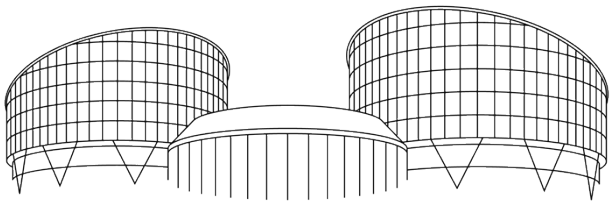

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF THE COMMUNIST PARTY OF RUSSIA AND OTHERS v. RUSSIA

(Application no. 29400/05)

JUDGMENT

STRASBOURG

19 June 2012

FINAL

19/09/2012

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

In the case of the Communist Party of Russia and Others v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 29 May 2012,

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

PROCEDURE

1. The case originated in application no. 29400/05 against the Russian Federation lodged with the Court on 1 August 2005 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight applicants: two political parties registred under the Russian law - the "Communist Party of the Russian Federation" (hereinafter referred to as "the Communist Party" or "the first applicant") and the "Russian Democratic Party "Yabloko" (hereinafter referred to as "the Yabloko party", "Yabloko" or "the second applicant"), and six Russian nationals: Mr Sergey Viktorovich Ivanenko, born in 1959 ("the third applicant"), Mr Yevgeniy Alekseyevich Kiselyev, born in 1956 ("the fourth applicant"), Mr Dmitriy Andreyevich Muratov, born in 1961 ("the fifth applicant"), Mr Vladimir Aleksandrovich Ryzhkov, born in 1966 ("the sixth applicant"), Mr Vadim Georgiyevich Solovyev, born in 1958 ("the seventh applicant"), and Ms Irina Mutsuovna Khakamada, born in 1955 ("the eighth applicant"). The individual applicants were represented before the Court by Mr Garry Kasparov, a politician and a former world chess champion.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that their right to free elections guaranteed by Article 3 of Protocol No. 1 to the Convention had been breached on account of the biased media coverage of the 2003 parliamentary elections campaign by the major TV stations. The applicants also complained that, as opposition candidates, they had been discriminated against and did not have effective remedies, in breach of Articles 13 and 14 of the Convention. They complained, lastly, that their complaints had been

examined in proceedings which had not been "fair" within the meaning of Article 6 of the Convention.

4. On 1 October 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The 2003 elections – general overview

5. On 3 September 2003 the President of Russia decided that election of members to the State Duma, the lower chamber of the Russian federal parliament, would take place on 7 December 2003. During this election campaign, 23 electoral associations - political parties and electoral blocs - were registered as standing for election in the federal contest. The pro-government forces in the 2003 elections were represented essentially by the United Russia party. The electoral list of United Russia included many high-ranking federal officials and regional governors.

6. The Communist Party and the Yabloko party put forward their lists of candidates. The third applicant ran on the Yabloko ticket. The sixth applicant ran as an independent candidate in a single-mandate electoral district. The eighth applicant ran on the ticket of the political party Soyuz Pravykh Sil (SPS). She also ran in a single-mandate electoral district. All the individual applicants also participated in the 2003 electoral campaign as voters. Although the political platforms of the applicants who participated in the 2003 elections were different, all of them positioned themselves as opposition parties and candidates.

7. The electoral process was administered by the Central Election Commission (the CEC). Similar commissions were created at regional level. The CEC's role was, *inter alia*, to examine complaints of candidates or voters about breaches of electoral law, and take the necessary measures to prevent or put an end to such breaches. The CEC was also responsible for counting the votes on election day and announcing the official results of the elections. In September 2003 the CEC created a Working Group on Information Disputes, an advisory body which was supposed to assist in overseeing compliance with the rules on allocation of free airtime, publication of opinion polls and illegal campaigning.

8. The voting was held by secret ballot on 7 December 2003. On 19 December 2003 the CEC officially confirmed the election results by Decree No. 72/620-4. According to the official statistics, 60,712,000 persons voted in the elections. Thus, the level of participation was 55.75 per cent of the registered number of voters. The United Russia party obtained a majority of votes (over 37 per cent) and formed the biggest grouping in Parliament with 224 seats. In the aftermath of the elections 37 Members of Parliament elected on behalf of United Russia renounced their mandates, whilst keeping their official positions, and transferred their seats in the Duma to other candidates on the United Russia list (who otherwise would not have been elected). On 24 December 2003 the CEC approved the forfeiture of 37 mandates obtained by the United Russia candidates in favour of other members of that party.

9. The Communist Party won 12.6 per cent of votes and obtained 52 seats, and accordingly formed the second biggest grouping in the Duma. Yabloko obtained 4.3 per cent of votes. Since this was less than the statutory five per cent minimum threshold, Yabloko did not obtain any seats in parliament. Mr Ryzhkov (the sixth applicant) obtained 35.1 per cent of votes in his district and was elected as an individual MP to the Duma. Mr Ivanenko and Ms Khakamada (the third and eighth applicants) were individual candidates, supported by the Yabloko party and SPS party respectively; they failed to be elected.

B. Electoral campaigning and media coverage of the 2003 elections

10. All the major TV companies in Russia covered the elections. Amongst them were five main nationwide broadcasting companies: Channel One, VGTRK (All-Russia State Television and Radio Broadcasting Company), TV Centre, NTV and REN TV. The first three companies were directly controlled by the State. Thus, the State held more than 50 per cent of shares in Channel One; VGTRK was a federal State unitary enterprise; the Moscow City Administration held ninety per cent of shares in TV Centre. The other two channels (NTV and REN TV) were incorporated as limited companies not owned directly by the State; however, amongst their major shareholders were corporations affiliated with the State.

11. The above five channels had a very large audience and covered all geographical zones. Thus, Channel One covered almost all the territory of Russia, VGTRK 97.4 per cent of the territory, and TV Centre over 70 per cent. The outreach of NTV amounted to 91 per cent coverage of Russian territory. The outreach of REN TV at the relevant time was not specified by the applicants.

12. During the electoral campaign the parties participating in it received a certain amount of free airtime on TV channels for "electoral campaigning", that is, direct political advertisement. Thus, each State

broadcasting company was required to provide the competing candidate parties with one hour of free airtime per working day on each TV or radio channel they controlled. In total, the parties received 160 hours of airtime. Each of them thus received 7.5 hours of free airtime. The time schedule for distribution of free airtime time amongst parties and candidates was defined by the drawing of lots on 4 November 2003. The candidates were supposed to use half that time for "joint campaigning events" (such as debates, for example). They could use the other half as they wished. All the parties used the free airtime provided to them by the broadcasting companies.

13. In addition, parties and candidates could buy a certain amount of paid airtime for campaigning on an equal footing with the others. Broadcasting companies were required to reserve paid airtime for political broadcasting of the candidates. However, the law provided that the amount of time for paid political advertising should not be more than 200 per cent of the amount of free airtime. Furthermore, at regional level all the State-owned regional broadcasting companies also provided free and paid airtime to the candidates according to the same principles as at federal level.

14. According to the Government, the Communist Party of Russia did not buy airtime from the federal broadcasting companies, although it had sufficient financial resources to do so. At the regional level the Communist Party bought airtime only occasionally, in some of the regions. The political party Yabloko bought time from Channel One to show two video clips, each lasting one minute. All parties and candidates also bought printed space in some of the federal print media.

C. Instances of unequal media coverage, according to the applicants

15. Besides "campaigning", all channels were involved in reporting on the elections in various news items, analytical programmes, talk shows and so on (hereinafter "media coverage"). The applicants maintained that media coverage of the electoral campaign of 2003 by the five TV channels was unfair to opposition parties and candidates, and that in the guise of media coverage these TV channels in fact campaigned for the ruling party, i.e. the United Russia.

16. Before the Court the applicants produced detailed data on the content of major information spots, programmes and shows on the five above-mentioned TV channels during the period of the 2003 electoral campaign. According to the applicants, the airtime spent by the five TV companies was allocated amongst the candidates unevenly. Thus, the Communist Party received 316 minutes and 58 seconds of the airtime. The total amount of airtime allocated to the Yabloko was 197 minutes and 21 second. In contrast, the reporting on the activities and personalities associated with United Russia amounted to 642 minutes and 37 seconds.

17. The applicants also argued that the information disseminated through newscasts and informational and analytical programmes was not neutral for the most part. The amount of "positive" media coverage received by the Communist Party during the election campaign did not exceed 7 minutes and 13 seconds. In addition, some positive coverage was provided through the Communist Party senior members' participation in the talk shows aired by NTV, which lasted 74 minutes and 45 seconds. *In toto* positive coverage of the Communist Party amounted to 81 minutes and 58 seconds. Negative coverage of the Communist Party amounted to 331 minutes and 22 seconds; most of such coverage was in the information spots. In contrast, positive media coverage of United Russia amounted to 529 minutes and 9 seconds, whereas "negative" coverage of that party amounted to 6 minutes and 2 seconds. Positive coverage of Yabloko amounted to 209 minutes and 40 seconds. Negative coverage of that party amounted to 8 minutes and 53 seconds. The applicants specified that the two private nationwide channels not directly controlled by the State (NTV and REN TV) provided a more balanced media coverage than the three channels directly controlled by the State (such as Channel One, VGTRK, and TV Centre).

18. The applicants also referred to various episodes of tacit electoral campaigning for United Russia by various high-level Government officials, notably the then President Putin. Thus, on 19 September 2003 Mr Putin attended the congress of United Russia, which was covered by Channel One, VGTRK and NTV. Mr Putin delivered a speech to the delegates of the congress, saying, in particular, the following:

> ''Your meeting is taking place at a moment which is important for our country, for the electoral campaign has just started. I am not going to hide the fact that I voted for your party four years ago. I believe I was right to do so''.

19. On 7 December 2003 – election day – when no campaigning is permitted, Channel One, VGTRK, TV Centre, and REN TV broadcast a short interview given by the then President of Russia, Mr Putin, at a voting station:

> "Journalist: Who did you vote for?
>
> Mr Putin: I think my answer may be regarded as additional campaigning, so I'd better keep silent. But I think my preferences are well known."

That phrase was broadcast eight times during the day; the general airtime allocated to showing that interview amounted to 14 minutes and 15 seconds. In addition, all channels disseminated information about the participation of the United Russia leaders in the voting which on that day was broadcast 14 times, the aggregate length amounting to 16 minutes and 38 seconds.

D. Assessment of the media coverage of the 2003 elections by the OSCE and Transparency International

20. After the elections, several international organisations and NGOs made public statements and issued reports in which they criticised the 2003 parliamentary elections for unequal access of the candidates to the media. Thus, on 27 January 2004 the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-Operation in Europe ("OSCE/ODIHR") published its election observation mission final report, where it noted that "the main countrywide State broadcasters displayed favouritism towards United Russia and, in doing so, failed to meet their legal obligation to provide equal treatment to electoral participants, also a fundamental principle of democratic elections". The report contained the following passages:

> "The State TV channels fully complied with legal provisions on allocation of free airtime for all contestants. All three State-controlled televisions aired regular debates among political parties and blocs, a positive development that helped voters to form opinions of the candidates ... However, outside of the free airtime, the State broadcasters monitored by the [OSCE/ODIHR election observation mission] openly promoted United Russia ... State-funded broadcasters also produced a number of prime time news discrediting [the first applicant political party] ... In comparison, the private broadcasters ... provided more balanced coverage of the campaign with a greater diversity of views ... The print media provided a plurality of views but mainly supported specific political parties or blocs. As such, voters could form an objective view of the campaign only if they read several publications. State-funded newspapers met the legal requirements in regard to free space for each party or bloc, but were biased in the political and campaign coverage in favour of United Russia and against [the first applicant political party]".

21. In 2004 a Moscow-based research affiliate of international NGO Transparency International published its report on "the abuse of administrative resources" during the 2003 electoral campaign in which it identified 518 instances of such abuse. That report, which was based on independently conducted media monitoring, concluded that "media resources had been systematically misused throughout the campaign on behalf of United Russia", and that "the monitoring had clearly documented bias in favour of United Russia in terms of the number of biased individual news items broadcast".

E. Complaints to the administrative authorities and before the courts by the applicants during the electoral campaign

22. On 10 September 2003 Mr Mitrokhin, the then deputy chairperson of the second applicant political party (Yabloko), wrote a complaint to the chairman of the CEC about unfair media coverage of the campaign. In his reply of 29 September 2003 the CEC chairman acknowledged that several

television broadcasts and press reports contained elements of unlawful electoral campaigning against that political party.

23. On 23 September 2003 Mr Zyuganov (the leader of the first applicant, the Communist Party) complained to the CEC about Mr Putin's speech of 19 September 2003 (see paragraph 18 above). On 26 September 2003 the CEC Working Group on Information Disputes examined that complaint and prepared a report; based on that report on 29 September 2003 the CEC chairman wrote a letter to Mr Zyuganov in which he explained that there had been nothing unlawful in that speech. The chairman explained that mass media could report on official statements of public officials and that such media coverage could not be considered as "campaigning". The position of the CEC chairman was later confirmed by the Supreme Court of Russia in judgments of 16 December 2004 and 7 February 2005. A similar complaint to the prosecuting authorities also failed: on 10 October 2003 the Tverskoy District Prosecutor of Moscow refused to initiate administrative proceedings, referring to the CEC's conclusion that Mr Putin's speech had not violated any electoral regulations. The District Prosecutor's decision was upheld by the Moscow Deputy Prosecutor on 24 November 2003 and by the Deputy Prosecutor General on 11 December 2003.

24. On 16 October 2003 Mr Solovyev (the seventh applicant, in 2003 a non-voting member of the CEC) complained to the CEC and to the Moscow Prosecutor's Office about a television report by Channel One of 12 October 2003 which had stated that United Russia was "leading [in the elections] having left its competitors far behind" and that the Communist Party was "losing the voters' support". In Mr Solovyev's submission, that report constituted illegal electoral campaigning. On 31 October 2003 the Ostankino District Prosecutor of Moscow refused to institute administrative proceedings in that regard. That decision was upheld by the Moscow Deputy Prosecutor on 28 November 2003.

25. On 22 October 2003 Mr Solovyev complained to the CEC about television programmes broadcast on 7 October 2003 featuring a friendly meeting between the United Russia leader and a well-known singer. The CEC found no elements of electoral campaigning in that broadcast, and the seventh applicant was informed accordingly by a letter from a CEC member dated 5 November 2003.

26. On an unspecified date Mr Zyuganov, Mr Solovyev and several other members of the Communist Party complained about the media coverage of the elections by Channel One and VGTRK period to the Working Group on Information Disputes. On 31 October 2003 the Working Group issued a report noting that VGTRK "had displayed a tendency towards deliberate and systematic dissemination of neutral or positive, or even complimentary, information about the events related to the activities of the United Russia party, while providing mainly negative coverage of the activities of the Communist Party". As regards Channel One, it found that

"Channel One displayed a tendency towards deliberate and systematic dissemination of neutral or positive information about the events related to the activities of United Russia, while providing mainly negative coverage - or news items accompanied by negative comments - of the activities of the Communist Party". The Working Group called on Channel One and VGTRK to comply with the provisions of the Duma Elections Act, in particular the principle of fair and impartial coverage of the electoral campaign. It also indicated that violations of the election coverage rules established by the Duma Elections Act were punishable under Article 5 § 5 of the Code of Administrative Offences.

27. On 6 November 2003 the CEC sent a letter to Channel One, VGTRK, Ren TV and TV Centre indicating that some of the material broadcast on Channel One and VGTRK displayed a tendency towards dissemination of predominantly positive or, on the contrary, predominantly negative information about the activities of "certain political parties and electoral blocs" standing for election to the Duma, and indicated that the directors of the State broadcasting companies must comply with the provisions of the Duma Elections Act governing election coverage, as interpreted by the Constitutional Court.

28. On an unspecified date Mr Zyuganov complained to the Moscow City Prosecutor's Office about unfair media coverage. On 14 November 2003 the Moscow Deputy City Prosecutor wrote back informing Mr Zyuganov that the management of the leading nationwide television channel had been reprimanded on account of irregularities committed in the course of publication of the results of the public opinion poll.

29. On 17 November 2003 the seventh applicant lodged a further complaint with the CEC. He relied on the transcripts of programmes broadcast on the leading nationwide television channels between 3 October and 9 November 2003. In response, on 28 November 2003 a CEC member advised the seventh applicant in writing to lodge a claim on grounds of defamation if he so wished. On 1 December 2003 the seventh applicant lodged complaints with the Supreme Court against that letter and the failure of the CEC to take action regarding his complaint of 17 November 2003. Those complaints were ruled inadmissible on 3 and 2 December 2003 respectively. The Supreme Court declined jurisdiction to examine the merits of those complaints.

30. On 25 November 2003 Mr Zyuganov and the seventh applicant again complained to the Working Group about biased media coverage. Having examined transcripts of TV programmes, the Working Group issued on the next day a report in which it noted that the situation had slightly improved since October 2003. After having received the report by the Working Group, the CEC sent a letter to the Ministry of Mass Media. In that letter the CEC noted that the facts revealed by the Working Group did not require any action by way of administrative proceedings; however, the

Ministry was asked to start monitoring the content of major information programmes of the five nationwide TV channels.

31. On 2 December 2003 Mr Zyuganov attempted to contact the directors of two leading nationwide television channels directly, but they denied any wrongdoing on their part. He then brought the matter to the attention of the CEC.

F. The applicants' attempt to invalidate the results of the elections

32. On 28 September 2004 the applicants lodged a claim with the Supreme Court for invalidation of the results of the 2003 electoral campaign as certified by the CEC's decision of 19 December 2003 (see paragraph 8 above). The CEC participated in the proceedings as the defendant.

33. In their voluminous submissions, the applicants relied on the results of the monitoring of five nationwide television channels in September – December 2003 which revealed that opposition parties and candidates received much less coverage than United Russia. They further referred to the unlawful electoral campaigning for United Russia by the President. They also complained that the five main nationwide television channels had waged a wave of negative publicity against the first applicant political party. The applicants submitted to the Supreme Court transcripts of all the television programmes, as well as video recordings, numbering 190 videocassettes.

34. The case was tried by the Supreme Court Justice Zaytsev, sitting in a single-judge formation. The first hearing was held on 16 December 2004. Before the start of the trial and at the first several hearings the applicants lodged a number of procedural motions, seeking discovery of new evidence, summoning of additional witnesses and experts, obtaining examination of certain written materials, video recordings etc. According to the applicants, nearly all motions lodged by them were refused by the judge without good reason and/or in breach of the domestic procedural rules. The Government contested that; they stressed that the same judge granted a number of motions introduced by the applicants. Furthermore, according to the applicants, at the first hearing the judge said that by lodging so many motions the applicants tried to protract the proceedings. On four occasions the applicants challenged the judge, but he refused to withdraw from the case.

35. On 16 December 2004 the Supreme Court dismissed the claim. The Supreme Court found no violations of electoral law capable of undermining the genuine will of the voters. The Supreme Court noted, in particular, the following:

> "The court is not in a position to accept the arguments of [the applicants] that the information coverage of [the 2003 electoral campaign] was conducted with such egregious violations of electoral law, namely, preferential media coverage of one

political party and the candidates put forward by it, that it was not possible to ascertain the genuine will of the voters.

First, electoral law does not provide for any limitations on the number of election-related events organised by the political parties in the course of the electoral campaign; the number of such events depends on the political parties themselves. The only exception is the maximum amount of expenditure, which is the same for all political parties taking part in the electoral campaign and stipulated by law. However, the scope of media coverage of the election-related events of the political parties depends on the number of those events.

Second, [the applicants] do not take into account that the coverage in question was conducted not only by five television channels but also by other mass media, in particular, radio stations and the printed mass media.

Third, according to the [judgment of the Constitutional Court of the Russian Federation of 30 October 2003, see applicable domestic law below], [the constitutional right to seek, receive, transmit, produce and disseminate information freely] shall not be unnecessarily interfered with.

Fourth, the applicants' arguments that there is an objective link between the amount of information about a political party disseminated by the television channels and the number of voters who voted for this party in the election are based on assumptions and are refuted by their own evidence.

Fifth, having examined the transcripts [submitted by the applicants], the court concludes that the applicants classified the stories [related by the journalists on TV] as information about a certain political party on the basis of their own subjective perceptions, in particular on the basis of their wrongful assumption that all voters undoubtedly know that persons whose activities those stories covered belonged to a particular political party ... The Constitutional Court of the Russian Federation, in its judgment of 30 October 2003, explained that a condition *sine qua non* of electoral campaigning was *dolus specialis*, that is, a special intention to persuade the voters to support or undermine a certain candidate or political party ... The Constitutional Court noted that media coverage without that *dolus specialis* did not constitute electoral campaigning ... The court has examined the transcripts of news and analytical programmes broadcast by five television channels over 13 days within the time-period from 3 September to 7 December 2003. Examination of those materials shows that it is not possible to accept the applicants' contention that the television channels disseminated materials about candidates and political parties capable of being classified as electoral campaigning in the course of the electoral campaign ... There are likewise no objective data confirming that the television channels had a specific intention to persuade the voters to vote for United Russia while covering the pre-electoral trips of the leaders of that party. The same is true in respect of the television coverage of the speech of President Putin at the [United Russia general meeting in Moscow in September 2009]. The court also considers it necessary to note that, pursuant to section 6 of the State Media Coverage of the Activities of State Bodies Act, State audio-visual media shall include in their daily informational programmes information about statements, communications and press conferences of the President of the Russian Federation as well as other facts about the activities of the federal state bodies which are of public significance. The court disagrees with the applicants' contention that the President of the Russian Federation conducted unlawful electoral campaigning in support of United Russia.

> It follows that there have been no violations of electoral law which would prevent the genuine will of the voters from being ascertained ... [The OSCE/ODIHR election observation mission report] likewise does not contain [information about] those violations ... The applicants' action for invalidation of the election results cannot therefore be allowed".

In respect of the episode of 7 December 2003 (reporting on Mr Putin's voting, see paragraph 19 above) the Supreme Court held as follows:

> "... The Supreme Court cannot accept the applicants' contention that there was unlawful electoral campaigning for United Russia on the part of the President of Russia on election day.
>
> Thus, having examined during the hearing a video recording of the Channel One items reporting on Mr Putin casting his vote in the Duma elections, the Supreme Court has established that the President of Russia refused to tell the journalist who he voted for. He did not mention any political party, which could have been classified as campaigning.
>
> It follows that there have been no violations of electoral law which would prevent the genuine will of the voters in the elections from being ascertained ... and could be a ground for invalidating the CEC's decision approving the outcome of the ballot ..."

36. The applicants appealed. They argued that the first-instance court had examined only a minor part of the evidence adduced by them, in particular around 5 per cent of transcripts and less than 1.5 per cent of video recordings. According to the applicants, that approach violated the principle of direct examination of evidence. The applicants further disagreed with other findings of the first-instance court.

37. On 7 February 2005 the Supreme Court, sitting as a court of appeal, composed of Justices Fedin, Potapenko and Tolcheyev, dismissed their appeal. The Supreme Court observed, most notably, the following:

> "The arguments contained in the grounds of appeal are unpersuasive.
>
> Having examined transcripts for four days (3 and 5 to 7 September 2009) and having heard the parties' representatives, the [first-instance] court made a decision on the basis of its examination of the evidence adduced. It decided to examine transcripts for the days proposed by the parties [to the proceedings] within the limits defined by the court. This method of examination of evidence did not violate the principle of equality of the parties. It allowed each of them to propose for examination their main transcripts capable of proving clearly, in their view, the violations of electoral law or absence thereof. The court accordingly proceeded to examine transcripts for eight days proposed by the applicants (20 September, 5, 20 and 31 October, 4, 18 and 28 November and 5 December) and for two days proposed by the CEC representatives (27 September and 3 December). Additionally, the court examined the transcript and the videotape of election day, that is, 7 December 2003. Overall, the court examined recordings of five main television channels for 14 days, that is, 13.4 per cent of those submitted.

> [Factual] circumstances as established by [the first-instance court] refute the allegations of inequality of the political parties and clear preference for one of them in so far as access to the mass media is concerned".

The appellate court also agreed with the other findings of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Composition of the State Duma

38. The State Duma is composed of 450 members. At the material time 225 members of the State Duma were elected from the lists of candidates put forward nationwide by the political parties. Those seats were distributed in proportion to the percentage of votes obtained by those political parties which had cleared a threshold of 5 per cent of votes. The remaining 225 seats were contested in "single mandate electoral districts" (one-seat constituencies), on a majority basis in two rounds, with candidates being put forward by the political parties or independently.

B. Legislation on media coverage of the 2003 elections

39. On 12 June 2002 the Law on basic principles of elections and referendums was enacted (Law no. 67-FZ, the Basic Guarantees Act). It was amended on 27 September 2002 and 23 June 2003. Further, the 2003 elections were governed by the Duma Elections Act of 20 December 2002, amended on 23 June 2003 (Law no. 175-FZ, the Duma Elections Act). Media coverage of elections was also regulated by the Coverage by the State Media of the Activities of State Bodies Act (Federal Law No. 7-FZ of 13 January 1995, the Media Coverage Act). Certain provisions of the law on media coverage of elections were developed in the documents of the CEC, in particular in Decree no. 38/354-4, and interpreted by the Constitutional Court of Russia in its judgment of 30 October 2003 no. 15-*P* (for more details, see below).

40. Pursuant to section 6 of the Media Coverage Act, the State-owned audio-visual mass media were obliged to disseminate information about the activities of State bodies and officials, in particular reporting on the decisions and acts of the President of the Russian Federation provided for by the Constitution, his declarations and announcements, press conferences and other activities "which are of public significance".

41. Sections 59 and 60 of the Duma Elections Act proclaimed the principle of equal access of candidates to the media, including the audio-visual media. The law distinguished between "informing" the population in

the course of the electoral campaign and "electoral campaigning" (or "agitation", *agitatsiya*).

42. "Electoral campaigning" was an activity undertaken with the aim of encouraging voters to vote for or against a certain candidate. Electoral campaigning on television was permissible as from the twenty-eighth day before election day and was to be ceased on the eve of election day.

43. Holders of certain higher public offices (including that of the President of the Russian Federation) and journalists were not allowed to engage in electoral campaigning unless they were formally registered as candidates. In any event it was illegal for them to do so while using the advantages of their official status on pain of administrative fines. The maximum amounts of expenditure were prescribed by law. The fact that an item of information - an article, a video clip and so on - was political campaigning was to be mentioned in the publication, and the source of funding should be indicated.

44. The law enumerated situations which could be characterised as campaigning. They included, *inter alia*, dissemination of materials in which information about a particular candidate is prevalent and accompanied by positive or negative comments, analysis of the consequences of electing this or that candidate, information about activities of a candidate which were not related to the performance of his official duties, and so on. The law also established a number of requirements of and limitations on the campaigning.

45. The law at the time provided that all candidates and parties had an equal opportunity to obtain a certain amount of free and paid airtime or printed space for their electoral campaigning. The conditions for obtaining airtime were identical for all candidates, and concerned both public and private mass media. Political parties registered at the federal level had a right of equal access to the national mass media, including State TV and radio-broadcasting stations. Individual candidates (affiliated or not to a political party) had similar rights in respect of access to the regional mass media.

46. "Electoral campaigning" was distinguished in the law from "informing". Informing was mainly the task of the "State authorities, municipal authorities, electoral commissions, media companies, legal entities and individuals" (section 54(1) of the Duma Elections Act, section 45(1) of the Basic Guarantees Act). It had to be objective, factually accurate and should not show preference for any candidate. Informing should consist of giving a neutral account of the progress of the electoral campaign, of the candidates' profiles, platforms and so on, within the "information slots" (airtime or printed space dedicated to informing). Those "information slots" should not be aligned with the position of any candidate and should not contain comments or value judgments. The mass media had to separate objective information from statements of opinion. At the same time the

mass media were free in their editorial policy (section 45(4) of the Basic Guarantees Act) and were allowed to comment on political events and personalities outside the "information slots".

C. Position of the Constitutional Court of the Russian Federation on the distinction between "informing" and "campaigning"

47. The Constitutional Court of the Russian Federation has ruled that professional journalists are regarded as involved in electoral campaigning only if they do so with special intent to campaign in favour of or against one or more candidates (judgment of 30 October 2003, no. 15-*P*). Thus, in order to distinguish between campaigning and informing (that is, normal journalistic activity) the courts have to establish whether or not the journalist pursued a specific aim of influencing the voting, *dolus specialis*. Where there is no such specific aim (the existence of which should be established by the courts), the materials, articles and so on must be considered as "informing". The Constitutional Court further stressed that, whilst the law required that information slots on TV and radio be neutral, the mass media were not prohibited from expressing their own opinion about candidates or giving comments outside the scope of the information slots.

D. Complaints about breaches of electoral law

48. Under the Basic Guarantees Act, the CEC was the central body responsible for organising and overseeing the electoral campaign at the federal level. It was also empowered to consider complaints about breaches of electoral law (section 20 of the Basic Guarantees Act). The CEC was entitled to refer such complaints to the law-enforcement and other official bodies for further consideration and reaction. Decisions of the CEC, taken within its competence, were binding on the lower electoral commissions, federal and regional State bodies, public officials, local authorities, candidates, parties, organisations, and voters. State broadcasting companies were required by law to provide free airtime to the candidates and parties during the elections and were required to give replies to the requests of the electoral commissions within five days of receipt.

49. Section 75 of the Basic Guarantees Act provided that unlawful acts and omissions of the public authorities and officials were amenable to judicial review. It further established rules of jurisdiction on applications for judicial review of acts and omissions of the CEC and regional commissions. The Basic Guarantees Act also provided for an appeal to a higher electoral commission against decisions of the lower electoral commissions. The Supreme Court of the Russian Federation had power to invalidate the results of the federal elections if the violations committed did

not permit the genuine will of the voters to be ascertained (sections 75 and 77 of the Basic Guarantees Act).

50. The Code of Administrative Offences (CAO) of 30 December 2001 established sanctions for certain breaches of electoral law, such as the failure by the mass media to comply with the rules of press coverage of the electoral campaign (Article 5 § 5 of the Code), or unlawful electoral campaigning through audio-visual and printed mass media by a candidate (Article 5 § 8). Article 5 § 11 established sanctions for electoral campaigning by persons who, by virtue of their position, were precluded from participating in electoral campaigning. Article 5 § 12 of the Code established sanctions for the unlawful production and dissemination of campaigning materials. Offences provided by the above mentioned provisions of the Code were punishable by fines ranging from 3,000 to 600,000 roubles (RUB), depending on the status of the offender and the seriousness of the violation.

III. RELEVANT INTERNATIONAL DOCUMENTS

51. 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 adopted the "Code of Good Practice in Electoral Matters". The Venice Commission distinguished two particular obligations of the authorities in relation to the media coverage of electoral campaigns: on the one hand to arrange for the candidates and/or parties to be accorded a sufficiently balanced amount of airtime and/or advertising space including on state television channels ("the access to the media obligation") and on the other hand to ensure a "neutral attitude" by state authorities, in particular with regard to the election campaign and coverage by the media, by the publicly owned media ("the neutrality of attitude obligation") (Explanatory Report to the Code of Good Practice on Electoral Matters, § 2.3). The Venice Commission's Code of Good Practice in Electoral Matters also recommended the creation of an effective system of electoral appeals, among other things, to complain about non-compliance with the rules of access to the media (§ 3.3).

52. The standards relating to public service broadcasting were further developed by the Committee of Ministers of the Council of Europe in the Appendix to Recommendation no. R (96) 10 on "The Guarantee of the Independence of Public Service Broadcasting" (1996). The Committee of Ministers recommended that "the legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy". Furthermore, "the legal framework governing public service broadcasting organisations should clearly stipulate that they shall ensure that news programmes fairly present facts and events and encourage the free formation of opinions. The cases in

which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations ...". Finally, in the Appendix to Recommendation Rec(2000)23 on "The Independence and Functions of Regulatory Authorities for the Broadcasting Sector", the Committee of Ministers again stressed the importance for States to adopt detailed rules covering the membership and functioning of such regulatory authorities so as to protect against political interference and influence.

53. Recommendation no. R (99) 15 of Committee of Ministers of the Council of Europe on measures concerning media coverage of election campaigns provided that regulatory frameworks in Member States should provide for the obligation of TV broadcasters (both private and public) to cover electoral campaigns in a fair, balanced and impartial manner, in particular, in their news and current affairs programmes, including discussion programmes such as interviews or debates. The Committee of Ministers also recommended the States to examine the advisability of including in their regulatory frameworks provisions whereby free airtime is made available to candidates on public broadcasting services in electoral time, "in a fair and non-discriminatory manner", and "on the basis of transparent and objective criteria".

54. The Inter-Parliamentary Council (a body of the Inter-Parliamentary Union based in Geneva), at its 154th session in Paris, on 26 March 1994 adopted the "Declaration on Criteria for Free and Fair Elections". Pursuant to that Declaration every candidate must have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views (Article 3 § 4). Everyone must have the right to campaign on an equal basis with other political parties, including the party forming the existing government; and to seek, receive and impart information and make an informed choice (Article 3 § 3). The States must ensure non-partisan coverage in State and public-service media and equality of access to such media (Article 4).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION AND ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF MEDIA COVERAGE OF THE ELECTIONS

55. The applicants complained that the media coverage of the 2003 elections had been biased, which had been detrimental to the opposition parties and candidates. They considered that, because of the unequal media coverage, the elections had not been "free" and had thus been incompatible with 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."

56. The applicants also complained of the lack of effective response on the part of the authorities to the applicants' allegations that the elections were not "free", contrary to Article 3 of Protocol No. 1 to the Convention. They referred to 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."

57. At the outset, the Court notes that the applicants also relied on Article 10 of the Convention, which guarantees freedom of expression, referring to the same facts and arguments. In the Court's opinion, the applicants' complaint under this provision is merely a reiteration of their principal complaint under Article 3 of Protocol No. 1 to the Convention. Given the specific context of the present case, the Court will examine it under the latter provision. That being said, in its analysis the Court will give due consideration to its case-law under Article 10 where this may be applicable *mutatis mutandis* in the context of the electoral process.

A. Admissibility

1. The Government's submissions

(a) The Court's competence *ratione materiae*

58. The Government argued that the applicants' complaints fell outside the Court's competence *ratione materiae*, since Article 3 of Protocol No. 1 to the Convention does not establish any specific electoral system, and, in

particular, did not guarantee all parties and candidates equal access to the media.

(b) Victim status

59. The Government submitted that some of the applicants did not have standing to complain about "unfair" elections. Thus, in the 2003 elections the first applicant had obtained seats in the Duma, and the sixth applicant had been elected as an individual member of the Duma. Furthermore, in the following years the first and the second applicant parties had received public funding. Elected members of the first applicant party had received salaries and allowances.

(c) Exhaustion of domestic remedies and compliance with Article 13 of the Convention

60. The Government contended that a variety of legal remedies capable of addressing the problem of unfair media coverage had been available to the applicants. The Russian legal system was therefore capable of providing the applicants with "effective remedies". However, the applicants had failed to use the existing remedies properly.

61. The Government contested the applicants' arguments that the electoral law was unclear and did not describe with sufficient precision the legal avenues available to candidates to contest violations of electoral law. Candidates had a right to lodge complaints about breaches of electoral law by other candidates and by the mass media with the CEC Working Group on the Information Disputes. During the 2003 campaign the Working Group had examined many applications of that kind, 19 of which had been partially satisfied, whilst 34 had been rejected. The Working Group had repeatedly drawn the attention of the mass media concerned to their obligation to comply with electoral law, communicated complaints to the law-enforcement bodies or to a regional branch of the Ministry of Mass Media and taken "other measures". As to the applicants' complaints to the Working Group, the latter had not found any breaches of electoral law related to the media coverage of the election campaign.

62. The candidates could also complain directly to the CEC. Depending on the nature of the complaint, the CEC was entitled to take various actions. The Government gave examples of successful complaints to the CEC and regional electoral commissions. The first and seventh applicants had made use of that remedy; they had complained to the CEC about two episodes: one concerning the speech by Mr Putin on 19 September 2003 (see paragraph 18 above) and another concerning the alleged negative press coverage on the chairmen of the Communist Party. Both had been directed against VGTRK and Channel One. In their application to the Court, however, they had complained about the whole series of episodes that had been shown on five major TV channels. Those other episodes had never

been examined by the CEC. Neither had the applicants challenged decisions of individual members of the CEC, such as their refusals to proceed with the complaints.

63. Neither had the applicants pursued administrative remedies in connection with the alleged breaches of electoral law by the broadcasting companies. The applicants alleged that the major TV companies had breached the rules of political campaigning and referred to 518 instances of such breaches (see paragraph 21 above). However, they had not produced any court decision or administrative act confirming the existence of those particular breaches. The members of the CEC had not drawn up any administrative offence report in 2003; the members of the regional electoral commissions had drawn up 152 reports related to unlawful electoral campaigning and inappropriate media coverage, 63 of which had been confirmed by the courts and a sanction imposed. The Government cited several examples of administrative cases that had been initiated on the basis of reports drawn up by members of regional electoral commissions.

64. Candidates were also entitled to bring their complaints directly before the courts. It did not matter whether or not a complaint had been examined by the full CEC, or by an individual member of that body. Even if the CEC had not taken any formal decision in the relevant procedure, its actions were amenable to judicial review by a district court. The Government produced copies of decisions of courts at various levels which had examined and upheld complaints about breaches of the electoral law.

65. The Government acknowledged that the applicants had contested before the Supreme Court the decree of the CEC of 19 December 2003 confirming the results of the 2003 elections. However, in essence the applicants complained of a violation of their rights by the broadcasting companies, and not the CEC, but had not lodged any claim against the broadcasting companies and other mass media which had allegedly participated in the alleged denigration of opposition candidates.

66. The Government cited examples of cases considered by the Russian courts in which candidates in the elections had successfully defended their rights, for instance, a decision of 23 November 2001 by the Supreme Court of Russia. Sitting as a court of appeal, it had set aside a decision of the electoral commission of the Magadan electoral district no. 6 on the ground of "unequal coverage of the electoral campaign by the mass media". The Government also referred to court proceedings which had resulted in the exclusion of a candidate in the regional elections for unlawful campaigning; the award of damages to a candidate for the unlawful removal of information about him from the voting ballots; the award of damages for libel and defamation in the context of an electoral campaign; and judicial review of the lawfulness of decisions of the local electoral commissions.

67. There were also other available remedies which the applicants had failed to use properly. In particular, the Government referred to the

possibility of lodging a criminal-law complaint with the prosecution authorities, or bringing a defamation claim before a court.

68. Lastly, the Government argued that the applicants' criticism of the proceedings before the Supreme Court was unfounded. The Supreme Court had indeed not reviewed each and every item of information provided by the applicants, but to examine all of them would have required at least 100 days of court hearings. The law on civil procedure permitted the courts to examine samples of evidence where that evidence was uniform in nature. In all, the Supreme Court had examined transcripts covering 14 days of the electoral campaign, or 13.4 per cent of the information produced by the parties (see paragraph 37 above). Further, having reviewed the public statements made by the then President Putin (see paragraphs 18 and 19 above), the Supreme Court did not consider that they contained any campaigning in favour of United Russia. In the course of the proceedings the applicants had lodged several procedural applications, some of which had been granted by the Supreme Court and others refused. The evidence examined at the hearings before the Supreme Court had been sufficient to make conclusive findings. The parties in the present case had had ample opportunities to present their case, which had been examined in fair proceedings.

(d) Compliance with the six-month rule

69. In the alternative, the Government argued that the applicants had failed to comply with the six-month time-limit provided for in Article 35 § 1 of the Convention. The Government argued that the mass media, in particular the broadcasting companies, had defined their editorial policy independently from the State. Since the applicants had chosen not to sue the broadcasting companies for breaches of their right to equal media coverage, the six-month time-limit had to be calculated from the date when the alleged violations of the applicants' rights had taken place. The application to the Court had been introduced on 1 August 2005, that is, one year, seven months and eleven days after the alleged violations had taken place (on 19 December 2003, when the CEC had confirmed the results of the elections).

2. The applicants' submissions

(a) The Court's competence *ratione materiae*

70. The applicants argued that the Court had competence *ratione materiae* to examine their complaints. As the Court's case-law showed, the freedom to form an opinion was an integral part of the guarantee of free elections and was therefore covered by Article 3 of Protocol No. 1.

(b) Victim status

71. The applicants maintained that Article 3 of Protocol No. 1 guaranteed the right to stand for election irrespective of the outcome of the ballot and regardless of whether the candidate ultimately won or lost. The existence of a violation was conceivable even in the absence of prejudice. The fact that some of the applicants had obtained seats in the Duma did not affect their status as victims. The Government's argument regarding the funding of political parties following the 2003 elections was irrelevant.

(c) Exhaustion of domestic remedies and compliance with Article 13 of the Convention

72. The applicants maintained that they had had recourse to all available domestic remedies relating to the substance of their complaints; however, all of them had either been ineffective *ab initio*, or proved to be ineffective in practice.

73. The applicants started by describing their attempts to obtain a decision of the CEC and the Working Group condemning unfair media coverage of the elections. Although those bodies had acknowledged that there had been unequal reporting, no practical steps had been taken in that connection. The CEC Working Group did not have sufficient powers to reinstate the rights of the candidates who had been victims of inadequate press coverage; it could only make recommendations. As to the CEC itself, it was common practice for that body to issue, in response to a complaint about violations of electoral rights, letters signed by one of the CEC members and approved by the rest of the members, without drawing up an official record or making a separate decision on the complaint. Such letters were procedurally inadequate documents that were substitutes for normal decisions made by the CEC sitting in regular meetings as a collegial body. Naturally, the courts did not accept appeals against such "letters", which did not constitute either "act" or "omission" within the meaning of the domestic law. The only response from the CEC chairman had been to send inarticulate warning letters to broadcasters. The CEC had not initiated any administrative proceedings against those involved in unlawful campaigning. Where the CEC exercised its statutory power to interpret electoral law, including the adoption of regulations (section 26(5) of the Duma Elections Act), it always did so in a manner most convenient for the authorities and the United Russia party.

74. Regarding an administrative-law complaint, the applicants argued that it was not on account of their failure to have recourse to that remedy that no administrative proceedings had been brought. In fact, the applicants had complained to the prosecution authorities, the CEC and the Ministry of Mass Media on at least six occasions, asking for administrative proceedings to be initiated against the directors of Channel One and VGTRK, as well as their individual journalists, on account of their biased coverage of the

election campaign. However, the State bodies that had the power to institute administrative proceedings had refused to do so. As to the possibility of lodging a complaint with the court about the refusal to initiate administrative proceedings, the applicants insisted that there had been a consistent practice of rejection of such complaints. There was no effective procedure for appealing against the decisions of the CEC, which was authorised to decide whether or not to bring administrative proceedings. The law also provided for the possibility to seek revocation of the broadcasting licence of TV companies involved in unlawful campaigning, but it was a very long process and too dependent on the discretion of various administrative bodies (the prosecutor's office, the CEC and the Ministry of Mass Media).

75. Judicial protection of electoral rights (including the right to balanced coverage) provided only for appeals against decisions and acts (or omissions) of State bodies, public associations or State officials. Hence, the statutory framework in force did not provide for a possibility of bringing a complaint about violations of electoral rights by the mass media. The Government had not referred to any domestic decision proving that such a remedy was available and effective at the relevant time.

76. In the applicants' submission, the cases cited by the Government in support of their contention that the applicants had been able to have recourse to judicial proceedings to defend their rights were irrelevant. According to the applicants, there had been no such case during the electoral campaign in 2003. Besides, the applicants' position was further supported by the fact that there had not been one single case that had been adjudicated to the detriment of the pro-government party United Russia or its members. The applicants argued that filing a claim in defamation was not a remedy relating to the substance of their complaint.

77. The applicants maintained that the only remedy available to them had been an application for invalidation of the election results, which they had lodged. That complaint had been considered by the Supreme Court at two instances and the final judgment delivered on 7 February 2005. However, that remedy had also proved to be ineffective on account of the numerous flaws in the proceedings before the Supreme Court. In particular, the applicants complained of selective examination of evidence by the Supreme Court (which had examined only 1.5 per cent of all video recordings and around 5 per cent of written transcripts produced by the applicants); deliberate distortion of the evidence produced by the applicants (for example, of the public statements of the then President Putin); repeated refusals of the Supreme Court to grant requests to call witnesses and adduce additional materials (for example, the applicants noted the court's refusal to request confirmation of the accuracy of the transcripts, to obtain the results of the monitoring of media coverage, or secure attendance of more than 100 witnesses); failure of the Supreme Court to address the applicants' argument

at first instance and on appeal. The applicants also called into question the impartiality of one of the judges of the Supreme Court who had made a statement showing his ill-disposition towards the applicants and refused to grant applications lodged by the applicants for discovery of evidence.

(d) Compliance with the six-month rule

78. Lastly, the applicants claimed that the six-month period should be calculated from 7 February 2005, when the Supreme Court, sitting as a court of appeal, delivered its judgment in the case concerning the invalidation of the results of the elections.

3. The Court's assessment

79. The Court reiterates that free elections are inconceivable without the free circulation of political opinions and information (see, for example, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 44, *Reports of Judgments and Decisions* 1998-I). Article 3 of Protocol No. 1 will not attain its goal (which is to establish and maintain the foundations of an effective and meaningful democracy governed by the rule of law – see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 58, ECHR 2005-IX) if candidates cannot disseminate their ideas during the electoral campaign. In *Yumak and Sadak v. Turkey* [GC] (no. 10226/03, § 106, 8 July 2008) the Court emphasised the role of the State as "ultimate guarantor of pluralism" and stated that in performing that role the State is under an obligation to adopt positive measures to "organise" democratic elections "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". Therefore, as a matter of principle the Court is competent to examine complaints about the allegedly unequal media coverage of elections under Article 3 of Protocol No. 1 to the Convention. The Government's plea of incompatibility *ratione materiae* should therefore be dismissed.

80. Furthermore, the Court notes the Government's submission that the applicants had failed to exhaust domestic remedies, and, in the alternative, to comply with the six-month rule. The applicants, in turn, complained that they had not had effective domestic remedies by which to protest against the unequal media coverage of the elections, contrary to Article 13 of the Convention. The Court observes that in the present case it is impossible to address the question of compatibility of the applicants' complaints with the admissibility criteria raised by the Government under Article 35 § 1 without addressing the substance of their complaints under Article 13. It follows that this objection of the Government should be joined to the merits. Similarly, the Court considers that the Government's objection concerning the victim status of certain applicants should be examined together with the merits of the present case.

81. The Court considers, in the light of the parties' submissions, that the above complaint under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court therefore concludes that these complaints should be declared admissible.

B. Merits

1. Article 13 of the Convention

82. The Court reiterates, having regard to the parties' submissions which are summarised above, in paragraphs 60 et seq. and 72 et seq., that "the scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; ... the remedy 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 has already occurred" (see *Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 74, 11 June 2009). The Court also reiterates that "although no single remedy may itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so" (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

83. The first question is what sort of remedy could be effective in view of the "nature of the applicants' complaint". The Court stresses that the applicants complained not of one or several isolated cases of unlawful campaigning, but of the entire media policy of five broadcasters over a period of three months. Having regard to the magnitude of the problem, the Court is not convinced that the remedies used by the applicants during the electoral campaign were sufficient to address it. Be that as it may, the Court does not need to take a definite stand on this matter. The Court has to examine whether other remedies existing in Russian law, in particular the *ex post facto* remedies, were capable of addressing the applicants' grievances.

84. The Court observes that the applicants tried to have the results of the elections invalidated by challenging CEC Decree No. 72/620-4 before the Supreme Court (see paragraphs 32 et seq. above). The Government did not deny that it had been within the powers of the Supreme Court to annul the results of the elections if it had detected serious breaches of electoral law, including those related to the alleged unlawful campaigning. Moreover, the Government referred to a case which demonstrated that such a remedy existed in Russian law and had been successfully used at least once (see paragraph 66 above). The Court concludes that the applicants had access to a legal remedy capable of satisfying their claim, at least in theory.

85. The applicants argued that, although they had made use of that remedy, it had finally proved to be ineffective because the examination of the applicants' complaints was procedurally flawed. The Court would observe, however, that not every procedural shortcoming results in the "ineffectiveness" of the remedy in question. Article 13 does not impose on States the same obligations as Article 6 of the Convention. To hold otherwise would be tantamount to extending the scope of Article 6 beyond disputes concerning "civil rights and obligations" (see *Golder v. the United Kingdom*, 21 February 1975, § 33, Series A no. 18, and *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61, with further references).

86. Turning to the present case, the Court notes that the applicants' allegations were reviewed at two levels of jurisdiction by the Supreme Court of Russia, the highest judicial body in electoral matters, which had full jurisdiction over the case and which was entitled *inter alia* to invalidate the results of the elections. The independence of the Supreme Court as such was not called into question. As to its impartiality, the Court does not see any major issue here either. The fact that Justice Zaytsev refused several procedural motions lodged by the applicants and even considered them vexatious (see paragraph 34 above) does not mean that he was biased or predetermined to reject their claim. Therefore, the Supreme Court was an appropriate body to consider the applicants' grievances.

87. Furthermore, the Court does not detect any serious flaws in the procedure before the Supreme Court which would make that remedy ineffective. The applicants were well prepared for the hearings, had gathered and produced extensive material in support of their claims and were able to make long oral and written submissions. The sampling method applied by the Supreme Court to examine the materials submitted by the applicants (see paragraph 37 above) does not seem arbitrary or manifestly unreasonable. In particular, the Court notes that the Supreme Court examined recordings of five television channels for 14 days that had been proposed by the applicants and the CEC. Furthermore, the Supreme Court heard the applicants and delivered a reasoned judgment.

88. In sum, the proceedings before the Supreme Court afforded the basic guarantees inherent in Article 13 of the Convention. Russian law provided the applicants with remedial legal mechanism capable of addressing their grievances under Article 3 of Protocol No. 1. The applicants used that remedy, having obtained the final decision of the Supreme Court of the Russian Federation of 7 February 2005. The present application was lodged with the Court on 1 August 2005, that is, within six months of the date of the final domestic decision. The Court accordingly dismisses the Government's objections as to the admissibility of the complaints, which it has joined to the merits, and concludes that there has been no breach of Article 13 of the Convention in the present case.

2. Article 3 of Protocol No. 1 to the Convention

89. The Court will now turn to the applicants' main grievance, namely, that on account of the unequal media coverage of the electoral campaign by the major TV companies, the 2003 parliamentary elections were not "fair", contrary to Article 3 of Protocol No. 1 to the Convention.

(a) The Government's submissions

i. Establishment of the facts

90. The Government maintained that the applicants had failed to substantiate before the Supreme Court their claim that the media coverage of the candidates had been biased in favour of United Russia and had predetermined the results of the elections. Thus, the applicants' assessment of the media coverage had been subjective, too abstract and unsupported by appropriate data and evidence. They had failed to explain the methods they had used to calculate the percentage of positive media coverage of the United Russia party and negative coverage of the opposition parties. They had not distinguished between "information slots" and other items of information, in particular commentaries by political analysts. TV programmes which presented some candidates in a favourable light and criticised others could not be considered as "campaigning" if they did not contain a subjective element with the specific aim of political campaigning. The mass media were free to comment on the candidates and their programmes outside the "information slots". Neither had the applicants explained how they distinguished between "positive" and "negative" commentaries, or which criteria they had used. As a result, it was impossible to verify their assertions in that respect. Lastly, the applicants had not shown a causal link between the allegedly unequal media coverage and the results of the elections. Although TV was the main source of information for the population of Russia, the applicants had at their disposal other mass media (newspapers, radio, Internet) to convey their message. The fact that certain views about the candidates and their programmes had been expressed did not mean that the population had been prevented from voting for those political parties and candidates. Thus, there had been more favourable media coverage of SPS political party than of the political block Rodina (another participant of the elections), yet Rodina had received more votes than SPS. The Government concluded that there was no direct correlation between the amount of media visibility and the popularity of the candidates.

ii. Whether the elections were "free" in so far as the media coverage was concerned

91. The Government maintained that the Court had only a limited role in reviewing the compatibility of the national electoral systems with Article 3 of Protocol No. 1. The Government also referred to the interrelation between the guarantees of Article 10 of the Convention (freedom of expression) and Article 3 of Protocol No. 1 thereto, and to the States' wide margin of appreciation in establishing a fair balance between these two guarantees.

92. The Government contested the applicants' argument that the principle of equal access to the media was formulated too vaguely in the law. This was a general principle and, consequently, could not be described in a more specific manner. Other provisions of the Russian legislation on elections were more detailed and left no room for interpretation. There existed various forms of publicity for candidates participating in elections, ranging from TV programmes to leaflets and posters. Candidates had equal rights of access to the State and private TV channels. All leading State broadcasting companies were required by law to provide candidates with a certain amount of free airtime, with no preference given to any particular party. Having analysed the financial statements of the opposition parties, the Government concluded that those parties had the financial resources to buy extra airtime but had preferred not to do so and had spent the money in other ways. The Government concluded that those parties had had ample opportunities to increase their visibility on TV channels, but had preferred not to do so for tactical reasons. The Government also analysed the pattern of spending from electoral funds by the applicants who had been individual candidates in the 2003 elections. The data showed that those candidates had spent more money on political advertisements in the press than on TV.

93. The Government further explained the difference between electoral campaigning and "information slots", which were supposed to be neutral. The content of "information slots" depended on the number and character of "events" generated by a particular candidate. Those candidates and parties who had more events worth covering received more coverage in the "information slots". The applicants had never complained that the TV channels had refused to report on a particular "event".

94. Russian law achieved a fair balance between the freedom of the press and the requirement of free elections. That being said, the State could not control the editorial policy of the mass media. Accordingly, the limitations guaranteeing the neutral character of information slots did not cover all journalistic activity.

95. The Government referred to Recommendation no. R 99 (15) (see paragraph 53 above) which did not require that all candidates should have equal time on TV, but that their views must be made known to the voters. The Government concluded that the authorities of the Russian Federation

had provided all participants in the elections with equal opportunities of access to the media and had not shown a preference for any party or candidate.

(b) The applicants' submissions

i. Establishment of the facts

96. According to the applicants, media coverage of the elections had been seriously biased in favour of United Russia and thus affected the voting preferences of the electorate. During the electoral campaign, federal TV channels had disseminated, in the guise of simple coverage, information which could be classified as campaigning (and not coverage). About 75 per cent of unlawful campaigning in favour of United Russia had been conducted by State television and radio stations, which, in the applicants' view, showed a deliberate abuse of State media resources. The applicants referred, as an example, to the reporting on Mr Putin's statement of 7 December 2003, which, taken in conjunction with his other interviews and news items broadcast beforehand, had made it clear that he was supporting United Russia. On the State-controlled TV channel his words had been relayed unabridged and thus amounted to *de facto* campaigning. NTV (which was not State-owned, or at least not directly) had reported on the same news in a more appropriate manner, indicating that Mr Putin had refused to tell the journalists his choice.

97. The fact that there had been a positive image of United Russia and a negative one of the Communist Party had been confirmed by the findings of the Working Group on Information Disputes of the CEC. Furthermore, in the Election Observation Mission Final Report, the OSCE/ODIHR had noted that most media coverage was characterised by an overwhelming tendency of the State media to exhibit a clear bias in favour of United Russia and against the Communist Party. In particular, throughout the campaign the majority of media coverage had been devoted to reports on the activities of Mr Putin, a fact considered to indirectly benefit the campaigns of the pro-presidential political parties. Similar findings had been made in the report by Transparency International-Russia.

98. The influence of TV programmes on the electoral preferences of the population could not be denied. The fact that other means of information were also available should not be used as an excuse for the biased media coverage by the State-controlled TV channels. In the proceedings before the Supreme Court, the CEC had failed to adduce any proof that the unfair reporting on State TV channels had been sufficiently balanced by pro-opposition publicity in other mass media. The applicants argued that TV played a central role in media coverage of the elections and that it necessarily had an effect on the voting preferences of the population. The applicants also referred to the results of the polls conducted in 2003

showing a drop in popularity of the Communist Party, which the applicants attributed to the propaganda campaign against it.

99. The applicants maintained that the Court could not rely on the factual findings of the Supreme Court because they were arbitrary. The Supreme Court had failed to investigate the applicants' allegations and had not taken the steps proposed by the applicants, thus breaching its positive obligations under Article 3 of Protocol No. 1.

ii. Whether the elections were "free" in so far as the media coverage was concerned

100. The applicants maintained that Europe's electoral heritage was based on five principles: universal, equal, free, secret and direct suffrage. They referred to the definition of "free elections" given by the Declaration on Criteria for Free and Fair Elections adopted by the Inter-Parliamentary Council in 1994 (see paragraph 54 above). The applicants also summarised the principles established in the documents of the Venice Commission on electoral law, in particular regarding the requirements of equality of opportunities between the candidates and impartiality of the State and publicly owned media (see paragraph 51 above). The applicants argued that in the 2003 elections those principles had not been respected.

101. The applicants referred to decision no. 15-P of 30 October 2003 by the Constitutional Court of the Russian Federation which held that elections could be deemed free only if they guaranteed the right to information and freedom of expression. For that reason, it was incumbent on the legislature to ensure the individual right to receive and disseminate information about elections, striking the right balance between two values protected by the Constitution – the right to free elections and freedom of expression and information – and avoiding any form of inequality or disproportionate restrictions.

102. Conditions imposed by the law must not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness. According to the applicants, the State could not enjoy a wide margin of appreciation if there existed a European consensus on the question. In the area of elections that consensus, in the applicants' opinion, consisted of the following principles: (1) the State authorities should honour their duty of even-handedness during the electoral campaign; (2) mass media coverage of the electoral campaign should be objective and balanced; and (3) the State should ensure the principle of equality when informing the voters about political parties.

103. Turning to the present case, the applicants claimed that as a result of pro-government propaganda the voters were no longer able to make an informed choice. The applicants had no doubt that the propaganda campaign against them on Russian TV had been orchestrated by the Government. Thus, on 28 June 2006 Mr Surkov, the then deputy head of the Presidential

Administration responsible for internal policy, had proclaimed that the Presidential Administration was supporting United Russia.

104. The applicants further argued that Article 3 of Protocol No. 1 implicitly imposed on the Government an obligation to adopt positive measures to ensure the "free expression of the opinion of the people" through equal coverage. They claimed that in certain circumstances it may be considered necessary during an election period to place certain restrictions on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of the legislature."

105. The applicants claimed that their complaint raised the issue of unbalanced coverage ("informing" in domestic terms) in the first instance, not campaigning. The Government claimed that biased informing had been counterbalanced by electoral campaigning, but failed to adduce any specific facts concerning the distribution of airtime amongst the candidates or to explain how the campaigning could possibly replace normal coverage.

106. Domestic law on media coverage of elections also lacked clarity. Although it enshrined the principle of equal reporting on all candidates, that principle was phrased in insufficiently specific terms with no indication of what type of equality was meant. That principle had become subject to arbitrary interpretation by the authorities. Thus, the federal list of candidates submitted by the United Russia party included at least 37 candidates who were heads of different federal executive authorities and regional governors. The activities of those candidates had been covered by the State media pursuant to the requirements of the above Act. Although the news items in question did not formally amount to electoral campaigning, they reported, and, as a rule, reported positively, on the activities of the officials concerned. Neither federal nor local laws had ever established any special procedure for covering the activities of officials during the electoral campaign, including the activities of those officials who were standing for election. Nor did they provide any guarantees of protection against misuse of administrative resources or protection against discrimination.

(c) The Court's assessment

i. Media coverage of elections under Article 3 of Protocol No. 1: general principles

107. Article 3 of Protocol No. 1 enshrines a fundamental principle of an effective political democracy. It implies the subjective rights to vote and to stand for election (see *Paksas v. Lithuania* [GC], no. 34932/04, § 96, 6 January 2011). This provision also expressly refers to "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". In the 1987 case of *Mathieu-Mohin and Clerfayt v. Belgium* (judgment of 2 March 1987, § 54, Series A no. 113), the Court noted that this part of Article 3 "implies essentially - apart from freedom of expression

... - the principle of equality of treatment ...". Thus, already at that time the Court recognised that "freedom of expression" was an important part of the "free expression of the opinion". The interrelation between free elections and freedom of expression was also emphasised in *Bowman v. the United Kingdom* (judgment of 19 February 1998, *Reports* 1998-I, § 42), where the Court held that "it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely". Lastly, in *Yumak and Sadak v. Turkey* [GC], cited above, the Court held that the State was under an obligation to adopt positive measures to organise elections "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

108. The Court is mindful of the stance taken by the Venice Commission that "equality of opportunity" shall be guaranteed to all parties and candidates alike entailing a neutral attitude by state authorities, in particular with regard to the election campaign and coverage by the media (see paragraph 51 above). That being said, the Court observes that Article 3 of Protocol No. 1 was not conceived as a code on electoral matters, designed to regulate all aspects of the electoral process. 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 *Ždanoka v. Latvia* [GC], no. 58278/00, § 103, ECHR 2006-IV). The States "enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and ... the relevant criteria may vary according to the historical and political factors peculiar to each State" (see *Aziz v. Cyprus*, no. 69949/01, § 28, ECHR 2004-V).

109. The Court recalls that this case is primarily about the applicants' participation in the elections as candidates, i.e. about the passive electoral right. In the context of the "passive" aspect of the rights guaranteed by Article 3 of Protocol No. 1, the Court has stressed that it would be "even more cautious in its assessment of restrictions in that context than when it has been called upon to examine restrictions on the right to vote, that is, the so-called "active" element of the rights under Article 3 of Protocol No. 1" (see *Yumak and Sadak*, cited above, § 109).

110. While this margin of appreciation is wide, it is certainly not all-embracing: the rules governing the electoral system "should not be such as to exclude some persons or groups of persons from participating in the political life of the country and, in particular, in the choice of the legislature, a right guaranteed by both the Convention and the Constitutions of all Contracting States" (*ibid.*). 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 restrictions imposed do not thwart the free expression of the opinion of the people.

ii. Alleged manipulation of the media by the Government

111. In most of the previous cases under Article 3 of Protocol No. 1 the Court has had to consider a specific legislative provision or a known administrative measure which has somehow limited the electoral rights of a group of the population or of a specific candidate. In those cases the measure complained of lay within the legal field, and, therefore, could be easily identified and analysed (see, for example, the cases concerning electoral thresholds (*Yumak and Sadak*, cited above), the right of prisoners to vote (*Hirst*, cited above), criteria of eligibility of candidates on account of their political affiliation or other status (*Ždanoka*, cited above; *Seyidzade v. Azerbaijan*, no. 37700/05, 3 December 2009), compositions of electoral commissions (*The Georgian Labour Party v. Georgia*, no. 9103/04, ECHR 2008), restrictions on reporting on a particular political movement (*Purcell and Others v. Ireland*, no. 15404/89, 16 April 1991), or impossibility for nationals living abroad to vote (*Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, 15 March 2012).

112. The situation in the present case is different. The applicants did not deny that Russian law guaranteed neutrality of the broadcasting companies, making no distinction between pro-governmental and opposition parties, and proclaimed the principle of editorial independence of the broadcasting companies. They claimed, however, that the law was not complied with in practice, and that *de jure* neutrality of the five nationwide channels did not exist *de facto*.

113. The applicant's position in the present case can be narrowed down to three main factual assertions. First, the applicants alleged that media coverage on the five TV channels had been predominantly hostile to the opposition parties and candidates. Secondly, they asserted that it was a result of a political manipulation, that the executive authorities and/or United Russia had used their influence to impose a policy on the TV companies which had helped to promote United Russia. Thirdly, the applicants claimed that biased media coverage on TV had affected public opinion to a critical extent, and had made the elections not "free".

114. As to the first point, the Court observes that the Supreme Court in its judgment of 16 December 2004 did not find that the media coverage had been equal in all respects. Many observers (in particular the OSCE and the CEC Working Group, see paragraphs 20 and 26 above) which monitored the elections noted that the TV media coverage was unfavourable to the opposition. The Supreme Court's conclusion was formulated more carefully and in a qualified manner: it noted that the tenor of media coverage on TV during the elections had not been so "egregious" to make the ascertaining of the genuine will of the voters impossible.

115. The answer given by the Supreme Court to the applicant's first point was somewhat elusive. Conversely, on the other two propositions of the applicants the Supreme Court was more explicit. It found in essence that

no proof of political manipulation had been adduced, and that no causal link between media coverage and the results of the elections had been shown.

116. The applicants argued that the findings of the Supreme Court in these respects were arbitrary and should not be relied upon. The Court reiterates that it is not a court of appeal from the national courts (see *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR 2004-V (extracts)), and it is not its function to deal with errors of fact or law allegedly committed by them (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). At the same time, the principle of subsidiarity does not prevent the Court from reviewing factual findings of the domestic courts if they are "arbitrary or manifestly unreasonable" (see *I.Z. v. Greece*, no. 18997/91, Commission decision of 28 February 1994, Decisions and Reports (DR) 76-B, p. 65, at p. 68, and *Babenko v. Ukraine*, (dec.), no. 43476/98, 4 May 1999; see also *Khamidov v. Russia*, no. 72118/01, § 170, 15 November 2007; *Camilleri v. Malta* (dec.), no. 51760/99, 16 March 2000; and *Kononov v. Latvia* [GC], no. 36376/04, § 189, 17 May 2010). The first question is thus whether the Supreme Court's findings were arbitrary or manifestly unreasonable.

117. The applicants' criticism of the domestic judgments was related, first, to the procedure and method applied by the Supreme Court, and, second, to the substance of its conclusions. As to the procedural aspect, the Court refers to its earlier finding under Article 13 that the procedure before the Supreme Court afforded minimum procedural guarantees. As to the material findings, the Court does not detect anything that would be "arbitrary or manifestly unreasonable" (see paragraph 35 above).

118. The Supreme Court found that the applicants had failed to show a causal link between the media coverage and the results of the elections. That finding is debatable; it is clear that the media coverage must have at least some effect on the voting preferences. What is true, however, is that the effect of media coverage is often very difficult to quantify. The Court recalls its own finding in the case of *Partija Jaunie Demokrāti and Partija Mūsu Zeme v. Latvia* (dec.), nos. 10547/07 and 34049/07, 29 November 2007) where it held that "however important [the propaganda by a political party] may be, [it] is not the only factor which affects the choice of potential voters. Their choice is also affected by other factors [...], so it is very difficult, if not impossible, to determine a causal link between "excessive" political publicity and the number of votes obtained by a party or a candidate at issue". As was demonstrated by the Government, the SPS political party which obtained generally positive media coverage did not even pass the minimal electoral threshold. The Rodina political block, by contrast, obtained a much better score at the elections despite poor media coverage. Therefore, the Supreme Court's arguments in this part did not appear "arbitrary or manifestly unreasonable".

119. Furthermore, and most importantly, the Supreme Court's findings did not support the applicants' allegation of a manipulation of the media by the government, which was their central proposition. The Supreme Court found that the journalists covering elections or political events had been independent in choosing the events and persons to report on, that it had been their right to inform the public about events involving political figures, and that they had not had the intent of campaigning in favour of the ruling party (see paragraph 35 above).

120. The Court notes that, indeed, the applicants did not adduce any direct proof of abuse by the Government of their dominant position in the capital or management of the TV companies concerned. Unlike in the case of *Manole and Others v. Romania* (no. 13936/02, §§ 104 et seq., ECHR 2009-... (extracts)), the TV journalists in the present case did not complain of undue pressure by the Government or their superiors during the elections. The Court reiterates that the weight to be given to an item of information "is a matter to be assessed, in principle, by the responsible journalists" (see *Jörg Haider v. Austria*, no. 25060/94, Commission decision of 18 October 1995, DR 83, p. 66), and that the journalists and news editors enjoyed, under Article 10 of the Convention, a wide discretion on how to comment on political matters. The applicants did not sufficiently explain how it was possible, on the basis of the evidence and information available and in the absence of complaints of undue pressure by the journalists themselves, to distinguish between Government-induced propaganda and genuine political journalism and/or routine reporting on the activities of State officials (see, by contrast, *Saliyev v. Russia*, no. 35016/03, § 68, 21 October 2010).

121. The other conclusions of the domestic courts do not appear "arbitrary or manifestly unreasonable" either. Thus, although the applicants disagreed with how the Supreme Court had construed the then President Putin's public statement on the election day (see paragraph 19 above), the Court admits that the reading proposed by the Supreme Court was not irrational, even though, given the then existing political context, Mr Putin's words could have been interpreted differently.

122. The Court emphasises once again that it has only a subsidiary role in such matters and it is not its task to substitute itself for the domestic courts and conduct a fresh assessment of evidence. The applicants failed to convince the Supreme Court that the opposition was a victim to a political manipulation. Having reviewed the materials submitted by the parties the Court does not have sufficient evidence to discard the Supreme Court's conclusion in this part. It follows that the applicants' allegations of abuse by the Government were not sufficiently proven.

iii. Alleged failure by the State to comply with its positive obligations

123. The Court's analysis does not stop here, however. "In the context of Article 3 of Protocol No. 1, the primary obligation is not one of

abstention or non-interference, as with the majority of civil and political rights, but one of adoption by the State of positive measures to "hold democratic elections" (*Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, § 67, 15 March 2012). The next question is thus whether the State was under any positive obligation under Article 3 of Protocol No. 1 to ensure that media coverage by the State-controlled mass-media was balanced and compatible with the spirit of "free elections", even where no direct proof of deliberate manipulation was found. In examining this question the Court will bear in mind that "States enjoy a wide margin of appreciation in the field of electoral legislation" (see *Sukhovetskyy v. Ukraine*, no. 13716/02, § 68, ECHR 2006-VI), which is *a fortiori* true where the case concerns the extent of the State's positive obligations, and that the State is only required to take those measures which are "reasonably available" (see, *mutatis mutandis*, *E. and Others v. the United Kingdom*, no. 33218/96, § 99, 26 November 2002).

124. The Court reiterates that it has interpreted Article 3 of Protocol No. 1 as containing certain positive obligations of a procedural character, in particular requiring the existence of a "domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights" (see *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 81 et seq., 8 April 2010; see also the recommendation of the Venice Commission in the Explanatory Report to the Code of Good Practice in Electoral Methods concerning creation of an effective system of electoral appeals, paragraph 51 above). The Court refers to its earlier findings under Article 13 in this case that the applicants had at their disposal at least one effective remedy. The Court does not need to define *in abstracto* the exact relation between the State's positive obligation under Article 13 and its procedural obligations under Article 3 of Protocol No. 1. It is sufficient to note that the applicants' complaint about unequal media coverage of the elections was examined by an independent body in a procedure which afforded the basic procedural guarantees, and that a reasoned judgment was given. The applicants did not explain what other remedies or legal tools could possibly be more effective in the situation complained of. The Court concludes that the system of electoral appeals put in place in the present case was sufficient to comply with the State's positive obligation of a procedural character.

125. The Court will now turn to the substantive positive obligations of the State in the context of media coverage of elections. The Court reiterates that there can be no democracy without pluralism (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 89 et seq., 17 February 2004), which cannot be attained without the adoption of certain positive measures. In the field of audio-visual broadcasting the Court has stated that where a State "decide[s] to create a public broadcasting system, ... domestic law and practice must guarantee that the system provides a pluralistic service" (see

Manole and Others, cited above, §§ 100-01). In the context of elections the duty of the State to adopt some positive measures to secure pluralism of views has also been recognised by the Court (see, for example, *Mathieu-Mohin and Clerfayt*, cited above, § 54; see also, *mutatis mutandis*, *Informationsverein Lentia and Others v. Austria*, judgment of 24 November 1993, Series A no. 276, § 38, and *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, §§ 71-72, 11 January 2007).

126. Turning to the present case, the Court notes that the State was under an obligation to intervene in order to open up the media to different viewpoints. That being said, it is clear that the time and technical facilities available for political broadcast were not unlimited. As the case shows, the applicants did obtain some measure of access to the nation-wide TV channels; thus, they were provided with free and paid airtime, with no distinction made between the different political forces. The amount of airtime allocated to the opposition candidates was not insignificant. The applicants did not claim that the procedure of distribution of airtime was unfair in any way. Similar provisions regulated access of parties and candidates to regional TV channels and other mass media. In addition, the opposition parties and candidates were able to convey their political message to the electorate through the media they controlled. In this connection, the Court also notes that it follows from the report of the OSCE/ODIHR, which generally found that the main country-wide state sponsored broadcasters that were monitored, openly promoted United Russia, that voters who actively sought information could obtain it from various sources (see paragraph 20 above). The Court considers that the arrangements which existed during the 2003 elections guaranteed the opposition parties and candidates at least minimum visibility on TV.

127. Lastly, the Court turns to the applicants' allegation that the State should have ensured neutrality of the audio-visual media. The "duty of neutrality", invoked by the applicant, was referred to by the Venice Commission as one of the preconditions of equal suffrage (see paragraph 51 above). The Court has already admitted that political pluralism can be regarded as a "pressing social need" legitimising some forms of interference with the freedom of expression (see *Bowman*, cited above). At the same time the Court has repeatedly warned against prior restraints on free speech (see, for example, *The Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, § 51, Series A no. 217), and stressed that in the sphere of political debate wide limits of criticism are acceptable (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, §§ 41 and 42). The question is what sort of interference with journalistic freedom would be appropriate in the circumstances in order to protect the applicants' rights under Article 3 of Protocol No. 1. The Russian legislation then in force defined neutrality and editorial independence as basic principles according

to which the public media should function and prohibited journalists from taking part in political campaigning (see paragraphs 43 and 46 above). The applicants claimed that those legislative provisions were of no effect. Having regard to the materials at its possession, including the Supreme Court's findings (see paragraphs 35, 37, 87-88 and 114-117 above), the Court considers that the applicants' claims in this respect have not been sufficiently substantiated.

128. The Court considers that the respondent State took certain steps to guarantee some visibility of opposition parties and candidates on Russian TV and secure editorial independence and neutrality of the media. Probably, these arrangements did not secure *de facto* equality of all competing political forces in terms of their presence on TV screens. In the present case, however, when assessed in the light of the specific circumstances of the 2003 elections as they have been presented to the Court, and regard being had to the margin of appreciation enjoyed by the States under Article 3 of Protocol No. 1, it cannot be considered established that the State failed to meet its positive obligations in this area to such an extent that it amounted to a violation of that provision.

iv. Conclusions

129. The Court concludes, in the light of the foregoing, that there has been no violation of Article 3 of Protocol No. 1 to the Convention on account of the media coverage of the 2003 elections. Consequently, there is no need to decide on the Government's preliminary objection concerning the victim status of some of the applicants.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

130. The applicants further complained that the 2003 elections were not "free" for a number of other reasons, in particular the alleged instability of the electoral legislation and the forfeiture of mandates by a number of deputies elected on behalf of the United Russia party. The applicants referred to Article 3 of Protocol No. 1 to the Convention, cited above.

131. The Government argued that in 2003 there had been no major changes to the electoral system, such as, for instance, composition of the electoral commissions, and no reshuffling of electoral districts. All amendments to the legislation in 2003 had been insignificant. The Government also described the measures taken by the CEC to explain the regulatory framework of the elections to all participants, including the lower electoral commissions, observers and political parties.

132. The Government acknowledged that on several occasions members elected on behalf of United Russia had withdrawn from the list immediately after the elections and transferred their seat in Parliament to the next

candidate on the list of United Russia. However, such a practice was quite widespread, was provided for by law and had also been used by representatives of other political forces, including the Communist Party itself during the elections of 2000.

133. In the applicants' opinion, during the period preceding the 2003 elections electoral law had not been stable and had increased the chances of the United Russia party to the detriment of smaller political parties. Within one year of the 2003 elections, four Laws had been passed introducing amendments to the Basic Guarantees Act, and four others introducing amendments to the Duma Elections Act. For example, the Law of 23 June 2003 introducing amendments to section 36 of the Political Parties Act and introducing amendments to the State Duma Elections Act had banned public associations other than political parties from standing in the State Duma elections. Further, pursuant to the amendments of 23 June 2003 political parties in debt to TV and radio broadcasters at the date on which the decision calling an election was officially published were not granted free airtime during the elections. That restriction had affected two political parties which had participated in the 2003 elections. The amendments of 4 July 2003 had enlarged the list of public associations banned from entering the electoral blocs. The applicants also produced a detailed analysis of numerous changes in the electoral legislation after 2003, which, in their opinion, had increased the domination of the majority party still further.

134. Second, the applicants claimed that United Russia had deliberately misled the voters in so far as the intention of its key member to be elected to the Duma was concerned. In the aftermath of the elections 37 freshly elected members had renounced their mandates. Most of them had been high-level public officials who had thus kept their positions in the executive while ceding their places in the parliament to candidates not known to the voters. Such a mass forfeiture of seats had violated the principle of "legitimate expectation" on the part of the voters and was not accidental.

135. As to the first point raised by the applicants, the Court considers that, as such, countries are free to amend and modify their legislation on elections, provided that they remain within their margin of appreciation under Article 3 of Protocol No. 1. In the present case the applicants (both individual and party candidates) did not demonstrate how the changes to the legislation they mentioned had directly affected them or the parties they represented. Their complaint in this respect appears to be an *actio popularis* and must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

136. As to the forfeiture of mandates by the MPs elected on behalf of United Russia, the Court notes that the Russian electoral system at the time combined elements of proportional representation and the majority system (see paragraph 38 above). By casting a vote for a political party the voter supported the whole list of candidates, and not a particular person. It was

not unreasonable that a seat in the parliament obtained by a particular party could be transferred to another person on that party's list if the person originally elected within the quota of the party was unable or unwilling to fulfil the mandate for some reason. The Court expresses concern in respect of the practice of coordinated forfeiture of a great number of mandates obtained by a political party. However, the Court will not analyse the dangers inherent in such a practice in the abstract. In the case at hand the Court confines itself to observing that the rule allowing forfeiture of parliamentary mandates was not as such contrary to the concept of free elections, and that the application of this rule in 2003 by the United Russia deputies was not abusive on the face. It follows that the application in this part is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1 THERETO

137. The applicants complained that they had been discriminated against in the course of the 2003 electoral campaign, in breach of Article 14 of the Convention, taken in conjunction with Article 3 of Protocol No. 1 to the Convention. The former provision reads as follows:

> "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."

138. The Government argued that the applicants had not been discriminated against, since the law did not make any distinction between them and other candidates and/or voters. The fact that the media coverage of different candidates outside the time allocated for "political campaigning" had not been equal was immaterial.

139. The applicants maintained that the coverage given to United Russia (and particularly the positive coverage) had exceeded the amount of coverage given to the other political parties. Therefore, either the State discriminated the opposition parties and candidates deliberately, or it had failed in its duty to protect them from discrimination by the media companies.

140. The Court considers that, even though it has not found a violation of Article 3 of Protocol No. 1 to the Convention in the case at hand, the applicants' complaints can be said to "fall within the ambit" of that provision (see *Inze v. Austria*, 28 October 1987, §§ 43-45, Series A no. 126). Therefore, the applicants' complaint under Article 14 is compatible *ratione materiae* with the Convention. The Court further observes that in order to claim that there has been discrimination, an

applicant must have identified another group of people compared with which he or she has received less favourable treatment. Further, the applicant must show that he or she was in an "analogous or relevantly similar" situation to those belonging to the other group. Lastly, the applicant must indicate the grounds for such unequal treatment and demonstrate that such a distinction had no objective and reasonable justification (see, amongst other authorities, *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV; *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004, and *Okpisz v. Germany*, no. 59140/00, § 33, 25 October 2005).

141. As regards those applicants who complained in their capacity as voters, their submissions on these points are vague. Thus, if they claimed that they had been discriminated against in comparison with another group of voters, they should have identified that group and the grounds for the allegedly discriminatory treatment. The applicants' complaint, in this respect, is not sufficiently developed, so the Court dismisses it as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

142. The Court will now turn to those applicants who had been candidates in the 2003 elections. The Court has already established that the allegation of a direct interference by the Government with the activities of the broadcasting companies was not sufficiently proven (see paragraph 122 above). *De jure*, broadcasting companies were required to remain neutral; no distinction was made between the opposition and the pro-governmental forces. Even if there was a *de facto* inequality between them in terms of their media presence, that problem was addressed, at least to a certain extent, by giving the opposition a certain minimal access to the media during the electoral campaign. Rules on access were formulated in a politically neutral manner, and no specific preferences were given to United Russia. The Court does not find anything in the language of Article 14 or in its case-law under both Article 3 of Protocol No. 1 to the Convention and Article 14 thereof that would require the authorities to take any other positive measures in this direction. The applicants did not specify what other measures could have been required in the circumstances. In the light of the above, the Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

143. The applicants finally complained under Article 6 § 1 of the Convention of the unfairness of the court proceedings in respect of their application to the Supreme Court of the Russian Federation to have the 2003 election results invalidated. This Convention provision, in so far as relevant, reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Court reiterates its well-established case-law that the right to stand for elections and similar rights in the election sphere are political and not "civil" within the meaning of Article 6 § 1 (see *Pierre-Bloch v. France*, 21 October 1997, §§ 49-52, *Reports of Judgments and Decisions* 1997-VI, and *Cherepkov v. Russia* (dec.), no. 51501/99, 25 January 2000). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objections on grounds of non-exhaustion of domestic remedies, non-compliance with the six-month rule under Article 35 § 1 of the Convention, and the Government's objection concerning the victim status of several applicants;

2. *Declares* admissible the complaint about an alleged breach of the applicants' right to free elections and the right to effective remedies, guaranteed by Article 3 of Protocol No. 1 and Article 13 of the Convention respectively;

3. *Holds* that there has been no violation of Article 13 of the Convention, and dismisses accordingly the Government's objections on non-exhaustion and non-compliance with the six-months rule;

4. *Holds* that there has been no violation of Article 3 of Protocol No. 1 to the Convention, and that it is not necessary to decide on the Government's objection concerning the victim status of the applicants;

5. *Declares* inadmissible the remainder of the application.

Done in English, and notified in writing on 19 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President