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BULLETIN:

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**Claiming to be a 'victim' under the European Convention –  
the case of Vatan v. Russia**

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**(No. 47978/99) 7/10/2004 (ECHR: Judgment)**

**Facts**

*The applicant, a political party, "Vatan", was founded in 1994 with the purpose of supporting the renaissance of the "Tartar nation" and to protect the Tartars' political, socio-economic and cultural rights.*

*In 1994, the Simbirsk regional organization of Vatan (the "Regional Organization") was registered with the regional department of justice. Vatan claimed that this was a branch of its party. In 1997 the Regional Organization made an appeal containing a number of statements including a call for "all oppressed people of the Empire" to strive for decolonisation. In July, the prosecutor of the Ulyanovsk region applied to the regional court to have the activities of the regional organisation suspended on the grounds that it had called for violence contrary to the federal legislation and the constitution. The regional court found that the statements made, including calls for the "Sember peoples" to join the Tartar Muslims in the national liberation fight, to decolonise Russia and to form military forces, were incompatible with the Constitution. The court suspended the Regional Organisation's activities for a period of six months. The decision was upheld on appeal by the Supreme Court.*

*In January 2000 the Ulyanovsk Regional Court allowed a claim by the Department of Justice to dissolve the Regional Organisation on account of its failure to bring its Charter into compliance with new legislation. This decision had not been appealed against.*

*Vatan brought an application to the European Court of Human Rights alleging that the suspension of the activities of the Regional Organisation violated Vatan's freedom to hold opinions and to impart information and ideas. It also alleged violations of its members right to freedom of association and their right to manifest their religion. Vatan invoked Articles 9, 10, 11 and 14 of the Convention*

**The Decision**

*The Court declared the application inadmissible on the basis that it was the Regional Organisation, and not Vatan, which was the victim of any potential Convention violation, according to Article 34 of the European Convention.*

**Comment**

In the judgment of *Vatan v. Russia* the Court has highlighted the importance of the “victim” concept in Article 34 of the European Convention on Human Rights. According to Article 34, “*The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation...*”. If an applicant does not fulfil these criteria, the application will be declared inadmissible and the Court will not consider the merits of the case. At present, more than 90 % of all applications submitted to the Court are declared inadmissible.

In the case of *Vatan v. Russia* the Court took a slightly different approach and decided in its admissibility decision to join the question of whether the applicant fulfilled the criteria in Article 34 to the merits of the case rather than examining it at admissibility stage. This might have been because the issue was considered to be rather complex, or so closely linked to the merits of the case that it was more rational to examine them together. It is clear from the Court’s case law that both natural and legal persons can claim to be victims of violations of the Convention and fulfil the criteria in Article 34. Political parties have also been held to have standing before the European Court (see, inter alia, *Freedom and Democracy Party (Özdep) v. Turkey*, judgment of 8 December 1999). However, there are some rights for which legal persons cannot be considered victims, e.g. the prohibition of torture in Article 3.

In the present case, the Court firstly examined the Government’s objection that Vatan was a separate legal entity from the Regional Organisation, which had been prohibited from holding meetings, demonstrations and other public actions, taking part in elections and disposing of its bank accounts. According to the Government, this meant that Vatan did not have standing before the Court. The Court considered whether Vatan and the Regional Organisation could be conceived as one and the same party, and therefore bring the applicant within the criteria of Article 34. The Court found that there was nothing to indicate that the Regional Organisation was structurally dependent on Vatan in its decision-making and that there was nothing in the constituent documents that prevented it from pursuing political goals other than those of Vatan. Therefore the Court held that the two could not constitute one political party. Important here was also that Vatan’s president had taken part in the domestic proceedings not as the head of the entire party but on the basis of a power of attorney issued by the Regional Organisation.

The Court then moved on to consider whether Vatan itself could claim to be a victim of the suspension applied against the Regional Organisation. The Court has established in its case law that there are three kinds of victims under Article 34: actual, potential and indirect victims.

An **actual** victim is someone who had already been personally affected by the alleged violation. A simple example is a person who has been tortured, or a company that has been involved in unfair civil proceedings. However, if applicants have received adequate redress at national level, they will no longer be considered to be a victim for the purposes of Article 34. Adequate redress means that the national authorities must have recognised that the action/non-action/measure complained about was contrary to the Convention or unlawful, and if appropriate must have provided compensation or other redress.

A **potential** victim is someone who is at risk of being directly affected by a law or administrative act. An example here is

individuals who are under threat of being deported and who would face inhuman or degrading treatment in the country to which they are being deported, although the deportation has not yet been carried out.

Finally, an **indirect** victim is someone who is immediately affected by a violation which directly affects someone else. This could, for example, be a family member of someone killed or deported.

In the present case, the Court considered whether Vatan could be an indirect victim for the purposes of Article 34. Finding that there was nothing in the injunction against the Regional Organisation which imposed any limitations on Vatan itself, and that there was nothing to stop Vatan pursuing activities in its own name in the Ulyanovsk region, it was not possible for Vatan to claim it had been a victim of a violation.

For this case to have been successful at the admissibility stage, the Regional Organisation should have instituted proceedings in the domestic courts, and then applied to the European Court

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under its own name. As the Regional Organisation constituted a legal entity of its own under domestic law, it would have standing before the European Court. In theory, the Regional Organisation could still pursue this action and the case could come before the Court again. According to the facts of the judgment, the Regional Organisation was dissolved by a decision of the Ulyanovsk Regional Court on 12 January 2000, but the Court's case law makes it clear that dissolved parties may be considered victims (see *inter alia* previously mentioned *Freedom and Democracy Party (Özdep) v. Turkey*). The party would obviously have to abide by any domestic time limits that might apply.

When submitting a complaint to the European Court on behalf of a group it is generally advisable, if appropriate, to include an individual as a complainant as well. As the case of *Vatan* shows, it is of utmost importance to put forward the right person, legal or natural, as the applicant. If a political party alleges that its rights have not been respected, it might be that individual members of that party have also been affected. In the case of *Sunday Times v. the United Kingdom* (judgment of 26 April 1979), the application was made on behalf of the company (a newspaper), the editor and a group of journalists. They were all held to have standing before the Court.

Interestingly, two of the judges in the case of *Vatan* submitted a separate opinion stating that even though they agreed with the conclusion reached in the judgment, they would have preferred to have seen it declared inadmissible on the grounds that it was manifestly ill-founded, an inadmissibility ground found in Article 35(3). According to the separate opinion, Vatan should have standing as it represented the "party as a whole". However as the Regional Organisation had openly called for violent challenges to the foundations of constitutional governance and for a brigade of courageous and resistant people to fight for national liberation, the conclusions by the regional court were neither exaggerated nor unfounded. The statements clearly overstepped the boundaries of

permissible freedom of expression and the application should be declared manifestly ill-founded.

Hence, it is far from clear that the application would ultimately have been successful even if it had been pursued by the Regional Organisation itself.