



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

SECOND SECTION

CASE OF PRESIDENTIAL PARTY OF MORDOVIA v. RUSSIA

(Application no. 65659/01)

JUDGMENT

This version was rectified on 31 March 2005
under Rule 81 of the Rules of the Court

STRASBOURG

5 October 2004

This judgment may be subject to editorial revision.

In the case of Presidential Party of Mordovia v. Russia,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mr A. KOVLER, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 September 2003 and 14 September 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 65659/01) 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 Presidential Party of Mordovia, a public association based in the Republic of Mordovia, Russia. The applicant was represented by its president, Mr V. Guslyannikov.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the refusal to renew its registration as a political party violated its right to freedom of association, guaranteed by Article 11 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 9 September 2003, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant party was based in the Republic of Mordovia, a constituency of the Russian Federation.

8. On 15 March 1994 the applicant party was registered with the Ministry of Justice of Mordovia as a “Mordovian All-Republican Socio-Political Association - the Presidential Party of Mordovia” (*Республиканская общественно-политическая организация республики Мордовия – Президентская Партия Мордовии*).

9. On 14 April 1995 the State Duma adopted a new Federal Law on Public Associations (*Федеральный Закон «Об общественных объединениях* – “the Federal Law on Associations”) which came into force on 19 May 1995. Article 52 of the Federal Law on Associations required public associations registered before 19 May 1995 to ensure that their articles of association complied with the Federal Law on Associations and to renew their registration by 1 July 1999.

10. On 30 June 1999 the applicant party applied to the Ministry of Justice of Mordovia to renew its registration. It presented its Articles of Association which contained the following provisions:

“2. The party’s objectives

2.1. The party’s aims are:

- assisting in the formation of a free democratic society in the Republic of Mordovia and Russia;
- strengthening Russia’s unity;
- fighting against the separatism of the Republic of Mordovia;
- enhancing the separation of the executive, legislative and judicial powers;
- creating a strong executive power headed by the directly elected President of the Republic of Mordovia, integrated in the executive power of the Russian Federation;
- building a highly developed market economy;
- striving to achieve the individual’s social protection.

In order to meet these objectives the party:

2.1.1. participates in presidential, parliamentary and local elections in the Republic of Mordovia by selecting and nominating candidates and assisting in their electoral campaigns.

2.1.2. carries out programmes and initiatives directed at professional training, provides assistance to members of parliament and party members in the fields of economy, law, administration, mass media and the arts to support the preparation and running of electoral campaigns.

2.1.3. develops a scheme to select a list of candidates and to establish the liability to the party of its members of parliament.

2.1.4. holds the preliminary election of candidates for elections.

2.1.5. supports the party groups in parliament.

2.1.6. assists individuals, public and private organisations, research and educational bodies in their activities concurring with the party's aims."

11. On 30 June 1999 the Minister of Justice of Mordovia refused to renew the applicant party's registration with reference to the Federal Law on Associations and to the Law of the Republic of Mordovia on Becoming an All-Republican Public Association (*Закон Республики Мордовия «О приобретении общественным объединением регионального (республиканского) статуса»* - the Association Law of Mordovia). The decision stated that the applicant party had failed to create branches in more than half of the districts and cities of Mordovia to qualify for the title "All-Republican". Furthermore, it stated that the applicant party's Articles of Association did not comply with the requirement to include among its objectives participation in the political life of society and in elections.

12. On 8 July 1999 the applicant party filed its objections with the Ministry of Justice of Mordovia. It maintained that the requirement to establish branches contained in Article 21 of the Federal Law on Associations applied exclusively to international, all-Russian or inter-regional public associations. It also contended that its Articles of Association provided for the applicant party's participation in the political life of society and in elections.

13. On the same day the applicant party filed a new application for the renewal of its registration with the Ministry of Justice of Mordovia. The newly submitted Articles of Association contained the following statements:

"2.1. The main objective of the party is participation in the political life of society through influencing and generating the citizens' political will, participation in elections to the State authorities and local government by nominating candidates and organising their electoral campaign, and taking part in the setting-up and activities of the said bodies."

14. On 19 July 1999 the Deputy Minister of Justice of Mordovia informed the applicant that it had missed the deadline for renewal of its registration.

15. In August 1999 the Ministry of Justice of Mordovia applied to the Leninsky District Court of Saransk for the dissolution of the applicant party on the ground that it had failed to re-register. The applicant party filed a

counter-claim in which it challenged the refusal to renew its registration and sought an order requiring the Ministry of Justice to register it.

16. On 29 December 1999 the Leninsky District Court of Saransk dismissed the request for dissolution. It held that it was sufficiently clear from the applicant party's Articles of Association that it intended to engage in activities amounting to "participation in the political life of society" in accordance with the Federal Law on Associations. The court also found that the requirement to establish branches applied only to all-Russian, inter-regional and international public associations. It declared the refusal to renew the registration of the applicant party unlawful and ordered the Ministry of Justice of Mordovia to renew the registration.

17. The Minister of Justice of Mordovia appealed.

18. On 14 March 2000 the Supreme Court of the Republic of Mordovia acting as an appeal instance quashed the judgment of 29 December 1999 and substituted its own decision. It found that the applicant party had failed to declare expressly its "participation in the political life of society" as a statutory objective. It rejected the finding made by the first-instance court that the activities listed in Article 2.1.1 of the applicant party's Articles of Association could qualify as "participation in the political life of society" for the purposes of the Federal Law on Associations. The court found the refusal to renew the registration of the applicant party lawful and, in accordance with Article 52 of the Federal Law on Associations, ordered its dissolution. This decision became final on the same day.

19. On 20 August 2002, after communication of the case to the respondent Government by the Court, the acting President of the Supreme Court of the Republic of Mordovia brought on his own motion an application for supervisory review of the decision of 14 March 2000.

20. On 5 September 2002 the Presidium of the Supreme Court of the Republic of Mordovia granted the application by quashing the decision of 14 March 2000 and upholding the judgment of the Leninsky District Court of Saransk dated 29 December 1999. The latter judgment declaring the refusal to renew the registration unlawful and requiring the Ministry of Justice of Mordovia to register the Presidential Party of Mordovia entered into force.

21. On 29 October 2002 the Department of the Ministry of Justice of the Russian Federation in respect of the Republic of Mordovia sought a court order in respect of the enforcement of the judgment of 29 December 1999. It claimed that, following legislative changes, it could not register the Presidential Party of Mordovia pursuant to the judgment. Firstly, on 17 May 2002 the competence to register legal persons had been transferred to the tax authorities. Secondly, the Law on Political Parties of 11 July 2001 changed the requirements for establishing political parties, and the application for registration of the applicant party had not taken account of these requirements. In particular, under the new law no regional political parties

could be created and existing regional parties were deprived of their current status.

22. On 30 October 2002 the Leninsky District Court of Saransk examined the request and terminated the execution of the judgment of 29 December 1999. The court accepted that both reasons prevented the party's registration pursuant to the judgment. It also took into account that the applicant's president, Mr V. Guslyannikov, had consented to the termination of the enforcement proceedings in view of the legislative changes.

II. RELEVANT DOMESTIC LAW

23. The Federal Law on Public Associations, No. 82-FZ of 19 May 1995, provided in so far as relevant as follows:

Article 52

“The articles of public associations registered before the entry into force of this Federal Law shall be amended in compliance with the said Federal Law [...].

State re-registration of public associations registered before the entry into force of this Federal Law shall be carried out before 1 July 1999.”

Article 12.1

“A political public association is a public association whose articles of association must provide for participation in the political life of society through influencing and generating the citizens' political will, participation in elections to the State bodies and local government by nominating candidates and organising their electoral campaign, and taking part in the setting-up and activities of the said bodies.”

24. The Federal Law on Political Parties, No. 95-FZ of 11 July 2001 contains the following provision:

Article 47 § 6

“... all interregional, regional and local political associations shall cease to enjoy the status of a political association and shall continue to function as interregional, regional and local public associations ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

25. The applicant claimed that the authorities' refusal to renew its registration as a political party was contrary to domestic law and was not necessary in a democratic society. It thus constituted an unjustified interference with its right to freedom of association, contrary to Article 11 of the Convention, which insofar as relevant provides as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, ...

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. ...”

26. The Government accepted, in view of the domestic courts' findings, that the refusal to renew the applicant party's registration and its dissolution were unlawful. However, they maintained that there has been no violation of the applicant party rights under Article 11 of the Convention since the Presidium of the Supreme Court of the Republic of Mordovia, acting as a supervisory instance, acknowledged that and on 5 September 2002 ordered the registration of the applicant party.

27. The applicant contested the Government's arguments, referring to the fact that through lack of registration it was not able to function for over three years, could not run for the 1999 elections and, furthermore, was prevented from renewing its registration in 2002 due to legislative changes.

28. The Court recalls that Article 11 applies to associations, such as political parties (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, and *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III), all the more so to a party which, like the applicant, is not suspected of undermining the constitutional structures.

29. The Court also reiterates that a refusal to register an association may amount to an interference with the exercise of the right to freedom of association (see, *inter alia*, the *Sidiropoulos and others v. Greece* judgment of 10 July 1998, *Reports* 1998-IV, §§ 31, 40).

30. The Court further notes that the Government's argument concerning the reparation of the refusal to register the applicant party is a restatement of their preliminary objection examined and dismissed by the Court in its admissibility decision of 9 September 2003.

31. The Court accepts that the measure in question must have affected the applicant party, as claimed, since it was unable to function for a substantial period of time and could not participate in regional elections. Furthermore, the damage appears irreparable given that, under current legislation, the party cannot be reconstituted in its original concept.

32. It is not in dispute that the interference in question was not “prescribed by law”. Having reached this conclusion, the Court does not consider it necessary to ascertain whether the other requirements of paragraph 2 of Article 11 were complied with in the instant case – namely, whether the interference pursued a legitimate aim and whether it was necessary in a democratic society.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant party sought 3,000 euros (EUR) for non-pecuniary damage.

36. The Government considered that the amount claimed by the applicant party is unsubstantiated and in any event excessive.

37. The Court, for its part, considers that the applicant party must have sustained damage on account of the protracted impossibility to carry out its activities as a public association. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant party the sum of 3,000 euros (EUR) for non-pecuniary damage. This sum should be paid to the applicant’s representative, Mr V. Guslyannikov.

B. Costs and expenses

38. The applicant party made no claims under this head.

C. Default interest

39. 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 UNANIMOUSLY

1. *Holds* that there has been a violation of Article 11 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment was rectified, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable; this sum is to be paid to the applicant's representative, Mr V. Guslyannikov;
 - (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.

Done in English, and notified in writing on 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President