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La Corte EDU sul rifiuto di registrare un'associazione pubblica per i diritti umani
(CEDU, sez. III, sent. 28 novembre 2023, ric. n. 10299/15)

Il caso deciso dalla Corte EDU verte sul rifiuto opposto dalle autorità russe di registrare un'associazione pubblica per i diritti umani, avente lo scopo di fornire assistenza legale ai detenuti. I ricorrenti hanno lamentato la violazione dell'art. 11 della Convenzione e, nella specie, del loro diritto alla libertà di associazione. In generale, la Corte ha precisato che sebbene tale disposizione faccia espresso riferimento solo al diritto di costituire sindacati, la costituzione di persone giuridiche in un ambito di interesse reciproco è uno degli aspetti più importanti della libertà di associazione, senza il quale tale diritto sarebbe privo di qualsiasi significato. A tal fine, gli Stati hanno il diritto – nel rispetto del principio di proporzionalità – di esigere dalle organizzazioni che richiedono la registrazione il rispetto di specifiche formalità. Sicché, proprio con riferimento a tale ultimo profilo, i Giudici di Strasburgo hanno ritenuto che le presunte carenze formali eccepite dalle autorità russe non costituissero un motivo sufficiente per negare la registrazione dell'associazione e, per conseguenza, l'ingerenza nella libertà di associazione dei ricorrenti si è rivelata non necessaria in una società democratica, con conseguente violazione dell'articolo 11 della Convenzione.

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

THIRD SECTION

CASE OF XXX v. RUSSIA (No. 2)
(Application no. 10299/15)

JUDGMENT
STRASBOURG
28 November 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Russia (no. 2),

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Pere Pastor Vilanova, *President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,
Having regard to:
the application (no. 10299/15) 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 individuals listed in the Appendix ("the applicants"), on the various dates indicated;
the decision to give notice to the Russian Government ("the Government") of the complaints concerning the refusal to register the applicants' organisation and the lack of effective remedies in this respect;
the parties' observations;
the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);
Having deliberated in private on 31 October 2023,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the refusal of the Russian authorities to register the applicants' human rights organisation "The Zone of Law" (*Зона права*).

THE FACTS

2. The applicants' names and dates of birth are indicated in the Appendix. They were represented by Mr I. Sharapov, a lawyer practising in Moscow.
3. The Government were initially represented by Mr M. Galperin, the former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.
4. The facts of the case may be summarised as follows.
5. The applicants – two members of a punk band, Pussy Riot, and a retired official from the Russian Federal Prison Service – attempted to establish a public association, "The Zone of Law", with the object of providing legal assistance to prisoners.

I.REFUSALS TO REGISTER THE APPLICANTS' ORGANISATION

6. On 25 December 2013 the applicants submitted the documents for registration of their organisation to the Justice Department of the Mordovia Republic ("the Justice Department").
7. On 22 January 2014 the Justice Department dismissed their application for registration on the following grounds:
(1) the founders had failed to indicate in the articles of association that the organisation could carry out profit-making activities if those activities complied with its goals;
(2) the articles of association did not provide that the organisation could carry out activities allowed by Russian law in pursuit of its goals;
(3) the articles of association contained a restriction on the membership of entities, in breach of the law on non-profit organisations;
(4) the articles of association contained contradictory provisions on admission to membership: under point 4.3 a simple majority of votes of the Board was required, while under point 6.2 it was necessary to obtain not less than two-thirds of the vote;
(5) the articles of association provided that the President of the Board was elected for one year, whereas the constituent assembly had elected the President for three years;
(6) the wrong patronymic had been given for one of the founders;
(7) no number of the possible ways of submitting the documents [цифровое значение способа выдачи (направления) документов] confirming the entry in the Unified State Register of Legal Entities or the decision to deny State registration was given in the application form; and
(8) the activity code under the Russian Classification of Economic Activities was incorrect.
8. On 5 March 2014 the applicants submitted a new application for registration, which was dismissed by the Justice Department on 3 April 2014 for the following reasons:
(1) the minutes of the constituent assembly contained the name of a person who had not participated in the assembly;
(2) a space was missing between two words in the application form;
(3) the applicants had filled in certain fields on the application form with the address of one of the founders, whereas the registration rules required those fields to be left blank;
(4) a document in which the identity of one of the founders was confirmed by a notary contained the notary's seal but not his signature;
(5) the applicants had indicated "the shortened name" of the organisation instead of "the abbreviated name";
(6) the articles of association stated that the president of the board was to be elected for one year, whereas the minutes of the constituent assembly showed that the president of the board had been elected for one year, the end of his or her term of office had not been determined; and
(7) the articles of association stated that the organisation was obliged to inform the registration body annually that it would be continuing its activities, whereas pursuant to the Public Associations Act, an association was required to provide that information to the body which had issued the decision on State registration of the public association in question.
9. On 23 April 2014, after some corrections had been made, the applicants submitted another application for registration.
10. On 20 May 2014 the Justice Department issued a new refusal to register the organisation, citing the applicants' failure to choose an appropriate name for it, and in particular, the absence of any

reference in the proposed name to the nature of its activities. The registration authority also mentioned that the articles of association did not meet the legal requirements, because the list of the organisation's activities was not exhaustive and certain internal procedures had not been properly described. The articles of association did not provide for the procedure whereby the general meeting was to take decisions on issues within its exclusive power, nor did it contain provisions specifying the powers of the management bodies, the procedure for their establishment, decision-making and representation, or the termination of their duties. Finally, the articles of association provided that the organisation's activities could be terminated by way of reorganisation which did not always result in termination of the organisation's activities.

11. In July 2014 the applicants challenged the refusal to register their organisation in the Kuntsevskiy District Court in Moscow. They alleged a violation of their right to form an association. They also argued that the reasons given for the refusal to register their organisation had been based on an incorrect interpretation and application of the relevant law and the European Convention on Human Rights.

12. On 1 October 2014 the Kuntsevskiy District Court dismissed the applicants' claim, holding that "the Moscow Justice Department correctly refused to register the public association because its articles of association were not in compliance with the existing legal rules". By way of reasoning the District Court simply stated that the words used to describe the organisation's name did not have any reference to the activities which it intended to carry out and that the articles of association contained an open-ended list of activities without setting out their precise scope. It further stated that the articles of association did not provide for the procedure whereby the general meeting was to take decisions on issues within its exclusive power and that they did not determine the powers of the organisation's management bodies, their terms of office, the procedure for their establishment or decision-making and representation. As regards the stipulation in the articles of association that the organisation's activities can be terminated by way of reorganisation or dissolution, the District Court held that this violated Article 57 of the Civil Code, according to which reorganisation did not always result in the termination of an organisation's activities.

13. The applicants appealed unsuccessfully against that decision. The Moscow City Court upheld the reasoning of the lower court on 8 December 2014.

II. ARTICLES OF ASSOCIATION OF THE APPLICANTS' ORGANISATION

14. The relevant parts of the articles of association of the applicants' organisation, approved on 12 April 2014, read as follows:

1. General provisions

"1.3. The Organisation's activities shall be subject to the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Federal Laws on Non-Profit Organisations and Public Associations, other laws and legal instruments of the Russian Federation and the City of Moscow, and the present Articles of Association, as well as to generally recognised international principles, norms and standards."

2. Objectives of the Organisation

"2.1. The Organisation's objectives shall be driven by its activities in the field of protection of constitutional rights and freedoms ... The main objectives shall include the establishment of civil society in Moscow; improving the level of legal awareness; creating a social mechanism allowing

citizens to exercise their rights and freedoms; and strengthening dialogue with other human rights organisations in various domains of social life.

2.2. In order to pursue its statutory objectives, the Organisation may carry out any activities allowed by the current law of the Russian Federation and the City of Moscow in compliance with the Organisation's objectives as provided for by its constitutional documents subject to restrictions as specified by law with regard to specific types of activities."

3. Rights and obligations of the Organisation

"3.1. Within the scope of its activities under these Articles of Association, the Organisation shall have the right to:

3.1.1. Collect, acquire, store and disseminate information about violations of human rights and fundamental freedoms ...

3.1.3. Represent and defend the rights and interests of ... anybody asking for help in dealing with State authorities, municipalities, courts, international entities ...

3.1.14. Organise human rights events ...".

7. Management bodies

"7.1. The General Meeting of Members of the Organisation shall be the highest management body of the Organisation ...

7.4. The General Meeting of Members of the Organisation shall be validly convened if more than half of its members are present.

7.5. Decisions shall be taken by qualified majority of not less than two-thirds of votes cast by the members present at the meeting ...

7.7. The General Meeting shall have exclusive power in respect of the following issues:

7.7.1. Amendment of the Articles of Association; ...

7.7.7. Participation in other organisations;

7.7.8. Reorganisation and dissolution of the Organisation;

7.7.9. Approval of the accounts on dissolution; ...

7.9. Decisions of the General Meeting of Members of the Organisation on the issues referred to in sub-paragraphs 7.7.1, 7.7.7, 7.7.8 and 7.7.9 of paragraph 7.7 of the Articles of Association shall be adopted unanimously ...

7.15. The Board, which shall be elected from among the Organisation's members for three years, shall be the permanent executive body of the Organisation...

7.19. The Board of the Organisation shall adopt decisions by the vote of a majority of the members present at the meeting.

7.20. The Board of the Organisation shall have the power to:

7.20.1. Call ordinary and extraordinary General Meetings of Members; draw up draft agendas; ...

7.20.2. Admit and exclude members of the Organisation ...

7.27. The President of the Board and deputy presidents, elected by the General Meeting of Members of the Organisation for a term of one year, shall manage the day-to-day operations of the Organisation and its members during the period between the General Meetings of Members and the Board.

7.28. The President of the Board shall carry out general and operational management, shall be accountable to the General Meeting of Members and shall ensure the implementation of its decisions ...

7.29. The President of the Board shall, without a power of attorney, act on behalf of the Organisation and shall represent its interests, dispose of its property and money, make contracts, including employment agreements, grant powers of attorney, open bank accounts ...

7.30. The President of the Board or one of his or her deputies in his or her absence shall decide on all issues falling outside the exclusive powers of the General Meeting of Members and the Board ..."

10. Termination of the Organisation's activity

"10.1. The Organisation's activities shall be terminated upon reorganisation or dissolution.

10.2. The reorganisation of the Organisation shall be conducted according to the law of the Russian Federation ..."

RELEVANT LEGAL FRAMEWORK

15. Under Article 30 of the Constitution of Russia, Russian citizens may freely create associations for the protection of their common interests and achievement of common goals.

16. The provisions of the Constitution were set out in further detail in the Civil Code, the Public Associations Act (No. 82-FZ of 19 May 1995), the Non-Profit Organisations Act (No. FZ-7 of 12 January 1996), the State Registration of Legal Entities and Individual Entrepreneurs Act (No. 129-FZ of 8 August 2001), and the Administrative Regulations on the Ministry of Justice's Services with regard to the State Registration of Non-Profit Organisations, approved under the Ministry of Justice's Decree No. 455 of 30 December 2011. In accordance with those instruments, a public association may be registered if its documents comply with Russian law, all the required registration documents are filed, the formal requirements for documents are fulfilled, the organisation's name is in accordance with the law, no other organisation with the same name has already been registered by the Ministry of Justice, and the data provided are accurate and consistent. If the application for registration is refused, the applicant may apply again or challenge the refusal in the courts.

17. Article 54 of the Civil Code provides that the name of a non-profit organisation must contain a reference to the nature of its activities.

18. Section 23.1(1.1) of the Non-Profit Organisations Act provides that if the documents submitted for State registration are not in compliance with the formal requirements, the registration authority may suspend the registration procedure until the defects found are remedied, but for not more than three months.

19. Section 24(1) of the Non-Profit Organisations Act provides that a non-profit organisation may carry out one or more activities permitted by Russian law in line with its objectives as specified in its founding documents.

20. Under section 28(1) of the Non-Profit Organisations Act, the structure, powers, procedure for establishment and termination of duties of the management bodies of a non-profit organisation, as well as their procedures for decision-making and representation, are governed by the organisation's founding documents in accordance with federal law.

21. Section 29 (3) of the Non-Profit Organisations Act contains a list of the issues that fall within the competence of the highest management body of a non-profit organisation.

THE LAW

I. JURISDICTION

22. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 46, 6 June 2023).

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

23. The applicants complained under Article 11 of the Convention about the refusal of the authorities to register their organisation. Article 11 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

24. The Government submitted that the applicants had failed to lodge a cassation appeal and a supervisory review application with the Moscow City Court and the Supreme Court of Russia respectively. They had therefore not exhausted domestic remedies in respect of their complaint under Article 11.

25. The applicants argued that the Court had held in May 2015 that a cassation appeal under the Code of Civil Procedure was an effective remedy in *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 93-96, 12 May 2015). However, they had lodged their application with the Court on 19 February 2015, that is, before the *Abramyan and Others* decision had been delivered.

26. The Court has already held that an applicant does not have to use a domestic remedy which was recognised as effective after his or her application had been lodged with the Court. In the present case, the application was lodged with the Court on 19 February 2015, that is, before the reform of the cassation appeal procedure had been found to be effective in *Abramyan and Others* (cited above). Moreover, the Government did not assert that at the time of the events under consideration any relevant domestic case-law had existed that would have enabled the applicants to realise that the new remedy met the requirements of Article 35 § 1 of the Convention (see *Kocherov and Sergeyeva v. Russia*, no. 16899/13, § 68, 29 March 2016).

27. As regards the supervisory review procedure, under the Court's well-established case-law, when the availability of remedies depends on the exercise of discretion by public officials and they are, as a consequence, not directly accessible to the applicants, they cannot be considered to be

effective remedies for the purposes of Article 35 § 1 of the Convention (see *Kucherenko v. Ukraine* (dec.), no. 41974/98, 4 May 1999). The Court does not see any reason to reach a different conclusion in the present case (see *Abramyan and Others*, cited above, § 102).

28. Accordingly, the Court dismisses the Government's objection as to the alleged non-exhaustion of domestic remedies.

29. This complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

30. The applicants submitted that Russian law did not contain any clear provisions on the names of organisations. Other organisations with similar names, especially those including the words "human rights", had been routinely registered by the Ministry of Justice. The Ministry had also not explained how the organisation's activities should be described in the articles of association. The applicants submitted documentary evidence showing that organisations with names such as the Committee for Human Rights, the Interregional Human Rights Public Association "Resistance" and the Youth Human Rights Group had been registered. They further noted that the interference in their case had not pursued any legitimate aim. Lastly, the Government, in their opinion, had failed to indicate any pressing social need for refusing the registration which would have been required given the clearly lawful nature of the organisation's intended activities. The decision to refuse registration had not been proportionate, as all the defects found could have been corrected and the registration could have been suspended while that was being done. Some of the arguments for refusal were inconsistent with the facts, in particular the references to the omission from the documents of the decision-making procedure of the general meeting of members and of the powers of the management bodies, all of which were in fact clearly set out in the articles of association.

31. The Government submitted that numerous provisions of the articles of association as presented for registration contravened the existing law. They further reiterated the reasoning provided by the Justice Department for refusing the registration. They also stated that the applicants had failed to support their arguments with evidence in court.

2. The Court's assessment

(a) General principles

32. The right to form an association is an inherent part of the right set forth in Article 11, even if that Article only makes express reference to the right to form trade unions (see *Sidiropoulos and Others v. Greece*, 10 July 1998, § 40, *Reports of Judgments and Decisions* 1998-IV).

33. The ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 88, ECHR 2004-I, and *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11 and 8 others, § 78, ECHR 2014 (extracts)).

34. The organisational autonomy of associations constitutes an important aspect of their freedom of association protected by Article 11 (see *Lovrić v. Croatia*, no. 38458/15, § 71, 4 April 2017).

35. Freedom of association does not preclude the States from laying down in their legislation rules and requirements on the governance and management of associations and from satisfying themselves that these rules and requirements are observed by incorporated entities (see, *mutatis mutandis*, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 72, ECHR 2009).

36. States are entitled – subject to the condition of proportionality – to require organisations seeking official registration to comply with reasonable legal formalities (see *Hayvan Yetiştiricileri Sendikası v. Turkey* (dec.), no. 27798/08, 11 January 2011; *Republican Party of Russia v. Russia*, no. 12976/07, § 87, 12 April 2011; *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria* (no. 2), nos. 41561/07 and 20972/08, § 83, 18 October 2011; and *Jafarov and Others v. Azerbaijan*, no. 27309/14, § 69, 25 July 2019). The Court's power to review compliance with domestic law is limited, and it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, since the national authorities are, in the nature of things, particularly qualified to settle any issues arising in this connection. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

37. The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, because 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. Any interference must correspond to a "pressing social need"; thus, the notion of "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik and Others*, cited above, §§ 94-95).

(b) Application of the general principles to the present case

(i) Whether there was an interference

38. A refusal by the authorities to register an applicants' organisation amounts to an interference by the authorities with the exercise of that applicants' right to freedom of association (see *Sidiropoulos and Others*, cited above, § 31, and *Metodiev and Others v. Bulgaria*, no. 58088/08, § 34, 15 June 2017).

39. That interference will not be justified under the terms of Article 11 unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of that Article and was "necessary in a democratic society" for achieving those aims.

(ii) Whether the interference was lawful and pursued a legitimate aim

40. The Russian authorities, when taking the decision to refuse to register the applicants' organisation, relied on the Public Associations Act and other legislation in force. Recalling that it is primarily for the national courts to interpret and apply domestic law, the Court is prepared to accept that the interference in question was prescribed by law. In so far as the applicants challenged the soundness of the courts' assessment of the relevant facts and the quality of their reasoning, these issues fall to be examined in the context of the question whether or not the interference was "necessary in a democratic society" (see *Savenko and Others v. Russia*, no. 13918/06, § 90, 14 September 2021).

41. Having regard to the manner in which the authorities treated the requests to register the applicants' organisation in the present case, it is open to doubt whether the repeated refusals of

registration aimed at ensuring compliance with the law and therefore at "prevention of disorder" or pursued any of the other aims that could justify an interference under Article 11 of the Convention (see *Election Monitoring Centre and Others v. Azerbaijan*, no. 64733/09, § 58, 2 December 2021). Nevertheless, the Court will proceed on the assumption that the impugned interference pursued the abovementioned aim.

(iii) Whether the interference was "necessary in a democratic society"

42. The applicants' organisation was not registered as a legal entity because of the failure to bring the registration documents into conformity with the existing legislation on non-profit organisations.

43. Therefore, in the present case, the Court must determine whether the legal formalities with which the applicants had to comply were reasonable and whether the authorities' decision to refuse the registration was proportionate to the legitimate aim of the interference.

44. One of the grounds for refusing registration was the absence of any reference in the organisation's name to the nature of its activities. However, the articles of association submitted for registration clearly designated the organisation as a human rights public association, as indicated by its full name "Moscow Regional Human Rights Public Association 'The Zone of Law'" (see paragraph 12 above). The existing law required that the name of a non-profit organisation contain a reference to the nature of its activities, but did not otherwise lay down any guidelines as to the way an organisation should be named in its founding documents. It, therefore, seems that there was no apparent legal basis for the requirement to provide a more detailed description (see paragraph 17 above). If the applicants' description of the organisation's name was not deemed sufficient it was, further, the authorities' task to elucidate the applicable legal requirements and give the applicants clear instructions as to how to prepare the documents in order to be able to have the organisation registered (see *Tsonev v. Bulgaria*, no. 45963/99, § 55, 13 April 2006). This, however, was not done. Moreover, the Government's submissions contradict the position previously taken by the domestic authorities when considering requests for registration by organisations with similar names (see paragraph 30 above). Accordingly, the Court considers that this ground for refusing registration has not been substantiated.

45. The registration authorities and the courts also referred to the fact that the scope of the organisation's activity had not been specified, in breach of section 24 of the Non-Profit Organisations Act. However, those provisions do not contain any explicit obligation to include an exhaustive list of activities in an organisation's constitutional documents, as was required by the domestic authorities in this case (see paragraph 19 above). Furthermore, the articles of association in paragraph 3.1 contain references to various activities that the organisation may carry out (see paragraph 14 above). Again, the authorities did not provide any explanation for their interpretation of the above-mentioned legal provisions and the Court considers that this ground for refusing registration has not been substantiated.

46. In the present case, the organisation's articles of association, as submitted to the Justice Department, contained provisions about the procedure whereby the general meeting was to take decisions on issues within its exclusive power, as well as the powers of its management bodies, the procedure for their establishment, decision-making and representation and the termination of their duties (see paragraph 14 above). Accordingly, the allegation that the registration documents

submitted to the Justice Department did not include the above information is not supported by the facts. The Court has not been supplied with examples of how the domestic courts usually operate when dealing with applications for the registration of non-profit-making associations or other legal entities, which could indicate with reasonable certainty the exact import of the formal conditions for registration and the degree of precision required in the drafting of the registration documents, which is a matter to be determined by domestic law and practice. However, in view of the apparent lack of more detailed guidelines in this respect, it is of the opinion that the authorities' findings concerning the above alleged deficiencies in the documents did not constitute in the circumstances a sufficient reason to deny registration (see *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, §§ 65-69, 19 January 2006).

47. Lastly, the domestic authorities alleged that the organisation's articles of association provided for its termination upon reorganisation whereas under the law in force, reorganisation did not always result in the termination of an organisation's activities. The Court notes that the articles of association provided that the reorganisation of the organisation had to be conducted according to the law of the Russian Federation. The Court, therefore, does not see any problem with the provisions of the articles of association on reorganisation and termination of activities. In any case, even assuming that this allegation was appropriate and relevant, it is unclear why such an omission could not have been remedied without dismissal of the request for registration.

48. The applicants submitted several requests for registration and each time they received a response from the Justice Department, which did not give a clear explanation or an opportunity to correct the defects. In the present case the refusal of registration could not therefore be easily remedied through a fresh application. The Court considers that obliging the applicants to repeat the registration procedure imposed too great a burden on them, especially as the law allowed them to remedy any irregularities in the first application for registration (see paragraph 18 above, and *Bozgan v. Romania*, no. 35097/02, § 29, 11 October 2007). Although the refusal of registration has more limited consequences than dissolution, in the circumstances of the present case its impact on the applicants was radical: it went so far as to prevent the association from even commencing any activity (see *Zhechev v. Bulgaria*, no. 57045/00, § 58, 21 June 2007, and *Bozgan*, cited above, § 27).

49. Although the Justice Department was vested with authority to refuse the registration, it was for the domestic courts to decide whether the refusal was justified. They were therefore required to provide relevant and sufficient reasons for their decisions. In the present case, that requirement first and foremost obliged the domestic courts to verify whether the allegations made against the organisation by the Justice Department were well-founded. This, however, was not done in the present case. It appears that the courts merely reproduced the Justice Department's findings in a concise manner without providing any legal analysis of the grounds for refusal to grant registration. Having heard the parties, the courts relied on the findings of the officials of the Justice Department and accepted them at face value as constituting true facts, without an independent judicial inquiry. Specifically, there is no indication in the domestic judgments that the courts ever attempted to evaluate the merit of the Justice Department's factual findings by independently examining the organisation's articles of association.

50. In the light of the foregoing, the Court concludes that the reasons given by the respondent State for refusing to register the applicants' organisation were not relevant and sufficient. That

being so, the interference with the applicants' freedom of association cannot be deemed necessary in a democratic society.

51. It follows that there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

52. The applicants complained that they did not have any effective remedy for the violation of their right to freedom of association. In the circumstances of the present case the Court considers that the treatment of which the applicants claimed to be victims has been sufficiently addressed in the above assessment that led to the finding of a violation of Article 11. It follows that there is no need for a separate examination of the same facts from the standpoint of Article 13 of the Convention (see *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, §§ 41-42, ECHR 2006-II).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicants asked the Court to make an award in respect of non-pecuniary damage in an amount to be decided at its discretion.

55. The Government submitted that the applicants had failed to formulate their claim and therefore no sum should be awarded in this respect.

56. The Court awards each applicant 7,500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicants also claimed EUR 1,920 for the legal costs and expenses incurred before the Court.

58. The Government submitted that the agreement on legal services was void and therefore the applicants did have any legal liability to pay the fees to their representative before the Court.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,920 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicants' complaints as they relate to facts that took place before 16 September 2022;
2. *Declares* the complaint under Article 11 of the Convention admissible;
3. *Holds* that there has been a violation of Article 11 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *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 amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, to each of the applicants, in respect of non-pecuniary damage;
(ii) EUR 1,920 (one thousand nine hundred and twenty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
(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.
Done in English, and notified in writing on 28 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar
Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pavli is annexed to this judgment.
P.P.V.
O.C.

CONCURRING OPINION OF JUDGE PAVLI

1. This case concerns the repeated and dogged refusals by the administrative authorities to register a new association, founded by the applicants. The latter include two members of a well-known punk band who have regularly found themselves in trouble with the Russian authorities due to their political activism.
2. In view of the authorities' Byzantine treatment of the applicants' straightforward request for registration, on increasingly spurious grounds, the Chamber found that "it is open to doubt whether the repeated refusals" pursued any of the aims enumerated in the second paragraph of Article 11 of the Convention. That notwithstanding, and without further explanation, the Chamber majority chose to "proceed on the assumption that the impugned interference" pursued the aim of "prevention of disorder" (see paragraph 41 of the judgment).
3. I am unable to proceed on such an assumption. The respondent Government carries the burden of showing that all elements of the three-part test under Article 11 § 2, including the existence of a legitimate aim pursued by the interference, have been met *in the specific circumstances of the case*. When the interference is as serious as preventing a new association from legally establishing itself in the first place – a form of prior restraint – that burden is exceptionally high: the authorities must present "only convincing and compelling reasons" to be able to justify such harsh restrictions (see paragraph 37 of the judgment and the case-law cited therein). It is therefore unclear on what basis the Chamber majority, while itself holding "doubts" about the pursuit of any legitimate aim, was prepared to proceed as if the Government had already met the relevant burden.

4. It is important to recall here that the authorities are not simply required to show that the relevant national legal framework, assessed in the abstract, serves a legitimate Convention aim. They must also prove that the application of that framework to the concrete circumstances of the case – in other words, the immediate "restriction placed on the exercise" by the applicants of their freedom of association – also served one or more of the listed legitimate aims. This is clear, in my reading, from the plain text of Article 11.

5. Lastly, for the Court to reach the conclusion that the pursuit of a legitimate aim has not been convincingly established in a particular case, it is not necessary, in my view, to have positive proof of bad faith or "ulterior motives" on the part of the authorities (though such a scenario can hardly be ruled out in the circumstances of the present case). That is an assessment that belongs more appropriately under an Article 18 analysis, which is subject to different material and evidentiary criteria, despite any potential overlaps.

6. Conversely, the purpose of a legal framework governing matters as central to democracy as association rights should be to *facilitate* their exercise to the fullest extent possible, in line with overarching democratic objectives. Where national administrative or judicial authorities, acting with either blind bureaucratic formalism or with outright bias, use seemingly valid regulations to effectively *suffocate* the exercise of those rights, the resulting interference no longer serves any aims that may be considered legitimate in a democratic society. "Rule by law" is fundamentally different from the rule of law.

7. In this day and age, the Court should not easily grant the benefit of *prima facie* legitimacy to restrictions of fundamental rights that deserve no such label. It is time to stop making assumptions about "legitimate aims".