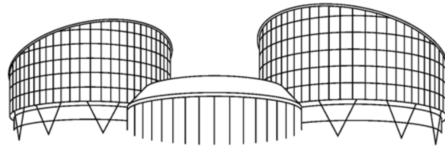

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TESLENKO AND OTHERS v. RUSSIA

(Applications nos. 49588/12 and 3 others - see appended list)

JUDGMENT

Art 5 § 1 • Lawful arrest or detention • Non-compliance with domestic law when escorting applicants to police station in the context of minor administrative offences Art 10 • Freedom of expression • Prosecution for administrative offences for calling on voters not to vote for a specific political party or to abstain from voting in elections • Margin of appreciation overstepped

STRASBOURG

5 April 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Teslenko and Others v. Russia,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma,
Mikhail Lobov, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 49588/12, 65395/12, 49351/18 and 50424/18) 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 four Russian nationals (see appendix);

the decisions to give notice to the Russian Government ("the Government") of the complaints under Articles 5, 6, 7, 10 and 13 of the Convention and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 8 March 2022,

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

INTRODUCTION

1. The present case concerns, *inter alia*, the applicants' prosecution for administrative offences for calling on other eligible voters not to vote for a specific political party or to abstain from voting in the parliamentary and presidential elections in 2011, 2012 and 2018.

THE FACTS

2. The Government were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov.

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

I. Mr TESLENKO (APPLICATION No. 49588/12)

4. The electoral campaign for the 2011 State Duma elections started on 30 August 2011. The election was held on 4 December 2011.

5. Mr Teslenko (hereinafter "the first applicant") wanted to express, as a private citizen, his views on the United Russia party. He found some material

(apparently drawings with slogans) on the Internet and printed it out on the back of some used paper. It appears that he printed out some eight leaflets that contained the phrases "United Russia is a party of crooks and thieves", "Don't let them steal your vote" and "Each person who skips the election is giving his vote to the party of crooks and thieves".

6. At around 10 p.m. on 29 November 2011 the applicant decided to put the leaflets on the wall of a block of flats.

7. He was spotted by two police officers, V. and P. It appears from V.'s report that the applicant was taken to a police station in order to ascertain his identity. According to the applicant, he had had his passport on him but was first asked to present it at the police station, which he did.

8. The applicant was kept at the police station for two hours. It appears that during that time his bag was searched and the leaflets were seized. On 30 November 2011 an offence report was compiled accusing him of unlawful "pre-election campaigning" in breach of Article 5.12 of the Code of Administrative Offences ("the CAO", see paragraph 43 below).

9. By a judgment of 23 December 2011 a justice of the peace considered that the leaflets had amounted to "campaign material" (*агитационные материалы*) and that their production and distribution had amounted to "pre-election campaigning" within the meaning of sections 2 and 48 of the Electoral Rights Act 2002 (see paragraphs 55 and 57 below). The applicant should therefore have complied with section 54 of that Act (see paragraph 59 below, hereinafter "the notification requirement"). The fact that he had incurred no expenses in producing the leaflets had no legal significance in terms of the charge against him. The justice of the peace sentenced the applicant to a fine of 1,000 Russian roubles (RUB – approximately 11 euros (EUR) at the time).

10. The applicant appealed, arguing that in view of the Constitutional Court's findings made in 2005 and 2006 (see paragraphs 61 and 63 below), citizens who were not affiliated to any candidate or electoral group could lawfully campaign without incurring expenses.

11. On 16 January 2012 the Novoaltaysk Town Court upheld the judgment. The appellate court stated that the notification requirement was applicable to both the production and dissemination of campaign material; that the applicant did not deny that he had produced the material; that some (unspecified) leaflets had amounted to "campaign material" because they had concerned the State Duma election; and that he therefore should have complied with the notification requirement. The court also held that the absence of any note in the offence report about the applicant's being taken to the police station did not adversely affect the legality of that report and the sentence.

12. On 6 March 2012 a deputy President of the Altay Regional Court upheld the above-mentioned decisions.

II. Mr LYUTAREVICH (APPLICATION No. 65395/12)

13. The electoral campaign for the 2012 Russian presidential election started in December 2011. The election was held on 4 March 2012.

14. On an unspecified date, Mr Lyutarevich (hereinafter "the second applicant") put writing on the rear window of his car saying "United Russia is a party of crooks and thieves". By a judgment of 23 March 2012 a justice of the peace convicted him under Article 5.12 of the CAO and sentenced him to a fine of RUB 1,000. The justice of the peace considered that the writing had amounted to "campaign material" because it had contained a negative assessment of the political party that had nominated one of the candidates for the election (Mr V. Putin); that the applicant had produced the material; and that he had not complied with the notification requirement under section 55 of the Presidential Elections Act (see paragraphs 59-60 below). On 10 April 2012 the Rodniki District Court of the Ivanovo Region upheld the judgment. It became final on that date. It is unclear whether the applicant paid the fine.

15. A deputy prosecutor of the Ivanovo regional prosecutor's office sought a review of the above-mentioned decisions. On 19 June 2017 the deputy President of the Ivanovo Regional Court set them aside. The judge considered that it had not been established that the applicant had produced the material during the presidential election campaign, his claim of having put the writing on his car after the parliamentary elections on 4 December 2011 not having been refuted; that it could not be classified as "printed material" within the meaning of Russian law; and that it had not been established that it could be classified as "visual material". The court discontinued the proceedings for lack of *corpus delicti*.

III. Mr DYACHKOV (APPLICATION No. 49351/18)

16. The electoral campaign for the 2018 Russian presidential election started in December 2017. The election was held on 18 March 2018. It appears that some 67% of eligible voters voted.

17. During the electoral campaign, eight people were registered as candidates. Several others seeking to be registered as candidates were not. It appears that Mr A. Navalnyy was not registered because of an existing criminal record (see, in this connection, *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, 23 February 2016). In January 2018 the Supreme Court upheld the decision not to register him as a candidate. Mr Navalnyy launched a campaign called "Voters' Strike", which was run through the local offices of his former campaign and through volunteer work. Protest rallies were held in early 2018 in Russia.

18. It appears that Mr Dyachkov (hereinafter "the third applicant") was the leader of the "Voters' Strike" campaign in Ivanovo. He considered that equal access for all people wishing to stand as candidates in the election had

not been ensured and that voters had the right to be informed of their constitutional rights, including the right to abstain from voting.

19. It also appears that the third applicant notified the Ivanovo city administration of his intention to organise, on 28 January 2018, a "Voters' Strike", a hybrid public event in the form of a march followed by a meeting to protest against the refusal to register Mr Navalnyy as a candidate in the forthcoming presidential election. The administration suggested that the applicant's event be held on another date and in another place.

20. On 20 February 2018 the applicant posted the following message on the Navalnyy Team page on VKontakte, a popular social media platform: "The Navalnyy office has received new leaflets and they urgently need to reach their readers! Come, take and distribute them: there are only a few weeks left before the staged election and less and less time to tell others about the impending fraud." On 3 March 2018 he posted a message saying "Tell everyone that the 'election' on 18 March is a sham".

21. The applicant also ordered and paid a printing company to produce 5,000 leaflets saying "Voters' Strike. Do not vote. [Be an election observer.]". It appears that on 1 March 2018 a search was carried out at the Navalnyy office in Ivanovo. The police seized 1,215 leaflets and some other material. On 18 March 2018 the applicant placed some leaflets saying "Voters' Strike: don't vote, watch [the election process]" on the wall of a block of flats and posted them through residents' letterboxes.

22. By a judgment of 30 May 2018 the Oktyabrskiy District Court of Ivanovo convicted the applicant of creating obstacles to the participation of voters in the voting process, an offence under Article 5.69 of the CAO (see paragraph 39 below). He was sentenced to a fine of RUB 4,500 (approximately EUR 62 at the time).

23. The court considered that between 20 February and 18 March 2018 the applicant had exerted influence over citizens by creating obstacles to the participation of voters in the presidential election and making calls to abstain from voting. He had misled voters by distributing information about the elections suggesting that they were flawed; he had not proved the truthfulness of that statement, which had amounted to a statement of opinion by the author of the leaflets. The leaflets had contained calls to abstain from voting and created a false impression and instilled doubts in people that the election was lawful. The applicant had thereby exerted unlawful influence over the choice of voters by inducing them to abstain from exercising their right to vote. His actions had not amounted to "pre-election campaigning" under section 48 of the Electoral Rights Act and section 49 of the Presidential Elections Act because the material had not referred to registered candidates. However, under section 46 of the Presidential Elections Act "information material" had to be objective, truthful and could not violate the equality of candidates. The court concluded that the applicant had violated section 1(2) of the Act by

creating obstacles to the participation of voters in the election on 18 March 2018.

24. The court dismissed as irrelevant the applicant's reference to the Constitutional Court's ruling of 14 November 2005 (see paragraph 61 below) because it concerned "pre-election campaigning" calling on people to vote against all registered candidates rather than calls to abstain from voting. The court also stated that there was no need to identify any specific voters who had fallen victim to the alleged obstacles to their voting. An offence under Article 5.69 of the CAO required no victim or actual adverse consequences, it being committed through "impugned actions" exerting influence over voters.

25. On 8 June 2018 the Ivanovo Regional Court upheld the judgment. It held that an electorate's abstention from exercising "their direct electoral functions" could be inspired by their own personal views, characterised by political passivity and inaction, or as a response to orders or calls from others interested in abstention. The large number of leaflets ordered by the applicant, together with his online publications, disclosed his intention to influence a considerable number of voters with the aim of that abstention. He had thereby violated section 1(2) of the Presidential Elections Act and created obstacles to the participation of voters in the voting process.

IV. Mr NIGMATULLIN (APPLICATION No. 50424/18)

26. The present application also concerns the electoral campaign for the 2018 Russian presidential election.

27. Mr Nigmatullin (hereinafter "the fourth applicant") considered that equal access for all people wishing to stand as candidates in that election had not been ensured and that voters had the right to be informed of their constitutional rights, including the right to abstain from voting. He decided to distribute leaflets in Naberezhnyye Chelny. It appears that the leaflets were part of the above-mentioned "Voters' Strike" campaign.

28. One leaflet was entitled "You should know your rights!". It indicated that voting in an election was not mandatory and that failure to vote was not unlawful. It further specified that it was unlawful to compel people to participate in the voting process or to control how they voted, to campaign for candidates in schools or similar institutions, to hold campaign events requiring people to attend and to put pressure on people to change their views or beliefs. It also indicated that it was lawful not to "go to the polls", to convince others to act accordingly, to distribute leaflets calling for a "voters' strike", to campaign for that boycott on social media or to become a member of an election observer team. The leaflet encouraged people to report instances of unlawful campaigning to the local offices of Mr Navalnyy's campaign and to further disseminate information about voters' rights.

29. Another leaflet was entitled “It’s not an election, it’s fraud!”. It indicated that the forthcoming election would amount to a “re-appointment” resulting in six more years without changes, including as regards the fight against corruption or the possibility to run fair elections or receive higher salaries; it also stated that the authorities did not care who voters chose but did care about turnout. The leaflet invited people to join the “Voters’ Strike” and to abstain from voting or from calling on others to vote. It encouraged people to take part in protest rallies or join observer teams, to explain to others that an election without a real choice was not a genuine election.

30. On an unspecified date, the applicant put those leaflets on the walls outside or inside several blocks of flats in Naberezhnyye Chelny.

31. It became clear in the ensuing proceedings (see below) that on 27 January 2018 the Central Electoral Committee of the Tatarstan Republic had classified the same leaflets (or leaflets with similar content) as “campaign material”.

32. On 10 March 2018 the police received a complaint about the leaflets on (the walls of) several buildings. They identified the applicant as a suspect and on 11 March 2018 instituted proceedings against him under Article 5.69 of the CAO.

33. On 14 March 2018 police officers went to his home. In his written report to his superior, Officer A. stated that he had met the applicant at the entrance to the block of flats and invited him to follow him to the police station. He had then been “escorted” to the station.

34. According to the applicant, he refused to follow the officers, saying that they should issue him with a summons to come to the station. He was then threatened with handcuffs and told that he was going to be escorted by force. The applicant complied and got into the police vehicle. At the police station he had to hand over his mobile telephone and take off his shoes for shoe prints to be taken.

35. The applicant remained at the police station for three hours.

36. By a judgment of 19 March 2018 a justice of the peace held that by placing the leaflets on the buildings the applicant had interfered with the work of the electoral committee and created obstacles to the participation of voters in the voting process of the presidential election. However, the justice of the peace considered that his conduct had amounted to an offence under Article 5.12 of the CAO rather than Article 5.69. The applicant was convicted accordingly and sentenced to a fine of RUB 1,000 (approximately EUR 14 at the time).

37. The applicant appealed. He admitted that he had placed the leaflets on the buildings because he had believed it necessary to boycott the presidential election as equal access for all people wishing to stand as candidates had not been ensured and voters had had the right to be informed of their constitutional rights mentioned in the leaflet entitled “You should know your rights!”, including the right not to vote. His actions had amounted to an

acceptable exercise of his freedom of expression on a matter of public interest. The applicant also argued that he had been arrested on 14 March 2018 in breach of Article 27.2 of the CAO in the absence of any difficulty to compile an offence report on the spot (without any summons being issued and being compelled to go to the police station) and in the absence of any exceptional circumstances for depriving him of liberty as required by Article 27.3 of the CAO.

38. On 23 April 2018 the Naberezhnyye Chelny Town Court of the Tatarstan Republic upheld the judgment in a summary manner.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN LAW AND PRACTICE

A. Code of Administrative Offences

1. Article 5.69 of the CAO

39. Article 5.69 was introduced into the Code of Administrative Offences (“the CAO”) in 2016 and read, until April 2020, as follows:

> “Interference with the exercise by an electoral or referendum committee of its powers established by the legislation on elections and referenda, where such interference constitutes a violation of the procedure for their functioning as established in the [above] legislation, or creating obstacles [*помехи*] to the participation of voters or referendum participants in the voting process [*голосование*], where such actions do not constitute an act punishable by criminal law –
>
> is punishable by an administrative fine of RUB 2,000 to 5,000 for citizens, [and] RUB 20,000 to 50,000 for officials.”

40. The above-mentioned expression “act punishable by criminal law” refers to Article 141 of the Criminal Code, which makes it an offence to “impede” (*воспрепятствование*) the free exercise by a citizen of his electoral rights or violate the secrecy of the ballot.

41. It appears that the proposal for Article 5.69 of the CAO was not included in the draft bill submitted for examination before the national legislature, nor was it assessed in the explanatory note to the draft bill. The proposal was introduced later by amendment during the second reading of the draft. During the consecutive second and third readings on 26 February 2016 the proposal was not discussed, except for one remark by a member of the State Duma.

42. The Constitutional Court held that Article 5.69 of the CAO used the “blanket reference” technique as regards its first part relating to a violation of the procedure for the functioning of an electoral committee, since that provision did not set out the “procedure”. As such, the “blanket reference” technique did not mean that the provision was incompatible with the Constitution. Regulatory norms which established rules of conduct were not

necessarily contained in the legal act that established liability for violating those rules. Thus, when assessing the foreseeability of legislation, it was pertinent to have regard to the text and wording used, as well as their place in the regulatory system (*нормативные предписания*) (Decision no. 1772-O of 18 July 2017).

2. *Article 5.12 of the CAO*

43. Article 5.12 § 1 of the CAO entitled "Production, dissemination or placement of campaign material in breach of the electoral legislation", as in force until 2016, penalised the production (*изготовление*) or dissemination of printed or audiovisual campaign material (*агитационные материалы*) without providing information on the number of copies produced (*тираж*), the date of dissemination, the election fund used to pay for it and details on the organisation or person having commissioned or produced it.

44. In 2016 Article 5.12 § 1 was redrafted. It now penalises the production or dissemination of printed, audiovisual or other campaign material in breach of the requirements of the electoral legislation.

45. When committed by a citizen, the offence was, until 2021, punishable by a fine of RUB 1,000 to 1,500. It is now punishable by a fine of RUB 5,000 to 20,000.

B. Electoral legislation

1. *Right to vote under Russian law*

46. Section 3 of Federal Law no. 67-FZ of 12 June 2002 ("the Electoral Rights Act") provides that the participation of citizens of the Russian Federation in an election or referendum is free and voluntary. No one may exert influence (*воздействие*) on a citizen with the aim to compel (*принудить*) him or her to participate or abstain from participating in an election or impede (*воспрепятствовать*) the free expression of his or her choice.

47. Section 1 of Federal Law no. 19-FZ of 10 January 2003 ("the Presidential Elections Act") provides that the participation of citizens of the Russian Federation in a presidential election is free and voluntary. No one may exert influence over a citizen with the aim to compel him or her to participate or abstain from participating in a presidential election or impede the free expression of his or her choice.

48. Until 2006 Russian law explicitly provided for the possibility to campaign against all candidates and vote "against all candidates".

49. Since 2006 Russian law has required no minimum turnout for a national election to be considered valid.

2. *Contributions to electoral campaigns*

(a) Donations to election funds

50. A political party's election fund may not exceed RUB 700,000,000. An individual or a legal entity may contribute up to 0.07% (RUB 490,000; some EUR 6,000 in 2018, for instance) and 3.5% (RUB 24,500,000; some EUR 295,000 in 2018) respectively to such a fund (section 64 of Federal Law no. 51-FZ of 18 May 2005 and section 71 of Federal Law no. 20-FZ of 22 February 2014).

51. The election fund of a candidate in a presidential election may not exceed RUB 400,000,000. An individual or a legal entity may contribute up to 1.5% (RUB 6,000,000; some EUR 72,300 in 2018) and 7% (RUB 28,000,000; some EUR 337,350 in 2018) respectively to such a fund (section 58 of the Presidential Elections Act).

(b) Other contributions

52. A candidate or an electoral group that has nominated candidates or a list of candidates may appoint proxies. They are registered by an electoral committee and may engage in pre-election campaigning in favour of the relevant candidate or electoral group (section 43 of the Electoral Rights Act). A presidential candidate may appoint up to 600 proxies; a political party that has nominated a candidate may appoint up to 100 proxies (section 43 of the Presidential Elections Act). In a State Duma election, a political party that has nominated a federal list of candidates may appoint up to 1,000 proxies; a candidate in a single-mandate constituency may appoint up to 20 proxies (section 55 of Federal Law no. 20-FZ of 22 February 2014).

53. A candidate is free to determine the content, forms or methods of his or her campaigning, conduct it freely and, pursuant to the procedure prescribed by law, involve other persons for campaigning purposes (section 48(4) of the Electoral Rights Act). Pre-election campaigning may be carried out by holding public campaign events (section 48(3)). Such events are subject to the notification requirement under the Public Events Act ("the PEA") (section 53 of the Electoral Rights Act and section 1 of the PEA). They may take one of the forms of public events specified in the PEA (Decision no. 18-AD14-18 of 2 June 2014 of the Supreme Court). On behalf of a candidate, a proxy may organise and run that event, including a meeting with voters (Decision no. 5-APA19-162 of 23 October 2019 of the Supreme Court).

3. *Flow of information during an election period*

(a) Informing voters

54. Section 45 of the Electoral Rights Act provides that public authorities, electoral committees, media outlets, legal entities and citizens may engage in

providing information to voters, in compliance with that Act. The content of such information must be objective and truthful and must not violate the equality of candidates or electoral groups. A similar provision is contained in section 46 of the Presidential Elections Act.

(b) Pre-election campaigning and campaign material

55. Section 2 of the Electoral Rights Act defines "campaign material" as printed, audiovisual and any other material containing indications of "pre-election campaigning" and designed for mass distribution during an election campaign. It defines "pre-election campaigning" as activities carried out during an electoral campaign inciting – or aimed at inciting – voters to vote for or against a candidate, candidates or a list of candidates.

56. Pursuant to section 2 of the Presidential Elections Act, the concepts and terms used in the Electoral Rights Act also apply in respect of presidential elections.

57. Since 2006, section 48 of the Electoral Rights Act has provided as follows:

> "1. Citizens of the Russian Federation and public associations [*общественные объединения*] have the right to engage – by legal means and in the forms permitted by law – in pre-election campaigning.
>
> 2. During an electoral campaign the following [actions] amount to pre-election campaigning:
>
> a) calls to vote for a list of candidates, lists of candidates, a candidate, candidates or against him or her (them);
>
> b) an expression of preference for a candidate or an electoral group [*избирательное объединение*], in particular, by indicating the candidate, list of candidates or electoral group the voter will vote for (except for situations of releasing the results of an opinion poll under section 46(2) [of the Act]);
>
> c) a description of the possible consequences of a certain candidate (not) being elected or certain list of candidates (not) obtaining parliamentary mandates;
>
> d) dissemination of information which is predominantly about one candidate, several candidates or one electoral group, in combination with positive or negative comment;
>
> e) dissemination of information about a candidate's activities that are not connected with his or her professional activities or the exercise of his or her official duties;
>
> f) activities contributing to the creation of a positive or negative attitude on the part of voters towards a candidate or an electoral group that presents that candidate or a list of candidates."

58. Similar provisions are contained in section 49 of the Presidential Elections Act.

59. Section 54 of the Electoral Rights Act provides that candidates or electoral groups have the right to freely disseminate printed, audiovisual or other campaign material, pursuant to the procedures prescribed by law. All printed and audiovisual campaign material must contain information about

the person or organisation having commissioned or produced it, the number of copies, the date of distribution and the election fund used to pay for it. Before disseminating campaign material, a candidate or an electoral group must submit a copy of it to the competent electoral committee. It is prohibited to disseminate campaign material if that requirement has not been complied with.

60. Similar provisions are contained in section 55 of the Presidential Elections Act.

61. In Ruling no. 10-P of 14 November 2005 the Constitutional Court examined whether the Electoral Rights Act (prior to its amendment in force since late 2005 and 2006, see paragraph 62 below) prohibited pre-election campaigning in the form of calls to vote against all registered candidates, independently of any candidates or electoral groups, that is, without incurring expenses from their electoral funds. The Constitutional Court's findings may be summarised as follows:

(a) At the time, Russian law provided that a voter had the right to express his or her choice in the form of a vote against all registered candidates. The federal legislature had been allowed to regulate the flow of information during an electoral campaign. Elections could only be considered "free" where citizens' rights to receive and impart information and freedom of expression were effectively protected. The legislature therefore had to strike a balance between the right to free elections and freedom of expression and information while avoiding excessive limitations. During an electoral campaign, citizens were not merely consumers of information but had the right to receive, produce or disseminate information by lawful means and to actively put forward their views on an election and call on others to share those views as regards voting for or against a specific candidate or against all registered candidates. The absence of an opportunity to engage in pre-election campaigning or the lack of safeguards for doing so would, in substance, amount to a denial of the right to influence the electoral process, which would be reduced to voting. Since the legislature had provided for such a choice of vote as a vote against all candidates, it was therefore necessary to regulate the pre-election campaigning relating to that choice.

(b) The Electoral Rights Act defined "pre-election campaigning" as activities inciting or aimed at inciting voters to vote for or against a specific candidate or list of candidates, as well as against all candidates or all lists. Activities aimed at inciting voters to vote against all candidates were therefore unequivocally classified as "pre-election campaigning".

The differences in the regulation of campaigning by candidates and citizens sought to ensure transparency in elections, the equality of candidates before the law, irrespective of financial resources, and to prevent abuses. The lack of any specific regulation of campaigning by citizens against all registered candidates could be interpreted as an absolute ban on such campaigning. In particular, the legislature had not provided for regulation as

regards incurring expenses for such campaigning. The situation therefore amounted to an unjustified restriction of freedom of expression and freedom to disseminate information by pre-election campaigning and was not in compliance with the requirement of foreseeability.

The Constitutional Court instructed the federal legislature to take immediate measures to remedy the situation.

62. In 2005 and 2006 the federal legislature amended the legislation so that calls to vote against all candidates were removed from the definition of "pre-election campaigning".

63. By Ruling no. 7-P of 16 June 2006 the Constitutional Court examined and declared compatible with the Constitution various provisions of the Electoral Rights Act (in particular, section 54 (see paragraph 59 above) and the provisions concerning the financing of pre-election campaigning through election funds) in so far as they prevented citizens who were not themselves candidates or representatives of candidates or electoral groups from engaging in pre-election campaigning for or against a candidate or list of candidates, and thereby incurring expenses outside of election funds. The Constitutional Court's findings are as follows:

(a) Having regard to the need to ensure the free expression of the opinion of citizens during elections held at reasonable periods and the need for such elections to be of a competitive and transparent nature, the federal legislature had to put in place a set of criteria for the flow of information, including rules for election campaigning and its funding.

(b) To reconcile the exercise of electoral rights, freedom of expression and freedom of mass information, the federal legislature had discretion to choose the appropriate methods and means that took account of the historical conditions prevailing at a particular stage of the country's development. To reconcile any conflict between these competing rights and freedoms, the legislature had to maintain the balance of constitutional values and not put in place disproportionate restrictions that would not be necessary in a democratic society and would impinge upon the very essence of the protected rights.

(c) The exclusion of Russian citizens from election campaigning and the absence of legislative safeguards would mean, in substance, refusing them a realistic opportunity to influence the electoral process, confining them to the action of voting. The absence of free political discussion and opportunities for a free exchange of opinions, including both candidates and citizens, during the elections would make it impossible to consider such elections free.

(d) The legislature had to ensure the adequate exercise of the right of citizens to receive and impart information about elections. Under the Electoral Rights Act, the flow of information was ensured by the provision of information about candidates, dates and the procedure for carrying out electoral activities, as well as by election campaigning aimed at inducing voters to vote for or against a candidate.

(e) Candidates were allowed to put in place campaign funds and spend such funds on campaigning, and could have broadcast time and access to print media, both paid and free of charge. Other citizens were allowed to engage in pre-election campaigning without incurring expenses by organising public gatherings or in other ways. They could also make contributions to campaign funds within the limits prescribed by law.

(f) At that stage of Russia's development, the need to ensure transparency in the financing of elections required reinforced safeguards. Therefore, also taking into account the realistic possibility of control over the financing of elections, the applicable regulatory framework pursued a legitimate aim and did not upset the balance of constitutional values. It also complied with the criterion of being necessary in a democratic society and was not disproportionate *vis-à-vis* the constitutionally protected aims.

Judge Kononov issued a separate opinion to Ruling no. 7-P. He stated that the applicable legislation had, in substance, created an absolute impossibility for the majority of voters who had no connection with election funds to impart their opinions about candidates to other voters, thereby impinging upon expressions relating to political speech. Judge Kononov stated that political discussion was not a dispute about objective facts. Opinions and comments, by their nature, contained value judgments and the potential to induce a choice or preference. Moreover, it was frequently difficult to determine the exact intention behind an utterance. Exclusion of value judgments from the notion of "information", their arbitrary classification as "campaigning" and the removal from ordinary citizens of the opportunity to express their attitude toward a candidate and his or her policy choices therefore significantly impinged upon the constitutional rights set out in Article 29 of the Constitution.

64. In Decision no. 1665-O of 28 June 2018 the Constitutional Court stated that the approach stated in its ruling of 16 June 2006 was applicable to presidential elections.

65. Sitting as a review court in an administrative-offence case related to the above-mention decision, the Supreme Court considered that the act of wearing, during a public event, a t-shirt bearing a text relating to a person standing as a candidate in an ongoing presidential election had amounted to "campaign material" disseminated in breach of section 55 of the Presidential Elections Act, which contained various requirements similar to those relating to State Duma elections (Decision no. 67-AD18-19 of 25 October 2018).

C. Administrative escorting and arrest

66. For a summary of the applicable legislation, see *Tsvetkova and Others v. Russia* (nos. 54381/08 and 5 others, §§ 60-75, 10 April 2018), and *Butkevich v. Russia* (no. 5865/07, §§ 33-36, 13 February 2018).

67. In Ruling no. 2 of 10 February 2009 the Plenum of the Supreme Court (paragraph 7) stated that the procedure under Chapter 25 of the Code of Civil Procedure ("the CCP") was not applicable to challenges against actions, omissions or decisions for which the CAO did not provide for a review procedure and which, being intrinsically linked to a given case of administrative-offence charges, were not amenable to a separate review. The above statement was relevant for evidence in cases such as the record of certain measures taken, for instance a record of administrative escorting or record of administrative arrest. In such circumstances, arguments relating to the inadmissibility of a piece of evidence or a measure could be presented during examination of the administrative-offence case or on appeal against a decision in such a case. However, where CAO proceedings were discontinued, any actions taken during such proceedings could then be challenged under Chapter 25 of the CCP, if such actions impinged upon the person's rights or freedoms, created obstacles to their being exercised or unlawfully imposed liability.

II. OTHER RELEVANT MATERIAL

68. Opinion no. 190/2002 (CDL-AD(2002)023rev2-cor) adopted by the European Commission for Democracy through Law (Venice Commission)contains the "Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report", which treats abstention as a potential political choice.

69. In June 2018 the Office for Democratic Institutions and Human Rights issued the Final Report of the ODIHR Election Observation Mission regarding the Russian presidential election on 18 March 2018. The relevant parts read as follows:

> "Overall, the process of handling election complaints lacked transparency. Out of a multitude of petitions, the CEC [Central Election Commission] deemed 420 to constitute complaints, but only considered 2 in public sessions and subsequently published those decisions. The CEC informed the ODIHR EOM that it considered the remaining complaints to be beyond its competence, as they mostly related to the misuse of administrative resources, directing them to other state authorities. Over 160 complaints were filed with Subject Election Commissions (SECs), mostly concerning campaign materials, including distribution of leaflets calling for an election boycott. The SECs ruled in a consistently restrictive manner and considered that the distribution of such materials violated the law.
>
> ...
>
> While candidates could generally campaign freely, the law obliges them to notify local authorities about their planned campaign events in advance. Some were offered alternative and in their view less attractive locations and time slots for their meetings with voters – several also faced difficulties renting private venues for their events. Cases of harassment of campaign workers, including by police, were reported to ODIHR EOM observers. In addition, activists affiliated with Alexei Navalny, who was not registered as candidate and both questioned the legitimacy of the election and called for

a boycott, faced numerous detentions, confiscation of materials and other measures that limited their freedom to express their views and hold peaceful assembly. Such instances contravened paragraphs 9.1 and 9.2 of the 1990 OSCE Copenhagen Document.

Authorities should demonstrate full respect for fundamental freedoms during the campaign. The right of all electoral stakeholders to express their views, including campaigning for boycott, and peaceful assembly, should be respected as foreseen by the Constitution and the legislation and as required by paragraph 9.1 and 9.2 of the 1990 OSCE Copenhagen Document.

The campaign was marked by a lack of genuine competition among contestants. Most candidates stated publicly that they expected the incumbent to emerge [as] a winner, and admitted participating in order to promote their political platform or draw national attention to a particular issue. The incumbent did not present an election programme, and limited his personal engagement in the campaign to one rally in Moscow. However, he travelled throughout the country in his official capacity as president, enjoying unparalleled visibility and opportunities to address the electorate. On 1 March, the President delivered an annual address to parliament, that was televised and widely discussed in the media, and in which he outlined policy goals for the future.”

THE LAW

I. JOINDER OF THE APPLICATIONS

70. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

71. The first and fourth applicants complained that they had been deprived of their liberty on 29 November 2011 and 14 March 2018 respectively, in breach of Article 5 § 1 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...”

A. Admissibility

72. The events concerning the first and fourth applicants took place on 29 November 2011 and 14 March 2018, and their related complaints were lodged with the Court on 15 July 2012 and 23 October 2018 respectively.

73. The first applicant raised the above-mentioned complaint before the courts in his CAO case in 2011. In their submissions, the Government accepted that the applicant had complied with the six-month rule under Article 35 § 1 of the Convention because he had lodged his complaint within six months after the appeal decision of 16 January 2012 upholding his conviction under the CAO (see paragraphs 10-11 above). The Government's view is supported by the judicial practice applicable at the time (see paragraph 67 above). The Court concludes that no question arises as to the first applicant's compliance with the six-month rule.

74. The fourth applicant raised a similar matter in the CAO proceedings against him in 2018 (see paragraph 37 above). In the absence of any submissions from the Government in that regard, the Court reaches the same conclusion as above.

75. The Court also notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

76. The first applicant argued that he had been deprived of his liberty. Refusal to get into the police vehicle or an attempt to leave the police station without permission would have resulted in him being prosecuted for disobeying the police under Article 19.3 of the CAO or handcuffs or similar measures being used against him. In substance, he had been subjected to the procedures of administrative escorting and arrest, but no written record had been compiled, in breach of Article 27.2 of the CAO. In any event, those procedures could have been lawfully used to compile an offence report at the police station, but no such report had been compiled and he had been let go.

77. The fourth applicant argued that the national authorities and the Government had not proven the impossibility of compiling an offence report on 10 March 2018 at the time and place the offence had been committed. He had been in possession of his identity document. It had not been strictly necessary for the police to deprive him of his liberty four days later and he should instead have been issued with a summons, which would have enabled him, if he had wanted, to be present during the compiling of the offence report.

(b) The Government

78. The Government submitted that the first applicant had been subjected to the escorting procedure under Article 27.2 of the CAO for the purpose of establishing his identity. It had also been necessary for the police to write up

his explanations and seize the leaflets, which could not have been done when the offence had been discovered, on the street late at night. At the police station, he had not been subjected to the arrest procedure under Article 27.3 of the CAO because he had not been placed in a cell. The Government concluded by arguing that there had been no violation of Article 5 § 1 of the Convention.

79. The Government submitted that the fourth applicant had been taken to a police station to establish his identity and the circumstances relating to the charge against him. After those purposes had been achieved and an offence report had been compiled, the police had issued him with a court summons and let him go.

2. The Court's assessment

80. The Court reiterates that execution of the measures within the escorting procedure under the CAO amounts to deprivation of liberty under Article 5 § 1 of the Convention (see, among many other authorities, *Korneyeva v. Russia*, no. 72051/17, § 34, 8 October 2019).

81. The Court notes that, in breach of Article 27.2 of the CAO, the escorting of the applicants to a police station, including the specific legal grounds and reasons for applying that measure, were not recorded in an escort record or the offence reports.

82. There is no indication that it was impossible to compile the offence report in respect of the first applicant at the place where the offence was discovered on 29 November 2011, as required by Article 27.2 of the CAO. It has not been established that he refused to present his identity document to the police officer, making it indispensable to take him to the police station to ascertain his identity. The fourth applicant's escorting was not related to any ongoing commission of an offence: he was arrested on 14 March 2018 for an offence committed on 10 March 2018. Instead of serving him with a summons, the police decided to deprive him of his liberty.

83. The two applicants were deprived of their liberty for short periods for an offence punishable by a fine of up to RUB 1,500 (approximately EUR 15-20 at the relevant time). The authorities should have borne in mind that the measure had been applied in the context of a minor offence and could interfere with the exercise of a fundamental right or freedom, such as freedom of expression (see paragraph 99 below). It was incumbent on the domestic authorities to ascertain that the deprivation of liberty was "reasonably considered necessary" in the circumstances of each case. Article 5 § 1 of the Convention requires that for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure be taken and executed in conformity with national law; it must also be necessary in the circumstances (see *Nešťák v. Slovakia*, no. 65559/01, § 74, 27 February 2007; *Ladent v. Poland*, no. 11036/03, § 55, 18 March 2008; and, in a similar context, *Butkevich v. Russia*, no. 5865/07, § 64, 13 February 2018).

84. The Court concludes that the first and fourth applicants' deprivation of liberty was not "lawful" as regards compliance with the requirements of Russian law and Article 5 § 1 of the Convention mentioned above.

85. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of the first and fourth applicants.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

86. The applicants complained that their prosecution for administrative offences had violated Article 10 of the Convention.

87. The relevant parts of Article 10 read as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the ... rights of others ..."

A. Admissibility

88. The Government argued that the first applicant had not exhausted domestic remedies as he had not mentioned his right to freedom of expression in the domestic proceedings. The Court notes that he was accused of violating the regulations on pre-election campaigning for producing and distributing leaflets. He did not deny the underlying facts but argued that he had exercised his freedom of expression in an election-related context (compare *Yılmaz and Kılıç v. Turkey*, no. 68514/01, §§ 39-43, 17 July 2008). The Government's objection is accordingly dismissed.

89. The Government argued that the second applicant had lost victim status after lodging his application with the Court because his conviction had been set aside (see paragraph 15 above). The applicant indicated that the reviewing court had done so years after the events and had not acknowledged that his right to freedom of expression had been violated, and that he had received no redress. The Court notes that the quashing occurred five years after the conviction, which was also after the complaint had been lodged with the Court and notice had been given to the Government. During that time, the prosecution against the applicant was a strong indication to him that unless he changed his behaviour during future elections he would run the risk of being prosecuted again and possibly convicted and punished (see, in the same vein, *Bowman v. the United Kingdom*, 19 February 1998, § 29, *Reports of Judgments and Decisions* 1998-I). In any event, the applicant received no compensation for the alleged violation of his right to freedom of expression, and it has not been argued that a compensatory remedy was available at the time (compare *Udaltsov v. Russia,* no. 76695/11, §§ 151-62, 6 October 2020).

The Court considers that the second applicant has not lost victim status under Article 10 of the Convention.

90. The Court notes that all 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

(a) The applicants

91. The first applicant argued that he had exercised his right to freedom of expression by distributing leaflets calling on people not to vote for the United Russia party. The Constitutional Court had indicated that citizens could engage in such campaigning independently of any candidate and without incurring any expenses. By implication, the regulations concerning various formal requirements, such as indicating the number of copies being distributed, did not apply.

92. The second applicant made similar arguments.

93. The third applicant stated that Article 5.69 of the CAO penalised interactions with voters carried out to compel them to abstain from participating in an election or impede the free expression of their choice. The scope of that provision should not have been extended, as in his case, to a mere expression of a point of view by a private citizen having no formal or actual means to compel or impede others. It had been impossible to ascertain the truthfulness of a value judgment he had expressed via the leaflets and his online statements. The authorities' different point of view (specifically, that the election was not a fraud) did not justify the interference with his freedom of expression. Russian law did not define an election boycott and did not specifically prohibit it or provide for liability for it. The interpretation and application of Article 5.69 of the CAO in the applicant's case had been unforeseeable and had had no basis in Russian law. That provision had not been previously applied in the context of calls to boycott elections. His prosecution had pursued no legitimate aim.

94. The fourth applicant argued that the rationale of Article 5.12 of the CAO concerned activities on the part of candidates rather than a unaffiliated person such as himself. He could not therefore be foreseeably and lawfully prosecuted for failing to notify the competent electoral committee of his "campaign material". In any event, the leaflets he had distributed could not be classified as such material or as an act of "pre-election campaigning" within the meaning of Russian law, specifically section 49 of the Presidential Elections Act 2003. The list of campaign activities mentioned in the legislation did not include calls to abstain from voting in an election. That had been precisely his aim rather than calls to vote for or against any

candidate. Russian law did not make it unlawful for a citizen to abstain from taking part in the vote. The interpretation and application of the legislation had not been foreseeable and the interference with his freedom of expression had not been "prescribed by law". His case, concerning a presidential election, had to be distinguished from cases about parliamentary elections, that is, cases which engaged considerations relating to Article 3 of Protocol No. 1 as regards the legitimate aims for the interference with freedom of expression (of the print media, for instance, as in the case of *Orlovskaya Iskra v. Russia*, no. 42911/08, § 102, 21 February 2017). Those considerations played no role since Article 3 of Protocol No. 1 was inapplicable to a presidential election. In any event, the courts had not referred to any legitimate aim. In their submissions, the Government had not done that either. There was no evidence that he had adversely influenced any voters or forced them in any manner, impinging upon their free choice in the election of a head of State. On the contrary, he had expressed an opinion on an important socio-political issue and imparted some relevant information. The applicable legislative framework had, in practice, silenced any possible expression by citizens during an election period.

(b) The Government

95. As regards the first applicant, the Government submitted that during the one-month period preceding the election day he had disseminated material related to the election. He had had a fair trial and had been lawfully convicted. The fine had been proportionate to the legitimate aims pursued.

96. The Government made no specific observations as to the second applicant.

97. As regards the third applicant, the Government submitted that Russian law prohibited actions consisting of exerting influence over citizens to compel them to abstain from participating in a presidential election or impede the free expression of their choice. During a presidential election campaign citizens, political parties and non-governmental organisations could engage, in permissible forms and by permissible means, in "pre-election campaigning", which was defined as activities (aimed at) inducing voters to vote for or against a candidate or candidates, according to the types of activities in section 48 of the Electoral Rights Act. Campaigning could be carried out by producing or disseminating print, audiovisual or other campaign material, which each had to contain certain information, including about the person or organisation who had commissioned it and the election fund used to pay for it. Campaign expenses could only be incurred from a candidate's election fund. Prosecution under Article 5.12 of the CAO for producing and distributing leaflets calling on people to abstain from participating in an election could be lawful where the content amounted to "pre-election campaigning" and had a specific campaign aim. Where no such aim was identified, prosecution was still possible under Article 5.69 of the

CAO in cases of interference with the work of an electoral committee in providing information to voters or the creation of prerequisites for exerting influence over voters in relation to their free expression of electoral choice. In addition, calls to boycott an election violated the statutory requirement that content disseminated during an election period be objective and truthful.

98. As to the fourth applicant, the Government stated that leaflets containing calls to abstain from voting in a presidential election could be classified as printed "campaign material" if they contained indications of pre-election campaigning under section 48 of the Electoral Rights Act and had a campaign aim. Where printed material contained calls not to vote or other information exerting influence over a Russian citizen and impeding the free expression of his or her choice, that material amounted to unlawful campaign material, and its production and dissemination would amount to unlawful campaigning. Launching calls to "boycott" an election violated section 45 of the Electoral Rights Act, which required that information be objective and truthful. Such material created prerequisites for electoral absenteeism and thereby created obstacles to the exercise by voters of their constitutional right to participate in an election. While Russian law did not define an "election boycott", the applicant's intentional actions had been aimed at exerting influence over large numbers of voters and undermining democracy. Expression of an opinion had to exclude any misleading perception on the part of its addressees. The applicable regulations and their application had been foreseeable.

2. *The Court's assessment*

(a) Interference

99. The applicants' prosecution for administrative offences amounted to an "interference" with their right to freedom of expression under Article 10 of the Convention (see, in particular, paragraph 89 above for the second applicant).

100. An interference infringes Article 10 unless it was prescribed by law, pursued one or more legitimate aims under paragraph 2 and was necessary in a democratic society for achieving those aims.

(b) Justification of the interference

(i) Prescribed by law

(α) The first, second and fourth applicants

101. As to the first applicant, the Court notes that the thrust of his argument is that it was not necessary in a democratic society to prosecute him for expressing political views. In view of its findings on whether the interference was "necessary in a democratic society" in the pursuance of a

legitimate aim (see paragraphs 121-129 below), the Court does not need to determine whether the same interference was "prescribed by law".

102. The Court reaches the same conclusion as regards the second applicant's prosecution.

103. The fourth applicant was prosecuted under Article 5.12 of the CAO (see paragraph 43 above). The courts considered that the leaflets had contained "campaign material" and that their production and distribution had amounted to "pre-election campaigning". Prior to distributing them, the applicant had therefore had to submit copies to the competent electoral committee and provide it with information on, *inter alia*, the election fund used to pay for them ("the notification requirement").

104. The Court notes that section 48(2) of the Electoral Rights Act defines six situations in which conduct or material may be classified as "pre-election campaigning" and "campaign material" respectively (see paragraph 57 above). The courts in the fourth applicant's case did not provide much reasoning as to why they considered the content of the leaflets to have amounted to "campaign material" under, at least, one of those scenarios. The Court considers that calls not to vote do not seem to fall within the ordinary meaning of the applicable text. Reiterating the electoral committee's position (see paragraph 31 above), the Government seemed to suggest that calls not to vote amounted to information about (all) the candidates with predominantly negative comments and information creating a negative attitude on the part of the voter toward (all) the candidates under section 48(2)(d) and (f). However, the Court notes that all those provisions are clearly phrased as referring to one or several candidates being treated (un)favourably and did not refer to all of them or the electoral process in general. An issue therefore arises as to whether it was foreseeable that the fourth applicant's actions consisting of distributing – or organising the distribution of – that content would be classified as "pre-election campaigning" that had to comply with the requirements of section 54 of the Electoral Rights Act (see paragraph 59 above).

105. Having said this, in view of the findings on whether the interference was "necessary in a democratic society" in the pursuance of a legitimate aim, in the present case the Court decides to leave open the question of whether the same interference was "prescribed by law".

(β) The third applicant

106. It is common ground between the parties that Russian law did not specifically regulate the production and dissemination of material calling on the electorate to abstain from voting in a forthcoming national election.

107. Unlike the other applicants, the third applicant was convicted under Article 5.69 of the CAO read in conjunction with sections 1 and 46 of the Presidential Elections Act. His actions were not considered "pre-election campaigning" under Russian law, that is, it was not established that he had

aimed to incite voters to vote one way or another. Instead, the courts considered that the production and dissemination of printed material and Internet publications calling on voters to abstain from voting had amounted to “creating obstacles to the participation of voters in the voting process”.

108. When describing the charge, the trial court held that the third applicant had “exerted influence over citizens” by distributing leaflets or organising their distribution, as well as by making statements on the Internet calling on voters to abstain from voting in the forthcoming election.

109. The Court notes that Article 5.69 was introduced into the CAO in 2016, whereas the actions held against the third applicant were carried out between February and March 2018. There is no indication that the legislature intended Article 5.69 to penalise calls to abstain from voting (see paragraph 41 above) or that by early 2018 there had been any case-law of the Constitutional Court or the Supreme Court concerning calls to abstain from voting in a forthcoming election and, more generally, the interpretation and application of Article 5.69. It appears that at the time diverging practices of interpreting and applying that Article were emerging at the level of the lower courts. For instance, the courts in the fourth applicant’s case considered, in comparable circumstances, that similar calls did not amount to an offence under that provision (see paragraph 36 above).

110. Be that as it may, in view of the findings on whether the prosecution was “necessary in a democratic society” in the pursuance of a legitimate aim (see paragraphs 132-141 below), the Court does not need to determine in the present case whether the same interference was “prescribed by law”.

(γ) Conclusion on lawfulness

111. In view of the Court’s findings below, it is not necessary to delve into whether the first, second and fourth applicants’ prosecution under Article 5.12 and the third applicant’s prosecution under Article 5.69 of the CAO were “prescribed by law”.

112. The Court will now examine whether the applicants’ prosecution was necessary in a democratic society in pursuance of a legitimate aim.

(ii) Legitimate aim(s)

(α) Prosecution under Article 5.12 of the CAO

113. The Court considers that the first, second and fourth applicants’ prosecution under Article 5.12 of the CAO sought to pursue the aim of protecting the “rights of others” (see *Orlovskaya Iskra*, cited above, §§ 99-104, and *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*, no. 43351/12, § 78, 18 May 2021).

(β) Prosecution under Article 5.69 of the CAO

114. The Court considers that the same rationale is not applicable as regards the third applicant's prosecution under Article 5.69 of the CAO for calls to abstain from voting. It did not concern "pre-election campaigning" or the production or distribution of "campaign material". The purpose of Article 5.69 was to penalise "creating obstacles to the participation of voters in the voting process", irrespective of the presence or absence of any campaign aim (dis)favouring any specific candidate or party. In particular, the equality of registered candidates was not at stake in such regulation of the "flow of information" under Russian law during an electoral campaign.

115. Having said this, at this juncture the Court takes into account the Government's submission that the need to ensure "free elections ... under conditions which ensure the free expression of the opinion of the people in the choice of" the President of the Russian Federation could be considered a legitimate consideration in terms of ensuring voters' access to truthful information about a forthcoming election, their actual access to the voting process, including the act of voting, as well as in terms of the State's policy choice to take measures aimed at reducing electoral abstention or, conversely, maximising turnout. In the Court's view, those considerations fall within the scope of the "rights of others" under Article 10 § 2 of the Convention.

(iii) Necessary in a democratic society

116. The Court will now examine whether the applicants' prosecution was convincingly shown to have been "necessary in a democratic society" to achieve the legitimate aims.

(α) General principles

117. The Court reiterates that democracy constitutes a fundamental element of the "European public order", and that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Mugemangango v. Belgium* [GC], no. 310/15, § 67, 10 July 2020). There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into its own democratic vision (see *Scoppola v. Italy (no. 3)* [GC], no. 126/05, § 84, 22 May 2012).

118. As to Article 10 of the Convention, the applicable principles are summarised in *Orlovskaya Iskra* (cited above, §§ 103-07 and 110-17).

119. In particular, the Court considers that free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see *Bowman*, cited above, § 42). Free speech is essential in ensuring "the free expression of the opinion of the

people in the choice of the legislature" (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 100, 20 January 2020). For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds be permitted to circulate freely. In certain circumstances it may be considered necessary, in the period preceding or during an election, to place certain restrictions on freedom of expression, in order to secure/ensure the "free expression of the opinion of the people in the choice of the legislature" (see *Orlovskaya Iskra*, cited above, § 111; see also paragraph 125 below).

120. The Court found a violation of Article 10 of the Convention in a case in which national law had limited to 5 British pounds sterling (GBP) a person's expenditure during the four to six weeks preceding the general election. The Court noted that even though the applicant could have campaigned freely at any other time, that would not have served her purpose in publishing leaflets which had been, at the very least, to inform the voters about the candidates' voting records and attitudes on abortion, during the critical period when their minds had been focused on their choice of representative. As to alternative methods to convey the information to the electorate, in practice, the applicant had had access to no other effective channels of communication. It had not been demonstrated that she had had any way of ensuring that the material contained in the leaflets was published in a newspaper or broadcast on radio or television. The Court concluded that the national law had operated, for all practical purposes, as a total barrier to the applicant's publishing information with a view to influencing the voters in favour of an anti-abortion candidate. The Court was not satisfied that it had been necessary thus to limit the expenditure to GBP 5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency (see *Bowman*, cited above, §§ 44-47).

(β) Application of the general principles in the present case

– *The first applicant*

121. The first applicant produced and attempted to distribute leaflets with content related to a forthcoming parliamentary election and a specific political party. It is undisputed that he was expressing his own political views and that he was not a candidate himself and was not acting on behalf of any registered candidate or electoral group.

122. The Court has previously dealt with the Russian regulatory framework relating to the "flow of information" during an electoral campaign

with a distinction between "informing voters" and "pre-election campaigning" (see *Orlovskaya Iskra* and *OOO Informatsionnoye Agentstvo Tambov-Inform*, both cited above, in the context of articles in the print and online media respectively). It is common ground between the parties that it was lawful under Russian law for the applicant to engage in "informing" other voters during an electoral campaign (see paragraph 54 above). In addition, he could engage in "pre-election campaigning" without incurring any expenses whatsoever (see paragraph 57 above). It was presumed that "campaign material" was commissioned by or for the benefit of a candidate or an electoral group and had to have been paid from his/her/their election fund. Failure to submit information about such a payment and other related information resulted in prosecution, specifically under Article 5.12 of the CAO.

123. The courts' decisions in the first applicant's case contained no meaningful assessment of the content of the leaflets and did not explain whether and why that content fell within the scope of the situations classified as "pre-election campaigning" under Russian law. The courts found it sufficient to state that the content had been related to the election and produced and disseminated during the electoral campaign. The facts of the case disclose that even a nominal personal expense for printing out leaflets exposed a private citizen to a risk of prosecution for unlawful pre-election campaigning (see paragraph 65 above for the Supreme Court's position).

124. The Court considers that unaffiliated citizens who wished to exercise their right to freedom of expression by expressing critical views during and in relation to a forthcoming election were faced with a dilemma: either they abstained from doing so or risked prosecution and, at times, measures such as administrative escorting or arrest (see paragraph 84 above). It appears that that state of affairs was present during the entire electoral period, that is, for some three months, from the launch of an electoral campaign until after election day (see *OOO Informatsionnoye Agentstvo Tambov-Inform*, cited above, § 92; compare *Bowman*, cited above, § 45).

125. The Court reiterates that the States enjoy a wide margin of appreciation in matters relating to the rights protected under Article 3 of Protocol No. 1 to the Convention, for instance, as regards the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 64, ECHR 1999-I). There is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two fields, namely political speech and matters of public interest, including during electoral periods (see *Orlovskaya Iskra*, cited above, §§ 115-16, and *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 104, ECHR 2013 (extracts)). At the same time, the Court reiterates that States must be accorded some discretion in regulating certain forms of election campaigning with a view to safeguarding the democratic order within

their own political systems (see *Assotsiatsiya NGO Golos and Others v. Russia*, no. 41055/12, § 89, 16 November 2021 and the cases cited therein).

126. In so far as the present case concerns the respondent State's choice, in substance, to impose a complete ban on the election-related speech of individuals that involves any form or amount of personal expenditure, the general principles stated in *Animal Defenders International* (cited above, §§ 106-11) should be applied.

127. The Court notes that the Constitutional Court held against the exclusion of Russian citizens from election campaigning and considered the free elections to be impossible in the absence of free political discussion and opportunities for a free exchange of opinions, including both candidates and citizens. Considering the rights of citizens, who are not candidates to the election, it specified that they were allowed to engage in pre-election campaigning without incurring expenses by organising public gatherings or in other ways. The Constitutional Court left it to the federal legislature's discretion to choose the appropriate methods and means to reconcile the exercise of electoral rights, freedom of expression and freedom of mass information, taking account of the historical conditions prevailing at a particular stage of the country's development (see paragraph 63 (b) and (c) above).

128. As to the applicable legislation, the Court notes, however, that the Government have provided no information about the regulation of electoral volunteering and made no specific submissions relating to financial contributions to election funds and electoral campaigns of candidates or electoral groups under Russian law (see paragraphs 50 and 51 above). As a matter of principle, the Court finds it difficult to conceive that participation in – and, *a fortiori*, organisation of – public campaign events would not necessitate any monetary or in-kind expenditure, not even a nominal personal expense, by the person concerned. Nor has the Court been provided with any detailed information relating to the rationale for adopting the relevant provisions of national legislation and whether any other, less restrictive, options were considered by the authorities to ensure transparency of electoral spending (see also *Orlovskaya Iskra*, cited above, §§ 124 and 125). Furthermore, a complete ban on electoral speech by individuals that involves any amount of personal spending appears difficult to reconcile, at least without further justification, with a legal regime that allows the same individuals to provide significant amounts in personal donations to the electoral funds of political parties or presidential candidates (see paragraphs 50 and 51 above).

129. The Court considers that the respondent State overstepped its margin of appreciation in so far as Russian law operated, for all practical purposes, as a total barrier to the applicant disseminating content with a view to encouraging voters to vote in the forthcoming election in a particular manner, and disproportionately restricted the very essence of his ability to influence

an election. The first applicant's prosecution answered no "pressing social need" as regards the production of the leaflets and was not "necessary in a democratic society" as regards their distribution during the legislative election campaign.

– *The second applicant*

130. The Court's findings in the preceding paragraphs apply, *a fortiori*, to the second applicant.

131. The second applicant was prosecuted for unlawful pre-election campaigning in relation to a forthcoming presidential election, for putting writing on the rear window of his car saying "United Russia is a party of crooks and thieves". His conviction was subsequently quashed on rather technical grounds relating to when that writing was made public and whether it should be classified as visual or printed material under Russian law. The reviewing court had no regard to the substance of the applicant's complaint relating to the overly broad scope of the electoral legislation adversely affecting his freedom of expression during and in relation to the ongoing electoral campaign (see also paragraph 89 above; compare *Zoltán Varga v. Slovakia*, nos. 58361/12 and 2 others, §§ 109-10 and 160, 20 July 2021). For some five years there was a chilling effect on the second applicant's exercising of his right to freedom of expression (see also paragraph 89 above).

– *The third applicant*

132. The third applicant was prosecuted for creating obstacles to the participation of voters in the voting process by calling on the electorate to abstain from voting in a forthcoming presidential election.

133. The Court reiterates that a boycott is a form of expressing a protesting opinion, and that calls to boycott aimed at communicating that opinion while calling for specific actions relating to it are, in principle, protected by Article 10 § 1 of the Convention (see *Baldassi and Others v. France*, nos. 15271/16 and 6 others, § 63, 11 June 2020). The Court considers that calls to abstain from voting in an election are an instance of political expression (see also paragraph 68 above) and thus, in principle, fall within the scope of expression that should be afforded the heightened level of protection under Article 10 of the Convention (compare *Magyar Kétfarkú Kutya Párt*, cited above, §§ 89-91).

134. The Court considers it uncontroversial that establishing and maintaining the foundations of an effective and meaningful democracy are better served by the active participation of voters in electoral processes, specifically the voting process, conducted in compliance with the principles relating to free and fair elections (see paragraph 68 above). That said, in so far as an "interference" under Article 10 of the Convention is concerned, the

respondent State's choice to prosecute calls to abstain from voting in an election should be subjected to strict scrutiny.

135. It has not been alleged that those calls amounted to calling on voters to engage in unlawful activities. It is uncontested that under Russian law there was no legal obligation to vote in an election. Furthermore, the third applicant did not incite hatred, intolerance or discrimination and did not call for violence or other criminal acts to be committed (compare *Féret v. Belgium*, no. 15615/07, §§ 67-81, 16 July 2009, and *Atamanchuk v. Russia*, no. 4493/11, §§ 53-73, 11 February 2020). He did not attempt "to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it", within the meaning of the Court's case-law relating to Article 17 of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 113-15, 15 October 2015).

136. It was not convincingly established that the impugned material had contained false information concerning the applicable legislation. The Court notes in this connection that the Russian courts found it established that the material, specifically the leaflets, constituted a point of view. At the same time, they concluded that the material had been misleading and untruthful. The Court reiterates in this connection that while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 55, ECHR 2007-IV). In the Court's view, the Russian courts did not apply the above requirements in the third applicants' case.

137. The national courts did not delve into whether the third applicant's exercise of his right to freedom of expression had contributed to an ongoing nationwide debate on a matter of general interest (see, *mutatis mutandis*, *Magyar Kétfarkú Kutya Párt*, cited above, §§ 89 and 91). It follows from the content of the leaflets and other available information (see paragraph 69 above) that there were allegations of unequal treatment of certain prospective candidates, that is, nominees for candidacy, in that specific election. At the same time, the leaflets encouraged citizens to engage in the electoral process in another manner, specifically through acting as election observers (see paragraph 21 above). The third applicant's expression was not intended to single out and promote or prejudice the electoral prospects of any particular candidate running in the national election. Indeed, his actions were not classified as "pre-election campaigning" under Russian law, more specifically negative campaigning against a candidate.

138. The courts considered that the impugned material could have influenced voters into adopting the author's point of view and that that had indeed been the third applicant's intention. The Court notes that convincing others of a point of view is often at the heart of the right to freedom of

expression in a democracy. It was not argued that the third applicant had advocated any wrongdoing or that, as a private individual, he was in any position of authority over other voters. The mere fact that the author's intention was to convince others to adopt a particular type of conduct was insufficient, in the Court's view, to justify the applicant's prosecution.

139. It is questionable whether the possibility to volunteer for or otherwise contribute to a registered candidate's campaign would have allowed the applicant to express his protest in the circumstances of the case (see paragraphs 51-53 above). It appears that the applicant's attempt to organise a protest rally was also unsuccessful (see paragraph 19 above).

140. As regards the Government's reference to the need to reduce abstention in an election, the Government failed to convincingly demonstrate how the mere expression of a point of view concerning the non-participation of the electorate in a forthcoming election could have exerted influence over eligible voters in the absence of any proven elements of coercion or impediment. With due regard to the presumption of innocence, it was incumbent on the national courts to convincingly establish that the applicant's exercise of his freedom of expression had obstructed voters from participating in the voting process. The applicant was not a registered candidate and was not acting on behalf of a registered candidate when calling on people to abstain from voting. He had no administrative, employment-related, hierarchical or other similar authority over voters and could not provide or withhold any benefits, incentives or the like from voters for their electoral behaviour.

141. The Russian courts did not adduce sufficient reasons to justify the third applicant's conviction for an offence under Article 5.69 of the CAO. The Court concludes that that conviction was not necessary in a democratic society to achieve the legitimate aims referred to by the Government (see paragraph 115 above). The respondent State overstepped its margin of appreciation in so far as the applicant was prevented from disseminating during an election period content with a view to encouraging the electorate to abstain from voting in a forthcoming national election.

– *The fourth applicant*

142. The Court's findings in the preceding paragraphs concerning the third applicant also apply to the fourth applicant's situation.

143. The national courts considered that the distribution by the applicant of leaflets containing, *inter alia*, calls to abstain from voting in the same presidential election had amounted to "pre-election campaigning" within the meaning of Russian law (see also paragraph 104 above). However, it was not convincingly established that his expression had been intended to single out and promote or prejudice the electoral prospects of any particular candidate running in that election.

144. Moreover, when prosecuting the applicant for calls to abstain from voting, the courts took no heed of the rationale for such a political choice as specified in the leaflets or of the fact that they had provided information relating to voters' rights and encouraged citizens to engage in the electoral process in another manner, specifically through acting as election observers (see paragraphs 28 and 29 above). It was not convincingly established that the fourth applicant's exercise of his right to freedom of expression had been such as to undermine the foundations of an effective and meaningful democracy (see also paragraphs 117 and 134 above).

(iv) Overall conclusion

145. There has been a violation of Article 10 of the Convention because the applicants' convictions under Articles 5.69 and 5.12 of the CAO were not "necessary in a democratic society".

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

146. The first applicant argued that he had had no effective remedies for his complaint under Article 5 § 1 of the Convention and that his being taken to the police station on 29 November 2011 had also violated Article 10 of the Convention. The third applicant argued that there had been violations of Articles 6 and 7 of the Convention in the CAO proceedings. The fourth applicant argued that the CAO proceedings had been in breach of Article 6 of the Convention.

147. Having regard to the nature and scope of its findings of violation under Articles 5 and 10 of the Convention, the Court decides to dispense with the examination of the admissibility and merits of these complaints.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The first, second and third applicants claimed 15,000, 11,000 and 10,000 euros (EUR) respectively in respect of non-pecuniary damage. The fourth applicant asked the Court to determine the amount to be awarded to him under this head. The second, third and fourth applicants claimed reimbursement of their fines.

150. The Government made no specific comment or disagreed, indicating, in particular, that the second and third applicants had submitted no proof of payment of their fines.

151. With respect to non-pecuniary damage, the Court awards EUR 3,000 to the second and third applicants separately, and EUR 3,300 to the first and fourth applicants separately, plus any tax that may be chargeable. The Court also awards the fourth applicant EUR 14, the amount of the fine paid by him. The second and third applicants did not provide proof that they had paid the fines.

B. Costs and expenses

152. The first applicant claimed EUR 1,200 for the costs and expenses incurred before the Court. The second applicant claimed EUR 4,000 for his representative's work before the Court and EUR 70 for postal expenses. The fourth applicant claimed EUR 3,758 for the costs and expenses incurred, by him or a non-governmental organisation, before the national courts and the Court. The first and fourth applicants requested that the relevant sum be paid to their representatives.

153. The Government disagreed or made no specific comment.

154. According to the Court's case-law, an applicant is 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. Regard being had to the documents in its possession and the above criteria, the Court awards EUR 1,000 each to the first and second applicants and EUR 1,500 to the fourth applicant. The amounts relating to the first and fourth applicants are to be paid directly to their representatives, Mr A. Glukhov and Mr D. Shedov.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 5 § 1 (as regards the first and fourth applicants) and under Article 10 of the Convention (as regards all four applicants' convictions) admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first and fourth applicants;

4. *Holds* that there has been a violation of Article 10 of the Convention in respect of each applicant;

5. *Holds* that it is not necessary to examine the remaining complaints;

6. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable to the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage to the second and third applicants each;

(ii) EUR 3,300 (three thousand three hundred euros) in respect of non-pecuniary damage to the first and fourth applicants each;

(iii) EUR 14 (fourteen euros) in respect of pecuniary damage to the fourth applicant;

(iv) EUR 1,000 (one thousand euros) in respect of costs and expenses to the first applicant, to be paid directly to his representative, Mr A. Glukhov;

(v) EUR 1,000 (one thousand euros) in respect of costs and expenses to the second applicant;

(vi) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses to the fourth applicant, to be paid directly to his representative, Mr D. Shedov;

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

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

Done in English, and notified in writing on 5 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pavli is annexed to this judgment.

G.R.
O.C.

CONCURRING OPINION OF JUDGE PAVLI

1. The present judgment is the fourth one since 2017 in which the Court has found a violation of Article 10 of the Convention in connection with the highly regulated Russian legal framework governing electoral speech. Whereas the first three cases involved generalised restrictions placed, respectively, on the print media, online media and election watchdog organisations[1], today's judgment involves a categorical ban on dissemination of "campaign materials" by ordinary citizens in the months prior to a legislative or presidential election. These latter restrictions are the most far-reaching: in the name of ensuring "the free expression of the opinion of the people in the choice of the legislature" or the head of State, the Russian Federation has effectively outlawed the public expression of electoral opinions and preferences by ordinary people in the crucial pre-election period.

The Chamber has held that the specific interferences with the four applicants' freedom of expression were not necessary in a democratic society, but accepts that they pursued the legitimate aim of protecting "the rights of others" under the second paragraph of Article 10 of the Convention (see paragraphs 113-15 of the judgment). In my view, the extreme and unjustified nature of the restrictions on campaigning by ordinary citizens renders them incapable of promoting any legitimate aims consistent with Article 10. The case of the second applicant is especially telling: the national courts found that it was an administrative offence for him to display on his car window a handmade sign that was critical of the governing party! The very fact that domestic law-enforcement took the trouble to prosecute the second applicant for that "offence" speaks eloquently about the zeal with which the relevant provisions appear to be enforced in the Russian Federation.

2. Before turning to the matter of legitimate aims, some clarifications are in order as to the precise nature of the statutory provisions at stake. The first, second and fourth applicants were fined for failing to comply with the "notification" requirements related to the distribution of "campaign materials" by individuals. This is, however, a misleading euphemism: what national law requires is not merely notification, which itself could be considered a burdensome measure. In fact, it goes much further: any and all electoral messaging by citizens – defined as "printed, audiovisual *or any other* [campaigning] material designed for mass distribution" – is lawful *only if it has been commissioned and paid for by the electoral fund of an official party or candidate*. Furthermore, it must be submitted in advance to be approved by election management bodies (see paragraph 43 of the judgment).

[1] See, respectively, *Orlovskaya Iskra v. Russia* (no. 42911/08, 21 February 2017); *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* (no. 43351/12, 18 May 2021); and *Assotsiatsiya NGO Golos and Others v. Russia* (no. 41055/12, 16 November 2021).

What counts as material “designed for mass distribution” is also subject to expansive interpretation by the domestic courts, including the federal Supreme Court. This could presumably apply to (stationary) yard signs and clearly does apply to any messages posted on moving personal vehicles, signs held at a rally or even T-shirts worn by people participating in public events (see paragraph 65 of the judgment). In other words, individuals may engage in public electoral messaging only and exclusively as *proxies* for the parties and their candidates. This is a stunning legislative straitjacket that is without precedent not only in our case-law, but most likely in the entire European democratic area.

The national Constitutional Court has sought to attenuate somewhat the nature of the ban by interpreting the relevant provisions as applicable to public campaigning by individuals that involves *any form or amount of personal spending*. However, that interpretation has not trickled down to the ordinary courts: there is no indication that any of the courts that tried the present applicants, within a timeframe of several years apart, considered whether they incurred any spending for their campaigning materials, or whether any exceptions applied to the categorical ban by statute. In any event, the Chamber, relying *inter alia* on *Bowman v. the United Kingdom* (19 February 1998, Reports of Judgments and Decisions 1998-I), which found against a ban on electoral spending of more than five British pounds, was not persuaded that the alternative of zero-expense speech can be considered proportionate during an election period.

3. The nature and extent of this specific prohibition raises, in my view, a question that precedes the proportionality analysis, namely: can such a ban be considered to pursue *any* legitimate aims within the meaning of Article 10 § 2?

The respondent Government have invoked the broad margin of appreciation to which they are entitled in regulating electoral matters, and the need to ensure fair treatment of parties and candidates competing in an election, including through transparency of spending. And yet they provided no details as to the legislative considerations that led to such a radical solution to the problem of financial fairness in elections, or as to whether other, less restrictive alternatives were considered and, if so, the grounds on which they were found to be inadequate.

Russian legislation imposes financial limits both on the overall spending by parties or candidates and on individual donations to their campaigns during any given electoral period (see paragraphs 50-51 of the judgment). It is conceivable that – if we are to rely on the more nuanced interpretation by the Constitutional Court – restrictions on autonomous individual spending in support of the same campaigns could serve to avoid the circumventing of the statutory limits on contributions. However, it is perfectly possible to impose transparency and oversight requirements on any (significant) amounts of individual spending without banning them entirely. After all, the caps on

private donations under Russian law are quite high, allowing citizens to contribute thousands of euros to partisan campaign funds – but none whatsoever to individual messaging that may be seen as favourable to certain parties or candidates. As such, the categorial ban is not rationally connected to the supposed goal of ensuring financial fair play in elections.

It is relevant to compare this legal framework with the United Kingdom's statutory restrictions as reviewed by the Court in the *Bowman* case (in which, to recall, the Court nevertheless found a violation of Article 10)[2]. The British restrictions, as in force in 1992, applied only to individual spending (above five pounds) seeking to promote or oppose a specific candidate within a specific constituency; they did not affect in any way the ability of individuals, organised groups or the media to promote the general interests of a political party or movement, or any given political or social causes (see *Bowman*, cited above, § 22). In contrast, the relevant Russian restrictions on individuals apply to any campaign materials that include an "expression of preference" or that may lead voters to create "a positive or negative attitude" about not only individual candidates, *but also entire lists of candidates and political parties or movements* (see paragraph 57 of the judgment). One direct result of this over-broad definition of "campaigning" is that voters and other actors are not able to critique openly the record of the incumbent governing majority or of any incumbent president who may be seeking re-election.

A comparison of the individual circumstances is also revealing as regards the severity of the restrictions and the zero-tolerance approach to their enforcement in the Russian context. Ms Bowman had been prosecuted, as executive director of an anti-abortion society, for having distributed one and a half million leaflets throughout the United Kingdom about the abortion voting record of named candidates running in given constituencies. In the present cases, Mr Teslenko was charged with having printed and posted on his block of flats a grand total of eight leaflets critical of the governing party; while Mr Lyutarevich was charged for putting a sign with a similar message on the rear window of his car. Mr Dyachkov and Mr Nigmatullin distributed leaflets calling on voters to boycott a presidential election, whose fairness they considered to have been compromised. In none of the cases did the "campaign materials" refer to any individual candidate.

4. Finally, the restrictions on individual speakers must be seen in the wider Russian context of election-related restrictions on virtually all other independent voices, as documented in our recent case-law. The media and other non-governmental watchdogs are under similar prohibitions from publishing any content that might be seen as supporting or opposing a party or candidate during the designated campaign period. Their freedom of

[2] The Grand Chamber concluded that the relevant legislative provision "operated, for all practical purposes, as a total barrier to Mrs Bowman's publishing information with a view to influencing the voters of [a given parliamentary constituency] in favour of an anti-abortion candidate" (see *Bowman*, cited above, § 47).

opinion or affiliation is effectively suspended for the duration of the official campaign – they can only convey the views and activities of electoral subjects (see *Orlovskaya Iskra v. Russia,* and *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*, both cited above)[3]. As a result, individual voters have no alternative channels by which to seek to influence their fellow citizens, not even indirectly (compare *Bowman*, cited above, § 46).

The net result of this regulatory framework is a system whereby national elections can be contested in the public domain only by recognised political actors, everyone else being consigned to the role of largely silent spectator – much like a song contest held behind closed doors, with the public watching (and voting) on television. But a national election is not merely about choosing names on a ballot, in the privacy of the voting booth; that act would be much devalued without open competition between ideas, visions and debates about the role of actors and forces whose names may not even appear on the ballot paper.

It is true that neither the drafters of the Convention, nor the Court's jurisprudence have given us a working definition of the "democratic society" in whose function the legitimacy and necessity of interferences with the core political rights protected by the Convention are to be judged (though it is certainly possible to glean a composite view from the case-law as a whole). That said, the democratic society envisaged by Article 10 and its sister provisions cannot, in my view, be one in which individual voters – and the rest of civil society – are treated as mere tools in the service of political parties' discourse. Or one in which it is illegal to carry a political message on the T-shirt you are wearing to a campaign rally.

[3] See also *Yartseva v. Russia* (Committee) (no. 19273/08, 25 February 2020, §§ 18 and 29), involving a journalist convicted of an administrative offence because her media *articles* were classified as unlawful non-monetary contributions to an electoral campaign.

APPENDIX

Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
49588/12	Teslenko v. Russia	15/07/2012	Andrey Yuryevich TESLENKO 1981 Hudson, USA Russian	Aleksey Vladimirovich GLUKHOV
65395/12	Lyutarevich v. Russia	08/10/2012	Valeriy Nikolayevich LYUTAREVICH 1958 Rodniki, Russia Russian	Konstantin Ilyich TEREKHOV
49351/18	Dyachkov v. Russia	10/10/2018	Nikolay Yuryevich DYACHKOV 1991 Ivanovo, Russia Russian	Ivan Yuryevich ZHDANOV
50424/18	Nigmatullin v. Russia	23/10/2018	Bulat Nurlanovich NIGMATULLIN 1987 Gloucester, UK Russian	MEMORIAL HUMAN RIGHTS CENTRE (Denis Viktorovich SHEDOV and others)