

FIRST SECTION

Application no. 12200/08
by Aleksandr ZHDANOV and RAINBOW HOUSE
against Russia
lodged on 3 March 2008

STATEMENT OF FACTS

THE FACTS

The first applicant, Mr Aleksandr Valeryevich Zhdanov, is a Russian national who was born in 1980 and lives in the Tyumen region. He is the President of the second applicant, a regional public association for the protection of citizens' sexual rights "Raduzhniy Dom" (Rainbow House), operating in the Tyumen region. The applicants are represented before the Court by Mr P. Chikov, a lawyer with the Interregional association of human rights organisations "Agora", an NGO registered in Kazan.

A. The circumstances of the case

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

1. Background information

In April 2005 the first applicant opened a gay nightclub which started to organise weekly gay parties.

On an unspecified day the police, masked and armed, stormed into the club, ordered that everyone should lie down on the floor and dragged the club visitors into the police bus. Several days later the lease for the premises of the nightclub was suddenly discontinued without any reasons.

In August 2005 a group of gay activists notified the Tyumen Administration of their intention to hold a gay march on 5 September 2005. At the press conference of 17 August 2005 the head of the Interior Department of the Tyumen Region said that he had been extremely astonished when he had learnt that a gay march was being planned in Tyumen. He continued: "In my personal opinion, Tyumen is neither the Netherlands, nor Amsterdam, one cannot hold a gay march in our town". The representatives of the Orthodox Church also spoke publicly against the march. The Tyumen Administration refused permission to hold a gay march.

On 20 August 2005 it was publicly announced that a regional public association "Rainbow House" (the second applicant) was created with the aim of defending the rights of gays, lesbians, bisexuals and transsexuals.

2. The first refusal of registration

In June 2006 the first applicant submitted an application for registration of the second applicant with the local department of the Federal Registration Service of the Ministry of Justice (hereafter "the local registration authority").

The local registration authority commissioned an expert opinion from the Tyumen Institute of Legal Studies of the Interior Ministry of Russia. The Institute studied the second applicant's articles of association and, on 31 July 2006, prepared an expert opinion which read as follows:

"The rights and legitimate interests of citizens with traditional sexual orientation, of the society [as a whole] and of the State may be breached by the activities related to the following stated aims of [the second applicant]:

- Publication and distribution of mass media, print, film and video products and communication through Internet of information about [the second applicant];
- Participation in the drafting of laws aimed at improving protection of persons with non-traditional sexual orientation.

The above conclusion is based on the following consideration: realisation of these aims involves propaganda of non-traditional sexual orientation.

...

[The second applicant's] activities related to propaganda of non-traditional sexual orientation may endanger the security of the Russian society and State for the following reasons:

- It will destroy the moral values of the society;
- It will undermine the sovereignty and territorial integrity of the Russian Federation by decreasing its population.

It follows from the above that propaganda of non-traditional sexual orientation by [the second applicant] may be qualified as extremist activities because the realisation of the aims mentioned above involves not only protection of rights and legitimate interests of citizens with non-traditional sexual orientation, but also attempts to increase the number of such citizens by converting those who, without such propaganda, would have retained a traditional sexual orientation.

However, to confirm the above finding, it is necessary to perform a sociological study ...”

The first applicant received a copy of that expert opinion in October 2007.

On 29 December 2006 the local registration authority refused registration of the second applicant, finding that it presented danger to Russia's national security. In particular, it considered that propaganda of non-traditional sexual orientation was capable of “destroying moral values of the society and undermining the sovereignty and territorial integrity of the Russian Federation by decreasing its population”. It further considered that the second applicant's activities might infringe the rights and freedoms of others, jeopardise the constitutionally protected institutions of family and marriage and encourage social and religious hatred and enmity. It concluded that the second applicant was an extremist organisation.

The local registration authority also noted irregularities in the document confirming the lease for the second applicant's office and reproached the first applicant for paying the registration fee several days before the second applicant had been founded.

The first applicant commissioned an expert opinion from a public association “Independent Legal Expert Council”. It follows from the expert opinion dated 7 February 2007 that the second applicant was not an extremist organisation. Its articles of association did not contain any indication that it would resort to propaganda of homosexuality, would encourage social or religious hatred or enmity or would endanger the national security.

On 10 March 2007 the first applicant challenged the decision of 29 December 2006 before the Federal Registration Service of the Ministry of Justice (hereafter “the federal registration authority”). He submitted, in particular, that under Russian law an association could be declared extremist by a judicial decision only. He further disputed the findings of the local registration authority, affirming that the second applicant had no intention to promote homosexuality or gay marriages. Its aims were to defend the rights of homosexuals and to promote tolerance of diversity in the population. Finally, he complained of discrimination on account of sexual orientation.

On 18 April 2007 the federal registration service found that the decision of 29 December 2006 had been lawful.

On 15 August 2007 the first applicant appealed against the refusal of registration to the Taganskiy District Court of Moscow. He repeated the arguments set out in his complaint of 10 March 2007.

On 26 October 2007 the Taganskiy District Court dismissed the first applicant's complaint. It referred to the expert opinion of 31 July 2006, repeated verbatim the local registration authority's decision of 29 December 2006 and found that it was lawful, well reasoned and justified. It rejected the applicant's argument that an association could be declared extremist only by a judicial decision, finding that that rule applied only to registered associations, while the second applicant had never been registered. The court refused to take into account the expert opinion of 7 February 2007 because it had not been submitted to the local registration authority together with the application for registration.

On 11 December 2007 the Moscow City Court upheld the judgment of 26 October 2007 on appeal.

3. The second refusal of registration

On 2 May 2007 the first applicant resubmitted an application for registration of the second applicant with the local registration authority.

On 1 June 2007 the local registration authority for a second time refused registration, repeating verbatim its previous reasoning relating to the extremist nature of the second applicant's activities. It also noted minor irregularities in the application for registration and accompanying documents, such as the failure to staple the application form or a typing error in the name of the department that had issued the first applicant's passport. It also refused to accept the lease agreement for the second applicant's office, finding that it had been drawn up incorrectly. Finally, the local registration authority held that the second applicant's articles of association unlawfully vested the right to dispose of its property in the president, and that the competence and the procedure for appointment of one of the governing bodies were not clearly defined.

On 25 August 2007 the first applicant challenged the refusal before the Tsentralniy District Court of Tyumen. He repeated the arguments set out in his complaint of 10 March 2007. He also submitted that the second applicant was an existing public association functioning without State registration as permitted under Russian law. Such existing associations could only be declared extremist by a judicial decision following a prosecutor's warning. No such warnings had been made in respect of the second applicant and its activities had never been qualified as extremist by the competent authorities.

The local registration authority commissioned expert opinions from the Tyumen Institute of Legal Studies of the Interior Ministry of Russia and from the Institute of Governmental and Legal Studies of the Tyumen State University.

On 17 October 2007 the Tyumen Institute of Legal Studies of the Interior Ministry of Russia found that the second applicant's activities might be extremist. The rights and legitimate interests of heterosexual citizens, of the society as a whole and of the State might be breached if the second applicant created an Information centre, issued and distributed printed, video and other materials, organised expositions, conferences, meetings, assemblies, marches or pickets. All those activities might involve propaganda of homosexuality and therefore might promote social enmity. They might also destroy the moral values of the society and undermine the national security and territorial integrity of the Russian Federation by decreasing its population. The second applicant's activities might aim not only at protecting the rights and legitimate interests of homosexual citizens, but also at increasing the number of such citizens by converting those who, without the second applicant's propaganda, would have retained a "traditional sexual orientation".

On the same day the Institute of Governmental and Legal Studies of the Tyumen State University also found that the second applicant was an extremist organisation. Firstly, the expression "the protection of citizens' sexual rights" in the second applicant's name was insulting to the moral, national and religious feelings of citizens. The Constitution guaranteed the right to respect for private life, which covered sexual relations. Any interference in the sphere of private life, including for its protection, was contrary to the Constitution and breached citizens' rights. It followed that the sole purpose of the founders of the second applicant was to insult the morality and the religious

feelings of others. Secondly, the distribution of printed, video and other materials by the second applicant might incite religious hatred because a majority of the traditional confessions in Russia viewed homosexuality negatively. An open propaganda of homosexuality would cause social tension and might provoke violent response. Thirdly, “non-traditional sexual orientation” was a broad term that might include paedophilia which was a criminal offence in Russia. Therefore, the second applicant’s activities might threaten public order. Finally, the support of persons suffering from HIV/AIDS, proclaimed as one of the aims of the second applicant, might violate the rights of those persons to confidentiality and respect for private life. It was impossible for a public association intending to advertise its activities to ensure confidentiality and inviolability of private life.

On 7 November 2007 the Tsentralniy District Court of Tyumen found that the decision of 1 June 2007 to refuse registration had been lawful and justified. It held that the refusal of registration did not breach the applicants’ right of association because the second applicant could continue to function without State registration. The decision of 1 June 2007 had not declared the second applicant an extremist organisation. It had rather found that there were indications of extremism in its articles of association and that it did not therefore comply with the requirements of domestic law.

The first applicant appealed.

On 17 December 2007 the Tyumen Regional Court upheld the judgment of 7 November 2007 on appeal, finding that it had been lawful, well-reasoned and justified.

On 20 May 2008 the flat of one of the members of the second applicant was searched by the police. The policemen stated that they were conducting an inquiry into the second applicant’s activities with a view to initiating criminal proceedings against its members on the charge of belonging to an extremist organisation. The first applicant’s requests for information about the outcome of the police inquiry remained without reply.

B. Relevant domestic law

1. Public Associations Act

The Public Association Act (Federal Law no. 82-FZ of 19 May 1995) provides that a public association may obtain legal entity status through State registration or carry on its activities without State registration and without legal entity status (section 3 § 4).

Establishment and functioning of public associations whose aims or activities are extremist is prohibited (section 16 § 1).

A public association is established at a general conference during which its articles of association are adopted and managing bodies are elected. From that moment on the public association acquires all rights and obligations under this Act, except the rights of a legal entity which are acquired at the moment of State registration (section 18 §§ 3 and 4).

State registration of a public association may be refused, *inter alia*, in the following cases: (a) its articles of association do not comply with the requirements Russian law; (b) the documents required for registration are incomplete or defective; or (c) the association’s name is insulting to the moral, national or religious feelings of citizens.

The refusal of registration may be appealed against to a higher authority or a court. Such refusal does not prevent a new application for registration, provided that the defects identified have been remedied (section 23).

2. Suppression of Extremism Act

The Suppression of Extremism Act (Federal Law no. 114-FZ of 25 July 2002 in force at the material time) defines extremist activities as activities of non-profit, religious or other organisations, the media or individuals consisting in planning, directing, preparing or committing acts aimed at, in particular, undermining the national security of the Russian Federation or encouraging racial,

ethnic, religious or social hatred accompanied by violence or calls for violence (section 1).

Establishment and functioning of public associations whose aims or activities are extremist is prohibited. If the authorities disclose indications of extremism in the activities of a public association, they must issue a warning to the association's president. The authorities may set a time-limit for correction of the established defects. A warning may be appealed against to a court. If the warning was not appealed against, if it was upheld by the court, if the defects were not corrected within the established time-limit, or if within twelve months of the first warning indications of extremist are for a second time disclosed in the association's activities, a court may issue a dissolution order or, if the association has no legal entity status, ban its activities. A public association may also be dissolved or banned by a judicial decision if it carries out extremist activities which have resulted in a breach of rights and freedoms of citizens, have damaged physical integrity or health of citizens, environment, public order, public safety, property, legitimate economic interests of natural or legal persons, the interests of the society or the state or have created a real risk of such damage (sections 7 and 9).

COMPLAINTS

1. The applicants complain under Article 11 of the Convention, taken alone and in conjunction with Article 14 of the Convention, about the refusals to register the second applicant. They disputed the authorities' finding that the second applicant was an extremist organisation and complained of discrimination on account of sexual orientation.
2. The applicants complain under Articles 6 and 13 of the Convention that the judicial proceedings were unfair. In particular, the domestic courts incorrectly applied domestic law, relied on expert opinions which had been obtained unlawfully and did not give sufficient reasons for their judgments.

QUESTIONS TO THE PARTIES

1. Did the refusals to register the second applicant interfere with the applicants' rights under Article 11 of the Convention? Was the interference prescribed by law? Was it "necessary in a democratic society" within the meaning of Article 11 § 2 of the Convention?
2. Can the second applicant claim to be a victim of the alleged discrimination on account of sexual orientation, contrary to Article 14 of the Convention (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 72 and 87, ECHR 2000-VII; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 88, 31 July 2008; see also, *mutatis mutandis*, *L'Erablière A.S.B.L. v. Belgium*, no. 49230/07, §§ 25-29, ECHR 2009-...)?
3. Did the applicants suffer discrimination on account of sexual orientation, contrary to Article 14 of the Convention read in conjunction with Article 11?

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