



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

THIRD SECTION

CASE OF VATAN v. RUSSIA

(Application no. 47978/99)

JUDGMENT

STRASBOURG

7 October 2004

FINAL

07/01/2005

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 Vatan v. Russia,

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

Mr G. RESS, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEN,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER,

Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 47978/99) 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 People’s Democratic Party Vatan (“Vatan”), a political party registered under Russian law.

2. The applicant party was represented before the Court by Mr R. Bekkin, a lawyer practicing in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant party alleged that the suspension of the activities of its branch violated its freedom to hold opinions and to impart information and ideas, its freedom of association and party members’ right to manifest their religion.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 21 March 2002, the Court declared the application partly inadmissible.

6. By a decision of 4 September 2003, the Court declared the remainder of the application partly admissible, having joined the Government’s preliminary objection to the merits.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 29 April 1994 Vatan was registered as a political party with the Ministry of Justice of the Russian Federation.

9. According to Vatan's constitutional charter, it was founded "to support the renaissance of the Tartar nation, to enhance the latter's political activity and to protect Tartars' political, socio-economic and cultural rights". The name "Tartar" applies to the peoples of Turkic origin who speak a language which belongs to the Ural-Altai language family. Four-fifths of the Tartars (about 5.5 million people) live in the Russian Federation: the majority live in the Republic of Tatarstan and the Republic of Bashkortostan, and the rest are dispersed across the Ural Mountains and in the Volga region. The Tartars are Muslims.

10. On 12 August 1994 the Simbirsk (Ulyanovsk) Regional Organisation of the People's Democratic Party Vatan ("the Regional Organisation") was registered with the Ulyanovsk Regional Department of Justice. Vatan claims that this was a branch of its party.

11. On 12 October 1997 the Regional Organisation made an appeal ("the appeal") to the "peoples of the Volga region, to all oppressed peoples of the empire, to the Ulyanovsk Regional and City authorities, to historians, students of local lore, archaeologists and scientists", entitled "Prevention and cancellation of the forthcoming witches' Sabbath arranged by reactionary forces – 'the war party' - the so-called '350th anniversary of the founding of the town of Simbirsk' which is in fact an approximate date of the colonisation of Shekhry Sember".

12. The appeal contained, *inter alia*, the following statements:

"To the indigenous population of the Volga Region: tartars, chuvash, erzya, moksha, mari, bashkir.

1. Never allow desecration or mockery of the memory of your ancestors; do not allow the reactionary Nazi forces to celebrate the date of colonisation of Sember. Shekhry Sember is a thousand-year-old town of your glorious ancestors. In the town centre, on Simbirskaya Hill and in the outskirts lie their graves – do not allow them to be defiled. Be prepared for the anniversary of the colonisation of Shekhry Sember. On the ancestors' Memorial Day, 31 May 1998 at 9 a.m., all come out to our sacred Sember Hill – to the ancestors' graves – between the Memorial and Lenin square. A trip to the ancestors' graves and the ruins of the Shekhry Kalman will also be on offer and everyone who wishes will have an opportunity to turn to Islam. Let us stand up for the honour and dignity of our peoples. Let us celebrate the 1350th Anniversary of Shekhry Sember in a dignified manner, *inshallah*. Strive for decolonisation of the peoples who are prisoners of Moscow-*Shaitan Kala*, the Russian empire.

2. Who knows how much loss, humiliation, suffering, deprivation and sacrifice our peoples have endured: racial discrimination, employment discrimination, the ban on education in our native language, forced service in the occupiers' army?

3. Strive for legitimisation of indigenous languages. Strive for the holding of fair municipal elections on the basis of national communities. Strive for education for every child in the national language from primary level to higher education. Strive for satellite channels broadcasting from Kazan, Ufa, Cheboksary, Saransk, Yoshkar-Ola, Tashkent, Bishkek, Alma-Aty, Ankara, Istanbul, Teheran, Riyadh and Mecca.

4. Indigenous peoples *idel-uras-seber-krym iort*, and in particular semberile and even American Indians – you are the heirs of the great Islamic culture. Come back to Islam. There will be more than a thousand million of us.

To the Ulyanovsk Regional administration, to Mr Goryachev and Mr Marusin personally, to historians, students of local lore, archaeologists and scientists of the region:

1. Mr Goryachev, Mr Marusin and their subordinates,

Do not fall under the influence of pseudo-historians, the “war party” from Moscow, the local liberal democratic party, pseudo-scientists and Nazis. Stop the witches' Sabbath in celebration of the 350th anniversary of the colonisation of Simbirsk. Even the colonisation date is intentionally confusing. The real colonisation date is the end of May 1666 - 1999 is a good round figure of colonisation, i.e. 333 years. Do not stir up the Russian population against the indigenous peoples of the Volga Region – you will not succeed. God be with us, *inshallah*.

2. Mr Goryachev, Mr Marusin and local governors,

Stop wasting our regional budget on the creation of monuments to an apostate and traitor of his peoples, the converted Christian Tartar Bogdan Khitrovo ..., in accordance with the directions of the “war party” in Moscow. The money saved on the witches' Sabbath should be invested in founding a Volga peoples' University and introducing TV broadcasting in the local languages. Bring back education in the national language for every child.

3. On the sacred Sember Hill between the Memorial and Lenin Square, on the burial place of our sacred ancestors, restore the remembrance tombstone destroyed by your administration ... Restore or allow to be restored the main temple Shekhry Sember on Sember Hill.

4. Mr Goryachev, have the courage to apologise on behalf of all your predecessors to the peoples of the Region for the centuries of humiliation, suffering, deprivation and sacrifices, since you are their successor. Someone must put an end to it.

5. ... There is no point in hiding, and it is common knowledge that there are only 10 million Russians, with the remaining 130 million being Russian speakers who do not remember their ancestors and historical-ethnic origin. Deprivation of historical and ethnic roots, of memory and the motherland is the sad result of the violence imposed in order to create a mono-ethnic and monolingual empire.

We, the peoples of the Volga region, were, are, and always will be, *inshallah*.

Given his 30 years of experience in the national liberation movement, his courage, his knowledge of the region and his understanding of people, the Ulyanovsk Regional Branch of Vatan empowers Iskhan Nailbek Mikey to be at the head of the national liberation fight and to form a brigade of trustworthy, courageous, consecrated and resistant people.

Let us shorten the arms of the “war party” in Moscow! Free the empire’s peoples! Decolonise Russia! Bring Islamic education in the national language to all children! These are the common slogans of all peoples - prisoners of Moscow.”

13. On 19 May 1998 the Regional Organisation asked the mayor of Ulyanovsk to authorise a ceremony dedicated to the 1350th anniversary of the founding of Sember. On 22 May 1998 the mayor gave permission for the ceremony to be held in places of worship belonging to religious organisations and in cemeteries.

14. On 31 May 1998 the Regional Organisation held a memorial ceremony in the city centre, where, according to Vatan, an ancient Muslim cemetery was formerly located.

15. On 3 June 1998 the prosecutor of the Ulyanovsk Region applied to the Ulyanovsk Regional Court to have the Regional Organisation’s activities suspended on the ground that it had called for violence, contrary to the federal legislation and the Constitution.

16. On 13 July 1998 the Ulyanovsk Regional Court examined the prosecutor’s claim.

17. Firstly, the court considered various statements made by the Regional Organisation in the light of their conformity with the Constitution, in particular, the appeal of 12 October 1997 and noted that the Regional Organisation:

- referred to the State institutions responsible for the public celebration of the 350th anniversary of Simbirsk as “Nazis”;
- called for “decolonisation of the peoples who are prisoners of Moscow–*Shaitan Kala*, the Russian empire”;
- referred to the Russian Federation as “the enemy of humankind”;
- referred to Russian citizens as “Russian speakers who do not remember their ancestors and historical-ethnic origin”;
- urged the authorities “to stop the witches’ Sabbath in celebration of the 350th anniversary of the colonisation of Simbirsk” and “to stop wasting [the] regional budget”;
- empowered the Regional Organisation’s secretary, Mr Mikeyev, “to be at the head of the national liberation fight and to form a brigade of trustworthy, courageous, consecrated and resistant people”.

18. The court also found that the Regional Organisation had called for recognition of the independence of the Republic of Chechnya and for a return by the peoples of the Volga region to Islam (conference minutes of

26 May 1996), and that it had called on the Sember peoples to join the Tartar Muslims in their national liberation fight (minutes of the Regional Organisation General Meeting of 12 October 1997). A reference was also made to the Annual Report of the Regional Organisation's activities, where the court found calls to "decolonise Russia", to form military forces "on the basis of religious confessions" and to "abolish the neo-imperialistic emblem depicting crosses and passports which gave no indication of ethnic origin".

19. The court held that all of the above statements were incompatible with the Constitution. The court stated, *inter alia*, the following:

"...the Ulyanovsk Regional Organisation of the People's Democratic Party Vatan openly calls for violation of the integrity of Russia, for violent alteration of the foundations of constitutional governance and for the creation of an Islamic State in the Volga Region. The Regional Organisation proclaims the idea of a national liberation fight and calls for the formation of a brigade of trustworthy, courageous and resistant people. The activities and opinions of the Regional Organisation's leaders and members are of an extreme nationalist nature, inciting people to national and religious discord and denigrating the Russian speaking population and non-adherents of Islam."

20. Secondly, the court found that the memorial ceremony of 31 May 1998 held by the Regional Organisation in the centre of Ulyanovsk was in breach of the mayor's permit.

21. The court concluded that the activities of the Regional Organisation did not correspond to the purposes declared in its Charter and violated Section 16 of the Federal Law on Public Associations, which prohibits the establishment and activities of public associations whose aims and actions are directed at the violent alteration of the foundations of constitutional governance, violation of the integrity of the Russian Federation and the undermining of state security, the forming of armed units and incitement to social, racial, national and religious strife. The court allowed the prosecutor's appeal and suspended the Regional Organisation's activities for 6 months.

22. *Ipsa jure*, the Regional Organisation was prohibited from holding meetings, demonstrations and other public actions, taking part in elections and disposing of its bank accounts other than for the payment of expenses incurred in the course of normal activities, payment of labour contracts, damages and fines.

23. The Regional Organisation challenged the judgment of 13 July 1998 before the Supreme Court of Russia, contending that the Ulyanovsk Regional Court had misinterpreted the meaning of the appeal, which reflected the Tartars' history and that there had been no incitement to national or religious strife or anything which might insult the dignity of Russians. The Regional Organisation insisted that the ceremony of 31 May 1998 had been held at the site of the ancient Muslim cemetery.

24. On 3 September 1998 the Supreme Court upheld the first instance judgment. An application for supervisory review was dismissed by the same court on 13 October 1998.

25. On 12 January 2000 the Ulyanovsk Regional Court allowed a claim by the Department of Justice of the Ulyanovsk Regional Administration to dissolve the Regional Organisation on account of its failure to bring its Charter in compliance with new legislation. This decision has not been appealed against.

II. CONSTITUENT DOCUMENTS OF VATAN AND THE REGIONAL ORGANISATION

A. Vatan

26. The relevant provisions of Vatan's constitutional charter read as follows:

“The Charter of the People's Democratic Party Vatan ...

1.1 The People's Democratic Party Vatan is a political party ...

1.2 Vatan carries out its activities on the territory of the Russian Federation, where regional organisations are created (Omsk, Ulyanovsk, Nizhniy Novgorod Regions, Moscow, the Republics of Bashkortostan and Mordovia and the Chuvash Republic) ...

1.5 The seat of Vatan's headquarters, the Central Co-ordination Board, is in Moscow.

...

3.4 All party organisations shall be autonomous in taking decisions concerning local matters in so far as these do not conflict with the party's Charter or its Programme.

...

4.1 Vatan has been set up for the protection of citizens of Tartar origin, citizens of other origin and of their political, economic, social and cultural rights and freedoms, in order to promote their active participation in the governing of the state and social affairs.

4.2 To achieve its goals Vatan shall pursue the following objectives:

- participating as prescribed by law in the state legislative and executive bodies, by nominating its candidates to express the political will of its members;

- promoting the creation of ethnic districts, circuits and country councils in those places where Tartars are concentrated within the Russian Federation;

- carrying out organisational activities, campaigns, propaganda and other information activities for educational and pedagogical purposes, promoting the return of the Arabic script;

- organising lectures, seminars, talks, round-table discussions, mass and collective actions and other events, in accordance with the law and the party's goals and objectives; ...

- representing its members' interests before state bodies and public institutions; ...

5.1 The party shall be organised on a territorial basis. The primary party units, namely the district, town, circuit and regional organisations, shall form the party's base.

5.2 Regional organisations shall be set in accordance with the administrative and territorial division of the Russian Federation and shall draw up their action programmes in accordance with local circumstances and shall elect delegates to the party's Congress (*Kurultay*); in accordance with the law, they shall participate in local government structures. The regional organisations shall establish themselves as legal persons in accordance with the procedure prescribed by law. Where this is done, they shall adopt their own Charter, which may not be contrary to the party's Charter and its Programme, and shall register it in accordance with the law.

...

6.7 The party's President shall be in charge of the party's general management between the meetings of the party's Congress ... he shall speak on the party's behalf ... and represent the party without power of attorney in any state bodies and public institutions ..."

B. The Regional Organisation

27. The relevant provisions of the Regional Organisation's constitutional charter read as follows:

"Charter of the Simbirsk (Ulyanovsk) Regional Organisation of the People's Democratic Party Vatan ...

1.1 The Simbirsk Regional Organisation of the People's Democratic Party Vatan is a party political organisation ...

2.5 Membership of the party may be terminated by the Simbirsk Regional Committee... for non-compliance with the party's Charter and its Programme; this decision is subject to appeal to the party's higher organs, including the Central Co-ordination Board.

...

4.1 The Simbirsk Regional Organisation of the People's Democratic Party Vatan has been set up for the protection of citizens of Tartar origin, citizens of other origin

and their political, economic, social and cultural rights and freedoms, in order to promote their active participation in the governing of the state and social affairs.

4.2 To achieve its goals the Simbirsk Regional Organisation of the People's Democratic Party Vatan sets the following objectives:

- participating as prescribed by law in the structures of state legislative and executive bodies, by nominating its candidates to express the political will of its members;
- promoting the creation of ethnic districts, circuits and country councils in those places where Tartars are concentrated within the Russian Federation;
- carrying out organisational activities, campaigns, propaganda and other information activities for educational and pedagogical purposes, promoting the return of the Arabic script;
- organising lectures, seminars, talks, round-table discussions, mass and collective actions and other events, in accordance with the law and the party's goals and objectives;
- representing its members' interests before state bodies and public institutions.

...

6.6 During the intervals between the [Regional Organisation's] conferences the Regional Committee of the People's Democratic Party Vatan shall be in charge of the [Regional Organisation's] activities."

III. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

28. The relevant provisions of the Constitution read as follows:

Article 13 § 5

"The creation and activity of public associations shall be prohibited if their aims and actions seek to alter the foundations of the constitutional system by violence, to breach the integrity of the Russian Federation, to undermine the security of the state, to create paramilitary units, or to rouse social, racial, national and religious strife."

Article 28

"Every person shall be guaranteed the right to freedom of conscience, freedom of religion, including the right to profess, either alone or in community with others, any or no religion, to freely choose, have and disseminate religious or other convictions and to act according to them."

Article 29 § 1

“Every person shall have the right to freedom of thought and speech.”

Article 29 § 2

“Propaganda and campaigning to instigate social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or language exclusiveness shall be banned.”

Article 30 § 1

“Every person shall have the right to freedom of association, including the right to establish trade unions to protect his interests. Free activity of public associations shall be guaranteed.”

Article 31

“Citizens of the Russian Federation shall have the right to meet peacefully, without arms, and to organise discussions, meetings and demonstrations, as well as processions and pickets.”

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

29. At the material time, the relevant provisions of the Federal Law on Public Associations read as follows:

Section 16

“The creation and activity of public associations shall be prohibited if their aims and actions seek to alter the foundations of the constitutional system by violence, to breach the integrity of the Russian Federation, to undermine the security of the state, to create paramilitary units, or to rouse social, racial, national and religious strife.”

Section 42 § 1

“An association’s activity may be suspended by a court decision where infringement of the Constitution of the Russian Federation, the constitutions (statutes) of the constituent entities of the Russian Federation, or the laws of the Russian Federation is found.”

Section 43

“A court’s decision to suspend the activities of a public association for a certain period shall entail the suspension of its right of assembly, its right to hold meetings, rallies, demonstrations and (or) other public actions, to participate in elections and to access funds on its bank accounts other than for payment of expenses incurred in the course of normal activities, payment of labour contracts, damages and fines ...”

C. Civil Code

30. Article 48 of the Civil Code of 30 November 1994 provides that a legal person is autonomous in exercising its rights and carrying out its obligations, and that it has standing as a party to proceedings before a court.

THE LAW

31. Vatan alleged that the court decisions to suspend the Regional Organisation's activities had violated its freedom to hold opinions and to impart information and ideas, its freedom of association and the party members' right to manifest their religion. It referred to Articles 9, 10, 11 and 14 of the Convention.

THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' arguments

32. The Government objected to the applicant party's standing as a victim of the alleged violations of the Convention.

33. First, the Government claimed that Vatan was not eligible to file an application with the Court on behalf of the Regional Organisation. They submitted that Vatan and the Regional Organisation were two different legal entities, each registered in accordance with the law. They claimed that Vatan did not have standing on behalf of its regional branches in domestic proceedings either under the Russian Civil Code or under its own constituent documents. In particular, they claimed that Vatan's president had acted in the proceedings before the Supreme Court of the Russian Federation on behalf of the Regional Organisation after having been given power of attorney.

34. Secondly, the Government denied that Vatan's application pursued its own interests as opposed to those of the Regional Organisation, since the suspension of the Regional Organisation's activities did not affect Vatan. They pointed out that Vatan could continue its activities, even in Ulyanovsk, during the whole period that the Regional Organisation was subject to the injunction.

35. Vatan did not accept the Government's objection.

36. First, it maintained that the application had been lodged on behalf of the political party as a whole and not on behalf of its regional organisation. It claimed that all units of Vatan's regional network, including regional organisations, were subordinate to the central organs, whether or not they

were registered as separate entities. Vatan alleged that its president was “the head of the entire party”, who, according to paragraphs 1.1 and 6.7 of Vatan’s founding charter, was to “represent the party as a whole”. It argued that the Regional Organisation’s subordination to the “party’s central organs” was implicit in the Regional Organisation’s charter, in particular paragraph 2.5, which allowed an appeal to the “party’s higher organs, including [Vatan’s governing body]” against termination of an individual’s membership of the party.

37. Secondly, Vatan alleged that the suspension of the Regional Organisation had repercussions for the interests of Vatan as a whole. It claimed that the branch’s suspension had resulted in the winding up of Vatan’s activities in the Ulyanovsk region, a deterioration of the party’s position in the region and, ultimately, a fall in the party’s popularity.

B. The Court’s assessment

38. The Court reiterates that in order to be able to rely on the substantive provisions of the Convention, two conditions must be met: an applicant must fall into one of the categories of petitioners mentioned in Article 34 of the Convention, and he or she must be able to make out a prima facie case that he or she is the victim of a violation of the Convention (*Asselbourg and Others v. Luxembourg* (dec.), no. 29121/95, ECHR 1999-VI). In so far as relevant, Article 34 provides as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...”

39. The Court notes that the present application was lodged by a political party, Vatan, which is registered as a legal person. The Court notes that the measures complained of in this application, notably the suspension and the ensuing domestic proceedings, concerned the Regional Organisation, which was also registered as a legal person, and not Vatan. The fact that Vatan and the Regional Organisation were two different legal entities is not disputed by the applicant and is evident from Vatan’s and the Regional Organisation’s constituent documents.

40. The Court has first to consider whether this case can be regarded as one in which Vatan constituted a form of “umbrella” organisation comprising both Vatan itself and the Regional Organisation as constituent parts.

41. Such an interpretation would require the Court to accept that the identity of a non-governmental organisation (within the meaning of Article 34) may extend beyond its own legal personality so as to comprise several legal persons.

42. The Court must therefore determine whether there existed at the material time a political party which comprised both Vatan and the Regional Organisation, and if so, whether it could claim to be a “non-governmental organisation” within the meaning of Article 34 for the purposes of the present case.

43. The Court considers that the legal personality of a non-governmental organisation creates a *prima facie* presumption as to its identity. Any claim that a political party embraces more than one legal person must be borne out by the statutes and structures of the organisation. In particular, one would expect regulation of matters such as subordination, submission to a single leadership, adherence to a single set of political proposals, joint pursuit of a single political campaign, membership registers, nominations for elections and support for candidates and abstention from mutual political rivalry. The legal persons comprising such a party would, at the least, be expected to provide in their individual constituent documents for their structural subordination and political commitment to certain political ideals. The Court will therefore examine whether on such an interpretation Vatan and the Regional Organisation could claim to constitute a single political party.

44. The Court observes that while Vatan’s constitutional charter provides for the establishment of “regional organisations”, no reciprocal provisions can be found in the charter of the Regional Organisation. The Regional Organisation’s constituent documents contain only one implicit reference to Vatan, providing for the appeal against termination of membership (paragraph 2.5 of the charter). The Regional Organisation’s charter leaves open the question of whether the Regional Organisation was structurally dependent on Vatan in its decision-making and whether it had political commitments to the latter. In particular, nothing in the constituent documents prevented the Regional Organisation from pursuing political goals other than those approved by Vatan. There is no suggestion in the present case that the actions and statements which gave rise to the Regional Organisation’s suspension were prompted or authorised by Vatan.

45. Moreover, the Court notes that Vatan had no standing in the domestic proceedings in its alleged capacity of a “party as a whole”. As submitted by the Government, and not disputed by the applicant, Vatan’s president took part in the proceedings before the Supreme Court in accordance with a power of attorney issued to him by the Regional Organisation, and not in his capacity of “the head of the entire party”.

46. The Court cannot therefore conclude that Vatan and the Regional Organisation were one political party which could constitute a single non-governmental organisation within the meaning of Article 34 of the Convention.

47. The Court has further considered whether Vatan itself may claim to be a victim of the suspension applied against the Regional Organisation.

48. The Court recalls that the term “victim” used in Article 34 denotes the person directly affected by the act or omission which is at issue (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 30, § 66). It further recalls that accepting an application from a “person” indirectly affected by the alleged violation will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the direct victim to apply to the Court through the organs set up under its articles of incorporation (see *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330, p. 25, § 66).

49. The person directly affected by the domestic measure in this case was the Regional Organisation. The focus of Vatan’s own concern appears to be the fact that it could not rely on the Regional Organisation to convey its political ideas in the Ulyanovsk region for a period of six months.

50. The Court notes that the injunction in question did not impose any limitations on Vatan itself, hence there was nothing to stop Vatan from pursuing its activities in its own name, for example through individual party members. The Court also notes that it was open to the Regional Organisation itself, as the direct victim, to lodge an application with the Court. The Court finds no exceptional circumstances in the present case which could entitle Vatan itself to claim to be a victim of the disputed suspension.

51. The Court also notes that Vatan, unlike the Regional Organisation, has never pursued any domestic proceedings in its own name in respect of the alleged violations. Therefore, even if the Court were to accept Vatan to be a victim, the application would in any event be inadmissible on account of a failure to exhaust domestic remedies.

52. Finally, the Court notes that there is no suggestion in the present case that Vatan represents the Regional Organisation in the proceedings before the Court.

53. Consequently, the Government’s preliminary objection is well-founded. Vatan cannot, as matters stand, claim “to be the victim of a violation” within the meaning of Article 34 of the Convention. It follows that the remainder of the applicant must be declared inadmissible.

54. Having accepted the Government’s preliminary objection, the Court cannot consider the merits of the case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Accepts the Government’s preliminary objection and therefore *holds* that it cannot consider the merits of the case.

Done in English, and notified in writing on 7 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Ress and Mr Cabral Barreto is annexed to this judgment.

G.R.

V.B

CONCURRING OPINION OF JUDGES RESS AND CABRAL BARRETO

We agree with the conclusion reached in the judgment, but would have preferred to see the case declared inadmissible on the ground that it is manifestly ill-founded. In our view, in considering the People's Democratic Party Vatan's right to defend itself against illegal interference, it is rather artificial to divide its structure into a central party organisation and regional organisations. As the Court has rightly stated in paragraph 43, there is a *prima facie* presumption that, in the case of a political party, the legal personality of a non-governmental organisation extends to the party as a whole and creates a single political entity. It may be that different legal personalities exist under Russian law, but the Court should bear in mind that, in order to protect the existence of political parties and freedom of political expression under Articles 10 and 11 of the Convention, a broad approach is to be preferred.

In our view, it was arguable under the Convention that Vatan should have had standing in the domestic proceedings in its alleged capacity as a "party as a whole". The Court's decision to accept the splitting up of a political party into different legal personalities, as permitted under the domestic legal system, makes it rather difficult for a political party to defend its rights against interference by the different state organs. This is particularly true when, as is the case here, a party's regional organisation is subject to interference that may affect the party as a whole. It is implicit in the principle of political representation that it should be acceptable for different legal persons to be involved. We would therefore have accepted Vatan's claim to have been affected by the domestic measure which, in this case, was directed against the party's regional organisation. In our view, Vatan itself was also a victim for the purpose of Article 34 of the Convention and we have no difficulty in accepting that, in addition to Vatan as the central organisation, the regional organisation was also entitled to defend itself against the infringement. The question of whether there was exhaustion of domestic remedies, in that Vatan, unlike the regional organisation, never pursued domestic proceedings in its own name in respect of the alleged violations, is not convincingly answered in the judgment: if the regional organisation acts in a broader perspective, representing the interest of the party as a whole as well as its own interests, then it does not seem justified even to contemplate rejection of Vatan's application on the ground that it failed to institute parallel proceedings before the domestic courts.

Furthermore, the issue is not whether Vatan may represent the regional organisation in the proceedings before this Court, since, if a political party like Vatan is presumed to have an all-embracing identity, then it does in fact defend itself in such proceedings when it challenges interference with a

regional organisation. This broader view is derived from the concept that, in a democratic society, political parties are not to be treated as ordinary associations but require specific protection.

We would in any event have come to the conclusion that the application is inadmissible because it is manifestly ill-founded. In our view, the regional court rightly concluded that the Regional Organisation of the People's Democratic Party Vatan openly called for violent alterations to the foundations of constitutional governance and for the creation of an Islamic state in the Volga region, and called for a brigade of "courageous and resistant" people to fight for national liberation and the decolonisation of Russia. In the light of the Court's judgment in the case of *Refah Partisi (the Welfare Party) and Others v. Turkey* ([GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II) we consider those conclusions by the regional court neither exaggerated nor unfounded. In particular, the reference to the Russian Federation as a "war party" whose arms should be "shortened" and to Russian institutions as "Nazis" overstepped the boundary of permissible freedom of expression within the meaning of Article 10. Therefore, in our view, it would have been preferable to base the conclusion on these considerations.