



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

Communicated on 13 March 2017

THIRD SECTION

Application no. 65395/12
Valeriy Nikolayevich LYUTAREVICH
against Russia
lodged on 8 October 2012

STATEMENT OF FACTS

The applicant, Mr Valeriy Nikolayevich Lyutarevich, is a Russian national, who was born in 1958 and lives in the Ivanovo Region. He is represented before the Court by Mr K. Terekhov, a lawyer practising in Moscow.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

Unhappy about allegations of fraud that marred the elections to the Russian legislature conducted in December 2011, the applicant stencilled a text on the rear windshield of his car that read “United Russia is a party of thieves and crooks”. United Russia was a political party that won the elections, taking 238 out of 450 seats in the lower house of Russian Parliament, and the phrase had been coined by the investigative blogger Mr Navalnyy who had extensively reported on inordinate and unaccounted-for wealth of the party leadership.¹

On 17 January 2012 the head of the local branch of the United Russia party spotted the text and complained to the police.

On 14 March 2012 the police of the Rodniki town in the Ivanovo Region filed a report on an administrative offence under Article 5.12 § 1 of the Code of Administrative Offences. According to the report, the text that the applicant stencilled on his car was a campaigning material (*агитационный материал*) because at that time the chairman of the United Russia party Mr Putin was standing for the election of the President of Russia. The material was in breach of electoral legislation since it did not contain information about its circulation, date of issue, the full details of the person

1. For more details, see application no. 32058/13, *Navalnyy v. Russia*.

who had produced it and the full details of the person or entity who had commissioned its production and paid for it.

On 21 March 2012 the Justice of the Peace of Circuit no. 2 in the Rodniki district found the applicant guilty as charged and fined him 1,000 Russian roubles (RUB). The Justice endorsed the contents of the police report, without addressing the applicant's argument that the text was an expression of his personal opinion.

On 10 April 2012 the Rodnikovskiy District Court in the Ivanovo Region upheld the conviction on appeal. It held that any "activity contributing to shaping the positive or negative attitude of voters to a political party or its candidates" amounted to electoral campaigning.

B. Relevant domestic law

Article 5.12 of the Code of Administrative Offences provides that "production or distribution of printed, audio-visual or other campaigning materials during the preparation or holding of an election in breach of the requirements of electoral legislation" shall be punishable with a fine of between RUB 1,000 and 5,000.

Section 55 of the Russian President Election Act (Law no. 19-FZ of 10 January 2003) reads:

"1. Candidates may freely produce and distribute electoral printed, audio-visual and other campaigning materials in accordance with the procedure established in the legislation of the Russian Federation ...

2. All distributed electoral printed, audio-visual and other campaigning materials must specify the identity, legal address and taxpayers' number of the organisation (or the full name and the address of the person) who produced that material, the identity of the organisation (or the full name of the person) who commissioned them, as well as their circulation, date of issue and an indication that they were paid for from the electoral fund."

Section 48 of the Electoral Rights Act (Law no. 67-FZ of 12 June 2002) gives the following guidance on electoral campaigning:

"1. Russian citizens and non-governmental organisations have a right to engage in lawful electoral campaigning by lawful means ...

2. The following activities during an election campaign should be held to amount to electoral campaigning:

(a) calls to vote for a candidate or candidates, a list or lists of candidates, or against him (her, them, it);

(b) stating preference for one of candidates or electoral bloc, in particular by specifying the name of the candidate (list of candidates or electoral bloc) for which the voter will vote ...

(c) description of possible consequences of the election or defeat of a specific candidate ...

(d) distribution of materials with manifest prevalence of information about one candidate, a group of candidates, or an electoral bloc, in combination with positive or negative comments;

(e) distribution of information about a candidate's activities unrelated to his professional occupation or service duties;

(f) active participation in shaping of a positive or negative attitude of voters toward a candidate, the electoral bloc of that candidate, or a list of candidates."

In Ruling no. 15-P of 30 October 2003, the Constitutional Court commented on section 48 § 2 of the Electoral Rights Act and expressed the view that “activities which do not seek to push voters towards voting for candidates or against them or, in other words, which do not pursue the objectively confirmed goal to obtain a specific outcome of the election, do not amount to electoral campaigning”.

COMPLAINT

The applicant complains under Article 10 of the Convention about a violation of his right to freedom of speech.

QUESTION TO THE PARTIES

Was there a violation of Article 10 of the Convention as regards the applicant's conviction in the administrative proceedings?