



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

FIFTH SECTION

CASE OF KORETSKYI AND OTHERS v. UKRAINE

(Application no. 40269/02)

JUDGMENT

STRASBOURG

3 April 2008

FINAL

03/07/2008

This judgment may be subject to editorial revision.

In the case of Koretskyy and Others v. Ukraine,

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

Peer Lorenzen, *President*,

Snejana Botoucharova,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 40269/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals, Mr Sergiy Petrovych Koretskyy, Mr Andriy Vasylyovych Tolochko, Mr Andriy Mykolayovych Gorbai, and Mr Oleksiy Grygorovych Lobytskyy (“the applicants”), on 12 September 2002.

2. The applicants were represented by Mr T. Shevchenko, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 13 March 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. Mr Koretskyy was born in 1955, Mr Tolochko and Mr Lobytskyy were born in 1975, and Mr Gorbai was born in 1978. All the applicants live in Kyiv.

5. On 7 June 2000 the applicants and two other persons founded an association named “Civic Committee for the Preservation of Wild (Indigenous) Natural Areas in Bereznyaky¹” (*“Громадянський Комітет за збереження дикої (корінної) природи Березняків”*, the “Civic Committee”). Mr Koretskyi was elected as the Civic Committee’s head.

6. On 27 July 2000 the applicants filed an application for the State registration of the Civic Committee together with a copy of its articles of association with the Kyiv City Department of Justice (the “City Department”).

7. The Civic Committee’s articles read, in so far as relevant, as follows:

1. General provisions

“1.1. The Civic Committee ... (hereafter – the Committee) is a voluntary association of citizens, non-governmental organisations, and other legal entities, which unite their efforts in joint activities [aiming at the] preservation of wild (indigenous) natural systems in cities and towns.

1.2. The Committee is a non-governmental, non-profit organisation.

...

1.4. The activities of the Committee are to be carried out on the territory of Kyiv. The Committee may have representative offices in other cities and towns of Ukraine.

...”

2. Principles of the Committee’s activities

“2.1. The Committee’s activities shall be based on the principles of:

- a) democracy;
- b) legality;
- c) self-government;
- d) equality of members;
- e) openness;
- f) combination of local actions with global thinking;
- g) active creative initiative of the broader community.”

1. Name of an area in the city of Kyiv.

3. Aim of the Committee

“3.1. The Committee was founded with the aim of protecting natural systems from their complete destruction in the process of urbanisation and from their replacement by artificial biomes in the process of urban development and growth.

3.2. The aim of the Committee is to preserve the remaining indigenous natural areas on the territory of the contemporary residential area of Berezhnyky.”

4. Tasks and areas of activities of the Committee

“4.1. The Committee ... shall have the task of taking concrete action to raise awareness among urban planners, members of bodies of local self-government, and the general public about ... the difference between indigenous natural systems and artificial natural systems in cities and towns, of the possible consequences of the loss of samples of natural ecosystems, as well as [the task of] coordinating joint activities of public authorities, non-governmental organisations, and the general public [aimed at] the prevention of such consequences, the result of which should be the preservation of indigenous biomes as natural samples.

4.2. According to [its] aim and tasks the Committee shall perform its activities in the following areas:

- a) collection of information concerning the indigenous nature of Berezhnyky;
 - b) collection and study of world experience of coexistence of cities and natural systems;
 - c) creation and development of a publicly accessible electronic database;
 - d) cultural, educational, publishing, and informational activities;
 - e) lobbying of issues connected with the preservation of natural ecosystems with the national and local authorities;
- ...”

5. Rights of the Committee

“5.1. ... the Committee shall have the right:

- a) to take part in civil law relations, to acquire pecuniary and non-pecuniary rights;
- ...
- d) to [disseminate] propaganda, and [carry out] cultural and educational activities;
- ...
- h) to set up entities and organisations, to set up media, and to perform publishing activities;

i) to carry out non-governmental ecological expert examinations;

...

5.2. In order to fulfil its tasks the Committee shall have the right to carry out the necessary economic (“*господарськ*”) and other commercial activities by means of establishing legal entities.”

6. Membership of the Committee

“6.1. Membership in the Committee may be individual, collective, honorary, as well as [through] voluntary participation (“*в якості волонтерів*”);

...

6.4. Citizens of Ukraine and other States who share the ideology and participate in certain projects and actions [of the Committee] for free, may become volunteers of the Committee;

...”

7. Organisational structure and management of the Committee

“...

7.11. The Executive Board of the Committee shall be responsible for the financial administration of projects, the accounting of the Committee, and manage everyday administrative (“*господарчу*”) and financial activities to ensure the implementation of projects.

...”

8. On an unspecified date the application and articles of association were returned to the applicants and they were advised to make changes to the text, which were noted down by the City Department in the same documents. In particular, several sentences and paragraphs were crossed out, including paragraphs 3.1, 5.1 (d), and 6.4. Some other parts of the articles were rephrased or amended, like, for instance, the word “lobbying” in paragraph 4.2 (e) was replaced by “submission of propositions” and the phrase “to carry out non-governmental ecological expert examinations” in paragraph 5.1 (i) was reformulated to the effect that the Civic Committee could carry out ecological expert examination on a “voluntary basis”.

9. According to the applicants, on 6 September 2000 they submitted the redrafted version of the articles of association, in which the Department’s corrections were only partially accepted. The Government denied this.

10. By letter of 18 September 2000, the City Department informed the applicants of its refusal to register the Civic Committee on the ground that its articles had not been drafted in accordance with the domestic law.

In particular, the Civic Committee's status was not indicated; the provision that the Civic Committee could have representative offices in other cities and towns of Ukraine did not correspond to the provision that its activities were to be carried out on the territory of Kyiv; the articles listed two aims of the organisation instead of one aim and tasks; the Executive Board of the Civic Committee was entrusted with economic ("*господарські*") functions while section 24 of the Associations of Citizens Act envisaged that the economic activities of an association could only be carried through separate legal entities which it could establish for that specific purpose; and the provisions that the Civic Committee could carry out publishing activities on its own and involve volunteers in its activities as members were contrary to the same law. Finally, the applicants had not taken into account all the corrections made to the text of the articles of association and they had submitted a copy of the document showing that they had paid registration fees, while the original was required.

11. In a letter of 20 September 2000, received by the City Department on 25 September 2000, Mr Koretskyi, acting on behalf of the Civic Committee as its head, stated that the Department had not taken into account the amended version of the Civic Committee's articles lodged with it on 6 September 2000. He asked the Department to reconsider its decision in the light of the amended version of the articles of association, the additional copies of which he could submit if the Department wished.

12. By letter of 24 October 2000, the City Department acknowledged receipt of the applicants' letter of 20 September 2000 and, referring to its letter of 18 September 2000, informed them that the articles of association could not be examined if they had not been re-drafted in compliance with the law. The Department also informed them that its refusal to register the Civic Committee could be challenged before the courts.

13. The applicants continued to carry out certain activities of the Civic Committee, in particular, publishing articles on its behalf in various newspapers.

14. On 30 November 2000 the applicants lodged a complaint with the Pecherskyi District Court of Kyiv, seeking the annulment of the City Department's decision not to register the Civic Committee. They alleged a violation of their right to form an association and the right to freely choose its aims and areas of activities. They also argued that the reasons for the refusal to register their association had been based on an incorrect interpretation and application of the relevant law by the City Department. Furthermore, according to them, the City Department had failed to take into account the amended version of the articles of association, which they annexed to their complaint to the court.

15. On 13 March 2001 the court rejected the applicants' complaint as unsubstantiated. On 28 August 2001 the Kyiv City Court of Appeal upheld the first-instance court's decision.

16. The courts held that the refusal to register the Civic Committee had been lawful, since the articles of association contained textual discrepancies with the relevant provisions of the domestic legislation. In particular, the aim of the Civic Committee was not defined correctly and did not correspond to the requirements of sections 3 and 13 of the Associations of Citizens Act. The provisions of paragraphs 1.4, 5.1, and 7.11 of the articles of association authorising the Executive Board of the Civic Committee to carry out “everyday administrative and financial” activities and envisaging that the Civic Committee could perform publishing activities were not in compliance with sections 9 and 24 of that law. The wording of paragraphs 6.1 and 6.4 of the articles of association as regards the participation of volunteers in the Civic Committee’s activities contravened the principle of equality of members of an association embodied in section 6 of the law.

17. The courts also noted that the applicants had failed to submit a corrected version of the articles of association, while the versions they had filed with the courts had not been drafted in compliance with the law.

18. On 14 March 2002 a panel of three judges of the Supreme Court rejected the applicants’ request for leave to appeal in cassation, finding no grounds for examination of the case by the Civil Cases Chamber of the Supreme Court.

19. On 7 July 2002 the applicants decided to liquidate the Civic Committee and discontinued its activities.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine of 26 June 1996

20. The relevant provisions of the Constitution of Ukraine read as follows:

Article 19

“The legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not envisaged by legislation.

State and local self-government bodies and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine.”

Article 36

“Citizens of Ukraine have the right to freedom of association in political parties and non-governmental organisations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests, with the exception of restrictions established by law in the interests of national security and public order, the protection of the health of the population or the protection of rights and freedoms of other persons.

...”

Article 37

“The founding and activities of political parties and non-governmental organisations are prohibited if their programme goals or actions are aimed at the liquidation of the independence of Ukraine, the change of the constitutional order by violent means, the violation of the sovereignty and territorial indivisibility of the State, the undermining of its security, the unlawful seizure of State power, the propaganda of war, violence, the incitement of inter-ethnic, racial, [or] religious enmity, and encroachments on human rights and freedoms and the health of the population.

Political parties and non-governmental organisations shall not have paramilitary formations.

...

The prohibition of the activities of associations of citizens shall be exercised only through judicial procedure.”

B. Criminal Code of 1960 (repealed as of 1 September 2001)

21. Article 187-8 of the Code provides:

“Leadership of an association of citizens which was not legalised in the order envisaged by law, or the legalisation of which was refused, or which was dissolved by a court decision, but which continues to act, as well as participation in the activities of such associations within a year following the application of the administrative sanction for the same offence, -

shall be punishable by the deprivation of liberty for a term of up to five years.”

22. With the entry into force of the new Criminal Code on 1 September 2001, the above offence was decriminalised.

C. Code on Administrative Offences of 1984

23. Article 186-5 of the Code reads:

“Leadership of an association of citizens which was not legalised in the order envisaged by law, or the legalisation of which was refused, or which was dissolved by a court decision, but which continues to act, as well as participation in the activities of such associations -

shall be punishable by a fine [in the amount] of twenty-five to one hundred and thirty times the statutory non-taxable monthly income.”

D. Associations of Citizens Act of 16 June 1992

24. The relevant provisions of the Act read as follows:

Section 3. Non-governmental organisation

“A non-governmental organisation is an association of citizens for the satisfaction and protection of their lawful social, economic, creative, age-related, national and cultural, sporting and other mutual interests.”

Section 4. Restrictions on the establishment and activities of associations

“Associations shall not be legalised, or the activities of legalised associations shall be prohibited through judicial procedure if their aim is:

to change the constitutional order by violent means and the territorial integrity of the State by any illegal means;

to undermine State security by means of activities in favour of foreign States;

to propagate war, violence or brutality, fascism and neo-fascism;

to incite national and religious enmity;

to restrict generally recognised human rights.

...”

Section 6. Principles of the establishment and activities of associations

“Associations shall be established and shall act on a voluntary basis and on the principles of equality of their members (participants), self-government, legality and openness. They shall be free to choose the direction of their activities.

Restrictions on the activities of associations may be introduced only by the Constitution and the laws of Ukraine.”

Section 9. Status of associations

“Associations shall have pan-Ukrainian, local or international status.

Pan-Ukrainian associations include associations the activities of which cover the entire territory of Ukraine and which have local branches in the majority of the regions [of Ukraine].

Local associations include associations the activities of which cover the territory of the respective administrative-territorial unit or region. Associations shall designate the territory of their activities independently.

A non-governmental organisation shall be international if its activities cover the territory of Ukraine and of at least one other State.

...”

Section 13. Articles of association (charter of associations)

“An association shall act on the basis of its articles of association.

The articles of association shall include:

- 1) the name of the association (which shall differ from the names of existing associations), its status and address;
- 2) the aim and tasks of the association;
- 3) the conditions of and rules governing the granting of membership of the association, [and of] termination of membership;
- 4) the rights and duties of the members (participants) of the association;
- 5) the rules governing the founding and activities of the bodies of the association, local branches and their powers;
- 6) the sources of, and rules governing the use of, funds and other assets of the association, rules governing reporting, control, and conducting economic and other commercial activities necessary to fulfil the tasks [of the association];
- 7) the procedure for changing and amending the articles of association;
- 8) the procedure for the liquidation of the association and settlement of property related issues connected with its liquidation.

The articles of association may contain other provisions concerning the peculiarities of the founding and activities of the association.

The articles of association shall not contradict the legislation of Ukraine.”

Section 14. Legalisation of associations

“Legalisation (official recognition) of an association shall be compulsory and may be effected through the (association’s) registration or the notification of [its] foundation. The activities of an association which has not been legalised or which has been dissolved by a court decision shall be illegal.

In the event of its registration the association shall become a legal entity.

Political parties and international non-governmental organisations shall be registered by the Ministry of Justice.

Legalisation of a non-governmental organisation shall be carried out by the Ministry of Justice, local bodies of State executive power, [or] executive committees of village and town councils.

If the activities of a local non-governmental organisation cover the territory of two or more administrative territorial units, its legalisation shall be carried out by the relevant higher authority.

The local bodies of State executive power and the executive committees of village and town councils shall register the local branches of registered pan-Ukrainian and international associations, provided such registration is envisaged by the articles of association of these associations.

The body [of State power] responsible for the legalisation [of associations] shall make an act of legalisation (official recognition) of an association public through the media.”

Section 15. Registration of associations

“The founders of associations shall submit an application for their registration...

The application for registration shall be accompanied by the articles of association, minutes of the constituent meeting (conference) or general meeting of founders, information about the composition of the central [managing] bodies, information about local branches, documents confirming the payment of registration fees, save for cases when a non-governmental organisation is exempted from the payment of registration fees in accordance with the laws of Ukraine.

...

The application for the registration shall be dealt with within two months following the receipt of the documents. If necessary, the body performing the registration shall verify the data contained in the submitted documents. The applicant shall be informed in writing about a decision to register or about a refusal to register within ten days.

...”

Section 16. Refusal to register [associations]

“The registration of an association may be refused if its articles of association or other documents submitted for the registration contravene the legislation of Ukraine.

A decision refusing the registration shall contain reasons for the refusal. This decision may be challenged before the courts.

The body [of State power] responsible for the registration shall make public the refusal to register an association through the media.”

Section 17. Notice of founding [of associations]

“Non-governmental organisations and their unions may be legalised by giving written notice to the Ministry of Justice, local bodies of State executive power, [or] executive committees of village and town councils.”

Section 20. Rights of registered associations

“To accomplish the goals and tasks set out in the articles of association, registered associations shall enjoy the [following] rights:

to take part in civil law relations, to acquire pecuniary and non-pecuniary rights;

to represent and protect their lawful interests and the lawful interests of their members (participants) before public and non-governmental bodies;

to take part in political activities, hold public events (meetings, demonstrations etc.);

to provide ideological, organisational, and financial support to other associations, to assist in their founding;

to found entities and organisations;

to receive information necessary for the fulfilment of their tasks from State and local self-government bodies;

to disseminate information and to propagate their ideas and aims;

to found media.

Non-governmental organisations shall have the right to found enterprises necessary for the fulfilment of their tasks.

...”

Section 24. Economic and other commercial activities [of associations]

“To accomplish the goals and tasks set out in the articles of association, registered associations may carry out the necessary economic and other commercial activities by means of establishing separate legal entities, founding enterprises in accordance with the procedure envisaged by the legislation.

...”

Section 27. Liability for violations of the legislation

“Leadership of the association which was not legalised in the order envisaged by law, or the legalisation of which was refused, or which was dissolved by a court decision, but which continues to act, as well as participation in the activities of such associations shall be punishable by administrative or criminal law.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

25. The applicants complained about the refusal of the authorities to register their association. They relied on Article 11 of the Convention, which 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

26. The Government did not raise any objection as to the admissibility of the application.

27. The Court considers that it raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

B. Merits

1. The parties' submissions

(a) The applicants

28. The applicants argued that the refusal to register the Civic Committee had not been in accordance with the law, that it had not pursued a legitimate aim and had not been necessary in a democratic society. The applicants also alleged that their case concerned several aspects of the national legislation and administrative practice which run counter to the principles embodied in Article 11 of the Convention.

29. First, the Ukrainian legislation, namely, sections 14(1) and 27(3) of the Associations of Citizens Act, Article 186-5 of the Code on Administrative Offences and Article 187-8 of the Criminal Code of 1960, contained a ban on any activities of an association which was not formally legalised. This had the effect of restricting the applicants' freedom of

association, since they were at a risk of being prosecuted for their involvement in the activities of the Civic Committee. The risk was very high given the arbitrary manner in which the registration had been refused. According to the applicants, such a restriction on their right to freedom of association was not justified.

30. Secondly, they submitted that the prohibition in the national law for an association to act beyond the territory in respect of which it was registered was not necessary in a democratic society. Although there was a possibility of registering the Civic Committee as having pan-Ukrainian status, this would necessitate setting up local branches in the majority of the regions of Ukraine, which was an insurmountable obstacle for the applicants.

31. Thirdly, the authorities' interpretation of the principle of equality of members of an association, contained in section 6 of the Associations of Citizens Act, as precluding the involvement of volunteers in its activities was wrong. In any event, such a restriction was against the principles of a democratic society.

32. Fourthly, the exclusion of certain activities which the applicants envisaged in the articles of association, in particular, propaganda, lobbying, publishing, expert examinations and so on, was not in compliance with the national law and was not justified. Also, there was nothing in the text of the articles of association which could form a basis for the authorities' conclusion that the Civic Committee intended to perform economic or commercial activities. This conclusion was based on the incorrect interpretation of the functions of the Civic Committee's Executive Board and, in particular, its task to manage the everyday administrative ("*господарча діяльність*") and financial activities of the Civic Committee, which were completely different from the activities classified as "economic" ("*господарська діяльність*"), since the former were merely aimed at ensuring the necessary material and technical conditions for the Civic Committee's everyday activities.

33. Finally, the applicants stated that the practice of making changes and amendments to the texts of articles of association by the authorities, without an association's consent, as had happened in their case, had no basis in the law and ran counter to the Article 11 guarantees.

(b) The Government

34. The Government argued that there had been no violation of Article 11 of the Convention, since the refusal to register the applicants' association had been lawful and necessary to ensure the well-functioning of the system of State registration of associations.

35. They also submitted that the Ukrainian legislation envisaged two ways of legalising an association, namely, the notification of the authorities and State registration. The applicants could have followed the former procedure, which was less complicated than the registration procedure. Otherwise, the applicants had to comply with the relevant requirements of the national legislation in order for their association to become a legal entity.

36. Furthermore, the system of State registration of associations is performed by bodies of different levels of authority. While the local departments of justice are responsible for the registration of associations the activities of which are limited to a particular locality, the higher authorities within the Ministry of Justice are competent to register an association the activities of which cover more than one administrative territorial unit.

37. Thus, the Kyiv City Department of Justice could not register an association the status of which was unclear or if the articles of association were not drafted in compliance with the law.

2. The Court's assessment

(a) General principles

38. The right to form an association is an inherent part of the right set forth in Article 11 of the Convention. The ability 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. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1614-15, § 40; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 57, 19 January 2006; *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 59, ECHR 2006-...; and *Ramazanov and Others v. Azerbaijan*, no. 44363/02, § 54, 1 February 2007).

(b) Existence of interference

39. The Court recalls that it has consistently held the view that a refusal by the domestic authorities to grant legal entity status to an association of individuals amounts to an interference with the applicants' exercise of their

right to freedom of association (see, for example, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52, 17 February 2004; *Sidiropoulos*, cited above, § 31; and *APEH Üldözötteinek Szövetsége and Others v. Hungary* (dec.), no. 32367/96, 31 August 1999).

40. Even assuming that, as the Government submitted, the Civic Committee could have carried out its activities without the State registration, the Court considers that the Civic Committee's ability to function properly without legal entity status would have been impeded. In this context, the Court notes that under section 20 of the Associations of Citizens Act only registered associations had a right to participate in civil law relations, acquire property, hold public meetings, disseminate information, and so on.

41. In these circumstances, the refusal to give the Civic Committee the status of a legal entity amounted to an interference by the authorities with the applicants' exercise of their right to freedom of association.

42. As regards the applicants' contention that the existence of the criminal and administrative legal regulations prohibiting any activities of non-legalised associations constituted a separate interference with their Article 11 rights, the Court observes that in the present case the applicants were negatively affected by the refusal to register the Civic Committee, rather than by the provisions of law discouraging them from carrying out its activities. The fact that the applicants were prohibited, under a risk of being prosecuted, from pursuing the activities of their association could not be divorced from the authorities' refusal to register it (see, *mutatis mutandis*, *Bączkowski and Others v. Poland*, no. 1543/06, §§ 67-68, ECHR 2007-...).

(c) Justification for the interference

43. The Court must now determine whether the refusal to register the Civic Committee, in view of the grounds on which it was based, satisfied the requirements of paragraph 2 of Article 11 of the Convention, that is whether it was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society" (see, among many authorities, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 104, ECHR 1999-III).

i. Compliance with the requirement of "lawfulness"

44. At the outset, the Court notes that the reason on which the Kyiv City Justice Department mainly relied for their refusal to register the Civic Committee and which was subsequently confirmed by the courts was the inconsistency of certain provisions of its articles of association with the relevant national legislation. The applicants stated that they had made some changes to the articles of association and submitted their revised version to the City Department. The Government contested that submission.

45. The Court does not find it necessary to resolve this particular issue, since, even assuming that the amended version of the articles of association was submitted to the City Department, the applicants only partially accepted the changes suggested by the latter. In particular, they insisted that, contrary to the position of the authorities, the following provisions of the articles of association should have remained in their text:

(a) that the Civic Committee with local status could have representative offices or representatives in other cities and towns of Ukraine;

(b) that the Executive Board of the Civic Committee could exercise everyday administrative functions;

(c) that the Civic Committee could carry out publishing activities on its own, as well as propagate its activities, lobby solutions for environmental protection with the authorities, and carry out expert examinations in this field; and

(d) that the Civic Committee could engage volunteers in its activities as members of the Civic Committee.

The courts of three instances came to the conclusion that the above provisions of the Civic Committee's articles were contrary to the law and, thus, the refusal to register it was well-founded.

46. Even assuming that the law was construed by the courts correctly and the present interference had a formal basis in the national law, the Court recalls that the expression "prescribed by law" in the second paragraph of Article 11 of the Convention does not only require that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question (see, for instance, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I).

47. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Maestri*, cited above).

48. The Court observes that according to section 16 of the Associations of Citizens Act “the registration of an association may be refused if its articles of association or other documents submitted for the registration contravene the legislation of Ukraine”. The Act does not specify whether that provision refers only the substantive incompatibility of the aim and activities of an association with the requirements of the law, in particular with regard to the grounds for the restrictions on the establishment and activities of associations contained in section 4 of the same Act, or also to the textual incompatibility of the articles of association with the relevant legal provisions. Given the changes to the text of the Civic Committee’s articles on which the authorities were insisting in the present case, the Court notes that the provision at issue allowed a particularly broad interpretation and could be read as prohibiting any departure from the relevant domestic regulations of associations’ activities. Thus, the Court finds that the provisions of the Associations of Citizens Act regulating the registration of associations are too vague to be sufficiently “foreseeable” for the persons concerned and grant an excessively wide margin of discretion to the authorities in deciding whether a particular association may be registered. In such a situation, the judicial review procedure available to the applicants could not prevent arbitrary refusals of registration.

49. Nevertheless, in the particular circumstances of the case, the Court does not find it necessary to decide whether the above considerations alone can serve a basis for finding a violation of Article 11 of the Convention. It notes that there are certain elements of the case which are closely linked to the issue of the quality of the law applied in the present circumstances, which require the Court to continue the examination of the case and to turn to the question whether the interference pursued one or more legitimate aims and was “necessary in a democratic society”. In particular, the Court must verify whether the specific restrictions on the activities of associations, listed at paragraph 45 above, correspond in principle to a “pressing social need” and, if so, whether they are proportionate to the aims sought to be achieved (see *Gorzelik and Others*, cited above, §§ 94-105).

ii. Whether the interference pursued legitimate aim and was “necessary in a democratic society”

50. The Court notes that the Government’s main argument, as regards the necessity of the interference, was that the State enjoyed the exclusive right to regulate independently the activities of non-governmental organisations on its territory. Thus, in their view, the refusal to register the Civic Committee was necessary in order to ensure the well-functioning of the system of State registration of associations.

51. In this context, the Court finds it necessary to reiterate that the State’s power to protect its institutions and citizens from associations that might jeopardise them 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 (see *Gorzelik and Others*, cited above).

52. The Court observes that neither the courts' decisions nor the Government's submissions in the present case contain an explanation for, or even an indication of the necessity of the existing restrictions on the possibility of associations to distribute propaganda and lobby authorities with their ideas and aims, their ability to involve volunteers as members or to carry out publishing activities on their own. Furthermore, the Court does not see why the managing bodies of such associations are, according to the authorities, prohibited from carrying out everyday administrative activities, even if such activities are essentially of an economic character.

53. As regards the territorial limitation of the activities of associations with local status, the Court notes that, even if this restriction can be said to be aimed at maintaining the well-functioning of the system of State registration of associations, it does not discern any threat to that system in that local associations could have their branch offices in other cities and towns of Ukraine, especially given the burdensome requirement for associations wishing to have pan-Ukrainian status to set up local branches in the majority of the twenty-five regions of Ukraine.

54. On the whole, the Court notes that the materials contained in the case file, including the parties' submissions, show that the Civic Committee intended to pursue peaceful and purely democratic aims and tasks. There is no indication, and it has not been suggested by the domestic courts or the Government, that the association would have used violent or undemocratic means to achieve its aims. Nevertheless, the authorities used a radical, in its impact on the applicants, measure which went so far as to prevent the applicants' association from even commencing its main activities.

55. In these circumstances, the Court considers that the restrictions applied in the present case did not pursue a "pressing social need" and, accordingly, the reasons invoked by the authorities to refuse the registration of the Association were not relevant and sufficient. That being so, the interference cannot be deemed necessary in a democratic society.

(d) Overall conclusions

56. In the light of the foregoing and the conclusions reached with regard to the requirement of "lawfulness", the Court considers that the interference with the applicants' freedom of association was not justified.

57. Thus, that there has been a violation of Article 11 of the Convention.

58. The Court does not find it necessary in the circumstances to determine whether the fact that the authorities made changes and amendments to the text of the articles of association, thereby indicating the provisions which they thought were not in compliance with the law and proposing the wording which, according to them, would satisfy the existing

legal requirements, raises a separate issue under Article 11 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. Mr S. Koretskyi claimed 6,000 euros (EUR) and the other applicants claimed EUR 3,000 each in respect of pecuniary and non-pecuniary damage. They stated that, given his managerial responsibilities in respect of the Civic Committee and his professional experience in the field of ecology of more than thirty years, Mr S. Koretskyi’s moral suffering because of the violation of his rights under Article 11 of the Convention had been greater than that of the other applicants. The applicants did not specify the nature of the pecuniary damage they had allegedly suffered.

61. The Government maintained that the applicants’ claims were unsubstantiated.

62. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim. On the other hand, the Court notes that the applicants must have suffered some distress and anxiety on account of the uncertainty and despair they experienced and accordingly, ruling on equitable basis, as required by Article 41 of the Convention, awards each applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicants also claimed EUR 1,600 for the cost of legal advice concerning the proceedings before the Court. They submitted a copy of the bill issued in this connection by their lawyer.

64. The Government contested this claim.

65. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award

the applicants the requested sum of EUR 1,600 for costs and expenses in the proceedings before the Court.

C. Default interest

66. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of payment:
 - (i) EUR 1,500 (one thousand five hundred euros) to each applicant in respect of non-pecuniary damage;
 - (ii) EUR 1,600 (one thousand six hundred euros) to the applicants jointly for costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicants on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 3 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President