



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

FIRST SECTION

**CASE OF REPUBLICAN PARTY OF RUSSIA v. RUSSIA**

*(Application no. 12976/07)*

JUDGMENT

STRASBOURG

12 April 2011

**FINAL**

*15/09/2011*

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



**In the case of Republican Party of Russia v. Russia,**

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

Nina Vajić, *President*,  
Anatoly Kovler,  
Elisabeth Steiner,  
Khanlar Hajiyeu,  
George Nicolaou,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 March 2011,

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

**PROCEDURE**

1. The case originated in an application (no. 12976/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the Republican Party of Russia (“the applicant”), on 26 February 2007.

2. The applicant was represented by Mr A. Semenov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a violation of its right to freedom of association.

4. On 3 September 2007 the President of the First Section decided to communicate the above complaint to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Background information

6. The Republican Party of Russia was created in November 1990 by consolidation of the Democratic Wing of the USSR Communist Party and its subsequent secession from that party.

7. On 14 March 1991 the Ministry of Justice formally registered the public association “Republican Party of the Russian Federation”.

8. Following changes in domestic legislation, on 27 April 2002 a general conference of the public association decided on its reorganisation into a political party by the name of “Republican Party of Russia”.

9. On 12 August 2002 the applicant was registered as a party by the Ministry of Justice.

10. Its articles of association list among its aims the nomination of candidates for election to state and municipal bodies and participation in the activities of those bodies, the development of civil society in Russia and the promotion of the unity and territorial integrity of the country and of the peaceful coexistence of its multi-ethnic population.

#### B. Refusal to amend the information about the applicant contained in the Unified State Register of Legal Entities

11. On 17 December 2005 an extraordinary general conference of the applicant elected its management bodies. In particular, Mr Zubov was elected chairman of the Political Council and Mr Sheshenin chairman of the Executive Committee. In accordance with the articles of association they became *ex officio* representatives of the party. The general conference also decided to change the party’s address and to create several regional branches.

12. On 26 December 2005 the applicant asked the Ministry of Justice to amend the information contained in the Unified State Register of Legal Entities. In particular, it asked that its new address and the names of its *ex officio* representatives be entered in the Register.

13. On 16 January 2006 the Ministry of Justice refused to make the amendments because the party had not submitted documents showing that the general conference had been held in accordance with the law and with its articles of association.

14. On 2 March 2006 the applicant re-submitted its request. It produced the minutes of the conferences of its regional branches at which delegates to the general conference had been nominated, the list of the delegates and the minutes of the general conference.

15. On 4 April 2006 the Ministry of Justice refused for the second time to register the amendments. It found that the applicant had not submitted documents confirming the number of its members. Moreover, the minutes of the Irkutsk, Chelyabinsk and Sverdlovsk regional conferences did not include the lists of participants. The minutes of the Arkhangelsk and Yaroslavl regional conferences were flawed because they indicated that those conferences had been convened at the initiative of the Novosibirsk regional branch. The Vladimir regional conference had not actually been held. Some of the participants at the general conference were not members of the party or had not been elected delegates. Due to those and other omissions it was not possible to establish whether the regional conferences had been quorate and whether the general conference had been legitimate.

16. The applicant challenged the refusal before a court. It argued that it was not required to submit documents confirming the number of its members. In any event, that information was already in the Ministry's possession because the party had submitted it in its annual activity report in 2005. The Ministry of Justice was not empowered to verify whether the general conference and the regional conferences were legitimate. Domestic law required that such verification be conducted only before the registration of a new party or of amendments to the articles of association, which was not the case of the applicant. In any event, the general conference had been convened in accordance with domestic law and the articles of association. It had brought together 94 delegates from 51 regional branches. The delegates had been nominated at regional conferences held in compliance with the party's internal rules. The law did not require the minutes of regional conferences to contain the list of participants. The minutes had indicated the total number of the members of the regional branches and the number of participants at the conferences. That information had been sufficient to establish that the conferences had been quorate. The applicant conceded that the minutes of the Arkhangelsk and Yaroslavl regional conferences contained typing errors, which, however, did not affect the outcome of the voting. The Ministry of Justice's finding that the Vladimir regional conference had never been held had been refuted by the documents. The finding that some of the participants at the general conference had not been members of the party or had not been elected delegates was not supported by any documentary evidence. The applicant lastly submitted that officials of the regional departments of the Ministry of Justice who had attended some of the regional conferences had not noted any breaches of the substantive or procedural rules. The applicant claimed that the refusal to amend the Register violated its freedom of association and hindered its

activities. In particular, the Ministry of Justice had refused to register three regional branches precisely because the Register did not contain the names of the applicant's *ex officio* representatives.

17. The Ministry of Justice maintained that the decision of 4 April 2006 had been lawful. The Ministry was not only entitled, but had a legal obligation to verify the information submitted by the applicant. The verification had revealed that the documents produced by the applicant had not met the legal requirements. In particular, the minutes of the regional conferences did not all contain the list of participants. Thirty-three regional conferences had been inquorate. The applicant had never submitted any information about its local branches and it was therefore not clear who had nominated delegates for the regional conferences and whose interests they had represented. The minutes of the Arkhangelsk and Yaroslavl regional conferences indicated that the conferences had been convened at the initiative of the Novosibirsk regional branch. Due to those omissions it had not been possible to establish whether the delegates to the general conference had been duly nominated. Moreover, the decision to convene the general conference had been taken on 1 December 2005, while some of the regional conferences had taken place in November 2005. As the general conference had been convened in breach of the procedural rules, it had been illegitimate.

18. On 12 September 2006 the Taganskiy District Court of Moscow upheld the decision of 4 April 2006. It held that, under sections 15, 16, 20 and 38 of the Political Parties Act, the Ministry of Justice had been empowered to verify the information and documents submitted by the applicant before registering any amendments to the Register. The Ministry had found that the documents submitted did not meet the requirements established by law. The court had no reason to doubt its findings because they were corroborated by the case materials and had not been refuted by the applicant. The court held that the decision of 4 April 2006 had been lawful and had not violated the applicant's rights under Article 11 of the Convention.

19. In its appeal submissions the applicant claimed, in particular, that the Ministry of Justice's requirement to submit the same documents as for the initial registration of a party or the registration of amendments to its articles of association had no basis in domestic law. Under the Political Parties Act amendments concerning a party's address or the names of its *ex officio* representatives were to be registered on the basis of a written notification to the registration authority. The applicant also argued that the Ministry of Justice had no authority to verify the legitimacy of its general conference. It insisted that the general conference had been held in conformity with its articles of association and with domestic law.

20. On 19 December 2006 the Moscow City Court upheld the judgment on appeal. It referred to section 32 § 7 of the Non-Profit Organisations Act and held as follows:

“...A political party requesting to amend the information [contained in the Register] is to produce the same documents as required for registration of a party. The list of those documents is contained in section 16 of the Political Parties Act.

[The applicant’s] argument that the extraordinary general conference of the party was organised and held in accordance with the law in force and with its articles of association aims at a different assessment of documents produced [by the applicant] to [the Ministry of Justice] for registration. At the same time, [the Ministry of Justice] and the [District] Court had reasons to conclude that the submitted documents contained information which did not meet the legal requirements. The [City] Court agrees with the [District] Court’s assessment of the evidence.”

### **C. Dissolution of the applicant**

21. In 2006, in a separate set of proceedings, the Ministry of Justice conducted an inspection of the applicant’s activities. It issued thirty-six warnings to the party’s regional branches. Seven regional branches were dissolved by courts at the Ministry’s request and the activities of the Moscow regional branch were suspended. On 28 September 2006 the Ministry prepared the inspection report mentioning that the applicant had 49 regional branches, of which 32 had more than 500 members, and that the total number of party members was 39,970.

22. On 1 March 2007 the Ministry of Justice asked the Supreme Court of the Russian Federation to dissolve the applicant. It claimed that the party had fewer than 50,000 members and fewer than 45 regional branches with more than 500 members, in breach of the Political Parties Act.

23. The applicant submitted that it met the requirements of the Political Parties Act because it had 58,166 members and had 44 registered regional branches with more than 500 members.

24. On 23 March 2007 the Supreme Court of the Russian Federation ordered the dissolution of the applicant. It found that the Mari-El, Krasnoyarsk, Tyumen, Novosibirsk, Murmansk, and Vladimir regional branches had been dissolved by court decisions in 2006, therefore their members could not be taken into account. Eight regional branches had fewer than 500 members, in particular:

– despite a warning issued by the Ministry, the Ingushetia regional branch did not submit documents showing the number of its members. According to the information in the Ministry of Justice’s possession, the branch had 152 members;

– the applicant had submitted that the Kalmykiya regional branch had 508 members. However, an inspection had revealed that thirty-seven of them had never joined the party, four of them were simultaneously members

of other regional branches, the names of three members appeared twice in the list, and eighteen members did not reside at the indicated addresses. Therefore, the branch had in fact only 468 members;

- out of 516 members of the Krasnodar Regional branch eighteen had made a written declaration that they had never joined the party. Four members, while refusing to make a written statement, had made oral statements to that effect;

- the Arkhangelsk regional branch had 514 members. However, seventeen of them were under eighteen years of age. Moreover, the party had not produced individual applications for membership in respect of 100 members;

- 1,036 members of the Samara regional branch had been admitted to the party in breach of the articles of association. In particular, 791 members had been admitted by the branch's political council elected at an illegitimate general conference. To support its conclusion that the general conference had been illegitimate the Supreme Court referred to the judgment of the Taganskiy District Court of Moscow of 12 September 2006 (see paragraph 18 above);

- the Tambov regional branch had 541 members. However, the membership of 230 of them had not been confirmed. In particular, the party had not produced individual applications for membership in respect of 177 members, thirty-three members had no residence registration in the Tambov Region, four members had left the Tambov region, two members had been younger than eighteen at the time they had joined the party, three members had not signed their applications for membership, and thirty-three had declared that they had never joined the party;

- the Tula Regional branch had 383 members;

- the Komi-Permyatskiy regional branch had 154 members.

25. The court held that it had no reason to doubt the information submitted by the Ministry. The applicant had never contested before the courts the information contained in the inspection report or the warnings issued by the Ministry. The court further found that the Ministry had not submitted any evidence in support of their conclusions that the Karachaevo-Cherkesskiy, Altay and St Petersburg regional branches had fewer than 500 members, therefore the court accepted the number of members suggested by the applicant. The court also accepted that the party had several unregistered branches. However, their members could not be taken into account for establishing the total number of party members. The court concluded that on 1 January 2006 the applicant had 43,942 members, and 37 regional branches with more than 500 members. Thus, the applicant did not meet the requirements established by law and was subject to dissolution.

26. The applicant appealed. It submitted that the Ministry's submissions had not been supported by any documents. Nor had the Ministry indicated the names of the people who, in its opinion, had been admitted to the party



in breach of domestic law and the party's articles of association. The first-instance court had refused to admit evidence submitted by the applicant, namely individual applications for membership and other documents confirming the number of party members. The court had not taken into account 8,819 members living in the regions where the branches were not registered, although they had been admitted to the party at the federal level and were members of the party itself and not members of its unregistered regional branches. The Ministry had conducted an inspection in March 2006; it had never verified the number of the applicant's members as at 1 January 2006. Moreover, its seven regional branches had been dissolved later in 2006, therefore on 1 January 2006 they had still been functioning and the applicant had had the required number of regional branches. Lastly, as domestic law did not establish the inspection procedure, the inspections had been arbitrary.

27. On 31 May 2007 the Appellate Collegium of the Supreme Court upheld the judgment of 23 March 2007 on appeal. It found that the findings of the first-instance court had been based on sufficient evidence, namely the inspection reports compiled by the Ministry of Justice and its regional departments. The court had taken into account the number of the party's members as at 1 January 2006. Individual applications submitted by the party after that date could not be taken into account because they could have been written after 1 January 2006 and backdated. Moreover, the applicant had not challenged the inspection report or the warnings issued by the Ministry. It was accordingly barred from contesting before the Supreme Court the facts mentioned in the report and in the warnings. In any event, even according to the party's submissions it had only 44 regional branches with more than 500 members instead of 45, which was in itself a sufficient ground for dissolution.

## II. RELEVANT DOMESTIC LAW

### A. Legal provisions on political parties

28. The status and activities of political parties are governed by the Political Parties Act (Federal Law no. 95-FZ of 11 July 2001), the Non-Profit Organisations Act (Federal law No. 7-FZ of 12 January 1996) and the Registration of Legal Entities Act (Federal Law no. 129-FZ of 8 August 2001).

#### *1. Requirements of minimum membership and regional representation*

29. Membership of a political party shall be voluntary and individual. Citizens of the Russian Federation who have attained the age of eighteen

may be members of a political party. Foreign citizens, stateless persons, and Russian nationals who have been declared incapable by a judicial decision may not be members of a political party. Admission to membership of a political party is decided upon on the basis of a written application by the Russian Federation citizen, in accordance with the procedure set out in the articles of association. A Russian Federation citizen may hold membership of only one political party at once. A member of a political party may be registered only in one regional branch in the region of his permanent or predominant residence (section 23 §§ 1, 2, 3 and 6 of the Political Parties Act).

30. The Political Parties Act, adopted on 11 July 2001, introduced the requirements of minimum membership and regional representation for political parties. Until 20 December 2004 section 3 § 2 of the Political Parties Act required that a political party should have no fewer than ten thousand members and should have regional branches with no fewer than one hundred members in more than one half of Russia's regions. If those conditions were fulfilled, it was also allowed to have branches in the remaining regions provided that each branch had no fewer than fifty members.

31. On 30 October 2004 a group of deputies of the State Duma proposed amendments to section 3 § 2 of the Political Parties Act. In particular, they proposed increasing the minimum membership of a political party to fifty thousand members and the minimum membership of a regional branch to five hundred members. An explanatory note appended to the draft law provided the following justification for the amendments:

“The proposed draft Federal law is a follow-up to the reform of the political system started in 2001 and it aims at strengthening the political parties and involving a wider range of citizens in the political life of the society and the State.”

32. The State Duma's Committee on Public Associations and Religious Organisations recommended that the amendments be adopted. The recommendation reads as follows:

“The subject of the proposed Draft law is extremely important and pertinent.

The experience of [political] party development in recent years has revealed that the political system in Russia needs perfection. The state and development of the party system have a major influence on the effective functioning of the legislative and executive powers whose mission is to protect citizens' rights and create favourable conditions for the development of the country.

This is the rationale of the political reform proposed by the President of the Russian Federation, which advocates as one of its main goals the enhancement of the role and prestige of political parties in contemporary Russia.

Acting as the nexus between civil society and the authorities and participating in parliamentary elections, large and authoritative political parties with firm political

views, supported by a large number of voters, reinforce the structure and stability of the party system.

This [Draft] law proposes increasing the minimum membership of a party from ten thousand (under the Law now in force) to fifty thousand members and, for the regional branches, from one hundred to five hundred members. This is mainly justified by the consideration that the parliamentary, and consequently democratic, system cannot function without strong parties.

Many small parties, the so-called quasi parties, having virtually no political weight or influence on the voters take part in the elections and enjoy various advantages. During the election campaign they receive financing from the State budget, have access to the media and are allocated free airtime on television. And after the election they disappear from the political scene.

It is enough to note that out of forty-four parties and political alliances registered at the moment only three parties and one political alliance have seats in the State Duma. Only three parties have passed the 3% threshold, while the others have obtained less than 1% of the votes. This situation places an excessive burden on the budget and is at variance with the principle of efficient and careful spending of public funds provided for in Article 34 of the Budget Code of the Russian Federation.

The dispersal of voters between such [small] parties results in the instability of the political system which we are witnessing today in our country.

On the whole, the Draft law aims at streamlining the existing political system and creating effective, large-scale political parties having stable branches in the regions, expressing the genuine interests of substantial groups of voters and capable of defending them in the present conditions of democratic transformations in Russia.

In view of the above, the Committee considers it necessary to support the proposed Draft law.”

33. On 20 December 2004 section 3 § 2 was amended. The amended section 3 § 2 required that a political party should have no fewer than fifty thousand members and should have regional branches with no fewer than five hundred members in more than one half of Russia’s regions. It was also allowed to have branches in the remaining regions provided that each branch had no fewer than two hundred and fifty members.

34. The political parties were required to bring the number of their members into compliance with the amended section 3 § 2 by 1 January 2006. If a party had not complied with that requirement it had to reorganise itself into a public association within a year, failing which it would be dissolved (section 2 §§ 1 and 4 of the Amending Act, Federal Law no. 168-FZ of 20 December 2004).

35. On 1 January 2007 the Ministry of Justice announced that only seventeen political parties out of forty-eight registered as at February 2004 now met the requirements of minimum membership and regional representation. Twelve political parties were dissolved by the Supreme Court in 2007, three political parties reorganised themselves into public

associations, while several more political parties merged with bigger parties. Fifteen political parties remained registered by the end of 2007 and were eligible to participate in the 2 December 2007 elections to the State Duma.

36. On 5 November 2008 the President, in his address to the Federation Council, called for the development of democracy, in particular, by decreasing the minimum membership requirement for political parties.

37. On 5 December 2009 the President proposed amending section 3 § 2 of the Political Parties Act by providing for a gradual decrease in the minimum membership requirement. The explanatory note contained the following justification for the proposed amendments:

“The Draft law aims at giving effect to the President’s address to the Federation Council of the Federal Assembly of the Russian Federation of 5 November 2008, concerning the necessity gradually to decrease the minimum membership of political parties required for their registration and further functioning, as well as to introduce the requirement of rotation for [management bodies] of political parties.”

38. The State Duma’s Committee on Constitutional Legislation and State Development recommended that the proposed amendments be adopted. The relevant part of its recommendation reads as follows:

“The Draft law proposes a gradual decrease in the [minimum] membership of political parties required for their establishment, registration and further functioning. Its aim is to give effect to the measures proposed by the President of the Russian Federation in his address to the Federation Council of the Russian Federation of 5 November 2008, with a view to increasing the level and quality of people’s representation in the government.”

39. On 28 April 2009 section 3 § 2 was amended. It now reads as follows:

“2. ... a political party shall:

before 1 January 2010 – have no fewer than fifty thousand members, and regional branches with no fewer than five hundred members in more than one half of Russian regions... It may also have branches in the remaining regions provided that each branch has no fewer than two hundred and fifty members...

from 1 January 2010 to 1 January 2012 - have no fewer than forty-five thousand members, and regional branches with no fewer than four hundred and fifty members in more than one half of Russian regions... It may also have branches in the remaining regions provided that each branch has no fewer than two hundred members...

from 1 January 2012 - have no fewer than forty thousand members, and regional branches with no fewer than four hundred members in more than one half of Russian regions... It may also have branches in the remaining regions provided that each branch has no fewer than one hundred and fifty members...”

## 2. *State registration of political parties*

### (a) **Registration of Legal Entities Act**

40. In accordance with the Registration of Legal Entities Act, all legal entities, including political parties, must be registered in the Unified State Register of Legal Entities. The Unified State Register of Legal Entities must contain, *inter alia*, the following information about each legal entity: its address and the names of its *ex officio* representatives. The legal entity must notify the registration authority of any change in that information (section 5 §§ 1 and 5).

41. Section 12 of the Registration of Legal Entities Act contains a list of documents to be submitted for the initial registration of a legal entity. Its section 17 § 1 contains a list of documents to be submitted for the registration of amendments to the legal entity's articles of association. Paragraph 2 of that section provides that to register changes in other information on the legal entity (such as a change of address or *ex officio* representatives), the legal entity must submit a written notification to the registration authority. The notification must contain a declaration confirming that the information submitted is authentic and satisfies the requirements established by law. For that purpose a standard notification form was to be designed by the Government.

### (b) **Non-Profit Organisations Act**

42. The Non-Profit Organisations Act also contains a list of documents to be submitted for the initial registration of a non-profit organisation (section 13.1 § 4) and the registration of amendments to its articles of association (section 23). The Act also provides that a non-profit organisation must notify the registration authority about any change concerning its address or its *ex officio* representatives and submit confirming documents. The procedures and time-limits are the same as for the initial registration of a non-profit organisation. The list of documents to be submitted is determined by the competent executive authority (section 32 § 7, added on 10 January 2006 and in force from 16 April 2006). The competent executive authority may refuse registration if the documents submitted do not comply with statutory requirements (section 23.1 § 1).

### (c) **Political Parties Act**

43. The Political Parties Act provides that political parties must be registered in the Unified State Register of Legal Entities in accordance with the special registration procedure established by that Act (section 15 § 1). Amendments to the Register are made pursuant to the decision of a competent executive authority authorising registration of information about the establishment, reorganisation or dissolution of a political party or its

regional branches or of other information specified by law (section 15 § 2). Before registering a political party, the competent registration authority must verify whether the documents submitted for registration satisfy the requirements of the Political Parties Act. The Register must be amended within five days from the date of the authorisation issued by the registration authority (section 15 § 5).

44. Section 16 § 1 of the Political Parties Act contains an exhaustive list of documents to be submitted for the registration of a political party established by the founding congress: (a) an application for registration; (b) the party's articles of association; (c) its political programme; (d) copies of decisions taken by the founding congress, in particular those concerning the establishment of the political party and its regional branches, the adoption of its articles of association and its programme and the election of its management bodies, and containing information about the delegates present and the results of the votes; (e) a document confirming payment of the registration fee; (f) information about the party's official address; (g) a copy of the publication announcing the time and place of the founding congress, and (h) copies of the minutes of regional conferences held in more than one half of Russia's regions, mentioning the number of members of each regional branch. Paragraph 2 of the same section prohibits State officials from requiring the submission of any other documents. The documents listed above must be submitted to the registration authority no later than six months after the founding congress (section 15 § 3).

45. The registration authority may refuse registration if the party has not submitted all necessary documents or if the information contained in those documents does not meet the requirements established by law (section 20 § 1).

46. A political party must notify the registration authority, within three days, of any change in the information contained in the Unified State Register of Legal Entities, including any change in its address or its *ex officio* representatives. The registration authority amends the Register within one day of receipt of the notification (section 27 § 3)

### *3. Internal organisation of a political party*

47. A political party's articles of association must establish, among other things, the procedure for the election of its management bodies (section 21 § 2 of the Political Parties Act). Management bodies of a political party must be re-elected at least every four years (section 24 § 3). Management bodies must be elected by a secret vote at a general conference assembling delegates from regional branches established in more than one half of Russia's regions. The election must be conducted in accordance with the procedure established by the party's articles of association and the decision must be taken by a majority of those present and voting (section 25 §§ 1, 4 and 6).

#### *4. Participation in elections*

48. Until 14 July 2003 candidates in elections to State bodies could be nominated by political parties, electoral blocks or by self-nomination. Since legislative amendments introduced on 11 July 2001 entered into force on 14 July 2003, candidates in elections to State bodies may be nominated by political parties only (section 36 § 1 of the Political Parties Act as in force from 14 July 2003).

49. A political party wishing to participate in elections to the State Duma must submit its list of candidates to the electoral commission. It must also submit a certain number of signatures of support. Parties who currently have seats in the State Duma are absolved from the requirement to submit signatures of support. Until 3 June 2009 a political party had to submit signatures from no fewer than 200,000 enfranchised citizens domiciled in at least twenty Russian regions. The legal provision currently in force requires a political party to submit signatures from no fewer than 150,000 enfranchised citizens domiciled in more than one half of Russian regions. The number of signatures required will be decreased to 120,000 after the parliamentary elections of December 2011 (section 39 of the State Duma Elections Act (Federal Law no. 51-FZ of 18 May 2005)).

50. Until 2005 the 450 seats in the State Duma were distributed between those political parties whose electoral lists obtained more than 5% of the votes cast. The State Duma Elections Act of 18 May 2005 increased the electoral threshold to 7% (section 82 § 7 of the State Duma Elections Act). In accordance with recent amendments to the State Duma Elections Act introduced on 12 May 2009, a political party whose electoral list wins between 6% and 7% of the votes cast receives two seats in the State Duma, while a party which wins between 5% and 6% of the votes cast receives one seat (section 82.1 of the State Duma Elections Act).

#### *5. Public financing of political parties*

51. Political parties which take part in elections and obtain more than 3% of the votes cast are entitled to receive public financing to reimburse their electoral expenses. The amount of public financing received by each party is proportionate to the number of votes obtained by it (section 33 §§ 1, 5 and 6 of the Political Parties Act).

#### *6. State control over political parties*

52. Once a year a political party must submit to the competent authorities a report on its activities, indicating, in particular, the number of members of each of its regional branches (section 27 § 1 (b)).

53. The competent authorities monitor compliance by political parties and their regional and other structural branches with Russian laws, as well as the compatibility of political parties' activities with the regulations, aims

and purposes set out in their articles of association. The authorities concerned have the right to study, on an annual basis, the documents of political parties and their regional branches confirming the existence of regional branches and the number of their members, and to issue warnings to political parties and their regional branches if they pursue activities incompatible with their articles of association. The party or regional branch may challenge such warnings before a court. The authorities have the right to apply to a court for the suspension of the activities or the dissolution of a political party or its regional branch (section 38 § 1).

54. A political party may be dissolved by the Supreme Court of the Russian Federation if it does not comply with the minimum membership requirement or the requirement to have regional branches in more than one half of Russian regions (section 41 § 3).

### **B. Case-law of the Constitutional Court of the Russian Federation**

55. On 1 February 2005 the Constitutional Court delivered its Ruling no. 1-P in a case lodged by the Baltic Republican Party, a regional party which was dissolved because it did not satisfy the requirements of minimum membership and regional representation. In its application to the Constitutional Court it complained that the above requirements under section 3 § 2 of the Political Parties Act were incompatible with the Constitution. The Constitutional Court declared that section 3 § 2 as in force until 20 December 2004 was compatible with the Constitution. It held as follows:

“3. The Constitution of the Russian Federation provides for the multiparty system (Article 13 § 3) and for the right to freedom of association and freedom of activities of public associations (Article 30 § 1) ... It does not, however, specify the territorial level – all-Russian, interregional, regional or local – on which political parties may be founded. Similarly, it does not contain an explicit ban on the creation of regional parties. Accordingly, the requirement in section 3 § 2 of [the Political Parties Act] that political parties may be created and operated only on the federal (all-Russian) level is a limitation of the constitutional right to freedom of association in political parties. Such limitations are permissible only if they are necessary in order to protect constitutionally guaranteed values (Article 55 § 4 of the Constitution of the Russian Federation).

3.1. ...[The Political Parties Act] guarantees the right to freedom of association in political parties (section 2) and provides that political parties are established for the purpose of ensuring participation by Russian citizens in the political life of their society. Their mission is to form and articulate citizens’ political will, to take part in public and political actions, elections and referenda, as well as to represent citizens’ interests in State and municipal bodies (section 3 § 1). According to the substance of [the Political Parties Act], political parties are created to ensure Russian citizens’ participation in the political life of the entire Russian Federation rather than in one of its parts. Their vocation is to form the political will of the multinational Russian



people as a whole and to articulate nationwide interests first and foremost. Their aims should not be associated with the interests of certain regions only. At the same time, when carrying out their activities directly in the regions, political parties must combine nationwide and regional interests...

The federal legislator ... made the acquisition (and retention) of the status of a political party conditional, firstly, on a public association expressing the interests of a considerable number of citizens irrespective of their region of residence and, secondly, on its carrying out activities in the entire territory of the Russian Federation or most of it. Such structuring of the political scene is aimed at preventing the division of the political forces and the emergence of numerous artificial small parties (especially during electoral campaigns) created for a short duration and therefore incapable of fulfilling their mission ... in the country's political system.

3.2. ... In the contemporary conditions where Russian society has not yet acquired solid experience of democratic existence and is faced with serious challenges from separatist, nationalist and terrorist forces, the creation of regional political parties – which would inevitably be interested in vindicating mainly their own purely regional or local interests – might result in a breach of the territorial integrity and unity of the political system and undermine the federative structure of the country.

The legal line between regional political parties and political parties based in fact on ethnic or religious affiliation would be blurred. Such parties ... would inevitably strive to assert mainly the rights of their respective ethnic and religious communities, which at the present stage of historic development would distort the process of forming and articulating the political will of the multinational people which is the bearer of sovereignty and the only source of power in the Russian Federation.

Moreover, taking into account the complex [federal] structure of the Russian Federation, the establishment of regional and local political parties in each region of the Federation might lead to the rise of numerous regional party systems. This might turn the emerging party system ... into a destabilising factor for the developing Russian democracy, popular sovereignty, federalism and the unity of the country, and weaken the constitutional protection of people's rights and freedoms, including the right to freedom of association in political parties and the equal right of all citizens to establish a political party and participate in its activities in the entire territory of the Russian Federation.

3.3. Thus, the requirement contained in [the Political Parties Act] that the status of a political party may be acquired only by nationwide (all-Russian) public associations pursues such constitutionally protected aims as the creation of a real multiparty system, the legal institutionalisation of political parties in order to assist the development of the civil society, and ... the formation of large, nationwide political parties. This requirement is also necessary in the contemporary historical conditions of developing democracy and rule of law in the Russian Federation for the purpose of protecting constitutional values and, above all, securing the unity of the country. The above limitation is temporary in character and must be abolished as soon as the circumstances justifying it become different.

4. Although it provides for a multiparty system and guarantees the right to freedom of association in political parties and the freedom of their activities, the Constitution of the Russian Federation does not set any requirements concerning the number of parties, or any membership requirements. Nor does it prohibit establishing a minimum

membership requirement for political parties. It is the role of the federal lawmaker to establish those requirements in such a way that, on the one hand, the [required minimum] membership and territorial scale of activities of political parties are not excessive and do not encroach on the very essence ... of the citizens' right to freedom of association and, on the other hand, [the political parties] are capable of fulfilling their aims and mission as nationwide (all-Russian) political parties. In other words, the lawmaker must be guided by the criteria of reasonable sufficiency ensuing from the principle of proportionality.

When deciding on the minimum membership and the territorial scale of the activities of political parties the lawmaker has a wide discretion, taking into account that this issue is to a considerable degree based on political expediency. This follows from the fact that there exist different solutions to the issue in the legislation of other countries (the minimum membership requirement for political parties is considerably higher or lower than that contained in section 3 of [the Political Parties Act])...

Defining the minimum-membership requirement for political parties in [the Political Parties Act], the lawmaker apparently proceeded from the necessity for a political party to have considerable support in society. Such support is required to fulfil the main mission of a political party in a democratic society, namely forming and articulating the political will of the people. The requirements such as contained in section 3 § 2 of [the Political Parties Act] [as in force until 20 December 2004] are not in themselves incompatible with the Constitution of the Russian Federation. These quantitative requirements might become incompatible with the Constitution if their enforcement results in the practical impossibility for the citizens to exercise their constitutional right to freedom of association in political parties, for example if, in breach of the constitutional principle of the multiparty system, they permit the establishment of one party only.

5. The principle of political pluralism guaranteed by Article 13 of the Constitution of the Russian Federation may be implemented not only through a multiparty system and establishment and the activities of political parties with various ideologies. Therefore the forfeiture by interregional, regional and local public associations ... of the right to be called a political party does not mean that such associations are deprived of the right to participate in the political life of society at the regional and local levels. Nor have their members been deprived of the right to freedom of association.

... public associations have the majority of the rights guaranteed to political parties... The provision of [the Political Parties Act] that a political party is the only kind of public association that may nominate candidates in elections to State bodies (section 6 § 1) does not mean that other public associations, including regional and local ones, ... are deprived of the right to nominate candidates for elections to municipal bodies or the right to initiate regional or local referenda...

6. It follows from the above that, taking into account the historical conditions of development of the Russian Federation as a democratic and federative State governed by the rule of law, sections 3 § 2 and 47 § 6 of [the Political Parties Act] setting out the requirements for political parties and providing for the forfeiture by interregional, regional and local public associations of the status of political parties ... cannot be considered as imposing excessive limitations on the right to freedom of association. The above requirements do not prevent citizens of the Russian Federation from exercising their constitutional right to freedom of association by creating all-Russian

political parties or joining them, or from defending their interests and achieving their collective goals in the political sphere at the interregional, regional and local levels by creating public associations ... and joining them...”

56. On 16 July 2007 the Constitutional Court delivered Ruling no. 11-P in a case lodged by the Russian Communist Labour Party in which section 3 § 2, as amended on 20 December 2004, was challenged. The Constitutional Court declared that the minimum membership requirement contained in that section was compatible with the Constitution. It held as follows:

“3.1... [The aim of the minimum membership requirement] is to promote the consolidation process, to create prerequisites for the establishment of large political parties voicing the real interests of the social strata, and to secure fair and equal competition between political parties during elections to the State Duma.

The Federal Law of 18 May 2005 [the State Duma Elections Act] reformed the electoral system ... In accordance with that law all 450 members of the State Duma are to be elected from electoral lists submitted by political parties. The seats in the State Duma are distributed between the political parties which pass the threshold [of 7%] in terms of the number of votes cast for their respective electoral lists. The introduction of the threshold ... prevents excessive parliamentary fragmentation and thus ensures normal functioning of the parliament and buttresses the stability of the legislature and the constitutional foundations in general...

[As a result of the reform] political parties become the only collective actors of the electoral process...

The reform of the electoral system requires that the legal basis for the functioning of the multiparty system be adjusted so that the party system is capable of reconciling the interests and needs of society as a whole and of its various social and regional strata and groups, and of representing them adequately in the State Duma. The State Duma is an organised form of representation of the will and interests of the multiethnic population of the Russian Federation. That will and those interests can be expressed only by large, well-structured political parties.

This is one of the reasons for changing the requirements imposed on political parties, including the minimum membership requirement for parties and their regional branches. These requirements are dictated by the characteristics proper to each stage of development of the party political system. They do not create insurmountable obstacles for the establishment and activities of political parties representing various political opinions, are not directed against any ideology and do not prevent discussion of various political programmes. The State guarantees equality of political parties before the law irrespective of the ideology, aims and purposes set out in their articles of association.

3.2. ... when setting out the minimum membership requirements for political parties the federal legislator must take care, on the one hand, that those requirements are not excessive and do not impair the very essence of the right to freedom of association, and must ensure, on the other hand, that the political parties are able to pursue the aims and purposes set out in their articles of association exclusively as national (all-

Russian) political parties. The national legislature must be guided by the criteria of reasonable sufficiency and proportionality.

... the quantitative requirements will be incompatible with the Constitution only if the constitutional right to associate in political parties becomes illusory as a result of their application...

...the federal legislature is entitled to set out membership requirements for political parties in the light of current historical conditions in the Russian Federation. Those requirements can be changed in one way or the other because they are not arbitrary but objectively justified by the ... aims in the sphere of development of the political system and maintenance of its compatibility with the basic constitutional foundations of the Russian Federation. They do not abolish, diminish or disproportionately restrict the citizens' constitutional right to associate in political parties.

3.3. ... Political parties are created to ensure the involvement of citizens of the Russian Federation in the political life of Russian society by means of forming and expressing their political will, participating in public and political activities, elections and referenda, and representing the citizens' interests in State and municipal bodies. Therefore, the legislator rightfully determined [the minimum membership] by reference to a political party's real ability to represent the interests of an important portion of the population and to accomplish its public functions...

The [minimum membership] requirements... are not discriminatory because they do not prevent the emergence of diverse political programmes, they are applied in an equal measure to all public associations portraying themselves as political parties, irrespective of the ideology, aims and purposes set out in their articles of association, and they do not impair the very essence of the citizens' right to freedom of association. Their application in practice shows that the constitutional right to associate in political parties remains real... (according to information from [the Ministry of Justice], on 1 January 2007 seventeen political parties out of thirty-three had confirmed their compliance with the new legal requirements, three political parties had decided on a voluntary basis to reorganise themselves into public associations...).

The members of political parties which do not comply with the legal requirements established by the Political Parties Act have a choice ... between increasing the number of members of their party to reach the required minimum, reorganising their party into a public association..., founding a new party or joining another [existing] political party..."

### III. RELEVANT INTERNATIONAL MATERIALS

#### A. Guidelines by the Venice Commission

57. The Guidelines on prohibition and dissolution of political parties and analogous measures (Doc. CDL-INF(2000)1), adopted by the European Commission for Democracy through Law ("the Venice Commission") on 10 January 2000, read as follows:

“The Venice Commission,

...

Has adopted the following guidelines:

1. States should recognise that everyone has the right to associate freely in political parties. This right shall include freedom to hold political opinions and to receive and impart information without interference by a public authority and regardless of frontiers. The requirement to register political parties will not in itself be considered to be in violation of this right.

...

3. Prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution. The fact alone that a party advocates a peaceful change of the Constitution should not be sufficient for its prohibition or dissolution.

...

5. The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint. Before asking the competent judicial body to prohibit or dissolve a party, governments or other state organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.

6. Legal measures directed to the prohibition or legally enforced dissolution of political parties shall be a consequence of a judicial finding of unconstitutionality and shall be deemed as of an exceptional nature and governed by the principle of proportionality. Any such measure must be based on sufficient evidence that the party itself and not only individual members pursue political objectives using or preparing to use unconstitutional means.

7. The prohibition or dissolution of a political party should be decided by the Constitutional court or other appropriate judicial body in a procedure offering all guarantees of due process, openness and a fair trial.”

58. The Venice Commission made the following recommendations in its Guidelines and explanatory report on legislation on political parties: some specific issues (Doc. CDL-AD(2004)007rev of 15 April 2004):

“...

B. Registration as a necessary step for recognition of an association as a political party, for a party’s participation in general elections or for public financing of a party does not *per se* amount to a violation of rights protected under Articles 11 and 10 of the European Convention on Human Rights. Any requirements in relation to registration, however, must be such as are ‘necessary in a democratic society’ and proportionate to the objective sought to be achieved by the measures in question.

Countries applying registration procedures to political parties should refrain from imposing excessive requirements for territorial representation of political parties as well as for minimum membership. The democratic or non-democratic character of the party organisation should not in principle be a ground for denying registration of a political party. Registration of political parties should be denied only in cases clearly indicated in the Guidelines on prohibition of political parties and analogous measures, i.e. when the use of violence is advocated or used as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution. The fact alone that a peaceful change of the Constitution is advocated should not be sufficient for denial of registration.

C. Any activity requirements for political parties, as a prerequisite for maintaining the status as a political party and their control and supervision, have to be assessed by the same yardstick of what is ‘necessary in a democratic society’. Public authorities should refrain from any political or other excessive control over activities of political parties, such as membership, number and frequency of party congresses and meetings, operation of territorial branches and subdivisions.

D. State authorities should remain neutral in dealing with the process of establishment, registration (where applied) and activities of political parties and refrain from any measures that could privilege some political forces and discriminate others. All political parties should be given equal opportunities to participate in elections.

E. Any interference of public authorities with the activities of political parties, such as, for example, denial of registration, loss of the status of a political party if a given party has not succeeded in obtaining representation in the legislative bodies (where applied), should be motivated, and legislation should provide for an opportunity for the party to challenge such decision or action in a court of law.

F. Although such concern as the unity of the country can be taken into consideration, Member States should not impose restrictions which are not “necessary in a democratic society” on the establishment and activities of political unions and associations on regional and local levels.

G. When national legislation provides that parties lose their status of a political party if they do not succeed to take part in elections or to obtain representation in legislative bodies, they should be allowed to continue their existence and activities under the general law on associations.

...

*a. Registration of political parties*

10. The already mentioned study on the establishment, organisation and activities of political parties conducted in 2003 by the Sub-Commission on Democratic Institutions has shown that many countries view registration as a necessary step for recognition of an association as a political party, for participation in general elections or for public financing. This practice – as the Venice Commission has stated before in its Guidelines on Prohibition and Dissolution of Political Parties – even if it were regarded as a restriction of the right to freedom of association and freedom of expression, would not per se amount to a violation of rights protected under Articles 11 and 10 of the European Convention on Human Rights. The requirements for

registration, however, differ from one country to another. Registration may be considered as a measure to inform the authorities about the establishment of the party as well as about its intention to participate in elections and, as a consequence, benefit from advantages given to political parties as a specific type of association. Far-reaching requirements, however, can raise the threshold for registration to an unreasonable level, which may be inconsistent with the Convention. Any provisions in relation to registration must be such as are necessary in a democratic society and proportionate to the object sought to be achieved by the measures in question.

*b. Activity requirements for political parties and their control and supervision*

11. Similar caution must be applied when it comes to activity requirements for political parties as a prerequisite for maintaining their status as a political party and their control and supervision. Far-reaching autonomy of political parties is a cornerstone of the freedoms of assembly and association and the freedom of expression as protected by the European Convention on Human Rights. As the European Court of Human Rights has stated, the Convention requires that interference with the exercise of these rights must be assessed by the yardstick of what is ‘necessary in a democratic society’. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from ‘democratic society’. In particular, control over the statute or charter of a party should be primarily internal, i.e. should be exercised by the members of the party. As regards external control, the members of a party should have access to a court in case they consider that a decision of a party organ violates its statute. In general, judicial control over the parties should be preferred over executive control.

12. Another important aspect is that of equal treatment of parties by public authorities. In the case of registration procedure (if it is foreseen by national legislation) the State should proceed carefully in order to avoid any possible discrimination of political forces which might be considered as representing an opposition to the ruling party. In any case, clear and simple procedures should exist to challenge any decision and/or act of any registration authority in a court of law.

...

*d. Political parties and elections*

16. The main objective of political parties is participation in the public life of their country. Elections are essential for the fulfilment of this task; therefore the principle of equality between parties is of utmost importance. In recent years some new democracies claim that the stability of government and the good functioning of parliament can be achieved through limiting the number of parties participating in elections. This suggestion seems to be in contradiction with European standards applicable to electoral process.

...

18. In recent years the role of a multitude of political parties as associations expressing the will of many different parts of society is being reconsidered in a positive way.

*“Preventing an excessive number of parties through the electoral system would seem to be the most effective and least objectionable method as far as political rights*

*are concerned. The general trend is to avoid restricting the number of parties by tinkering with the terms and conditions governing registration, because refusal to register a party is often a convenient way for the authorities to get rid of a competitor who is irksome rather than insignificant”[CDL-EL(2002)1, ch. II.4.1].*

19. In some Member States parties can lose their status of “political party” if they do not have any candidates elected in national elections. If the provisions of Articles 10 and 11 are to be applied with due regard to what is ‘necessary in a democratic society’, they should be allowed to continue their activities under the general law on associations.

*e. Parties on local and regional levels*

20. Member states should not restrict the right of association in a political party to the national level. There should be a possibility to create parties on regional and local levels since some groups of citizens might want to associate in groups limiting their action to local and regional levels and to local and regional elections. However, certain new democracies consider such extensive approach to the freedom of association premature in the light of their effort to preserve the unity of the State. Such concern can be understood, but before any restrictions are imposed, the principle of proportionality and the yardstick of what is ‘necessary in a democratic society’ should be considered thoroughly.”

59. The Report on the participation of political parties in elections (Doc. CDL-AD(2006)025, of 14 June 2006) states as follows:

“15. Political parties are, as some Constitutions and the European Court of Human Rights have expressly admitted, essential instruments for democratic participation. In fact, the very concept of the political party is based on the aim of participating “in the management of public affairs by the presentation of candidates to free and democratic elections”. They are thus a specific kind of association, which in many countries is submitted to registration for participation in elections or for public financing. This requirement of registration has been accepted, considering it as not *per se* contrary to the freedom of association, provided that conditions for registration are not too burdensome. And requirements for registration are very different from one country to another: they may include, for instance, organisational conditions, requirement for minimum political activity, of standing for elections, of reaching a certain threshold of votes. However, some pre-conditions for registration of political parties existing in several Council of Europe Member States requiring a certain territorial representation and a minimal number of members for their registration could be problematic in the light of the principle of free association in political parties.”

60. Further, in the report entitled “Comments on the Draft law on political parties of Moldova” endorsed by the Venice Commission at its 71st plenary session (Doc. CDL-AD(2007)025, of 8 June 2007), the Venice Commission criticised the requirements contained in the Moldovan Draft Law that a political party have no fewer than five thousand members in at least half of the territorial administrative units, with no fewer than 150 members domiciled in each of the aforementioned territorial administrative units. It found those requirements to be unusually high as compared to other democracies in Western Europe and almost impossible to fulfil for any local association. In another report on Moldova the Venice Commission criticised



the statutory requirement that political parties submit membership lists for review every year. The relevant part of that report, entitled Joint Recommendations on the electoral law and the electoral administration in Moldova of the European Commission for Democracy through Law and the Office for Democratic Institutions and Human Rights of the OSCE (Doc. CDL-AD(2004)027, of 12 July 2004) read as follows:

“51. Moldova has gone too far in registering political opinions, in that the membership lists have to be submitted for review every year.

It is difficult to find a justification for this. Once a party is registered and has run for elections, the results of the elections could be sufficient evidence of its support. Only the need for renewed registration of such parties, which never gained support during elections, is admissible. Submitting membership lists to the government if a party has won seats in Parliament in a number of municipalities or rayons, seems at best unnecessarily bureaucratic, at worst, abusive.

52. Moreover, the requirement of support across the country discriminates regionally based parties.”

61. The Venice Commission has also adopted a Code of Good Practice in Electoral Matters (Doc. CDL-AD(202)23, of 30 October 2002). The Explanatory Report to the Code of Practice reads, in so far as relevant, as follows:

“63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.

64. In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged) as stability of some of the more specific rules of electoral law, especially those covering the electoral system *per se*, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.

65. It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests.”

## **B. Comparative law materials**

62. The Court conducted a comparative study of the legislation of twenty-one Member States of the Council of Europe. Thirteen of those States impose a minimum membership requirement on political parties. In

particular, in order to obtain registration political parties are required to prove that they have a certain number of founding members. The required minimum membership ranges from 30 in Turkey and 100 in Croatia to 5,000 in Moldova and 25,000 in Romania. Five countries (Austria, France, Germany, Italy and Spain) do not impose any minimum membership requirement on political parties. Three more countries, while not setting a membership requirement as such, make registration of a political party conditional on producing a certain number of signatures of support (5,000 in Finland and Norway and 10,000 in Ukraine). In only two countries is there a statutory requirement that a political party establish regional branches in a certain number of regions (in more than one half of the regions in Ukraine and in all regions in Armenia). The legislation of two more countries requires political parties to have members domiciled in a certain number of regions (no fewer than one hundred and fifty members in more than one half of the regions in Moldova and no fewer than seven hundred members in at least eighteen regions in Romania).

63. It must also be noted that out of the twenty-one countries studied by the Court the legislation of only two countries (Latvia and Ukraine) restricts the right to nominate candidates for elections to political parties or their coalitions. The legislation of all the other countries examined allows the nomination of election candidates by associations of citizens or by self-nomination.

64. The Court also studied a report adopted by the Venice Commission, on the establishment, organisation and activities of political parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties (Doc. CDL-AD (2004)004, of 16 February 2004), which, in so far as relevant, reads as follows:

“1. This report has been prepared from the replies to the Questionnaire on Establishment, Organisation and Activities of Political Parties, which was adopted by the Sub-Commission on Democratic Institutions (Venice, 13 March 2003, CDL-DEM(2003)1rev). The questionnaire is a follow-up to a similar document, which was sent out earlier, as part of preparations for the adoption of Guidelines and Report on the Financing of Political Parties (Venice, 9-10 March 2001, CDL-INF(2001)8).

2. This time 42 countries responded. They are listed here in alphabetical order:

Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Republic of Korea, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, “The Former Yugoslav Republic of Macedonia”, Malta, The Netherlands, Poland, Romania, The Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and The United Kingdom.

...

*1.4 Does the law distinguish between political parties on the local, the regional and the national level?*

14. The majority of responding countries do not distinguish between political parties on different levels of government, no matter whether the governmental system of the country is unitary, federal or other; *Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta* and *Spain* may be mentioned as examples. There are exceptions, however. *Canada* distinguishes between political parties on the federal and on the provincial level. *Georgia* prohibits explicitly establishment of political parties on the grounds of regional or territorial basis. *Germany* does not include political activities on the local level as aiming at taking part in the forming of the will in the representation of the people, i.e. the *whole* of the people; associations which are politically active on the local level only, therefore, do not fall within the concept of political party in the sense of the Constitution and the German legislation on political parties.

...

*2.2 What are the substantive and procedural requirements to establish a political party?*

22. A number of countries have a specific legal framework for the activities of political parties and their establishment.

– in general

– concerning its political programme

– concerning founding members or concerning other individuals, who in some way have to support the establishment (and their number, citizenship, geographical distribution etc.)

23. Some countries impose on political parties an obligation to go through a registration process. Almost all countries mentioned in the first group in paragraph 2.1 have to go through a registration process or at least through deposition of their articles of association with the competent authorities of their country. This process is justified by the need of formal recognition of an association as a political party. Some of these additional requirements can differ from one country to another:

...

d) minimum membership (*Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Russian Federation, Slovakia and Turkey*);

...

i) signatures attesting certain territorial representation (*Moldova, Russian Federation, Turkey and Ukraine*);

...

24. After these requirements are met, a competent body (Ministry of Justice, for example) proceeds with official registration. In the case of such countries as, for example, Austria and Spain, the Charter (articles of association) are just submitted to the competent authority in order to be added to a special State register.

...

3.6 *Is a political party required to maintain national, regional or local branches or offices?*

48. There are no requirements in law to maintain branches or offices in a particular way in Andorra, Austria, Belgium, Canada, Estonia, Finland, France, Georgia, Hungary, Italy, Latvia, Liechtenstein, Luxembourg, Sweden and Switzerland. Romania requires political parties to maintain a head office, Ireland requires headquarters and Turkey, a national office in Ankara. Germany requires parties to maintain regional branches, and in the United Kingdom a party must state whether it intends to operate in the United Kingdom as a whole, in part of the United Kingdom or at a local level; however, this is no more than a statement of intention, and the law does not appear to impose a legal obligation on the party to carry out this statement of intention. In Ukraine, within six months from the date of registration a political party shall secure the formation and registration of its regional, city and district organisations in most regions of Ukraine, in the cities of Kyiv and Sevastopol and in the Autonomous Republic of the Crimea.

...

4.2 *Is it mandatory for political parties, e.g. as a prerequisite for maintaining registration or for access to public financing,*

*- to present individual candidates or lists of candidates for general elections on the local, regional or national level?*

*- to participate in local, regional or national election campaigns?*

*- to get a minimum percentage of votes or a certain number of candidates elected in local, regional and national elections?*

*- to conduct other political activities specified by law?*

52. Regulations on the participation of political parties in the political process of the country are more diverse in the case of States where there is a requirement for party registration. However, financing from public sources is subject to detailed legislation in most countries. Such general trends can be observed in countries for party registration and party financing:

(a) only parties participating in general elections, which attain a certain threshold can receive public funding (Austria, Belgium, Bosnia and Herzegovina, Canada, Czech Republic, Estonia, “the Former Yugoslav Republic of Macedonia”, France, Georgia, Germany, Greece, Japan, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Poland, Russian Federation, Spain, Slovenia, Sweden);

(b) registration is revoked if a party:

- (1) does not take part in a certain number of elections (Armenia);
  - (2) does not receive a minimum number of votes (Armenia); or
  - (3) fails to prove a minimum membership and/or regional representation (Estonia, Moldova, Ukraine);
- (c) The party is removed from the official list of parties but can continue to exist as an association if it does not take part in a certain number of elections (Finland)..."

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION ON ACCOUNT OF THE REFUSAL TO AMEND THE STATE REGISTER

65. The applicant complained under Article 11 of the Convention about the refusal to amend the information about its address and *ex officio* representatives contained in the Unified State Register of Legal Entities. Article 11 reads as follows:

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

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

#### A. Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### 1. *The parties' submissions*

#### (a) **The applicant**

67. The applicant submitted that the refusal to amend the State Register had been unlawful. In particular, the requirement to submit the same documents as for the registration of a newly established political party had no basis in domestic law. It followed from the wording of section 16 of the Political Parties Act containing a list of documents to be submitted to the registration authority (see paragraph 44 above) that it applied only to cases of initial registration of a political party immediately after its establishment by the founding congress. Section 27 § 3 of that Act established a simplified notification procedure for registration of amendments to the information contained in the Register (see paragraph 46 above). The Registration of Legal Entities Act also differentiated between initial registration of a legal entity and registration of amendments to the Register, providing for an authorisation procedure in the former case and a notification procedure in the latter (see paragraph 41 above). It followed that the applicant had been unlawfully and arbitrarily required to submit, for verification by the registration authority, the documents enumerated in section 16 of the Political Parties Act. It had however complied with that unlawful requirement and produced the necessary documents.

68. The applicant disputed the domestic authorities' finding that the documents thus produced were defective. It asserted in particular that the general conference of 17 December 2005 which had elected its *ex officio* representatives and decided to change its official address had been convened and held in accordance with the procedure established by domestic law and its articles of association. The domestic authorities' findings to the contrary had been arbitrary and irreconcilable with the available evidence.

69. Further, the applicant submitted that the refusal to amend the information about its address and *ex officio* representatives had disrupted its activities. The term of office of the previous *ex officio* representatives had expired in April 2006. As the authorities had refused to register the new *ex officio* representatives duly elected at the general conference, the applicant had become unable to function properly. It could not establish new regional branches, submit annual reports or other documents requested by the authorities, or re-submit a request for registration of amendments to the Register, as all those actions required the signatures of the *ex officio* representatives. Moreover, it had not been the first time that the authorities had invalidated the decisions adopted at the applicant's general conferences. The extraordinary general conference of 17 December 2005 had been convened because the domestic authorities had refused to recognise the

decisions adopted at the previous general conference. Finally, the authorities' finding that the general conference of 17 December 2005 had been illegitimate had served as a basis for the dissolution of several of the applicant's regional branches and the ultimate dissolution of the applicant itself. For the above reasons, the applicant considered that the authorities' refusal to amend the Register had amounted in fact to dissolution in disguise.

**(b) The Government**

70. The Government submitted that the interference with the applicant's rights had been lawful. The Political Parties Act established a special authorisation procedure for registration of political parties. The requirement to obtain a registration authorisation was justified by the special status and role of political parties. The Political Parties Act did not differentiate between types of registration. The same rules therefore applied to the registration of a newly established political party and to the registration of any amendments to the information contained in the Register. In all cases a political party had to submit the documents specified in section 16 of the Political Parties Act (see paragraph 44 above) and the registration authority had competence to verify those documents and decide whether to authorise or refuse registration (see sections 15 § 5, 29 § 1 and 38 § 1 of the Political Parties Act in paragraphs 43, 45 and 53 above). The fact that those provisions allowed different interpretations was not contrary to the Convention. Many laws were inevitably couched in terms which, to a greater or lesser extent, were vague and whose interpretation and application were questions of practice. The role of adjudication vested in the courts was precisely to dissipate such interpretational doubts as remained, taking into account the changes in everyday practice (the Government referred to *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III, and *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 65, ECHR 2004-I). The Government concluded that domestic provisions governing registration of political parties met the requirements of accessibility and foreseeability. In any event, the applicant had applied to the domestic authorities for instructions as to the registration procedure to be followed and had received detailed explanations. It was also significant that the lawfulness of the refusal of registration had been examined and confirmed by the domestic courts. Given that it was in the first place for the national authorities, and notably the courts, to interpret domestic law, it was not the Court's task to substitute its own interpretation for theirs in the absence of arbitrariness (they referred to *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII).

71. As to the justification for the refusal of registration, the Government submitted that the domestic authorities had refused registration of amendments to the Register because the documents produced by the

applicant were flawed with substantive defects. Their perusal had revealed that the general conference which had elected the *ex officio* representatives and decided to change the official address of the applicant had been illegitimate. In particular, the delegates who had taken part in that conference had not been elected in accordance with the procedure prescribed by law and the applicant's articles of association. The minutes of that conference could not therefore serve as a basis for amending the State Register. The refusal to amend the Register aimed at furthering democracy within the applicant party and protecting the rights of its members to participate in the regional and general conferences and thereby take part in the decision-making process.

72. The Government further disputed the applicant's allegations that the refusal to amend the Register had obstructed its activities and had led to its dissolution. They submitted that the applicant had been active in 2006 and 2007. In particular, it had taken part in the regional elections, had submitted an annual activity report according to which it had spent more than a million roubles in 2006, and its representatives had participated in the dissolution proceedings. As for the dissolution, it had been ordered on different grounds which were not in any way related to the refusal of registration. Nor had the refusal of registration aimed at disrupting the applicant's activities. The domestic authorities had simply exercised legitimate control over the applicant's compliance with the registration procedure established by domestic law. They argued that the applicant had an obligation to respect domestic law and the domestic authorities were entitled, and had an obligation, to watch over its compliance with statutory requirements and procedures. In particular, it had been necessary to verify whether the applicant's general assembly had been convened and held in accordance with domestic law and its articles of association in order to protect its members from taking arbitrary decisions in breach of democratic procedures.

73. The Government also stressed that the refusal of registration had not been definitive. The applicant had had an opportunity to correct the identified defects in the documents and re-submit its request for registration. In particular, a new general conference could have been convened at the request of one third of its regional branches and that conference could have elected new *ex officio* representatives for the applicant. However, the applicant had failed to take any steps to convene a new general conference and remedy the defects identified by the domestic authorities.

74. Finally, the Government referred to the cases of *Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* ((dec.), no. 12282/02, 14 June 2005) and *Baisan for "Liga Aparării Drepturilor Omului din România" (the League for the Defence of Human Rights in Romania) v. Romania* ((dec.), no. 28973/95, 30 October 1997), in which the refusal to register an association which had failed to observe the registration



procedure had been found to be compatible with Articles 9 and 11 of the Convention.

## 2. *The Court's assessment*

### (a) **General principles**

75. The Court reiterates that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 40).

76. Freedom of association is however not absolute and it must be accepted that where an association, through its activities or the intentions it has expressly or implicitly declared in its programme, jeopardises the State's institutions or the rights and freedoms of others, Article 11 does not deprive the State of the power to protect those institutions and persons. Nonetheless, that power must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. In determining whether a necessity within the meaning of paragraph 2 of these Convention provisions exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *Gorzelik and Others*, cited above §§ 94 and 95; *Sidiropoulos*, cited above, § 40; and *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX).

77. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47,

*Reports of Judgments and Decisions* 1998-I, and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I (extracts)).

78. The Court has also confirmed on a number of occasions the essential role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 and also in Article 10 of the Convention. Political parties are a form of association essential to the proper functioning of democracy. In view of the role played by political parties, any measure taken against them affects both freedom of association and, consequently, democracy in the State concerned (*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 87, ECHR 2003-II, and *United Communist Party of Turkey*, cited above, § 25).

**(b) Application to the present case**

79. The Court observes that on 17 December 2005 the applicant held a general conference which elected its managers and *ex officio* representatives and decided to change its official address. It subsequently applied to the registration authority with a request to amend the State Register, as required by domestic law. The registration authority ordered that the applicant should submit the same set of documents as required for the registration of a newly established political party. It then refused to amend the Register, finding, on the basis of the documents submitted by the applicant, that the general conference had been illegitimate.

80. It was not disputed between the parties that the refusal to amend the State Register amounted to an interference with the applicant's rights under Article 11 of the Convention (compare *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 123, 14 June 2007). The Court accepts the applicant's argument that the refusal to register its *ex officio* representatives adversely affected its activities. By refusing to give effect to the decisions of the general conference of 17 December 2005 and recognise the *ex officio* representatives elected at that conference, the public authorities undoubtedly created serious difficulties in the applicant's everyday life. Although there is no evidence to support the applicant's claim that its activities were virtually paralysed as a result of the refusal to amend the Register, there can be no doubt that they were severely disrupted by the inability of the applicant's *ex officio* representatives to act on its behalf.

81. It remains to be ascertained whether the interference with the applicant's rights was "prescribed by law", "pursued a legitimate aim" and was "necessary in a democratic society".

82. The Court will first examine the applicant's argument that the registration authority's requirement to submit the same set of documents as for the registration of a newly established political party and its refusal to amend the State Register on account of irregularities in those documents

had no basis in domestic law. It reiterates in this connection that according to its settled case-law, the expression “prescribed by law” requires that the impugned measure should have a basis in domestic law and also that the law be formulated with sufficient precision to enable the citizen to foresee the consequences which a given action may entail and to regulate his or her conduct accordingly (see, as a classic authority, *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, § 49).

83. The Court observes that domestic law is far from precise as to the procedure to be followed in cases of registration of amendments to the State Register. In contrast to the very detailed provisions governing procedure for registration of a newly established party, the procedure for registration of amendments is not determined. The Political Parties Act and the Registration of Legal Entities Act do not specify which documents, save for a simple notification, are to be submitted by the political party for registration of amendments and does not expressly mention the registration authority’s power to verify these documents and refuse registration (see paragraphs 41 and 46 above).

84. To justify the requirement to submit the same set of documents as for the registration of a newly established political party and the powers of the registration authority to refuse registration if those documents were incomplete or flawed, the domestic courts referred to section 32 § 7 of the Non-Profit Organisation Act (see paragraph 42 above). The Court however notes that § 7 was added to section 32 on 10 January 2006 and entered into force on 16 April 2006, while the refusals to amend the Register had been made on 16 January and 4 April 2006. The Court is struck by the domestic courts’ reliance on a provision which was not in force at the material time and which could not therefore serve as a lawful basis for the refusal to amend the State Register.

85. Given that no other legal document or provision establishing the procedure for amending the Register was referred to in the domestic proceedings, the Court is unable to find that the domestic law was formulated with sufficient precision enabling the applicant to foresee which documents it would be required to submit and what would be the adverse consequences if the documents submitted were considered defective by the registration authority. The Court considers that the measures taken by the registration authority in this case lacked a sufficiently clear legal basis.

86. In view of the above conclusion, it would be unnecessary to examine whether the interference was proportionate to any legitimate aim pursued. However, in the present case the Court will nevertheless point out that it cannot but disagree with the Government’s argument that the interference with the applicant’s freedom of association was “necessary in a democratic society”.

87. The ground for the refusal to amend the Register was the registration authority’s finding that the general conference of 17 December 2005 had

been convened and held in breach of the procedure prescribed by the applicant's articles of association. The Court accepts that, in certain cases, the States' margin of appreciation may include a right to interfere – subject to the condition of proportionality – with an association's internal organisation and functioning in the event of non-compliance with reasonable legal formalities applying to its establishment, functioning or internal organisational structure (see, for example, *Ertan and Others v. Turkey* (dec.), no. 57898/00, 21 March 2006; *Cârmuirea ...*, cited above; and *Baisan ...*, cited above) or in the event of a serious and prolonged internal conflict within the association (see *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, § 131, 22 January 2009). However, the authorities should not intervene in the internal organisational functioning of associations to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 78, ECHR 2009-...).

88. In the present case the registration authority discovered irregularities in the election of regional delegates for the general conference, finding for example that some regional conferences had been convened by unauthorised persons or bodies, some other regional conferences had been inquorate, minutes of several regional conferences did not mention the names of participants and some of the participants were not members of the applicant. The Court sees no justification for the registration authority to interfere with the internal functioning of the applicant to such an extent. It notes that domestic law did not provide for any detailed rules and procedures for convening regional conferences or electing delegates for the general conference. Nor did it establish any requirements as to the minutes of such conferences. The Court considers that it should be up to an association itself to determine the manner in which its conferences are organised. Likewise, it should be primarily up to the association itself and its members, and not the public authorities, to ensure that formalities of this type are observed in the manner specified in its articles of association (see *Tebieti Mühafize Cemiyyeti and Israfilov*, cited above, § 78, see also the Venice Commission Guidelines and explanatory report on legislation of political parties: specific issues in paragraph 58 above). In the absence of any complaints from the applicant's members concerning the organisation of the general conference of 17 December 2005 or the regional conferences preceding it, the Court is not convinced by the Government's argument that the public authorities' interference with the applicant's internal affairs was necessary in the aim of protecting the rights of the applicant's members.

89. In view of the above, the Court concludes that by refusing to amend the State Register, the domestic authorities went beyond any legitimate aim

and interfered with the internal functioning of the applicant in a manner which cannot be accepted as lawful and necessary in a democratic society.

90. There has therefore been a violation of Article 11 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S DISSOLUTION

91. The applicant complained of its dissolution for failure to comply with the requirements of minimum membership and regional representation. It relied on Article 11 of the Convention.

### A. Admissibility

92. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### 1. *The parties' submissions*

##### (a) **The applicant**

93. The applicant submitted, firstly, that the requirements of minimum membership and regional representation were not justified under the second paragraph of Article 11. In particular, they were unreasonable and did not pursue any legitimate aim. The imposition of such requirements on political parties could not be justified by the interests of national security or public safety. Nor were they necessary for the prevention of disorder or crime or for the protection of the rights and freedoms of others.

94. Further, the applicant disputed the findings made by the domestic authorities and courts. It argued that the inspections of its membership situation had been carried out by the authorities in a perfunctory manner. The inspections had been unsystematic and had not followed any uniform methodology or clearly defined set of rules established by law. The applicant's members had been questioned over the phone about their membership status and some of them had been intimidated by the authorities. The authorities had required the regional branches to produce countless documents, different for each regional branch. The dissolution proceedings had not been adversarial as the applicant had been denied an opportunity to submit evidence showing the number of its members. The applicant insisted that it had 63,926 members and 57 regional branches, 51

of which had more than 500 members. It had therefore complied with the statutory requirements of minimum membership and regional representation.

95. The applicant finally submitted that its dissolution had not only violated its freedom of association, but had also restricted its freedom to participate in elections, as under Russian law political parties were the only type of public association entitled to nominate candidates in elections to State bodies.

**(b) The Government**

96. The Government submitted that the interference had been prescribed by law, namely by the amended section 3 § 2 and section 41 of the Political Parties Act and section 2 of the Amending Act (see paragraphs 33, 34 and 54 above). In particular, the above provisions required that, by 1 January 2006, all political parties should increase their membership to 50,000 persons and the membership of their regional branches to 500 persons. It also followed from those legal provisions that if a party had not increased its membership it had to reorganise itself into a public association or be dissolved. The applicable domestic law was accessible and formulated in clear terms so that the applicant had been able to foresee that failure to comply with the above requirements would lead to its dissolution.

97. To justify the imposition of the requirements of minimum membership and regional representation on political parties, the Government referred to their special status and role as associations taking part in elections and representing citizens' interests in State bodies. They argued that those requirements pursued the legitimate aim of protecting the constitutional foundations of the Russian Federation and the rights and legitimate interests of others. Their "necessity" had been confirmed by the Constitutional Court (see paragraphs 55 and 56 above). In particular, the requirements of minimum membership and regional representation promoted the process of consolidation of political parties, created prerequisites for the establishment of large, strong parties, prevented excessive parliamentary fragmentation and thereby ensured normal functioning of the parliament and furthered the stability of the political system. The above requirements were not discriminatory because they did not prevent the emergence of diverse political programmes and were applied in equal measure to all political parties, irrespective of their ideology, aims and purposes set out in their articles of association. Nor did they impair the very essence of the citizens' right to freedom of association, as political parties which did not meet that requirement had an opportunity to reorganise themselves into public associations. The Government also argued that the special features of the social and political situation prevailing in contemporary Russia had to be taken into account when determining whether the statutory requirements imposed on political parties were

justified (they referred to *Igor Artyomov v. Russia* (dec.), no. 17582/05, 7 December 2006).

98. The Government further submitted that freedom of association was not absolute. Political parties had an obligation to respect domestic law and the authorities were entitled to watch over their activities to ensure that they were compatible with statutory requirements. As the applicant had breached the requirements of minimum membership and regional representation, and had thereby violated the rights and interests of those parties that complied with the requirements, it had been necessary to dissolve it. The dissolution had not been automatic as the applicant had been given a choice between bringing the number of its members and regional branches into compliance with the amended law to retain its status as a political party or reorganising itself into a public association. However, it had failed to make use of that choice and had therefore become subject to dissolution. It was also noteworthy that the applicant had not been dissolved or banned on account of extremist activities. It was therefore possible for it to establish a new party under the same name. The applicant's members could either establish a new party or join another existing party.

99. Finally, the Government submitted that the dissolution proceedings had been fair and adversarial, and the domestic courts had examined and assessed the evidence submitted by the parties and made reasoned findings.

## 2. *The Court's assessment*

100. It is common ground between the parties that the applicant's dissolution amounted to interference with its rights under Article 11 of the Convention. It is not contested that that the interference was "prescribed by law", notably sections 3 § 2 and 41 § 3 of the Political Parties Act and section 2 §§ 1 and 4 of the Amending Act (see paragraph 33, 34 and 54 above).

101. The Court further observes that several aims were relied upon by the Government and the Constitutional Court to justify the applicant's dissolution for failure to comply with the requirements of minimum membership and regional representation, namely protecting the democratic institutions and constitutional foundations of the Russian Federation, securing its territorial integrity and guaranteeing the rights and legitimate interests of others (see paragraphs 55, 56 and 97 above). It considers that the defence of territorial integrity is closely linked with the protection of "national security" (see, for example, *United Communist Party of Turkey*, cited above, § 40), while the protection of a State's democratic institutions and constitutional foundations relates to "the prevention of disorder", the concept of "order" within the meaning of the French version of Article 11 encompassing the "institutional order" (see *Basque Nationalist Party – Iparralde Regional Organisation v. France*, no. 71251/01, § 43, ECHR 2007-VII, and, *mutatis mutandis*, *Gorzelik and Others*, cited above, § 76).

The Court is prepared to accept that the contested statutory requirements and the applicant's dissolution for failure to comply with them were intended to protect national security, prevent disorder and guarantee the rights of others, and therefore pursued legitimate aims set out in the second paragraph of Article 11 of the Convention.

102. It remains to be ascertained whether the interference "was necessary in a democratic society". The Court reiterates that in view of the essential role played by political parties in the proper functioning of democracy, the exceptions set out in paragraph 2 of Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association (see case-law cited in paragraphs 76 to 78 above). It is also significant that the interference at issue in the present case was radical: the applicant party was dissolved with immediate effect. Such a drastic measure requires very serious reasons by way of justification before it can be considered proportionate to the legitimate aim pursued; it would be warranted only in the most serious cases (see *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, § 56, 20 October 2005, with further references).

103. The Court notes at the outset that the applicant, created in 1990, was one of the oldest Russian political parties. There was nothing in its articles of association or programme to suggest that it was not a democratic party. It was never claimed that during its seventeen years of existence it ever resorted to illegal or undemocratic methods, encouraged the use of violence, aimed to undermine Russia's democratic and pluralist political system or pursued objectives that were racist or likely to destroy the rights and freedoms of others. The sole reason for its dissolution was its failure to comply with the requirements of minimum membership and regional representation.

104. The Court must ascertain whether the applicant's dissolution for failure to comply with the above requirements was proportionate to the legitimate aims advanced by the Government. It will, however, first examine whether the opportunity to reorganise into a public association, provided for in the domestic law, counterbalanced the negative effects of the interference.

**(a) Possibility of reorganising into a public association**

105. The Court takes note of the Government's argument that the applicant had been given an opportunity to reorganise itself into a public association. However, it has already found it unacceptable that an association should be forced to take a legal shape its founders and members did not seek, finding that such an approach, if adopted, would reduce the freedom of association of the founders and members so as to render it either



non-existent or of no practical value (see *Zhechev v. Bulgaria*, no. 57045/00, § 56, 21 June 2007).

106. The Court reiterates that political parties have a special status. The only type of association which can come to power, political parties have the capacity to influence the whole of the regime in their countries. By the proposals for an overall societal model which they put before the electorate and by their capacity to implement those proposals once they come to power, political parties differ from other organisations which intervene in the political arena (see *Refah Partisi*, cited above, § 87).

107. It is significant that in Russia political parties are the only actors in the political process capable of nominating candidates for election at the federal and regional levels. A reorganisation into a public association would therefore have deprived the applicant of an opportunity to stand for election. Given that participation in elections was one of the applicant's main aims specified in its articles of association (see paragraph 10 above), the status of a public association would not correspond to its vocation. The Court accepts that it was essential for the applicant to retain the status of a political party and the right to nominate candidates for elections which that status entailed.

108. The Court must next ascertain, against this background, whether the applicant's dissolution for failure to comply with the requirements of minimum membership and regional representation may be considered necessary in a democratic society. It will examine the two requirements in turn.

**(b) Failure to comply with the minimum membership requirement**

109. The first ground for the applicant's dissolution was its failure to comply with the minimum membership requirement, which was introduced for the first time in 2001, when political parties were required to have no fewer than 10,000 members. In 2004 the required minimum membership was increased to 50,000 persons. In 2009 domestic law was again amended to provide for a gradual decrease of minimum membership to 40,000 persons by 1 January 2012. The minimum membership of a regional branch was also changed on the same occasions (see paragraphs 30 to 39 above).

110. The Court notes that the minimum membership requirement is not unknown among the member States of the Council of Europe. The legislation of at least thirteen States establishes a minimum membership requirement for political parties (see paragraph 62 above). However, even if no common European approach to the problem can be discerned, this cannot in itself be determinative of the issue (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 85, ECHR 2002-VI). The Court notes that the required minimum membership applied in Russia is quite the highest in Europe. In order to verify that it is not disproportionate, the Court must assess the reasons advanced by the legislator and the Constitutional Court to justify it.

111. The explanatory notes to the draft law on political parties, the resolutions by the State Duma's committees, and the rulings of the Constitutional Court (see paragraphs 31, 32, 55 and 56) justify the introduction of the minimum membership requirement and its subsequent increase by the necessity to strengthen political parties and limit their number in order to avoid disproportionate expenditure from the budget during electoral campaigns and prevent excessive parliamentary fragmentation and, in so doing, promote stability of the political system.

112. The Court is not convinced by those arguments. It notes that in Russia political parties do not have an unconditional entitlement to benefit from public funding. Under domestic law only those political parties that have taken part in the elections and obtained more than 3% of the votes cast are entitled to public financing (see paragraph 51 above). The existence of a certain number of minor political parties supported by relatively small portions of the population does not therefore represent a considerable financial burden on the State treasury. In the Court's view, financial considerations cannot serve as a justification for limiting the number of political parties and allowing the survival of large, popular parties only.

113. As to the second argument, related to the prevention of excessive parliamentary fragmentation, the Court notes that this is achieved in Russia through the introduction of a 7% electoral threshold (see paragraph 50 above), which is one of the highest in Europe (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, §§ 64 and 129, 8 July 2008). It is also relevant in this connection that a political party's right to participate in elections is not automatic. Only those political parties that have seats in the State Duma or have submitted a certain number of signatures to show that they have wide popular support (200,000 signatures at the relevant time, recently decreased to 150,000 signatures) may nominate candidates for elections (see paragraph 49 above). In such circumstances the Court is not persuaded that to avoid excessive parliamentary fragmentation it was necessary to impose additional restrictions, such as a high minimum membership requirement, to limit the number of political parties entitled to participate in elections.

114. The Court is also unable to agree with the argument that only those associations that represent the interests of considerable portions of society are eligible for political party status. It considers that small minority groups must also have an opportunity to establish political parties and participate in elections with the aim of obtaining parliamentary representation. It has already held that, although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Gorzelik and Others*, cited above, § 90). The voters' choice must not be unduly restricted and different political

parties must be ensured a reasonable opportunity to present their candidates at elections (see, *mutatis mutandis*, *Yumak and Sadak*, cited above, § 108).

115. Further, the Court observes that domestic law requires that political parties not only prove their compliance with the minimum membership requirement at the moment of their establishment and registration, but that they should subsequently submit annual reports to the registration authority, not only concerning their activities but also confirming their membership situation (see paragraph 52 above). The authorities also have power to conduct inspections once a year and issue warnings or start dissolution proceedings if a political party has an insufficient number of members (see paragraphs 53 and 54 above). The Court is unable to discern any justification for such intrusive measures subjecting political parties to frequent and comprehensive checks and a constant threat of dissolution on formal grounds. If these annual inspections are aimed at verifying whether the party has genuine support among the population, election results would be the best measure of such support.

116. The Court also notes the uncertainty generated by the changes in the minimum membership requirement in recent years (see paragraph 109 above). The obligation to bring the number of their members in line with the frequently changing domestic law, coupled with regular checks on the membership situation, imposed a disproportionate burden on political parties. In this regard, the Court takes note of the opinion of the Venice Commission that altering the terms and conditions for obtaining and retaining the status of a political party may be seen as affording an opportunity of unjustifiably dissolving political parties (see paragraph 58 above). It also refers to the Venice Commission Code of Practice, which warns of the risk that frequent changes to electoral legislation will be perceived, rightly or wrongly, as an attempt to manipulate electoral laws to the advantage of the party in power (see paragraph 61 above).

117. The Court observes in this connection that the introduction and the subsequent increase of the minimum membership requirement was one of the aspects of the political reform started in 2001, whose other measures consisted, in particular, of raising the electoral threshold from 5% to 7% and banning electoral blocks and independent candidates from participating in elections (see paragraphs 48 and 50 above). There can be little doubt that all those measures had an evident impact on the opportunities for various political forces to participate effectively in the political process and thus affected pluralism. In particular, the fact that only fifteen political parties out of forty-eight were able to meet the increased minimum membership requirement (see paragraph 35 above) demonstrates the effect of such an increase.

118. The Court reiterates that where the authorities introduce significant restrictions on the rights of political parties, and in particular where such changes have a detrimental impact on the opposition, the requirement that

the Government produce evidence to demonstrate that the amendments were justified is all the more pressing (see, *mutatis mutandis*, *Tănase v. Moldova* [GC], no. 7/08, § 169, ECHR 2010-...). In the present case, no convincing explanation has been provided for increasing the minimum membership requirement.

119. In the light of the above considerations, the Court is unable to accept the view that any minimum membership requirement would be justified unless it permitted the establishment of one political party only (see paragraph 55 above). In the Court's opinion, a minimum membership requirement would be justified only if it allowed the unhindered establishment and functioning of a plurality of political parties representing the interests of various population groups. It is important to ensure access to the political arena for different parties on terms which allow them to represent their electorate, draw attention to their preoccupations and defend their interests (see, *mutatis mutandis*, *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 67, ECHR 2006-II).

120. Turning back to the particular circumstances of the applicant's case, the Court notes that the applicant had existed and participated in elections since 1990. It adjusted its membership and went through a re-registration procedure following the introduction of a minimum membership requirement in 2001. It was dissolved in 2007, however, after a drastic five-fold increase of the minimum membership requirement. The Court considers that such a radical measure as dissolution on a formal ground, applied to a long-established and law-abiding political party such as the applicant, cannot be considered "necessary in a democratic society".

**(c) Insufficient number of regional branches**

121. The second reason for the applicant's dissolution was the authorities' finding that it did not have a sufficient number of regional branches with more than 500 members, as required by the legal provisions then in force.

122. The requirement that a political party should have regional branches in the majority of the Russian regions was, like the minimum membership requirement, introduced for the first time in 2001 (see paragraph 30 above). It follows from the Ruling of the Constitutional Court of 1 February 2005 (see paragraph 55 above) that its rationale was to prevent the establishment, functioning and participation in elections of regional parties, which, according to the Constitutional Court, were a threat to the territorial integrity and unity of the country. Accordingly, the Court has to examine whether the ban on regional political parties is compatible with the Convention.

123. The Court has previously emphasised that there can be no justification for hindering a public association or political party solely because it seeks to debate in public the situation of part of the State's

population, or even advocates separatist ideas by calling for autonomy or requesting secession of part of the country's territory. In a democratic society based on the rule of law, political ideas which challenge the existing order without putting into question the tenets of democracy, and whose realisation is advocated by peaceful means, must be afforded a proper opportunity of expression through, *inter alia*, participation in the political process. However shocking and unacceptable the statements of an association's leaders and members may appear to the authorities or the majority of the population and however illegitimate their demands may be, they do not appear to warrant the association's dissolution. A fundamental aspect of democracy is that it must allow diverse political programmes to be proposed and debated, even where they call into question the way a State is currently organised, provided that they do not harm democracy itself (see *Tănase*, cited above, § 167; *The United Macedonian Organisation Ilinden – PIRIN and Others*, cited above, §§ 57-62; *United Communist Party of Turkey*, cited above, § 57; and *Socialist Party and Others v. Turkey*, 25 May 1998, §§ 45 and 47, *Reports* 1998-III).

124. The Court has also found that a problem might arise under the Convention if the domestic electoral legislation tended to deprive regional parties of parliamentary representation (see *Yumak and Sadak*, cited above, § 124). It is therefore important that regional parties should be permitted to exist and stand for election, at least at the regional level.

125. The Court also refers to the guidelines of the Venice Commission, which found the requirement of regional or territorial representation for political parties to be problematic and recommended that legislation should provide for the possibility of creating parties on a regional or local level (see paragraphs 58 and 59 above).

126. Further, the Court observes that very few Council of Europe member States prohibit regional parties or require that a political party should have a certain number of regional or local branches (see paragraphs 62 and 64 above). Georgia is the only country that explicitly prohibits regional political parties. Two countries, Ukraine and Armenia, require that a political party have a certain number of regional branches, while two more countries, Moldova and Romania, require political parties to have members domiciled in a certain number of regions. The Court considers that a review of practice across Council of Europe member States reveals a consensus that regional parties should be allowed to be established. However, notwithstanding this consensus, a different approach may be justified where special historical or political considerations exist which render a more restrictive practice necessary (see *Tănase*, cited above, § 172, and, *mutatis mutandis*, *Refah Partisi*, cited above, § 105).

127. The Court takes note of the Constitutional Court's reference to Russia's special historico-political context characterised by the instability of the newly established political system facing serious challenges from

separatist, nationalist and terrorist forces (see paragraph 55 above). The Court emphasises the special position of Russia, which relatively recently set out on the path of democratic transition. The Court accepts that there was likely to be a special interest in ensuring that, upon the collapse of the Soviet Union and the onset of democratic reform in 1991, measures were taken to secure stability and allow the establishment and strengthening of fragile democratic institutions. Accordingly, the Court does not exclude that in the immediate aftermath of the disintegration of the Soviet Union a ban on establishing regional political parties could be justified.

128. However, the Court finds it significant that the ban was not put in place in 1991 but in 2001, some ten years after Russia had started its democratic transition. In the circumstances, the Court considers the argument that the measure was necessary to protect Russia's fragile democratic institutions, its unity and its national security to be far less persuasive. In order for the recent introduction of general restrictions on political parties to be justified, particularly compelling reasons must be advanced. However, the Government have not provided an explanation of why concerns have recently emerged regarding regional political parties and why such concerns were not present during the initial stages of transition in the early 1990s (see, for similar reasoning, *Tănase*, cited above, § 174).

129. The Court considers that with the passage of time, general restrictions on political parties become more difficult to justify. It becomes necessary to prefer a case-by-case assessment, to take account of the actual programme and conduct of each political party rather than a perceived threat posed by a certain category or type of parties (see, *mutatis mutandis*, *Tănase*, cited above, § 175, and *Ādamsons v. Latvia*, no. 3669/03, § 123, 24 June 2008). In the Court's opinion, there are means of protecting Russia's laws, institutions and national security other than a sweeping ban on the establishment of regional parties. Sanctions, including in the most serious cases dissolution, may be imposed on those political parties that use illegal or undemocratic methods, incite to violence or put forward a policy which is aimed at the destruction of democracy and flouting of the rights and freedoms recognised in a democracy. Such sanctions are concerned with identifying a credible threat to the national interest, in particular circumstances based on specific information, rather than operating on a blanket assumption that all regional parties pose a threat to national security.

130. The present case is illustrative of a potential for miscarriages inherent in the indiscriminate banning of regional parties, which is moreover based on a calculation of the number of a party's regional branches. The applicant, an all-Russian political party which never advocated regional interests or separatist views, whose articles of association stated specifically that one of its aims was promotion of the unity of the country and of the peaceful coexistence of its multi-ethnic population (see paragraph 10 above) and which was never accused of any

attempts to undermine Russia's territorial integrity, was dissolved on the purely formal ground of having an insufficient number of regional branches. In those circumstances the Court does not see how the applicant's dissolution served to achieve the legitimate aims cited by the Government, namely the prevention of disorder or the protection of national security or the rights of others.

**(d) Overall conclusion**

131. In view of the foregoing, the Court finds the domestic courts did not adduce "relevant and sufficient" reasons to justify the interference with the applicant's right to freedom of association. The applicant's dissolution for failure to comply with the requirements of minimum membership and regional representation was disproportionate to the legitimate aims cited by the Government. There has accordingly been a violation of Article 11 of the Convention.

**III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION**

132. The applicant further complained under Article 6 § 1 of the Convention that the dissolution proceedings had been unfair. However, having regard to all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of Article 6. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

**IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

133. 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**

134. The applicant claimed 5,990,140.98 Russian roubles (RUB) in respect of pecuniary damage, of which RUB 1,996,669.78 represented the expense of holding its general conference of 17 December 2005, while the remaining RUB 3,993,471.2 represented expenses that would be required to establish a new political party.

135. The Government submitted that there was no causal link between the complaints lodged by the applicant and the claims in respect of the expenses incurred in connection with the general conference. The claims

relating to the establishment of a new political party were hypothetical and not supported by any documents.

136. The Court observes that the applicant did not submit any claim for non-pecuniary damage. As regards the pecuniary damage alleged, it does not discern any causal link between the violations found and the applicant's expenditure on the organisation of the general conference. The claims relating to the establishment of a new political party are speculative and are not supported by any documents. The Court therefore rejects the claim for pecuniary damage.

### **B. Costs and expenses**

137. Relying on legal fee agreements, the applicant claimed RUB 433,500 for the legal fees incurred before the domestic courts and RUB 250,000 for those incurred before the Court.

138. The Government submitted, in respect of the expenses allegedly incurred before the domestic courts, that the legal fee agreements produced by the applicant related to the proceedings concerning the dissolution of the applicant's regional branches. They were not therefore connected with the applicants' complaints. The claim for the expenses incurred in connection with the proceedings before the Court was excessive.

139. The Court reiterates that legal costs and expenses are only recoverable in so far as they relate to the violation found (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 65, Series A no. 288). It accepts the Government's argument that the documents produced by the applicant in support of its claims for legal fees incurred before the domestic courts did not relate to the proceedings examined in the present case. It therefore rejects this part of the claim. On the other hand, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of 6,950 euros (EUR) in respect of the legal fees incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

### **C. Default interest**

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



## FOR THESE REASONS, THE COURT

1. *Declares* by a majority the complaints concerning the refusal to amend the State Register and the applicant's dissolution admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 11 of the Convention on account of the authorities' refusal to amend the State register;
3. *Holds* unanimously that there has been a violation of Article 11 of the Convention on account of the applicant's dissolution;
4. *Holds* unanimously
  - (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 6,950 (six thousand nine hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, 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;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Nina Vajić  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Kovler is annexed to this judgment.

N.A.V.  
S.N.

## PARTLY DISSENTING OPINION OF JUDGE KOVLER

I share the Chamber's final conclusion that there has been violation of Article 11 of the Convention on account of the applicant's dissolution, and I share also the main part of its arguments concerning this conclusion. But I cannot agree with the position of the majority on the first issue – the refusal of the Ministry of Justice to register the amendments of the information contained in the Unified State Register of Legal Entities because of various omissions, including the party's failure to submit certain documents, thereby leaving it open to doubt whether the general conference had been held in accordance with the law and with its articles of association (§ 15).

Leaving aside the problem of the quality of the law regulating political parties' activities - *dura lex, sed lex* - I would point out that the respondent Government stressed that the refusal to register the party had not been definitive and the applicant could have corrected the identified defects in the documents and re-submitted its request for registration. In some similar situations concerning religious organisations (for example, *Church of Scientology Moscow v. Russia*, no. 18147/02, judgment of 5 April 2007, and *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/02, judgment of 5 October 2006), or a local political organisation (*Presidential Party of Mordovia v. Russia*, no. 65659/01, judgment of 5 October 2004), the organisations concerned did renew their applications, exhausting domestic procedures in full lest there be any doubt. The problem of the registration of the amendments of an existing political organisation could have been resolved at this stage had the organisation in question been more respectful of the procedural requirements. The applicant party preferred to challenge the refusal before a court after the second attempt, and the national courts found that the documents submitted did not meet the requirements established by law.

The Court has declared inadmissible applications having circumstances similar to the instant case (such as *Baisan and Liga Apararii Drepturilor Omului din România v. Romania*, no. 28973/95, Dec. 30 October 1995, and *Carmuirea Spirituala a Musulmanilor din Republica Moldova v. Moldova*, no. 12282/02, Dec. 14 June 2005) because the applicants failed to observe the requirements of the national legislation. Unfortunately, in the present case the Chamber did not follow the Court's case-law but declared this issue admissible and went on to find a violation of Article 11 of the Convention.

However, I agree with my colleagues that the sanction – the party's dissolution after 15 years of existence because of its alleged failure (disputed by the applicant) to comply with minimum membership and regional representation requirements – was hasty and disproportionate, and that the domestic authorities did not adduce "relevant and sufficient" reasons to justify the interference with the applicant's right to freedom of association.