



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

FIRST SECTION

Application no. 18860/07
YABLOKO RUSSIAN UNITED DEMOCRATIC PARTY and others
against Russia
lodged on 29 March 2007

STATEMENT OF FACTS

The first applicant is the Karelian Regional Division of the Yabloko Russian United Democratic Party, a political party registered under the laws of the Russian Federation (“the applicant party”).

The second applicant, Ms Irina Vladimirovna Petelyayeva (born in 1959), is a Russian national and the chairwoman of the applicant party.

The third and fourth applicants, Mr Aleksandr Ilyich Klimchuk (born in 1949) and Ms Kseniya Vladimirovna Fillipenkova (born in 1981), are Russian nationals and members of the applicant party residing in the Republic of Karelia.

The applicants are represented before the Court by Mr D. Holiner, a barrister practising in London, the United Kingdom.

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

A. Background information

The Republic of Karelia (“Karelia”) is a federal subject (constituent region) of the Russian Federation. Under Article 73 of the Constitution of the Russian Federation, federal subjects possess the full authority of the Russian State in all matters other than those that come within the sole jurisdiction of the federal government or within the shared jurisdiction of federal subjects and the federal government to the degree of the latter’s scope of authority.

Karelia maintains a Legislative Assembly of fifty members that is elected by universal direct suffrage once every five years. Twenty-five seats are

allocated on a proportional representation basis to registered party lists receiving at least 7% of the region-wide vote, whereas the remaining seats are allocated to the winners of twenty-five single-member constituencies (electoral circuits), each of which is determined by plurality vote. There is no minimum turnout for the election to be valid, and each voter may only vote for only one party and only one candidate in the electoral circuit in which he or she resides.

B. Decision to take part in the election to the regional legislature

On 26 April 2006 the Regional Council of the applicant party, with a view to the upcoming election to the 4th Legislative Assembly, called for a regional party conference to be held in two sessions on 27 May and 12 August 2006, respectively.

Between 27 April 2006 and 26 May 2006 local party divisions throughout Karelia held assemblies and conferences in accordance with the Yabloko party charter and selected forty-seven delegates to attend the regional party conference.

On 27 May 2006 the applicant party, having expressed its will at a regional party conference in accordance with the Yabloko party charter, decided to participate in the upcoming election to the 4th Legislative Assembly. Nominations of specific candidates to the party list and electoral circuits were left to the second session scheduled for 12 August 2006.

On 10 and 11 June 2006 the Yabloko (nationwide) party held its 13th Party Congress, which adopted several amendments to the party's charter, none of which had any material impact on the applicant party's nomination procedures.

On 4 July 2006 the 3rd Legislative Assembly enacted Order no. 2519-III ZS, which appointed 8 October 2006 as the date for the election to the 4th Legislative Assembly.

On 9 August 2006 the amendments to the Yabloko (nationwide) party charter were registered at the Federal Registration Service, upon which date they came into legal force for the party.

On 12 August 2006 the regional party conference resumed. Thirty-seven of the forty-seven selected party delegates were present, and a quorum was declared in accordance with the party's charter. The regional party conference then proceeded to nominate, by secret ballot in accordance with the party's charter, a 25-member party list and candidates for three electoral circuits. The second and third applicants were chosen to run for office in the electoral circuits for Kukkovsk and Medvezhyegorsk respectively.

Among those also present at the regional party conference were two representatives from the Karelia Directorate of the Federal Registration Service (the State monitoring body for political parties), and two members of the Central Election Commission of the Republic of Karelia (the "Election Commission"). At that time they did not report any irregularities in the conduct of the regional party conference.

On 16 August 2006 the applicant party submitted to the Election Commission all necessary documentation to participate in the upcoming election, and on 21 August 2006 it paid the requisite electoral deposits

(150,000 RUB in respect of the party list and 60,000 RUB in respect of each of the three single-constituency candidates).

On 22 August 2006, after having reviewed the applicant party's documentation, the Election Commission issued Order no. 66/362-3, by which it registered the applicant party's party list and the three single constituency candidates, including the second and third applicants.

C. Annulment of the applicant party's registration

On 8 September 2006, one month before the election, the Election Commission applied to the Supreme Court of the Republic of Karelia seeking a declaration that its own decision to register the party list and the three single-constituency candidates had been unlawful and should be annulled. The Election Commission sought the order under a provision of the Election Rights Act allowing judicial annulment of the registration of individual candidates and party lists where "new facts" had come to light showing a violation of federal or regional law regulating candidate nominations.

The application did not identify any materially new facts that had not been available to the Election Commission at the time that it had registered the party list and the single-constituency candidates. It also did not identify any requirement of federal or regional law governing candidate nominations alleged to have been violated by the applicant party.

On 15 September 2006 the Supreme Court of the Republic of Karelia allowed the application of the Election Commission and annulled the registration of the applicant party's party list and its single constituency candidates. The court identified no "new facts" nor any legal requirement governing nomination of candidates alleged to have been violated by the applicant party. Nor did it find that the applicant party had violated any provisions of the party's lawfully registered charter. Instead, the court concluded that the annulment decision was justified because participation of a minority of the party's regional membership in the nomination process thwarted "the will of the majority", finding as follows:

"If one takes a formal approach to the problem it seems that all the requirements governing nomination of the lists of candidates were observed.

At the same time the court believes that the procedure for nomination of the lists of candidates [to the legislature] was breached.

It was established at the court hearing that only so-called 'registered members of the party' participated and nominated the lists of candidates [to the legislature] at the regional conference.

What is the difference between 'registered members of the party' and 'unregistered members'? Let's look at section 7 of the party's charter ...

The practice of applying these provisions of the charter in the party's regional division in the Republic of Karelia is such ... that members of the party determine themselves whether to actively participate in the activity of a regional division of the party or to participate [only] as needed ...

It is impossible to agree with such a practice of applying the party's charter ...

A democratic regime is characterised by wide participation of the population in forming the organs of State authority and a wide spectrum of political rights and freedoms for citizens governed by the rule of law, protection of the rights and legal interests of citizens and others. One imagines that these very elements should take place in the activities of any democratic party.

The Constitutional Court of the Russian Federation emphasised the significance of the principle of the mandatory will of the majority, pointing out that ‘... elections as a means of determining the will of the people and forming the corresponding legitimate organs of State authority and local government, on whose behalf they exercise public authority, is based on the priority of the will of the majority of voters taking part in the vote’ ...

This principle applies with equal measure to the nomination of lists of candidates to [the legislature], since the basis for forming the representative bodies are the [candidates] nominated by political parties.

In this specific case the principle of the ‘will of the majority’ was violated.”

The court did not identify any party member or members whose “will” had been “violated” by the party’s nomination procedure.

The applicant party lodged an appeal against the decision with the Supreme Court of the Russian Federation.

On 29 September 2006 the Supreme Court of the Russian Federation dismissed the applicant party’s appeal with similar reasons.

As a result of the annulment order having come into legal force, the applicant party lost the election deposits made in respect of the party list and the single constituency candidates.

On 8 October 2006 the election to the 4th Legislative Assembly took place. The party list and the single constituency candidates nominated by the applicant party were not present on the ballot. The fourth applicant cast a ballot writing in a vote for the Yabloko party list, but her choice was not counted in the election results.

COMPLAINTS

The applicants complain under Article 3 of Protocol No. 1 that the annulment order (i) arbitrarily excluded the applicants from participation in the election to the Karelian legislature, and (ii) frustrated the free expression of the opinion of the fourth applicant in her choice of a representative legislature.

They further complain under Article 14 in conjunction with Article 3 of Protocol No. 1 that the grounds for annulment of the registration of the party list and the single constituency candidates were selectively applied to the first three applicants due to their party affiliation.

Finally, they allege a violation of Article 1 of Protocol No. 1, in that the applicant party was deprived of the funds paid for the election deposits as a result of the annulment order.

QUESTIONS TO THE PARTIES

1. As regards the applicant party, the second and third applicants who were registered as candidates in the elections to the regional legislature, was there a violation of Article 3 of Protocol No. 1 as regards the domestic courts' decision to annul their registration? What were the specific "new facts" that had become known to the authorities in the period between 22 August and 8 September 2006? What was the legal basis for requiring the participation of all members – rather than solely registered members – in the regional conference?

2. As regards the fourth applicant's complaint that she was unable to cast her vote for the applicant party, was her right to vote excessively restricted in breach of Article 3 of Protocol No. 1? In particular, how many political parties competed in the election to the Karelian legislature and what political views they represented? (compare with *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, §§ 75-81, 11 January 2007).