

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 15 December 2004 No. 18-II

in the case concerning the review of the constitutionality the provision of Subsection 3, Article 9 of the Federal Law “On Political Parties”, upon a request of the Koptevsky District Court of Moscow and in connection with complaints of the Russian Social and Political Organization The Orthodox Party of Russia and the citizens I. V. Artyomov and D. A. Savin.

Moscow, 15 December 2004

The Constitutional Court of the Russian Federation composed of Presiding Judge G. A. Zhilin and Judges M. V. Baglay, Yu. M. Danilov, L. M. Zharkova, V. D. Zorkin, S. M. Kazantsev, M. I. Kleandrov, V. O. Luchin, N. V. Seleznev, O. S. Khokhryakova,

in the attendance of V. V. Sipachev, representative of the Russian Social and Political Organization The Orthodox Party of Russia, the citizens I. V. Artyomov and D. A. Savin, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, and Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 86, 96, 97, 99, 101, 102 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provision of Subsection 3, Article 9 of the Federal Law “On Political Parties”.

The reason for the consideration of the case is a request of the Koptevsky District Court of Moscow and complaints of the Russian Social and Political Organization The Orthodox Party of Russia and the citizens I. V. Artyomov and D. A. Savin. The ground for the consideration of the case is the discovered uncertainty of whether the challenged provisions of Subsection 3, Article 9 of the Federal Law “On Political Parties” are in conformity with the Constitution of the Russian Federation.

Insofar as the request and the complaints concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the

Russian Federation” the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur N. V. Seleznev, statements by the parties and their representatives, an intervention by M. Yu. Barshchevsky, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation, and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. Pursuant to Subsection 3, Article 9 of the Federal Law “On Political Parties” of 11 July 2001, the establishment of political parties based on professional, racial, national or religious affiliation shall not be permitted. The Federal Law defines the basis of “professional, racial, national or religious affiliation” as proclamation in the charter and the program of a political party of such objectives as advocacy of professional, racial, national or religious interests and the reflection of these objectives in the name of the political party.

In their complaints to the Constitutional Court of the Russian Federation, the applicants assert that the mentioned provisions do not conform to Articles 19 (Section 2) and 30 (Section 1) of the Constitution of the Russian Federation to the extent that they violate the freedom of association and the principle of equality in the exercise of this freedom. Further, the mentioned provisions do not conform to Article 13 (Section 5) of the Constitution of the Russian Federation stipulating the grounds for prohibition of public associations in the Russian Federation.

1.1. After the entry into force of the Federal Law “On Political Parties”, a congress of Russian social and political organization The Orthodox Party of Russia decided to reorganize it into a political party, the Orthodox Party of Russia. N. Ye. Ilyukhina, a member of the mentioned organization, who considered that the decision of the congress does not conform to Subsection 3, Article 9 of the mentioned Federal Law and hinders registration as a political party by preserving the name “Orthodox Party of Russia”, lodged a request for annulment of this decision with the Koptevsky District Court of Moscow. Having concluded that there is an uncertainty of whether the provisions of Subsection 3, Article 9 of the Federal Law “On Political Parties” conform to the Constitution of the Russian Federation, the Koptevsky District Court of Moscow stayed the proceedings on the request of the decision of 11 July 2002 and applied to the Constitutional Court of the Russian Federation with a request for constitutionality review of the mentioned provisions. Concurrently, the Russian social and political organization The Orthodox Party of Russia applied to the Constitutional Court of the Russian Federation with a constitutional

complaint about violation of the constitutional right to association by the same provisions which were to be applied in N. Ye. Ilyukhina's case.

The constitutionality of Subsection 3, Article 9 of the Federal Law "On Political Parties" is also challenged by D. A. Savin, a member of the Russian Christian-Democratic Party, a political party, and I. V. Artyomov, a member of the Russian National Union, a political party. The Ministry of Justice of the Russian Federation referring to the challenged provision denied state registration of the Russian Christian-Democratic Party, since it considered the first part of the word "Christian-Democratic" to be definitive and referring to the establishment of this party on a religious basis. The Ministry also denied state registration of the political party "Russian National Union" on the ground that the use of the word "Russian" in its name refers to the establishment of this party on a national (ethnic) basis. The request of I. V. Artyomov to annul the respective decision of the Ministry of Justice of the Russian Federation was dismissed by the Tagansky District Court of Moscow.

1.2. Pursuant to Section 3, Article 74 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation delivers judgments and gives conclusions only on the subject matter indicated in a complaint and only regarding the part of the law the constitutionality of which is challenged by the applicant.

Consequently, the subject matter for consideration by the Constitutional Court of the Russian Federation in the present case is Subsection 3, Article 9 of the Federal Law "On Political Parties" to the extent that it prohibits the establishment of political parties on a national (ethnic) and religious basis.

2. Everyone's right to association, as follows from Article 30 (Section 1) of the Constitution of the Russian Federation in conjunction with its Articles 1 (Section 1), 2, 13, 14, is among the fundamental values of society and the state based on the principles of the rule of law and democracy. It includes the right to freely establish associations to protect citizens' interests and the right to the freedom of activity of public associations. These constitutional provisions are coherent with the International Covenant on Civil and Political Rights (Article 22 § 1) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 11 § 1), which guarantee the right of each person to the freedom of associations with other persons.

Article 30 of the Constitution of the Russian Federation does not explicitly provide for citizens' right to the freedom of association in political parties, however, within its meaning in conjunction with Articles 1, 13, 15 (Section 4), 17 and 32 of the Constitution of the Russian Federation, the mentioned right, which includes the right to establish a political party and the right to participate in its activity, is an inalienable part of everyone's right to association and the

freedom of activity of political parties as public associations is guaranteed. A possibility for citizens to freely form a political party, to establish a political party as a legal entity for acting collectively for the exercise and protection of their political interests, is one of the necessary and most important components of the right to associations. The mentioned right would be deprived of its meaning without this possibility. That is why the Constitution of the Russian Federation protects not only the freedom of activity of political parties, but the freedom to establish them as well.

The freedom of establishment and activity of political parties, which are necessary for proper functioning of representative democracy, are guaranteed in the Russian Federation by recognition of pluralism, ideological and political diversity, impermissibility of establishment of any ideology as a state or compulsory ideology (including national and religious ideologies), the secular nature of the state, equality of political parties under the law, and equality of the rights and freedoms of man and citizen regardless of affiliation with public associations, including political parties (Sections 1–4, Article 13, Article 14, Section 2, Article 19 of the Constitution of the Russian Federation).

At the same time, the Constitution of the Russian Federation prohibits the establishment and activity of political parties whose aims or actions are directed to forcibly alter the fundamentals of the constitutional order, violate the unity of the Russian Federation, undermine security of the state, create military units, incite social, racial, ethnic and religious discord (Section 5, Article 13), and allows restriction of the rights and freedoms of man and citizen only by federal law to the extent necessary to protect the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defence of the country and security of the state (Section 3, Article 55). The cited constitutional provisions conform to the provisions of the International Covenant on Civil and Political Rights (Article 22 § 2) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 11 § 2), according to which 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.

Therefore, being guided by the Constitution of the Russian Federation and provisions of international instruments ratified by Russia, the legislator may regulate the legal status of political parties, including the conditions and procedure for their establishment, the principles of their activity, their rights and obligations. The legislator may also establish necessary restrictions on the right to form political parties and grounds and a procedure for state registration of a political party as a legal entity. However, due to Article 17 (Section 1) of the Constitution of the

Russian Federation stipulating that in the Russian Federation the rights and freedoms of man and citizen are recognized and guaranteed in accordance with the generally recognized principles and norms of international law and in accordance with the present Constitution the regulation enacted by the legislator shall not distort the essence of the right to form political parties, and the restrictions imposed by the legislator shall not unreasonably hinder the exercise of everyone's constitutional right to association and freedom of establishment and activity of political parties as public associations. These limitations shall be necessary and proportionate to the constitutionally significant aims.

3. The Federal Law "On Political Parties" regulates the legal status of political parties on the basis of the Constitution of the Russian Federation by specifying provisions of its Articles 1 (Section 1), 3 (Section 2), 13 (Section 3) and 30 (Section 1). It defines a political party as a public association established in order to ensure participation of citizens of the Russian Federation in the political life of society by formulating and expressing their political will, enable their participation in public and political events, elections, referenda and represent the interests of citizens in bodies of state power and bodies of local self-government (Subsection 1, Article 3). At the same time a political party shall be the only kind of public association entitled to nominate candidates (lists of candidates) for deputies and other elected offices in bodies of state power (Subsection 1, Article 36).

Under the requirements of Article 30 (Section 2) of the Constitution of the Russian Federation, which stipulates that no one may be compelled to join any association and to stay in it, the mentioned Federal Law establishes that the right of Russian Federation citizens to form political parties shall include the right to establish, on a voluntary basis, political parties according to their convictions; the right to join or refrain from joining political parties; the right to participate in the activity of political parties pursuant to their charters; the right to freely withdraw from political parties (Article 2); a political party shall be established freely (Subsection 1, Article 11); membership in a political party shall be voluntary and individual, it shall not be restricted on professional, social, racial, national or religious grounds or on the grounds of sex, origin, property status, place of residence (Subsections 1 and 10, Article 23). Consequently, representatives of any nationality or religion without any restrictions may become members of any party congenial to them in aims and aspirations and therefore exercise their right to association including the right to associate in a political party.

Political parties as a necessary institute of representative democracy ensuring participation of citizens in the political life of society, political cooperation between the civil society and the state, in an open lawful struggle relying on the principles of equality and political pluralism undertake to definitively influence state power, participate in the formation of state

bodies, and to gain control over their activity. Unlike other associations acting on the political arena (trade unions and business alliances, so-called “pressure groups”), political parties fostering their own political aims, openly struggle for places in Parliament and Government, which gives them an opportunity to govern the state and therefore society as a whole. By consolidating citizens’ interests they promote the formation of the political will of the society. In the competitive struggle for political power the necessary democratic conditions are created to allow the multinational Russian people as the bearer of sovereignty and the only source of power in the Russian Federation to consciously choose optimal trends of social and state development and to reach civil peace.

As opposed to political parties, religious associations, as follows from Articles 28 and 30 of the Constitution of the Russian Federation, are established to exercise the freedom of religion, the right to join others in professing a certain religion, which implies a possibility to perform religious rites and ceremonies, proselytism, religious education and upbringing, charitable, missionary, philanthropic and other activities predetermined by the respective religious doctrine. The constitutional basis for the establishment and activity of religious associations is created by Article 13 of the Constitution of the Russian Federation, which stipulates its ideological and organizational pluralism, taken together with Article 14 of the Constitution of the Russian Federation, which stipulates that the Russian Federation is a secular state; no religion may be established as state or compulsory (Section 1); religious associations shall be separated from the state and shall be equal before the law (Section 2).

Pursuant to Article 14 of the Constitution of the Russian Federation taken in conjunction with Articles 11, 12 and 13 and pursuant to provisions of Article 4 of the Federal Law “On Freedom of Conscience and Religious Associations”, the constitutional principle of the secular state and separation of religious associations from the state implies that the state, its bodies and officials, bodies and officials of local self-government i.e. bodies of public (political) power, have no right to interfere in the lawful activity of religious associations and may not vest them with state or local self-government functions. Religious associations on the other hand have no right to interfere in the affairs of the state, participate in the formation and to perform the duties of state and local self-government bodies, participate in the activities of political parties and political movements, assist them financially or in any other way, participate in elections, *inter alia* by campaigning for or publicly supporting certain parties or candidates. However, nothing prevents adherents of a certain religion (including clergy) from participating in expression of will of the people by voting equally with other citizens. They have the freedom of choice and expression of their political views and political interests, making decisions and performing

respective activities, however, not as members of religious associations but as citizens and members of political parties.

Therefore in the Russian Federation as a democratic and secular state a religious association may not substitute itself for a political party, it must be above partisanship and politics. While a party, due to its political nature, may not be a religious organization, it must be non-denominational and above any confession. In any event a political party, due to its political aims, is not established to protect or express certain religious interests, since respective public associations in other legal and organizational forms may be established under law to pursue these aims.

4. In respect of statutory regulation of the establishment and activity (including conditions of registration) of political parties, the principles of pluralistic democracy, plurality of political parties and secular state, which are the fundamentals of the constitutional order of the Russian Federation, may not be interpreted and implemented without taking into consideration the peculiarities of the historical development of Russia, outside the context of national and confessional composition of Russian society, and peculiarities of interaction of the state, political power, ethnic groups, and religious confessions.

4.1. The Constitution of the Russian Federation states that the bearer of sovereignty and the only source of power in the Russian Federation is its multinational people (Section 1, Article 3). The Constitution of the Russian Federation was adopted in the name of the multinational people of Russia as a totality of citizens of different nationalities and religions united by the common destiny and preserving historically established integrity of the State (the Preamble).

That is why in the Russian Federation one may not automatically apply the principle of a secular state in a manner it is understood in certain countries with the structure of society relying on a single nation and religion and advanced traditions of religious tolerance and pluralism (which makes it possible, in particular, for some countries to permit political parties based on the ideology of Christian democracy since the notion “Christian” in this case transcends the confessional framework and implies belonging to European system of values and culture).

In the multiconfessional and multinational Russian Federation, due to the specificity of functioning of the leading religious doctrines (Orthodoxy as the dominant Christian denomination on the one hand, and Islam on the other), their influence on social life, including political ideology, which is historically related to a significant degree to national and ethnic factors, the use of such concepts as “Christian”, “Orthodox”, “Muslim”, “Russian”, “Tatar” etc. is predominantly associated in public opinion with specific confessions and certain nationalities, and not with a common system of values of the people of the Russian Federation as a whole.

Moreover, at the present stage of development neither Russian society nor political parties and religious associations have strong experience of democratic existence. Under these conditions the parties established on a national or religious basis would unavoidably tend to represent primarily the rights of the respective national (ethnic) or religious groups. The competition of national and religious parties, which is most vividly exposed in campaigning for votes, might lead to stratification and division of the Russian multinational people instead of consolidation, opposition of ethnic and religious values, praising of ones and denigration of the others. Ultimately, it might lead to ascribing the dominant meaning to a certain ethnic ideology or religion instead of values common to the whole nation. Articles 13 and 14 of the Constitution of the Russian Federation would be therefore violated.

The establishment of parties on a religious basis could open the way for politization of religion and religious associations, political fundamentalism and clericalisation of parties, causing in its turn rejection of religion as a form of social identity and its ousting from the system of factors which consolidate the society. The establishment of parties on a national basis could lead to dominance in elected state bodies of representatives of parties acting in the interests of larger ethnic groups to the detriment of smaller ethnic groups. The principle of legal equality regardless of the nationality guaranteed by the Constitution of the Russian Federation (Section 2, Article 6, Section 4, Article 13, Section 2, Article 19) would be violated.

Therefore the constitutional principles of a democratic and secular state in the specific historical reality of the Russian Federation as a multinational and multiconfessional country do not permit establishment of political parties on the basis of national or religious affiliation.

That is why in a situation of persisting ethnic and confessional tensions and increasing political ambitions of contemporary religious fundamentalism, introduction of differentiation on the basis of religion in the political sphere (i.e. sphere of struggle for power), which may acquire national overtones may split society into national and religious components (in particular, Orthodox Christian and Turkic-Muslim). The prohibition on the establishment of political parties on a national and religious basis by the Federal Law "On Political Parties" conforms to the authentic meaning of Articles 13 and 14 of the Constitution taken in conjunction with Articles 19 (Sections 1 and 2), 28 and 29, and therefore is a proper specification of the mentioned Articles.

4.2. The Constitution of the Russian Federation within the meaning of its Articles 13 and 14, requires the establishment of political parties to comply with the requirement of clarity and certainty of their aims as political parties in order to preclude violation of the principles of pluralistic democracy, the secular state, separation of the church and the state, and the requirement of the secular character of politics and political activity, which stems from the mentioned principles.

The special attention of the legislator to the name of the party in which as a general rule its ideological affiliation and program aims are expressed is predetermined by the fact that citizens, including potential members and voters in the first place form their opinion about the major aims of the party on the basis of its name. The presence of certain words in the name of a party which usually denote a certain nation or religion, in itself is not evidence of national or religious affiliation, which shall be determined relying on the systematic connection between its name and its charter and program. However such name of a party provokes certain reactions, attracts citizens determined to support religious or national aims and tasks, promotes the emergence of certain confessional or ethno-political overtones, which strengthen its position for adherents of certain religious movements or persons of a certain nationality for whom the name of a party denotes deliberately highlighted priorities of activity.

In any event the political party's use, in its name, of words and expressions which are expressly linked to any religion or nationality directly correlates to its ideological views, programmatic principles and aims. Thus, the concepts of "Christian", "Muslim", "Orthodox", "Catholic" etc. are obviously related to religion, have a religious meaning, reflect precisely religious feelings, interests, and values. That is why the presence of such terms in the names of parties, in spite of all the attempts to argue their non-religious significance, will be associated in mass consciousness with religious dogmas, i.e. they will be understood as a sign of adherence of the party to one of the religious doctrines and will spill over to the sphere of political struggle, *inter alia* on national (ethnic) issues. The same conclusions are applicable to parties which include in their name "ethnically oriented" terms. The establishment of various "Russian" parties, for example, provokes similar political activity on the part of representatives of other nationalities, and in itself it may fuel ethnic discord.

The prohibition on the use of words and expressions which are directly linked to any religion, church or nationality in the names of political parties is derived from the prohibition on the establishment and activity of parties on a religious and national basis. In multiconfessional and multinational society the mentioned prohibition is aimed at ensuring "transparency" of parties' participation in political life, freedom of conscience, and observance of the principles of a democratic and secular state as well as separation of church from the state. In particular, the use of the word "Orthodox" in the name of a party may mislead voters due to its close connection with this religion. Meanwhile, Orthodox Christianity as a faith and religious doctrine shall not be appropriated by one of the political parties.

At the same time a political party's failure to observe the prohibition on the use of any references to national or religious interests in its name may not be a sufficient reason to prohibit the activity of such a party, notwithstanding the fact that it is one of the conditions for

registration of a party as a legal entity. Owing to the general legal principle, a legal norm must be formally certain, clear and lucid in order to preclude the possibility of its arbitrary interpretation and application (especially for negative imperatives). Law-enforcement officials have no right to broadly interpret the prohibition on the reference to the protection of national and religious interests in the names of political parties.

If the contents of the charter and the program of a political party does not prove that the party is established on a religious or national basis, the words indicating its national or religious affiliation shall not be used in its name, since they are artificially imposed on the real ideological position of a party, its charter aims and tasks. The registration authority, within the meaning of Subsection 3, Article 9 of the Federal Law “On Political Parties”, has the power to demand alteration of the party’s name pursuant to its real aims and tasks. This procedure does not violate the citizens’ right to form political parties under Article 30 of the Constitution of the Russian Federation since neither the party itself nor its establishment or activity are prohibited. If there are no other legal reasons to deny registration, a political party shall be registered and allowed to carry out its activity.

Consequently, the requirements concerning the name of a political party under Subsection 3, Article 9 of the Federal Law “On Political Parties” is only one of the conditions of exercising the constitutional right to association, established by the legislator with the aim to protect the constitutional values, rights and lawful interests of citizen regardless of their nationality of religion.

4.3. Thereby, Subsection 3, Article 9 of the Federal Law “On Political Parties”, to the extent that it prohibits the establishment of political parties on a national or religious basis (i.e. in the charter of a party protection of national or religious interests is listed among its aims and these aims are expressed in its name), does not violate the principles of a democratic and secular state, equality, the right to association, and requirements for possible restrictions of the rights and freedoms of man and citizen under Articles 13, 14, 19, 28, 30 and 55 (Section 3) of the Constitution of the Russian Federation.

It is not a task of the Constitutional Court of the Russian Federation under Article 125 of the Constitution of the Russian Federation to review the lawfulness and reasonableness of law-enforcement decisions on the denial of registration to a certain political party due to violation of the requirements of Section 3, Article 9 of the Federal Law “On Political Parties”, *inter alia* examination of the issue whether the political party is established on a religious or national basis, whether the aims indicated in the charter of a party protect national and religious interests, and to what extent the terms used in its name reflect these aims.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 74, 75, 79, 100 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provision of Subsection 3, Article 9 of the Federal Law “On Political Parties”, as conforming to the Constitution of the Russian Federation to the extent that it prohibits the establishment of political parties on a national (ethnic) or religious basis.

2. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

3. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” this Decision shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court  
of the Russian Federation

No. 18-II