provisions have been found (see, for instance, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005; *Estamirov and Others v. Russia*, no. 60272/00, 12 October 2006; *Chitayev v. Russia*, no. 59334/00, 18 January 2007; *Goncharuk v. Russia*, no. 58643/00, 4 October 2007; *Sadykov v. Russia*, no. 41840/02, 7 October 2010; *Khatsiyeva and Others*, cited above; *Akhmadov and Others*, cited above; *Esmukhambetov and Others v. Russia*, no. 23445/03, 29 March 2011). Secondly, 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), the more so when such criticism concerns the whole public institution – Russia's armed and security forces in the present case – rather than identifiable civil servants. Admittedly, a certain degree of immoderation may fall within those limits, given that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which

they are conveyed (see, among many other authorities, *Gül and Others*, cited above, § 41).

107. In the present case, however, the Court is unable to reach a conclusion that, albeit immoderate, the statements under examination remained within the limits of the acceptable criticism of the federal armed and security forces' actions in the Chechen Republic. In its view, just as the other statements in the group under examination, they seek to stigmatise and dehumanise the other party to the conflict. By generalising and labelling all the members of Russia's armed and security forces as "maniacs", "murderers" and otherwise criminally minded persons, the texts in question stir up a deep-seated and irrational hatred towards them in a clear attempt to justify and advocate violent actions against them (see paragraphs 11 and 35 above). In the light of the tenor of the phrases used, and with due regard to the sensitive context of the fight against terrorism and, in particular, the counter-terrorist operation in the Chechen Republic (see paragraph 96 above), the Court is prepared to accept that the impugned statements (see paragraphs 9 and 29 above) incited hatred against the members of the federal armed and security forces and exposed them to a possible risk of physical violence, and that, from this standpoint, the domestic courts' conclusion in that respect was based on "relevant and sufficient" considerations.

108. The domestic courts also found that some of the extracts under examination promoted separatism as they had, *inter alia*, referred to "President Maskhadov" as the "legitimate President of Chechnya" and "the Commander-in-Chief of the CRI" and had reproduced his "decrees" (see paragraph 50 above). The Court has previously held that expressions that merely refer to someone, who is considered to be an outlaw, as "the people's leader", "president", "esteemed" or similar, by themselves, do not incite violence (see *Belge v. Turkey*, no. 50171/09, § 34, 6 December 2016, and the authorities cited therein), and therefore the use of such expressions is in itself insufficient to justify an interference with the freedom of expression. In the present case, however, the above-mentioned expressions were employed in the context of glorification of the Chechen separatists' insurgence and armed resistance as well as the violent methods used by them (see paragraphs 23 and 24 above). Seen in this perspective, the reasons put forward by the Russian courts in support of their conclusions appear to be in keeping with the principles set forth in the Court's case-law.

109. In the light of the foregoing, the Court finds that, in so far as this group of the impugned statements was concerned, the interference with the applicant's right of freedom of expression met a "pressing social need" and the reasons adduced by the authorities were "relevant and sufficient".

(β) Second group of statements

110. The second group includes extracts quoted in paragraphs 10, 27, 28, 33, 34 and 36 above.

111. The Court observes that these extracts describe the Russian authorities' actions in the Chechen Republic as "a totally destructive genocidal war against the Chechen people" (see paragraph 33 above). They expose the practices used by Russia's security forces, such as the "killing of the ex-President of the CRI, Zelimkhan Yandarbiyev" (see paragraph 34 above) and invite the readers to "accumulate, hate and keep record of [the Russian authorities'] crimes [in the Chechen Republic] – the endless list of all those "sweep operations", "identity checks", "counter-terrorist operations", gagging laws, unlawful searches and politically motivated criminal prosecutions" to eventually hold those responsible "accountable ... for everything" (see paragraph 28 above). It is also suggested that "an immediate compulsory psychiatric examination" of the servicemen and officers of the armed and security forces in Russia is necessary (see paragraph 10 above). Some of the extracts furthermore advance political claims in the form of an appeal to abstain from participation in the presidential election that was to be held in March 2004, and to carry out a campaign to that effect (see paragraph 27 above), or in the form of slogans printed on posters (see paragraph 36 above).

112. These statements were amongst those which the domestic courts relied on to justify the applicant's conviction for public appeals to extremist activities and incitement of hatred and enmity. According to the domestic courts, the above-mentioned extracts showed that the applicant had regarded Russia's actions in the Chechen Republic as aggression, war waged by Russia against the Chechen people, and genocide of the latter (see paragraph 49 above). The domestic courts also referred to the above-mentioned statements as an example of the applicant's "acts aimed against the State and the existing political regime in Russia", those acts being keeping "record of [the Russian authorities'] crimes [in the Chechen Republic]" and "organisation of meetings concerning the events in the Chechen Republic, participation in those meetings, writing inscriptions on the walls of buildings, fences and bus stops" (see paragraphs 55-56 above), or displaying banners "with slogans condemning the regime" (see paragraph 59 above). The domestic courts, as the texts of their decisions reveal, also considered that by requiring "an immediate compulsory psychiatric examination" of federal servicemen and law-enforcement officers the impugned statements, in fact, made "an appeal to act criminally against them" and incited hatred against them (see paragraph 53 above).

113. The Court cannot accept such reasoning as "relevant and sufficient" to justify the interference with the applicant's right of freedom of expression, in so far as the statements under examination are concerned. It reiterates in this connection that it is an integral part of freedom of expression to seek historical truth, and that a debate on the causes of acts of particular gravity which may amount to war crimes or crimes against humanity should be able to take place freely (see *Fatullayev v. Azerbaijan*, no. 40984/07, § 87, 22 April 2010). Moreover, it is in the nature of political

speech to be controversial and often virulent (see *Perinçek*, cited above, § 231) and the fact that statements contain hard-hitting criticism of official policy and communicate a one-sided view of the origin of and responsibility for the situation addressed by them is insufficient, in itself, to justify an interference with freedom of expression (see, for instance, *Sürek and Özdemir*, cited above, § 61).

114. In the Court's opinion, the views expressed in the impugned extracts cannot be read as an incitement to or justification of violence, nor can they be construed as instigating hatred or intolerance. Although those extracts are admittedly quite virulent in their language and contain strongly worded statements, the Court discerns no elements in them other than a criticism of the Russian Government and their actions during the armed conflict in the Chechen Republic, which however acerbic it may appear does not go beyond the acceptable limits given the fact that those limits are particularly wide with regard to the government (see paragraph 103 above). It is also of relevance that the appeal to abstain from participation in the election of the President of Russia (see paragraph 27 above), was published in an issue for February-March 2004. That was, the Court notes, during the electoral campaign – a period where it was particularly important that opinions and information of all kinds were permitted to circulate freely (see *Długołęcki v. Poland*, no. 23806/03, § 30, 24 February 2009).

115. In so far as the domestic court considered that a requirement of "an immediate compulsory psychiatric examination" of Russia's servicemen and law-enforcement officers amounted to an appeal to act criminally and incited hatred against them, the Court considers that the authorities did not assess this statement in the light of the article, as a whole; they focused on that statement taken out of its context and failed to examine which idea it sought to impart.

116. The above-mentioned statement was made in an article that, as the Court has observed above, commented on the case of a high-ranking officer of the Russian Army who at that time was standing trial on charges of torturing and killing an 18-year-old Chechen woman (see paragraph 9 above). The article, *inter alia*, fervently criticised a first-instance court's judgment by which that officer had been absolved of criminal liability on the grounds of temporary insanity. The article also suggested that the fact that an insane officer had been in command of a regiment necessitated a compulsory psychiatric examination of other officers and servicemen of Russia's armed and security forces (see paragraph 10 above). Against this background, the phrase at issue cannot be regarded as an appeal to any criminal act, or as incitement to hatred against federal servicemen or law-enforcement officers. Rather, it can be seen as a scathing criticism of the judicial response to the murder of a young woman by a high-ranking military officer who had been, furthermore, a representative of the State seconded to the Chechen Republic to maintain constitutional order in the region and called upon to protect the interests of civilians. It is also an

expression of concern that a mentally unstable person had been placed in command of a regiment, and an emotional appeal to take necessary measures with respect to the personnel of the federal armed and security forces to prevent similar incidents in the future.

117. The Court has found in paragraph 107 above that, in the sensitive context of the fight against terrorism and, in particular, the counter-terrorist operation in the Chechen Republic, and in the light of the tenor of the phrases used, a number of other statements from the same article could be regarded as inciting hatred against the members of Russia's armed and security forces. However, in the light of its considerations in the previous paragraph, the Court cannot reach the same conclusion with regard to the extract under examination, which, as has been noted above, is merely concerned with criticism of the State and the actions of the federal armed and security forces as a part of the machinery of the State. It stresses in this connection that it is vitally important that the domestic authorities adopt a cautious approach in determining the scope of "hate speech" crimes and strictly construe the relevant legal provisions in order to avoid excessive interference under the guise of action taken against "hate speech", where such charges are brought for a mere criticism of the Government, State institutions and their policies and practices.

118. The Court thus finds that, in reaching their conclusions, the domestic courts failed to take account of all facts and relevant factors. Therefore their reasons cannot be regarded as "relevant and sufficient". It follows that the interference with the applicant's freedom of expression did not meet "a pressing social need" as regards this group of statements.

(γ) Third group of statements

119. The last group encompasses texts quoted in paragraphs 18 and 19 above.

120. The domestic courts observed that the texts in question concerned isolated cases of alleged abuses committed respectively by certain ethnic Russians and Orthodox believers, whereas the applicant had used headings that had contained generalised negative statements representing those two situations as typical and characteristic of all Russians and Orthodox believers respectively, thereby inciting hatred and enmity against the relevant groups of population (see paragraph 57 above).

121. The Court has consistently held that attacking or casting in a negative light an entire ethnic or religious group by, for instance, linking the group as a whole with a serious crime, is in contradiction with the Convention's underlying values, notably tolerance, social peace and non-discrimination (see *Perinçek*, cited above, § 206, and the authorities cited therein). Also, whereas there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate of questions of public interest, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to

matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion (see *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports* 1996-V).

122. In the present case, as was established by the national courts, the applicant, in essence, accused ethnic Russians of keeping slaves, and linked Orthodox believers to some very controversial statements. In the light of its approach to such broad attacks on ethnic and religious groups, the Court sees no reasons to depart from the conclusions of the domestic courts and finds their considerations in this respect to be "relevant and sufficient" to justify the interference with the applicant's right to freedom of expression, as regards the impugned texts.

123. At the same time, in so far as the domestic courts considered – with a mere reference to unspecified texts in issues nos. 1 (27) and 9 (35) of the applicant's newsletter – that he "[had abased] the national dignity of people practising [the Orthodox] religion" by using "insulting characteristics and negative emotional assessments of believers" and "discriminatory expressions in respect of the Orthodox denomination" (see paragraph 58 above), the Court finds this reasoning deficient. Indeed, when reaching this conclusion, the courts failed even to refer to any particular texts which, according to them, had had discriminatory or humiliating connotations, let alone to assess those texts in the light of the Court's relevant standards. Their assessment therefore was not in conformity with the principles embodied in Article 10 of the Convention.

(δ) Conclusion

124. The Court thus concludes that, in so far as the statements mentioned in paragraphs 98 and 119 above were concerned, the interference with the applicant's right to freedom of expression met a "pressing social need" for the protection of the rights of others, as well as national security, territorial integrity and public safety and for the prevention of disorder and crime. However, the need for the restriction was not convincingly demonstrated as regards the statements mentioned in paragraph 110 above, and also, in so far as the domestic courts referred to some unspecified texts in issues nos. 1 (27) and 9 (35) of the applicant's newsletter (see paragraph 123 above).

(ii) Proportionality

125. The Court will now proceed to examine whether the applicant's conviction was proportionate to the legitimate aims pursued and whether the reasons adduced by the domestic courts in that respect it were "relevant and sufficient".

126. It reiterates in this connection that the Contracting States do not enjoy unlimited discretion to take any measure they consider appropriate for protecting the legitimate interests established in Article 10 § 2 of the Convention and for punishing illegal conduct intertwined with expression.

That discretion goes hand in hand with European supervision by the Court, whose task is to give a final ruling on whether the penalty was compatible with Article 10 (see *Taranenko v. Russia*, no. 19554/05, §§ 81 and 87, 15 May 2014). In the assessment of the proportionality of an interference, the nature and severity of the penalties imposed are factors to be taken into account (see, for instance, *Skałka v. Poland*, no. 43425/98, §§ 41-42, 27 May 2003; and *Fatullayev*, cited above, § 102). The Court must exercise the utmost caution where the measures taken by the national authorities are such as to dissuade the applicants and other persons from imparting information or ideas contesting the established order of things (see *Taranenko*, cited above, § 81).

127. The Court has found above that a number of the impugned statements glorified terrorism and advocated and promoted violence and hatred and that, thus, there was a need for a restriction of the applicant's right of freedom of expression to protect the interests secured by Article 10 § 2 of the Convention as invoked by the Government, including the rights of others as well as national security, territorial integrity and public safety and preventing disorder and crime. Consequently, an appropriate sanction would be compatible with the Court's standards under Article 10 § 2 of the Convention (cf. *Skałka*, cited above, § 41).

128. The Court observes that the applicant was sentenced to five years' imprisonment and banned from practising journalism for three years. He served this sentence in full. The Court leaves open the question whether a ban on the exercise of journalistic activities, as such, is compatible with Article 10 of the Convention.

129. In the Court's view, a deprivation of liberty coupled with a ban on practising journalism, particularly for such a long period, for speech, even if criminal, cannot but be regarded as an extremely harsh measure warranting very convincing considerations with due regard to the particular circumstances of the case. In the instant case, the domestic courts limited their justification of the sanctions in question with reference to the applicant's "personality" and the "social danger" posed by his offence (see paragraph 62 above). Whilst those considerations may be "relevant", they cannot be regarded as "sufficient" to justify the exceptional severity of the penalty imposed on the applicant.

130. The Court furthermore discerns no reasons that would enable it to conclude that the applicant's sentence was rendered necessary by any particular circumstances of his case. It observes in this connection that the applicant had no criminal record and thus had never been convicted of any similar offence. Had he been so convicted, it would have been more acceptable had the courts chosen to impose a harsh sentence on him in order to make it more dissuasive in the face of his intransigence (see *Skałka*, cited above, § 39, and *Gough v. the United Kingdom*, no. 49327/11, §§ 174-76, 28 October 2014).

131. The Court further reiterates that the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference (see *Murphy v. Ireland*, no. 44179/98, § 69, ECHR 2003-IX (extracts)). In this connection, it notes, firstly, that it does not appear that at the time of the events under examination, the applicant was a public, well-known or influential figure (see, by contrast, *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001). It is also noteworthy that the impugned statements were printed in a self-published newsletter, the number of copies of which, as was pointed out by the applicant and not disputed by the Government, was very low (see paragraphs 63-64 and 74 above). Those copies were distributed by the applicant in person or through his acquaintances at public events in Moscow only to those individuals who expressed their interest (see paragraph 37 above). It is thus clear that the circulation of the newsletter at issue was insignificant. Moreover, it cannot be said that the incriminated statements were disseminated in a form that was impossible to ignore (see *Perinçek*, cited above, § 253, and, by contrast, *Vejdeland and Others v. Sweden*, no. 1813/07, §§ 56-57, 9 February 2012), or in any other way that enhanced the message they were conveying (see, by contrast, *Féret v. Belgium*, no. 15615/07, § 76, 16 July 2009). On the contrary, it is clear that the above-mentioned factors in the present case significantly reduced the potential impact of the impugned statements on the rights of others, national security, public safety or public order (cf. *Okçuoğlu v. Turkey* [GC], no. 24246/94, § 48, 8 July 1999; *Gerger v. Turkey* [GC], no. 24919/94, § 50, 8 July 1999; and *Karataş*, cited above, § 52).

132. The Court thus concludes that the applicant's punishment was not proportionate to the legitimate aims pursued.

(iii) Conclusion

133. In view of the above, and particularly bearing in mind the authorities' failure to demonstrate convincingly "the pressing social need" for an interference with the applicant's freedom of expression in respect of a number of the impugned statements (see paragraph 124 above) as well as the severity of the penalty imposed on him, the Court finds that the interference in question was not "necessary in a democratic society".

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

135. The applicant also complained under Article 6 of the Convention that various irregularities in the criminal proceedings against him had rendered them unfair. In his view, his conviction had been based on insufficient and inadmissible evidence. In particular, the courts had taken

into account the expert report of 13 April 2004, and had rejected an alternative expert report submitted by the defence. Also, the courts had incorrectly assessed statements by a number of prosecution witnesses and referred, in convicting the applicant, to a statement by a witness who had lodged an anonymous complaint, and to a statement by another witness who had been biased against the applicant. At the same time, in the applicant's view, the courts had failed to give appropriate weight to the statements of the defence witnesses. The applicant also disputed the establishment of facts by the trial court, stating that its relevant findings had not been substantiated with sufficient evidence.

136. The Government contested the applicant's allegations, stating that the applicant's case had been attended by sufficient procedural guarantees and that, overall, the criminal proceedings against him had met the "fairness" requirement, within the meaning of Article 6 § 1 of the Convention.

137. The Court reiterates that it is not its function to deal with errors of fact and law allegedly committed by national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, whilst Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are primarily matters for regulation by national law and national courts (see, among many other authorities, *Ziembiński v. Poland (no. 2)*, no. 1799/07, § 49, 5 July 2016).

138. In the present case, the Court finds that the applicant's allegations do not disclose any appearance of a violation of the fair trial guarantees, within the meaning of Article 6 § 1 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

139. 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

140. The applicant claimed 60,000 euros (EUR) in respect of pecuniary damage, which represented his loss of earnings for the five years in which he was in prison. He also claimed EUR 300,000 in respect of non-pecuniary damage.

141. The Government contested the applicant's claim in respect of pecuniary damage as purely speculative and unsubstantiated. They also

disputed the applicant's claim in respect of non-pecuniary damage as excessive and argued that, should the Court find a violation of the applicant's rights in the present case, a finding of a violation would constitute a sufficient just satisfaction.

142. The Court notes that the claim for pecuniary damage has not been substantiated; it therefore rejects this claim. On the other hand, it finds that the applicant suffered non-pecuniary damage on account of the violation of his right to freedom of expression and that that damage cannot be compensated by a mere finding of a violation. Having regard to the particular circumstances of the case, the Court considers it reasonable to award the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that should be chargeable on that amount.

B. Costs and expenses

143. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court. He pointed out that he had not paid those as he did not have the financial means to do so.

144. The Government invited the Court to reject this claim in the absence of any evidence that the above-mentioned costs had actually been incurred.

145. 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 applicant's submissions on the issue, the Court rejects the claim.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds*, by four votes to three,
   (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 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

4. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
(a) concurring opinion of Judge Jäderblom joined by Judge Keller;
(b) concurring opinion of Judge Keller;
(c) partly dissenting opinion of Judge Pastor Vilanova.

H.J.
J.S.P.

CONCURRING OPINION OF JUDGE JÄDERBLOM JOINED BY JUDGE KELLER

1. I agree with the majority that there has been a violation of Article 10. However, I respectfully disagree with the majority's conclusion in paragraph 119 that the headline of one article with the wording "Russians have slaves and dare to squawk something about Chechens" (see paragraph 18), and another with the wording "Orthodox [believers] went completely nuts" (see paragraph 19), constituted broad attacks on ethnic and social groups and therefore the domestic courts' considerations were relevant and sufficient to justify the interference with the applicant's right to freedom of expression, as regards the impugned texts.

2. The article in connection with the first headline reproduced information from the website "regions.ru" regarding a police operation to liberate Uzbek nationals who had been held in slavery by Russian nationals (see paragraph 18).

3. The article connected to the second headline contained information about some unidentified "Orthodox theologians" who, in a booklet, had allegedly claimed that "Jesus Christ [had been] crucified not by Jews but by Chechens" (see paragraph 19).

4. The domestic courts (see paragraphs 57 and 64) found that the statements in the headlines were unacceptable generalisations about all Russians and Orthodox believers respectively.

5. If the statements are read in isolation it is difficult not to regard them as offensive vis-à-vis these groups. However, the headline of a text, such as an article in a newsletter or newspaper, which is not reproduced in isolation elsewhere (for example on a newspaper placard) but only in direct connection with the running text of the article is a different matter. In such cases the reader can be expected to continue reading the article after his or her attention was caught by the headline. Therefore the headline should be assessed together with the article as a whole.

6. Such an assessment may lead to the conclusion that the headline as such is unacceptable, but in the present case I cannot agree that the headlines are unacceptable, for the following reason. Admittedly both headlines are stereotyping groups of people as having very negative characteristics. However, the ensuing articles make it clear that there had been specific events where individuals of these groups had performed certain acts, the description of which by the applicant clearly fell within his freedom of expression (the veracity of those incidents was not questioned by the domestic courts). In my opinion, in the context of the contents of the running texts of the articles, the statements in the headlines fell outside the scope of what could be accepted as criminal speech.

CONCURRING OPINION OF JUDGE KELLER

I. Introduction

1. I agree with the majority of my colleagues that there has been a violation of Article 10 of the Convention. However, I write separately because I believe that the Court should have followed different reasoning in reaching this conclusion.

2. The present case is important, as it is the first time that this Court has had to decide on a case which stems from the application of the Suppression of Extremist Activities Act (see paragraph 69 of the judgment), and will thus be the starting point of a body of case-law which will serve as a reference not only in future cases concerning Russia, but for all other Member States as well.

3. In this opinion I will argue, first, that the majority's methodology of classifying all the statements individually is ill-suited to this case, and that a holistic assessment of the applicant's expressions would have been more appropriate (II.); second, that if such a methodology was to be used, the majority should have been more careful in classifying some of the applicant's expressions as incitement to or glorification of violence (III.); third, that the potential impact of the applicant's expressions should have been assessed before delving into a proportionality analysis (IV.); and, finally, that the ban on journalism imposed on the applicant was not "prescribed by law" and was therefore not compatible with Article 10 of the Convention, regardless of its proportionality (V.).

II. Classification of statements

4. I cannot agree with the rigid classification of statements made by the Court in paragraphs 98, 110 and 119 of the present judgment, neither in principle nor in its specific form.

5. I believe that the Court should have followed a different approach in this case. Instead of making an individual assessment of each statement, the Court should have focused on the domestic court's decision, which considered the applicant's expressive activity holistically. This would have been the correct approach, given the role of this Court and the hazards that these classification might pose to the case-law.

6. Assessing the statements individually, classifying some as hate speech, some as glorification of violence and others as legitimate political speech, entails a new assessment of the facts that comes close to putting this Court in a fourth-instance position (see, for example, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012). All expressions must be considered in the context in which they are made. Identical statements can have different meanings depending on the person

producing them, the intended audience, or the audience reached by the statements, as well as the general context, among others. The domestic courts may have considered that some of the statements in paragraph 98 (which the Court finds to glorify violence) were problematic only because they were accompanied by those in paragraph 110 (which the majority considers innocuous), or vice versa. The rigid classification adopted by the Court prevents an analysis of the actual decision taken by the Russian courts, and leads the majority to undertake a proportionality analysis of a decision that did not exist and that we must second-guess – that is, the Court assesses the five-year sentence and the three-year ban on journalism as if it had been imposed only by virtue of the statements contained in paragraphs 98 and 119. In reality, the Court cannot know what statements were essential to the domestic courts in imposing the sanctions.

7. Additionally, and relatedly, classifying statements in this way could lead to doctrinal confusion that might obscure, rather than clarify, the future application of this precedent. Such classification presupposes that each of these statements can be assessed independently. This could have problematic implications, where the Court may feel compelled to decide future cases by comparing individual statements to those in each of our categories. Not only would this exercise be extremely difficult, it might lead to problematic conclusions. The context in which these particular statements were made was particularly exceptional and delicate, thus rendering a future comparison, in a different context, particularly difficult. Ultimately, undertaking this classification may generate implications that are hard to foresee at the present time, especially as more countries within the Council of Europe are dealing with separatist tensions.

8. For the purposes of the present judgment, I think it would have been sufficient to conduct a more holistic assessment of the applicant's activities and state that only some of them amount to glorification of violence, while others represent legitimate political speech that is protected by the Convention. I agree with the majority that some of the statements made by the applicant did amount to glorification of or incitement to violence. For example, the statements quoted in paragraph 30 (calling for an overthrow of the constitutional system) or paragraph 32 (justifying a bomb attack in the Moscow metro that resulted in 41 deaths) justify some sort of interference with the applicant's Article 10 rights, provided that such interference is lawful and proportionate. However, I also agree with the majority that the lengthy prison sentence and the ban on journalistic activities were not proportionate. In addition, I believe that the sentence would not have been proportionate even in the absence of a ban on journalism, which I consider to be unlawful for different reasons (see Section V.).

III. Misclassification of the statements

9. As I argued above, the individual assessment of almost thirty statements extracted from their context, such as that undertaken by the majority, risks arbitrariness. Since this was nonetheless the approach taken by the majority, I would like to express my disagreement with the majority's assessments of some statements as "promot[ing], justify[ing] and glorify[ing] terrorism and violence" (see paragraph 99 of the judgment). My disagreement further serves to illustrate that such disagreement is almost inevitable when a court enters this sort of micro-management of individualised expressions, and is a reason for refraining from such a wide-ranging task.

10. One example of what I consider a misclassification is set out in the separate opinion of Judge Jäderblom, which I joined. However, other examples can be found. For example, the fragment cited in paragraph 8 of the present judgment, which the majority considers to "clearly and unequivocally promote, justify and glorify terrorism and violence" (see paragraph 99 of the judgment):

> "Russia has clearly demonstrated that it is at war and permanently in danger of being hit by retaliatory blows, because its rulers have perpetrated a despicable attack on a sovereign State and are killing innocent civilians there. Even the western community is compelled to admit that Putin's Russia is waging a war aimed at the physical extermination of Chechens as an ethnic group."

The majority reads this fragment as "communicat[ing] to the readers the general idea that recourse to violence and terrorism is necessary and justified measures of self-defence in the face of the aggressor" (see paragraph 100). However, reading this fragment in isolation does not obviously convey the idea that the author is calling for violence. While the statement does refer to Chechnya as a sovereign state and does characterise Russian actions as a "despicable war," neither of these elements could be considered, on their own, to be glorification or incitation of violence.

11. Another example is the extract in paragraph 13, which only mentions the "national liberation struggle of the Chechen people against the colonial expansion of Russia", and which is also considered by the majority to constitute promotion, justification and glorification of violence (see paragraphs 98 and 99 of the judgment). Again, this fragment considers Chechnya a nation and Russia a colonial invader. It might even, as the majority suggest, "reveal an intention to romanticise and idealise the Chechen separatists' cause" (see paragraph 99). However, this Court has held that even separatist speech containing identical words, namely "struggle" and "liberation", was protected insofar it "did not constitute an incitement to violence, armed resistance or an uprising" (see, for example, *Gerger v. Turkey* [GC], no. 24919/94, § 50, 8 July 1999; *Erdal Taş v. Turkey*, no. 77650/01, § 38, 19 December 2006). Classifying this

individual statement as glorification of violence would depart from that case-law and create a dangerous precedent. However, when it is read in conjunction with the other statements, the majority might be right to consider that this passage was an incitement to violence. This, once again, proves the difficulty this Court will have in making individualised assessments of statements.

12. As a final example, the majority includes the expressions enumerated in paragraph 14 of the judgment as being among those that "promote, justify and glorify terrorism and violence" (see paragraphs 98 and 99). These expressions mention Chechen "resistance" and imply the existence of Chechnya as a nation; I disagree that this is sufficient to consider them as glorification of violence. This would be inconsistent with previous case-law (see *Gerger*, cited above, § 50, which explicitly points to the word "resistance" as not constituting in itself an incitement to violence). Moreover, the majority provides no reason for including paragraph 14 in the enumeration of paragraph 98 (see the reasons given in paragraphs 99-109, with no mention whatsoever of paragraph 14).

IV. The impact of the applicant's expressions

13. The impact of statements is also a critical element in the assessment of interference with freedom of speech. The majority assesses the impact of the applicant's publications at the stage of performing a proportionality analysis (see paragraph 131 of the judgment). This is consistent with the Court's case-law, insofar it has held that "the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference" (see *Murphy v. Ireland*, no. 44179/98, § 69, ECHR 2003-IX [extracts]). However, I believe that the impact of the statements should also have been considered when addressing the question of whether there was a "pressing social need" for interference with the applicant's freedom of expression.

14. I consider that there is no "pressing social need" to interfere with speech that has no or negligible impact. This is in line with previous case-law. In *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, the Court found that statements that posed "no real foreseeable risk of violent action or of incitement to violence or any other form of rejection of democratic principles" did not justify banning a political association's meetings (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 111, ECHR 2001-IX).[1] Because the impact of the statements was so negligible, the Court in *Stankov* did not perform a proportionality analysis.

1. The Court found a violation of Article 11 in *Stankov*, although the analysis was explicitly conducted "in the light of Article 10" (§ 85).

15. The medium through which statements are made is important when assessing their impact. The Court has held that, in some cases, the medium through which individuals express themselves may change the very nature of their expressions (see *Karataş v. Turkey* [GC], no. 23168/94, § 52, ECHR 1999-IV). In *Karataş* the Court held that the impact of the statements made by the applicant, through the medium of poetry, did not amount to an incitement to violence, despite their aggressive tone (ibid.).

16. In the present case, it can be argued that some of the applicant's statements could be considered an incitement to or glorification of violence, and that they had a certain impact which posed a risk to wider society. Whilst the number of copies distributed by the applicant was admittedly low, according to the domestic courts eight individuals lodged complaints against him (see paragraph 43 of the judgment). This suggests that the applicant's problematic statements had at least some impact that would justify interference by the State and criminal sanctions against him.

17. It would have been more correct for the Court to engage in this analysis *before* delving into the proportionality analysis, so as not to create a precedent that allows for interference with *any* kind of expression, regardless of its potential impact.

V. Ban on journalism

18. The Court has left open the question of "whether a ban on the exercise of journalistic activities, as such, is compatible with Article 10 of the Convention" (see paragraph 128 of the judgment). The Court did find that the joint application of the ban and the deprivation of liberty was contrary to the Convention (see paragraph 129). While I do not necessarily object to deciding the issue of the ban on narrow grounds, leaving open the question of whether any such ban would be incompatible with Article 10, I do consider that more attention should have been paid to the circumstances of this particular ban.

19. Article 280 § 2 of the Criminal Code of Russia establishes, among other things, the penalty of "withdrawal of the right to hold certain posts or carry out certain activities for a period of up to three years" which the domestic courts applied to the applicant in this case (see paragraph 68). The majority accepts that, since the applicant's conviction was based upon this Article, "the resultant interference with the applicant's relevant rights may be regarded as having been 'prescribed by law'" (see paragraph 81).

20. In my opinion, the quality of Article 280 § 2 as "law" for the purposes of justifying an interference, such as a three-year ban on journalistic activities, is problematic. This Court has consistently held that "the expression 'in accordance with the law' [in Articles 8 to 11 of the Convention] not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question,

requiring that it should be accessible to the person concerned and foreseeable as to its effects" (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V; see also *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I). In particular, an interference with one of those Articles has been found when "[domestic] law d[id] not indicate with sufficient clarity the scope and conditions of exercise of the authorities' discretionary power in the area under consideration" (see *Amann v. Switzerland* [GC], no. 27798/95, § 62, ECHR 2000-II). As the Court's Article 7 case-law makes clear, not only must the prohibited conduct be described in a way that its prosecution is foreseeable, the penalties that might be imposed for it should be precise enough as to be foreseen (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 140, ECHR 2008). This is also true for "laws" restricting Article 10, which should allow a "citizen ... to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" (see *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

21. In the present case, I do not think that the "withdrawal of the right to hold certain posts or carry out certain activities for a period up to three years" fulfils the minimum foreseeability of a "law" for Article 10 purposes. Indeed, anything anyone does may be considered an "activity". The law also fails to clarify adequately to what "certain posts" may refer. Nor does it make clear what may aggravate or mitigate the penalties. Article 280 § 2 is, effectively, a blank cheque that allows anything from the mildest to the most severe sanctions.

22. Such a broad, almost absolute, concession of discretion upon State authorities cannot constitute a legitimate basis for interference as severe as a general ban of the practice of journalism. This is all the more relevant when we note that a ban on practicing journalism is in itself a very far-reaching prohibition, given that a wide array of expressive activities could be considered "journalism".

VI. Conclusion

23. While I agree with my colleagues that the applicant's rights under Article 10 have been infringed, I write to caution the Court against the dangers of micro-managing the classification of statements.

24. Additionally, the impact of such statements should be considered first when assessing the "pressing social need". Only if the impact warrants interference should the Court proceed to a proportionality analysis, where it may once again take into consideration the impact of the statements.

25. Finally, I am concerned about the vague and broad wording of Article 280 § 2 of the Criminal Code of Russia, which was used to justify imposing criminal sanctions on the applicant. This law is ultimately little more than a blank cheque which allows the domestic authorities to impose a

wide array of sanctions, without providing much clarity or foreseeability to potential defendants.

PARTLY DISSENTING OPINION OF JUDGE PASTOR VILANOVA

(Translation)

1. I fully endorse the Court's finding of a violation of Article 10 in this case. I also agree with the fact of awarding the applicant the sum of EUR 12,500 in respect of non-pecuniary damage and making no award in respect of pecuniary damage. In contrast, I voted against point 4 of the judgment's operative provisions, in which, *inter alia*, reimbursement of the fees incurred in respect of the applicant's lawyer was refused.

2. For reference, the applicant's representative stated in his claim for just satisfaction that the applicant had not paid the costs incurred as he did not have the financial means to do so. The sum of EUR 3,000 was claimed under this head.

3. The Government opposed the claim, alleging that there was no evidence of payment of these expenses.

4. The Court accepted the Government's claims and dismissed, by a very large majority, the claim in respect of professional fees. In the majority's view, this claim was not payable, having regard to the information provided by the applicant (see paragraph 142 of the judgment).

5. It has been found that an applicant is entitled to reimbursement of his costs and expenses in so far as it is shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, ECHR 2016, and, more recently, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, ECHR 2017). The reality of a representative's fees is established if the applicant has paid them or is liable to pay them (see *Luedicke, Belkacem and Koç v. Germany* (Article 50), 10 March 1980, § 15, Series A no. 36; *Artico v. Italy* (13 May 1980, § 40, Series A no. 37); *Airey v. Ireland* (Article 50), 6 February 1981, § 13, Series A no 41; *Ždanoka v. Latvia*, no. 58278/00, § 122, 17 June 2004; and *Merabishvili v. Georgia* [GC], cited above, § 372).

6. However, the applicant's claim was perfectly compatible with the Court's case-law, which does not make the reimbursement of lawyers' fees conditional on their prior payment. Although payment has not been made, the applicant remains indebted to his lawyer. The reality of the debt was, in my view, indisputable. It arises from a letter presented by the applicant's lawyer requiring payment for his work and emphasising that his client is insolvent. It must be borne in mind that the applicant has spent five years in prison and it is therefore unlikely that he was in receipt of any resources throughout that long period. His claim is fully reasonable and justified. It follows that the costs incurred ought to be reimbursed to him by the other

party, even allowing for adjustment of the amount by this Court if necessary.

7. In conclusion, the majority has, in my humble opinion, incorrectly applied the case-law that was used to support its refusal.