

La Corte EDU sulla mancanza di garanzie giurisdizionali sufficienti contro la violazione dei diritti elettorali

(CEDU, sez. III, sent. 28 settembre 2021, ric. nn. 41982/12 e 6599/14)

Con la decisione in oggetto, la Corte EDU si è pronunciata sui ricorsi presentati contro la Federazione Russa da parte del Partito Democratico unito Russo, della sua sezione regionale e di due cittadini russi per violazione dell'art. 3 del Protocollo n. 1 alla Convenzione EDU, in combinato disposto con l'art. 13.

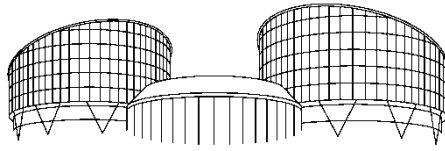
Nella specie, i ricorrenti hanno denunciato l'inadeguatezza delle indagini svolte dalle autorità nazionali sulle accuse di gravi irregolarità che si sarebbero verificate in occasione delle elezioni per la Duma di Stato della Federazione Russa, tenutesi il 4 dicembre 2011; in particolare, i ricorrenti lamentavano che numerose infrazioni sarebbero state riscontrate nelle operazioni di conteggio dei voti, tabulazione e comunicazione dei risultati ottenuti nella competizione elettorale e che le autorità giudiziarie nazionali non avessero garantito un effettivo controllo giurisdizionale sulle violazioni denunciate.

Ritenuta l'ammissibilità e la non manifesta infondatezza delle doglianze, la Corte EDU - in aderenza ai principi consolidatisi nell'evoluzione della propria giurisprudenza in materia - ha dapprima valutato il tenore delle accuse mosse dai ricorrenti, verificando la serietà delle denunce presentate alle autorità nazionali contro i brogli elettorali, per poi passare a indagare l'adeguatezza degli accertamenti compiuti in sede giurisdizionale sulla validità dei risultati elettorali.

Nel caso di specie, i giudici di Strasburgo nulla hanno obiettato circa la gravità delle affermazioni sostenute dai ricorrenti, piuttosto ritenendo l'insufficienza dell'operato dei giudici nazionali i quali avrebbero omesso di esaminare il merito delle questioni, ignorando gli elementi probatori che indicassero gravi e diffuse violazioni degli obblighi procedurali e di trasparenza del sistema elettorale.

Ne consegue che, a giudizio della Corte, i giudici nazionali abbiano mancato di assicurare garanzie idonee e sufficienti contro la denunciata, grave violazione dei diritti elettorali, in contrasto con la previsione contenuta all'art. 3 del Protocollo n. 1 alla Convenzione EDU che mira ad assicurare la democraticità delle elezioni.

Per questi motivi, la Corte ha dichiarato la fondatezza dei ricorsi presentati contro la Federazione Russa e, per l'effetto, condannato lo Stato convenuto al risarcimento dei danni subiti dai ricorrenti.



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

THIRD SECTION

CASE OF XXX v. RUSSIA

(Applications nos. 41982/12 and 6599/14)

JUDGMENT

STRASBOURG

28 September 2021

This judgment is final but it may be subject to editorial revision.

In the case of XXX v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Georgios A. Serghides, *President,*

María Elósegui,

Andreas Zünd, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 41982/12 and 6599/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a political party registered in the Russian Federation, XXX (“XXX” or “the first applicant party”), its regional branch, the XXX (“XXX” or “the second applicant party”), and two Russian nationals, XXX and XXX (“the third applicant” and “the fourth applicant”), on the dates indicated in the Appendix;

the decision to give notice to the Russian Government (“the Government”) of the applications;

the parties’ observations;

the decision to reject the Government’s objections to examination of the applications by the Committee;

Having deliberated in private on 7 September 2021,

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

INTRODUCTION

1. The case concerns the alleged failure of the domestic authorities to adequately investigate complaints of serious irregularities during the elections to the State Duma of the Russian Federation (the lower chamber of the Russian Parliament) (“the Duma”) held on 4 December 2011.

THE FACTS

2. The applicants' details are set out in the appended table. They were represented by Mr I. Sivoldayev, a lawyer practising in Voronezh.

3. The Government were initially represented by Ms V. Milinchuk, the Representative of the Russian Federation to the European Court of Human Rights, then by her subsequent successors in that office, Mr M. Galperin, and Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. ELECTIONS TO THE DUMA

5. On 4 December 2011 elections to the Duma were held.

6. General information about the organisation of elections, the parties and the system of vote counting is outlined in the case of *Davydov and Others v. Russia* (no. 75947/11, §§ 10-16 and 20, 30 May 2017). While the latter case refers to elections in St Petersburg, the system operated similarly in each constituency of the Russian Federation.

7. The parties that took part in the elections were as follows: XXX ("ER"); XXX ("SR"); XXX ("PR"); Pravoye Delo ("PD"); XXX ("the KPRF"); XXX ("the LDPR"); and XXX.

II. ALLEGED IRREGULARITIES

8. According to the applicants, in the course of the elections numerous irregularities were detected as regards the vote counting, tabulation and reporting of the results obtained during the Duma elections in the Voronezh Region. The precinct election commissions ("PECs") allegedly altered the results of the elections by systematically assigning more votes to the ruling party ("ER") and its candidates, and sometimes by stripping the opposition parties (including XXX) of their votes.

A. Application no. 41982/12

9. The applicants challenged the results in respect of eighteen polling stations of the Kalacheyevskiy District in the Voronezh Region: nos. 16/01, 16/02, 16/06, 16/07, 16/08, 16/11, 16/12, 16/13, 16/14, 16/20, 16/21, 16/29, 16/33, 16/34, 16/39, 16/42, 16/43 and 16/44.

1. *Proceedings brought by the first applicant party*

10. On 11 March 2012 the first applicant party and SR lodged a complaint challenging the results of the elections to the Duma. They claimed that (1) the PECs had falsified the results of the elections in respect of the eighteen above-mentioned polling stations, and (2) such actions had been in breach of Article 3 of Protocol No. 1 to the Convention. They submitted a list of the allegedly incorrect data in the election results and asked the court for the data to be corrected. The allegedly incorrect data concerned: (1) the number of ballots contained in the ballot boxes; (2) the number of unused ballots; (3) the number of valid or invalid ballots; and (4) the number of votes cast in favour of the participating parties, including ER, XXX and SR.

11. In the claimants' opinion, the breaches had resulted in the following: (1) the number of valid ballots had been inflated by 1,967; (2) the number of invalid ballots had decreased by 191; (3) the number of unused ballots had decreased by 2,057; (4) the votes cast in favour of the ruling party (ER) had been inflated by 4,295, (5) the LDPR had lost 1,736 votes; (6) PR had lost 118 votes; (7) the first applicant party had lost 205 votes; and (8) PD had lost 51 votes.

12. The claimants submitted that the observers who had been present at the eighteen polling stations during the vote counts had been provided with copies of the records containing the results of the elections in respect of each of the eighteen polling stations. However, the records

transmitted later by the PECs to the Territorial Election Commission (TEC) contained different data from those documented in the “original” records. In support of their allegations, the claimants submitted copies of the records containing the election results received by the observers.

13. In particular, the alleged discrepancies for polling station no. 16/01 are summarised in the table below. The third column indicates the figures as recorded in the “original” copy of the records. This document was attested by the signature of the commission’s chairperson and a stamp and indicated that it was issued at 12.30 a.m. on 5 December 2011. The fourth column of figures comes from the official results for the constituency as entered in the “Vybory” database and made public.

Line №	Line description	“Original” record	Official result
4	Number of ballots issued at the polling station	1,455	1,755
6	Number of unused ballots invalidated after the end of the voting	807	507
8	Number of used ballots in the stationary ballot boxes	1,455	1,755
9	Number of invalid ballots	32	12
10	Total number of valid ballots	1,625	1,946
19	Votes cast for SR	262	262
20	Votes cast for the LDPR	170	5
21	Votes cast for PR	17	5
22	Votes cast for the KPRF	375	375
23	Votes cast for XXX	46	6
24	Votes cast for ER	747	1,291
25	Votes cast for PD	9	2

14. According to the claimants’ calculations, 4,495 votes for ER were added across the eighteen polling stations, amounting to about 12% of the total number of votes cast on that day in the Kalacheyevskiy District. Conversely, the number of votes cast for the first applicant party was reduced by 205.

(a) Judicial review at the first level of jurisdiction

15. On an unspecified date the Kalacheyevskiy District Court of the Voronezh Region started the hearing of the case. The first applicant party and SR maintained their position. The KPRF was admitted as a third party to the proceedings. Its representative supported the claim. The prosecutor taking part in the proceedings called for the claim to be dismissed.

16. The court heard evidence from the PECs’ chairpersons and secretaries, who denied the claimants’ allegations. They further submitted that all of them had conducted the vote counts in the presence of the observers, in strict compliance with the applicable laws. The observers had interfered with, and slowed down, the process. As to the potential errors in the records, some of the persons questioned attributed them to fatigue on the part of the PEC members who had performed the actual counting.

17. The court also heard evidence from the observers assigned to the eighteen polling stations by the KPRF and from one observer representing SR. They explained that they had received the records of the election results after the vote count had been completed. The data in the records had

corresponded to those published on the noticeboard. The election results announced officially on the following day had differed from the results recorded in the “original” records they had received.

18. Witness P.S., a member of the PEC at polling station no. 16/43, submitted that, according to the vote count, only 42% of the votes had been cast in favour of ER. The chairperson and another member of the commission had been concerned that they would be fired for such a result. The PEC had decreased the number of votes cast in favour of the LDPR, the first applicant party and PD, and assigned them to ER. The witness also claimed that one of the signatures in the “official” record against his name had not been his.

19. Witness N.S., the TEC deputy chairperson, submitted that on 5 December 2011 from 3 to 5 a.m. the computer system had stopped responding and they had been unable to enter the data regarding the election results. At the time of the system shutdown, the TEC had not received the records from the eighteen PECs in question. In his opinion, the system had been manipulated in order to rig the election results.

20. Witness Ch., a member of the TEC, submitted that the figures in the records submitted to the TEC in respect of the eighteen polling stations had differed from those recorded in the records issued to the observers. He had seen the persons who had brought the ballot boxes amend the records during the two hours when the computer system had been shut down.

21. On 23 July 2012 the District Court dismissed the claims, noting as follows:

“The claimants failed to submit evidence showing consistently that on election day [the eighteen PECs] had counted the votes and determined the election results in violation of the laws on elections or that the election results did not reflect the true expression of the voters’ will. Nor did [the claimants] submit any evidence to prove that their right to take part in the elections had been infringed ...

[The court] established that the process of voting, vote counting, determination of the election results, completion of the records by the PECs and issuance of the copies of the records was in compliance with the applicable laws on elections ... The claimants’ arguments are based on an incorrect interpretation of substantive laws, and on speculation and emotions that cannot be taken into consideration by the court. They are of no relevance for the correct consideration of the case.

On 2 July 2012 [the investigator] refused to institute criminal proceedings ... as regards the alleged election fraud at polling station no. 16/01 ...

[The claimants and the third party] justify their allegations by relying on the copies of the records issued to the observers on behalf of the KPRF and SR.

Admittedly, the [content] of the copies of the records submitted by the claimants and the third party differs from [the data contained in] those received by the TEC.

...

[The claimants and the third party] refused categorically to submit the original copies of the records which [had been issued to the observers]. In such circumstances the court is unable to verify the documents’ authenticity and admit them in evidence.

The court explained to SR’s representative that it was necessary to question the observers on [their] behalf who had obtained the copies of the records. However, no information concerning those persons was provided and it was impossible to obtain their attendance.

Regard being had to the above, the court considers the copies of the records containing the election results [submitted in respect of the eighteen polling stations] to be inadmissible in evidence.

...

... No evidence has been submitted to show that any of the PECs' members have been found administratively liable for [failure to act in compliance with law]. Accordingly, the allegation that there were errors in the content of the record [issued by PEC no. 16/21] has not been substantiated.

...

No criminal investigation has been opened in respect of members of the PECs on charges of [election fraud]. Accordingly, the allegations of election fraud have not been substantiated."

22. The court dismissed the statement made by P.S., relying on the forensic expert's findings that it could not be established whether the signature attributed to P.S. had been authentic or forged.

23. The first applicant party, SR and the KPRF appealed against the judgment of 23 July 2012.

(b) Appeal proceedings

24. On 1 November 2012 the Voronezh Regional Court upheld the judgment of 23 July 2012 on appeal, noting as follows:

"... the court at the first level of jurisdiction has correctly determined the circumstances of the case. Its findings are based on the fact that the copies of the records submitted by the claimants cannot be admitted in evidence. They do not correspond to the requirements set out in [the applicable legislation]. No other evidence in support of the argument that the election results were based on false data has been submitted. [The District Court] has found correctly that there were no grounds to satisfy the claims.

The statements made by the observers and PEC members cannot be considered in evidence given that the election results should be determined exclusively on the basis of the vote count. Such data can be obtained on the basis of the records of election results or duly certified copies of them. Accordingly, the statements made by the observers and by PEC members and secretaries are of no significance.

[The appellate court] affirms the District Court's finding that there have been no significant violations in the course of the vote count and preparation of the records.

...

The argument set out in the statement of appeal to the effect that the validity and authenticity of the copy of the records which is duly certified by the officer in charge should be presumed cannot be accepted. The copies of the records submitted by the claimants do not comply with the legal requirements for such copies. The required information is missing. The time of the preparation of the record is not indicated. The copy number is missing. In some [of the records] the figures are not reproduced in words, and so on.

The information contained in the copies of the records submitted is refuted by other objective evidence contained in the case file. The claimants have failed to provide any other evidence in compliance with [the applicable laws]."

2. *Proceedings initiated by individual voters, observers and members of PECs*

25. Several voters, observers and PEC members challenged the election results as reported by PECs nos. 16/02, 16/06, 16/11, 16/12, 16/21, 16/29, 16/33, 16/34, 16/39, and 16/43. The third applicant was a PEC member with an advisory vote appointed by the KPRF. The fourth applicant was an observer

on behalf of the KPRF who had taken part in the vote count. The claimants alleged that the vote count conducted by the PEC had differed from the results submitted to, and published by, the TEC. The courts discontinued the proceedings, noting that the claimants did not have standing to challenge the election results. The claimants appealed against those decisions. The second applicant party took part in the appeal proceedings as a third party. On various dates between 20 March and 11 December 2012 the court of appeal upheld the findings of the lower courts.

3. *Proceedings brought by SR*

26. The regional branch of SR challenged the election results as reported by PECs nos. 16/01, 16/07, 16/11, 16/12, 16/13, 16/14, 16/20, 16/29, 16/33, 16/34, 16/39, 16/42, 16/43, and 16/44. In each case the courts discontinued the proceedings, noting that the claimant did not have standing to challenge the election results. The claimants appealed against those decisions. The second applicant party took part in the appeal proceedings as a third party. On various dates between 5 April and 26 June 2012 the court of appeal upheld the findings of the lower courts.

4. *Proceedings before the Constitutional Court*

27. On 22 April 2013 the Constitutional Court allowed a complaint lodged by ten persons, including the third applicant, challenging the compliance of legislation on elections with the Constitution of the Russian Federation. It confirmed the right of individual voters to challenge election results. The Constitutional Court's findings on the issue are set out in detail in *Davydov and Others* (cited above, §§ 80-88).

5. *Administrative proceedings*

28. On 21 September 2012 the first and second applicant parties, jointly with KPRF and SR, asked the Kalacheyevskiy District Prosecutor's Office to open administrative proceedings in respect of irregularities as regards the vote count. On 24 October 2012 the District Prosecutor's Office discerned no grounds to open such proceedings. The parties appealed, and on 7 December 2012 the District Court found that the prosecutor had failed to carry out a proper investigation into the complaint and quashed the decision of 24 October 2012. On 29 January 2013 the Regional Court upheld the refusal by the prosecutor's office to institute the proceedings.

B. Application no. 6599/14

29. On 3 December 2012 the first applicant party and SR applied to the Semilukskiy District Court of the Voronezh Region, challenging the decision ordering a recount of the votes in respect of PECs:

nos. 35/13, 35/16, 35/18, 35/21, 35/22, 35/24, 35/25, 35/27, 35/28, 35/29, 35/33, 35/35, 35/36 and 35/50.

They submitted that SR's representatives had been present during the initial vote count. At the time the PECs had established and recorded the election results. The party's representatives had received the relevant records. However, the official election results published by the TEC had been different from those recorded in the records received by SR's representatives. According to the official version, the fourteen PECs had decided to recount the votes. The recount had been conducted in the absence of any legal basis or legal ground. None of the interested parties, including observers, journalists, and so on, had been informed of the decision to recount the votes. As a result of the recount, the number of votes cast in favour of the ruling party increased by 1,493.

30. On 14 December 2012 materials relating to the elections of December 2011, including the ballot papers, were destroyed.

31. On 3 April 2013 the District Court dismissed the complaint. It established that the PEC members with an advisory vote had not been informed of the decision ordering the recount of the votes and that the recount had taken place in their absence. The court also accepted that the election results had been based on the records reissued by the fourteen PECs. In that connection it noted that the copies of the records presented by the claimants, containing results which differed from the official ones, had been issued prematurely and that the data contained therein had not been verified. The court conceded that the fact that the PEC members had received the records containing incorrect data had amounted to a breach of the applicable legislation but had not led to a distortion of the voters' intent. Nor did the court accept that the difference between the information contained in the records presented by the claimants and the official election results proved that the data in the records had been correct. It noted that the records submitted by the claimants had not been in conformity with the applicable legal requirements as to their form and dismissed them as inadmissible in evidence.

32. On 16 July 2013 the Regional Court upheld the judgment of 3 April 2013 on appeal.

33. On the same day, the Regional Court issued a separate ruling (*частное определение*) directed at the Semilukskiy District TEC. It reminded it of the duty to fully comply with the requirements of the applicable legislation concerning, *inter alia*, the copies of the records of the voting results, and the recount procedure. The Regional Court found that the PECs and the TEC concerned had not informed all members of the commissions of the recounts and the drawing up of new records, in breach of the relevant legislation. The TEC was asked to report to the Regional Court within one month on the measures taken to comply with such requirements in the future.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

34. An overview of the relevant domestic legal framework and practice and international documents is provided in *Davydov and Others v. Russia* (no. 75947/11, §§ 173-98, 30 May 2017).

THE LAW

I. JOINDER OF THE APPLICATIONS

35. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly.

II. LOCUS STANDI

36. On 4 May 2021 the applicants' representative informed the Court that fourth applicant (Mr S. XXX) died on 4 November 2020 and that his widow, Ms Nina Timofeevna XXXa, wished to pursue the application before the Court in his stead.

37. The Government claimed that Ms N. XXXa should not be allowed to pursue the application in stead of her late husband, because the rights under Article 3 of Protocol No. 1 of the Convention to which he referred to are eminently personal and non-transferrable.

38. The Court notes that the decisive point in the present case is not whether the rights in question are or are not transferable to the heirs wishing to pursue the procedure, but whether the heirs can in principle claim a legitimate interest in asking the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court (see *Singh and Others v. Greece*, no. 60041/13, § 26, 19 January 2017; *Burlya and Others*

v. Ukraine, no. 3289/10, § 68, 6 November 2018; and *Garbuz v. Ukraine*, no. 72681/10, § 28, 19 February 2019).

39. Taking into account the materials before it, the Court considers that Ms N. XXXa has a legitimate interest in pursuing the application. It therefore holds that she has standing to continue the present proceedings in her late husband's stead (see, among recent examples, *Mifsud v. Malta*, no. 62257/15, §§ 38-40, 29 January 2019, and *Radzevil v. Ukraine*, no. 36600/09, § 47, 10 December 2019).

III. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

40. The applicants complained under Article 3 of Protocol No. 1 to the Convention in conjunction with Article 13 of the Convention that the official results of the elections to the Duma had not been based on the vote counts conducted by the PECs in the Kalacheyevskiy and Semilukskiy Districts and that the national judicial authorities had failed to ensure a proper judicial review of their complaints. The Court will examine those allegations under Article 3 of Protocol No. 1, which reads as follows:

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

A. Admissibility

41. The Government submitted that the applicants had failed to bring their grievances to the attention of the election commissions. They also pointed out that none of the applicants had asked the competent national authorities to open a criminal or administrative investigation into their allegations of election fraud or any other violations in the course of the elections. Neither the third nor the fourth applicant had applied for the reopening of their cases after the review of the applicable legislation by the Constitutional Court of the Russian Federation.

42. The applicants contended that they had exhausted the domestic remedies in respect of their grievances. As to the possibility for the third and fourth applicants to apply for a review of the decisions in their cases following the decision of the Constitutional Court of the Russian Federation, the relevant documents had been already destroyed by the PECs and any application for a review of the cases would have been devoid of purpose.

43. The Court observes that the applicants applied for a judicial review of their complaints at the domestic level. The national courts were competent, as a matter of law, to perform an independent and effective evaluation of the allegations at stake (compare *Davydov and Others*, cited above, §§ 333-34). Accordingly, the applicants complied with the requirements set out in Article 35 of the Convention by bringing their grievances to the attention of the national courts. The Court also accepts the applicants' position that it was not incumbent on them to apply for the reopening of the proceedings in their respective cases following the Constitutional Court's decision of 22 April 2013 (*ibid.*, § 323).

44. The Court notes that the applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicants maintained their complaints. They argued that they had submitted arguable claims concerning serious violations in the course of the vote counting and reporting by the electoral commissions and that the domestic courts had failed to ensure an effective examination of those claims. The courts had ignored the obvious violations committed by the PECs and had refused to recount the votes. The complaints lodged by the third and fourth applicants had not been examined on the merits.

46. The Government submitted that the applicants' grievances had been duly considered by the national judicial authorities at two levels of jurisdiction; that the applicants' rights had not been infringed; and that the elections had been conducted in strict compliance with the law.

47. As regards the proceedings which ended with the judgment of the Voronezh Regional Court on 1 November 2012, the Government relied on the domestic courts' findings that the first applicant party had failed to substantiate its allegations. The claimants had refused to submit duly authenticated copies of the records, to provide the names of the parties' observers who had been present during the vote count, or to ensure their attendance at the hearing. The Government further reiterated the domestic courts' findings that there had been no administrative or criminal proceedings instituted against members of the PECs and reasoned that, in such circumstances, the courts had rightfully dismissed as unsubstantiated the claimants' allegations of fraud committed in the course of the vote-count reporting.

48. As regards the proceedings which ended with the judgment of the Regional Court on 16 July 2013, the Government reiterated the findings of the national judicial authorities. They conceded that the PECs had failed to comply with the procedure for the issuance of the records to the observers. That fact alone, however, had not had any impact on the expression of the voters' will and the election results. Having examined the first applicant party's allegations, the national domestic authorities had not discerned any serious violations of law that would have invalidated the elections. Nor had the claimants submitted copies of the relevant records to substantiate their allegations. The copies of the records submitted by the claimants had not been admitted in evidence by the courts. Accordingly, the national judicial authorities' decision to dismiss the claimants' allegations as unsubstantiated did not appear unreasonable or arbitrary. Lastly, the Government argued that the first applicant party had applied for a judicial review of the alleged violations one year after the elections. At the time, the PECs had already been dissolved and it had been impossible to obtain the relevant evidence. The original documents had been destroyed as the time-limit for their storage had expired.

2. The Court's assessment

49. According to the principles developed in *Mugemangango v. Belgium* [GC], no. 310/15, §§ 67-73, 10 July 2020, and *Davydov and Others*, cited above, §§ 271-88, the Court's task in the present case is to ascertain whether the applicants' allegations were sufficiently serious and arguable and whether they received an effective examination, i.e. that the findings of the domestic authorities were not arbitrary or manifestly unreasonable.

(a) The first applicant party's complaints

(i) Kalacheyevskiy District (application no. 41982/12)

50. The Court observes that the first applicant party challenged the election results in respect of eighteen polling stations in the Kalacheyevskiy District, alleging manipulation of the vote count

leading to an increase in the vote share of the ruling party and to a decrease in the vote share of its rival candidates. In doing so, it relied on the documents submitted by the observers and on eyewitness statements (see paragraphs 10-24 above). The first applicant party claimed that the free expression of the will of the people had been thwarted as a result of the misreporting of the vote count by the relevant PECs.

51. In the Court's view the first applicant party put forward a serious and arguable claim that the fairness of the elections had been seriously compromised. The alleged irregularities, if duly confirmed to have taken place, were indeed capable of thwarting the democratic nature of the elections. The first applicant party's allegations were supported by relevant evidence, which included statements made by the observers and the members of the electoral commissions who gave fact-specific accounts of the violations witnessed by them. The Court also has regard to its finding in the above-mentioned *Davydov and Others* judgment, and observes that the problems identified in that case were similar to the first applicant party's specific allegations. It remains, accordingly, to ascertain whether the first applicant party's complaint received an effective examination at the national level.

52. The Court accepts and the parties have not argued otherwise, that Russian law provided, at the relevant time, for a system of examination of individual election-related complaints, consisting of electoral commissions at different levels, whose decisions could be challenged subsequently before the courts of general jurisdiction. Under such circumstances, the Court's examination should be limited to verifying whether any arbitrariness could be detected in the domestic procedure and decisions (see *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 80, 8 April 2010).

53. While the first applicant party's claims were accepted for examination on the merits, the national judicial authorities refrained from examining the substance of the complaints. They routinely dismissed the documents submitted by the first applicant party and its co-claimants as inadmissible in evidence, noting that the form of those documents had not been in compliance with the statutory requirements. The Court does not deny the importance of adherence to rules of procedure in matters of election administration and the recording of the results. Nevertheless, in its opinion and regard being had to the seriousness of the accusations, it was incumbent on the national courts to employ other means available to dispel the doubts as to the validity of the election results rather than dismissing the documentary evidence on purely formal grounds. The Court discerns no indication in the judgments delivered by the national courts or in the Government's submissions as to the efforts made by the national authorities in that regard. While several witnesses who had been members of the electoral commissions testified to the repeated violations of the vote count and reporting and those allegations were also supported by the written statements provided by the observers assigned to the polling stations, the national courts refused to assess that evidence and found it, without going into any detail, of no probative value. The fact that the election results management system malfunctioned was ignored. Nor did the courts explain why a judicial recount of the votes was impossible or unfeasible. It appears that the national courts gave such predominant weight to the fact that no criminal or administrative proceedings had been opened in connection with the first applicant party's complaint that they virtually dispensed with examining the evidence presented by the claimants.

54. Regard being had to the above, the Court concludes that the national judicial authorities refrained from going into the substance of the complaint lodged by the first applicant party about the misreporting of the election results by the eighteen PECs, instead limiting its judicial review to trivial questions of formalities and ignoring evidence pointing to serious and widespread breaches of procedure and transparency requirements. Accordingly, the Court is unable to conclude that the national courts ensured a procedure complying with the requirement to provide sufficient guarantees against arbitrariness in the review of an arguable claim of serious violations of electoral rights. There has been accordingly a violation of Article 3 of Protocol No. 1 to the Convention.

(ii) Semiluksiy District (application no. 6599/14)

55. As to the first applicant party's complaint concerning the recount of the votes at the fourteen polling stations in the Semiluksiy District (see paragraphs 29-33 above), the Court takes into account the national courts' finding that (1) the decisions to recount the votes were taken in the absence of the observers from the opposition and (2) the observers from the opposition were not present during the actual recount or advised in good time about the results of the recount. It further notes that, as a result of the recount, the number of votes in favour of the ruling party increased. Accordingly, the Court considers that the recount of the votes on such scale, in the absence of any transparency, pointed to a serious dysfunction in the electoral system and was capable of casting serious doubts on the fairness of the entire process. It therefore accepts that the first applicant party put forward a serious and arguable claim that the fairness of the elections had been seriously compromised. It remains to ascertain whether there was an effective examination of the first applicant party's complaint at the national level.

56. The Court further notes that, similarly to the situation in the Kalacheyevskiy District, the judicial authorities refrained from going into the substance of the first applicant party's allegations, instead limiting their analysis to trivial questions of formalities and completely ignoring evidence pointing to serious and widespread breaches of procedure and transparency requirements.

57. Lastly, the Court does not lose sight of the fact that, as submitted by the Government, the actual ballots were destroyed almost immediately after the District Court accepted the first applicant party's complaint for consideration, thus rendering it impossible for the judicial authorities to verify the vote count if necessary. The Government did not explain why the District Court chose not to take measures ensuring the preservation of the ballots while this was still feasible. Nor did they elaborate as to the legislative requirements, if indeed there were any, concerning the storage of relevant electoral materials until the last opportunity to challenge election results had passed. Similarly, the Court does not accept the Government's argument that the first applicant party instituted the judicial proceedings belatedly.

58. In the circumstances of the case, the Court considers that the failure on the part of the authorities to ensure a proper, transparent review of the first applicant party's grievances amounts to a violation of Article 3 of Protocol No. 1. It finds it difficult to reconcile such a breach with the Russian courts' and the Government's argument that it did not lead to a distortion of the voters' intent. Accordingly, the Court finds that the Government's argument that such an omission did not lead to a violation of the relevant Convention provisions is of no significance and concludes that there has been a violation of Article 3 of Protocol No. 1 to the Convention.

(b) The second applicant party and the third and fourth applicants

59. The Court observes that the national courts refused to consider the complaints lodged by the second applicant party and the third and fourth applicants on the merits, noting that they did not have standing to challenge the election results (see paragraphs 25 and 26 above²⁶). The Government did not argue that the applicants' complaints had received an effective examination by the national judicial authorities.

60. In this connection, the Court reiterates that such a failure would constitute a violation of the individual's right to free election guaranteed under Article 3 of Protocol No. 1 to the Convention (see, for example, *Davydov and Others*, cited above, § 335). It further notes that the Government have not made any submissions on the matter that would allow it to reach a different finding in the present case.

61. The Court concludes that the national judicial authorities have not ensured an effective examination of the applicants' grievances. The Court does not lose sight of the fact that it was open to the applicants to apply for the reopening of the proceedings after the Constitutional Court's finding. However, such an application for reopening would have been devoid of purpose after a significant lapse of time, when all the relevant documents had been destroyed. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

63. The applicants' claims in respect of non-pecuniary damage are summarised in the appended table.

64. The Government considered those claims excessive and unreasonable.

65. The Court considers that there is a clear link between the violations found and the non-pecuniary damage alleged by the applicants. Making its assessment on an equitable basis, the Court awards the first, second and third applicant, as well as Ms N. XXXa 5,000 euros (EUR) each in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

66. The applicants also claimed EUR 8,000 jointly for the costs and expenses incurred before the domestic courts and the Court, and asked the award to be paid directly to their representative. They submitted that their representative had represented them *pro bono*. Nevertheless, he had incurred travel, accommodation and other expenses which had to be reimbursed. The third and fourth applicants each claimed 200 Russian roubles (RUB) in respect of the court fees they had paid. Lastly, the applicants claimed RUB 2,000 in connection with the court fee paid by their representative when lodging an appeal and RUB 11,415.49 in respect of the fee paid by him for commissioning an expert report. The third and fourth applicants submitted copies of the relevant receipts. The remainder of the documents submitted were illegible. The applicants asked the Court to indicate that the aforementioned amounts of fees should be paid into the bank account of their representative.

67. The Government submitted that no compensation should be awarded to the applicants under this head. As regards the costs of Mr Sivoldayev's services, the applicants had failed to substantiate their claims in respect of the sum of EUR 8,000, regard being had to the *pro bono* service provided by Mr Sivoldayev. They further noted that the court fees paid by the applicants when lodging an appeal were obligatory and should be not reimbursed. Lastly, they submitted that the fee paid by Mr Sivoldayev for the expert report had not been substantiated by any document.

68. According to the Court's case-law, the applicants are entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the third applicant and Ms N. XXXa the sum of EUR 5 each covering court fees incurred by them in the domestic proceedings, for which evidence confirming the payment has been submitted.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that Ms N. XXXa has *locus standi* under Article 34 of the Convention to continue the proceedings in her late husband's stead;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of 3 of Protocol No. 1 to the Convention in respect of each of the applicants;
5. *Holds*
 - (a) that the respondent State is to pay the applicants and Ms N. XXXa, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to the first, second, and third applicant and to Ms N. XXXa each;
 - (ii) EUR 5 (five euros), plus any tax that may be chargeable, in respect of costs and expenses to the third applicant and Ms N. XXXa each;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Olga Chernishova Deputy Registrar

Georgios A. Serghides President