

# CASE OF YEFIMOV AND YOUTH HUMAN RIGHTS GROUP v. RUSSIA (European Court of Human Rights) 12385/15 and 51619/15

The case concerns the prosecution of the first applicant for what was considered to be an instance of hate speech and the dissolution of the applicant association, of which he had been the founding member, on the basis that he had been suspected of an extremist offence.

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## THIRD SECTION CASE OF YEFIMOV AND YOUTH HUMAN RIGHTS GROUP v. RUSSIA (Applications nos. 12385/15 and 51619/15) JUDGMENT

Art 10 • Freedom of expression • Unjustified prosecution for hate speech and placement on list of terrorists and extremists for publishing a note criticising the Russian Orthodox Church • Court analysis of Art 10 requirements in absence of assessment by domestic authorities  
Art 11 (+ Art 10) • Freedom of association • Requirement to remove person suspected of an extremist offence from participation in the applicant association and its subsequent dissolution not prescribed by law

STRASBOURG  
7 December 2021

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 Yefimov and Youth Human Rights Group v. Russia,**

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

Georges Ravarani, President,  
Georgios A. Serghides,  
Dmitry Dedov,  
Darian Pavli,  
Peeter Roosma,  
Andreas Zünd,  
Frédéric Krenc, judges,  
and Olga Chernishova, Deputy Section Registrar,

Having regard to:

the applications (nos. 12385/15 and 51619/15) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Maksim Mikhaylovich Yefimov, and a Russian non-governmental organisation, Youth Human Rights Group (“the applicants”), on 28 February and 2 October 2015, respectively;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the prosecution of the first applicant and dissolution of the applicant association and to declare inadmissible the remainder of application no. 51619/15;

the parties' observations;

Having deliberated in private on 16 November 2021,

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

## **INTRODUCTION**

1. The case concerns the prosecution of the first applicant for what was considered to be an instance of hate speech and the dissolution of the applicant association, of which he had been the founding member, on the basis that he had been suspected of an extremist offence.

## **THE FACTS**

2. The first applicant was born in 1976 and lived at the material time in Petrozavodsk in the Republic of Karelia. He was the founder and director of the applicant association, the Karelian regional branch of the inter-regional charity organisation Youth Human Rights Group (Молодежная правозащитная группа), established in 2000 in Petrozavodsk ("the second applicant"). The applicants were represented by Mr D. Gaynutdinov, a lawyer admitted to practise in Russia.

3. The Government were represented initially by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Vinogradov.

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

### **I. Prosecution of the first applicant**

5. The applicant association provided legal assistance to victims of human rights violations, supported youth projects and published an online newspaper, Zero Hour (Час Ноль), covering its work and social life in Karelia. In December 2011 the first applicant posted a short note on the newspaper's website, "Karelia is fed up with priests" («Карелия устала от попов»), which read as follows:

"Anti-church attitudes are on the rise in the Karelian capital. Nothing surprising about that. Thinking members of society have realised that the church is also a party in power. The Russian Orthodox Church, just like the [ruling] United Russia party, is fooling people with fairy-tales about our good life while raking in money. Total corruption, oligarchy, and the absolute power of security services are the reasons for a revival of the Russian Orthodox Church (ROC). Churches in Karelia are being built with public funds while there is no money for basic needs; ROC gets day nurseries for use at a time when childcare facilities are desperately lacking. Bearded men in fancy robes – modern-day ideology instructors – have filled the television screens. They give their opinion on everything, from canalisation to modernisation. All of this makes normal people puke; unable to do anything about the clerical stranglehold, they express their attitude to the ROC's provincial officials by tagging walls in places where the Orthodox scum hangs out. 'Pay and pray', 'Christ is dead' [is written] on the walls of the Orthodox Centre in Petrozavodsk ... which once was a day nursery."

6. On 5 April 2012 an investigator with the Investigations Committee of the Republic of Karelia opened a criminal investigation into the publication which allegedly undermined the dignity of religious believers, an offence under Article 282(1) of the Criminal Code. The decision reproduced the full text of the publication and referred to a report by an unidentified expert in linguistics, according to which "the text of the publication contained expressions publicly degrading the dignity of a person or a group of persons on account of their attitude to the religion".

7. On 9 April 2012 the Petrozavodsk Town Court authorised a search in the first applicant's flat for the purpose of locating "printed and digital media containing extremist content, central computer units, photographs, drawings and any other item or document significant for the criminal investigation". Later

that night the officers of the Federal Security Service (FSB) and the Investigations Committee searched the flat and removed the first applicant's personal computer.

8. On 13 April 2012 the investigator formally notified the first applicant that he was suspected of "degrading of dignity of a person or group of persons on account of their attitude to the religion" which constituted an offence under Article 282(1) of the Criminal Code. The first applicant refused to give evidence, invoking the right not to incriminate himself.

9. On 20 April 2012 the investigator commissioned a psychiatric evaluation of the first applicant and asked a panel of four experts to determine whether he had any past or current mental conditions and whether he was able to appreciate the nature and quality or the wrongfulness of his acts. The experts reviewed the first applicant's medical records, interviewed him and returned their findings three days later. They concluded that he was of sound mind and confident demeanour and that he did not have any mental disorder. They added that a more granular analysis of his personality traits required an in-patient examination.

10. On 11 May 2012 the investigator lodged with a court an application for the first applicant's placement for an in-patient psychiatric evaluation. He did not inform the first applicant of that application but called him in to his office the following day for accessing the findings of the first evaluation. From the investigator's office, FSB officers took the first applicant directly to the Petrozavodsk Town Court where the hearing on the application was to be held. His counsel was given two hours to prepare the position. The Town Court approved the first applicant's placement into a psychiatric facility, endorsing the view that such placement was necessary to carry out "a granular analysis of his personality traits". The investigator told counsel that the first applicant would be committed on 21 May.

11. Counsel lodged an appeal, complaining that the first evaluation did not find any mental disorders and that the law did not allow someone being committed for an assessment of "personality traits". On 28 June 2012 the Supreme Court of Karelia quashed the commitment order for procedural reasons and remitted the matter before the Town Court.

12. On 16 July 2012 the investigator withdrew the application before reintroducing it again on 30 July 2012. As the first applicant had left Russia in the meantime, the Town Court discontinued the proceedings, finding that a commitment order would be unenforceable because he had absconded.

13. On 4 September 2012 the investigator charged the first applicant with an offence under Article 282(1) of the Criminal Code. On 10 September 2012 the first applicant was declared a fugitive from justice and a warrant for his arrest was issued. On 27 September 2012 the investigation was suspended until such time as he had been arrested. His name was added to the List of Terrorists and Extremists (see paragraph 26 below).

14. On 28 September 2012 the Estonian Police and Border Guard Board approved the first applicant's application for political asylum, noting his claim that he feared politically motivated criminal prosecution in Russia and faced the risk of being confined to a psychiatric institution for his political views and activism.

15. In 2013 and 2014 counsel for the first applicant unsuccessfully applied to supervising prosecutors at the ascending hierarchical levels with a request to discontinue the criminal proceedings. On 13 May 2014 she requested judicial review of their refusal to withdraw the charges. She submitted in particular that the publication did not call for violence or discrimination, that the criticism targeted a religious organisation rather than individual believers and that it represented the first applicant's opinion on the close ties of the Russian Orthodox Church with State authorities and on the allocation of public funds which were matters of intense public concern. She pointed out that the first applicant's prosecution for criticising a religious organisation under a criminal-law provision providing for up to two years' deprivation of liberty did not pursue any pressing social need and was manifestly disproportionate to the aims pursued.

16. On 18 July 2014 the Petrozavodsk Town Court dismissed the application, finding that the investigator had acted within his discretion in deciding to institute criminal proceedings. It declined to carry out a substantive assessment of the decision or to engage with the counsel's arguments. On 28 August 2014 the Supreme Court of Karelia upheld the Town Court's decision in a summary fashion.

## **II. Dissolution of the applicant association**

17. On 7 November 2013 and 3 September 2014 the Karelian office of the Ministry of Justice sent a notice to the applicant association, requiring it to eliminate, within one month, a violation of section 19 of the Associations Act. It stated that the applicant association could no longer have the first applicant as its founder or member because his name had been added to the list of terrorists and extremists.

18. On 20 October 2014 the Ministry of Justice applied for a court dissolution of the applicant association on the grounds that it had not eliminated the violation and was liable to be dissolved in accordance with section 7 of the Suppression of Extremism Act.

19. On 18 December 2014 the Supreme Court of Karelia held a hearing without summoning the representatives of the applicant association, and granted the application for its dissolution, endorsing the position of the Ministry of Justice.

20. The applicant association introduced an appeal, complaining that the interference with its right to freedom of association was not justified and that the Supreme Court had not assessed the proportionality of the measure. It pointed out that the proceedings had been conducted without it being represented and that the Supreme Court's judgment had been sent to it only on 22 January 2015, that is to say, three days after the time-limit for filing an appeal had expired.

21. On 11 March 2015 the Supreme Court of Karelia rejected the appeal as belated, noting that a copy of its judgment had been received at the applicant association's address on 26 December 2014. The applicant association challenged that decision. It pointed out that the person who had signed for receipt was not an employee of the organisation and had no relationship with it or authority to receive court correspondence. On 2 April 2015 the Supreme Court of Russia upheld the decision to reject the appeal. In its view, the fact that the judgment had been received by an unauthorised person did not render the Supreme Court of Karelia's decision unlawful. The Supreme Court held the hearing without informing the parties of the date or affording them the opportunity to be present or represented.

## **RELEVANT LEGAL FRAMEWORK**

### **I. Extremist offences**

22. "Extremist activities" are defined, among others, as: (i) incitement of social, racial, ethnic or religious discord, and (ii) propaganda about the exceptional nature, superiority or deficiency of people on the basis of their social, racial, ethnic, religious or linguistic affiliation or their attitude to religion (see, for details concerning the Suppression of Extremism Act and its interpretation by the Constitutional Court, *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 90-100, 17 July 2018, and *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, § 41, 28 August 2018).

23. Actions aimed at inciting hatred or enmity and undermining the dignity of an individual or a group of individuals on account of, in particular, ethnic origin, religion or membership of a social group, are punishable with a fine, mandatory works or up to two years' deprivation of liberty (Article 282(1) of the Criminal Code).

24. The Plenary Supreme Court's Resolution on judicial practice in criminal cases concerning extremist offences, no. 11 of 28 June 2011, provides that actions aimed at inciting hatred or enmity were to be understood as comprising in particular the speech justifying or advocating a genocide, mass repression, deportations and other illegal actions, including use of violence against members of a certain ethnicity or race or followers of a certain religion. The criticism of political organisations, ideological and religious

associations, political, ideological and religious beliefs, national and religious customs should not, in itself, be regarded as actions aimed at inciting hatred or enmity (paragraph 7).

25. Experts who carry out a forensic assessment of extremist material may not be requested to resolve issues of law which fall outside their competence and involve a characterisation of the impugned act. Determination of such issues shall be the exclusive competence of a court. In particular, experts may not be requested to answer questions whether a text contains calls for extremist activity or whether material is directed at inciting hatred or enmity (paragraph 23).

## **II. List of terrorists and extremists**

26. The Money Laundering Act (Law no. 115-FZ of 7 August 2001) lays down the grounds for including individuals in the List of Terrorists and Extremists (Перечень террористов и экстремистов) (section 6(2.1)). The grounds include a final judicial decision declaring a person guilty of a terrorist or extremist offence (paragraph 2), a procedural decision declaring a person to be a suspect in a terrorist or extremist offence (paragraph 4), and an investigator's decision to charge a person with a terrorist or extremist offence (paragraph 5). Persons on the list may spend no more than 10,000 Russian roubles per month (approximately 115 euros in June 2021) from their bank accounts without the consent of the financial monitoring authority (section 6(2.4)).

## **III. Dissolution of an association for INDICATORS of extremist ACTIVITIES**

27. The Associations Act (Law no. 82-FZ of 19 May 1995) establishes that an individual included in the List of Terrorists and Extremists may not be a founder, member or participant of any association (section 19, paragraph 3(2)).

28. The Suppression of Extremism Act (Law no. 114-FZ of 25 July 2002) provides that where indicators of extremist activities are identified in the activities of an association, a competent prosecutor or executive body may issue a letter of warning to caution the association against extremist activities. The letter may set a time-limit for eliminating the violation. If the association fails to eliminate the violation within the time-limit or if new indicators of extremist activities are identified within twelve months of the date of the letter, the association is subject to dissolution (section 7).

## **THE LAW**

### **I. JOINDER OF THE APPLICATIONS**

29. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### **II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION IN RESPECT OF THE FIRST applicant**

30. The first applicant complained that his prosecution for an expression of his views had been in breach of Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ...”

### **A. Admissibility**

31. As the Government did not raise any objections to the admissibility of this complaint, the Court need not consider the matter of exhaustion of domestic remedies of its own motion (see *Dobrev v. Bulgaria*, no. 55389/00, §§ 112-13, 10 August 2006). Nevertheless, it reiterates that the rationale for the exhaustion rule is to afford the national authorities, primarily the courts, an opportunity to prevent or put right the alleged violations of the Convention (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). The first applicant repeatedly asked the prosecution authorities and later the courts to discontinue the criminal proceedings instituted in connection with his publication. In so doing, he afforded the Russian authorities multiple opportunities to redress, through their own legal system, the alleged violation of his right to freedom of expression which they failed to do, causing him to seek relief in the Court. It follows that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The Court declares it admissible.

## **B. Merits**

### *1. Submissions by the parties*

32. The first applicant submitted that a clear threat to commit him unlawfully to a psychiatric facility in a situation where an initial evaluation had found no mental disorder amounted to an interference with his right to freedom of expression. The criminal proceedings had sought to end his work as an activist and human rights defender fighting for the cause of secularism. The authorities were seeking to punish him for criticising the regional authorities and the Russian Orthodox Church and to indicate to him that if he did not change his conduct he would lose his freedom or be committed to a psychiatric institution. The publication presented his view on a matter of public interest concerning as it did the Russian Orthodox Church's embrace of the ruling party, the allocation of public funds and property to religious entities, and the overwhelming presence of clergy on television. Instituting criminal proceedings for criticising a religious organisation was incompatible with the position of the Supreme Court which indicated that criticism of religious organisations did not constitute hate speech. The interference was therefore neither lawful nor necessary in a democratic society.

33. The Government submitted that the investigator had instituted criminal proceedings in full compliance with domestic law. A linguist from the Federal Security Service had found that the publication contained "humiliating descriptions, negative affective evaluations and adverse affirmations" directed against the Russian Orthodox Church and attributed hostile intentions and conduct to its representatives. Other experts had concurred in that assessment. The investigative authorities had had a duty to conduct an inquiry and submit the case against the first applicant to a court. His right to freedom of expression had been outweighed by the public interest in protecting national security and preventing disorder and extremist offences.

### *2. Existence of interference*

34. The Court reiterates that the State actions which have been found to amount to an interference with the right to freedom of expression may encompass a wide variety of measures in the form of a "formality, condition, restriction or penalty". Criminal-law measures capable of having a chilling effect on freedom of expression may confer on the affected individuals the status of a "victim" of an alleged violation even where criminal proceedings against them did not end in a conviction (see, among others, *Dilipak v. Turkey*, no. 29680/05, §§ 40-51, 15 September 2015; *Kaboğlu and Oran v. Turkey* (no. 2), no. 36944/07, §§ 105-16, 20 October 2020; and *Sabuncu and Others v. Turkey*, no. 23199/17, §§ 223-26, 10 November 2020) or were discontinued for procedural or substantive reasons (see *Bowman v. the United Kingdom*, 19 February 1998, § 29, Reports of Judgments and Decisions 1998-I; *Altuğ Taner Akçam v. Turkey*, no. 27520/07, §§ 69-83, 25 October 2011; *Döner and Others v. Turkey*, no. 29994/02, §§ 85-89, 7 March 2017; and *Fatih Taş v. Turkey* (no. 3), no. 45281/08, § 28, 24 April 2018).

35. In the instant case the first applicant stated his views on allegedly anti-clerical attitudes in his home region. The authorities reacted to his short note with a series of restrictive measures which involved the institution of criminal proceedings for an offence punishable by deprivation of liberty, a search of his home, the removal of his personal computer and an order for his involuntary confinement in a

psychiatric institution. The domestic court which issued the order endorsed the contents of the investigator's application without undertaking an independent assessment of whether in-patient psychiatric evaluation was necessary in a situation where the first applicant did not show symptoms of any mental disorder and had not entered an insanity or diminished responsibility plea or claimed being unable to stand trial (compare, in a factually similar situation, *Manannikov v. Russia* [Committee], no. 74253/17, § 37, 23 October 2018). The Court reiterates that the vexatious or malicious use of the law and legal process to prevent or sanction contributions to public debate can become a means of intimidating and silencing journalists and other social watchdogs (see *Ali Gürbüz v. Turkey*, nos. 52497/08 and 6 others, § 67, 12 March 2019).

36. The risk of the first applicant's placement in a psychiatric institution did not materialise only because he had fled Russia in the meantime. Furthermore, whereas the existence of a deprivation of liberty was a decisive element for the Court's finding of interference in some cases (see *Nedim Şener v. Turkey*, no. 38270/11, §§ 95-96, 8 July 2014; *Şık v. Turkey*, no. 53413/11, §§ 83-85, 8 July 2014; and *Döner and Others*, cited above, § 88), its absence has not prevented the Court from taking account of the cumulative effect of the proceedings as a whole, attaching in particular weight to their overall duration and/or the existence of other "genuine and effective restrictions" affecting the applicants (see *Dilipak*, cited above, § 50, and *Ali Gürbüz*, cited above, §§ 63-67).

37. The charging of the first applicant with an extremist offence also resulted in his name being placed on the list of terrorists and extremists. The addition of his name to that list brought about a wide range of far-reaching legal consequences. His right to continue as a director or ordinary member or participant of any public association was immediately curtailed on account of his inclusion in the list (see paragraph 27 above). Pursuant to the money-laundering legislation, his bank accounts in Russia had been frozen and the amount he could spend monthly without seeking approval from the financial monitoring authority was limited to as little as 10,000 Russian roubles (see paragraph 26 above). Those restrictions which he had faced as a consequence of the exercise of his right to freedom of expression constituted a distinct and separate manifestation of the "chilling effect" resulting from his criminal prosecution.

38. Having been initiated in 2012, the criminal proceedings in the instant case were still pending at the time the application was lodged (see paragraph 13 above). The domestic authorities refused the first applicant's repeated requests for a discontinuation. On the basis of an arrest warrant issued in 2012, he had been listed as a fugitive from justice liable to be arrested if returned to Russia. The Court considers that the fear of conviction and pressure which the criminal proceedings must have brought to bear on the first applicant constituted "genuine and effective restrictions" resulting from the exercise of his right to freedom of expression.

39. In the light of the above elements, the Court finds that the pursuance of criminal proceedings against the first applicant in connection with his publication and the placement of his name on the list of terrorists and extremists amounted to an interference with his right to freedom of expression. The interference will infringe the Convention unless it can be shown that it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of Article 10 and was "necessary in a democratic society" to achieve those aims.

### *3. Justification for the interference*

40. The Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

41. The parties disagreed on whether the interference was "prescribed by law". The first applicant argued that his comments did not constitute the offence of inciting hatred because the Plenary

Supreme Court's guidance had set the limits of the offence by placing criticism of religious associations outside its scope (see paragraph 23 above). As it did in similar cases against Russia, the Court leaves this issue open with a view to examining the complaint from the standpoint of the necessity of the interference (see *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, § 86, 28 August 2018). It is also prepared to accept that the protection of the rights of others may be a legitimate aim of the interference.

42. The decision to institute criminal proceedings and the decision to declare the first applicant a suspect said very little, if anything, about the factual basis for the prosecution or the legal characterisation attributed to the acts (see paragraphs 6 and 8 above). They did not specify which particular elements of the publication were problematic and did not indicate the grounds for considering them extremist speech prosecutable under Article 282 of the Criminal Code. In fact, they offered no details other than references to the findings of an unnamed expert in linguistics and to provisions of criminal law. There was no legal analysis of the constituent elements of an offence beyond an unreserved endorsement of the expert's conclusion that the publication had degraded the dignity of religious believers. The Court will accordingly proceed to apply the criteria laid down in its case-law to the extent that the domestic authorities omitted to consider the matter in the light of the requirements of Article 10 (see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 276 and 279, ECHR 2015 (extracts)).

43. The Court's assessment of the necessity of interference in cases concerning allegedly extremist speech takes into account a number of factors: the existence of a tense political or social background; the presence of calls for – or a justification of – violence, hatred or intolerance, the manner in which the statements were made, and their potential to lead to harmful consequences. It is normally not sufficient that the interference was imposed because its subject-matter fell within a particular category or was caught by a legal rule formulated in general terms; what is rather required is that it was necessary in the specific circumstances (see *Perinçek*, cited above, §§ 205-08).

44. The first applicant's note concerned a supposedly growing anti-clerical sentiment in the Republic of Karelia. In setting out his views on what might have adversely affected attitudes towards the Russian Orthodox Church, he referred to the Church's close links with the political party in power, the continued construction of religious buildings at public expense, the allocation of former kindergartens for use by the church, and the pervasive presence of priests on public television. He cited anti-clerical graffiti on the walls of a former kindergarten converted into a religious centre as evidence of negative attitudes towards the Church. Admittedly, the criticism was strongly worded and some people might have taken offence at the language. The Court however reiterates that merely because a remark may be perceived as offensive or insulting by particular individuals or groups of individuals does not mean that it constitutes "hate speech". Whilst such sentiments are understandable, they alone cannot set the limits of freedom of expression (see *Ibragim Ibragimov and Others*, cited above, § 115). The key issue in the present case is thus whether the applicant's comments, when read as a whole and in their context, could be seen as promoting violence, hatred or intolerance (see *Perinçek*, cited above, § 240).

45. The Court has no doubt that both the place of religion in society and the administration of public funds and property are matters of general concern and continuing public debate, a sphere in which very strong reasons are required for justifying restrictions on freedom of expression (see *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV). The first applicant's contribution to that debate expressed his concern about what he saw as the encroachment of one particular religious organisation on public facilities and its unjust enrichment at the expense of society as a whole. His criticism focused on the religious organisation rather than on individual believers and did not call for anyone's exclusion or discrimination, let alone incite to acts of violence or intimidation. Nor has it been claimed that any factual allegations in the publication, such as the building of churches at public expense, the conversion of kindergartens into religious facilities or the existence of graffiti, were untrue or slanderous in nature.

46. As regards the aims of protecting national security and preventing disorder to which the Government referred, they have not put forward any evidence of a sensitive social or political background, a tense security situation, an atmosphere of hostility and hatred, or any other particular circumstances in which the publication was liable to produce imminent unlawful actions against Orthodox priests and to expose them to an actual or even remote risk of violence. The Court reiterates that the containment of a mere speculative danger, as a preventive measure for the protection of



democracy, cannot be seen as pursuing a “pressing social need” (see *Vajnai v. Hungary*, no. 33629/06, § 55, ECHR 2008).

47. Lastly, in so far as the nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference, the Court notes that the first applicant was prosecuted on charges punishable with a deprivation of liberty. It reiterates in this connection that the threat of imposition of a custodial sentence may have a strong “chilling effect” on freedom of expression and should not apply to non-violent forms of it (see *Murat Vural v. Turkey*, no. 9540/07, § 66, 21 October 2014).

48. In view of the above, the Court finds that the publication has not been shown to be capable of inciting violence, hatred or intolerance or causing public disturbances, and that the grounds for levelling criminal charges against the applicant were inconsistent with the Article 10 standards. There has accordingly been a violation of Article 10 of the Convention on account of the first applicant’s prosecution in connection with the publication.

### III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION, READ IN THE LIGHT OF Article 10

49. The applicants complained that the requirement to expel the first applicant from the applicant association and the decision on its dissolution had breached Articles 10 and 11 of the Convention. The relevant parts of Article 11 read as follows:

“1. Everyone has the right ... to freedom of association with others ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others ...”

#### **A. Admissibility**

50. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### **B. Merits**

##### *1. Submissions by the parties*

51. The applicants submitted that the decision to dissolve the applicant association had been taken on purely formal grounds and had not pursued any “pressing social need”. The courts had not examined whether it was necessary to dissolve a human rights organisation which had existed for more than ten years, solely because one of its founders had been included in the list of terrorists and extremists. They had given no consideration to the fact the first applicant had not been convicted; nor had it examined the nature of the charges against him. The Russian authorities had not explained how the first applicant’s exclusion could have strengthened national security or advanced the fight against terrorism or extremism. The proceedings had been conducted in the absence of representatives of the applicant association.

52. The Government submitted that the domestic court had correctly identified the grounds for the liquidation of the applicant association. The applicant association could have eliminated the violation but had failed to do so. The Government cited, by way of example, the case of another organisation, the Karelian Society for Animal Welfare, which had expelled the first applicant from its members and continued to exist. The dissolution of the applicant association had been lawful and necessary in a democratic society for the prevention of disorder and the protection of health and morals (they referred to *Vona v. Hungary*, no. 35943/10, ECHR 2013).

## *2. Existence of interference*

53. The Court reiterates that the organisational autonomy of associations constitutes an important aspect of their freedom of association protected by Article 11 of the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 82, ECHR 2000-XI, and *Lovrić v. Croatia*, no. 38458/15, § 71, 4 April 2017). A requirement to expel a founding member on the grounds that he had been charged with an extremist offence, emanating as it did from a State authority, amounted to an interference with the internal organisation of the applicant association. It also interfered with the right to freedom of association of the first applicant in so far as he was the member liable to be expelled (see *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 39 in fine, 27 February 2007).

54. The Court further reiterates that forced dissolution of an association represents one of the most serious forms of restriction on the freedom of association because it entails the termination of the association's legal existence (see *Association Rhino and Others v. Switzerland*, no. 48848/07, § 62, 11 October 2011). Forced dissolution of an association affects both the association itself and also its officers, founders and members (see *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 101, 10 June 2010, with further references). It follows that the measures taken by the authorities amounted to an interference with both applicants' right to freedom of association protected by Article 11 of the Convention.

55. Furthermore, to the extent that the measures taken against the applicant association were prompted by the views expressed by the first applicant, the interference must be examined in the light of the principles established under Article 10 of the Convention (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 85, ECHR 2001-IX).

56. An interference will constitute a breach of Article 11, read in the light of Article 10, unless it is "prescribed by law", pursues one or more of the legitimate aims and is "necessary in a democratic society" for the achievement of such aims.

## *3. Justification for the interference*

57. The statutory basis for the measures against the applicants could be found at the junction of two provisions of Russian law. The Court will examine them in turn to ascertain whether they are sufficiently foreseeable to meet the "quality of law" requirement and necessary in a democratic society to achieve any of the legitimate aims.

58. For domestic law to meet the "quality of law" requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise. The existence of sufficient procedural safeguards may be particularly important, having regard to the nature and extent of the interference in question (see *Ivashchenko v. Russia*, no. 61064/10, §§ 73-74, 13 February 2018, and, in a factually similar context, *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, § 72, 11 May 2021).

### *(a) Prohibition on persons suspected of extremist offences from participating in an association*

59. The first provision – section 19 of the Associations Act – has been interpreted by the domestic authorities as prohibiting the first applicant from participating in the applicant association in any capacity once his name has been added to the list of terrorists and extremists.

60. The administration of the list of terrorists and extremists is governed by section 6(2.1) of the Money Laundering Act which establishes that the list aggregates the names of individuals who have been suspected of, charged with or convicted of terrorist or extremist offences. The grounds for adding the

person's name to the list cover a wide range of situations varying in gravity from a final criminal conviction of such offences to a mere state of suspicion cast in the form of an investigator's decision (see paragraph 26 above).

61. It appears therefore that an investigator's decision that a person is suspected of an extremist offence constitutes a necessary but also self-sufficient legal basis for barring the suspected individual from participating in any association, whether existing or future. This decision triggers the adding of the person's name to the list of terrorists and extremists which, in turn, results in a legal ban on his or her participation in associations. This sequence of restrictive measures is put in motion automatically, without any judicial control or review of the investigator's decision. It follows that the above provisions confer on an investigator the legal authority and full discretion over the exercise of a fundamental right to freedom of association. An unqualified restriction on the exercise of that right is an extremely severe measure which would need to be justified by serious and compelling reasons even in the case of a convicted person, let alone someone who has been merely suspected of a certain type of offence and still benefits from the presumption of innocence.

62. The Court reiterates that severe measures limiting Convention rights must not be resorted to lightly; more particularly, the principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned. The authorities are required, when they decide to restrict fundamental rights, to choose the means that cause the least possible prejudice to the rights in question (see *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 75, ECHR 2012 (extracts)).

63. However, an assessment of proportionality and of a link between the restrictive measure and the conduct and circumstances of the person concerned is not required by Russian law. Courts reviewing a complaint about the inclusion of the person's name on the list only need to satisfy themselves that it was based on an appropriate procedural document drawn up by an investigator. They are not obliged to consider the evidence underlying that decision or assess the justification for declaring someone to be a suspect, having due regard to the Convention standards and heeding that person's presumption of innocence. Moreover, whereas the decision to declare the person a suspect can also be challenged as unfounded in the framework of criminal proceedings, the circumstances of the first applicant's case demonstrate that the judicial scrutiny would be confined to verifying the investigator's formal compliance with the procedural requirements (see paragraph 16 above). It follows that Russian law does not offer any procedural safeguards against potentially abusive use of the discretion to declare suspicion and the resulting restriction on freedom of association.

64. The Court finds that the provisions of Russian law, which make the exercise of the fundamental right to freedom of association dependent on an investigator's decision to declare a person a suspect of an extremist offence, do not meet the "quality of law" criterion in so far as they give unfettered discretion to the investigative authorities and offer no protection against abuse.

(b) Dissolution of an association for "indicators of extremist activities"

65. The second provision – section 7 of the Suppression of Extremism Act – lays down a procedure for dissolution of an association which failed to eliminate "indicators of extremist activities" (see paragraph 28 above).

66. The Court reiterates that dissolution of an association is an extremely severe measure entailing significant consequences which can only be tolerated in very serious circumstances (see *Association Rhino and Others*, cited above, § 62, and *Vona*, cited above, § 58). A dissolution order which is not based on acceptable and convincing reasons is liable to have a chilling effect not just on the targeted association and its members but also on human rights organisations generally (see *Adana TAYAD v. Turkey*, no. 59835/10, § 36, 21 July 2020). Consequently, Article 11 imposes on the State a high burden of justification for such a measure.

67. In the case of *Vona* on which the Government relied, but also in other similar cases, the Court found the dissolution of applicant associations justified because of their members' involvement in intimidation,

violence or disturbances of public order (see *Vona*, cited above, §§ 66-69; *Les Authentiks and Supras Auteuil 91 v. France*, nos. 4696/11 and 4703/11, §§ 81-84, 27 October 2016; and *Ayoub and Others v. France*, nos. 77400/14 and 2 others, §§ 113-17, 8 October 2020).

68. In contrast, in the present case, during the thirteen years of the applicant association's legal existence, no irregularities in its activities and no misconduct attributable to it had been identified. The only ground for its dissolution was the failure to comply with the Ministry of Justice's request to expel the first applicant from its membership after his name had been added to the list of terrorists and extremists (see paragraphs 17-18 above). Given the formal nature of the ground for dissolution, the courts were not required to check whether the allegedly unlawful conduct by the first applicant could be imputable to the applicant association (compare *Refah Partisi (the Welfare Party) and Others v. Turkey [GC]*, nos. 41340/98 and 3 others, §§ 112-15, ECHR 2003-II).

69. It follows that the applicant association was dissolved not for any "indicators of extremist activities" in its own conduct – because it was not claimed that there had been any – but for the fact that its founder was suspected of an extremist offence. This measure can be interpreted in several ways, all of which lead the Court to the conclusion that the interference was not "prescribed by law".

70. The Suppression of Extremism Act establishes that a letter of warning may be issued to an association in whose conduct "indicators of extremist activities" have been identified (see paragraph 28 above). In so far however as the legislation provides no definition of the concept of "indicators of extremist activities", the Court has already found that there is no ascertainable manner in which a distinction could be made between "extremist activities" as such and the conduct that did not amount to such activities but contained their "indicators" and could give rise to the warning procedure. The Court has held that the resulting uncertainty adversely affected the foreseeability of the regulatory framework, while being conducive to creating a chilling effect on freedom of expression and leaving too much discretion to the executive (see *Karastelev and Others v. Russia*, no. 16435/10, § 90, 6 October 2020).

71. In addition to lacking a substantive definition of "indicators of extremist activities", the legislation appears to have been imprecise in terms of how such activities should be imputed to various actors. The domestic courts accepted the Ministry of Justice's allegations against the applicant association as true, without subjecting them to an independent inquiry or examining any evidence of the misconduct alleged (compare *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 89, ECHR 2009). Since the applicant association's engagement in any "extremist activities" had not been shown and since no indicators of such activities had been identified in its own conduct, the decision to hold it responsible for the allegedly unlawful conduct of its founder was arbitrary.

72. Lastly, in so far as the dissolution of the applicant association was a direct consequence of the investigator's decision to declare the first applicant a suspect in an extremist offence, the Court refers to its finding in paragraph 64 above that conferring unchecked discretion on the investigative authorities capable of producing such far-reaching legal effects without judicial control and without due regard for the presumption of innocence is, in itself, incompatible with the "quality of law" requirements.

73. Accordingly, the Court finds that the dissolution of the applicant association did not have a clear and foreseeable legal basis.

#### (c) Conclusion

74. The finding that the interference was not "prescribed by law" dispenses the Court from examining whether it also pursued a legitimate aim and was "necessary in a democratic society".

75. There has accordingly been a violation of Article 11 of the Convention, read in the light of Article 10, in respect of both applicants.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

77. The first applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. He submitted that he had been forced to rebuild his life in a foreign country in which he had no home, no work, no friends or family.

78. The Government submitted that the claim was excessive.

79. The Court awards the first applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

80. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. Decides to join the applications;
2. Declares the case admissible;
3. Holds that there has been a violation of Article 10 of the Convention in respect of the first applicant;
4. Holds that there has been a violation of Article 11 of the Convention, read in the light of Article 10, in respect of both applicants;
5. Holds
  - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (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;
6. Dismisses the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 7 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Georges Ravarani  
President