



Automatic and indiscriminate ban on Russian prisoners' voting rights was disproportionate

In today's Chamber judgment in the case of [Anchugov and Gladkov v. Russia](#) (application no. 11157/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 of Protocol No. 1 (right to free elections) of the European Convention on Human Rights

The case concerned two prisoners who complained in particular that their disenfranchisement had violated their right to vote and had prevented them from participating in a number of elections.

The Court found that the applicants had been deprived of their right to vote in parliamentary elections regardless of the length of their sentence, of the nature or gravity of their offence or of their individual circumstances. It rejected the Government's argument that this case was essentially different from the cases against other countries, notably Italy and the United Kingdom, in which the Court had addressed the issue of disenfranchisement, as the ban on prisoners' voting rights in Russia was laid down in the Constitution rather than in an act of parliament. Indeed, all acts of a member State are subject to scrutiny under the Convention, regardless of the type of measure in question. The Court therefore concluded that, despite the room for manoeuvre they had to decide on such matters, the Russian authorities had gone too far in applying an automatic and indiscriminate ban on the electoral rights of convicted prisoners.

As regards the implementation of the judgment, and in view of the complexity of amending the Constitution, the Court considered that it was open to the Government to explore all possible ways to ensure compliance with the Convention, including through some form of political process or by interpreting the Constitution in harmony with the Convention.

Principal facts

The first applicant, Sergey Borisovich Anchugov, is a Russian national who was born in 1971 and lives in Chelyabinsk (Russia). In a judgment of June 1998, he was convicted on a charge of murder and several counts of theft and fraud and sentenced to death. The second applicant, Vladimir Mikhaylovich Gladkov, is a Russian national who was born in 1966 and lives in Moscow. In November 1998, he was convicted of murder, aggravated robbery, participation in an organised criminal group and resistance to police officers and sentenced to death. Both applicants' convictions were upheld on appeal but their death sentences were commuted to 15 years' imprisonment in, respectively, December 1999 and February 2000.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Following their transfer to prison, both Mr Anchugov and Mr Gladkov were debarred from voting in elections in application of Article 32 § 3 of the Russian Constitution. In particular, they were ineligible to vote in the elections of members of the State Duma held in December 2003 and December 2007 as well as in the presidential elections of March 2000, March 2004 and March 2008. Mr Gladkov was also unable to vote in additional parliamentary elections held in the electoral constituency of his home address in December 2004.

At various times, both Mr Anchugov and Mr Gladkov challenged Article 32 § 3 of the Constitution before the Russian Constitutional Court, without success. Mr Gladkov then repeatedly brought proceedings against election commissions at various levels complaining of their refusal to allow him to vote in parliamentary and presidential elections. However, his claims were rejected several times by appellate courts from December 2007 to September 2008.

In his first letter to the European Court of Human Rights, dispatched on 17 February 2004, Mr Anchugov described the circumstances of his case and formulated his complaint. He later reproduced his original submissions in an application form received by the Court in June 2004. Mr Gladkov filed an application with the Court in December 2004 which was not dispatched until February 2005. Subsequently, both Mr Anchugov and Mr Gladkov updated their applications referring to new elections in which they were still ineligible to vote.

Mr Anchugov was still imprisoned on the date of his latest correspondence with the Court, whilst Mr Gladkov was released from prison on parole in April 2008.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 (right to free elections), Mr Anchugov and Mr Gladkov complained that their disenfranchisement on the ground that they were convicted prisoners had violated their right to vote and, in particular, that they had been ineligible to vote in a number of elections held on various date from 2000 to 2008. They also complained under Article 10 (freedom of expression) that their disenfranchisement had breached their right to express their opinion, and under Article 14 (prohibition of discrimination) that they had been discriminated against as convicted prisoners.

The application was lodged with the European Court of Human Rights on 16 February 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 3 of Protocol No. 1 (right to free elections)

As concerned the admissibility of the applicants' complaints, the Court reiterated that Protocol No. 1 did not apply to the elections of a Head of State. Therefore, the part of Mr Anchugov's and Mr Gladkov's applications concerning their ineligibility to vote in presidential elections was not covered by the European Convention and the Court only had competence to address their complaints in so far as they concerned their inability to vote in elections of members of the State Duma. Mr Gladkov's complaint, lodged in February 2005, about his inability to vote in the parliamentary elections of 7 December 2003 was also declared inadmissible for failure to comply with the six-month time-limit for lodging a case.

However, the applicants' complaints as to their disenfranchisement under Article 32 § 3 of the Russian Constitution, which concerned a continuing situation against which no domestic remedy was available, and their ineligibility to vote in the parliamentary elections held on December 2003 and December 2007, as regards Mr Anchugov, and on December 2004 and December 2007, as regards Mr Gladkov, had not been lodged out of time and were therefore declared admissible.

As concerned the right to vote in parliamentary elections, the Court found that Article 32 § 3 of the Constitution, under which Mr Anchugov and Mr Gladkov had been deprived of their right to vote, applied automatically and indiscriminately to all convicted prisoners, regardless of the length of their sentence and irrespective of the nature or gravity of their offence or of their individual circumstances.

Whilst the Court was prepared to accept that the applicants' disenfranchisement had pursued the aims of enhancing civic responsibility and respect for the rule of law as well as ensuring the proper functioning of civil society and the democratic regime, it could not accept the Government's argument regarding the proportionality of the restrictions imposed on both Mr Anchugov and Mr Gladkov. In particular, the Court rejected the Government's argument that the ban was not indiscriminate since only those prisoners who had been convicted of criminal offences sufficiently serious to warrant an immediate custodial sentence had been disenfranchised. Indeed, whilst a large category of prisoners, namely those in detention during judicial proceedings, retained their right to vote, disenfranchisement nonetheless concerned a wide range of offenders and sentences from two months – which was the minimum period of imprisonment following conviction in Russia – to life and from relatively minor offences to the most serious ones.

Nor was there evidence that, when deciding whether or not an immediate custodial sentence should be imposed, the Russian courts took into account the fact that such a sentence would involve disenfranchisement, or that they could make a realistic assessment of the proportionality of disenfranchisement in the light of the circumstances of each case.

Moreover, the Court rejected the Government's argument that this case was essentially different from the cases against other countries in which the Court had addressed the issue of disenfranchisement², as the ban on prisoners' voting rights in Russia was laid down in the Constitution – the basic law of Russia adopted following a nationwide vote – rather than in an act of parliament. It stressed that all acts of a member State are

² In the case of *Hirst v. the United Kingdom (no. 2)* (application no. 74025/01) of 6 October 2005, the Court had come to the same conclusion about the legislation of the United Kingdom depriving all convicted prisoners serving sentences of the right to vote. On the contrary, in the case of *Scoppola v. Italy (no. 3)* (application no. 126/05) of 22 May 2012, it could not be said that the ban on the electoral rights of convicted prisoners had an automatic and indiscriminate character as the legislation took into account such factors as the gravity of the offence and the conduct of the offender.

subject to scrutiny under the Convention, regardless of the type of measure concerned. Besides, no relevant materials had been provided to the Court showing that an attempt had been made to weigh the competing interest or to assess the proportionality of a blanket ban on convicted prisoners' voting rights. The Court therefore concluded that, despite the room for manoeuvre they had to decide on such matters, the Russian authorities had gone too far in applying an automatic and indiscriminate ban on the electoral rights of convicted prisoners.

As regards the implementation of the judgment, it noted the Government's argument that the ban was imposed by a provision of the Russian Constitution which could not be amended by the Parliament and could only be revised by adopting a new Constitution, which would involve a particularly complex procedure. However, it was primarily for the Russian authorities to choose, subject to the supervision of the Committee of Ministers, the executive arm of the Council of Europe, the means to be used in order to bring its legislation into line with the Convention once the judgment in this case became final. Indeed, it was open to the Government to explore all possible ways to ensure compliance with Article 3 of Protocol No. 1, including through some form of political process or by interpreting the Russian Constitution in harmony with the Convention.

Articles 10 and 14 (freedom of expression and prohibition of discrimination)

The Court found that no separate issue arose under these Articles.

Article 41 (just satisfaction)

The court found that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants, and dismissed their claim for just satisfaction.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.