European Court of Human Rights: Stomakhin v. Russia

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

On 9 May 2018, the European Court of Human Rights (ECtHR) delivered, unanimously, an important judgment with regard to the conditions regarding interferences by public authorities with extremist speech. The ECtHR found that the Russian authorities had violated Article 10 of the European Convention of Human Rights (ECHR), which guarantees the right to freedom of (political) expression. With its judgment, the ECtHR urged governments to be cautious when considering what constitutes hate speech and what constitutes criticism of the authorities.

The case concerned Boris Vladimirovich Stomakhin's conviction for newsletter articles he had written on the armed conflict in Chechnya. Acting both as a journalist working for a magazine, but mostly as an activist (being the founder, owner, publisher and editor-in-chief of a monthly newsletter, Radikalnaya Politika ("Radical Politics"), Stomakhin published in 2003 a series of articles touching, to a great extent, on events in the Chechen Republic. The articles sharply criticised the Russian Government and the actions by the army there, and expressed support for the Chechen rebel separatist movement. According to the domestic courts, Stomakhin had justified extremist activities and had incited racial, national, and social hatred. He had justified and glorified acts of terrorism by Chechens, called for violence against the Russian people and declared that the Orthodox faith was an inferior one. Stomakhin argued that he had simply expressed his opinion on political events in Russia (in particular the conflict in Chechnya) and he denied supporting extremism. Stomakhin was found 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). The domestic courts also concluded that the impugned texts had had a clear extremist leaning and had incited actions prohibited by the Federal Law on Suppression of Extremist Activities. Stomakhin was sentenced to five years in prison and given a three-year ban on practising journalism. He served the sentence in full and was released in March 2011.

In 2007, while in prison, Stomakhin lodged an application with the ECtHR, complaining mainly about a violation of his right to freedom of expression. In its

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judgment, more than ten years later, the ECtHR reiterated that there is little scope under Article 10 § 2 ECHR for restrictions on political speech or on debate on questions of public interest and that “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”. The ECtHR also reiterated that it may be considered necessary in democratic societies to sanction or even prevent all forms of expression that spread, incite, promote or justify violence, hatred or intolerance, provided that the restrictions or penalties imposed are proportionate to the legitimate aim pursued. Turning to the wording of the texts in question, the ECtHR considered that the impugned statements could be divided into three groups, and it examined each group separately. The first group of statements had justified terrorism, vilified Russian servicemen to the extent that they might have become targets for actual attack, and had praised Chechen leaders within the context of approving of violence. Those statements had therefore gone beyond the limits of acceptable criticism and the ECtHR found that the Russian courts’ treatment of them had been proportionate. The ECtHR also found that some of Stomakhin’s criticisms of Orthodox believers and ethnic Russians had incited hatred and enmity and that the Russian courts’ considerations had been “relevant and sufficient” to justify a conviction.

However, the domestic courts had been too harsh in other aspects. In particular, some statements about the war had not gone beyond acceptable limits of criticism, which are wide when it comes to governments. The domestic courts had also taken other comments on Russian servicemen out of context, or had failed even to refer to any particular texts which, according to them, had had discriminatory or humiliating connotations with regard the national dignity of people practising the Orthodox religion. The ECtHR emphasised 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. Moreover, it is in the nature of political speech to be controversial and often virulent, 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. Although some of Stomakhin’s statements had been admittedly quite virulent in their language and had contained strongly worded statements, the ECtHR discerned no elements in them other than a criticism of the Russian Government and its actions during the armed conflict in the Chechen Republic and held that however acerbic they might have appeared, those statements had not gone

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beyond the acceptable limits, given the fact that those limits are particularly wide with regard to the Government. Other statements had been published during an electoral campaign, a period “where it was particularly important that opinions and information of all kinds were permitted to circulate freely”.

The ECtHR also stressed 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 the purpose of merely criticising the Government, state institutions, and their policies and practices.

Lastly, the ECtHR found that the Russian courts’ reasons for the penalty imposed on Stomakhin had been limited to his personality and the social danger he had presented. The ECtHR referred to the fact that Stomakhin had been sentenced to five years’ imprisonment and banned from practising journalism for three years, and that he had served this sentence in full. It left open the question of whether a ban on the exercise of journalistic activities, as such, was compatible with Article 10 of the ECHR. But the punishment to five years imprisonment it considered not proportionate. The ECtHR observed that Stomakhin had had no criminal record and thus had never been convicted of any similar offence. It also found that the circulation of the newsletter at issue was insignificant, and that it could not be said that the incriminated statements had been disseminated in a form that had been impossible to ignore. On the contrary, in the present case the potential impact of the impugned statements had been very limited. Therefore, the ECtHR found the punishment of five years imprisonment “an extremely harsh measure”. Particularly bearing in mind the Russian authorities’ failure to demonstrate convincingly “the pressing social need” to interfere with Stomakhin’s freedom of expression in respect of a number of the impugned statements, as well as the severity of the penalty imposed on him, the ECtHR found that the interference in question had not been “necessary in a democratic society”, and hence that there had been a violation of Article 10 of the ECHR.

Judgment by the European Court of Human Rights, Third Section, case of Stomakhin v. Russia, Application no. 52273/07, 9 May 2018

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