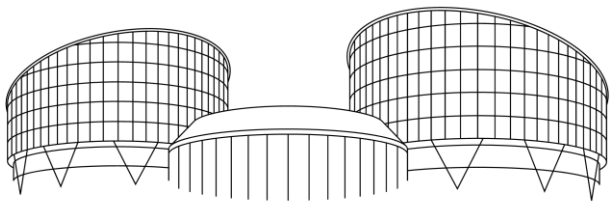
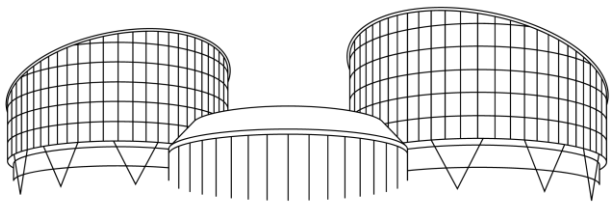


EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANCHUGOV AND GLADKOV v. RUSSIA

(Applications nos. 11157/04 and 15162/05)



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

JUDGMENT

STRASBOURG

4 July 2013

FINAL

09/12/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Anchugov and Gladkov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 June 2013,

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

PROCEDURE

1. The case originated in two applications (nos. 11157/04 and 15162/05) 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 two Russian nationals, Mr Sergey Borisovich Anchugov and Mr Vladimir Mikhaylovich Gladkov ("the applicants"), on 16 February 2004 and 27 February 2005 respectively.

2. The first applicant was represented by Mr Ye. Stetsenko, a lawyer practising in Chelyabinsk. The second applicant, who had been granted legal aid, was represented by Mr V. Shukhardin, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, in the proceedings in application no. 11157/04, and by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights, in the proceedings in application no. 15162/05.

3. The applicants complained, in particular, that, as they were convicted prisoners in detention, they were debarred from voting in elections. They relied on Article 10 of the Convention and Article 3 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

4. The President of the First Section decided to give notice of the applications to the Government on 22 October 2007 and 19 October 2009 respectively. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

5. On 11 June 2013 the Chamber decided to join the proceedings in the applications (Rule 42 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1971 and lives in Chelyabinsk. The second applicant was born in 1966 and lives in Moscow.

A. The applicants' criminal history

1. The first applicant

7. On 10 January 1995 the first applicant was arrested on suspicion of having committed a criminal offence and remanded in custody.

8. By a judgment of 23 June 1998 the applicant was convicted at first instance on a charge of murder and several counts of theft and fraud and sentenced to death. On 20 December 1999 his conviction was upheld on appeal, but the death sentence was commuted to fifteen years' imprisonment.

9. On the date of his latest correspondence with the Court, the first applicant was serving a sentence of imprisonment in penitentiary facility YuK-25/1 in Orenburg.

2. The second applicant

10. On 20 January 1995 the second applicant was arrested on suspicion of having committed a criminal offence and remanded in custody.

11. On 27 November 1995 the second applicant was convicted at first instance and sentenced to five years' imprisonment. The sentence was upheld on appeal on 19 June 1996.

12. In another set of criminal proceedings, on 13 November 1998 the second applicant was convicted of murder, aggravated robbery, participation in an organised criminal group and resistance to police officers and sentenced to death. On 15 February 2000 his conviction was upheld on appeal, but the death sentence was commuted to fifteen years' imprisonment, of which fourteen were to be served in prison and the last year in a correctional facility.

13. On 23 April 2008 the second applicant was released from prison on parole.

B. The applicants' attempts to participate in elections

14. The first and second applicants were kept in pre-trial detention centres from 10 January 1995 to 20 December 1999 and from 20 January 1995 to 22 March 2000 respectively. During those periods the first applicant voted twice in parliamentary elections and the second applicant voted several times in parliamentary and presidential elections and in regional elections of an executive official.

15. On an unspecified date the first applicant was transferred to a penitentiary facility to serve his prison sentence. Since that date he has been debarred, as a convicted prisoner, from participating in any elections pursuant to Article 32 § 3 of the Russian Constitution ("the Constitution").

16. On 22 March 2000 the second applicant was transferred to a prison to continue serving his sentence. From that date, and until his release from prison on 23 April 2008, the second applicant was debarred from voting in elections under the provisions of the aforementioned Article.

17. In particular, the applicants were ineligible to vote in the elections of members of the State Duma – the lower chamber of the Russian parliament – held on 7 December 2003 and 2 December 2007 and in the presidential elections of 26 March 2000, 14 March 2004 and 2 March 2008. The second applicant was also unable to vote in additional parliamentary elections held in the electoral constituency of his home address on 5 December 2004.

C. The applicants' applications to the Constitutional Court

18. Both applicants challenged, at various times, the aforementioned constitutional provision before the Russian Constitutional Court ("the Constitutional Court") stating that it violated a number of their constitutional rights.

19. In letters of 15 March and 6 April 2004, sent to the first and second applicants respectively, the Secretariat of the Constitutional Court replied that the applicants' complaints fell outside the Constitutional Court's competence and therefore had no prospects of success.

20. The second applicant appealed against that decision to the President of the Constitutional Court.

21. By a decision of 27 May 2004 the Constitutional Court declined to accept the second applicant's complaint for examination, stating that it had no jurisdiction to check whether certain constitutional provisions were compatible with

others.

22. On 19 July 2004 the Secretariat of the Constitutional Court forwarded the court's decision to the second applicant. In a letter of 5 August 2004 a regional office of the Department of Execution of Sentences sent the Secretariat's letter of 19 July 2004 to the second applicant's prison. According to the second applicant, this correspondence, including the decision of 19 July 2004, was delivered to him on 1 September 2004.

D. Proceedings against election commissions

23. The second applicant then repeatedly brought court proceedings against election commissions at various levels complaining of their refusals to allow him to vote in parliamentary and presidential elections. His complaints were rejected either on formal grounds or on the merits. Final decisions were taken by the appellate courts on 1 December 2007 and 3 April, 5 May, 4 June and 29 September 2008. The domestic courts mainly referred to Article 32 § 3 of the Constitution and the fact that the second applicant was a convicted prisoner, and stated that the domestic law debarred him from voting in elections. In its decision of 1 December 2007 the Lipetsk Regional Court also held as follows:

> "In the judgment of the European Court of Human Rights dated 6 October 2005 in the case of Hirst v. the United Kingdom the applicant's disenfranchisement on account of his serving a sentence of imprisonment was found to be in breach of Article 3 of Protocol No 1 to the Convention.
>
> The European Court noted in that judgment that prisoners in general continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention.
>
> It was also pointed out that a blanket statutory disenfranchisement of all convicted prisoners in prisons (of the United Kingdom) applies automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.
>
> ... The Russian Federation accepts ... as binding the jurisdiction of the European Court of Human Rights regarding questions of interpretation and application of the Convention and its Protocols in situations of alleged violations of those legal instruments by the Russian Federation where the alleged violation has taken place after their entry into force in respect of the Russian Federation.
>
> However, the aforementioned judgment of the European Court does not allow a conclusion to be reached as to the unreasonableness of restrictions on electoral rights established in the legislation of the Russian Federation in respect of individuals serving a sentence of imprisonment after their conviction by a court.
>
> Apart from the foregoing, the said judgment of the European Court provides that any restrictions on other rights of prisoners (save for the right to liberty) must be justified, although such justification may well be found in considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment.
>
> Also, it is noted that Article 3 of Protocol No. 1, which enshrines the individual's capacity to influence the composition of the law-making power, does not therefore exclude that restrictions on electoral rights could be imposed on an individual who has, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations. The severe measure of disenfranchisement must not, however, be resorted to lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned.
>
> Therefore, without ruling out the very possibility of restricting electoral rights of convicted prisoners, the European Court attaches decisive weight to the proportionality and reasonableness of establishing this measure in

law.

The criteria which the European Court has considered as decisive when determining a question of proportionality of, and justification for, limiting electoral rights of convicted prisoners – the nature and seriousness of their offence and their individual circumstances – were taken into account when [the second applicant's] punishment was chosen, in accordance with provisions of the [Russian] legislation which were not analysed in the aforementioned judgment.

According to [a relevant provision] of the Russian Penitentiary Code, it is individuals convicted of particularly serious offences, or of particularly serious repeat offences, and sentenced to a term of imprisonment exceeding five years ... who serve their sentence in prison.

It should also be noted that, in accordance with Article 10 § 3 of the International Covenant on Civil and Political Rights of 16 December 1966, the penitentiary system must comprise treatment of prisoners the essential aim of which must be their reformation and social rehabilitation.

[A relevant provision] of the Russian Code of Criminal Procedure also lists the reform of a convicted prisoner as one of the aims of punishment, together with the prevention of further crimes.

Therefore, taking into account the aforementioned criteria, [it can be concluded that] the temporary (for the period of imprisonment) restriction of the electoral rights established in the legislation of the Russian Federation in respect of individuals serving a sentence of imprisonment is, from its inception, reasonable, justified and in the public interest, being a preventive measure aimed at reforming convicted prisoners and deterring them from committing crimes and breaching public order in the future, including in the period when elections are held.

The same [reasoning] applies to the restriction of [the second applicant's] electoral rights."

E. Other proceedings

24. The second applicant also attempted to bring proceedings complaining of the refusal of the head of a local election commission to give him copies of certain documents.

25. On 27 December 2007 the Lipetsk Regional Court returned the second applicant's claim, stating that it should be lodged with a lower court.

26. On 4 June 2008 the Supreme Court upheld the above decision on appeal.

F. The applicants' applications to the European Court

27. In his first letter to the Court dated 16 February 2004, and dispatched, as is clear from the postmark, on 17 February 2004, the first applicant described the circumstances of his case and complained about his disenfranchisement and inability to vote in a number of elections held in Russia. He later reproduced this in an application form of 30 April 2004, which was received by the Court on 23 June 2004.

28. The second applicant complained about his disenfranchisement and inability to vote in elections in an application form which he dated 29 December 2004 and which, as is clear from the postmark, he sent on 27 February 2005. The Court received the application form on 30 March 2005.

29. Subsequently, the applicants updated their applications referring to new elections in which they were still ineligible to vote.

II. RELEVANT DOMESTIC LAW

A. Constitution

30. Article 15 (Chapter 1) of the Russian Constitution of 12 December 1993 provides:

"1. The Constitution of the Russian Federation shall have supreme legal force and direct effect and shall be applicable within the entire territory of the Russian Federation. Statutes and other legal instruments adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation.

...

4. Generally recognised principles and norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by the [domestic] law, the rules of the international treaty or agreement shall be applicable."

31. Article 32 (Chapter 2) of the Constitution provides:

"...

2. Citizens of the Russian Federation shall have the right to elect and to be elected to bodies of state governance and bodies of local self-government, as well as to take part in a referendum.

3. ... citizens detained in a detention facility pursuant to a sentence imposed by a court shall not have the right to vote or to stand for election.

...".

32. Article 33 (Chapter 2) of the Constitution reads as follows:

"Citizens of the Russian Federation shall have the right to appeal in person and make individual and collective appeals to State bodies and local bodies of self-government".

33. Article 134 (Chapter 9) of the Constitution reads as follows:

"Proposals on amendments to and revision of the provisions of the Constitution of the Russian Federation may be submitted by the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation, legislative (representative) bodies of constituent entities of the Russian Federation, and by groups of deputies numbering no less than one fifth of the total number of deputies of the Federation Council or of the State Duma".

34. Article 135 (Chapter 9) of the Constitution provides:

"1. The provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation may not be revised by the Federal Assembly.

2. Where a proposal to revise any provisions in Chapters 1, 2 and 9 of the Constitution of the Russian Federation is supported by three fifths of the total number of deputies of the Federation Council and the State Duma, a Constitutional Assembly shall be convened in accordance with a federal constitutional law.

3. The Constitutional Assembly may either confirm the inviolability of the Constitution of the Russian Federation or draw up a new draft of the Constitution of the Russian Federation which shall be adopted by two thirds of the total number of deputies to the Constitutional Assembly or submitted to a nationwide vote. In the event of a nationwide vote, the Constitution of the Russian Federation shall be considered as adopted if more than half of those voting have voted for it, provided that more than half of the electorate have taken part in the voting."

B. Other legal instruments

35. The provisions of Article 32 § 3 of the Constitution are reproduced in section 4(3) of the Federal Law of 12

June 2002 on Fundamental Guarantees of Electoral Rights and Eligibility to Participate in a Referendum of the Citizens of the Russian Federation and in section 3(4) of the Federal Law of 10 January 2003 on Presidential Elections in the Russian Federation.

III. INTERNATIONAL AND OTHER RELEVANT MATERIALS

A. Vienna Convention on the Law of Treaties (1969)

36. Article 27 ("Internal law and observance of treaties") of the Vienna Convention on the Law of Treaties reads as follows:

> "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. ..."

B. Work of the United Nations International Law Commission

37. At its fifty-third session, in 2001, the International Law Commission ("the ILC") adopted a text entitled "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries". The text was submitted to the United Nations General Assembly as a part of the ILC's report covering the work of that session. The report was published in the "Yearbook of the International Law Commission, 2001", vol. II, Part Two, as corrected. In its relevant parts, the aforementioned text read as follows:

Article 3: Characterization of an act of a State as internationally wrongful

> "The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."

In its commentary to this article the ILC noted, in particular:

> "(1) Article 3 makes explicit a principle ... that the characterization of a given act as internationally wrongful is independent of its characterization as lawful under the internal law of the State concerned ... [A] State cannot, by pleading that its conduct conforms to the provisions of its internal law, escape the characterization of that conduct as wrongful by international law ..."
>
> ...
>
> (3) That conformity with the provisions of internal law in no way precludes conduct being characterized as internationally wrongful is ... well settled ... The principle was reaffirmed many times:
>
> "...
>
> ... a State cannot adduce ... its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force [*Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44*, p. 24]."
>
> ...
>
> (9) As to terminology, in the English version the term "internal law" ... covers all provisions of the internal legal order, whether written or unwritten and whether they take the form of constitutional or legislative rules, administrative decrees or judicial decisions."

C. International Covenant on Civil and Political Rights (adopted by the General Assembly of the United Nations on 16 December 1966)

38. The relevant provisions of the International Covenant on Civil and Political Rights read as follows:

Article 10

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

...

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation ..."

Article 25

"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country."

D. United Nations Human Rights Committee

39. In its General Comment no. 25 (1996) on Article 25 of the International Covenant on Civil and Political Rights, the Human Rights Committee expressed the following view:

"14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote."

40. In its views on the *Yevdokimov and Rezanov v. Russian Federation* case (21 March 2011, no. 1410/2005), the Human Rights Committee, referring to the Court's judgment in *Hirst (no. 2)* [GC] (cited above), stated:

"7.5 ... the State party, whose legislation provides a blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment, did not provide any arguments as to how the restrictions in this particular case would meet the criterion of reasonableness as required by the Covenant. In the circumstances, the Committee concludes there has been a violation of article 25 alone and in conjunction with article 2, paragraph 3, of the Covenant..."

E. Venice Commission Code of Good Practice in Electoral Matters

41. This document, adopted by the European Commission for Democracy through Law ("the Venice Commission") at its 51st plenary session (5-6 July 2002) and submitted to the Parliamentary Assembly of the Council of Europe on 6 November 2002, lays down the guidelines developed by the Commission concerning the circumstances in which people may be deprived of the right to vote or to stand for election. The relevant passages read as follows:

"i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions:

ii. it must be provided for by law;

iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them;

iv. the deprivation must be based on mental incapacity or a criminal conviction for a serious offence;

v. Furthermore, the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law."

F. Law and practice in the Contracting States

42. A comparative law study was carried out in the context of the proceedings before the Grand Chamber of the Court in the case of *Scoppola v. Italy (no. 3)* ([GC], no. 126/05, §§ 45-48, 22 May 2012). Nineteen of the forty-three Contracting States examined in that study place no restrictions on the right of convicted prisoners to vote: Albania, Azerbaijan, Croatia, Cyprus, Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Moldova, Montenegro, Serbia, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" and Ukraine.

43. Seven Contracting States (Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia and the United Kingdom) automatically deprive all convicted prisoners serving prison sentences of the right to vote.

44. The remaining seventeen member States (Austria, Belgium, Bosnia and Herzegovina, France, Germany, Greece, Italy, Luxembourg, Malta, Monaco, Netherlands, Poland, Portugal, Romania, San Marino, Slovakia and Turkey) have adopted an intermediate approach: disenfranchisement of prisoners depends on the type of offence and/or the length of the custodial sentence.

45. In some of the States in this category the decision to deprive convicted prisoners of the right to vote is left to the discretion of the criminal court (Austria, Belgium, France, Germany, Greece, Luxembourg, Netherlands, Poland, Portugal, Romania and San Marino). In Greece and Luxembourg, in the event of particularly serious offences disenfranchisement is applied independently of any court decision.

G. Other materials

46. For other relevant materials see *Scoppola (no. 3)* [GC], cited above, §§ 43, 49-60.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

47. The applicants complained that their disenfranchisement on the ground that they were convicted prisoners violated their right to vote and, in particular, that they had been unable to vote in a number of elections held on various dates in 2000 to 2008 (see paragraph 17 above). They relied on Article 3 of Protocol No. 1 to the Convention, which reads as follows:

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

1. Compatibility ratione materiae

(a) The Government's objection

48. The Government submitted that the Constitution was the highest-ranking legal instrument within the territory of Russia and took precedence over all other legal instruments and provisions of international law. In particular, the Constitution took precedence over international treaties to which Russia was a party, including the Convention.

Accordingly, in the Government's submission, a review of the compatibility of Article 32 of the Constitution with the provisions of the Convention fell outside the Court's competence.

49. The applicants argued that, on ratification of the Convention, Russia had not made any reservations regarding the applicability of the provisions of Protocol No. 1, including Article 3 of that Protocol, within its territory, and therefore the Government were not justified in arguing that that provision was inapplicable because it conflicted with the Russian Constitution. The applicants maintained that, having ratified the Convention, Russia was under an obligation to integrate the principles set forth in the Convention into its domestic legal system. They also submitted that, by virtue of Article 15 § 4 of the Russian Constitution, the Convention took precedence over any domestic legal instrument in Russia.

50. The Court reiterates that Article 1 requires the States Parties to "secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". That provision makes no distinction as to the type of rule or measure concerned and does not exclude any part of the member States' "jurisdiction" from scrutiny under the Convention (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 153, ECHR 2005 VI; *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 128, ECHR 2010 (extracts); and *Nada v. Switzerland* [GC], no. 10593/08, § 168, ECHR 2012). It is, therefore, with respect to their "jurisdiction" as a whole – which is often exercised in the first place through the Constitution – that the States Parties are called upon to show compliance with the Convention (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 29, Reports of Judgments and Decisions 1998 I).

51. Furthermore, in accordance with Article 19 of the Convention, the Court's duty is "to ensure the observance of the engagements undertaken by the High Contracting Parties ..." (see *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, § 69, Series A no. 246 A). In cases arising from individual petitions, its task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, without losing sight of the general context, to examining the issues raised by the case before it (see, among other authorities, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 69, 20 October 2011).

52. Turning to the present case, the Court agrees with the applicants that, once having acceded to the Convention, and in the absence of any reservations regarding Protocol No. 1 thereto, Russia undertook to "secure to everyone within its jurisdiction" the rights and freedoms defined, in particular, in that Protocol. It also accepted the Court's competence to adjudicate on its compliance with that obligation. Therefore the Court's task in the present case is not to review, *in abstracto*, the compatibility with the Convention of the relevant provisions of Article 32 of the Russian Constitution, but to determine, *in concreto*, the effect of those provisions on the applicants' rights secured by Article 3 of Protocol No. 1 to the Convention (ibid., § 70).

53. Having regard to the foregoing, the Court thus rejects the Government's relevant objection.

(b) Scope of the present case

54. According to the Court's established case-law, Article 3 of Protocol No. 1 only concerns "the choice of the legislature" (see, for instance, *Paksas v. Lithuania* [GC], no. 34932/04, § 71, ECHR 2011 (extracts)). In the present case the applicants complained that pursuant to Article 32 § 3 of the Russian Constitution they were debarred from voting in the election of deputies of the State Duma and in the election of the Russian President. It therefore has to be determined whether the Court is competent *ratione materiae* to examine the present case. The Court notes the absence of any objection in this respect on the part of the Government. It must, however, examine this issue. It reiterates in this connection that since the scope of its jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case, the mere absence of a plea of incompatibility cannot extend that jurisdiction (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-...).

55. The Court further has no doubt that Article 3 of Protocol No. 1 is applicable to the election of members of the State Duma, which is the lower chamber of the Russian parliament. However, as regards the election of the Russian President, the Court reiterates that the obligations imposed on the Contracting States by Article 3 of Protocol No. 1 do not apply to the election of a Head of State (see *Baškauskaitė v. Lithuania*, no. 41090/98, Commission decision of 21 October 1998; *Guliyev v. Azerbaijan* (dec.), no. 35584/02, 27 May 2004; *Boškoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 11676/04, 2 September 2004; *Niedźwiedź v. Poland* (dec.), no. 1345/06, 11 March 2008; *Paksas*,

cited above, § 72; and *Krivobokov v. Ukraine* (dec.), no. 38707/04, 19 February 2013).

56. It follows that, in so far as the applicants complained about their ineligibility to vote in presidential elections, this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4. The Court therefore has competence to address the applicant's complaint under Article 3 of Protocol No. 1, on condition that it complies with the other admissibility criteria, only in so far as it concerns the applicants' inability to vote in elections of members of the State Duma.

2. *Exhaustion of domestic remedies*

(a) Submissions by the parties

57. In their additional observations relating to application no. 11157/04, the Government seemed to suggest that the first applicant could have sought to have his violated rights restored at the domestic level. On the one hand, they conceded that there was no individual remedy capable of providing redress to the first applicant in his situation. On the other hand, the Government stressed that "there [was] an opportunity for the citizens of the Russian Federation to amend the existing legal order in their country". In this latter respect, they referred to Article 134 of the Constitution, which provided that the Constitution may be amended at the suggestion of the Russian President, both chambers of the national parliament, the Russian Government, the legislatures of the regions of Russia, and a group of one fifth of the members of either of the two chambers of the Russian parliament. They further argued that, under Article 33 of the Constitution, Russian citizens had the right to address their suggestions and complaints to the competent authorities in Russia. The Government thus argued that, taking into account the applicant's active civic position, before applying to the Court, he should have addressed his complaint to the "elected institutions of the Russian authorities, such as the Russian President, or the lower chamber of the Russian parliament".

58. The first applicant maintained that there were no effective domestic remedies that had to be exhausted in his situation and referred to the Government's concession to that effect.

(b) The Court's assessment

59. The Court reiterates that where the Government claim non-exhaustion they must satisfy the Court that the remedy proposed was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 66, ECHR 2010 (extracts), with further references).

60. In the present case the Government suggested that, in order to comply with the exhaustion requirement under Article 35 § 1 of the Convention, the first applicant should have appealed, under Article 33 of the Russian Constitution (see paragraph **Errore. Non è stato specificato un nome segnalibro.** above), to the Russian President or the State Duma in an attempt to have "the existing legal order in the country" amended, as Article 134 of the Russian Constitution (see paragraph **Errore. Non è stato specificato un nome segnalibro.** above) vested power in those two State institutions to submit proposals on amendments and/or revision of the Russian Constitution. In other words, according to the Government, before complaining about his disenfranchisement to the Court, the first applicant should have tried to have the Russian Constitution changed at the domestic level.

61. The Court fails to see how, in the circumstances, the suggested remedy can be "effective" within the meaning of Article 35 § 1 of the Convention (see paragraph 59 above). Firstly, its accessibility is more than doubtful, as it is clear that such an appeal could not have prompted an examination of the applicant's particular situation for the purposes of Article 3 of Protocol No. 1. Moreover, any follow-up to such an appeal would depend entirely on the discretionary powers of the State authorities referred to by the Government, and, in any event, under Article 134 of the Russian Constitution neither the Russian President nor the State Duma have any power to amend or revise the Russian Constitution, but only to make proposals to that end. Also, as is clear from Article 135 of the Russian Constitution, revision of Article 32 § 3 of the Russian Constitution, in Chapter 2 thereof, would involve a particularly complex procedure (see paragraph **Errore. Non è stato specificato un nome segnalibro.** above).

62. Secondly, even if they were to take any action in reply to the first applicant's appeal, there is no evidence that any of the aforementioned State authorities were in a position to provide adequate redress to the first applicant in his

individual situation, as clearly none of the aforementioned State authorities is entitled to ban or suspend the application of Article 32 § 3 of the Russian Constitution either in general or on a case-by-case basis.

63. For the above reasons, the prospects of success of the remedy advanced by the Government would, in the Court's view, be minimal. It thus regards this remedy as clearly inadequate and ineffective and finds that the first applicant was under no obligation to pursue it. It therefore rejects the Government's objection in this regard.

3. Compliance with the six-month rule

(a) Submissions by the parties

64. The Government maintained that the applicants had submitted their applications outside the six-month time-limit laid down in Article 35 § 1 of the Convention.

65. They pointed out first of all that there were discrepancies between the dates accepted by the Court as those on which the present applications had been lodged, that is, 16 February 2004 and 27 February 2005 respectively; the dates indicated on the application forms as those on which the applicants had filled them in, that is, 30 April and 29 December 2004 respectively; and the dates on which, as can be seen from the Court's stamp on the application forms, these had been received by the Court, that is 23 June 2004 and 30 March 2005 respectively. In the Government's view, it is the latter dates that should be taken as the dates of introduction of the present applications.

66. They further maintained that the six-month period should run from the dates of the latest elections indicated by the applicants in their application forms as those in which, pursuant to Article 32 § 3 of the Constitution, they had been unable to vote. In the Government's submission, the applicants' attempts to challenge Article 32 § 3 of the Constitution before the Russian Constitutional Court could not be taken into account for the purpose of calculating the six-month time-limit, as an application to that court was not an effective remedy in their situation.

67. Accordingly, the first applicant, in the Government's opinion, should have lodged his application within six months from 7 December 2003, the date of the parliamentary elections in which he, being a convicted prisoner, had been unable to vote. They thus argued that his application had been lodged out of time, given that the Court had received it on 23 June 2004. As regards the second applicant, the Government did not indicate the exact date on which he should have lodged his application. They maintained, however, that the alleged violation of the second applicant's rights could not be said to have been of a continuing nature, as "the elections were held at strictly established intervals" and the number of elections from which the second applicant had been debarred "had been strictly limited".

68. The first applicant disputed the Government's objection, stating that he had sent his introductory letter in February 2004 and had therefore complied with the six-month time-limit. The second applicant remained silent on the issue.

(b) The Court's assessment

(i) Dates of introduction of the applications

69. As regards the Government's argument that the dates of introduction of the present applications should be those of receipt by the Court of the present applications, the Court reiterates that, in accordance with Rule 47 § 5 of the Rules of Court, the date of introduction of the application is as a general rule considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application. The date of introduction is accordingly the date on which the first letter was written by the applicant or, where there is an undue delay between this date and the date on which the letter was posted, the Court may decide that the date of posting shall be considered to be the date of introduction (see *Gaspari v. Slovenia*, no. 21055/03, § 35, 21 July 2009; *Calleja v. Malta* (dec.), no. 75274/01, 18 March 2004; *Arslan v. Turkey* (dec.), no. 36747/02, ECHR 2002-X (extracts); and *Andrushko v. Russia*, no. 4260/04, § 32, 14 October 2010).

70. It notes also that, when lodging their applications with the Court, applicants are expected to take reasonable steps to inform themselves, *inter alia*, about the time-limit provided for in Article 35 § 1 of the Convention and act accordingly to comply with that time-limit (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 61, 29 June 2012). However, applicants cannot be held responsible for any delays that may affect their correspondence with the Court in transit; to hold otherwise would mean unjustifiably shortening the six-month period set forth in Article 35 § 1 of the Convention and negatively affecting the right of individual petition.

71. In the present case, the Court observes that the first applicant had clearly described the circumstances of his case and formulated his relevant complaint in his letter of 16 February 2004, which was dispatched the next day. The application form dated 30 April 2004 referred to by the Government merely reproduced his original submissions. Against this background, the Court sees no reason to doubt that the application was indeed produced by the first applicant on 16 February 2004, and it therefore accepts that date as the date of introduction of his application (see, for a similar conclusion in a comparable situation, *Ismailova v. Russia* (dec.), no. 37614/02, 31 August 2006).

72. As regards the second applicant, the Court observes that in his first letter to the Court the second applicant submitted the Court's official application form describing the circumstances of his case and complaining about the disenfranchisement. The application form was dated 29 December 2004, but, as is clear from the postmark, was not dispatched until 27 February 2005. In the absence of any explanation from the second applicant in respect of that delay of nearly two months, the Court considers it reasonable to accept the latter date as the date of introduction of his application.

(ii) Compliance with the six-month time-limit

73. In so far as the Government argued that the applicants had failed to comply with the relevant requirement of Article 35 § 1 of the Convention, having lodged their applications more than six months after the elections in which they were ineligible to vote had taken place, the Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period does not apply and runs only from the cessation of that situation (see *Sabri Güneş* [GC], cited above, § 54). The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII).

74. In the present case the applicants complained that, as convicted prisoners, they were or had been disenfranchised pursuant to Article 32 § 3 of the Russian Constitution, and, in particular, that they had been ineligible to vote in the parliamentary elections of 7 December 2003 and 2 December 2007, as regards both of them, and in the additional parliamentary elections of 5 December 2004 as regards the second applicant.

75. The Court accepts the Government's argument that, in so far as the applicants complained about their inability to take part in particular parliamentary elections, they should have lodged their applications within six months from the date of the elections concerned: an act occurring at a given point in time. The Court also notes the absence of any effective remedies in this respect. It is clear that the court proceedings against elections commissions instituted by the second applicant were doomed to failure and therefore were not a remedy that had to be pursued. Indeed, as the domestic courts later confirmed, the election commissions' refusals to include the second applicant in the lists of voters were based on law, namely, Article 32 § 3 of the Russian Constitution (see paragraph **Errore. Non è stato specificato un nome segnalibro.** above).

76. In the light of the foregoing and having regard to the dates of introduction of the present application, the Court thus finds that the second applicant's complaint about his inability to vote in the parliamentary elections of 7 December 2003 was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

77. On the other hand, the Court observes that the applicants' complaint about their disenfranchisement concerned a general provision, namely, Article 32 § 3 of the Russian Constitution, which did not give rise in their case to any individual measure of implementation amenable to an appeal that could have led to a "final decision" marking the start of the six-month period provided for in Article 35 § 1 of the Convention (see *Paksas*, cited above, § 82). It is clear that the impugned provision produced a continuing state of affairs, against which no domestic remedy was in fact available to the applicants, as acknowledged by the Government (see paragraph 66 above). It is furthermore clear, on a more general level, that such a state of affairs can end only when the provision in question no longer exists or when it is no longer applicable to the applicants, that is, after their release.

78. In the present case, there was obviously not the slightest prospect that Article 32 § 3 of the Russian Constitution would be repealed, amended, or revised during the period of the applicants' detention following their conviction.

Therefore the aforementioned state of affairs in their case could only cease to exist after their release. In particular, as regards the second applicant, it did not arise before 23 April 2008, when he was released on parole (see paragraph 13 above), which is several years after he lodged his relevant complaint. As regards the first applicant, it appears, in the absence of any evidence to the contrary, that he is still imprisoned, and therefore the state of affairs complained of obtains.

79. In such circumstances, the Court cannot conclude that this part of the application is out of time.

4. Conclusion

80. The Court notes that, in so far as the applicants complained about their disenfranchisement and, in particular, their ineligibility to vote in the parliamentary elections held on 7 December 2003 and 2 December 2007, as regards the first applicant, and on 5 December 2004 and 2 December 2007, as regards the second applicant, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

81. The applicants maintained that their disenfranchisement was in breach of Article 3 of Protocol No. 1. They argued, in particular, that their case was similar to the case of *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX). Moreover, according to the applicants, the fact that in Russia the ban on electoral rights of convicted prisoners in detention was imposed by a constitutional provision, which could not be changed, only confirmed its absolute nature. In that connection they stressed that the ban was imposed on all prisoners serving their sentences in detention, irrespective of whether they had been convicted of minor offences or particularly serious offences, and irrespective of the length of their sentence. They pointed out that in Russia the measure in question affected some 734,300 prisoners.

82. The applicants further contended that this restriction could not be regarded as part of the punishment for a criminal offence, given that the Russian Criminal Code clearly stipulated that every form of punishment for criminal offences was set forth in that Code.

83. The applicants contested the Government's argument that convicted prisoners lacked the information necessary to make an objective choice during elections. In that connection they referred to the relevant provisions of the penitentiary legislation to the effect that those detained in penitentiary institutions should be given adequate access to information. The applicants also rejected the Government's argument to the effect that the choice by convicted prisoners in detention could be negatively influenced by leaders of the criminal underworld, stating that this phenomenon could also affect any citizen at liberty.

84. The applicants submitted that, even though they had been convicted, they had not ceased to be members of civil society and retained their Russian citizenship, and therefore they should have the right to vote. They added that, being unable to vote, convicted prisoners could not in fact be distinguished from aliens or stateless persons, and therefore a blanket ban on their electoral rights *de facto* deprived them of their Russian citizenship.

(b) The Government

85. The Government argued that the present case could be distinguished from the case of *Hirst (no. 2)*, although there is no significant difference as regards the factual circumstances of these two cases. In the Government's view, it was important to note that, whilst in the United Kingdom it was an "ordinary" legal provision that imposed a ban on electoral rights of convicted prisoners in detention, in Russia such a restriction was enacted in the Constitution: the basic law of Russia. The Government stressed that a draft of the Russian Constitution of 1993 had been thoroughly prepared by specially created institutions, such as the Constitutional Commission of the Congress of People's Deputies,

which had comprised public representatives – legislators and experts – and the Constitutional Council, the composition of which had been even broader. After years of debate and experts' work, the draft had then been submitted for nationwide public discussion and debate in which every Russian national could have expressed his or her opinion. Thereafter the Constitution, in its present form, had been adopted following a nationwide vote. The Government thus argued that the majority of the Russian citizens who had taken part in that vote had clearly expressed their support for the provisions of the Constitution, including the one disenfranchising convicted prisoners serving a prison sentence.

86. The Government also pointed out that, whilst in the United Kingdom provisions of the relevant legal act could be amended by the parliament, Article 32 of the Russian Constitution was enacted in its Chapter 2, which was not subject to any review by the legislature. According to Article 135 of the Russian Constitution, amendments or revision of its Chapter 2 would necessitate adoption of a new Constitution (see paragraph 34 above).

87. The Government further cited the Court's case-law to the effect that a State enjoyed a wide margin of appreciation in imposing conditions on the right to vote, and that there were numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it was for each State to mould into their own democratic vision. The Government argued that the relevant provisions of Article 32 of the Russian Constitution corresponded to the democratic vision of Russia, and that the restriction in question pursued a legitimate aim and was not disproportionate.

88. As regards the aim of the alleged interference, the Government pointed out that, according to the Court's case-law, Article 3 of Protocol No. 1 did not, like other provisions of the Convention, specify or limit the aims which a restriction must pursue, and a wide range of purposes may therefore be compatible with that Article (see, for instance, *Podkolzina v. Latvia*, no. 46726/99, § 34, ECHR 2002-II). In the Government's submission, the restriction in question had been applied as a measure of constitutional liability and pursued the aims of enhancing civic responsibility and respect for the rule of law. They stated that in Russia the policy of imposing a ban on electoral rights of convicted prisoners in detention had been consistently adhered to since the beginning of the nineteenth century, the legislature examining the matter with due diligence each time it came to its attention. The Government further submitted that the ban on electoral rights was one of the elements of punishment of an individual who had committed a crime: by committing a crime liable to a term of imprisonment, an individual consciously condemned himself to certain restrictions of his rights, including his right to liberty and electoral rights.

89. The Government further maintained that the impugned measure was aimed at protecting the interests of civil society and the democratic regime in Russia. Indeed, it was unacceptable that an individual who had disregarded the norms of law and morals and had been isolated from society with a view to ensuring his correction should participate in governing society by voting in elections. The Government stressed the need to strike a balance between the public interest in having conscientious and law-abiding citizens as public representatives and the private interests of certain categories of individuals excluded from the election process by law.

90. The Government also referred to the existence of an informal hierarchy in penitentiaries in almost every State with the result that pressure could be exercised by criminal underworld leaders on individuals serving a custodial sentence that could negatively influence the freedom and objectiveness of the latter's choice in elections, hence the limitation under examination was also aimed at preventing such a situation. They also pointed out that convicted prisoners in detention had limited access to information as compared with individuals at liberty and therefore their choice could also be distorted by the lack of sufficient information about candidates.

91. The Government further argued that the measure complained of was proportionate to the aims it pursued. In particular, they pointed out that it was applied strictly for the period of imprisonment and was removed as soon as a person affected by it was released from prison. They further stressed that the ban on electoral rights affected only those who had been convicted of criminal offences sufficiently serious to warrant an immediate custodial sentence. Moreover, in their choice of the measure of punishment to be imposed in each particular criminal case, the domestic courts carefully examined all relevant circumstances, including the nature and degree of public dangerousness of the crime, the defendant's personality, and so forth. The Government thus argued that in such circumstances there were no grounds on which to consider the ban absolute, arbitrary or indiscriminate.

92. The Government further argued that the number of convicts serving their sentence in detention was

incomparably lower than the overall number of Russian citizens, so it could not be said that the provisions of Article 32 § 3 of the Russian Constitution prevented the free expression of the opinion of the people of Russia. The Government also expressed doubts as to whether it was possible to build civil society and the State on the principles of the rule of law on the basis of the choice made by those who, by committing serious crimes, had opposed the interests of society and demonstrated, in an extreme form, their disrespect for society.

2. *The Court's assessment*

(a) General principles

93. The Court reiterates that Article 3 of Protocol No. 1 guarantees subjective rights, including the right to vote and to stand for election (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 46-51, Series A no. 113).

94. It further notes that the rights guaranteed by this Article are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Hirst (no. 2)* [GC], cited above, § 58, and *Scoppola (no. 3)* [GC], cited above, § 82). In addition, the right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion and universal suffrage has become the basic principle (see *Mathieu-Mohin and Clerfayt*, cited above, § 51; *Hirst (no. 2)* [GC], cited above, § 59; and *Scoppola (no. 3)* [GC], cited above, § 82). The same rights are enshrined in Article 25 of the International Covenant on Civil and Political Rights (see paragraph 38 above).

95. Nevertheless, the rights enshrined in Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and the Contracting States must be afforded a margin of appreciation in this sphere. The Court has repeatedly affirmed that the margin in this area is wide (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Matthews* [GC], cited above, § 63; *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV; and *Podkolzina*, cited above, § 33). There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into its own democratic vision (see *Hirst (no. 2)* [GC], cited above, § 61, and *Scoppola (No. 3)* [GC], cited above, § 83).

96. However, it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt*, cited above, § 52). In particular, any conditions imposed must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage. Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (see *Hirst (no. 2)* [GC], cited above, § 62, and *Scoppola (No. 3)* [GC], cited above, § 84).

97. The Court has already addressed the issue of the disenfranchisement of convicted prisoners. In particular, in the *Hirst (no. 2)* case, it noted that there is no question that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction. Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for automatic disenfranchisement based purely on what might offend public opinion (see *Hirst (no. 2)* [GC], cited above, § 70). According to the Court, this standard of tolerance does not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set forth in the Convention. Article 3 of Protocol No. 1, which enshrines the individual's capacity to influence the composition of the law-making power, does not therefore exclude that restrictions on electoral rights could be imposed on an individual who has, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations. The severe measure of disenfranchisement must not, however, be resorted to lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned (ibid., § 71).

98. The Court also considered that where Contracting States had adopted a number of different ways of addressing the question, the Court must confine itself "to determining whether the restriction affecting all convicted prisoners in custody exceed[ed] any acceptable margin of appreciation, leaving it to the legislature to decide on the choice of means for securing the rights guaranteed by Article 3 of Protocol No. 1" (ibid., § 84, and *Greens and M.T.*, cited above, §§ 113 and 114).

99. In examining the particular circumstances of the *Hirst (no. 2)* case, the Court considered that the legislation of the United Kingdom depriving all convicted prisoners serving sentences of the right to vote (section 3 of the 1983 Act) was "a blunt instrument [which stripped] of their Convention right to vote a significant category of persons and [did] so in a way which [was] indiscriminate". It found that the provision "impose[d] a blanket restriction on all convicted prisoners in prison. It applie[d] automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances." It concluded that "such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1" (ibid., § 82). The Court also noted that "[the voting bar] concern[ed] a wide range of offenders and sentences, from one day to life and from relatively minor offences to offences of the utmost gravity" (ibid., § 77).

100. The principles set out in the *Hirst (no. 2)* case were later reaffirmed in the *Scoppola (no. 3)* [GC] judgment. The Court reiterated, in particular, that when disenfranchisement affected a group of people generally, automatically and indiscriminately, based solely on the fact that they are serving a prison sentence, irrespective of the length of the sentence and irrespective of the nature or gravity of their offence and their individual circumstances, it was not compatible with Article 3 of Protocol No. 1 (see *Scoppola (no. 3)* [GC], cited above, § 96). The Court found no violation of that Convention provision in the particular circumstances of this latter case however, having distinguished it from the *Hirst (no. 2)* case. It observed that in Italy disenfranchisement was applied only in respect of certain offences against the State or the judicial system, or offences punishable by a term of imprisonment of three years or more, that is, those which the courts considered to warrant a particularly harsh sentence. The Court thus considered that "the legal provisions in Italy defining the circumstances in which individuals may be deprived of the right to vote show[ed] the legislature's concern to adjust the application of the measure to the particular circumstances of [each] case, taking into account such factors as the gravity of the offence committed and the conduct of the offender" (ibid., § 106). As a result, the Italian system could not be said to have a general automatic and indiscriminate character, and therefore the Italian authorities had not overstepped the margin of appreciation afforded to them in that sphere (ibid., §§ 108 and 110).

(b) Application in the present case

101. Turning to the present applications, the Court observes that the circumstances are, on their face, very similar to those examined in the *Hirst (no. 2)* [GC] judgment. Indeed, the applicants were stripped of their right to vote by virtue of Article 32 § 3 of the Russian Constitution which applied to all persons convicted and serving a custodial sentence, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances (compare *Hirst (no. 2)* [GC], cited above, § 82 and, compare, by contrast, *Scoppola (no. 3)* [GC], cited above, §§ 105-10). The Court notes the finding of the Lipetsk Regional Court during the examination of the second applicant's complaint to the effect that, as a convicted prisoner, he was ineligible to vote in elections, that he had served his custodial sentence in prison – a type of detention facility in which only individuals convicted of particularly serious offences punishable by a term of imprisonment exceeding five years were detained (see paragraph 23 above). This finding can be understood as suggesting that the ban on voting rights only applies to convicted prisoners serving their custodial sentence in prison, that is, to those convicted of particularly serious offences and sentenced to a term of imprisonment of more than five years. However, such an interpretation is not in conformity with the wording of Article 32 § 3 of the Russian Constitution (see paragraph 31 above), and the respondent Government adduced no domestic case-law indicating that only those convicted of serious offences were disenfranchised.

102. Having regard to the Government's submissions (see paragraphs 88-90 above), the Court is prepared to accept that the measure under examination pursued the aims of enhancing civic responsibility and respect for the rule of law and ensuring the proper functioning and preservation of civil society and the democratic regime, and that those aims could not, as such, be excluded as untenable or incompatible with the provisions of Article 3 of Protocol No. 1 (see

Hirst (no. 2) [GC], cited above, §§ 74-75, and *Scoppola (no. 3)* [GC], cited above, §§ 90-92).

103. However, the Court cannot accept the Government's arguments regarding the proportionality of the restrictions in question. In particular, in so far as the Government referred to its wide margin of appreciation in the relevant field and to a historical tradition in Russia of imposing a ban on electoral rights of convicted prisoners in detention dating back to the beginning of the nineteenth century (see paragraphs 87 and 88 above), and contended that the relevant provisions of Article 32 of the Russian Constitution corresponded to Russia's current democratic vision (see paragraph 87 above), the Court reiterates that although the margin of appreciation is wide, it is not all-embracing (see *Hirst (no. 2)* [GC], cited above, § 82). Moreover, as has already been noted in paragraph 94 above, the right to vote is not a privilege; in the twenty-first century, the presumption in a democratic State must be in favour of inclusion and universal suffrage has become the basic principle. In the light of modern-day penal policy and of current human rights standards, valid and convincing reasons should be put forward for the continued justification of maintaining such a general restriction on the right of prisoners to vote as that provided for in Article 32 § 3 of the Russian Constitution (ibid., § 79).

104. Further, in so far as the Government argued that the measure in question affected a limited number of Russian citizens (see paragraph 92 above), the Court notes that the Government did not indicate any figures to illustrate that assertion, whereas, according to the applicants, some 734,300 prisoners – a number undisputed by the Government – were disenfranchised by virtue of the aforementioned constitutional provision. The Court finds that this is a significant figure and that the measure in question cannot be claimed to be negligible in its effects (ibid., § 77).

105. Also, as regards the Government's argument that only those who had been convicted of criminal offences sufficiently serious to warrant an immediate custodial sentence were disenfranchised (see paragraph 91 above), with the result that the bar could not be said to be indiscriminate, the Court notes that while it is true that a large category of persons – those in detention during judicial proceedings – retain their right to vote, disenfranchisement nonetheless concerns a wide range of offenders and sentences, from two months (which is the minimum period of imprisonment following conviction in Russia) to life and from relatively minor offences to offences of the utmost seriousness. In fact, as has already been noted in paragraph **Errore. Non è stato specificato un nome segnalibro.** above, Article 32 § 3 of the Russian Constitution imposes a blanket restriction on all convicted prisoners serving their prison sentence (ibid., §§ 77 and 82).

106. In so far as the Government contended that, in their choice of the measure of punishment, the domestic courts usually took into consideration all relevant circumstances, including the nature and degree of public dangerousness of the criminal offence, the defendant's personality, and so on (see paragraph 91 above), the Court is prepared to accept that, when sentencing, the Russian courts may indeed have regard to all those circumstances before choosing a sanction. However, there is no evidence that, when deciding whether or not an immediate custodial sentence should be imposed, they take into account the fact that such a sentence will involve the disenfranchisement of the offender concerned, or that they can make any realistic assessment of the proportionality of disenfranchisement in the light of the particular circumstances of each case. It is therefore not apparent, beyond the fact that a court considers it appropriate to impose a sentence of imprisonment, that there is any direct link between the facts of any individual case and the removal of the right to vote (ibid, § 77).

107. The Court emphasises that its considerations in the previous paragraph are only pertinent for the purpose of dealing with the Government's relevant argument; they are not to be regarded as establishing any general principles. The Court reiterates in this connection that removal of the right to vote without any *ad hoc* judicial decision does not, in itself, give rise to a violation of Article 3 of Protocol No. 1 (see *Scoppola (no. 3)* [GC], cited above, § 104). With a view to securing the rights guaranteed by Article 3 of Protocol No. 1, the Contracting States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction (ibid., § 102).

108. The Court further notes the Government's argument that the present case is distinguishable from *Hirst (no. 2)*, as in Russia a provision imposing a voting bar on convicted prisoners is laid down in the Constitution – the basic law of Russia adopted following a nationwide vote – rather than in an "ordinary" legal instrument enacted by a parliament, as was the case in the United Kingdom (see paragraph 85 above). In that connection the Court reiterates that, according to its established case-law, a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations (see, among other authorities, *Nada*, cited above, § 168). As has been noted in paragraph 50 above, Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a member State's "jurisdiction" – which is often exercised in the first place through the Constitution – from scrutiny under Convention. The Court notes that this interpretation is in line with the principle set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties (see paragraph 36 above).

109. Further, as to the Government's argument that the adoption of the Russian Constitution was preceded by extensive public debate at various levels of Russian society (see paragraph 85 above), the Court observes that the Government have submitted no relevant materials which would enable it to consider whether at any stage of the debate referred to by the Government any attempt was made to weigh the competing interests or to assess the proportionality of a blanket ban on convicted prisoners' voting rights (see *Hirst (no. 2)* [GC], cited above, § 79). Nor can the Court discern in the Government's argument any other factor leading it to another conclusion.

110. In such circumstances, the Court is bound to conclude that the respondent Government have overstepped the margin of appreciation afforded to them in this field and have failed to secure the applicants' right to vote guaranteed by Article 3 of Protocol No. 1.

111. The Court notes the Government's argument that the restriction complained of is enacted in a chapter of the Russian Constitution, amendments to or revision of which may involve a particularly complex procedure (see paragraph 86 above). It reiterates in this connection that its function is in principle to rule on the compatibility with the Convention of the existing measures. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention (ibid., § 83). As has been noted in paragraph 107 above, there may be various approaches to addressing the question of the right of convicted prisoners to vote. In the present case, it is open to the respondent Government to explore all possible ways in that respect and to decide whether their compliance with Article 3 of Protocol No. 1 can be achieved through some form of political process or by interpreting the Russian Constitution by the competent authorities – the Russian Constitutional Court in the first place – in harmony with the Convention in such a way as to coordinate their effects and avoid any conflict between them.

112. Having regard to the above, the Court concludes that there has been a violation of Article 3 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLES 10 AND 14 OF THE CONVENTION

113. The applicants also complained under Article 10 that their disenfranchisement breached their right to express their opinion, and that they had been discriminated against as convicted prisoners, contrary to Article 14 of the Convention. The relevant Articles read as follows:

Article 10

"1. Everyone has the right to freedom of expression ...

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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

114. The Government appear to have contested the applicability of Article 10 in the present case. In any event, they argued, with reference to the *Hirst (no. 2)* [GC] judgment, that there were no separate issues in the present case under Articles 10 and 14 of the Convention.

115. The second applicant submitted that he did not insist on pursuing his complaints under the aforementioned Articles any further.

116. Having regard to the parties' submissions and to its conclusion under Article 3 of Protocol No. 1 in paragraph above, there may be various approaches to addressing the question of the right of convicted prisoners to vote. In the present case, it is open to the respondent Government to explore all possible ways in that respect and to decide whether their compliance with Article 3 of Protocol No. 1 can be achieved through some form of political process or by interpreting the Russian Constitution by the competent authorities – the Russian Constitutional Court in the first place – in harmony with the Convention in such a way as to coordinate their effects and avoid any conflict between them.

112 above, the Court considers that this part of the application is admissible and that no separate issue arises under Articles 10 and 14 of the Convention in the circumstances of the present case (see *Hirst (no. 2)* [GC], cited above, §§ 87 and 89).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

117. The second applicant also complained under Article 10 of the Convention that his right to receive information had been violated by a public official's refusal to give him certain documents. He complained under Article 6 of the Convention that there were various irregularities in the court proceedings brought by him.

118. Having regard to the materials in its possession, the Court finds that this part of the application does not disclose any appearance of a violation of the Convention provisions. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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."

A. Damage

120. The applicants claimed 30,000 euros (EUR) and EUR 20,000 respectively in compensation for non-pecuniary damage.

121. The Government contested the first applicant's claims under this head. They argued, with reference to the *Hirst (no. 2)* [GC] judgment, that, should any violation of the first applicant's rights be found in the present case, the mere finding of a violation would suffice. They did not comment on the second applicant's relevant claims.

122. Having regard to the circumstances of the present case, the Court considers that the finding of a violation constitutes sufficient just satisfaction in the present case for any non-pecuniary damage sustained by the applicants (see *Hirst (no. 2)* [GC], cited above, §§ 93-94 and *Greens and M. T.*, cited above, § 98).

B. Costs and expenses

123. The applicants did not submit any claims under this head. Accordingly, there is no call to make any award in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the proceedings in the applications;

2. *Declares* the complaints under Articles 10 and 14 of the Convention and the complaint under Article 3 of Protocol No. 1 to the Convention, in so far as it concerned the applicants' disenfranchisement and their ineligibility to vote in the parliamentary elections held on 7 December 2003 and 2 December 2007, as regards the first applicant, and on 5 December 2004 and 2 December 2007, as regards the second applicant, admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* that no separate issues arise under Articles 10 and 14 of the Convention;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants, and *dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Isabelle Berro-Lefèvre
Registrar President