



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

FIRST SECTION

Application no. 34196/05
Boris Vladimirovich MELEKHIN against Russia
lodged on 29 August 2005

STATEMENT OF FACTS

The applicant, Mr Boris Vladimirovich Melekhin, is a Russian national who was born in 1950 and lives in Miass, in the Chelyabinsk Region.

A. The circumstances of the case

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

1. The founding meeting

On 12 June 2004 the applicant and other thirteen persons identifying themselves as Cossacks (delegates of District Cossack Ethno-Cultural Autonomies of Chelyabinsk) held a meeting at which they resolved to form a Chelyabinsk Regional Cossack Ethno-Cultural Autonomy.¹ They adopted its Articles of Association and elected its bodies (Managing Council and Control-Revision Commission). The applicant was elected President of the Managing Council.

Clause 2(1) of the Articles defined the association's main goals as "cultural rehabilitation and rebirth of Cossacks as historically established ethnic community, independent decision-making in the spheres of preserving Cossacks' identity, development of language, education and national culture".

¹ According to Russia's 2002 Population Census 140,028 Russian citizens indicated their nationality as "Cossack". 319 of them live in the Chelyabinsk Region, according to Chelyabinsk Regional Committee of State Statistics.

Clause 2(2) of the Articles defined the association's main tasks as "cultural, spiritual, moral nurturing of Cossack population, preserving and developing of Cossack traditions and customs, studying and promoting of Cossack history, protecting the rights and lawful interests of the Cossacks in State bodies and local authorities, developing ties with Cossack population in other parts of the country and abroad, participating in election campaigns aiming at representing the Cossack population in State bodies and local authorities".

2. The registration proceedings

On 5 July 2004 the applicant submitted to the Chelyabinsk Regional Justice Department (*Главное управление Министерства юстиции Российской Федерации по Челябинской области*) an application for registration, together with the documents required by law.

On 5 August 2004, relying on Section 23 of the Law on public associations, the Chelyabinsk Regional Justice Department refused to register the association. The Justice Department held that the Articles of Association of the Chelyabinsk Regional Cossack Ethno-Cultural Autonomy were in contradiction with the Law on ethno-cultural autonomy:

"The [domestic] law does not provide for creation and state registration of Cossack ethno-cultural autonomy" since "the Cossacks are defined as historically established ethno-cultural community, not the ethnic community forming a national minority [on the territory concerned]".

On 1 November 2004 the applicant challenged the lawfulness of the above refusal in court.

On 2 March 2005 the Tsentralniy District Court dismissed the applicant's claim. The court held as follows:

"The Cossacks can not be ascribed to ethnic communities representatives of which are entitled by law to found [...] ethno-cultural autonomies".

On 17 May 2005 the Chelyabinsk Regional Court upheld the above judgment on appeal.

On 5 December 2005 the applicant sought to have the judgment of 2 March 2005, as upheld on appeal on 17 May 2005, reviewed in view of newly discovered circumstances. The applicant referred, in particular, to state registration on 31 January 2000 of the Volgograd Regional Cossack Ethno-Cultural Autonomy.¹

On 21 December 2005, however, the Tsentralniy District Court of Chelyabinsk refused to reopen the proceedings, since the existence of the Cossack Ethno-Cultural Autonomy in the Volgograd Region could have had no bearing on the court's decision to grant the applicant's claim or dismiss it.

On 7 February 2006 the Chelyabinsk Regional Court upheld the above decision on appeal.

¹ By a final decision of 11 October 2011 the Supreme Court of Russia granted the claim by the Volgograd Regional Justice Department to liquidate the Volgograd Regional Cossack Ethno-Cultural Autonomy. The Supreme Court held that pursuant to domestic law the form of self-organization of Cossacks is a Cossack society (a non-profit organization), not an ethno-cultural autonomy.

B. Relevant domestic law and practice

1. The Constitution of the Russian Federation

Article 26 § 1

“Everyone shall have the right to determine and indicate his nationality. No one may be forced to determine and indicate his or her nationality.”

Article 30 § 1

“Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.”

Article 55 § 3

“The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.”

2. Order of the Supreme Council of the Russian Federation on Rehabilitation of the Cossacks, No. 3321/1 of 16 July 1992

“Pursuant to the requirements of the RSFSR Law on rehabilitation of repressed peoples, aiming at full rehabilitation of the Cossacks and creation of necessary conditions for its rebirth as historically established ethno-cultural community, the Supreme Council holds:

...

3. Recognize the Cossacks’ rights to ... create public Cossack associations with historically established names, including expatriates’ communities (*землячества*), unions (*союзы*) and other associations; their registration and activity in accordance with general procedure provided for the public associations of citizens.”

3. Federal Law on Public Associations, No. 82-FZ of 19 May 1995

Section 3. Content of the citizens’ right to association

“The right of the citizens to association involves the right to create on voluntary basis public associations for the protection of their common interests and attaining their common goals, the right to join the existing public associations or abstain from joining them, as well as the right to freely withdraw from public associations.

The creation of public associations fosters the implementation of the rights and legitimate interests of the citizens.

The citizens have the right to create at their choice public associations without prior authorization by the State bodies and local authorities, as well as to join such public associations on condition of compliance with their articles of association.”

Section 16. Restrictions on creation of public associations and their activity

“The creation and activity of public associations which goals and actions are directed to carrying out extremist activities shall be prohibited.

...

The restrictions on creation of certain types of public associations may be established only by federal laws.”

Section 21. State registration of public associations

“For acquiring the rights of a legal person a public association shall be subjected to State registration in accordance with federal law of 8 August 2011 No. 129-FZ on state registration of legal persons and individual entrepreneurs.

The decision on state registration (refusal of state registration) of a public association is taken by the [competent federal executive body], or its territorial body.
... ”

Section 23. Refusal to register a public association

“The state registration of a public association shall be refused on the following grounds:

1) if the articles of a public association contradict the Constitution of the Russian Federation and the legislation of the Russian Federation; ...

The refusal of state registration of a public association ... may be appealed against to ... a court. ... ”

4. *Federal Law on Ethno-Cultural Autonomy, No. 74-FZ of 17 June 1996*

Section 1. Definition of ethno-cultural autonomy

“Ethno-cultural autonomy in the Russian Federation is a form of ethno-cultural self-determination, corresponding to an association of the citizens of the Russian Federation identifying themselves as part of a certain ethnic community forming a national minority on the territory concerned, on the basis of their voluntary self-organization for the purposes of independent decision of the questions of preserving their identity, development of their language, education and national culture.

Ethno-cultural autonomy is a variety of a public association. The legal form of organization of an ethno-cultural autonomy is a public association.”

5. *Federal Law on State Service of the Russian Cossacks, No. 154-FZ of 5 December 2005*

Section 2. Basic notions

“1) The Russian Cossacks – the citizens of the Russian Federation – members of Cossack societies;

2) The state register of Cossack societies in the Russian Federation – information resource containing data on Cossack societies;

3) A Cossack society – voluntary association of the citizens of the Russian Federation in the form of a non-profit organization, created in accordance with the federal law, entered into the state register of Cossack societies of the Russian Federation, the members of which took it upon themselves in the established order the obligation to carry out state or other service; ... ”

COMPLAINTS

Invoking Articles 6 § 1, 11, 13, 14, 15 and 17 of the Convention and Article 1 of Protocol No. 12 to the Convention the applicant complained about the refusal to register the Chelyabinsk Regional Cossack Ethno-Cultural Autonomy.

QUESTIONS TO THE PARTIES

1. Has the refusal to register the Chelyabinsk Regional Cossack Ethno-Cultural Autonomy amounted to an interference with the applicant's right to freedom of association, within the meaning of Article 11 § 1 of the Convention? If so, was that interference prescribed by law, pursued one or more legitimate aims as defined in paragraph 2 and was “necessary in a democratic society” to achieve those aims in terms of Article 11 § 2?

2. Has the applicant suffered discrimination in the enjoyment of his Convention rights, contrary to Article 14 of the Convention read in conjunction with Article 11?