...

THE FACTS

The applicant, Mr Igor Vladimirovich Artyomov, is a Russian national who was born in 1962 and lives in Vladimir.

A. The circumstances of the case

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

The applicant has been the leader of the public movement Russian All-Nation Union (*Русский общенациональный союз – Russkiy obshchenatsionalniy soyuz*) since its inception in the early 1990s.

On 7 December 1998 the Ministry of Justice registered the movement as a public association.

On 23 December 2001, at the sixth general assembly of the movement, members decided to reorganise the movement into a political party bearing the same name. An application for the party's registration was lodged with the Ministry of Justice.

By a letter of 28 June 2002, the Ministry of Justice refused the application on a number of grounds. The first ground for the refusal was that the adjective "Russian" (*русский – russkiy*) in the name of the party referred to an ethnic group, whereas section 9(3) of the Political Parties Act prohibited the establishment of political parties based on professional, racial, ethnic or religious affiliations. The applicant contested that particular ground for the refusal before a court of general jurisdiction.

By a judgment of 24 January 2003, the Taganskiy District Court of Moscow dismissed the applicant's complaint after hearing evidence from several experts called by the defence. The experts concurred that the meaning of the word *russkiy* was ambiguous, since it could be understood either as denoting anything related to Russia – and in this sense its meaning was closer to the word *rossiyskiy*[1] (*российский*) – or as referring to one particular ethnic group, the Russians. A representative of the Ministry of Justice submitted to the court that the word "all-nation" (*общенациональный – obshchenatsionalniy*) in the name of the applicant's party also had two meanings, the first being "an association of people

1. Unlike *russkiy*, the adjective *rossiyskiy* derives directly from the name of the country, *Rossiya* (Russia), and does not refer to any particular ethnic group.

belonging to different nations" and the second "an association of the people of one nation". However, since it was preceded by the word *russkiy*, these two adjectives had to be read together and understood as "an association of the nation of [ethnic] Russians". The District Court accepted that interpretation, which was not disputed by the applicant, and found that the applicant's party was founded on the basis of ethnic affiliation. This amounted to a breach of section 9(3) of the Political Parties Act, even though the party's articles of association and programme did not indicate protection of the interests of Russians as its main objective.

On 18 September 2003 the Moscow City Court upheld the judgment on appeal, endorsing the reasoning of the District Court.

The applicant challenged section 9(3) of the Political Parties Act before the Constitutional Court, alleging that it was incompatible with the Russian Constitution. The Constitutional Court joined his complaint with those of the Orthodox Party of Russia and Mr Savin.

On 15 December 2004 the Constitutional Court issued Ruling no. 18-P. It noted at the outset the special role of political parties as the only form of public association vested with the right to nominate candidates in elections to State bodies. According to the Political Parties Act, membership of political parties is individual and voluntary and may not be restricted on account of professional, social, racial, ethnic or religious affiliation, gender, social origin, property or place of residence. The court concluded that the right of individuals of any ethnicity or religion to become members of a party whose objectives and goals they shared could not be restricted. It further found as follows.

> "The principles of pluralist democracy, a multi-party system and a secular State that form the constitutional basis of the Russian Federation – in so far as they apply to legal regulation of the establishment and functioning of political parties, including conditions for their registration – may not be interpreted or implemented without regard to the particular features of Russia's historic development, the ethnic and religious structure of Russian society and the specific character of interaction between the State, political power, ethnic groups and religious denominations.
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> ... The principle of a secular State cannot be applied in the Russian Federation in the same way as in those countries that have a single-faith and single-nation social structure and boast a well-developed tradition of religious tolerance and pluralism. In particular, some of those countries have permitted the establishment of political parties based on Christian democratic ideology; in these cases the term 'Christian' has moved beyond denominational confines and designates affinity with the European system of values and culture.
>
> In multinational and multi-denominational Russia, owing to the specific *modus operandi* of leading faiths ..., their influence on public life and their invocation in political rhetoric (which has historically been linked to the ethnic question), public consciousness is more likely to identify the terms 'Christian', 'Orthodox', 'Muslim', 'Russian', 'Tartar', etc. with specific denominations or ethnic groups, rather than with a system of values common to the Russian [*rossiyskiy*] people in its entirety.

Furthermore, contemporary Russian society, including political parties and religious associations, has not yet acquired substantial experience of democratic coexistence. In these circumstances, parties based on ethnic or religious affiliation would inevitably strive to assert principally the rights of their respective ethnic and religious communities. Competition among parties based on ethnic or religious affiliation ... could lead to stratification of the multinational people of Russia instead of the consolidation of society, to the opposition of ethnic and religious values, exaltation of some and belittlement of others and, ultimately, to attributing predominant importance not to those values which are common to the entire nation but to those restricted to one ethnic ideology or religion, a result which would be contrary to the Russian Constitution (Articles 13 and 14).

The establishment of parties based on religious affiliation would open the door to the politicisation of religion and religious associations, political fundamentalism and the clericalisation of parties ... The establishment of parties based on ethnic affiliation could lead to a situation where representatives of parties advocating the interests of large ethnic groups – to the detriment of those of small ethnic groups – would predominate in elected governing bodies; a situation which would violate the principle of equal rights irrespective of ethnic origin, established in the Russian Constitution (Articles 6 § 2, 13 § 4 and 19 § 2).

Thus, the constitutional principle of a democratic and secular State, as applied in the particular social and historic context existing in the Russian Federation as a multinational and multi-denominational country, does not allow political parties to be established on the basis of ethnic or religious affiliation.

For those reasons, in the face of unrelenting inter-ethnic and interdenominational tension and the ever-growing political demands of modern-day religious fundamentalism, when any religion-based distinction, once brought into the sphere of politics (and therefore, into the struggle for power), may acquire an ethnic dimension and lead to a division of society along ethnic and religious lines (a division, in particular, into Slavic-Christian and Turko-Muslim elements), the introduction into the Political Parties Act of a ban on the establishment of political parties based on ethnic or religious affiliation is compatible with the authentic meaning of Articles 13 and 14 of the Russian Constitution read together with Articles 19 §§ 1 and 2, 28 and 29 ..."

Finally, the Constitutional Court noted that it was not competent to determine whether in a particular case a party had been established on the basis of national or religious affiliation and whether a party's name reflected its aims, namely the promotion of ethnic or religious interests, these matters coming within the jurisdiction of the ordinary courts.

B. Relevant domestic law

The Russian Constitution guarantees plurality of ideologies and political parties and prohibits the activity of public associations which incite social, racial, ethnic or religious discord (Article 13). Article 14 guarantees the secularity of the Russian State and equality of religions. Article 19 establishes the principle of equality before the courts and the law. Article 28 guarantees the right to freedom of conscience and religion. Article 29

guarantees the right to freedom of thought and expression and prohibits the promotion of social, racial, ethnic, religious or linguistic superiority.

The Political Parties Act (Federal Law no. 95-FZ of 11 July 2001) provides as follows:

> **Section 9 – Restrictions on the establishment and activity of political parties**
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> "(3) The establishment of political parties based on professional, racial, ethnic or religious affiliation is not allowed.
>
> The terms 'professional, racial, ethnic or religious affiliation' shall be understood in the present Federal Law as inclusion in the articles of association and programme of the political party of the aims of protection of professional, racial, ethnic or religious interests, as well as reference to those aims in the name of the political party."

COMPLAINT

Relying on Article 11 of the Convention and Protocol No. 12, the applicant complained that the domestic legislation precluded groups based on ethnic or religious affiliation from identifying themselves voluntarily as such and from participating in the political life of the country.

THE LAW

The applicant complained of the domestic authorities' refusal to grant registration to the political party Russian All-Nation Union. He relied, firstly, 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. ..."

The Court observes at the outset that the domestic authorities' decision directly affected the political party into which the public movement of the same name had decided to reorganise itself, rather than the applicant himself as an individual. It had no incidence on the autonomous existence or activity of that public movement or on the applicant's leadership position within it (contrast *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 63-65, ECHR 2000-XI). As the public movement pursuing essentially the same objectives has continued its activity, it does not appear that the refusal to

register the political party deprived the applicant of a possibility of jointly or individually pursuing the aims which the movement and party had harboured and thus of exercising the right in question (contrast *Sidiropoulos and Others v. Greece*, 10 July 1998, § 31, *Reports of Judgments and Decisions* 1998-IV). For the purposes of the following analysis, the Court will nevertheless assume that the refusal to register the political party amounted to an interference with the applicant's right to freedom of association.

The interference was based on section 9(3) of the Political Parties Act, which introduced a prohibition on the establishment of political parties based, in particular, on religious or ethnic affiliation. The exact import of the term "based on ... ethnic or religious affiliation" was clarified in the same legal provision and also extensively examined and interpreted by the domestic courts in the applicant's case. The applicant did not dispute that that provision was formulated with sufficient precision enabling him to foresee the consequences which a given action might entail and to regulate his conduct accordingly (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 57, ECHR 2003-II, with further references). The Court is therefore satisfied that the interference was "prescribed by law".

The Court further notes that the Russian Constitutional Court founded its decision on the conviction that the establishment of parties based on ethnic or religious affiliation would imperil the peaceful co-existence of nations and religions in the Russian Federation and would undermine the principles of a secular State and equality before the law. Having regard to the special features of the social and political situation prevailing in contemporary Russia as they were outlined by the Constitutional Court, the Court accepts that the interference pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others.

It remains to be determined whether the interference was "necessary in a democratic society". The Court reiterates that freedom of association is 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. This follows both from paragraph 2 of Article 11 and from the State's positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within its jurisdiction (see *Refah Partisi (the Welfare Party) and Others*, cited above, §§ 96-103). Nonetheless, this 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. It is in the first place for the national authorities to assess whether there is a "pressing social need" to impose a given restriction in the general interest. While the

Convention leaves to those authorities a margin of appreciation in this connection, their assessment is subject to supervision by the Court. Its task, however, is not to substitute its own view for that of the national authorities, which are better placed to decide both on legislative policy and measures of implementation, but to review under Article 11 the decisions they delivered in the exercise of their discretion. 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" (see *Sidiropoulos*, cited above, § 40; *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 94-96, ECHR 2004-I, and *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, §§ 46-47, *Reports* 1998-I).

The Court will first consider whether there could be said to have been a "pressing social need" to take the impugned measure in order to achieve the legitimate aims pursued. In this context it reiterates that pluralism, tolerance and broadmindedness are amongst the hallmarks of a "democratic society". 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*, cited above, § 90, with further references).

The applicant did not contest the finding by the domestic courts of general jurisdiction that the name of his political party advocated the promotion of the interests of a particular ethnic group, the Russians. The Court takes note of the applicant's agreement on the accuracy of that finding.

In deciding on the applicant's complaint, the Russian Constitutional Court has noted the special role of Russian political parties as the only actors in the political process capable of nominating candidates for election at all levels. Having regard to the importance of that role, the legislature banned discrimination in access to the membership of political parties, including, specifically, discrimination on the ground of race, religion and ethnic origin. When considering the legal consequences of registering political parties openly declaring their affiliation with a certain ethnic group or religion, the Constitutional Court evidently proceeded from the assumption that the establishment of such parties would be incompatible with the non-discrimination clause of the Political Parties Act. Indeed, it is hardly conceivable that a party standing for the furtherance of the interests of one ethnic group or religious denomination would be able to ensure the fair and proper representation of members of other ethnic groups or adherents of other faiths. Thus, the impugned measure, read together with the non-discrimination clause, served to implement the guarantee of equality enshrined in Article 19 of the Russian Constitution, as well as to ensure the fair treatment of minorities in the political process.

The Court, for its part, observes that discrimination on account of one's ethnic origin or religion is a form of racial discrimination, which is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction (see *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-XII, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII). The Court accordingly accepts that the impugned measure was adopted in pursuance of a "pressing social need".

It remains for the Court to ascertain whether the refusal to register the political party bearing the name Russian All-Nation Union was proportionate to the legitimate aims pursued.

The Court, firstly, distinguishes the present case from the cases in which the refusal of registration prevented an association of citizens from even commencing its activities (see *Sidiropoulos*, § 46; *Gorzelik*, § 105; and *United Communist Party of Turkey and Others*, § 51, all cited above). In the instant case the legal status or activities of the public movement Russian All-Nation Union, which took the decision to reorganise itself into a political party under the same name, have not been affected by the refusal to register that party. It has lawfully existed since 1998 and its activities or membership have not been restricted in any way.

Secondly, the Court notes that the prohibition against explicit ethnic or religious affiliation was of a limited remit: it applied solely to political parties but not to any other type of public associations. As the Court has had an opportunity to observe, political parties are a form of association essential to the proper functioning of democracy, but it is only natural that the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see *United Communist Party of Turkey and Others*, § 25, and *Gorzelik*, § 92, both cited above). As noted above, the applicant's ability to lead a public association – whether based on ethnic affiliation as in the instant case, or otherwise – in the pursuit of that association's objectives has been unhampered.

The Court concludes, therefore, that it was not the applicant's freedom of association *per se* that was restricted by the State (see *Gorzelik*, cited above, § 106). What has been affected, though, is the ability of the association under his leadership to nominate candidates in elections. Had the political party Russian All-Nation Union obtained registration, it would have become eligible to stand for election, including election to national Parliament. In this connection, the Court reiterates that, given the special role of political parties, States have considerable latitude to establish the criteria for participation in elections, which vary in accordance with the historical and political factors peculiar to each State (see *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II, and *Gitonas and Others v. Greece*, 1 July 1997, § 39, *Reports* 1997-IV). The Russian Constitutional Court has

expounded on the reasons which led it to conclude that in modern-day Russia it would be perilous to foster electoral competition between political parties based on ethnic or religious affiliation. Regard being had to the principle of respect for national specificity in electoral matters, the Court does not find that these reasons were arbitrary or unreasonable.

It follows that the authorities did not prevent the applicant from forming an association to express and promote the specific aims embraced by it, but from creating a legal entity which, following its registration, would have become entitled to stand for election. Given that the national authorities were entitled to consider that the contested interference met a "pressing social need" and given that the interference was not disproportionate to the legitimate aims pursued, the refusal to register the applicant's political party can be regarded as having been "necessary in a democratic society" within the meaning of Article 11 § 2 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

Lastly, in so far as the applicant sought to rely on Protocol No. 12, the Court notes that the Russian Federation has not ratified that instrument and, accordingly, is not bound by its provisions.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.