**Atamanchuk v. Russia**

**Summary and Outcome**

The Third Section of the European Court of Human Rights (with one dissenting opinion) held that there had been no violation of the freedom of expression under Article 10 of the European Convention on Human Rights. The applicant, a journalist, published an article explaining the reasons for not voting in the upcoming elections. His explanations were alleged to contain phrases disclosing a negative attitude toward a social group based on ethnicity, language and religion. The European Court of Human Rights found no violation of Article 10 due to the damaging nature of "sweeping statements attacking or casting in a negative light entire ethnic, religious or other group.' [para.51] It underlined that inciting hatred 'does not necessarily involve an explicitly call for an act of violence.

**Facts**

The applicant, Atamanchuk, is a journalist, newspaper founder, and politician. He wrote an article supporting his decision to refrain from voting in upcoming elections. He suggested that Russian persons suffered and that non-Russians were to blame. He argued, with reference to "ethnic characteristics," that members of non-Russian groups had engaged in criminal activities, got "their hands into others' pockets", and conspired against the "Kuban people." The applicant stated that these persons "participate[d] in the destruction" of Russia.

The applicant was convicted based on the publication for inciting hatred, enmity, and debasing the dignity of a group of people due to their ethnicity, language, origin and religion. The Article received a fine of 200,000 rubles for each publication and was prohibited from participating in any journalistic or publishing activities for two years.

Atamanchuk appealed to the European Court of Human Rights, arguing violations of Article 10 (freedom of expression) of the European Convention on Human Rights.

**Decision Overview**

The main issue before the ECtHR was to assess whether Russia had violated the applicant's freedom of expression under Article 10 on account of the applicant's conviction for inciting hatred and enmity and debasing the dignity of a group of people due to their characteristics.

The applicant argued that the criminal punishment imposed on him due to the publication of his Article amounted to a violation of Article 10 of the European Convention on Human Rights. The government urged the Court to dismiss the application under Article 17. It argued that the criminal conviction of the applicant had the legitimate aim of protecting the rights of others. The publication could have incited violence and negatively impacted public and legal order. It argued further that the penalty imposed was proportionate.

The ECtHR considered the government's reference to Article 17 and relied on case law such as Perinçek v. Switzerland and Stern Taultas and Roura Capellara v. Spain. The Court evaluated the applicability of Article 10 and noted that it was closely linked to the merits of the complaint, and thus joined it to the merits.' [para.35] In this light, Article 10 can be relied on if the applicant can justify the interference under section 2 of the Article, which contains the limitation clauses and on which the Court has well-developed case-law and legal tests for their interpretation.

The legal test applied was determining whether the interference with Article 10 (the applicant's punishment for his article) was prescribed by law, pursued a legitimate aim or aims and was necessary for a democratic society.

In considering the presence of a legitimate aim, the ECtHR relied on well-established case law such as [Aksu v. Turkey](https://globalfreedomofexpression.columbia.edu/laws/ecthr-aksu-v-turkey-application-nos-4149-04-and-41029-04-2012/) to demonstrate that 'discrimination on account of a person's ethnicity is a form of racial discrimination.' Referring to [Lewit v Austria](https://globalfreedomofexpression.columbia.edu/laws/ecthr-lewit-v-austria-application-no-4782-18-2019/) also noted 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 its members' feelings of self-worth and self-confidence.' [para.42]

While the ECtHR considered that there is no basis that the publication will not bring about a risk of violence or disorder [para.43] but, relying on established case law such as Seurot v France, [Soulas and others v. France](https://globalfreedomofexpression.columbia.edu/laws/ecthr-soulas-and-others-v-france-no-15948-03-2008/) and [Le Pen v. France,](https://globalfreedomofexpression.columbia.edu/laws/ecthr-le-pen-v-france-app-no-1878809-2010/) [W.P and Others v Poland,](https://globalfreedomofexpression.columbia.edu/laws/ecthr-w-p-and-others-v-poland-4226498-2004/) [Pavel Ivanov v Russia,](https://globalfreedomofexpression.columbia.edu/laws/ecthr-pavel-ivanov-v-russia-application-no-3522204-2007/) [Féret v. Belgium](https://globalfreedomofexpression.columbia.edu/laws/ecthr-feret-v-belgium-2009-no-15615-07-%c2%a7-65/), it noted that it was particularly 'sensitive towards sweeping statements attacking or casting in a negative light entire...groups.' [para.51].

It reiterated that incitement to hatred does not necessarily involve a call for violence but, still, attack by 'insulting, holding up to ridicule or slandering specific groups of the population can legitimize Article 10 interference ([Vejdeland and Others v Sweden](https://globalfreedomofexpression.columbia.edu/cases/case-of-vejdeland-and-others-v-sweden/), [Dmitriyevskiy v Russia](https://globalfreedomofexpression.columbia.edu/laws/ecthr-dmitriyevskiy-v-russia-2017-no-42168-06/) and [Ibragim Ibragimov and Others v. Russia).](https://globalfreedomofexpression.columbia.edu/laws/ecthr-ibragim-ibragimov-v-russia-app-nos-1413-08-and-28621-11-2018/)

The ECtHR, in 6:1, held that there had been no violation of Article 10 of the European Convention on Human Rights.

**Dissenting Opinion of Judge Serghides**

Judge Serghides disagreed with his peers, arguing that there had been a violation of Article 10 since the restriction was unnecessary in a democratic society. He submitted that the Court followed only in theory, and not in practice, its previous approach regarding the interpretation and application of restrictions to freedom of expression. He noted that the sentence imposed on the applicant, prohibiting him from exercising any journalistic or publishing activities for two years (in addition to the penalty of a fine, which was also high), was disproportionate in the circumstances. He concluded that these actions violated the applicant's rights under Article 10 and the principle that the press must be able to perform the role of a public watchdog in a democratic society.

**Decision Direction**

This case neither expands nor contracts the freedom of expression. Rather, it follows the low threshold adopted in previous case law such as [Féret v. Belgium](https://globalfreedomofexpression.columbia.edu/laws/ecthr-feret-v-belgium-2009-no-15615-07-%c2%a7-65/) and [Vejdeland v Sweden](https://globalfreedomofexpression.columbia.edu/cases/case-of-vejdeland-and-others-v-sweden/) that insults groups based on their characteristics and the low point associated with the alleged harms of negative stereotyping ([Lewit v Austria](https://globalfreedomofexpression.columbia.edu/laws/ecthr-lewit-v-austria-application-no-4782-18-2019/)).

**Significance**

This judgment establishes a binding or persuasive precedent since the European Court of Human Rights judgments is binding upon parties to the decision.

The decisions of the European Court of Human Rights have precedential value on the interpretation of the right to freedom of expression for other States Parties to the European Convention on Human Rights.