

UDC 342.1

EUROPEAN COURT OF HUMAN RIGHT'S DECISIONS ON FREEDOM OF ASSOCIATIONS (CASE OF THE REPUBLICAN PARTY OF RUSSIA V. RUSSIA)

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SUMMARY

The article is devoted to the analysis of the case "Republican Party of Russia v. Russia", the final decision of which was adopted by the European Court of Human Rights in September 2011. In the context of studying the constitutional right to freedom of association in political parties, this ECHR judgment is interesting because it demonstrates how the Court decides when an individual right to participate in democracy is contrary to the state's mandate for public order.

Key words: freedom of association, constitutional right to freedom of association in political parties, political parties, European standards of human rights, European Court of Human Rights.

ЄВРОПЕЙСЬКИЙ СУД З ПРАВ ЛЮДИНИ ПРО СВОБОДУ ОБ'ЄДНАНЬ (СПРАВА РЕСПУБЛІКАНСЬКОЇ ПАРТІЇ РОСІЇ ПРОТИ РОСІЇ)

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АНОТАЦІЯ

Стаття присвячена аналізу справи «Республіканська партія Росії проти Росії», остаточне рішення в якій ухвалено Європейським судом з прав людини у вересні 2011 р. У контексті дослідження конституційного права на свободу асоціацій у частині політичних партій це рішення Європейського суду з прав людини є цікавим тому, що демонструє, як Суд вирішує питання, коли індивідуальне право брати участь в демократії суперечить мандату держави на громадський порядок.

Ключові слова: свобода асоціацій, конституційне право на свободу об'єднання у політичні партії, політичні партії, європейські стандарти прав людини, Європейський суд з прав людини.

REZUMAT

Acest articol analizează cazul Partidului Republican din Rusia împotriva Rusiei, decizia finală cu privire la care a fost adoptată de Curtea Europeană a Drepturilor Omului, în septembrie 2011. În cadrul studiului dreptului constituțional la libertatea de asociere în ceea ce privește partidele politice, decizia CEDO este interesant deoarece arată modul în care Curtea decide cazul în care un drept individual de participare la democrație este contrară mandatului statului de a stabili ordinea publică.

Cuvinte cheie: libertatea de asociere, dreptul constituțional la libertatea de asociere în partidele politice, partidele politice, standardele europene în domeniul drepturilor omului, Curtea Europeană a Drepturilor Omului.

Statement of a problem. Nowadays the political reform is hold in Ukraine, that aims to strengthen the democracy, have the close connection with the political parties' activities. That is why the constitutional regulation of the freedom of association should be constantly modified in order to keep it in accordance with the European standards (created by the Council of Europe's bodies).

Relevance of a topic. The European Court of Human Rights (ECHR) is one of the most influential courts, when it comes about the human rights in Ukraine. The decisions of the ECHR are seen as precedents in our country, though Ukraine belongs to the continental (Romano-Germanic) legal family, thus don't use the precedents as the sources of law. Yet understanding the high importance of the human rights protection, as well as the past totalitarian legacy and so – the lack of the experience in the field of the human rights protections, such the exception was made. According to the Law of Ukraine "On the Fulfillment of Decisions and Application of Practice of the

European Court of Human Rights". "Decisions shall be obligatory for Ukraine according to Article 46 of the Convention. The procedure for the fulfillment of decision is determined by this Law, the Law of Ukraine "On Execution Procedure", other normative and legal acts taking into account the peculiarities envisaged by this Law. The decisions shall be executed at the expense of the State Budget of Ukraine" [1].

The state of a research. The problems, based on the decisions of the ECHR, were briefly analyzed by V.V. Chernichko in his Ph. D. (Law) about the constitutional right on freedom of association in the political parties in Ukraine and in the EU (comparative analysis) [2]. The decisions of the ECHR about the freedom of associations in general were discussed in some works by D.E. Volkova (for example [3; 4]) and by N.V. Mishyna [5].

The aim of the article is to demonstrate the example of the legal analysis of one of the ECHR's decisions (based on the materials of one of the cases about the freedom of association (the case of the Republican Party of Russia v. Russia).

The basic material. The ECHR bases its activity on the Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Article 11 of this Convention covers the freedom of assembly and association. The first part of this Article proclaims, that 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' [6]. The second part shows the possible cases, when these rights can be restricted: "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" [6].

The case of the Republican Party of Russia v. Russia is interesting in terms of such a freedom as the freedom of association, because the ECHR's decision shows how the Court decides the case when the individual right to participate in democracy conflicts with the state's mandate to impose public order.

The facts of the case of the Republican Party of Russia v. Russia are as follows.

The Republican Party of Russia (RPR) complained to the ECHR defending the freedom of association, claiming that the individual right to participate in democracy was violated by the state. The RPR mentioned two connected problems. First, two rejections of the Ministry of Justice to change the information about the RPR at the Unified State Register of Legal Entities, which indirectly led to the second problem – the RPR's registration as of the political party was cancelled by the Ministry of Justice.

At the end of 2005 the RPR made some changes at the Party's Political Council and Executive Committee, changed the Party's address, created several new branches. The Political Parties Act 2001 requires that this information should be up-to-date at the Unified State Register of Legal Entities [7], that's why the RPR asked the Ministry of Justice to make the changes. The Ministry refused based on the fact, that not all of the necessary documents were submitted.

After the PRP resubmitted the documents, they got the negative response again, this time because the Political Parties Act 2001 was amended, and the RPR doesn't have the minimum required number of members and regional branches now.

The RPR appealed the administrative decision in the Taganskiy District Court of Moscow and lost. They lost the appeal, and then they appealed that court's decision in the Moscow City Court and lost.

The representative of the Russian Federation claimed to the ECHR, that the State has just used its mandate to impose public order. When the RPR submitted the documents for the first time, to up-to-date the information at the Unified State Register of Legal Entities, the Ministry refused because the RPR haven't submitted the documents that show that the general conference of the RPR (that made these changes) was organized and hold according to the Political Parties Act 2001.

On April, 2006 the Ministry for the second time refused to modify the information about the RPR at the Unified State Register of Legal Entities. The Ministry claimed that the legislation on political parties changed after the RPR was registered. The RPR also doesn't have the minimum required number of members and regional branches now.

Started with enough members. Then the Political Parties Act 2001 was changed. The Ministry claimed they didn't have enough members, but the RPR claimed they had enough members. The case went to the Supreme Court. The Supreme Court

ruled against the RPR's thus dissolving the party. The RPR then appealed the case to the Appellate College of the Supreme Court. The RPR again lost the appeal.

The RPR is one of the oldest political parties in Russia. The leaders of the RPR have left the Communist Party of the USSR to register the RPR in 1991. This party was successful at the parliamentary elections (up to 14 representatives) till 2007, when it lost its registration. The RPR represents itself as the right-center party, since 2015 called "PARNAS" (abbreviation of the Russian phrase "Party of the People's Freedom". The Party Charter lists among its aims the nomination of candidates for election to state and municipal bodies and participation in the activities of those bodies, the development of civil society in Russia and the promotion of the unity and territorial integrity of the country and of the peaceful coexistence of its multi-ethnic population.

The Court:

- declares by a majority the complaints concerning the refusal to amend the State Register and the applicant's dissolution admissible and the remainder of the application inadmissible;

- holds by six votes to one that there has been a violation of Article 11 of the Convention on account of the authorities' refusal to amend the State register;

- holds unanimously that there has been a violation of Article 11 of the Convention on account of the applicant's dissolution;

- holds unanimously:

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,950 (six thousand nine hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

- dismisses unanimously the remainder of the applicant's claim for just satisfaction [8].

This Decision is accompanied by the Partly Dissenting Opinion of Judge Kovler (the Judge, who have represented the Russian Federation at the ECHR while the Decision was passed). Mr. A. Kovler states that he agrees with the final decision of his colleagues, but contributes in the argumentation of this decision. According to his Partly Dissenting Opinion, he shares 'the main part of its arguments concerning this conclusion. But I cannot agree with the position of the majority on the first issue – the refusal of the Ministry of Justice to register the amendments of the information contained in the Unified State Register of Legal Entities because of various omissions, including the party's failure to submit certain documents, thereby leaving it open to doubt whether the general conference had been held in accordance with the law and with its articles of association [9]. Then the Judge Kovler explains the Russian legislation, related to this case, when it comes about the refusal of the Ministry of Justice to register the amendments of the information contained in the Unified State Register of Legal Entities. He concludes, that the Ministry of Justice in this situation was fulfilling the functions of the state, when it comes about the state's mandate to impose public order.

Coming back to the case of the Republican Party of Russia v. Russia it is necessary to claim, that the Russian scientists still don't have the joint opinion whether to agree with this decision or not to agree.

For example, B. Ebzeev and V. Churov think the decision is heavily politized. They write: "Do not be mistaken. The prob-

lem is not in the rules of registration of legal entities adopted in Russia and their interpretation by the Ministry of Justice or the ECHR; the main thing is that the criteria for creating political parties established by the Russian state are not arbitrary, as the ECHR believes, but taking into account the historical stage experienced by the country and the need to create a stable multiparty system. The question is also whether we are ready to accept the extremely tendentious interpretation of the ECHR of the fundamental foundations of our national state-legal life and our socio-political reality, which cast doubt on Russia's sovereignty, and defend the Constitution of the Russian Federation from attempts at it, under whatever plausible pretext and whoever they are committed" [10, p. 29].

On contrary, S. Avakjan writes: "It is quite obvious that the formation of a party is a troublesome, complex and inexpensive process. This is especially noticeable in a federal state, as the party units must be created in at least half of the subjects. It is necessary to hold regional conferences, the national congress. Who will fund it? Simple people are not in a pocket, and if the oligarch agrees to finance, then only on the basis of their pragmatic interests" [11, p. 107]. He writes it with no relation to the analyzed ECHR's Decision, but the arguments are valid.

It is important to tell, that the author totally agrees with the analyzed ECHR's Decision and will continue the researches in the field of making the Ukrainian legislation more liberal in terms of creation of the political parties.

Conclusion. The case of the Republican Party of Russia v. Russia is interesting in terms of such a freedom as the freedom of association, because the ECHR's decision shows how the Court decides the case when the individual right to participate in democracy conflicts with the state's mandate to impose public order.

References:

1. Про виконання рішень та застосування практики Європейського суду з прав людини: Закон України від 23 лютого 2006 р. URL: <http://zakon5.rada.gov.ua/laws/show/3477-15> (дата звернення: 20.03.2018).
2. Черничко В. Конституційне право на об'єднання у політичні партії в Україні та країнах ЄС: порівняльно-правовий аналіз: автореф. дис. ... канд. юрид. наук: 12.00.02. Ужгород, 2016. 18 с.
3. Волкова Д. Конституційне законодавство України про громадські організації: стан та перспективи гармонізації з європейськими стандартами: дис. ... канд. юрид. наук: 12.00.02. Одеса, 2015. 189 с.

4. Волкова Д. Європейські стандарти про громадські організації: проблеми та перспективи адаптації українського законодавства. Вісник Південного регіонального центру Національної академії правових наук України. 2017. № 11. С. 21–26.

5. Мішина Н. Європеїзація конституційного права України: проблеми і перспективи. Публічне право. 2011. № 3. С. 12–19.

6. Convention for the Protection of Human Rights and Fundamental Freedoms 1950. URL: <http://zakon5.rada.gov.ua/laws/show/3477-15https://rm.coe.int/1680063765> (дата звернення: 20.03.2018).

7. О политических партиях: Закон Российской Федерации от 11 июля 2001 г. URL: <http://zakon5.rada.gov.ua/laws/show/3477-15http://docs.cntd.ru/document/901792270> (дата звернення: 20.03.2018).

8. European Court Of Human Right's Decision. Case of the Republican Party of Russia v. Russia. URL: <http://zakon5.rada.gov.ua/laws/show/3477-15http://users.unimi.it/dirpubesteuropa/wp-content/uploads/CEDU.Republican-Party-of-Russia-v.-Russia.pdf> (дата звернення: 20.03.2018).

9. European Court Of Human Right's Decision. Partly Dissenting Opinion of Judge Kovler. Case of the Republican Party of Russia v. Russia. URL: <http://zakon5.rada.gov.ua/laws/show/3477-15http://users.unimi.it/dirpubesteuropa/wp-content/uploads/CEDU.Republican-Party-of-Russia-v.-Russia.pdf> (дата звернення: 20.03.2018).

10. Чуров В., Эбзеев Б. Утраченные иллюзии (о Постановлении Европейского суда по правам человека по делу Республиканская партия России против России). Журнал конституционного правосудия. 2011. № 6. С. 28–38.

11. Авакян С. Конституционно-правовой статус политических партий в России: учебн. пособ. М.: Норма-Инфра, 2011. 320 с.

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