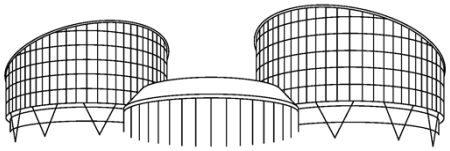

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KILIN v. RUSSIA

(Application no. 10271/12)

JUDGMENT

Art 10 ● Freedom of expression ● Conviction for sharing content online within a small social-media group with intent to incite violence against non-Russian ethnicities, established in absence of commentary ● Video excerpt of a well-known "mockumentary" film, when taken out of context, reasonably perceived as stirring up ethnic discord calling for violence ● Applicant's criminal intent relevant and sufficient despite absence of broader background tensions ● Proportionate penalties

Art 6 § 1 ● Public hearing ● Holding appeal hearing in camera not strictly required as a safety consideration ● No need to show actual damage to the defendant's exercise of other procedural rights ● Public hearing at first instance not dispensing with the requirement for a public hearing on appeal

STRASBOURG

11 May 2021

FINAL

11/08/2021

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

In the case of Kilin v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 10271/12) 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 Roman Olegovich Kilin ("the applicant"), on 31 December 2011;

the decision to give notice to the Russian Government ("the Government") of the complaints under Articles 6 and 10 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 30 March 2021,

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

INTRODUCTION

1. The present case concerns the applicant's criminal conviction for public calls to violence and ethnic discord on account of video and audio files that had been made accessible via a social-network account.

THE FACTS

2. The applicant was born in 1991 and lives in Kemerovo. He was represented by Mr I. Morokhin, a lawyer practising in Kemerovo.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

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

I. IMPUGNED MATERIAL AND ITS DISSEMINATION

5. With reference to the findings made in the domestic proceedings (see below), the Government submitted that the applicant had registered as a user on VKontakte (hereinafter "VK"), a popular online social network in

Russia, and had created a user account. By registering on VK he had accepted its use regulations that required its users to provide full and truthful information and prohibited propaganda or incitement of racial, religious, ethnic hatred or enmity. The applicant had named his account "Roman Kilin". On 9 June 2009 using his personal computer the applicant had connected to the Internet from his home network via his Internet-access provider, and uploaded a video file entitled *Russia 88 (Granny)*. On an unspecified date prior to 30 November 2009, the applicant had uploaded an audio file containing a song called "Glory to Russia!" performed by Kolovrat, a music band.

6. The video lasted for one minute and showed a young man approaching an elderly woman, who was played by a man. They engaged in a dialogue in the Russian language (for a full description of the content, see Annex to the present judgment).

7. *Russia 88* is a so-called "mockumentary" (also in Russian) directed by Pavel Bardin about neo-Nazis (skinheads) in Russia. The plot of the film came from the imagination of the author but the imaginary story was based on life in Russia. In the film, members of a gang called *Russia 88* are filming propaganda videos to post on the Internet. After a while, they become accustomed to the camera and stop paying attention to it. The leader of the gang discovers that his sister is dating a Southern Caucasian man. This family drama develops into a tragedy. The film has no closing credits, but a list of people killed by skinheads in Russia in 2008 at the end, playing over silence. The film was screened at the Berlin International Film Festival. Director Pavel Bardin won the Discovery of the Year Nika Award for the film. According to the applicant, the piece was also shown on Russian television channels.

8. The audio file contained a musical composition "Glory to Russia!" with lyrics in the Russian language (see Annex to the present judgment).

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. Investigation

9. On an unspecified date and in unspecified circumstances, the applicant or the relevant VK account came to the attention of the Russian authorities.

10. In November 2009 the authorities created a VK account and sent a "friend" request to the "Roman Kilin" account. After the request had been accepted, the authorities gained access to the content that included the impugned video (see paragraph 6 above). Forty-seven people who had also been added as the account's "friends" had similar access (see also paragraphs 18 and 27 below).

11. Later on, the authorities also examined, through their VK account, the impugned audio file (see paragraph 8 above).

12. In September 2010 the regional office of the Federal Security Service initiated criminal proceedings against the applicant. His home was searched, and his personal computer was seized.

13. In September 2010 the investigator commissioned a linguistic and psychological assessment of the impugned material by officials of the Kemerovo State University, the dean of the Faculty of Social and Psychological Studies and the deputy chair of the Unit of Stylistics and Rhetoric. On 8 November 2010 they issued their report (see paragraphs 14-15 below).

14. Concerning the video, they made the following findings:

(a) Linguist: The video was a part of a well-known feature film *Russia 88* and was a self-contained clip in terms of its content. It showed a negative encounter between an elderly woman and Azerbaijanis, soured because of a lack of honesty and decency, implying that Azerbaijani vendors fooled their clients and thereby putting forward a negative image of people of Azerbaijani ethnicity. The video did not refer to any specific person; the negative image was not personified. Thus, the video showed a negative image of the entire ethnic group. The video contained two calls put forward by the elderly woman ("Look, maybe it is better [to beat the shit out] of all those [blackies]!?"; "And to throw them, throw them out of Moscow?"; "Well, the holy cause is not tricky! [*She takes a bat in her hands*.]"). The first two indirect calls were strengthened by the last one emphasising the positive assessment of the suggested actions as well as by the ensuing actual conduct consisting in the beating up of non-Russian people (presumably of Azerbaijani origin, in view of the context of the video). The last call ("Here is how Russians must fight for their rights.") is demonstrated by the use of the words "must" and "fight". The expert concluded that the video contained a call to violence aimed at inciting discord between Russians and Azerbaijanis (a call to beat them with a bat) as well as a call to violence aimed at violating their rights (a call to throw them out of Moscow).

(b) Psychologist: The overall context of the *Russia 88* film meant that its authors aimed, in the impugned part, to show the tools and methods of manipulative impact on the part of nationalist organisations and, by implication, to strengthen the protection of the individual and mass consciousness against such manipulation. However, when taken out of context, that part acquired a different meaning. By posting it as separate material (that is to say without regard to and in isolation from the authors' intended message), the person concerned pursued his or her own message. The video created a negative image of people of Azerbaijani origin by attributing to them deceitful and indecent actions, while omitting to make any disclaimer or reservations. Thus this image was intended to relate to the entire ethnic group, in opposition to a Russian woman, who could not be

deceptive and thus had to stay away from the markets taken over by Azerbaijanis. The video then demonstrated the actions to be taken, namely physical assault against them and their removal from Moscow. Such actions were presented as positive and were approved of as a "holy cause" and the way "Russians [had to] fight for their rights".

15. As to the audio, they concluded as follows:

(a) Linguist: The content of the song opposed Russians and non-Russians, who were called "blackies" (*черные*). In modern Russian this word was used as a pejorative in respect of the people of certain races or ethnic origins (Asian, black or from the Caucasus). They were presented in the song as enemies that Russians had to fight against. The nationalist tone of the song followed from the use of patriotic tropes; the fact that it was directed toward Russians; the solicitation of the support of other Slavic peoples; the use of the notion of "[our] kind". The non-Russians were depicted as dangerous. The song contained several calls: "The blackie shit must be thrown out of Russia" (the use of the word "must"); "Come on, guys, let's put on our bomber jackets and boots!" (a call to get military clothing on); "Let's shout loud 'Glory to Russia!' and we will fight!". The expert concluded that the song contained a call to violence aimed at inciting discord between Russians and non-Russians (a call to fight against them) as well as a call to violence aimed at violating their rights (a call to throw them out of Russia).

(b) Psychologist: The message of the song's author and the person who had posted it in the Internet coincided. The song contained a very negative depiction of non-Russians together with insulting and emotional adjectives, while omitting to make any disclaimer or reservations. Thus the content concerned all non-Russian ethnic groups. They were attributed a dominant position in Russia. Thus the content was aimed at inciting ethnic discord between ethnic Russians and those of another ethnicity. The content also contained expressions calling for a fight, to not give up and to win, meaning violence against non-Russians with the aim of "throwing them out of Russia".

B. Trial

16. The applicant stood trial before a justice of the peace. The justice of the peace held a public hearing.

17. The applicant denied that he had been the user of the VK account "Roman Kilin". According to him, at the time of the criminal proceeding against him the official register of extremist materials had listed no material containing the film (or part thereof) or any audio material containing the lyrics of the song mentioned above.

18. The justice of the peace heard a number of witnesses who stated that through their own VK accounts they had communicated with the account

"Roman Kilin"; that they had had no doubt that they had been in touch with the applicant; that they had been accepted as "friends" thus gaining access to the content of that account; that they had had seen and, some of them, had actually accessed the impugned video and audio files.

19. On 29 April 2011 the justice of the peace convicted the applicant under Article 280 § 1 of the Criminal Code (see paragraph 34 below) and sentenced him to a suspended term of eighteen months' imprisonment.

C. First appeal

20. The applicant appealed to the Leninskiy District Court of Kemerovo.

21. By a procedural decision dated 15 July 2011, the District Court decided to hold the appeal hearing in camera. It stated that since the offence under Article 280 was listed in the chapter of the Criminal Code concerning offences against the foundations of the constitutional regime and national security, it was relevant to ensure the safety of the persons participating in the proceedings. It was indicated in the procedural decision that it could be appealed against to the Kemerovo Regional Court within ten days. The applicant did not appeal.

22. The applicant and his lawyer(s) took part in the appeal hearing before the District Court. The applicant pleaded not guilty and refused to give any oral testimony.

23. In a judgment of 16 August 2011 the appellate court quashed the justice of the peace's judgment, considering that it did not properly describe the facts held against the applicant.

24. Having re-examined the case, the appellate court considered that by posting the impugned video and audio in his VK account the applicant had realised that it had been possible for them to be accessed by an unlimited number of people and had acted with the intent to incite ethnic discord (*национальная рознь*) and to incite others to "commit violations of the rights and freedoms of people of non-Russian ethnicity (*нерусские национальности*)". Between 9 June and 30 November 2009 he had made public calls to carry out extremist activities.

25. In the appellate court's view, the video and the audio contained calls to violent actions aimed at inciting ethnic discord between Russians and people of other ethnicities and aimed at violating their rights and freedoms. Specifically the impugned video contained calls to violent actions with the aim of inducing ethnic discord between Russians and people of Azerbaijani ethnicity and at violating their rights and freedoms.

26. In the appellate court's view, when registering a VK account and then uploading or posting information, a user (i) had to realise that such information became accessible to all registered users of the website; (ii) wanted that that would happen "because [that], together with his personal details mentioned in the account, reflected his interests and

hobbies, which helped in acquiring new friends among the website users". The court concluded that in view of those considerations the information contained in a VK account was widely accessible to an unlimited number of people.

27. In reaching those conclusions, the appellate court referred to the witness statements made before the justice of the peace and some other witness statements made before the justice of the peace which had not been, however, assessed in the first-instance judgment.

28. Mr P., a deputy dean at the Kemerovo State Medical University, stated that he had examined the impugned video and audio which had been available at the applicant's account; he had asked the applicant why he had posted that content; the latter replied that he had posted it some six months before when he had been interested in "national ideas". Another witness, Mr B., stated that he had asked a similar question and that the applicant replied that he had posted it "just like that" (that is for no particular reason). Mr T., the applicant's secondary-school classmate, stated that until late 2010 the applicant's "webpage" had been "open" and that he had examined the impugned material.

29. Mr S. (apparently a law-enforcement officer) stated that in November 2009 the authorities had created a VK account and sent a "friend" request (without any further explanation) to the "Roman Kilin" account. After the request had been accepted, the authorities had gained access to the content that had included the impugned video. Forty-seven people had had similar access as they had also been added as the account's "friends".

30. The appellate court stated that "in addition to" those statements the applicant's guilt was confirmed by some other evidence:

(a) it followed from the report issued by linguists and psychologists (see paragraphs 14-15 above) that the communicative intention of the author of the *Russia 88* film had been to uncover the means and methods used by nationalist organisations to psychologically manipulate others and, thereby, to reinforce individual and societal protection against such harmful influence. When disseminating the video the person concerned [the applicant] had aimed at inciting ethnic discord and at violent and other actions aiming at violating the rights and freedoms of people of Azerbaijani ethnicity.

The author of the impugned audio and the person who had disseminated it [the applicant] had aimed at inciting ethnic discord and violent and other actions aiming at violating the rights and freedoms of people of non-Russian ethnicities.

The video contained a call to violence aimed at inciting discord between Russians and Azerbaijanis (a call to use a bat to hit Azerbaijanis); and a call to violent actions aimed at violating their rights and freedoms (a call to throw Azerbaijanis out of Moscow).

The audio contained a call to violence aiming at inciting ethnic discord between Russian and non-Russian ethnicities (a call to fight with non-Russians); a call to violence aimed at violating their rights and freedoms (a call to expel them from Russia).

(b) An audio recording of a telephone conversation between the applicant and a woman, in which the applicant had stated "We'll shoot them down ..." and "Russia for Russians!" in the context referring to people of non-Russian ethnicity.

(c) As to Article 280 of the Criminal Code, calls to extremist activities could be expressed orally, in writing or through another form, for instance in audio or video works. The fact that the person who disseminated publicly such material was not its author did not mean that the calls to extremist activities did not emanate from that person. By intentionally disseminating such material, that person expressed his or her endorsement or approval and intended that others would be receptive to the calls contained in the impugned material. Thus that person had to be held as personally wanting to incite others to carry out an extremist activity.

(d) By adding information to a personal VK account the applicant had to realise that such information became accessible to other registered VK users, and wanted that outcome psychologically, with the aim of acquiring new friends among users by way of sharing his personal data, hobbies and interests.

(e) Unlike disseminating extremist material, which was an offence under the Code of Administrative Offences, prosecution under Article 280 of the Criminal Code required a public call for extremist activities to be carried out, including ethnic discord and violation of others' rights and freedoms on account of their ethnicity.

31. The appellate court sentenced the applicant to a suspended term of eighteen months' imprisonment; the period of probation was set to eighteen months and during that period the applicant was required to regularly report to the authority supervising the execution of sentences and was not allowed to change the place of residence or his educational institutional without notifying that authority. The court referred to the nature of the offence, the degree of danger to the public involved, the mitigating circumstances, the fact that it had been the applicant's first criminal prosecution, his age and his character.

D. Second appeal

32. The applicant filed a cassation appeal with the Kemerovo Regional Court, arguing as follows:

(a) there had been no evidence that he had been the user of the VK account; that he had retained exclusive control over it without any unauthorised access by third parties, such as the authorities, through the use

of the so-called SORM technologies; that he had accessed, from his personal computer at his home, and downloaded to it or uploaded to the VK account the impugned video or audio;

(b) where a work of art (such as the *Russia 88* film or the "Glory to Russia!" song) had not been classified as extremist material under the Suppression of Extremism Act, a quotation from that work of art could not be perceived or classified (in a criminal case) as calling for extremist activities;

(c) the appellate court had not established any calls to extremist activities on the part of the applicant as required under Article 280 of the Criminal Code; instead he had, in substance, been convicted of disseminating extremist material, which was an offence under Article 20.29 of the Code of Administrative Offences;

(d) there had been no valid reason under Article 241 § 2 of the Code of Criminal Procedure to hold the appeal hearing in camera.

33. On 1 November 2011 the Regional Court upheld the appeal decision of 16 August 2011. The Regional Court's decision did not specify whether a public hearing had been held. However, it stated as follows:

> "... having examined, at the hearing on 1 November 2011, the cassation appeal statement submitted by [the applicant's lawyers] and ... having heard the opinion expressed by [the applicant and his lawyers] and [the prosecutor] ... the court has decided as follows: ...
>
> Indeed, the appeal court decided, under Article 241 § 2 of the Code of Criminal Procedure, to hold the hearing in camera and issued a related decision, providing the reasons in it ... It follows from the material in the case file that the justice of the peace held a public hearing at which the evidence submitted by the parties was examined; the defence did not appeal against the decision to hold the appeal hearing in camera and in their cassation appeal has not submitted convincing arguments to the effect that the appeal hearing in camera significantly impinged upon the defence's rights in so far as the presentation of evidence was concerned ..."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN LAW

A. Criminal Code of the Russian Federation

34. Article 280 § 1 of the Criminal Code of the Russian Federation ("the Criminal Code"), as in force at the relevant time, provided as follows:

> "1. Public calls for extremist activities [to be carried out] shall be punishable by a fine of up to 300,000 Russian roubles, or an amount equivalent to the convicted person's wages or other income for a period of up to two years, or by detention for a period of four to six months, or by imprisonment for a period of up to three years; ..."

35. Pursuant to Ruling no. 11 of 28 June 2011 by the Plenary Supreme Court of the Russian Federation, "public calls" under Article 280 of the

Criminal Code are defined as appeals to other people with the aim of inciting (inducing) them to carry out extremist activities as defined in the Suppression of Extremism Act (see paragraph 39 below). The crime under Article 280 is deemed completed from the moment of a public dissemination of at least one call, irrespective of whether one succeeded in inciting (inducing) others to carry out extremist activities (paragraph 4 of the ruling).

36. Article 282 of the Criminal Code punished actions aimed at inciting hatred or enmity and humiliating the dignity of an individual or a group of people on the ground of gender, race, ethnic origin, language, background, religious beliefs or membership of a social group, committed publicly or through a mass-media outlet. Pursuant to Ruling no. 11 mentioned above, a public dissemination of the information that justifies – the need to commit – unlawful actions against other people on account of their race, ethnicity, religious beliefs and the like should be classified under Article 282 of the Criminal Code, where the elements of the *corpus delicti* are present.

37. Pursuant to Articles 24 and 25 of the Criminal Code, there are two types of criminal guilt: intent and negligence; direct intent (*прямой умысел*) requires proving that a person understands that his or her action or inaction is socially dangerous, anticipates that socially dangerous consequences may ensue or will inevitably ensue and wishes them to ensue.

38. The offences under Articles 280 and 282 of the Criminal Code require proof of direct intent.

B. Suppression of Extremism Act

39. Federal Law of 25 July 2002 no. 114-FZ on Suppression of Extremist Activities (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:

...

Incitement of social, racial, ethnic (*национальная*) or religious discord (*рознь*);

...

Violation of rights, freedoms and legitimate interests of a person and citizen on account of his social, racial, ethnic (*национальная*), religious or linguistic origin (*принадлежность*) or attitude to religion; ...

public appeals to carry out the above-mentioned activities; ..."

C. Code of Criminal Procedure of the Russian Federation

40. Under Article 11 § 3 of the Code of Criminal Procedure (CCrP) a court, a prosecutor and certain other public officials should order measures of protection that fall within their area of competence (for instance, a court hearing in camera under Article 241 § 2 of the CCrP) where there is sufficient information that a crime victim, a witness or another person participating in the criminal proceedings or their next of kin were threatened with death or violence, destruction of or damage to their property or with other unlawful actions.

41. Pursuant to Article 241 § 2 of the CCrP, holding a hearing in camera was possible on the basis of a court decision if:

- the proceedings could lead to the disclosure of a State secret or another classified information;
- the case concerned crimes committed by minors;
- proceedings concerning sex crimes or other crimes could lead to the disclosure of sensitive information on the parties' private lives or to the disclosure of humiliating information;
- a hearing in camera was essential for the safety of parties and their relatives.

A court decision on holding a hearing in camera was to give the exact factual circumstances on which that decision had been based. Such a decision could concern the entire proceedings or a part thereof.

42. It follows from Ruling no. 35 of 13 December 2012 by the Plenary Supreme Court that a violation of the rules relating to a public hearing in a criminal case may justify the quashing of the relevant judgment where such a violation entailed or could entail taking an unlawful, non-reasoned or unfair judgment (paragraph 23).

II. OTHER MATERIAL

43. 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 (for relevant summaries, see among others *Atamanchuk v. Russia*, no. 4493/11, § 29, 11 February 2020, and *Karastelev and Others v. Russia*, no. 16435/10, §§ 44-45, 6 October 2020).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

44. The applicant complained that his criminal conviction had violated Article 10 of the Convention, which in the relevant parts reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ..."

A. Admissibility

45. The Government argued that the complaint had to be declared incompatible *ratione materiae* with reference to Article 17 of the Convention. The applicant had posted materials that incited ethnic hatred and discrimination.

46. The applicant made no comment.

47. Article 17 of the Convention reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

48. The Court reiterates that the effect of Article 17 of the Convention is to negate the exercise of the Convention right that the applicant seeks to vindicate in the proceedings before the Court (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 114, ECHR 2015 (extracts)). Article 17 is only applicable on an exceptional basis and in extreme cases and should, in cases concerning Article 10 of the Convention, only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (see *Perinçek*, cited above, § 114, and *Pastörs v. Germany*, no. 55225/14, § 37, 3 October 2019). The decisive point when assessing whether the statements are removed from the protection of Article 10 by Article 17, is whether those statements were directed against the Convention's underlying values or whether by making the statement, the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it.

49. This point, however, is not immediately clear in the present case and overlaps with the question whether there was an interference with the applicant's right to freedom of expression and whether this interference was "necessary in a democratic society". Thus the Court finds that the question whether Article 17 is to be applied must be joined to the merits of the complaint under Article 10 of the Convention (see *Perinçek*, cited above, § 115).

50. The Court also notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

51. The applicant argued that Article 10 of the Convention did not allow criminal prosecution on account of one's expression of sympathy toward certain information or ideas expressed in an excerpt of a cinematographic work, in particular, where such information or ideas had not been banned on the national level. Subject to paragraph 2 of Article 10, 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. One could not be held criminally liable for posting a part of a work of art, which had not been banned in the respondent State. In any event, the applicant had not posted the impugned material. In convicting him the Russian courts exceeded their discretion and thus the "interference" was not necessary in a democratic society.

52. The Government stated that the criminal conviction amounted to an "interference" with the applicant's freedom of expression. However, it was prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity and public safety as well as for preventing disorder and crime and protecting the rights of others. The applicant's conviction was a proportionate reaction on the part of the State with the aim of limiting access of other people to aggressive, discriminatory or provocative statements.

2. The Court's assessment

(a) Interference

53. The applicant was convicted for making third-party content available for access to others using an account on a social-networking website. Both at the national level and before the Court the applicant denied that he had been the user of the relevant VK account and alleged that the impugned video and audio had been published on it by others.

54. Firstly, the Court considers that the applicant's criminal conviction for the offence of public calls to extremist activities punishable under Article 280 of the Criminal Code was directed at activities falling within the scope of freedom of expression as protected by Article 10 of the Convention. The Court reiterates in this connection that owing to its accessibility and capacity to store and communicate vast amounts of information, the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and

information. The Internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public's access to news and facilitates the dissemination of information in general. Article 10 of the Convention guarantees "everyone" the freedom to receive and impart information and ideas. It applies not only to the content of information but also to the means of its dissemination, for any restriction imposed on the latter necessarily interferes with that freedom (see *Ahmet Yıldırım v. Turkey*, no. 3111/10, §§ 48-54, ECHR 2012). For instance, the Court has previously stated that the prosecution for posting a hyperlink to defamatory material online amounted to an "interference" under Article 10 of the Convention (see *Magyar Jeti Zrt v. Hungary*, no. 11257/16, § 56, 4 December 2018).

55. Second, the Court reiterates that where an applicant argues that, by attributing to him statements he had never made and convicting him in relation to those statements, the domestic courts indirectly stifled the exercise of his freedom of expression, he may rely on the protection of Article 10 of the Convention (see *Stojanović v. Croatia*, no. 23160/09, § 39, 19 September 2013). To hold otherwise would be tantamount to requiring him to acknowledge the acts of which he stood accused. It should be borne in mind in this connection that the right not to incriminate oneself, although not specifically mentioned in Article 6 of the Convention, is a generally recognised international standard which lies at the heart of the notion of a fair procedure under that provision (see *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015, and *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, § 45, 16 July 2019).

56. In the present case the applicant chose to remain silent during the domestic proceedings. He maintained the same position before the Court. At the same time, both at national level and before the Court he put forward an alternative line of argument consisting, in substance, in challenging the compliance of his prosecution with Article 10 of the Convention.

57. Having said this, the Court finds no reason to disagree with the domestic courts' finding that the applicant used the VK account, retained exclusive access to it and made accessible the impugned material using it.

58. The Court will therefore proceed on the assumption that there has been an "interference" with the applicant's right to freedom of expression under Article 10 § 1 of the Convention.

(b) Justification of the interference

59. To the extent that the applicant may rely on Article 10 of the Convention (see paragraphs 49 and 58 above), such interference infringes Article 10 of the Convention unless it satisfies the requirements of paragraph 2 of that provision. It has to be determined whether the interference was "prescribed by law", pursued one or more legitimate aims

as defined in that paragraph and was "necessary in a democratic society" to achieve those aims.

(i) Prescribed by law

60. The Court notes that the applicant's prosecution had a basis in Article 280 § 1 of the Criminal Code read together with section 1 of the Suppression of Extremism Act (see paragraphs 34 and 39 above). In his observations the applicant raised no specific argument suggesting that those provisions of Russian law had not been complied with, including that their application to him had not been foreseeable. Thus the Court considers that the "interference" was "prescribed by law".

(ii) Legitimate aim

61. It is with reference to the Government's submissions and, foremost, on account of the related domestic findings on the necessity of the "interference" in pursuance of a legitimate aim or, at least, of the rationale for the underlying legislative framework that the Court would take a stance on the relevant legitimate aim(s) (see *P.T. v. the Republic of Moldova*, no. 1122/12, § 29, 26 May 2020). When referring to a legitimate aim the Government must demonstrate that in acting to penalise an applicant, the domestic authorities had that legitimate aim in mind (compare *Perinçek*, cited above, § 152, in relation to the Government's assertions in that case on the legitimate aim of preventing disorder).

62. The Government argued that the applicant's conviction had been in the interests of national security, territorial integrity and public safety as well as for preventing disorder and crime and protecting the rights of others (see paragraph 52 above).

63. The Court notes that the applicant's conviction concerned calls for violent actions aimed at (i) inciting discord between Russians and people of other ethnicities (in particular, Azerbaijanis); and (ii) violating the latter's rights and freedoms because of their ethnicity.

64. The Court is not satisfied that the interests of national security, territorial integrity and public safety were shown to be pertinent in the present case.

65. The Court considers, however, that the applicant's criminal prosecution can be regarded as having been intended for the prevention of disorder and crime and for the protection of the "rights of others" within the meaning of Article 10 § 2 of the Convention, specifically the dignity of people of non-Russian ethnicity, in particular Azerbaijani ethnicity. In *Aksu v. Turkey* ([GC], nos. 4149/04 and 41029/04, §§ 44, 53-54, 61 and 81, ECHR 2012) the Court observed that discrimination on account of, *inter alia*, a person's ethnicity is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view

of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. The Court also held, *inter alia*, that negative stereotyping of an ethnic group was capable, when reaching a certain level, of having an impact on the group's sense of identity and on its members' feelings of self-worth and self-confidence (ibid., § 58; see also *Lewit v. Austria*, no. 4782/18, §§ 46-47 and 82-87, 10 October 2019; and *Atamanchuk v. Russia*, no. 4493/11, §§ 42 and 61, 11 February 2020).

66. In the Court's view, incitement of discord between ethnic groups through calls to violence may be prejudicial to all the groups involved and other sectors of the population.

(iii) Necessary in a democratic society

67. It remains to be determined whether the criminal conviction was "necessary in a democratic society" in the pursuance of those legitimate aims.

(α) General principles

68. The Court reiterates 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 paragraph 2 of Article 10 of the Convention, 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 pluralism, tolerance and broadmindedness without which there is no "democratic society". As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 124, 27 June 2017).

69. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. 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. The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. What the Court has to do is, *inter alia*, to look at the interference complained of in the light of the case as a whole and determine whether the national authorities adduced "relevant and sufficient" reasons to justify it, including whether they relied on an acceptable

assessment of the relevant facts (see *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

(β) Applications of the principles in the present case

70. The applicant was given a suspended sentence of eighteen months' imprisonment for making third-party content (one video recording and one audio recording) available for access through an account on a social-networking website. As the criminal courts adjudged in his case, by doing so the applicant made public calls to (i) ethnic discord, through recourse to violence against members of non-Russian ethnic groups in Russia, in particular people of the Azerbaijani ethnic origin (as regards the video); and (ii) violating their rights and freedoms on account of their ethnicity, also through recourse to violence against them.

71. In the assessment of the interference with freedom of expression in cases of this type, alongside the general principles formulated in the Court's case-law under Article 10 of the Convention (see *Perinçek*, cited above, §§ 196-97), various factors may prove to be pertinent and have to be taken into account, including: the social and political background against which the statements were made; whether the statements, fairly construed and seen in their immediate or wider context, can be seen as a direct or indirect call to violence or as a justification of violence, hatred or intolerance; the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences (ibid., §§ 205-07). It is the interplay between the various factors, rather than any of them taken in isolation, that determines the outcome of a particular case (ibid., § 208), including where the balance had to be struck between freedom of expression and the rights of others (ibid., §§ 228 and 274-80).

72. The Court has previously taken into account the intention of or the purpose being pursued by the applicant, in particular where that consideration had formed part of the criminal courts' reasoning (see *Jersild v. Denmark*, 23 September 1994, §§ 32-33 and 36, Series A no. 298; *Féret v. Belgium*, no. 15615/07, §§ 70-71, 16 July 2009; *Perinçek*, cited above, §§ 232-33; *Stomakhin v. Russia*, no. 52273/07, §§ 115 and 123, 9 May 2018; *Pastörs v. Germany*, no. 55225/14, §§ 43-48, 3 October 2019; and *Atamanchuk*, cited above, §§ 60 and 62). For example, the fact that the author of controversial statements acted without a "racist motive" (see *Perinçek*, §§ 232-33) or intention to incite hatred or violence or, *a fortiori*, that the purpose of disseminating such statements was to denounce or expose racist or intolerant views (see *Jersild*, §§ 32-33) has been treated by the Court as a relevant factor for assessing whether the applicants' criminal convictions were convincingly shown to have been "necessary in a democratic society" under Article 10 of the Convention. That consideration is particularly relevant for applying Article 17 of the Convention in cases where, conversely, by making the statements the applicants attempted to

rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it (see *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007, and *Belkacem v. Belgium* (dec.), no. 34367/14, § 33, 27 June 2017) rather than, for instance, at contributing to a debate on a matter of public interest.

73. In this connection the Court has also taken note of ECRI's position that, in some instances, a particular feature of the use of "hate speech" is that it may be intended to incite, or can reasonably be expected to have the effect of inciting, others to commit acts of violence, intimidation, hostility or discrimination against those targeted by it. The element of incitement entails there being either a clear intention to bring about the commission of acts of violence, intimidation, hostility or discrimination or an imminent risk of such acts occurring as a consequence of the particular "hate speech" used. Intent to incite might be established where there is an unambiguous call by the person using hate speech for others to commit the relevant acts or it might be inferred from the strength of the language used and other relevant circumstances, such as the previous conduct of the speaker. However, the existence of intent may not always be easy to demonstrate, particularly where remarks are ostensibly concerned with supposed facts or coded language is being used (see paragraph 43 above).

74. In the Court's view, the applicant was prosecuted in relation to the type of "incitement" mentioned above and his conviction was based on the consideration that his actions had been intended to incite violence.

75. Article 280 of the Criminal Code did not appear to require any assessment of a risk of harmful consequences, it being sufficient to establish a defendant's direct intent and his or her actual aim to incite (to call) others to carry out extremist activities, that is – in the present case – to induce ethnic discord and to violate the rights of people of non-Russian ethnicities, both by way of violent actions against them (see paragraph 35 above).

76. The finding of guilt was based on two considerations:

(a) The finding that the third-party content contained calls to violence aiming at inciting ethnic discord and at violating rights and freedoms of non-Russian ethnic groups because of their ethnicity; and

(b) a number of indications relating to the applicant's attitude toward that content, the applicant choosing to remain silent during the criminal proceedings.

77. To assess the weight of one's interest in the exercise of his or her right to freedom of expression, the Court must first examine the nature of his or her statements (see *Perinçek*, cited above, § 229). The relevant question is whether the statements belonged to a type of expression entitled to heightened or reduced protection under Article 10 of the Convention, which is ultimately for the Court to decide, while having regard to the findings of the domestic courts in this regard (see, for instance, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 174; *Bédat*, cited

above, § 66; and *Herbai v. Hungary*, no. 11608/15, §§ 43-44, 5 November 2019). Under the Court's case-law, expression on matters of public interest is in principle entitled to stronger protection, whereas expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection (see *Perinçek*, § 230).

78. The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms may be higher than that posed by the press, as "unlawful speech", including hate speech and calls to violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain persistently available online (see *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 110 and 133, ECHR 2015). At the same time, the reach and thus potential impact of a statement released online with a small readership (or, as the case may be, online followership on social-media platforms) and a statement published on mainstream or highly visited web pages may differ. It may be pertinent for the assessment of a potential influence of an online publication to determine the scope of its reach to the public (see *Savva Terentyev v. Russia*, no. 10692/09, § 79, 28 August 2018).

79. The Court also considers that the sharing of third-party content online through social-media platforms is a frequent way of communication and social interaction and that it does not always pursue any specific communicative aim or aims, especially where a person does not accompany it with any comment or otherwise signify his or her attitude toward the content. The Court does not exclude that such act of sharing certain content still can contribute to an informed citizenry.

80. In the domestic proceedings the applicant chose to remain silent. Before the Court he took no stance relating to his involvement in and motivation for making the impugned material available through the VK account. However, he insisted that prosecution for a quotation from a work of art which was not banned could not be compatible with Article 10 of the Convention.

81. The domestic courts established that the applicant had expressed interest in what could be described as nationalist ideas. The applicant did not challenge this finding at the national level or before the Court. The conduct held against the applicant consisted in his having made available to others video and audio files that had been uploaded onto his personal VK account. There is no indication that those acts were accompanied by any statement, for instance, uncovering the applicant's attitude toward the impugned material. Relying on the expert report, the appellate court considered that the applicant's communicative intent consisted in calling to violence aiming at ethnic discord and at violating non-Russians' rights and freedoms. The appellate court also relied on the fact that the uploading of the video had been followed by the uploading of similar content in the form of an audio recording; witness statements suggesting that the applicant had

had some interest in nationalist ideas; and a wiretapped telephone conversation between the applicant and another person (see paragraph 30 above).

82. It has not been argued, and the Court has no reason to consider, that by uploading the impugned material to his VK account and making it accessible to other users the applicant contributed or at least intended to contribute to any debate on a matter of public interest (compare *Atamanchuk*, cited above, §§ 59-62).

83. The Court notes that the video showed a man dressed as an elderly woman expressing xenophobic and racist views and acting upon them, being incited by another person acting as a supporter of so-called nationalist or neo-Nazi ideas.

84. The only evident element concerns the fact that the video had the title *Russia 88 (Granny)*. This title corresponded to the title of a cinematographic work entitled *Russia 88*. As acknowledged by both the experts in the criminal case and the applicant, that film was well-known in Russia (see paragraphs 6 and 14 above and the Annex to this judgment below). It is also uncontested that the film could be classified as a "mockumentary". The experts considered that the impugned one-minute excerpt was a semantically complete scene filmed in this genre and represented, within the film's plot, the process of filming a propaganda video.

85. The Court reiterates that satire is a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care (see *Eon v. France*, no. 26118/10, § 60, 14 March 2013 and cases cited therein). It has not been claimed, and the Court has no reason to consider, that the applicant's act of sharing the impugned video was (intended as) a means of his own artistic expression or satirical social commentary.

86. At the same time, the Court notes that the film's message was no longer apparent in any manner or form, the video being presented in isolation from the overall context of the film and without any context or commentary.

87. In the Court's view, an ordinary viewer could be mistaken as to the message of the video: that it was to mock propaganda techniques with a racist agenda rather than to put forward that racist agenda and to demonstrate a way to pursue it. The Court accepts the national courts' finding that the video could be reasonably perceived as stirring up ethnic discord by calling for violence against people of Azerbaijani origin and as calling for violating their rights by violent actions.

88. As regards the audio, it has not been contested, and the Court accepts, that it could be reasonably perceived as stirring up ethnic discord

by calling for violence against people of non-Russian ethnicities and as calling for violating their rights by violent actions. The manner and the immediate context in which the applicant disseminated that third-party content do not prompt the Court to reach a different conclusion in the present case.

89. In view of the foregoing considerations and given the racist nature of the material and the absence of any commentary on such content, the Court doubts that the applicant's exercise of his freedom to impart information and ideas had any appreciable socially redeeming value in the specific circumstances of the case.

90. When finding the applicant guilty of the criminal offence of intentional calls to ethnic discord by violent actions and violation of the rights of others by violent actions, the domestic courts convincingly established the applicant's criminal intent vis-à-vis that content (compare *M'Bala M'Bala v. France* (dec.), no. 25239/13, §§ 37-39, ECHR 2015 (extracts), and *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, §§ 25-26, 22 February 2007). Specifically, the Court considers that the domestic courts convincingly demonstrated that the impugned material incited ethnic discord between Russian people and people of non-Russian ethnic origin (Azerbaijanis, as for the video) and, foremost, the applicant's clear intention to bring about the commission of related acts of hatred or intolerance.

91. The material was uploaded to a social-networking website that was accessible, at the time, through the Internet. The appellate court stated that a "large audience" could watch the video and listen to the audio. It transpires from the witness statements made at the national level that access to that material depended on the account user's acceptance of those witnesses as "friends" of the account thereby granting them access to its content (see paragraphs 18 and 27 above). Some fifty people could have accessed that material. At the time of the events under examination, the applicant does not appear to have been a well-known or popular user of social media (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, ECHR 2016) or a public or influential figure (contrast, *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001, and *Féret*, cited above, §§ 75-76), which could have attracted public attention to the material and thus have enhanced its potential harmful impact. Having said this, the Court does not exclude that the sharing of such content in such a manner within an online group (even a relatively small one) of like-minded persons may have the effect of reinforcing and radicalising their ideas without being exposed to any critical discussion or different views.

92. The Court also notes that there is no indication in the decisions of the domestic courts that the material was published against a sensitive social or political background, or that at the relevant time the general security

situation in Russia was tense, or that there were any clashes, disturbances, or interethnic riots, or that there existed an atmosphere of hostility and hatred towards the non-Russian ethnic groups (in particular, those of the Azerbaijani ethnic origin), or any other particular circumstances in which that material was liable to produce imminent unlawful actions in respect of Azerbaijanis or other ethnic groups and to expose them to a real threat of physical violence. The domestic courts did not refer to any factors or context which would show that the applicant's actions could have actually encouraged violence and thus put those groups, or any of its members, at risk.

93. However, the Court considers that the above-mentioned elements are not decisive in the present case. The Court has found that the domestic courts' reasoning based on the applicant's criminal intent can be regarded as both relevant and sufficient in the present case to justify his prosecution for a criminal offence for a call for ethnic discord through violence.

94. Lastly, the Court reiterates that the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI). The Court considers that the suspended eighteen-month term of imprisonment with a similar period of probation and some other requirements (see paragraph 31 above) was proportionate in the specific circumstances of the case (compare *Pastörs,* cited above, § 48; *Stomakhin*, cited above, §§ 127-32; and *Sinkova v. Ukraine*, no. 39496/11, § 111, 27 February 2018).

95. There has accordingly been no violation of Article 10 of the Convention.

96. Having reached this conclusion, the Court finds it unnecessary to delve into whether Article 17 should be applied in the present case (see, in the same vein, *Atamanchuk*, cited above, § 74).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

97. The applicant complained under Article 6 of the Convention that the appeal hearing in his criminal case had been held in camera.

98. Article 6 in the relevant parts reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ..."

A. Admissibility

99. The Government stated that the present application, which included the complaint under Article 6 of the Convention, had to be dismissed with reference to Article 17 of the Convention. However, they made no related argument as regards Article 6 in relation to the applicant's right to a public hearing.

100. The applicant made no specific comment in that regard.

101. Having regard to its case-law (see *Varela Geis v. Spain*, no. 61005/09, §§ 31 and 40, 5 March 2013), the Court does not find it appropriate to declare the complaint incompatible *ratione materiae*.

102. The Court also notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

103. The applicant made no observations on the present complaint.

104. The Government stated that the appellate court had provided reasons for disallowing the public's presence and that the cassation-instance court had confirmed that the decision to hold the appeal hearing in camera had been justified (see paragraphs 21 and 33 above).

105. The Court notes at the outset that the applicant did not allege that the appeal decision had not been "pronounced publicly". The complaint before the Court is limited to holding the appeal hearing in camera, that is to the exclusion of the press and public from it. The Court also notes that the applicant has not substantiated in which manner that decision adversely affected the equality of arms and adversarial procedure in the criminal case. It is noted that the appeal court held an oral hearing at which the parties were present and made submissions.

106. The Court reiterates that the public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Martinie v. France* [GC], no. 58675/00, § 39, ECHR 2006-VI). The exclusion of the press and public from all or part of the trial may be compatible with Article 6 § 1 in the light of the special features of the case and in "the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the

court in special circumstances where publicity would prejudice the interests of justice". Holding proceedings, whether wholly or partly, in camera must be "strictly necessary" in that last situation mentioned above and, in any event, must be "strictly required" by the circumstances of the case in respect of the other situations listed above (ibid., § 40; *Olujić v. Croatia*, no. 22330/05, § 71, 5 February 2009; *Welke and Białek v. Poland*, no. 15924/05, § 74, 1 March 2011; and *Chaushev and Others v. Russia*, nos. 37037/03 and 2 others, §§ 22-23, 25 October 2016).

107. It has not been contested, and the Court does not rule out, that safety considerations relating to (a threat to) one's physical integrity could fall within the scope of, at least, one of the legitimate interests mentioned above. Nor was it in dispute that such type of measure as the exclusion of the press and public from a court hearing could be tailored to deal with that kind of considerations.

108. It appears that under Russian law the exclusion of the press and public from a court hearing was also considered as one of the protective measures in that context, where there was sufficient information confirming the existence of threats to, *inter alia*, the physical integrity of a crime victim, a witness or another person participating in the criminal proceedings or their next of kin (see paragraphs 40-41 above).

109. Having said this, the Court is not satisfied that the decision to hold the appeal hearing in camera was shown to have been "strictly required" on account of the mere fact that the type of offence for which the applicant stood trial was prescribed in the chapter of the Code of Criminal Procedure concerning offences against the foundations of the constitutional regime and national security. Nor was this fact, *per se*, sufficient for deducing that the safety of unspecified persons that participated or were going to participate in the appeal hearing was at stake. The factual and legal elements of the specific charge against the applicant concerned dissemination of material that allegedly incited or could incite social, racial or ethnic discord. The procedural decision issued by the appeal court contained no further factual elements or legal arguments for justifying the hearing in camera. In this connection the Court also notes that the justice of the peace held a public hearing, without any safety considerations being raised. The appeal court's decision did not point out any circumstances, namely relating to the physical safety of any witnesses or the like, that justified the hearing in camera at the appellate stage of the proceedings.

110. The Court also notes that the cassation-instance court considered that the applicant's procedural rights had not been violated on account of the appeal hearing in camera, indicating that the justice of the peace had held a public hearing at which the evidence submitted by the parties had been examined; the defence had not appealed against the decision to hold the appeal hearing in camera and in their cassation appeal did not submit convincing arguments to the effect that the appeal hearing in camera had

significantly impinged upon the defence's rights in so far as the presentation of evidence had been concerned (see paragraph 33 above).

111. The Court reiterates, however, that while the overall fairness of the proceedings is the overarching principle under Article 6 of the Convention (see *Jussila v. Finland* [GC], no. 73053/01, § 42, ECHR 2006-XIV), the (non-)violation of the defendant's right to a public hearing vis-à-vis the exclusion of the public and the press does not necessarily correlate with the existence of any actual damage to the defendant's exercise of his other procedural rights, including those protected under paragraph 3 of Article 6.

112. Thus, even assuming the applicant was otherwise afforded an adequate opportunity to put forward a defence in the appeal proceedings with due regard to his right to an oral hearing and the principles of equality of arms and adversarial procedure, it remains the fact that it was not shown that the decision to hold the appeal hearing in camera had been strictly required in the circumstances of the present case, namely, for ensuring the safety of any person participating in that hearing.

113. Nor does the Court consider that the examination of the case by the justice of the peace at a public hearing could entail the conclusion that Article 6 § 1 of the Convention was complied with in the present case in so far as the applicant's right to a public hearing on appeal was concerned. The Government have not argued, and the Court does not consider, that it was appropriate to dispense with an oral (and thus public) hearing on appeal because the applicant had already had one at first instance. The Court notes in this connection that after an oral hearing the appeal court set aside the trial judgment and issued a new one convicting the applicant.

114. The Court concludes that the exclusion of the press and public from the appeal hearing was not justified.

115. Lastly, the Court previously held that a complete re-examination of the criminal case by a higher-instance court in compliance with the requirements of Article 6 of the Convention could have the effect of redressing the procedural shortcomings before the lower court(s) (see *Idalov v. Russia* [GC], no. 5826/03, § 180, 22 May 2012), and did not rule out that a similar approach could apply to the right to a public hearing on account of the exclusion of the press and public from a court hearing (see *Izmestyev v. Russia*, no.74141/10, § 94, 27 August 2019, and cases cited therein). Neither the cassation-instance court nor the Government before the Court argued that the alleged violation of the applicant's right to a public hearing on appeal had been redressed in the cassation-instance proceedings before the Regional Court. In any event, while it appears that there was an oral hearing before the Regional Court, there is no indication that it was a public one (see paragraph 33 above) or that the Regional Court proceeded with the complete re-examination of the criminal case.

116. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

118. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

119. The Government considered that the claim was excessive.

120. The Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

121. The applicant made no claim on this account. The Court thus makes no award.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits under Article 10 of the Convention the Government's argument under Article 17 of the Convention;

2. *Declares* the complaints under Article 6 § 1 and Article 10 of the Convention admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been no violation of Article 10 of the Convention;

5. *Holds* that it is not necessary to examine whether Article 17 of the Convention should be applied;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to be converted into Russian roubles 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;

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

Done in English, and notified in writing on 11 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Paul Lemmens
Registrar	President

ANNEX

A. The video

The video had a title “Russia 88 (Granny)” and lasted nearly one minute. It depicted a young man (A) approach an elderly woman (B) (whose role was played by a man). They engaged in the following dialogue:

“A: Hello, granny!

B: Hello, son!

A: What are you selling here?

B: Sauerkraut.

A: Great Russian food it is. May I try it?

B: Sure, try it, son.

A: It is good.

B: It is, I cooked it myself.

A: Granny, why are you standing here to sell it? Why not go to a market, to sell it normally?

B: Oh my, there are only Azerbaijanis over there!

A: Really?

B: Yes! And I cannot fool others! And I cannot trick with weight!

A: Granny, let me teach you now! You should inject sugar into watermelons, sell rotten stuff, you will learn to trick with money and prices. Come on, granny!

B: No, no way! I am old woman! I don’t know how. Look, maybe it is better to [beat up the shit off] all those [blackies]!?

A: Really, is it something to be done?

B: And to throw them, throw them out of Moscow?

B: How is that?

A: Well, the holy cause is not tricky! [*She takes a bat in her hands*.]

B: Oh my!

[*She then runs toward two men dressed as/looking as people of non-Russian origin and hits them with the bat*.]

A: Here is how Russians must fight for their rights.”

B. The audio

The audio file contained a musical composition “Glory to Russia!” with the following rhymed lyrics:

“Three bright colours, it is the Russian flag.

If you are not a patriot, you are not Russian but a [blockhead].

The blackie shit must be thrown out of Russia,
Instead of just passing them by, leaving all the power to them.

Glory to Russia! There are boys standing under flags of Kolovrat.
Glory to Russia! All the boys need is our Russia.
Glory to Russia! There are boys standing under flags of Kolovrat.
Glory to Russia! All the boys need is our Russia.

And you, skunk, will get nothing in my country!
Maybe, some don't care but I do.
Go away from Russia and return our markets!
Come on, guys, let's put on our bomber jackets and boots!

Glory to Russia! [....]
Let's shout loud "Glory to Russia!" and we will fight!
And let us Slavic brothers support us, and we will not give up!
All together we will win and clean Russia,
So that our children are proud of their kind, their Russian kind."