CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION
(as composed before 1 April 2006)

CASE OF RUSSIAN CONSERVATIVE PARTY OF ENTREPRENEURS AND OTHERS v. RUSSIA

(Applications nos. 55066/00 and 55638/00)

JUDGMENT

STRASBOURG

11 January 2007

FINAL

11/04/2007

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 the Russian Conservative Party of Entrepreneurs and Others v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 7 December 2006,

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

PROCEDURE

1. The case originated in two applications (nos. 55066/00 and 55638/00) 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 the Russian Conservative Party of Entrepreneurs ("the applicant party") and two Russian nationals, Mr Aleksandr Anatolyevich Zhukov ("the second applicant") and Mr Viktor Sergeyevich Vasilyev ("the third applicant"), on 8 and 22 February 2000.

2. The applicants were represented before the Court by Mr M. Toporkov, the chairman of the applicant party, and Mr P. Sklyarov, the head of its legal department. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged a violation of the applicant party's and the second applicant's right to stand for election and a violation of the third applicant's right to cast his vote for the party of his choice. The applicant party also complained about the domestic authorities' refusal to return the election deposit. Finally, all the applicants complained that they had had no effective remedy in respect of the alleged violations of their rights.

4. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 3 April 2003 the Chamber decided to join the applications (Rule 42 § 1).

6. By decision of 18 March 2004, the Court declared the applications admissible.

7. The applicants and the Government filed observations on the merits (Rule 59 § 1). The applicants submitted their comments on the Government's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant party, the Russian Conservative Party of Entrepreneurs (*Российская консервативная партия предпринимателей*), is a nationwide political party established under the laws of the Russian Federation.

The second applicant, Mr Aleksandr Anatolyevich Zhukov, was born in 1949 and lives in Smolensk. He stood as one of the applicant party's candidates for the 1999 elections to the State Duma.

The third applicant, Mr Viktor Sergeyevich Vasilyev, was born in 1959 and lives in Moscow. He was a supporter of the applicant party.

A. Participation in the 1999 elections to the State Duma

1. Registration of the applicant party for election

9. On 24 September 1999 the applicant party nominated 151 candidates for the elections to the State Duma of the Federal Assembly of the Russian Federation, the lower chamber of the Russian bicameral parliament.

10. On 15 October 1999 the Central Electoral Commission of the Russian Federation (*Центральная избирательная комиссия РФ* – "the CEC") confirmed receipt of the applicant party's list of candidates. The applicant party paid the election deposit.

11. On 3 November 1999 the CEC refused to register the applicant party's list, with reference to sections 24(1), 47 (6) (d), 51 (11) and 91 (2) of the Elections Act. The CEC established that seventeen candidates had submitted substantially inaccurate information about their income and property and struck them off the list. One of them was the number two candidate on the list. On that ground the CEC decided:

> "2. To refuse the registration of the federal list of candidates to the State Duma of the Russian Federation nominated by [the applicant party] because of the withdrawal [*выбытие*] of the candidate listed as number two in the nationwide section of the accepted federal list of candidates."

2. Judicial proceedings concerning the applicant party's complaint

12. The applicant party appealed to a court against the CEC's refusal to register it.

13. On 10 November 1999 the Civil Division of the Supreme Court of the Russian Federation, acting as a first-instance court, upheld the CEC's decision to remove from the list the candidates who had made false representations, but declared unlawful the CEC's refusal to register the list in its entirety. The court interpreted the term "withdrawal" in section 51(11) of the Elections Act as meaning only a candidate's voluntary withdrawal of his or her own free will. The court therefore held that the provision should not apply to a situation where one of the top three candidates had been struck off the list by the CEC.

14. The CEC appealed against that judgment. The applicant party submitted its observations on the CEC's grounds of appeal.

15. On 22 November 1999 the Appeals Division of the Supreme Court of the Russian Federation upheld the judgment of 10 November 1999. The court thoroughly analysed the wording of the Elections Act and agreed that the word "withdrawal" in section 51(11) of the Act should only refer to situations where the candidate's name had been taken off the list of the candidate's own free will or at the request of the candidate's electoral union.

16. On the same date the CEC allowed the registration of the applicant party's list of candidates.

3. Supervisory-review proceedings and quashing of earlier judgments

17. On 26 November 1999 a deputy Prosecutor General of the Russian Federation lodged an application for supervisory review with the Presidium of the Supreme Court of the Russian Federation. The prosecutor argued that "withdrawal" was a generic term which applied to any situation where a candidate was struck off the list, be it the expression of will of the candidate himself, of his electoral union, or of the CEC. Hence a candidate's exclusion as a result of the CEC's decision should count as "withdrawal" and thus render section 51(11) of the Elections Act applicable.

18. On 8 December 1999 the Presidium of the Supreme Court of the Russian Federation granted the application for supervisory review and quashed the judgment of 22 November 1999. The court followed the line of reasoning suggested by the deputy Prosecutor General. The court emphasised that the exclusion of a candidate from the list as a result of the CEC's decision was only a specific instance of "withdrawal" and that the CEC's refusal to register the list had therefore been lawful.

19. On 9 December 1999 the CEC annulled its earlier decisions, refused the registration of the applicant party's list and ordered the applicant party's name to be removed from the ballot papers. The applicant party appealed against the CEC's decision to the Supreme Court of the Russian Federation.

On 18 December 1999 the Supreme Court of the Russian Federation dismissed the applicant party's complaint. The court found that pursuant to the judgment of the Presidium of the Supreme Court of the Russian Federation, the CEC had no discretion in the matter and it was obliged as a matter of law to refuse the registration of the applicant party's list.

20. On 19 December 1999 the elections to the State Duma took place. The applicant party was not listed in the voting papers.

4. Ruling no. 7-P of the Constitutional Court of the Russian Federation

21. On 25 April 2000 the Constitutional Court of the Russian Federation, acting on an application by a group of Russian MPs, declared unconstitutional the part of section 51(11) of the Elections Act which provided for the refusal or cancellation of a party's registration in the event of the withdrawal of one of the top three candidates on the list.

22. The Constitutional Court stressed that the right to stand for election was an individual rather than a collective right. However, the contested provision made the exercise of that right conditional on the consistent presence of the top three candidates on the list, which amounted to a restriction on the other candidates' right to stand for election and on the citizens' right to vote for them. It violated the principle of equality between the candidates because it only applied in the event of withdrawal of one of the top three candidates but not of those in lower positions on the list. Such a restriction could not be justified by the special role played by the top three candidates, who were usually political heavyweights, in the electoral campaign and it did not serve any legitimate aim listed in the Constitution.

23. Moreover, withdrawal of one of the top three candidates had a disproportionately crippling effect on the electoral union or bloc, which forfeited the right to stand for election through no fault of its own. On the other hand, it made it difficult for the top three candidates to leave an electoral union whose platform had changed to the point of being inconsistent with their own views. It also encroached on the active voting rights of the electorate, depriving them of an opportunity to vote for the candidates and impairing the formation of a representative spectrum of members of Parliament.

24. Finally, the Constitutional Court noted that the refusal or cancellation of registration was essentially a sanction imposed on an electoral union or bloc. Sanctions could only be inflicted for violations of the electoral laws and should be proportionate to the violation. However, the contested provision made it possible to sanction electoral unions, blocs and other candidates who had not committed any violation, and this was incompatible with the general principles of justice and rule of law.

25. The Constitutional Court also ruled that the finding that section 51(11) was unconstitutional was of no consequence for the State

Duma elections of 19 December 1999 and could not be relied upon to seek a review of their results.

26. On 4 May 2000 the Constitutional Court of the Russian Federation disallowed the applicant party's application for review of the compatibility of section 51(11) with the Constitution, because the subject-matter of the application was essentially the same as the matter adjudicated on 25 April 2000.

5. Request for a review on account of new circumstances

27. In 2001 the applicant party lodged an application with the Presidium of the Supreme Court of the Russian Federation to review the judgment of 8 December 1999 in the light of a new circumstance, namely the ruling of the Constitutional Court.

28. On 7 February 2001 the Presidium of the Russian Federation Supreme Court refused the applicant party's application. The court ruled that the ruling of the Constitutional Court was not a new circumstance under domestic law and that, in any event, the applicant party had failed to comply with the procedural time-limit of three months for lodging its application for a review.

B. Proceedings for the return of the election deposit

29. On 30 July 2000 the applicant party applied to the CEC to have its election deposit paid back.

30. In a letter of 24 August 2000, the CEC informed the applicant party that the election deposit had been credited to the federal budget and could not be repaid. The CEC maintained that the decision of the Constitutional Court did not apply to the 1999 elections and that there was consequently no ground for returning the election deposit.

31. On 26 April 2001 the applicant party brought a civil action against the CEC for the return of the election deposit.

32. In a judgment of 6 September 2001, the Basmanniy District Court of Moscow dismissed the applicant party's action. The court based its decision on a provision of the Elections Act to the effect that the election deposit could not be repaid if the party's list had not been registered in accordance with section 51(11) of the Act. The court held that the applicant party's request for the return of the deposit on the basis of the Constitutional Court's ruling was in fact a disguised request for a review of the election results, which had been expressly prohibited by the Constitutional Court.

33. On 10 June 2002 the Moscow City Court upheld on appeal the judgment of 6 September 2001.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

34. The Constitution of the Russian Federation guarantees to the citizens of the Russian Federation the right to elect and to stand for election to State and municipal bodies (Article 32 § 2).

B. The Elections Act

35. The Federal Law on Elections of Deputies to the State Duma of the Russian Federation Federal Assembly (no. 121-FZ of 24 June 1999 – "the Elections Act") provided at the material time as follows:

Section 47. Registration of a candidate or of a federal list of candidates

"1. No later than ten days after the submission of the lists of signatures ([or] upon receipt of the election deposit in the special account of the Central Electoral Commission) and of other documents required for the registration of the federal list of candidates, the Central Electoral Commission shall make a decision to register the federal list of candidates or a reasoned decision to refuse to register the said list...

6 ... Grounds for a refusal shall include:

(d) ["(г)" in the original] inaccuracy of information submitted by candidates, electoral unions or blocs in accordance with the present Federal Law, provided that such inaccuracy is substantial (inaccuracy of information in respect of specific candidates on the federal list of candidates of an electoral union or bloc may only be a ground for the exclusion of the candidates in question from the approved federal list)..."

Section 51. Withdrawal of candidates, registered candidates, electoral unions or electoral blocs

"11. If the number of candidates, registered candidates and candidates excluded from the federal list of candidates of their own motion or by virtue of a decision of the electoral union or electoral bloc exceeds 25 per cent of the total number of candidates in the approved electoral list or if withdrawal of one or more candidates listed in the top three positions in the nationwide section of the approved federal list of candidates occurs (except in the event of compelling circumstances as described in subsection 16 of this section), the Central Electoral Commission shall refuse to register the federal list of candidates or shall cancel such registration.

15. ...[If] the registration of the federal list was cancelled pursuant to subsection 11 of this section..., all expenses incurred by the electoral commission in connection with the preparation and organisation of elections shall be reimbursed by that registered candidate, electoral union or electoral bloc."

Section 64. Election deposit

"7. ...If... a registered candidate withdraws on his own initiative or a candidate, registered candidate or the federal list is withdrawn by the electoral union or electoral bloc (with the exception of cases described in section 51(15) of this Federal Law) ...

[or] registration of a candidate or of the federal list is refused (except on the grounds set out in section 91(2) of this Federal Law) ..., the election deposit that has been paid shall be returned by the electoral commission to the appropriate electoral fund no later than ten days after an application (notice) to that effect is submitted to the Central Electoral Commission ... by the electoral union, electoral bloc, candidate, or registered candidate, or after the registration is refused."

Section 91. Grounds for refusal or cancellation of the registration of a candidate or a federal list of candidates

"2. An electoral commission may refuse to register a candidate or a federal list of candidates if:

(a) it is established that the information submitted by the candidate or an authorised representative of an electoral union or bloc under this Federal Law is substantially inaccurate ..."

C. Decree no. 65/764/3 of the Central Electoral Commission of the Russian Federation on the Approval of the General Election Results for the State Duma of the Federal Assembly of the Russian Federation

36. On 29 December 1999 the CEC approved, by the above decree, the general election results. It appears from the appendices to the decree that 28 political parties and blocs took part in the elections, of which six passed the requisite 5% threshold for representation in Parliament. 66.8 million voters cast their votes in the election, representing 61.85% of the voting population. 3.3% of voters voted "against all candidates".

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. Resolution of the Parliamentary Assembly on the Code of Good Practice in Electoral Matters

37. The relevant parts of Resolution 1320 (2003) adopted by the Parliamentary Assembly on 30 January 2003, read as follows:

"1. The holding of free, equal, universal, secret and direct elections at regular intervals remains a *sine qua non* [condition] for recognising a political system as democratic...

5. The Assembly considers that the code constitutes a major step towards harmonising standards for the organisation and observation of elections and in establishing procedures and conditions for the organisation of the electoral process...

8. The Assembly considers that, as a reference document not only for member states but also for itself, the code would reinforce the impact and the credibility of the electoral observation and monitoring activities conducted by the Council of Europe."

B. Declaration by the Committee of Ministers on the Code of Good Practice in Electoral Matters

38. The relevant parts of the declaration adopted by the Committee of Ministers on 13 May 2004 at its 114th Session, read as follows:

> "The Committee of Ministers...
>
> Recalling the importance of the effective implementation of the principles of Europe's electoral heritage: universal, equal, free, secret and direct suffrage...
>
> Recognises the importance of the Code of Good Practice in Electoral Matters, which reflects the principles of Europe's electoral heritage, as a reference document for the Council of Europe in this area, and as a basis for possible further development of the legal framework of democratic elections in European countries;
>
> Calls on governments, parliaments and other relevant authorities in the member states to take account of the Code of Good Practice in Electoral Matters, to have regard to it, within their democratic national traditions..."

C. Code of Good Practice in Electoral Matters: Guidelines on Elections and Explanatory Report

39. The Code of Good Practice was adopted by the European Commission for Democracy through Law (Venice Commission) at its 51st (Guidelines) and 52nd (Report) sessions on 5-6 July and 18-19 October 2002 (Opinion no. 190/2002, CDL-AD (2002) 23 rev.).

40. Guidelines on Elections provide as follows:

I. Principles of Europe's electoral heritage

> "The five principles underlying Europe's electoral heritage are *universal*, *equal*, *free*, *secret* and *direct suffrage*. Furthermore, elections must be held at regular intervals.
>
> 3.1. Freedom of voters to form an opinion
>
> a. State authorities must observe their duty of neutrality. In particular, this concerns:
>
> i. media;
>
> ii. billposting;
>
> iii. the right to demonstrate;
>
> iv. funding of parties and candidates.
>
> b. The public authorities have a number of positive obligations; *inter alia*, they must:
>
> i. submit the candidatures received to the electorate;
>
> ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting.
>
> iii. The above information must also be available in the languages of the national minorities.

c. Sanctions must be imposed in the case of breaches of duty of neutrality and voters' freedom to form an opinion.

3.2. Freedom of voters to express their wishes and action to combat electoral fraud

i. voting procedures must be simple;

ii. voters should always have the possibility of voting in a polling station...

vii. at least two criteria should be used to assess the accuracy of the outcome of the ballot: the number of votes cast and the number of voting slips placed in the ballot box...

x. polling stations must include representatives of a number of parties, and the presence of observers appointed by the candidates must be permitted during voting and counting...

xiii. counting must be transparent. Observers, candidates' representatives and the media must be allowed to be present. These persons must also have access to the records;

xv. the state must punish any kind of electoral fraud."

41. Explanatory Report reads as follows:

"3. Free suffrage

26. Free suffrage comprises two different aspects: free formation of the elector's opinion, and free expression of this opinion, i.e. freedom of voting procedure and accurate assessment of the result.

3.1 Freedom of voters to form an opinion

a. Freedom of voters to form an opinion partly overlaps with equality of opportunity. It requires the state – and public authorities generally – to honour their duty of even-handedness, particularly where the use of the mass media, billposting, the right to demonstrate on public thoroughfares and the funding of parties and candidates are concerned.

b. Public authorities also have certain positive obligations. They must submit lawfully presented candidatures to the citizens' votes. The presentation of specific candidatures may be prohibited only in exceptional circumstances, where necessitated by a greater public interest. Public authorities must also give the electorate access to lists and candidates standing for election by means, for instance, of appropriate billposting...

3.2. Freedom of voters to express their wishes and combating electoral fraud

27. Freedom of voters to express their wishes primarily requires strict observance of the voting procedure. In practice, electors should be able to cast their votes for registered lists or candidates, which means that they must be supplied with ballot papers bearing their names and that they must be able to deposit the ballot papers in a ballot box. ... Electors must be protected from threats or constraints liable to prevent them from casting their votes or from casting them as they wish, whether such threats come from the authorities or from individuals; the state is obliged to prevent and penalise such practices."

IV. RELEVANT INTERNATIONAL DOCUMENTS

42. The relevant part of the summary of the findings of the Final Report on the parliamentary elections in the Russian Federation (19 December 1999), prepared by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR), reads as follows:

> "In general, and in spite of episodic challenges that could have undermined the general integrity of the process as a whole, the State Duma elections marked significant progress in consolidating representative democracy in the Russian Federation. They reflected a political environment in which voters had a broad spectrum of political forces from which to choose.
>
> A solid turnout demonstrated a respectable level of public confidence in the process, and the final result showed a significant increase in the representative share of overall voter support actually included in the State Duma.
>
> The electoral laws governing the process had improved significantly with each successive election and were found to be consistent with commonly recognized democratic principles, including those formulated in the OSCE Copenhagen Document of 1990. This legal framework provided a sound basis for the conduct of orderly, pluralistic and accountable elections.
>
> The law provides the framework for parties and blocs to enter the political arena on an equal basis and provides a foundation for maintaining a level playing field for political participants. In particular, the law provided a basis for equal access to free media time for all participants, and instituted rigid parameters for enforcing accountability measures and controlling the use of campaign funds.
>
> The political campaigns were competitive and pluralistic with 26 parties and blocs ultimately competing on the federal list and 3 to 24 candidates appearing on ballots for the single-mandate constituency races..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1

43. The applicants complained under Article 3 of Protocol No. 1 to the Convention that the first and second applicants' right to stand for election and the third applicant's right to vote had been violated. Article 3 of Protocol No. 1 provides 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."

44. The Court will consider separately the alleged violation of the applicant party's and the second applicant's right to stand for election, and the alleged violation of the third applicant's right to vote.

A. The right to stand for election

1. The parties' arguments

45. The applicants submitted that the Central Electoral Commission had acted in excess of its jurisdiction. It followed from the CEC's decision of 3 November 1999 that it had uncovered false representations made by individual candidates rather than by the applicant party as an entity. Neither section 47(6)(d) nor section 91(2) of the Elections Act could be construed as a legal basis for the applicant party's exclusion: the former provision provided for a sanction against individual candidates rather than against the entire list, whereas the latter refused registration of a party that submitted substantially inaccurate information about itself. Neither provision was applicable to the case at hand. Registration of the applicant party had been cancelled on the basis of section 51(11), which had later been struck down by the Constitutional Court because it unduly restricted voting rights. There had been a violation of the applicant party's and the second applicant's right to stand for election, which comprised, in particular, the right to be listed on a ballot paper.

46. The Government submitted that there had been no violation because after the elections the contested section 51(11) had been struck down by the Constitutional Court. The CEC's decision to refuse to register the applicant party and the second applicant, subsequently upheld by the domestic courts, was a consequence of a breach of the requirement to submit exact information about the property and income of all candidates on the federal list. That decision had been based not only on section 51(11), but also on section 91(2), which the applicants had disregarded. In any event, from 22 November to 9 December 1999 the applicants had participated in the election campaign on a par with other parties and candidates.

2. The general principles established in the Court's case-law

47. Article 3 of Protocol No. 1 enshrines a fundamental principle for effective political democracy, and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 22, § 47). As to the links between democracy and the Convention, the Court has made the following observations (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, pp. 21-22, § 45, cited in *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 47, ECHR 2002-II):

> "Democracy is without doubt a fundamental feature of the European public order ... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by

> a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political traditions, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ..."

48. The Court reiterates that implicit in Article 3 of Protocol No. 1 are the subjective rights to vote and to stand for election. Although those rights are important, they are not absolute. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements 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 *Sadak and Others (no. 2) v. Turkey*, nos. 25144/94 et al., § 31, ECHR 2002-IV).

49. More particularly, States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. Though originating from a common concern – ensuring the independence of members of parliament, but also the electorate's freedom of choice – the criteria vary according to the historical and political factors peculiar to each State. The number of situations provided for in the Constitutions and the legislation on elections in many member States of the Council of Europe shows the diversity of possible choice on the subject. None of these criteria should, however, be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections (see *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II; and *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports* 1997-IV, pp. 1233-34, § 39).

50. The Court further reiterates that the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see *United Communist Party of Turkey and Others*, cited above, pp. 18-19, § 33). The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would only be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires the finding that this or that candidate has failed to satisfy them to comply with a number of

criteria framed to prevent arbitrary decisions (see *Podkolzina*, cited above, § 35, and *Melnychenko v. Ukraine*, no. 17707/02, § 59, ECHR 2004-X).

3. Application of the above principles to the present case

51. Turning to the present case, the Court notes that the applicant party and the second applicant did not participate in the 1999 elections to the Russian legislature because the Central Electoral Commission (CEC) refused registration of the applicant party's list of candidates, with the result that all candidates on the list, the second applicant among them, were disqualified.

52. In its decision of 3 November 1999 the CEC found that certain candidates on the list, including the candidate listed second, had provided incorrect information about their income and property, and ordered their disqualification in their individual capacity. Paragraph 2 of the decision additionally refused the registration of the applicant party's list "because of the withdrawal of the candidate listed as number two". Although the decision referred indiscriminately to a number of sections of the Elections Act, that particular reason was mentioned only in section 51(11), and paragraph 2 did not give any other reason for the refusal.

53. The Court notes that it is not called upon to examine whether the refusal to register individual candidates disclosed a violation of Article 3 of Protocol No. 1. Not one of the candidates in question is an applicant in the present case and the applicants did not complain about that part of the CEC's decision. Rather, their complaint hinged on the fact that the applicant party and the other candidates who had done nothing wrong, such as the second applicant, had been disqualified in the election through the fault of the number two candidate.

54. Section 51(11) provided for disqualification of the entire party's list in the event of "withdrawal" (*выбытия*) of one of the top three candidates on the list. That provision was interpreted by the CEC as encompassing all instances of "withdrawal" for whatever reasons: both voluntary withdrawal of the candidate's own free will, and involuntary withdrawal as a consequence of his or her registration having been cancelled or refused by an electoral commission.

55. Disagreeing with such an interpretation, the applicant party challenged the CEC's decision before a court of general jurisdiction. The Supreme Court found for the applicant party at two instances and rejected the CEC's appeal. As a result, on 22 November 1999 the applicant party obtained a final judgment to the effect that section 51(11) applied only if the "withdrawal" had been voluntary. As in the applicant party's case the withdrawal had not been voluntary since the number two candidate had been refused by the CEC, the judgment was immediately enforced: on the same day the CEC registered the applicant party and allowed it to carry on its electoral campaign.

56. The judgment of 22 November 1999 was final and no ordinary appeal lay against it. However, on 26 November 1999 a deputy Prosecutor General lodged an application for supervisory review of the adopted judgments, requesting the Supreme Court to reopen the proceedings and to accept the CEC's original broad interpretation of section 51(11). The Presidium of the Supreme Court acceded to the prosecutor's request, quashed the earlier judgments by way of supervisory-review proceedings and upheld the CEC's position. On the following day the CEC annulled its decision to register the applicant party's list of candidates.

57. The Court has already found a violation of Article 3 of Protocol No. 1 in a case where the procedure for determination of the applicant's eligibility as a candidate in the election had not satisfied the requirements of procedural fairness and legal certainty (see *Podkolzina*, cited above, § 37).

58. The Court further reiterates that the requirement of legal certainty presupposes respect for the principle of *res judicata*, that is the principle of finality of judgments. This principle underlines that no party is entitled to seek a re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle may be justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX). Indeed, as the Court has noted, "judicial systems characterised by the objection procedure and, therefore, by the risk of final judgments being set aside repeatedly ... are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law" (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 77, ECHR 2002-VII).

59. Turning back to the present case, the Court notes that the final and enforceable judgment of 22 November 1999 which cleared the way for the applicant party and the second applicant to stand in the elections was quashed by means of supervisory-review proceedings on an application by a deputy Prosecutor General, a State official who was not a party to the proceedings. The purpose of his application was precisely to obtain a fresh determination of the issue that had been already settled in the judgment of 22 November 1999, notably whether section 51(11) of the Elections Act also applied to instances where the withdrawal of a candidate was involuntary. The Government did not point to any circumstances of a substantial and compelling character that could have justified that departure from the principle of legal certainty in the present case. As a result of the re-examination, the CEC's point of view prevailed and the applicant party and the second applicant were prevented from standing for election.

60. It follows that by using the supervisory-review procedure to set aside the judgment of 22 November 1999, the domestic authorities violated the principle of legal certainty in the procedure for determining the applicant party's and the second applicant's eligibility to stand in the elections.

61. Independently of the issue of legal certainty, the Court has to examine whether the decision to disqualify the applicant party and the second applicant from standing in the election was proportionate to the legitimate aims pursued, having regard to the State's margin of appreciation.

62. The Court has accepted as incontestably legitimate the interest of each State in ensuring the normal functioning of its own institutional system. That applies all the more to the national parliament, which is vested with legislative power and plays a primordial role in a democratic State (see *Podkolzina*, cited above, § 33). The requirement to submit information on the candidate's property, earnings and sources of income serves to enable the voters to make an informed choice and to promote the overall fairness of elections. Regard being had to the principle of respect for national specificity (see paragraph 49 above), the introduction of such a requirement, which is determined by historical and political considerations particular to the Russian Federation, does not appear arbitrary or unreasonable. Accordingly, the Court concludes that requiring a candidate for election to the national parliament – be it a person or an electoral bloc or union – to make his or her financial situation publicly known pursues a legitimate aim.

63. In a party-list proportional representation system, where a voter votes for a party list on the understanding that candidates placed higher on the list have more chances of obtaining seats in the parliament, it is not surprising that, as part of their electoral campaigning strategy, political parties nominate the most well-liked or charismatic figures at the top of their lists. Legal provisions reinforcing the bond between the top candidates and the entire party list are therefore instrumental for promoting the emergence of a coherent political will, which is also a legitimate aim under the terms of Article 3 of Protocol No. 1 (see, *mutatis mutandis*, *Gorizdra v. Moldova* (dec.), no. 53180/99, 2 July 2002).

64. The Court notes that section 47(6)(d) of the Elections Act provided for disqualification of candidates or electoral unions if a substantial discrepancy in their financial submissions was uncovered. That provision expressly restricted the application of the measure to individual candidates. Section 51(11) of the Elections Act, however, provided for disqualification of the entire list of candidates in the event of the withdrawal of one of the top three candidates.

65. The Court observes that neither the applicant party as an entity nor the second applicant as an individual candidate on the applicant party's list was found to have been in breach of the electoral laws. Thus, it was not their own conduct that led to their ineligibility or disqualification. As noted above, they were prevented from standing for election because the number

two candidate on the party's list had been withdrawn in connection with his untrue financial declaration. However, under the domestic law, electoral blocs or candidates on the list were not required to verify the truthfulness of financial representations that were not their own. It follows that the applicant party and the second applicant were sanctioned for circumstances which were unrelated to their own law-abiding conduct and were also outside their control. Notwithstanding the considerable latitude which States are allowed in establishing criteria for disqualification, the Court considers that the disqualification of the applicant party and the second applicant for the above reasons was disproportionate to the legitimate aims pursued, namely ensuring the truthful disclosure of the candidates' financial position and promoting the integrity of electoral blocs or unions.

66. The Court notes that this was also the view of the Russian Constitutional Court, which subsequently found section 51(11) of the Electoral Law to be incompatible with the Russian Constitution in so far as it disproportionately restricted the party's and other candidates' right to stand for election (see paragraphs 21 et seq. above). The Constitutional Court convincingly established that disqualification of candidates and entire electoral alliances for reasons unrelated to their conduct unduly impaired their passive voting rights, irrespective of the grounds for the withdrawal of a top-three candidate, and was contrary to the legal principle *nulla poena sine culpa*. The Court sees no reason to dissent from these findings.

67. It follows that there has been a violation of Article 3 of Protocol No. 1 in respect of the applicant party and the second applicant.

B. The right to vote in elections

1. The parties' arguments

68. The applicants submitted that, irrespective of the applicant party's electoral potential in the 1999 elections, the fact that it was not allowed to stand for election had forced its supporters, such as the third applicant, to change their voting preference or not to cast their vote at all. This represented an unjustified interference with the third applicant's right to vote.

69. The Government responded that there had been no restriction on the third applicant's right to vote because he had been able to vote for any lawfully registered candidate or party. The applicant party had not been registered for elections because of its failure to abide by the legislation in force at the time. Alternatively, the third applicant could have cast his vote "against all candidates", making use of a special line on the ballot paper indicating that the voter did not wish to see any of the listed candidates elected. In any event, the applicant party's low level of popular support would not have permitted it to gain representation in the legislature.

2. The Convention institutions' case-law and the Council of Europe's general principles pertaining to the right to vote

70. The common principles of the European constitutional heritage, which form the basis of any genuinely democratic society, frame the right to vote in terms of the possibility to cast a vote in universal, equal, free, secret and direct elections held at regular intervals (see Resolution of the Parliamentary Assembly on the Code of Good Practice in Electoral Matters, paragraph 37 above; Declaration by the Committee of Ministers on the Code of Good Practice in Electoral Matters, paragraph 38 above; and the Guidelines on Elections, paragraphs 40 and 41 above). Article 3 of Protocol No. 1 explicitly provides for the right to free elections at regular intervals by secret ballot and the other principles have also been recognised in the Convention institutions' case-law.

71. Freedom of suffrage is the cornerstone of the protection afforded by Article 3 of Protocol No. 1. The Court considers, as did the Commission, that the words "free expression of the opinion of the people" primarily signify that "the elections cannot be made under any form of pressure in the choice of one of more candidates, and that in this choice the elector [may] not be unduly induced to vote for one party or another" (see *X. v. the United Kingdom*, no. 7140/75, Commission decision of 6 October 1976, Decisions and Reports 7, p. 96). In other words, from a voter's perspective, free suffrage comprises two aspects: freedom to form an opinion and freedom to express that opinion (see the Explanatory Report, § 26).

72. As regards the freedom of voters to form an opinion, the Court notes that the Council of Europe's institutions have primarily described it in terms of the State authorities' obligation to honour their duty of neutrality, particularly where the use of the mass media, billposting, the right to demonstrate and the funding of parties and candidates are concerned (see, for example, the Guidelines on Elections, § 3.1 (a), and the Explanatory Report, § 26 (a)). In addition, this freedom has been considered to imply certain positive obligations on the part of the authorities, such as the obligation to submit the candidatures received to the electorate and to make information about candidates readily available (see the Guidelines on Elections, § 3.1 (b), and the Explanatory Report, § 26 (b)).

73. The freedom of voters to express their wishes, on the other hand, has been understood in terms of strict observance of the voting procedure. The electors should be able to cast their votes for registered lists or candidates in conditions shielding them from threats or constraints liable to prevent them from casting their votes or from casting them as they wish, whether such threats come from the authorities or from individuals (see the Guidelines on Elections § 3.2, and the Explanatory Report, § 27).

3. The Court's assessment

74. The Court notes at the outset that the cases concerning the right to vote that have come before the Convention institutions in the past have focused on the possibility for the applicant to exercise his or her franchise. Thus, the Court has found a violation of Article 3 of Protocol No. 1 in cases where the voting ban was not proportionate to the legitimate aim pursued (see *Vito Sante Santoro v. Italy*, no. 36681/97, ECHR 2004-VI; *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV; and *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, ECHR 2005-IX) or where the applicants belonged to a disenfranchised cluster of the population (see *Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I, and *Aziz v. Cyprus*, no. 69949/01, ECHR 2004-V). The Commission extended the reasoning in respect of a single voter's right to vote to the entire voting population in Greece and expressed the opinion that there had been a violation of Article 3 of Protocol No. 1 in that "the Greek people were... prevented from expressing their political opinion by choosing a legislature..." owing to the dissolution of Parliament and the postponement of new elections (see the Commission report in the Greek case, *Yearbook* 12, pp. 179-80).

75. In the present case it has not been claimed that the third applicant was disenfranchised because of any restriction on his right to vote existing in law or in practice. The thrust of his grievance was not that his right to vote had been taken away but rather that it had been impossible for him to cast his vote for a party of his choosing – the applicant party – which had been denied registration for the election.

76. The Court, however, does not consider that an allegedly frustrated voting intention is capable, by itself, of grounding an arguable claim of a violation of the right to vote. It notes, firstly, the obvious problem of laying down a sufficient evidentiary basis for demonstrating the nature and seriousness of such an intention. An intention to vote for a specific party is essentially a thought confined to the *forum internum* of an individual. Its existence cannot be proved or disproved until and unless it has manifested itself through the act of voting or handing in a blank or spoiled paper (see *X v. Austria*, Commission decision of 22 March 1972, Yearbook 15, p. 474). Moreover, a voter's preference is not static but may evolve in time, influenced by political events and electoral campaigning. A sudden and sweeping change in voters' intentions is a well-documented political and social phenomenon.

77. The Court reiterates that an individual applicant should be able to claim to be actually affected by the measure of which he complains and that Article 34 may not be used to found an action in the nature of an *actio popularis* (see, among other authorities, *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142, § 30). The third applicant did not furnish any information about the way in which he had exercised his right to

vote. It is not known whether he cast a ballot paper or, for that matter, whether he attended the polling station on the voting day. He did not bring, or take part in, any domestic proceedings in which the courts could have established the fact that he had intended to vote for the applicant party.

78. On a more general level, the Court is mindful of the ramifications of accepting the claim of a frustrated voting intention as an indication of an interference with the right to vote. Such acceptance would confer standing on a virtually unlimited number of individuals to claim that their right to vote had been interfered with solely because they had not voted in accordance with their initial voting intention.

79. In the light of the above considerations, the Court finds that the right to vote cannot be construed as laying down a general guarantee that every voter should be able to find on the ballot paper the candidate or the party he had intended to vote for. It reiterates, nevertheless, that the free expression of the opinion of the people is inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country's population (see *Federación Nacionalista Canaria v. Spain* (dec.), no. 56618/00, ECHR 2001-VI). Accordingly, it must have regard to the broader context in which the right to vote could be exercised by the third applicant.

80. The Court notes that more than twenty-five political parties and electoral blocs representing a broad gamut of political views and platforms competed in the 1999 elections to the lower chamber of the Russian Parliament. The elections were acclaimed as competitive and pluralistic by international observers (see paragraph 42 above). The observers recognised that the voters' freedom to form an opinion had a secure basis in domestic law, which laid down “a foundation for maintaining a level playing field for political participants” (ibid.). It was not alleged that the voters lacked sufficient or adequate information about the candidates, and the strict measures adopted by the CEC in respect of the candidates who had made false representations about themselves served to reinforce that guarantee. Nor has it been claimed that the third applicant was subjected to any form of pressure or undue inducement in his voting choices. Indeed, if there were no candidates to his taste (assuming that he persisted in his wish to vote for the applicant party), he could have voted “against all candidates”, as more than two million other voters did (see paragraph 36 above). It cannot therefore be said on the basis of the information available that the third applicant's right to take part in free elections has been unduly restricted.

81. There has therefore been no violation of Article 3 of Protocol No. 1 as regards the third applicant's right to vote.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

82. The applicants complained that they had had no effective remedy in respect of the breach of Article 3 of Protocol No. 1. The Court has decided to examine this complaint under Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The applicant party and the second applicant

1. The parties' arguments

83. The applicants submitted that the Presidium of the Supreme Court should not have adjudicated on the interpretation issue and should have referred it to the Constitutional Court, which was the only judicial body competent to determine the compatibility of the contested provision with the Constitution. The question to be determined was not whether any means of appeal had existed but whether the applicants had had a real opportunity to redress a breach of their electoral rights in the framework of the electoral campaign. Furthermore, although the Constitutional Court had received the applicants' complaint at the time when a similar application by a group of Russian MPs had been examined, it had not joined the two applications. Instead, it had disallowed the applicants' complaint as "substantially the same". Lastly, the applicants submitted that Russian law did not provide for a procedure for granting compensation for breaches of electoral law.

84. The Government asserted that the applicants' contention that they had had no effective remedy was incompatible with the provisions of Russian law in force at the time and was not based on the facts of the case. The applicants had had their claims examined by the Supreme Court and also by the Constitutional Court. In particular, the Supreme Court had heard their appeal against the CEC's decision of 9 December 1999 and dismissed it as unsubstantiated. After the Constitutional Court had declared the contested provision invalid, the applicants could have applied for a review of the Presidium's judgment in the light of newly discovered circumstances, but had not complied with the three-month time-limit for lodging that application.

2. The Court's assessment

85. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The scope of the Contracting States'

obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. However, the remedy required by Article 13 must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or remedying the impugned state of affairs, or of providing adequate redress for any violation that had already occurred (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

86. In the instant case the applicant party and the second applicant were disqualified as candidates in the election as a result of the Central Electoral Commission's decision of 9 December 1999 (see paragraph 20 above). Accordingly, the Court has to examine whether they had an effective remedy in respect of the violation of their right to stand for election.

87. The Government argued that the applicant party had been able to appeal to a court against the decision of 9 December 1999. However, the remedy they suggested was obviously not an effective one: the appeal failed because the domestic courts considered that the supervisory-review judgment of the Presidium of the Supreme Court was final and that no further examination of the matter was possible.

88. The RSFSR Code of Civil Procedure at the time did not provide for any appeal against a judgment or decision given in supervisory-review proceedings. It could only be set aside by means of another supervisory-review judgment or decision. However, the power to institute supervisory-review proceedings was discretionary, that is to say it was solely for the State official concerned to decide whether or not a particular case warranted supervisory review (see *Ryabykh*, cited above, § 34). It follows that a new round of supervisory-review proceedings could not have been set in motion by a party and that that "remedy" was not accessible to the applicants.

89. It follows that the applicant party and the second applicant were denied an effective remedy in respect of the violation of their electoral rights through the use of the supervisory-review procedure. There has accordingly been a violation of Article 13 of the Convention. In the light of this finding, the Court does not consider it necessary to examine whether further developments in the case, such as the Constitutional Court's refusal to consider the merits of the applicants' complaint, also disclose a violation of that provision.

B. The third applicant

90. The Court reiterates that Article 13 applies only in respect of grievances under the Convention which are arguable (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). As it has found above that the third applicant did not have an arguable claim

of a violation of his right to vote (see paragraph 76 et seq.), Article 13 finds no application in this situation. There has therefore been no violation of the third applicant's right under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

91. The applicant party complained under Article 1 of Protocol No. 1 that the refusal to return its election deposit and the requirement for it to pay for the airtime it had used on State television had violated its property rights. Article 1 of Protocol No. 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' arguments

92. The applicant party submitted that the election deposit could be credited to the budget only if registration of the party's list had been refused, *inter alia* on the grounds set out in section 51(11) of the Elections Act, or if the party received less than 3% of the votes. However, the applicant party had not been allowed to stand for election and the level of its support had therefore remained unknown. Likewise, the requirement to pay for airtime had also impaired its property rights because it only applied to parties that had stood for election and obtained less than 2% of the votes.

93. The Government submitted that the applicant party had obtained State financial assistance and used free airtime for campaigning in the same conditions as other parties until the judgment of the Presidium of the Supreme Court had been given. In any event, the election deposit was payable out of the electoral fund created by the applicant party and accordingly did not directly form part of its assets. The CEC's decision to refuse to return its election deposit had been justified because there were no legal grounds for returning it. After the deposit had been credited to the budget, the CEC had had no control of the money concerned, and the Constitutional Court's ruling of 25 April 2000 could not change that situation.

B. The Court's assessment

94. It has been the Convention institutions' settled case-law that the requirement to pay an election deposit and the provisions making reimbursement of the deposit and/or campaigning expenses conditional on the party's having obtained a certain percentage of votes serve to promote sufficiently representative currents of thought and are justified and proportionate under Article 3 of Protocol No. 1, having regard to the wide margin of appreciation afforded to the Contracting States in this matter (see *Tête v. France*, nos. 11123/84 and 11802/85, Commission decisions of 9 December 1987 and 10 March 1988; *André v. France*, no. 27759/95, Commission decision of 18 October 1995; and *New Horizons and Others v. Cyprus*, no. 40436/98, Commission decision of 10 September 1998).

95. The situation in the present case is different. Firstly, the applicant party complained about a violation of its property rights under Article 1 of Protocol No. 1 rather than about a violation of its right to take part in free elections under Article 3 of Protocol No. 1, as the applicants in the above-mentioned cases did. Secondly, and more importantly, the applicants in those cases did participate in the election, albeit unsuccessfully, whereas the applicant party in the present case was prevented from standing for election as a result of the defective domestic procedure.

96. The Court notes that the domestic courts refused the applicant party's request for the return of its election deposit because it had been disqualified from standing for election on the basis of section 51(11) of the Elections Act. However, it has already found that the application of that provision in the present case was incompatible with the requirements of the Convention. In particular, the Court has found that the domestic proceedings were conducted in breach of the principle of legal certainty. That conclusion holds true for the applicant party's complaint under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII).

97. It follows that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicant party.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicants claimed 2,315,520 Russian roubles (RUR) in respect of compensation for pecuniary damage. The amount claimed represented 91.3% of the election fund, of which 90.7% represented the applicant party's own assets and 0.6% represented contributions from private individuals, which had been used to pay the election deposit. The applicants further claimed 1,600,000,000 euros (EUR) for the applicant party and EUR 200,000 for each of the second and third applicants in respect of non-pecuniary damage.

100. The Government considered these claims excessive and "fabulous".

101. The Court refers to its above finding that the election deposit was forfeited as a consequence of the domestic procedure, which was incompatible with the principles set forth in the Convention. There is therefore a causal link between the violation found and the pecuniary damage claimed. Accordingly, the Court awards the applicant party the entire amount claimed for the pecuniary damage plus any tax that may be chargeable on it.

102. As regards the claim in respect of non-pecuniary damage, the Court considers that the finding of a violation would constitute sufficient just satisfaction in respect of the applicant party and the second applicant.

B. Costs and expenses

103. The applicants claimed RUR 168,306 as reimbursement of the court fees paid in the domestic proceedings and RUR 28,371 for postal, translation and notary expenses incurred in the Strasbourg proceedings. They also submitted that the applicant party had signed a contingency fee agreement with Mr Sklyarov, according to which he was to receive EUR 10,000 plus 5% of any amount awarded after the judgment of the Court had been delivered.

104. The Government did not comment on those claims.

105. The Court notes that Mr Sklyarov is the head of the applicant party's legal department. It would therefore be logical to assume that the representation of the applicant party's legal interests before judicial bodies is part of his normal professional duties, any additional pay or bonus in the event of successful litigation being a matter between him and his employer. It has not been shown that the second applicant paid him any fee for representing him before the Court. In these circumstances, the Court makes no award in respect of Mr Sklyarov's fees.

106. The Court is satisfied that the other expenses have been necessarily incurred by the applicant party and are supported by appropriate documentation. Accordingly, it awards the entire amount claimed in respect

of the domestic costs, as well as postal, notary and translation expenses, that is, RUR 196,677, plus any tax that may be chargeable on it.

C. Default interest

107. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 3 of Protocol No. 1 in respect of the applicant party and the second applicant;

2. *Holds* that there has been no violation of Article 3 of Protocol No. 1 in respect of the third applicant;

3. *Holds* that there has been a violation of Article 13 of the Convention in respect of the applicant party and the second applicant;

4. *Holds* that there has been no violation of Article 13 of the Convention in respect of the third applicant;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicant party;

6. *Holds*

(a) that the respondent State is to pay the Russian Conservative Party of Entrepreneurs, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) RUR 2,315,520 (two million three hundred and fifteen thousand five hundred and twenty Russian roubles) in respect of pecuniary damage;

(ii) RUR 196,677 (one hundred and ninety-six thousand six hundred and seventy-seven Russian roubles) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

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

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President