



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

Communicated on 18 March 2014

**FIRST SECTION**

Applications nos 75947/11  
Andrey Vladimirovich DAVYDOV and others  
against Russia  
lodged on 9 December 2011

**STATEMENT OF FACTS**

**A. General overview of the case**

1. The facts of the case, as submitted by the applicants, may be summarised as follows.

2. All the applicants are Russian nationals living in Saint-Petersburg. On 4 December 2011 they took part in the elections which, on that date, took place simultaneously at city level and federal level: the election of deputies to the Legislative Assembly of Saint-Petersburg (the legislative body of the City of Saint-Petersburg, a constituent entity of the Russian Federation, hereinafter referred to as “the LA”) and the election of deputies to the State Duma of the Russian Federation (the lower chamber of the Russian parliament, hereinafter referred to as “the Duma”).

3. The applicants participated in the election in different capacities: all of them were registered voters; in addition, some of them stood as candidates to the Duma or to the Legislative Assembly, while others were members of the electoral commissions or observers.

4. The applicants alleged that during those elections electoral commissions falsified the results of the voting by assigning more votes to the ruling *Yedinaya Rossiya* (United Russia) party and its candidates, and stripping the opposition parties and candidates of their votes. The applicants’ allegations mostly concern the results of voting in the Kolpino district of Saint-Petersburg<sup>1</sup>.

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<sup>1</sup> Kolpino is a town which, administratively, belongs to the City of Saint-Petersburg and has the status of a city district. Kolpino, as an administrative district, is divided for electoral purposes into a few electoral territories, and each of them is in turn divided into a few dozen smaller “electoral districts”. Therefore, the term “electoral district” should not be taken to mean the Kolpino district.

5. After the announcement of the preliminary election results, the applicants complained to the Central Electoral Commission (CEC) and the City Electoral Commission about the alleged falsification of the results. Later, some of the applicants sued the respective electoral commissions in court and lodged complaints with the prosecutor’s office, but to no avail. For more details about the process of contesting the results of the elections, see sections “E” et seq. below.

## **B. Organisation of the elections of 4 December 2011**

6. Elections at both levels (federal and city) were organised on the basis of a system of proportional representation. That is, the electorate voted not for individual candidates, but for lists of candidates proposed by several political parties. The following parties took part in the elections:

- *Yedinaya Rossiya*
- *Spravedlivaya Rossiya* (SR)
- *Patrioty Rossii* (PR)
- *Pravoye Delo* (PD)
- *Kommunisticheskaya Partiya Rossiyskoy Federatsii* (KPRF)
- *Liberalno-Demokraticheskaya Partiya Rossii* (LDPR)
- *Yabloko*.

7. *Yedinaya Rossiya* (“United Russia”) was the governmental party which had already had an absolute majority in both legislatures and supported President Medvedev and Prime Minister Putin. The other parties can be characterised as “opposition forces”, albeit to a varied extent; some (like LDPR) were historically relatively loyal to the government whereas others (like *Yabloko*) were more anti-government.

8. Depending on the number of votes received, each party could obtain a certain number of seats in the LA and in the Duma. The chances of each individual candidate of getting elected depended on what position he occupied on the list of his respective party. Those at the top had a higher chance of being elected. Even if a party obtained the number of votes required to pass the “minimum threshold” established by law to enter the LA or the Duma, the party’s overall poor result deprived those at “low positions” on the list of a mandate. Thus, the chances of each individual candidate of getting elected depended not on the results of the voting at a particular voting station, but on the average result of his political party in general, throughout the whole territory concerned.

9. Vote counting at the 2011 elections was organised at three levels. Voters cast their votes at the voting stations managed by the District Electoral Commissions. The District Commissions also collected the votes of those casting their votes at home. Each electoral district usually had 2,000 to 3,000 registered voters. Generally, the lists of voters registered for federal and city elections were identical, and each voter coming to the voting station received two separate ballot papers – one for the LA elections and another for the Duma elections.

10. On the evening of the elections the District Electoral Commissions, after having opened the ballot boxes (stationary and transportable), counted the votes and drew up “results tables” (*protocoly*) for the voting in the

district. All members of the electoral commissions had to sign the results tables and were entitled to receive a copy of them. There were two tables: one for the LA elections and one for the Duma elections.

11. After that the results tables were sent up to the respective Territorial Electoral Commission, which was responsible for preparing a consolidated table of results of the voting on the territory under its jurisdiction.

12. Finally, each Territorial Commission sent their results tables to the City Electoral Commission, which made a final calculation at city level. The official final results were published on the website of the City Electoral Commission.

### **C. Nature of the “manipulation and fraud” alleged by the applicants**

13. The applicants refer to various sorts of manipulation during the elections, which varied from simple non-respect of the electoral legislation to direct fraud.

14. First, the applicants alleged that the tables reflecting the actual results of the voting were often replaced with new ones which contained incorrect figures, invariably inflating the results of the ruling party or its candidates, or were simply disregarded by the upper commissions, which reported a higher result for United Russia.

15. Second, some observers who witnessed the process of voting in the district electoral commissions reported various incidents which they qualified as direct electoral fraud, such as bundles of ballot papers being stuffed into the ballot boxes, for example. For more details, see the submissions of the eleventh applicant below.

16. Third, the applicants complained of manipulation, which made the process of voting and calculation of votes deliberately opaque, thus creating the potential for fraud. For example, observers were occasionally prevented from performing their tasks and were even forcibly removed from the premises of the electoral commissions.

### **D. Specific violations in respect of each applicant and related domestic proceedings**

#### *1. The first applicant*

17. Mr Davydov (the first applicant) was born in 1987 in Leningrad. He stood as candidate to the LA on behalf of *Spraverdliвая Rossiya* (hereafter, “SR”). His complaint concerns the results of voting in the Kolpino district, Saint-Petersburg (electoral territory no. 19)<sup>1</sup>.

#### **(a) The essence of the alleged falsification**

18. In Mr Davydov’s words, the official results of the elections published by the City Electoral Commission on 5 December 2011 on their website did not correspond to the real figures obtained by the District

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<sup>1</sup> Domestic decisions also refer to electoral territory no. 21; see, in particular, the decision of the City Court of 12 January 2013. It is unclear whether the contested elections took place within one or two electoral territories; the parties are invited to comment on this point.

Electoral Commissions as a result of the vote counting which took place on the evening of 4 December 2011. The official results of the voting at city level (including the Kolpino district) were approved by decision of the City Electoral Commission of 12 December 2011.

19. In support of his allegation the applicant produced copies of the results tables of the District Commissions. The applicant, as a candidate and a member of SR, collected those tables from members of the electoral commissions who represented SR or other opposition parties, as well as from the observers who were dispatched to the voting stations by SR, KPRF and *Yabloko*. Under the law, after the votes had been counted members of the electoral commission and observers were entitled to receive a “certified copy” of the results tables.

20. The applicant produced a list of the names of observers and members of the electoral commissions who had given him copies of the results tables.

**(b) Copies of results tables submitted by the applicants**

21. Mr Davydov produced information concerning thirty-five voting stations, all belonging to electoral territory no. 19. According to Mr Davydov, as follows from the original results tables obtained by the members of the District Commissions on the night of the elections, SR received 10,031 votes in electoral territory no. 19. However, those tables were later replaced with new ones, according to which SR received only 4,538 votes, while the officially proclaimed result of United Russia grew to 17,265 votes from the 8,695 recorded in the original tables. Additional votes in favour of United Russia were taken not only from SR but also from other parties which participated in the elections at city level.

22. Mr Davydov produced copies of “original results tables” and of the “final results” published on the website of the City Electoral Commission. Some of the final results do not reveal any difference from the original results tables. For example, the original results table of District Electoral Commission no. 640 fully corresponded to the official final results.

23. However, in the majority of voting stations the number of votes cast in favour of United Russia was much lower than the figure which appeared in the official final results. Voting station no. 639 could be taken as an example. According to the copy of the results table of District Commission no. 639, 903 valid ballot papers were cast. The votes were distributed as follows:

- United Russia – 218;
- LDPR – 132;
- KPRF – 137;
- SR – 302;
- PR – 12;
- *Yabloko* – 89;
- PD – 13.

24. According to the final results published by the City Commission, in District Commission no. 639 903 valid ballot papers were cast. The votes were distributed as follows:

- United Russia – 460;
- LDPR – 210;

- KPRF – 137;
- SR – 28;
- PR – 6;
- *Yabloko* – 55;
- PD – 7.

25. In the applicant’s opinion, the difference between the final published results and the original results tables showed that the votes were re-distributed in favour of United Russia and, to a certain extent, LDPR.

26. The applicant submitted original results tables in respect of the following voting stations where the results of United Russia, recorded in the original tables, were much lower than the final results officially published by the City Electoral Commission: nos. 638, 639, 641, 642, 643, 644, 646, 648, 649, 651, 652, 653, 654, 657, 661, 662, 664, 665, 666, 667 and 668. From the documents submitted by the applicant it appears that the form of the original results tables differs from one District Electoral Commission to another. All of the original results tables contain certain pre-printed parts to be filled in; however, not all of the information fields were filled in and not all signatures were always in place. Thus, some of the tables submitted by the applicant do not have a third page, which should contain the signatures of the members of the electoral commissions (for example, table no. 638). Some of the tables contain a third page with the signatures of the head of the respective District Electoral Commission and/or his deputy but not the signatures of the other members of the Electoral Commission and do not contain the official stamp of the Commissions or indicate the time when they were drawn up (for example, no. 639). Some tables have no third page, but the first page bears the words “authentic copy”, the signature of the head of the electoral commission and an official stamp (for example, no. 642).

27. A number of original results tables have all the necessary entries, signatures, indicate the date and time they were drawn up and bear an official stamp on the third page (for example, that of station no. 654, which reports that United Russia received 261 votes whereas the official final results reported 748; see also tables nos. 657, 661, 665 and others) or even on every page (for example, that of station no. 643, which lists United Russia as having obtained 253 votes, in contrast to the 498 votes it received according to the final results).

28. Generally speaking, most of the “original results tables” are photocopies containing the handwritten inscription “authentic copy”, the official stamp of the District Electoral Commission and the handwritten signature of the head of the commission, his deputy and, occasionally, the secretary of the commission.

**(c) Overall effect of the alleged falsification**

29. According to Mr Davydov, in the Kolpino district United Russia received 8,695 votes, whereas the City Electoral Commission reported a figure which was almost twice as high – 17,265 votes. By contrast, SR obtained 10,031 votes, while according to the official publication its result was only 5,493 votes. Votes for other parties (except for LDPR) had also been redistributed in favour of United Russia.

### 2. *The second applicant*

30. The second applicant (Ms Andronova) was born in 1953 in Leningrad. She was a voter registered in electoral district no. 652 in the Kolpino district. She was also a voting member of District Electoral Commission no. 652. She was affiliated with SR. She voted for SR at both levels and oversaw the two elections – to the LA of the City and to the State Duma – at that voting station.

31. The real result of SR at the LA elections in district no. 652, reflected in the copy of the results table which the second applicant received as a member of the district electoral commission, was 299 votes; the official result was 19 votes. As to the Duma elections, SR received 315 votes in reality and 115 votes according to the official results. The official results of United Russia at that voting station were 574 (Duma elections) and 599 (LA elections).

32. Other parties also saw their votes redistributed in favour of United Russia. Thus, according to the results table, KPRF obtained 174 votes at the Duma elections and 164 at the LA elections; however, the City Electoral Commission reported about 75 and 14 votes respectively. The official results of United Russia at that voting station were 640 (Duma elections) and 807 (LA elections).

### 3. *The third applicant*

33. The third applicant (Mr Andronov) was born in 1986 in Leningrad. He was a voter registered in electoral district no. 651 in the Kolpino district, and a voting member of the District Electoral Commission. He was affiliated with SR. The official results of SR at that station were 125 votes (Duma elections) and 9 votes (LA elections), whereas according to the original results table SR received 345 and 328 votes correspondingly. The official results of United Russia were 807 (Duma) and 640 (LA).

### 4. *The fourth applicant*

34. The fourth applicant (Ms Nikolayeva) was born in 1988 in Leningrad. She was a voter registered in electoral district no. 654 in the Kolpino district, and a voting member of the District Electoral Commission. She was affiliated with SR. In that district at the Duma elections SR received 307 votes according to the original results table and 157 according to the official published results (287 and 14 accordingly at the LA elections). The official results of United Russia were 758 (LA) and 424 (Duma).

### 5. *The fifth applicant*

35. The fifth<sup>1</sup> applicant (Mr Sizenov) was born in 1972 in Leningrad. He was a voter registered in electoral district no. 661 in the Kolpino district and a voting member of the District Electoral Commission. He was affiliated with *Yabloko*. In that district at the Duma elections SR received 307 votes according to the original results table and 157 according to the official

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<sup>1</sup> Referred to in the application as the “sixth” applicant, since the fifth has withdrawn her complaint.

published results (287 and 14 accordingly at the LA elections). The official results of United Russia were 667 (Duma) and 861 (LA)<sup>1</sup>.

*6. The sixth applicant*

36. The sixth applicant (Mr Belyakov) was born in 1948 in Leningrad. He was a voter registered in electoral district no. 637 in the Kolpino district; his complaint only concerns the elections to the LA. According to him, as a result of the redistribution of votes, the result of United Russia grew from 380 to 804 votes, to the detriment of other parties. The sixth applicant received the results table from Mr Moskovtsev, who was the head of the local branch of KPRF and had received results tables from the observer at that voting station acting on behalf of KPRF.

*7. The seventh applicant*

37. The seventh applicant (Mr Yakushenko) was born in 1954 in the Leningrad Region. He was a voter registered in electoral district no. 623 in the Kolpino district; his complaint concerns elections to the LA. According to him, as a result of the redistribution of votes, the result of United Russia grew from 731 to 798 votes, to the detriment of other parties. The seventh applicant received the results table from Mr Moskovtsev.

*8. The eighth applicant*

38. The eighth applicant (Mr Payalin) was born in 1968 in Leningrad. He stood candidate at the elections to the LA on behalf of SR. His complaint concerns the results of voting in electoral territory no. 22 of Saint-Petersburg. In particular, he challenges the official figures concerning the results of voting in electoral districts nos. 721, 722, 723, 724, 725, 726, 727, 728, 729, 731, 733, 734, 735, 736, 739, 740, 741, 742, 743, 744, 745 and 794. He claims that as a result of the falsification of the results SR was deprived of a certain number of seats in the LA and he did not receive a mandate.

*9. The ninth applicant*

39. The ninth applicant (Mr Truskanov) was born in 1946 in Leningrad. He stood candidate at the elections to the LA on behalf of SR. His complaint concerns the results of voting in electoral territory no. 17 of Saint-Petersburg. In particular, he challenges the official figures concerning the results of voting in electoral districts nos. 486, 489, 495, 496, 497, 498, 500, 501, 508 and 509.

40. The ninth applicant's complaint has another limb. He claims that on territory no. 17 two "closed" electoral districts were formed on sites with special security status.<sup>2</sup> The observers, candidates and the press were not allowed to access those "closed" districts; the results of United Russia at those districts were particularly high, even if compared with the official

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<sup>1</sup> The applicants from first to fifth lodged their application on 8 December 2011. The remaining applicants joined the first five applicants afterwards, on 15 March 2012.

<sup>2</sup> The applicant does not indicate the numbers of those districts or the result United Russia obtained there.

results of United Russia in other districts where observers and candidates were able to monitor the process of voting and counting.

*10. The tenth applicant*

41. The tenth applicant (Ms Pushkareva) was born in 1957 in the Donetsk Region. She stood as a candidate in the elections to the LA on behalf of SR. Her complaint concerns the results of voting in electoral territory no. 33 of Saint-Petersburg. In particular, she challenges the official figures concerning the results of voting in electoral districts nos. 1070, 1084, 1089, 1090, 1093, 1097, 1098, 1103, 1104, 1107, 1108, 1109, 1111, 1114, 1115, 1118, 1126 and 1127.

42. The tenth applicant indicates that the official results of the voting in electoral districts nos. 1071, 1091, 1099 and 1113 were cancelled by the higher electoral commission. However, no new voting was organised, and as a result voters living on the territory of those four districts were deprived of their right to vote and the applicant's party (SR) was deprived of a certain number of votes.

*11. The eleventh applicant*

43. The eleventh applicant (Mr Shestakov) was born in 1982 in Leningrad. He stood candidate at the elections to the LA on behalf of SR. His complaint concerns the results of voting in electoral territory no. 15 of Saint-Petersburg. In particular, he challenges the official figures concerning the results of voting in electoral districts nos. 554, 555, 557, 592, 593, 597, 598, 600, 601, 605, 606, 610 and 611.

44. In addition, the eleventh applicant also contests the data of the original results tables issued by some of the electoral commissions. In particular, he claims that the results tables of District Electoral Commissions nos. 549, 552, 553, 554, 444, 446, 558, 592, 594, 598, 601, 605, 606, 607, 608 and 611 do not reflect the actual results of the voting.

45. In support of that allegation he refers to the following breaches of procedure which were reported by the observers and some members of the electoral commissions and which were, in his opinion, indicative of manipulation:

(1) The observers were removed from the voting station under different pretexts, such as “filming the lists of registered voters and the process of voting” or “using dictaphones” (nos. 549 and 554); “showing written materials bearing the symbol of one of the parties” (no. 549); or “making offensive comments in respect of the head of the electoral commission” (no. 552);

(2) The observers were positioned where they were unable to see the voting booths and the head of the District Electoral Commission refused to relocate the ballot boxes, the voting booths or the observers' seating area or let the observers move to a better position (nos. 549, 552, 554, 592, 605, 608 and 611);

(4) During the voting unidentified persons blocked the view of the booths or ballot boxes so as to prevent observers from seeing what was happening there (no. 549);



(5) Certain people voted without having received ballot papers from the electoral commission (no. 549) or stuffed several ballot papers into the boxes at once (no. 553); observers reported that the number of people who had turned up to vote was, according to their calculations, much lower than the number of ballot papers deposited in the boxes (nos. 549 and 594); compact wads of dozens of identical ballot papers filled in for United Russia were found in certain boxes (nos. 598 and 608);

(6) The observers were ordered to stay at a certain distance from the tables where the ballot papers were counted and could not therefore see what was happening and what was written on the papers (nos. 552 and 558);

(7) Certain people who should normally have been amongst the registered voters did not find their names on the lists (nos. 558 and 607);

(8) “Transportable boxes” used for voting at home were not shown to the observers (no. 558);

(9) Those members of the electoral commission who took the “transportable boxes” to home voters discovered that the people concerned had already voted in person at the voting station and claimed that they had never requested to vote at home (nos. 601 and 607);

46. The observers referred to other informalities and anomalies in the voting and counting process (insufficient number of blank ballot papers, lists of registered voters not stapled together and sealed, inexplicable interruptions to the process of counting the votes, third parties entering the premises of the Electoral Commission and talking to the head of the commission, agitation for United Russia, and so on).

47. To confirm his allegations the eleventh applicant submitted copies of the complaints lodged by individual observers and members of the electoral commissions at the electoral districts concerned.

### **E. Judicial review proceedings before the Supreme Court of the Russian Federation and the proceedings before the Constitutional Court**

48. On 12 December 2011 the first five applicants (Mr Davydov and four others<sup>1</sup>) lodged a complaint with the Supreme Court of Russia seeking the invalidation of the decision of the CEC whereby the results of the elections had been officially approved. Their complaint concerned the results of the elections to the LA and to the Duma in the Kolpino district of Saint-Petersburg. According to the five applicants, the official results published by the CEC did not correspond to the real results of the voting.

49. In their complaint the applicants explained who they were and in what capacity they had participated in the elections. In particular, the first applicant indicated that he had stood candidate at the elections on behalf of SR, and that the other applicants were either members of the electoral commission, observers, or simple voters.

50. The applicants explained that the results of the elections officially published by the City Electoral Commission on its website and then reproduced by the CEC did not correspond to the results tables they had

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<sup>1</sup> The complaint before the City Court was lodged on behalf of six people; one of them (Ms Alla Nikolayeva) later withdrew her application to the Court

obtained from the electoral commissions, and that the overall difference between those tables and the final results was close to eight thousand votes. The applicants produced copies of original results tables and print-outs of the final results from the website of the City Commission and asked for those results to be annulled, along with the decision of the City Commission and the decision of the CEC approving them.

51. On 23 December 2011 a Supreme Court judge refused to consider that complaint. The judge decided that the court had no competence to examine such a complaint since the alleged violations did not affect the rights of the voters. The judge observed that such violations may have affected the rights of the parties which had participated in the elections and had not obtained mandates as a result of such violations.

52. The applicants appealed, but on 9 February 2012 the appeal was dismissed. The Supreme Court of Russia, sitting as a court of appeal, noted that under the Duma Elections Act, section 92(4) and (5), the quashing of a decision of the CEC whereby the results of elections were approved was possible only where the violations complained of affected the interests of the political parties participating in the elections.<sup>1</sup> Section 77 of the Basic Guarantees Act contained a similar provision. The court of appeal held that the violations complained of affected the interests of the parties whose candidates had stood in those elections, but not the rights of the voters.

53. Having obtained the Supreme Court's decisions of 23 December 2011 and 9 February 2012, the first six applicants brought a complaint before the Constitutional Court of Russia. They complained about the interpretation given by the Supreme Court to the Code of Civil Procedure (the CCP), the Basic Guarantees Act and the Duma Elections Act. According to the Supreme Court, those acts did not give the voters standing to complain about the incorrect counting of the votes: only the political parties had that standing. In the applicants' opinion, that interpretation contradicted the Constitution.

54. On 22 April 2013 the Constitutional Court delivered a judgment on the applicants' complaint (judgment no. 8-P/2013). It held that an individual voter had a legitimate interest that his vote in support of one or another political party or candidate was counted up correctly. Thus, the "active electoral right" was not limited to the right to come to an electoral district and cast a vote freely; it also included the process of counting votes and obtaining a correct final result which reflected the real will of the electorate. The voter should have the right to check the validity of the counting process. In addition, the interests of the parties participating in the elections and the voters could be different. The fact that the process of casting votes was secret did not preclude voters from complaining about incorrect recording of the results, since it affected that election process as a whole and could potentially undermine the legitimacy of the body elected as a result of it. Therefore, it did not matter for which party the particular voter voted at the elections. The Constitutional Court concluded that voters should have

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<sup>1</sup> Does this decision mean that at the federal level only a political party participating in the elections as such has standing to complain about abuses and manipulation during those elections, and that individual members of the party (even those who stood candidate), local branches of the party, observers, members of the electoral commissions etc. have no standing? The Government are invited to submit case-law which would elucidate this point.

the right to complain about unlawfulness in the process of counting votes (point 2.1 of the judgment).

55. As to the judicial avenue for such complaints, the Constitutional Court noted that although it was not the only legal mechanism, it existed in many European countries. Referring to PACE Resolution 1897 (2012), to the principles developed by the Venice Commission, and to the case *X. v. Germany*, Commission Decision of 7 May 1979, no. 8227/78, the Constitutional Court noted that the law might create certain procedural barriers to such complaints: for example, establish short time-limits for complaining or fix a minimum number of voters needed in order to bring such complaints. The Constitutional Court also examined the provision of the CIS convention of 7 October 2002 (signed in Kishinev) on standards of democratic elections, electoral rights and freedoms.

56. The Constitutional Court concluded that the judicial protection of electoral rights should be available to voters not only in connection with complaints about electoral campaigns and the process of voting, but also in respect of irregularities in the process of counting votes. At the same time, the exercise of the right to judicial protection must not perturb the stability of the functioning of the elected bodies. Therefore, in order to prevent abuse of rights, only substantial violations in the process of the counting of votes could lead to a re-consideration of the results of the elections.

57. In point 2.4 of the judgment the Constitutional Court invited the federal legislature to secure the right to judicial review of the process of counting votes and determination of the final results of elections. The Constitutional Court added that the courts conducting such a review must be capable of declaring the results of elections on a particular electoral territory void. The exercise of the right to obtain judicial review of vote counting could be subject to rules and procedures established by a federal law.

58. The Constitutional Court then examined provisions of the legislative acts referred to by the applicants (point 3.1 of the judgment). In the opinion of the Constitutional Court, those acts, if interpreted in compliance with the spirit of constitutional provisions, did not prevent voters from complaining about the process and results of the counting of votes by the electoral commissions, and allowed the courts, where the violations complained of prevented the correct determination of the will of the electorate, to annul the results of the elections. In point 3.3 of the judgment the Constitutional Court held that a regional branch of a political party participating in the elections had standing to bring a complaint about violations of the electoral law at the regional level.

59. The Constitutional Court further held that voters should not be put in a situation of uncertainty as to the scope of their right of access to court and the procedure of exercising that right. It held that the federal legislature, having proclaimed that the courts were competent to examine complaints about breaches of the electoral law, must adopt special norms to ensure that voters could exercise the right of access to court. The law must also introduce rules to prevent competing political forces from abusing the right to bring judicial proceedings and employing them as a tool for political manipulation. The rules of the CCP and the other acts under examination by the Constitutional Court, as they were formulated at the time, implied that all participants in elections, irrespective of their status and the type and

scale of the violation concerned, had equal right to bring complaints to court about any violation of their electoral rights. However, such a lack of differentiation was prejudicial to the stability of the democratic system and created an opportunity for abuse. The procedure for judicial review of irregularities in election procedures was unified at all levels of the electoral system; however, the interest of the voter in having his vote counted accurately was stronger at the level of the electoral district where he voted (as opposed to higher levels of the electoral system).

60. In the concluding paragraphs of the judgment, the Constitutional Court noted that the courts of general jurisdiction often interpreted the CCP and other applicable acts differently, as if those acts gave the right to bring a complaint about inaccuracies in the counting of votes only to political parties, but not to voters themselves. In part, it was due to the wording of point 20 of Supreme Court Decree no. 5 of 31 March 2011, where the Supreme Court held that the courts could not accept for examination complaints about breaches of the electoral law where those breaches did not affect the rights of the complainant.

61. The Constitutional Court concluded that such practice was related to the uncertainty of the underlying legislative provisions. Such practice was declared to be incompatible with the Constitution (point 4.3). The Constitutional Court ordered the federal legislature to enact a law which would define the procedure and conditions of voters' exercise of their right to judicial review of the electoral process at the stages of vote counting and summing up the results. In the meantime the courts of general jurisdiction were ordered to accept for examination on the merits complaints by voters concerning the counting process at the level of the electoral districts where they had voted.

## **F. Judicial review proceedings before the Saint-Petersburg City Court**

### *1. The first five applicants (LA and Duma elections in the Kolpino district as a whole)*

62. On 12 December 2011 the first five applicants lodged a complaint with the Saint-Petersburg City Court seeking the annulment of the decision of the City Electoral Commission of 12 December 2011 whereby the results of the elections to the LA were officially approved. This complaint was very similar to the one lodged with the Supreme Court (see above).

63. On 23 December 2011 the judge of the City Court refused to consider the complaint.

64. First, the judge observed that the City Court had jurisdiction over complaints lodged against electoral commissions at city level. However, in the opinion of the judge, the applicants' complaint was directed against the actions of the lower commissions – district commissions and territorial commissions. Consequently, the City Court had no jurisdiction to examine those claims.

65. Second, the judge found that the applicants alleged that the officials of the electoral commissions were guilty of electoral fraud, which was a criminal act and could not be examined in civil proceedings.

66. Third, the judge observed that in their complaint the applicants had not fulfilled certain formal requirements of the law.

67. The judge invited the applicants to amend their complaint accordingly, attach the missing documents and resubmit it before 11 January 2012.

68. On 30 December 2011 the applicants appealed. They indicated that they had not asked the court to bring anybody to criminal liability; the only object of their complaint was to obtain annulment of the decision of the City Electoral Commission whereby it had approved the official results of the elections published on its website on 5 December 2011. Under Article 26 of the Code of Civil Procedure and section 75(2) of the Basic Guarantees Act the City Court was competent to examine complaints about decisions of the City Electoral Commission.

69. In parallel, on 10 and 11 January 2012 the applicants resubmitted their complaint, having made the modifications suggested by the City Court.

70. On 12 and 13 January 2012 the City Court refused to consider the complaint. The judge of the City Court found that the applicants were trying to contest the results of the elections in the district of Kolpino, in electoral territories nos. 19 and 21. However, under section 74(2) of the Basic Guarantees Act this complaint fell within the jurisdiction of the corresponding District Courts. As to the role of the City Electoral Commission, the judge observed that its duty had been to summarise data received from the lower commissions. The court reiterated that the main subject of the applicants' complaint was the data which had emanated from the territorial and district commissions; therefore, the applicants had to contest the actions of those commissions before the respective courts at the district level, and not before the City Court.

71. The applicants appealed. They insisted that they had not challenged the decisions of the District Commissions. Quite the contrary, their case fully relied on the results tables issued by the District Commissions, which they had submitted in support of their complaint. As to the Territorial Commissions, the applicants only knew that the Territorial Commissions had received the tables from the District Commissions, but not what had happened to them later and how the Territorial Commissions had processed the data. The applicants had not participated in the process of calculating results at the level of the Territorial Commissions and did not know what figures the Territorial Commissions had sent to the City Commission. They had learned about the incorrect figures from the official publication of the City Commission of 5 December 2011, as approved by its decision of 12 December 2011. Consequently, it was the decision of the City Commission which the applicants contested.

72. In their appeal the applicants reiterated that they were simply comparing the correct data contained in the results tables of the district commissions which they had received and the incorrect data published by the City Commission. They did not know and could not know at what level the correct figures had turned into incorrect ones. However, the City Court was equally unable, without examining the case on the merits, to infer that the applicants' complaint concerned allegedly unlawful actions on the part of the Territorial Commissions.

73. The applicants indicated, with reference to section 26 of the Duma Elections Act, that the City Commission's role was not limited to a mechanical summing up of the data received from the lower commissions. Under section 26 the City Commission had a general duty to "coordinate the operations" of the lower commissions, ensure respect for electoral rights, guarantee that a uniform procedure was applied in the calculation of votes, and so on. It was also responsible for announcing and approving the final results of voting. Therefore, the applicants intentionally contested the decision of the City Commission, which contained incorrect data, and not the individual decisions of each District Commission (which contained correct data) or the Territorial Commissions (about which the applicants had no information). On the strength of the above, the applicants concluded that their complaint, as directed against the actions of the City Commission, was within the jurisdiction of the Saint-Petersburg City Court.

74. On 7 February 2012 the City Court of Saint-Petersburg, sitting in a three-judge formation, examined the appeal and dismissed it, repeating the findings of the lower court as to the question of jurisdiction. It confirmed that the City Commission merely summarised data received from the lower commissions. The City Court also indicated that point 39 of Supreme Court Decree no. 5 of 31 March 2011 provided that if a complaint about a decision approving the results of voting referred to alleged violations of the electoral legislation on the part of the District Commissions, the object of the complaint was in fact the decision of the District Commissions, and such cases were to be examined by the relevant District Courts.

75. According to the applicants, on 22 February 2012 the decision of the judge of 23 December 2011 was upheld on appeal by the Supreme Court; the applicants were not informed about the decision of the Supreme Court but learned about it from the Supreme Court's website some time later.<sup>1</sup>

## *2. The sixth applicant (LA elections in district no. 637)*

76. The sixth applicant (Mr Belyakov) lodged a complaint with the Saint-Petersburg City Court against the decision of the City Electoral Commission approving the final results of the voting. His complaint was similar to those of the first five applicants, but concerned only his own electoral district (no. 637). He brought his complaint in the capacity of an individual voter. The applicant claimed that according to the results table he had received from a voting member of the electoral commission, KPRF and *Yabloko* had received 200 and 128 votes respectively; however, according to the official results those parties received only 14 and 4 votes. By contrast, the results of United Russia and SR grew from 380 to 804 and from 337 to 404 votes respectively. The applicant did not vote for either United Russia or SR. He believed that as a result of the falsification his vote had been effectively "stolen" and given to one of the two parties which had benefitted from the falsification. He asked the City Court to annul the decision of the CEC in the part concerning the district in question.

77. The applicant produced a copy of the results table issued by District Commission no. 637. This copy bore the official stamp of the District Commission; it was signed by the head of the commission and eight

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<sup>1</sup> The parties are requested to produce a copy of the decision of the Supreme Court

members thereof. The document specified that during the voting there had been no incidents and that no complaints about the voting process had been received.

78. In addition, the applicant submitted a copy of the results table issued by Territorial Commission no. 21, and a print-out from the screen of the webpage of the City Commission. The City Commission was indicated in the text of the complaint as “the interested party<sup>1</sup>”.

79. On 25 January 2012 the Saint-Petersburg City Court decided that it was impossible to consider the applicant’s complaint without certain additional clarifications and documents. It noted that the applicant challenged actions of the City Commission which did not take the form of a decision, record of results, or similar. Therefore, the court invited the applicant to explain what particular action of the City Commission he contested. The applicant was also invited to identify the decision of the City Commission approving the results of the voting in district no. 637, and submit a copy of that decision “with another copy for the interested party”. The applicant was invited to explain what particular breach of the electoral legislation he contested and who was responsible for that breach, and specify in what respect the City Commission had not acted in accordance with the law.

80. On 3 February the sixth applicant, having supplemented his complaint, resubmitted it to the City Court.

81. On 9 February 2012 the City Court refused to consider the complaint, having found that the applicant had failed to submit the clarifications and additional documents requested by the City Court in its decision of 25 January 2012. The court ruled as follows:

“[In accordance with the law] the results table issued by the District Electoral Commission for voting at [a particular] voting station has to be drawn up in two original copies; [...] the District Commission sends copy no. 1 ... to the Territorial Commission which then forwards it to the Saint-Petersburg City Commission.

The photocopy of the table of the results of the voting in District no. 637 submitted by the claimant did not indicate which original copy [had served to make the photocopy]; thus, there are no grounds to believe that the interested party [the City Commission] has a copy of that document.

Whereas the claimant’s complaint is based on the argument that the [official] results of the voting in district no. 637 are different from those which are reflected in the results table of District Commission no. 637, and whereas the claimant relied on that item of evidence and produced it to the court, he was required [by law ...] to submit, for the [use of the] interested party, a second copy of the document he had at his disposal”.

82. The applicant appealed. He argued that he had submitted a copy of the results table to the court. He had received that copy from a member of the District Electoral Commission who, in turn, had obtained it from the Commission after the counting of the votes. The City Commission (the interested party) had the original of the results table of the District Commission, so it was absurd to require him to submit anything more than he had already submitted to the court.

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<sup>1</sup> The notion of “interested party” in the context of proceedings arising from a judicial review complaint (*жалоба*) is a notion similar to “defendant” in proceedings whereby courts examine a civil claim brought by one person against another (*иск*).

83. On 5 March 2012 the Saint-Petersburg City Court, sitting as a court of appeal, upheld the lower court’s decision. It noted that the copy which the applicant had submitted did not indicate whether it was a copy of original table no. 1 or 2. As can be understood from the decision of the court of appeal, the applicant should have submitted to the lower court not a copy of the results table which he had received from a member of the electoral commission, but a copy of the original document, either no. 1 or no. 2<sup>1</sup>, so that copy could be transmitted to the respondent (“the interested party”, that is, the City Commission) and that without such a document the applicant’s complaint could not be examined.

*3. Complaint lodged by the Saint-Petersburg branch of SR together with the eighth, ninth, tenth and eleventh applicants (LA elections in Saint-Petersburg City as a whole)*

84. On 19 December 2011 the Saint-Petersburg branch of SR, together with the eighth, ninth, tenth and eleventh applicants, lodged a complaint with the Saint-Petersburg City Court. The complaint concerned several electoral territories, in particular nos. 15, 17, 22 and 33<sup>2</sup>. The claimants complained, in particular, about the differences between the official results and the results contained in the copies of the results tables received by the observers and members of the electoral commissions in those districts. They also indicated that the City Commission had failed to examine properly eighteen complaints lodged by SR and eighty-seven complaints lodged by other interested parties.

85. On 27 February 2012 the Saint-Petersburg City Court dismissed the complaint. It found that all the administrative complaints to the City Electoral Commission had been properly discussed and addressed. The City Court further found that the decision approving the results of the elections had been adopted unanimously and in accordance with the procedure set out by law. According to the City Court, an employee of the City Commission had informed interested parties about the time and the date of the meeting of the Commission, so they had been given the chance to be present. Some of the participants of the meeting had been affiliated with SR. Section 30(1) of the Basic Guarantees Act did not require that every person on the list established in that provision be notified. The Commission had an obligation to notify them “within the bounds of feasibility” (*v predelakh vozmojnosti*). Some of the representatives of SR had been informed about the meeting and could have passed that information on to others. Indeed, information about the meeting of 12 December 2012 had not been published in the media or in the internet database “Vybory”, but that fact was immaterial. The court concluded that the City Commission had not committed any breach of the law which would affect the results of the voting.

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<sup>1</sup> The decisions of the City Court are unclear. The Government are invited to explain what sort of document the applicant had to submit to have his complaint examined on the merits, what the difference between “copy no. 1 and no. 2” is and what sort of documents should have been submitted to the City Commission (as the defendant or the “interested party” in this case) which the City Commission did not already have.

<sup>2</sup> According to the statement of claim of 19 December 2011, it appears that the only “claimant” indicated in the complaint was the regional branch of SR; the applicants’ names were not directly mentioned in the statement of complaint.



86. The applicant appealed. On 23 May 2012 the Supreme Court of the Russian Federation dismissed the appeal. The Supreme Court upheld the lower court's judgment. In addition it noted that although the City Commission had not taken individual decisions on each and every complaint it had received between 4 and 12 December 2012, that could not affect the lawfulness of its final decision to approve the results of the elections. The members of the Commission had been informed about the complaints received by the Commission and that had been enough to satisfy the requirements of the law. In particular, it was perfectly acceptable that all those complaints had been examined by a special working group created within the Commission, and not the Commission itself. The Supreme Court also noted that, in breach of the law, the persons who had lodged the complaints with the City Commission had not been invited to be present for the examination of their complaints; however, that was not a sufficient ground for declaring the final decision of the City Commission unlawful. The Supreme Court also held that the "consolidated table" containing the results of the voting in the City had been approved in accordance with the correct procedure and was therefore lawful. The failure of the City Commission to notify all interested parties in accordance with section 30(1) of the Basic Guarantees Act did not constitute a ground for invalidating the results of the elections, since "it had not prevented the actual will of the voters from being determined".

87. The Supreme Court also held that the claimants had failed to prove that the complaints which the City Commission had received could have affected the results of the voting. In essence, those complaints challenged the results of the voting in certain electoral districts. However, the decisions of the District Electoral Commissions had to be challenged before the District Courts. The Supreme Court concluded that "since it had not been established that there had been any breaches of electoral law which would affect [the determination of] the will of the voters", the lower court had been correct to dismiss the complaint.

### **G. Judicial review proceedings before the Kolpino District Court**

#### *1. The sixth applicant (LA elections in district no. 637)*

88. On 25 January 2012 the sixth applicant (Mr Belyakov, district no. 637) lodged a complaint against the actions of Territorial Commission no. 21 before the Kolpino District Court.

89. On 27 January 2012 the District Court returned the complaint to the applicant. It noted that the applicant had failed to submit a sufficient number of copies of his statement of complaint and attached documents – in particular, he had not submitted a copy for the prosecutor's office. Furthermore, the copy of the consolidated table of the results of the voting was signed by the secretary of the Territorial Commission but not by its head, and the results table of the Territorial Commission had not been signed by all members of the commission. The District Court invited the applicant to add the missing documents and resubmit his complaint.

90. On 7 February 2012 the applicant resubmitted the complaint.

91. On 1 March 2012 the Kolpino District Court decided that it had no jurisdiction to examine the complaint. The District Court noted that the applicant had complained in the capacity of a voter about a breach of his “active electoral right” (the right to vote). However, in the opinion of the District Court the actions of the Territorial Commission which the applicant contested and which concerned the allegedly incorrect distribution of votes amongst the political parties might have affected the interests of those parties but not the interests of the individual voters. The applicant had participated in the elections as a candidate, but in a different district. The court concluded that the applicant’s rights had not been affected by the impugned acts of the Territorial Commission and discontinued the examination of the case.

92. The applicant appealed. On 12 April 2012 the Saint-Petersburg City Court ordered the lower court to examine the case on the merits, having disagreed with its conclusion that the actions of the Territorial Commission did not affect the applicant’s rights as a voter.

93. On 24 May 2012 the Kolpino District Court examined the complaint on the merits. According to the applicant, he requested the examination of a number of witnesses, in particular Mr M., the Head of the District Commission, Mr G., a voting member of the District Commission, and Mr K., an observer at the Territorial Commission. However, the District Court refused to call any of those witnesses. The District Court heard the applicant, representatives of the Territorial Commission and the City Commission and the prosecutor. The latter recommended dismissing the applicant’s complaint as unfounded. From the District Court’s decision, it appears that it did not hear any witnesses.

94. The District Court dismissed the applicant’s complaint. The relevant part of its decision reads as follows:

“[...] In support of his arguments [...] the claimant submitted copies of the results table of District Electoral Commission no. 637, the results table of Territorial Electoral Commission no. 21 [...] and the consolidated table [...] of the results of the voting.

However, those documents have been drawn up in breach of the mandatory formal requirements established by the Basic Guarantees Act. [Namely], in breach of [the relevant provision of the Act] the copy of the results table does not indicate the number of the original copy it was made from. In breach of [the relevant provision of the Act] numerical data in the results table was not written out in words. [In breach of the provisions of the law] the copy of the table did not contain the entries ‘true copy’ or ‘exact [copy]’ and did not indicate the date and the time the copy of the table was issued.”

95. Furthermore, the District Court observed that the results table of the District Commission contained incoherent data. For example, the number of valid ballot papers noted in the table amounted to 1,276, whereas the aggregate number of votes for all candidate parties was indicated as 1,246, whereas it should normally correspond to the number of valid ballot papers received by the District Commission. The aggregate number of ballot papers deposited in the stationary boxes, those deposited in the transportable boxes and “cancelled ballot papers”, which should normally correspond to the number of ballot papers received by the District Commission, was higher (1,630 instead of 1,600).

96. The District Court concluded that the copy of the results table of the District Commission was inadmissible in evidence.

97. The District Court further established that, having detected inconsistencies in the table of results of the voting, the District Commission had conducted a recount of the ballots. On 5 December 2011 the Territorial Commission annulled the decision of the District Commission whereby the results of the voting had been approved and ordered District Commission no. 637 to recount the votes. The applicant did not contest that decision. The City Commission submitted to the District Court “copy no. 2” of the results table of the District Commission with the mention “recount of votes”. Data contained in that copy, drawn up following the recount, corresponded to the officially approved results of the elections. That copy had all the necessary entries and fully met the formal requirements of the law.

98. Under the law the District Commission was entitled, if the original results table contained incoherent data, to recount the ballot papers and issue a new table.

99. The District Court further reiterated the provisions of the applicable legislation, which provided for a revision of the results of an election only where the breaches of the law were such as to prevent the real opinion of the voters from being established. The District Court concluded that the applicant’s complaint did not reveal any such breach. The District Court dismissed the applicant’s complaint and refused to cancel the official results of the elections in district no. 637.

100. The applicant appealed. He claimed that, according to his information, no recount had been conducted. The law required the mandatory presence of all the members of the District Commission and the observers at such a recount; however, they had not been invited to the District Commission for that purpose. Even if a recount had taken place, it would have been unlawful. The fact that the copy of the results table submitted by the applicant to the court did not correspond to the copy of the table at the disposal of the City Commission had not been contested by the first-instance court. The very reference to a version for the “recount” confirmed the existence of two different tables. In the course of the hearing the applicant had repeatedly asked the District Court to verify whether the recount had had any lawful basis, but the District Court had failed to address that argument. The applicant claimed that the witnesses whose appearance he had sought would have been able to confirm that no recount had taken place. The alleged incoherencies in the original table were immaterial; what mattered was that the original results table had been replaced with a new one and that this second table was a concoction.

101. According to the text of the applicant’s statement of appeal, the alleged recount was carried out in response to a complaint by a voter, a certain Mr Larionov. However, the original results table indicated that the District Commission had received no complaints from voters or observers. Furthermore, according to the letter of 26 December 2011 from the head of the Territorial Commission in reply to the applicant’s complaint, before the signature of the final results table the commission had received “no complaints from the representatives of the political parties”. The applicant concluded that the “complaint by Mr Larionov” which had served as a pretext for the secret recount was fake.

102. The applicant argued that he had been unable to challenge the decision of the Territorial Commission to conduct a recount because that decision had been concealed from the public and representatives of the parties and had become apparent only from the documents submitted by the City Commission to the court within the proceedings.

103. On 16 August 2012 the City Court of Saint-Petersburg, sitting as a court of appeal, dismissed the sixth applicant's appeal, endorsing the reasons adduced by the lower court. The appeal court did not comment on the lower court's refusal to call witnesses. It noted that the evidence produced by the applicant was unreliable, whereas the evidence produced by the Territorial Commission and the City Commission was in conformity with all the formal requirements and the District Court had found it convincing. The City Court concluded that the applicant had failed to prove his allegations.

*2. The seventh applicant (LA elections in Kolpino district as a whole)*

104. On 14 December 2011 the seventh applicant (Mr Yakushenko) lodged a complaint with the Kolpino District Court about falsification of the results of voting in Kolpino taken as a whole (electoral territories nos. 18 and 19). His complaint concerned the following districts: nos. 623, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 657, 658, 661, 662, 663, 664, 666, 667, 668, 669, 670, 671, 672, 673, 675, 678, 680, 681, 682, 683, 684, 685 and 687. The applicant produced copies of the results tables received by the observers and members of the electoral commissions concerning those districts.

105. On 19 December 2011 the Kolpino District Court returned the seventh applicant's complaint to him without examination. The District Court informed him that the complaint should have been submitted to the City Court.

106. On 28 December 2011 the applicant resubmitted the complaint to the City Court but on 29 December 2011 it was returned without examination. The City Court indicated to the applicant that his complaint fell within the jurisdiction of the Kolpino District Court. The applicant appealed, but to no avail – on 26 January 2012 the City Court, sitting as a court of appeal, confirmed that it had no jurisdiction to examine such a case.

107. On 19 January 2011 the applicant resubmitted his complaint to the Kolpino District Court.

**(a) Judgment of 16 July 2012 by the Kolpino District Court**

108. On 16 July 2012 the Kolpino District Court examined the applicant's complaint<sup>1</sup>. The court heard the prosecutor, who recommended dismissing the complaint. The applicant lodged several procedural applications seeking the examination of certain witnesses and disclosure of documents; some of those applications were rejected and others were granted. Thus, the District Court heard several witnesses whose appearance in court was requested by the applicant, namely, observers and members of the electoral commissions (Mr Belyakov, Mr Korshakov, Ms Zimodrina,

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<sup>1</sup> The parties are invited to produce an English translation of the judgment

Ms Smirnova, Ms Nikolayeva, Ms Shepel, Mr Potashev, Ms Morozova, Mr Zaytsev, Mr Moskovtsev, Mr Lvov, Ms Bogdanova, Ms Petrova, Ms Andronova, Ms Zarina, Ms Glushkevich, Mr Sizenov, Ms Smirnova, Ms Petrova, Ms Bogdanova, Ms Samedova, Ms Mokhonko and Mr Mokhonko). They described their role in the elections, and explained how they had received copies of the results tables. Most of the witnesses testified that the data in the copies of the tables which they had received at the voting stations significantly differed from the official results published by the CEC, and that they had not heard about any recount.

109. The judgment of the District Court started with a summary of the applicable electoral legislation and witness statements.

110. The District Court further observed that “[the applicant] did not indicate in his statement of complaint and additional submissions how his rights [to elect and to be elected] had been violated”.

111. Furthermore, the District Court observed that the copies of results tables submitted by the applicant did not meet certain formal requirements of the law.

112. On the basis of the witness statements the District Court concluded that none of them had given their copies of the results tables personally to the claimant (Mr Yakushenko). The District Court also noted that at three voting stations (nos. 640, 644 and 653) the copies of the tables obtained from the District Electoral Commissions contained data which did not correspond to the data in the tables submitted by the claimant.

113. The District Court stressed that it was its duty to verify whether an official document had been issued by a body which had been entitled to issue it, whether it had been signed by a duly authorised person and had other requisite entries, how it had been copied and stored, whether the copy submitted to the court was identical to the original, and so on. The District Court observed that it could not rely on a copy of a document where the original had been lost, and where the copies produced by the parties were not identical and it was impossible to establish the actual content of the document on the basis of other evidence.

114. On the strength of the above the District Court concluded that the copies of results tables submitted by the claimant could not be admitted in evidence. According to the District Court, the claimant did not submit other evidence to show that the will of the voters had not been properly reflected.

115. The District Court also refused to declare unlawful the “recount” of votes ordered by the Territorial Electoral Commissions in voting stations nos. 627, 630, 633, 635, 637, 638, 641, 646, 651, 652, 654, 657, 661, 662, 664, 665, 666, 667, 668, 675, 678, 680, 681 and 682. According to the District Court, the higher commission had the power to order a recount if the results tables received from the lower commissions contained “errors [or] discrepancies” or if there were “doubts as to whether the results tables were drawn up correctly”. The law entitled the higher commission to conduct the recount and issue a new results table. The District Court referred to the following reasons for the recount:

“The doubts as to whether the results tables of the District Commissions were drawn up correctly, complaints about breaches of the law committed by the District Commissions during the counting of the votes, as well as a complaint by Mr Larionov, a candidate on the list of SR”.

116. The Court referred to a witness statement by Ms S., who was a member of Territorial Commission no. 21. According to Ms S., the Territorial Commission had decided to conduct a recount; she personally recounted votes with the Deputy Head of the Territorial Commission, Mr R. Observers and members of the lower commissions were entitled to participate in the recount. A member of the Territorial Commission, Ms Sh., “was very often present” during the recount. The territorial Commission included members of different parties. In addition, observers were present on the premises of the Territorial Commission and supervised the process of counting, voting and decision-making. All complaints were read out by the head of the Territorial Commission and discussed. Most of the complaints related to the difference between the results reported in the copies of results tables received by the observers and “the data in the possession of the Territorial Commission”. The tables which were submitted to the Territorial Commission differed from the tables which were given to the observers. As a result, the Territorial Commission decided to recount the votes and the information which was in the possession of the Territorial Commission was confirmed. When the recount was conducted by the Territorial Commission, the heads of the District Commissions were not present, but the election candidates were. The observers were not informed about the recount but they were always present on the premises of the Territorial Commission and all the actions of the Territorial Commission had been visible to them. As a result of the recount the Territorial Commission drew up new results tables.

117. The District Court concluded that by holding a recount the Territorial Commission had acted within its powers and there was no reason to declare those actions unlawful. The members of the District Commission had the right, but not the obligation, to be present during the recount, and “the absence of the members of the District Electoral Commissions during the recount did not constitute a ground for declaring the recount unlawful”.

118. On the basis of the above, the District Court dismissed the applicant’s complaint.

**(b) The appeal**

119. The applicant appealed. In his statement of appeal he indicated that in the course of the hearing most of the witnesses examined by the court had confirmed the validity of the results tables which the applicant had submitted to the court in support of his complaint. Furthermore, they had confirmed that they had not been aware of any complaints about the voting or counting process. They also indicated that they had not been informed about the recount. None of the results tables submitted to the court by the CEC and attached to the materials of the case mentioned complaints about the voting or counting process. The head of Territorial Commission no. 22 had written in his letter that the Territorial Commission had received no complaints about either procedure.

120. The applicant further referred to the testimony of Ms S., the member of Territorial Commission. In her oral submissions before the court, as related by the applicant, Ms S. testified that two people had participated in the recounting of votes in the Territorial Commissions: herself and Mr R. She indicated that the recount had taken about two hours for each district. Where the recount had been conducted by the Territorial

Commission itself, heads of the District Commissions had not been present and the candidates had not been present either. Ms S. admitted that the Territorial Commission had not notified the observers about the recount. Ms S. was unable to say what had happened to the “original” results tables. In the room where they had worked with Mr R. there had been no tables, only two chairs. In essence, by referring to the “data in the possession of the Territorial Commission” Ms S. acknowledged that in some districts the heads of the District Commissions prepared two different results tables: one contained the correct figures, and its copies were distributed to the observers, whereas another table, with falsified results, was submitted to the Territorial Commission. The applicant also drew attention to other elements of Ms S.’s testimony which showed that either she had failed to follow the procedure prescribed by law or that there had not been any real recount at all.

121. The applicant further argued that the Territorial Commission had not had the right to recount the votes. During the proceedings Mr K., a representative of the Territorial Commission, had failed to refer to any complaint which would have warranted a recount. Mr K. had stated that he had not been aware of the legal grounds for the recount. At the same time Mr K. had opposed any attempt by the claimant to have the heads of the District Commissions and the members of Territorial Commission no. 21 examined as witnesses and obtain, through the court, the minutes of the meetings of the Territorial Commission<sup>1</sup>. Three witnesses confirmed that they had not been notified of the recount. Members of the Territorial Commission did not participate in the recount, whereas it was required by the law.

122. The representatives of the Territorial and City Commissions drew attention to various irregularities in the “original” results tables submitted by the applicant. However, they did not claim that the signatures or stamps on those tables were forged and did not contest that those tables reflected the results of the first calculation of votes (before the recount). All District Commissions included representatives of United Russia; however, none of them ever produced results tables different from those which the applicant submitted to the court.

123. In order to justify the recount the representatives of the Territorial Commissions referred to “doubts” as to whether the original results tables had been drawn up correctly. However, they did not submit the original tables which had raised those “doubts” and did not specify why the “doubts” had arisen.

124. The only specific reason which was mentioned to justify the recount was a complaint by Mr Larionov. However, in his complaint Mr Larionov did not point to any particular violation in the procedure of voting or counting, but simply referred to unidentified “complaints by the observers”. It was unclear when the complaint by Mr Larionov had been lodged, since the copy of it submitted by the defendants did not contain an incoming number or the date of its submission (whereas other complaints received by the Territorial Commission had been given an incoming

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<sup>1</sup> The parties are invited to submit texts of the relevant applications and the court’s decision thereon.

number). Furthermore, the representatives of the defendants admitted that Mr Larionov's complaint had concerned not all but only some of the districts. Thus, his complaint did not concern districts nos. 646, 651, 652, 654, 657, 662, 665, and 668. The applicant enumerated various incoherencies in Mr Larionov's complaint.

125. The applicant maintained that the material conclusions of the District Court were not supported by the evidence examined at the trial. The District Court had deliberately ignored important facts and even occasionally distorted the witness statements: thus, while Ms S. had twice stated that candidates had not participated in the recount or that she had not seen the candidates, the judge found that the candidates had been present.

126. The applicant concluded that the fact that the original results of the voting had later been replaced with new ones had not been seriously debated. The fact that some of the "original results tables" contained irregularities of form was irrelevant. Thus, the main question before the court was whether the recount had been justified and had been conducted in accordance with the law. However, the court had failed to address this question carefully, and had jumped to the conclusion that since the recount had been possible in principle, it had been lawful.

**(c) Decision by the court of appeal of 18 October 2012**

127. On 18 October 2012 the Saint-Petersburg City Court dismissed the applicant's appeal. Its reasoning, which was almost identical to the judgment of the District Court, can be summarised as follows. First, the first-instance court had been correct not to take into account the copies of results tables submitted by the applicant, since the witnesses questioned by the court did not confirm that they had given their copies to the applicant. The copies of tables submitted by the applicant did not meet all the formal requirements of the law. In addition, the copies of the tables concerning districts nos. 640, 644 and 653 did not correspond to the copies which were in the archives of the three respective District Commissions. The applicant had failed to prove that the elections had been tainted with violations of the electoral law which prevented the will of the voters from being established. According to a series of decisions issued by Territorial Commission no. 21 on 5 December 2011, the results of the voting were annulled in the following districts: nos. 667, 666, 646, 641, 668, 665, 664, 662, 657, 654, 652, 651, 641, 638, 635, 637, 681, 680, 678, 675, 630, 682, 627 and 629. In all those districts the Territorial Commission had conducted a recount of votes, on the basis of "doubts as to whether the results tables were drawn up correctly", "complaints about violations of the law", and "a complaint by Mr Larionov". The actions of the Territorial Commission had been lawful. The members of the Territorial Commission had the right to be present during the recount, but they were not obliged to be; consequently, their absence did not affect the lawful nature of the recount.



## **H. Attempts to start a criminal investigation into the alleged falsification**

### *1. Complaint by the second applicant (LA elections and Duma elections in district no. 652)*

128. On 5 December 2011 the second applicant (Ms Andronova) lodged a criminal-law complaint with the Saint-Petersburg Investigative Committee. She wrote that, as a voting member of District Electoral Commission no. 652, she had seen the results of the voting and had participated in the transmission of the signed results table of the District Commission to the Territorial Commission. In a telephone conversation the head of the Territorial Commission had confirmed that he had received the table as it was. According to that document, SR had received 315 votes; however, the officially approved results reported 115 votes. The second applicant attached a copy of the results table and the final results of the elections published on the website of the City Electoral Commission to her letter and asked the Investigative Committee to open a criminal investigation into the matter. In her opinion, the circumstances of the case were indicative of falsification of the results of the elections – a crime under the Criminal Code of the Russian Federation.

129. It appears that the second applicant's complaint was forwarded to the Kolpino District Prosecutor's Office for consideration.

130. On 14 February 2012 the Kolpino District Prosecutor, Mr Durkin, informed the second applicant that he had decided not to take any action in connection with her complaint. The District Prosecutor informed the second applicant, without giving any specific details or answering the allegations raised in the complaint, that having considered the situation he had not detected any breaches of the electoral legislation. The District Prosecutor informed the second applicant that she was entitled to challenge the official results of the elections before "the court of the corresponding level".

### *2. The third and fourth applicants (LA elections and Duma elections in districts nos. 651 and 654)*

131. On 6 December 2011 the third and fourth applicants lodged a criminal-law complaint with the Investigative Committee of Saint-Petersburg, seeking the opening of a criminal investigation into the alleged falsification of the results of the elections in districts nos. 651 and 654. This complaint was forwarded to the Kolpino District Prosecutor.

132. On 14 February 2012 the Kolpino District Prosecutor replied to the third applicant that he had decided to take no action in respect of the complaint for want of any breach of the legislation (a letter identical to the letter of the same date sent to the second applicant – see above). On the same day the Kolpino District Prosecutor replied to the fourth applicant that her complaint was being examined.

3. *The third and fourth applicants (LA elections and Duma elections in district no. 646)*

133. It appears that the third and fourth applicants also lodged a similar criminal-law complaint concerning district no. 646<sup>1</sup>.

134. On 20 December 2012 the Kolpino District Prosecutor received a criminal-law complaint concerning alleged falsification of the results of the voting in district no. 646.

135. On 18 January 2012 the Kolpino District Prosecutor decided not to start an investigation into the alleged falsification. The investigator noted that, indeed, according to the results table produced by the unnamed claimant the number of votes received by United Russia had been three times smaller than the number officially reported. However, the investigator received from the CEC another table, in which the number of votes recorded was identical to that reported on the website. Having examined it, the investigator continued as follows:

“... In this connection it is necessary to conduct a graphological examination of the signatures of the members of electoral commission no. 646 [on the results tables] submitted by the applicant and by the CEC. On the basis of the above [the investigator] has decided not to open a criminal case under Article 142.1 of the Criminal Code, as there is no evidence of a crime.”

136. It appears that at some point the decision of 18 January 2012 was quashed by a supervising prosecutor. On 21 February 2012 the same investigator again decided not to open a case. The new decision by the investigator read as follows:

“... In this connection it is necessary to conduct a graphological examination of the signatures of the members of electoral commission no. 646 [on the results tables] submitted by the applicant and by the CEC; without [such an examination] it is impossible to establish whether there are elements of the crime provided for by Article 142.1 of the Criminal Code. Such an examination was ordered on 15 February 2012, but so far it has not been completed. On the basis of the above [...], [the investigator] has decided not to open a criminal case under Article 142.1 of the Criminal Code, as there is no evidence of a crime.”

137. According to the applicants, in the months that followed that decision by the investigator was quashed, the case was reopened and then closed again at least once. The applicants did not have more detailed information about all the re-openings and closing of the case.

4. *The sixth applicant (LA elections in district no. 637)*

138. A complaint by the sixth applicant (Mr Belyakov) concerning the falsification of the results of the voting in district no. 637 was lodged with the Investigative Committee. The Investigative Committee forwarded it to the City Electoral Commission. On 30 December 2011 the City Electoral Commission informed the sixth applicant that after the official approval of the results of the voting the applicant had to bring his complaint to a court. On 10 January 2012 the Kolpino District Court considered that forwarding the applicant’s criminal-law complaint to the City Electoral Commission had been unlawful. However, the court did not indicate what sort of action

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<sup>1</sup> The applicants are invited to explain whether the complaint about this district was lodged by the third and the fourth applicant or someone else.

should have been taken by the Investigative Committee in response to the applicant's complaint.

### **I. Administrative complaints to the City Electoral Commission and the judicial review thereof**

139. On 6 December 2011 the third and the fourth applicants (Mr Andronov and Ms Nikolayeva) lodged an administrative complaint with the City Electoral Commission indicating that the official results of the voting (LA and Duma elections) in districts nos. 651 and 654 of the Kolpino district were wrong and did not correspond to those recorded in the results tables.

140. As regards voting station no. 651, Mr Andronov described the process of transmitting the results table to the Territorial Commission. He indicated that the table had been taken by the head of the District Electoral Commission to the Territorial Commission on 5 December 2011. However, when, at about 7:15 p.m., Mr Andronov spoke to the head of the District Commission on the phone, the latter informed him that the document had not yet been handed to the Territorial Commission and that he was waiting in the corridor to be called. Nevertheless, by that time information on station no. 651 had already appeared on the website of the City Electoral Commission. In other words, the City Commission had published information before the Territorial Commission had received the table. The figures published on the website of the City Commission were wrong and the result of United Russia was much higher than the result recorded in the table. The head of the District Commission later informed Mr Andronov that he had handed in the table and received a receipt from the Territorial Commission; according to the third applicant, the receipt bore the correct results of the voting, not those which were later published by the City Commission. A copy of that receipt was later added to the case file of the Territorial Commission. The third applicant recorded all his conversations with the head of the commission and submitted a CD of those recordings to the City Commission. He also indicated that he would be prepared to request a print-out of his telephone connections during the period concerned from the mobile operator.

141. As regards voting station no. 654, the fourth applicant (Ms Nikolayeva) had fewer details about the process of the counting; she simply indicated that, as a voting member of the electoral commission she had received a results table, but the official results published by the City Commission did not correspond those recorded in the table.

142. On 8 December 2011, having considered the administrative complaint of the third applicant, the City Electoral Commission forwarded it to the Kolpino District Prosecutor for further action. It appears that the fourth applicant's complaint was also forwarded there.

143. On 12 December 2011 the City Commission officially approved the results of the voting, including concerning stations nos. 651 and 654.

144. On 19 December 2011 the Kolpino District Prosecutor returned the complaint to the third applicant, explaining that since the results of the voting had been officially approved, the applicants' complaint had to be

considered by the City Electoral Commission. The complaint was therefore sent back to the City Electoral Commission.

145. On 28 December 2011 the City Electoral Commission informed the third applicant, by letter, that after the official approval of the results of the elections they could only be contested in court. The fourth applicant did not receive any reply to his complaint.

146. On 2 and 8 February 2012 the third and fourth applicants lodged a complaint before the Oktyabrskiy District Court contesting the refusal of the City Electoral Commission to examine their complaints.

147. On 9 and 15 February 2012 the Oktyabrskiy District Court rejected the applicants' complaint. The relevant part of the court's reasoning in both decisions reads as follows:

“In her complaint [Ms] Nikolayeva pointed to a possible falsification of the results of the voting, which is a crime under Article 141-1 of the Criminal Code of the Russian Federation [; however,] the electoral commission of Saint-Petersburg has no power to establish, investigate or ascertain circumstances, events or actions which may trigger criminal liability, [and therefore] the court considers that it was justified in forwarding the complaint to the Kolpino district prosecutor's office”.

148. The two applicants appealed, but on 16 April and 10 May 2012 the Saint-Petersburg City Court upheld the lower court's decisions.

## **J. Legislative framework of the elections of December 2011 in Saint-Petersburg**

149. The elections at the city level were governed by Law no. 252-35 of the City of Saint-Petersburg “on the election of deputies to the Legislative Assembly of Saint-Petersburg” of 15 June 2005 (the Saint-Petersburg Elections Act).

150. The elections at the federal level were governed by Federal Law no. 51-FZ “on the election of deputies to the State Duma of the Federal Assembly of the Russian Federation” of 18 May 2005 (the Duma Elections Act).

151. In addition, federal elections are governed by Federal Law no. 67-FZ on the basic principles of elections and referendums of 12 June 2002 (the Basic Guarantees Act).

### *1. Rights of observers and members of electoral commissions during federal elections*

152. Section 30(9) of the Basic Guarantees Act provides that observers have the right to familiarise themselves with the results tables of the electoral commissions and obtain “certified copies of those tables”.

153. Section 29(23)(g) of the Basic Guarantees Act provides that members of the electoral commissions (both voting members and members with a consultative status) have the right to obtain certified copies of documents drawn up by the electoral commissions. Although tables of results of voting are not mentioned explicitly, that provision appears to apply to such documents too.

2. *Rights of observers and members of electoral elections during LA elections at city level*

154. The Saint-Petersburg Elections Act contains provisions empowering observers and members of electoral commissions to receive copies of results tables identical to those contained in the federal legislation (section 17(9)(e) and section 16(11)(g)).

3. *Recounting of votes*

155. Section 69(9) of the Basic Guarantees Act reads as follows:

“Where the tables [...] of the results of the voting contain errors or discrepancies, [or] whether there are doubts as to whether the results tables [...] received from the lower commission have been drawn up correctly, the higher commission has the power to order a recount of the votes [by the lower commission...] or conduct a recount itself [...]. The recount shall be conducted in the presence of a voting member (or members) of the higher commission by the commission which drew up and approved the results table [that is, the lower commission] or by the commission which ordered the recount [that is, the higher commission] with mandatory notification of the non-voting members of the commission, observers, candidates and other people [...] who have the right to be present at the recount.”

## COMPLAINTS

The applicants complain under Article 3 of Protocol No. 1 to the Convention about the elections of 4 December 2011 in Saint-Petersburg, mostly (but not exclusively) in the Kolpino district. Primarily, they allege that the official results did not reflect the actual results of voting as reflected in the “original results tables” drawn up after the counting of votes at the voting stations. They also complain of manipulation and irregularities at the voting stations during the process of voting. They also complain, at least in essence, that they did not have effective remedies in respect of the violations of their rights under Article 3 of Protocol No. 1 to the Convention.

## **QUESTIONS TO THE PARTIES**

### **A. Clarifications to be made to the facts of the case**

The parties are invited to address the questions below. If the facts of the case contain any inaccuracies or important lacunas, the parties are invited to comment on them as well, in the light of the questions formulated by the Court and having regard to the issues raised in the footnotes to the facts.

In answering the questions the parties are invited to refer to the relevant decisions of the domestic court, indicate corresponding pages of the trial record and, if necessary, quote from the domestic decisions and other relevant documents.

In addition, since the present case concerns elections of two levels, several applicants with a different status, a large number of electoral districts and territories, and several parallel sets of domestic proceedings, the parties are invited, in answering the Court's questions, to indicate clearly (1) the level of elections concerned (LA or Duma), (2) the electoral districts or territories concerned, (3) the type of the violation alleged, (4) the names of the applicants involved in the domestic proceedings and their status.

### **B. Questions about the procedures in which the applicants' complaints have been examined**

1. Did the applicants have "effective domestic remedies" to complain about the alleged breaches of their rights under Article 3 of Protocol No. 1 to the Convention, as required by Article 13 thereof?

2. Where a voter or a candidate complains of a violation akin to that at the heart of the present case (fraud in the process of counting votes and recording the results), what remedies are available to them under the domestic law? The Government are invited to indicate (from the position of the Russian legislation as it stood at the relevant time):

- what sort of complaint/claim/petition etc. (hereinafter- "complaint") must be lodged in such situations;
- what sort of remedy or redress the complainant should seek in such proceedings;
- to which body such a complaint must be addressed (an electoral commission, the Investigative Committee, a prosecutor, a court, etc.);
- at what level it should be made (district, territory, City etc.),
- who has standing to bring such complaints;

- what powers the body entitled to examine such complaints has;
- what the modalities of bringing such complaints (such as time-limits, court fees and other similar procedural conditions) are.

The Government are invited to refer to specific provisions of the Russian law which provide answers to or are relevant to each of the points raised above and provide an English translation of the relevant parts.

3. In the particular circumstances of the present case, did the courts and other competent bodies (such as the Investigative Committee, the prosecutor's office, the electoral commissions etc.) examine and address all the essential issues raised by the applicants in their complaints?

4. Did the procedure in which the applicants' grievances were examined, in particular the court procedure, guarantee their "effective examination"? In particular, did the courts examine all the relevant and essential sources of information which were at their disposal or could have been easily obtained?

### **C. Questions about the elections of December 2011**

5. What is the main reason (or reasons) for the difference between the figures contained in the "original results tables" received by the applicants from the members of the District Commissions and observers, and the official results published and approved by the CEC? The parties are requested to indicate, in respect of each voting station concerned, what the official explanation for the difference in figures was, that is, whether it was a recount at the level of the District Commission, a recount at the level of the Territorial Commission or something else.

6. The Government are invited to submit the "correct" results tables (i.e. those which were used by the Territorial and City Commissions to calculate the aggregate results of the elections). Did the City Commission, Territorial Commission or District Commission keep copies of the "original" tables where recalculation took place? If so, the Government are invited to produce them. If not, what happened to those original tables?

7. If the differences between the original tables and the official figures are explained by a recount, did the recounting procedure offer sufficient procedural guarantees to prevent fraud? In particular:

- (a) What body or official decided that a recount was needed?
- (b) What were the reasons for the recount - in general and in each specific case where a recount was ordered? The Government are invited to produce documents of the electoral commission describing those reasons and all supporting documents.
- (c) In what form were decisions on recounting taken?
- (d) Were the members of the electoral commissions and observers notified of the recount? Who specifically was notified and in what form (letters, e-mails, telephone calls etc.)? Is there any proof of notification of

the members of the commissions and observers in the records of the Territorial Commissions and City Commission and how can that be verified?

(e) Were the members of the electoral commissions, observers and candidates given enough time to come and participate in the recount?

(f) Where a recount took place, at what time was it held and how much time did it take? Did it involve the physical recounting of ballot papers? In that case, were the ballot papers physically transported from the district electoral commissions to the territorial electoral commissions?

(g) Did the body responsible for the recount inform interested parties (such as candidates, members of the electoral commissions, observers) about the results of the recount and, if so, when and how was that done? Who, besides members of the territorial commissions, was present and observed the process of recounting? Did the interested parties receive the tables of results of the recount and copies of decisions ordering the recount and if so, when?

(h) How many ballot papers in total did the members of the territorial commissions have to process in order to recount the votes (for each electoral territory)? How many people were involved in the recount and how much time did it take?

8. The parties are invited to explain how the members of the electoral commissions (District and Territorial) were appointed (including voting and non-voting members), which parties did they represent and how many members and observers were affiliated with other parties than United Russia (in absolute figures and in proportion).

9. The Government are invited to produce the trial record of the proceedings initiated before the Kolpino District Court by Mr Yakushenko, in particular (a) the record of the oral testimony of witnesses called at the applicant's request, (b) the record of the oral testimony of Ms S., who was a member of Territorial Commission no. 21, (c) the written and oral observations in reply to the applicant's complaint by the Territorial Commission and City Commission, (d) the written and oral opinion of the prosecutor, (e) applications made by the parties during the proceedings, and (f) procedural decisions taken by the court.

10. The applicants and the Government are invited to compare, based on the official statistics, patterns of voting at the elections to the LA and to the Duma. In particular, was there a difference in the results of voting for the same party depending on the level of elections? Can the same difference be observed if "suspect" districts are compared with "normal" ones (where the applicants accept that the official results reflect the actual result of the voting)? Is the same difference observed if only the data from the "original results tables" (those on which the applicants rely) is considered?

11. In those districts where a recount was ordered, did that recount always lead to an increase in the result of United Russia? In how many cases did a recount lead to a loss of votes by United Russia (if compared with data from the copies of results tables which the observers and members



of the District Commissions received after the original counting of votes on the night of the elections)?

12. As regards statistical information, the parties are encouraged to provide it in the form of charts, graphs and tables, with explanatory tables where necessary. The parties are also invited, when referring to a provision of the Russian law, to quote it in English, and to verify the accuracy of quotes made by the opposite party.