CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KRASNOV AND SKURATOV v. RUSSIA

(Applications nos. 17864/04 and 21396/04)

JUDGMENT

STRASBOURG

19 July 2007

FINAL

31/03/2008

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

In the case of Krasnov and Skuratov v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 28 June 2007,

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

PROCEDURE

1. The case originated in two applications (nos. 17864/04 and 21396/04) 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 two Russian nationals, Mr Aleksandr Viktorovich Krasnov ("the first applicant") and Mr Yuriy Ilyich Skuratov ("the second applicant"), on 17 and 11 May 2004 respectively.

2. The applicants were represented before the Court by Dr K. Eckstein, a lawyer practising in Rorschach, Switzerland. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that there had been a violation of their right to stand for election as guaranteed by Article 3 of Protocol No. 1. The second applicant also complained that he had been discriminated against in breach of Article 14 of the Convention.

4. On 14 December 2004 the Court decided to join the applications and declared them partly inadmissible.

5. By a decision of 23 March 2006 the Court declared the applications admissible.

6. The applicants and the Government filed observations on the merits (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1956 and the second applicant in 1952. They both live in Moscow.

A. General information

8. On 7 December 2003 the general elections to the State Duma of the Federal Assembly of the Russian Federation, the lower chamber of the Russian bicameral legislature, were held to elect 450 members for a term of four years. One half of the members (225 seats) were returned by a majority vote from single-mandate district constituencies. The other 225 seats were allocated on a proportional basis to candidates on federal rolls submitted by political parties or electoral blocs that gained more than five per cent of the valid votes cast in a single federal constituency ballot.

B. The first applicant, Mr Krasnov

1. Mr Krasnov's employment history

9. On 28 August 2001 Mr Krasnov was elected head of the district council of the Presnenskiy district of Moscow (*глава районной управы Пресненского района г. Москвы*).

10. On 6 November 2002 the Moscow City Duma enacted Law no. 56 "on the organisation of local self-government in the city of Moscow". Section 10 of that law determined that the bodies of local self-government in Moscow would include a municipal assembly (*муниципальное собрание*) as the representative body and a municipality (*муниципалитет*) as the executive body. Pursuant to transitional provisions of the law (section 43 § 2), heads of district councils who had been appointed or elected to their position before the law was enacted were to remain in power until the appropriate body had been formed, and its officials appointed or elected, in accordance with the law.

11. On 29 May 2003 the municipal assembly of the Presnenskiy district passed a decision to rename the district council of the Presnenskiy district of Moscow as the "Presnenskiy" municipality (*муниципальное учреждение – муниципалитет «Пресненский»*). On the same day the assembly adopted the regulation on the "Presnenskiy" municipality and appointed Mr Klubkov as its director.

12. On 16 June 2003 the director of the "Presnenskiy" municipality ordered the dismissal of the first applicant on the ground that he had not been re-elected to his position.

2. Mr Krasnov's bid for election

13. On 24 September 2003 the first applicant submitted his self-nomination application, for the elections to the State Duma, to the District Election Commission (DEC) of central single-mandate constituency no. 202 (in Moscow). He indicated that he was employed as "the head of the district council of the Presnenskiy district of Moscow".

14. On 9 October 2003 the District Election Commission registered the first applicant as a candidate for election.

15. On 31 October 2003 the District Election Commission examined materials concerning verification of the information submitted by the first applicant and decided to apply to the Moscow City Court with a request for the annulment of its own decision of 9 October 2003 in the light of newly discovered circumstances.

16. On 6 November 2003 the Moscow City Court granted the Commission's request and annulled the first applicant's registration as a candidate for the Duma elections. It established that the first applicant had submitted untrue information about his employment as head of the district council of the Presnenskiy district of Moscow.

17. On 21 November 2003 the Supreme Court of the Russian Federation dismissed the first applicant's appeal against the judgment of 6 November 2003, finding as follows:

> "The [first-instance] court correctly applied the substantive law ... [I]t determined that, once it had been established that the information submitted by a candidate about himself, including the place of his employment, was untrue and if such circumstance became known after the registration, a court ... could annul the decision on registration.
>
> Having examined the evidence obtained by the District Election Commission after the registration of Mr Krasnov, the court established that on 28 August 2001 Mr Krasnov had been elected as head of the Presnenskiy district council and that on the basis of a decision ... of 29 May 2003... the district council was renamed as the 'Presnenskiy' municipality and Mr [Klubkov?] was appointed its director, whereas Mr Krasnov was dismissed ... because he had not been re-elected ... It follows that at the time of self-nomination Mr Krasnov was not the head of the district council of the Presnenskiy district of Moscow.
>
> The arguments in the appeal to the effect that the re-organisation of the district council had been carried out in flagrant breach of the law and that Mr Krasnov's dismissal had been unlawful cannot be the grounds for quashing of the judgment and for declaring Mr Krasnov's registration valid, as the examination of these issues falls outside the scope of the present proceedings. Neither the re-organisation of the district council nor Mr Krasnov's dismissal were ... appealed against or annulled.

Mr Krasnov's argument that his continued employment as head of the district council is confirmed by the entry in his employment record, has been examined and rejected by the court. It follows from the case-file that on 23 June 2003 a letter was sent to Mr Krasnov's address whereby he was invited to take cognisance of the dismissal order. The claimant did not make use of his procedural right to prove the circumstances on which his claims were based ... For instance, he did not produce a certificate from the human resources department about his position at the moment of self-nomination or any orders (regulations) that he may have adopted after June 2003 as head of the district council, or any other proof of his employment in that period."

B. The second applicant, Mr Skuratov

1. Elections in a single-mandate constituency

18. On 20 October 2003 the second applicant submitted the documents concerning his nomination by the Communist Party of the Russian Federation ("CPRF") for the elections to the State Duma, to the District Election Commission of the Buryatskiy single-mandate constituency no. 9. According to the acknowledgement-of-receipt coupon signed by the secretary of the Commission, the second applicant enclosed an application form, copies of his passport, diplomas and employment record (see paragraph 33 below), tax and property declarations and a copy of a certificate attesting to the membership status of the Communist Party's candidates for election to the State Duma, signed by the Chairman of the Central Committee of the Communist Party and addressed to the Central Election Commission (CEC) (see paragraph 34 below).

19. On 27 October 2003 the District Election Commission refused registration of the second applicant, invoking the following three grounds:

"In the application written by the candidate Skuratov himself, his position is indicated as 'acting head of the department of constitutional, administrative and international law of the Moscow State Social University'. However, according to the entries in the candidate's employment record, his appointment as acting head of the department ... occurred at the same time as his transfer to the position of professor in the same department ... In fact, Mr Skuratov simultaneously performs the duties of acting head of the department and those of a professor of [that] department, which does not correspond to the information that he provided about his employment.

Having indicated his membership of the Communist Party of the Russian Federation, the candidate ... did not provide a document showing his membership of the CPRF and his status within the party addressed to the District Election Commission and endorsed by the standing management of the party. Instead he submitted a copy of a certificate concerning membership of candidates for the State Duma elections and their status within the party addressed to the Central Election Commission ..."

20. The third ground for the refusal was that the copies of the second applicant's diplomas had been certified by a non-governmental organisation rather than by the competent authority.

21. On 29 October 2003 the second applicant complained to the Central Election Commission.

22. On 4 November 2003 the Central Election Commission determined that the District Election Commission had no solid grounds to consider that the second applicant had submitted untrue information. The CEC requested the District Commission to reconsider the second applicant's registration immediately.

23. On 11 November 2003 the District Election Commission issued a new decision refusing the second applicant's registration. It modified the first two grounds for refusal and added a new one. As to the second applicant's employment, it stated that, according to a certificate of 29 October 2003 signed by the pro-rector of the Moscow State Social University and enclosed with the second applicant's complaint to the CEC, Mr Skuratov was a professor in the department. Since a copy of that certificate had not been made available to the District Election Commission, the second applicant was considered to be in breach of electoral law in that he had failed to inform it of a change in his employment. As to the second applicant's membership in the CPRF, the Commission noted that he had been in possession of an appropriate document and had enclosed it with his complaint to the CEC, but he had only done so on 29 October 2003, that is after the expiry of the registration period on 22 October 2003. As a new ground for refusal, the Commission found that the second applicant had printed certain campaign materials which had not been paid for from his election fund.

24. The second applicant complained once again to the Central Election Commission. On 20 November 2003 it rejected his complaint. It determined that the second applicant had omitted to state that he had also been a professor in the university and that a document showing his membership in the CPRF had been incorrectly addressed.

25. The second applicant contested these decisions before a court. On 25 November 2003 the Supreme Court of the Buryatiya Republic dismissed his claim, upholding the first two grounds for refusal relied upon by the District Election Commission. It found that the second applicant had failed to inform that Commission of his appointment to the position of professor and to submit an appropriate document confirming his party membership.

26. On 29 November 2003 the Supreme Court of the Russian Federation upheld, on the second applicant's appeal, the judgment of 25 November 2003. It found as follows:

> "It has been established that in the application form ... of 2 October 2003 the candidate ... Skuratov indicated his position as acting head of the department ... However, it transpires from a copy of Skuratov's employment record ... that he was

appointed acting head of the department ... by the order ... of 30 May 2003. Pursuant to the order ... of 28 May 2001 Skuratov had been elected for three years as a professor of the department of constitutional law ... and, by an order ... of 30 May 2003, he was transferred to the position of professor of the department of constitutional, administrative and international law. Skuratov failed to submit information ... concerning his transfer to the position of professor of the department of constitutional, administrative and international law.

The court cannot agree with his argument that he had no intention of misleading the election commission ... because he did not see any substantial discrepancy in the information submitted. The [first-instance] court correctly determined that he should have indicated, as his current position, that of professor ... Because it is precisely that position which defines, in the spirit of the labour law, the substance of the employment contract between [Skuratov] and the educational institution, which corresponds to its organisation chart and which determines the nature of his professional duties ... At the same time, the fact of acting in another position may only be of a temporary nature, that is until the person has been approved in that position or has been reassigned to his old one ...

The Supreme Court also considers that, as the right of a candidate to indicate his party membership and status in his application form carries a corresponding obligation to submit a document confirming that information ... officially certified by the standing governing body of the political party, such document cannot be replaced by the list of that party's candidates in single-mandate constituencies signed and sealed by the Chairman of the party's central committee and addressed to the Central Election Commission ...

Pursuant to section 47 § 8(3) of the Elections Act, a failure to submit documents required for registration of a candidate under that law is a ground to refuse registration of that candidate ..."

2. Exclusion from the Party's federal roll

27. On 6 September 2003 the Communist Party of the Russian Federation submitted its federal roll of candidates to the State Duma elections. On 13 October 2003 the roll was registered by the Central Election Commission. The second applicant was candidate no. 5 in the Urals regional group.

28. On 25 November 2003 Mr K., Chairman of the general council of the electoral bloc "Russian Pensioners' Party and Party of Social Justice", made an application to the Supreme Court of the Russian Federation, seeking exclusion of the second applicant from the federal roll of the Communist Party. Referring to the decisions of the District Election Commission of the Buryatskiy district, he claimed that the submission of untrue information by the second applicant had infringed the rights of other political parties and electoral blocs standing in the elections, including his bloc.

29. In its observations of 28 November 2003, the Central Election Commission objected to the granting of the application. In its view, the

claimants had failed to show how the registration of the second applicant had impaired their rights. It submitted that at the time of registration of the federal roll, the CEC had had no doubts as to the accuracy and authenticity of the information submitted by the CPRF about its nominees and that the circumstances invoked by the claimants could not be a ground for curtailing the second applicant's right to stand for election.

30. On 28 November 2003 the Supreme Court of the Russian Federation granted the application by Mr K., finding that the personal information submitted by the second applicant had been untrue because the position of "acting head of a department" was not among those listed in the Russian Labour Code and in the Graduate and Post-graduate Professional Education Act. Both the second applicant and the CPRF appealed.

31. On 4 December 2003 the Appeals Division of the Supreme Court upheld the judgment of 28 November 2003, giving the following reasons:

> "Having indicated in his application form ... that his position was acting head of the department ... while he permanently held the position of professor in that department, Mr Skuratov thereby submitted inaccurate personal information, which was the ground ... to annul his registration ... [T]he first-instance court was also justified in referring to the fact that neither the Labour Code nor the Graduate and Post-graduate Professional Education Act provided that the office of acting head of a department was a permanent one ...
>
> As the Supreme Court correctly determined in its judgment, the right to apply to a court with an application for annulment of a candidate's registration ... is vested ... in political parties and electoral blocs ... (section 95 § 6 of the Elections Act, Article 260 § 1 of the Code of Civil Procedure). As to the specific electoral rights and interests of the claimant (who had also submitted and registered a federal roll of candidates to the State Duma), in the instant case they are affected by the inclusion of the candidate Skuratov in the federal roll of candidates of the CPRF because that candidate had not complied with the formal requirements that applied in an equal measure to all candidates, political parties and electoral blocs and made possible the exercise of the right to stand for election. Such interests of the claimant are envisaged in sections 1 and 3 of the Elections Act, according to which members of the State Duma of the Russian Federation are elected by citizens of the Russian Federation in general, equal and direct elections; political parties and electoral blocs stand for election to the State Duma members on equal grounds in accordance with the procedure established by the present federal law ..." (original emphasis)

3. Documents submitted by the second applicant

32. The second applicant submitted a copy of his employment record (*трудовая книжка*) and a copy of the Communist Party's certificate.

33. The relevant entries in his employment record read as follows:

> "28. 24/10/1995. Started fulfilling duties of Prosecutor General of the Russian Federation...
>
> 29. 20/04/2000. Discharged from the prosecution bodies of his own initiative...

...

34. 31/12/2002. Appointed acting head of the department of constitutional and administrative law, order no. 3832-l of 31 December 2002.

35. 01/01/2003. Transferred to the position of professor of constitutional and administrative law, order no. 856-l of 17 April 2003.

36. 30/05/2003. Transferred to the position of professor of constitutional, administrative and international law, order no. 1171a-l of 30 May 2003.

37. 30/05/2003. Dismissed from the position of professor of constitutional and administrative law, order no. 1190a-l of 30 May 2003.

38. 01/06/2003. Appointed acting head of the department of constitutional, administrative and international law, order no. 1169a-l of 30 May 2003."

34. The relevant parts of the certificate printed on the letterhead of the Communist Party of the Russian Federation read as follows:

"To the Central Election Commission of the Russian Federation:

Certificate concerning membership of candidates to the State Duma ... standing for election in single-mandate constituencies ... in the political party 'Communist Party of the Russian Federation' and their status in the party.

...

9. Buryatiya Republic, district no. 9 – Skuratov Yuriy Ilyich – CPRF member.

...

Chairman of the [Central Committee] of the CPRF [signature, seal] G. Zyuganov"

II. RELEVANT DOMESTIC LAW

35. The Election Act (Federal Law "On election of members of the State Duma of the Federal Assembly of the Russian Federation", no.175-FZ of 20 December 2002, as amended on 23 June 2003) provides as follows.

Pursuant to section 47 § 8 (6), a candidate may not be registered if he or she submitted untrue information in his or her application form. According to section 38 § 7 (1), the application form of a candidate who nominated himself or herself for the elections must indicate, in particular, his or her "education, principal place of work or service and the position held (if he has no principal place of work or service – profession)". The same information is required from candidates nominated to federal rolls by political parties (section 41 § 4 (1)) who may, in addition and without being obliged to do so, indicate their membership and status in a political party on the condition that they submit a document confirming such information and

officially certified by the standing governing body of that party. The same requirements apply to the candidates nominated by political parties for election in single-mandate constituencies (section 41 § 12).

III. OSCE ELECTION OBSERVATION MISSION REPORT

36. On 27 January 2004 the Office for Democratic Institutions and Human Rights of the Organisation on Security and Cooperation in Europe (OSCE) released the final Election Observation Mission Report concerning the elections to the State Duma held on 7 December 2003. The relevant extracts read as follows:

> "There were relatively few complaints concerning registration of parties and candidates, and the CEC adjudicated most of these in a fair and open manner. However in a number of instances, courts and lower level election commissions disqualified candidates in a selective manner for trivial violations ...
>
> In a ruling which suggested an inconsistent and selective application of the registration rules, former Procurator General Yuriy Skuratov (DEC 9) was refused registration on the basis that he had failed to mention in his nomination papers that he had a second job of a professor at Moscow State Social University and had also failed to provide timely confirmation of his membership of the [Communist Party]. The DEC's decision was initially revoked by the CEC. However, when the matter was remitted to the DEC, it again refused to register Mr Skuratov, on the same grounds. On a second appeal to the CEC, Mr Skuratov's complaint was rejected on the grounds that the DEC had provided clearer reasons for its decision. Mr Skuratov's subsequent appeal to the Supreme Court was also rejected."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1

37. The applicants complained that the decisions of the domestic authorities preventing them from standing in the elections to the State Duma had violated Article 3 of Protocol No. 1, which reads as follows:

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

38. The Government submitted that the Russian law required all candidates to submit accurate information about themselves in a timely fashion. The principle, according to which all candidates were afforded the same amount of time for submission of the documents, served to reinforce equality between candidates. Furthermore, the required truthfulness of

information about the candidate enabled voters to make an informed choice on the basis of complete and accurate information published in the electoral bulletin. These requirements were proportionate restrictions on the right to stand for election and they were necessary in a democratic society to ensure the free expression of voters. The legitimacy of election is reinforced by sanction for breaches of electoral law, such as refusal or cancellation of a candidate's registration. In the cases of both applicants, their disqualification had not violated their right to stand for election because it had been the result of their own failure to comply with electoral law.

A. General principles regarding the right to stand for election

39. Article 3 of Protocol No. 1 enshrines a fundamental principle for effective political democracy, and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 22, § 47).

40. The Court reiterates that implicit in Article 3 of Protocol No. 1 are the subjective rights to vote and to stand for election. Although those rights are important, they are not absolute. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with. It has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Sadak and Others (no. 2) v. Turkey*, nos. 25144/94 et al., § 31, ECHR 2002-IV).

41. More particularly, States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. Though originating from a common concern – to ensure the independence of members of parliament, but also the electorate's freedom of choice – the criteria vary according to the historical and political factors peculiar to each State. The number of situations provided for in the Constitutions and electoral legislation of many member States of the Council of Europe shows the diversity of possible choice on the subject. None of these criteria should, however, be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections (see *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II, and *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports* 1997-IV, pp. 1233-34, § 39).

42. The Court further reiterates that the object and purpose of the Convention, which is an instrument for the protection of human rights,

requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see *United Communist Party of Turkey and Others*, cited above, pp. 18-19, § 33). The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would only be illusory if one could be arbitrarily deprived of it at any moment. Consequently, while it is true that States have a wide margin of appreciation when establishing eligibility conditions in the abstract, the principle that rights must be effective requires the finding that this or that candidate has failed to satisfy them to comply with a number of criteria framed to prevent arbitrary decisions (see *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, § 50, 11 January 2007; *Podkolzina*, cited above, § 35; and *Melnychenko v. Ukraine*, no. 17707/02, § 59, ECHR 2004-X).

B. Application of the above principles to the present case

43. Turning to the present case, the Court notes that both applicants applied for registration to stand as candidates in the general elections to the lower chamber of Parliament. Mr Krasnov filed his application in Moscow and Mr Skuratov in the Buryatiya Republic. Following a round of domestic proceedings, their applications for registration were turned down on the ground that they had submitted untrue information about their employment and that Mr Skuratov, in addition, had failed to confirm his party membership. Neither applicant took part in the election. Accordingly, the Court has to examine whether the decisions to disqualify the applicants from standing in the elections pursued a legitimate aim and whether it was proportionate to that legitimate aim, having regard to the State's margin of appreciation.

44. As regards the legitimate aim, the Court reiterates that each State has a legitimate interest in ensuring the normal functioning of its own institutional system. That applies all the more to the national parliament, which is vested with legislative power and plays a primordial role in a democratic State (see *Podkolzina*, cited above, § 33). The Court considers that the requirement to submit information on the candidate's employment and party membership serves to enable voters to make an informed choice with regard to the candidate's professional and political background. The introduction of such a requirement does not appear arbitrary or unreasonable. It is also incontestably legitimate to ask the candidates that the information so submitted be accurate to the best of their knowledge, lest the voters be misled by false representations. Accordingly, the Court concludes that requiring a candidate for election to the national parliament to submit truthful information on their employment and party affiliation is a legitimate aim for the purposes of Article 3 of Protocol No. 1.

45. The Court will now turn to an individual analysis of the proportionality of the disqualification imposed on each of the applicants to the legitimate aim it pursued.

1. Proportionality of disqualification of the first applicant, Mr Krasnov

(a) Arguments by the parties

46. The first applicant claimed that his disqualification had not been founded on relevant grounds and had been, in any event, disproportionate. He had not submitted any information capable of misleading the voters. He had acted in good faith by indicating the position he had previously held in a subsequently re-organised body. His mandate had not yet expired and his dismissal had not been properly notified to him. In the first applicant's view, the final choice of candidates should have been left not to the election commission but rather to voters who would be adequately protected from undue influence by being given thorough access to the information on candidates.

47. The Government pointed out that Mr Krasnov had misled the electoral commission as to his place of work by declaring that he had been head of the Presnenskiy district council, whereas he had been dismissed from that position on 16 June 2003. In these circumstances, the electoral commission's decision to cancel his registration had been lawful and justified.

(b) The Court's assessment

48. The Court observes that when submitting his nomination form in September 2003, Mr Krasnov indicated that he was the head of the district council. However, by that time the district council had legally ceased to exist after being re-organised into a municipality with another person being appointed its director. It follows that at the time of the first applicant's self-nomination the position he claimed to hold no longer existed.

49. The Court is not convinced by the first applicant's claim that he had erred in good faith about his employment status. It is hardly conceivable that he should have been unaware of the re-organisation of the body of which he had once been in charge or of the appointment of another person as its director. Even assuming that the decision on his dismissal of 16 June 2003 had not been formally notified to him as he claimed, there is no evidence whatsoever – as pointed out by the Supreme Court (see paragraph 17 above) – that he had continued to fulfil his duties after that date. It is also relevant that the decision on Mr Krasnov's dismissal was not contested in any on-going judicial proceedings which – had they been issued – could have furnished him with an expectation of being re-instated. The Court finds

that the first applicant knowingly submitted untrue information on his employment.

50. The first applicant nominated himself as a candidate in a single-mandate constituency located within the Presnenskiy District of Moscow. The Court considers that the information whether or not he remained the head of the Presnenskiy district council was not a matter of indifference for the voters, all of whom were local residents. By withholding information on his dismissal, Mr Krasnov cloaked himself in the authority associated in the voters' eyes with a position he no longer held. The Court accepts that the submission of untrue information about the first applicant's employment could have adversely affected their ability to make an informed choice.

51. As Mr Krasnov had deliberately submitted substantially untrue information capable of misleading the voters, the Court finds that the decision as to his ineligibility was not disproportionate to the legitimate aim pursued. There has therefore been no violation of Article 3 of Protocol No. 1 in respect of the first applicant Mr Krasnov.

2. Proportionality of disqualification of the second applicant, Mr Skuratov

(a) Arguments by the parties

52. The second applicant stressed that he had submitted all the required documents, including those concerning his employment and Communist Party membership, within the time period laid down in the domestic law, as attested by the acknowledgment of receipt of 20 October 2003. From that date on, the electoral bodies had continuously been in possession of all requisite documents. The only purpose of his enclosing an additional employment certificate from Moscow State Social University with the complaint of 27 October 2003 had been to show that no change in his employment had occurred in the intervening period. The law required him to indicate his principal place of employment or service, which he had done by mentioning that he was the acting head of the constitutional law department. That was his main place of work, according to the employment record. The law did not require him to indicate all the positions held at the material time. Besides, it was quite usual and clear to everyone that the head of a university department also taught in that department as a professor.

53. The second applicant further submitted that the means chosen by the national authorities had been disproportionate to whatever legitimate aim had been pursued. The Government did not explain why the reference to his main place of work had misled the electorate to such an extent that his disqualification, the most severe electoral sanction, should have been applied. He considered that that measure had been political retribution for his earlier attempts to investigate, as Prosecutor General, the actions of President Yeltsin and his team.

54. The Government maintained that Mr Skuratov's registration in the single-mandate constituency had been refused owing to his failure to submit the required documents in a timely fashion. If his belated submission had been accepted, it would have violated the principle of equality of candidates. As to his exclusion from the federal roll of the Communist Party, the Supreme Court had assessed the evidence before it and determined that he had submitted untrue information about himself. Mr Skuratov had omitted to mention that, in addition to being the acting head of the department of constitutional law, he had also been a professor in that department.

(b) The Court's assessment

55. The Court observes at the outset that the grounds invoked by the domestic authorities for determination of Mr Skuratov's ineligibility were not consistent throughout the proceedings. Thus, following a second review of the same set of documents, the District Election Commission abandoned one of the original grounds for his disqualification (incorrect certification of diplomas, see paragraph 20 above) and substituted a new one, namely that certain campaign materials had not been paid for from the candidate's fund (see paragraph 23 above). That latter ground was not subsequently upheld by the court (see paragraph 25 above).

56. Furthermore, in so far as the Government claimed that the second applicant's disqualification could be explained by the belated submission of documents, the Court observes that that ground had never been relied upon in the proceedings before the domestic courts. Moreover, the Government's contention is rebutted by documentary evidence, namely the acknowledgment-of-receipt coupon issued to the second applicant on 20 October 2003 – the final date for submission of documents having been fixed for 22 October 2003 – which listed, among others, his employment record and certificate of Communist Party membership (see paragraph 18 above).

57. In these circumstances, the Court will confine its analysis to the grounds that were ultimately endorsed in the judicial decisions upholding the second applicant's disqualification (see paragraphs 25 and 26 above), namely the allegedly untrue information about his employment and party membership.

58. On the facts, the Court observes that the second applicant submitted to the District Election Commission that he was employed as acting head of the constitutional-law department. The most recent entry in his employment record (no. 38), a copy of which he also produced to the election commission, confirmed that he had been appointed to that post on 1 June 2003. A previous entry (no. 36) also recorded his transfer to the position of professor in that department (see paragraph 33 above).

59. Although it has never been disputed that the second applicant was indeed the head of the constitutional-law department, the domestic authorities gave conflicting reasons as to why they believed that the information about his employment was untrue. The first decision by the District Election Commission referred to Mr Skuratov's failure to indicate that he had *simultaneously performed* the duties of the professor. The second decision by the same commission found fault in his omission to inform the commission of a *change in his employment*. The first-instance court held that Mr Skuratov should have mentioned his *transfer* to the position of professor. Finally, the appeal court advanced a new explanation: in its view, the post of acting head was of a *temporary* nature whereas the second applicant should have listed his *permanent* position, that of professor.

60. The Court notes with concern that, not only were the findings of the domestic authorities inconsistent *inter se*, they were also not founded on any legal provision or case-law interpreting the requirements of the Election Act as regards the indication of the workplace. The District Election Commission and the first-instance court did not cite any legal authority in support of their construction of that requirement, whereas the Supreme Court of the Russian Federation vaguely referred to the "spirit of the labour law". In this connection the Court observes that neither the obligation to list transfers and changes in employment, nor the duty to distinguish between permanent and temporary posts can be derived from a literal reading of the Election Act, which only required an indication of "the principal place of work" if the candidate had one (see paragraph 35 above). The lack of a clear legal basis for the domestic authorities' decisions calls for the conclusion by the Court that they did not meet the Convention standard of "lawfulness" and foreseeability of the impugned measure, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee the consequences which a given action may entail (see, among other authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

61. It is relevant in this context that, by contrast with the situation obtaining in the case of the first applicant, nothing suggests that Mr Skuratov acted in bad faith. The place of work he listed in his nomination form matched the most recent entry in his employment record (no. 38) and he could reasonably have believed that he had to list the most recent and senior position he held. In these circumstances, it was the domestic authorities' task to elucidate the applicable legal requirements and thus give the second applicant clear notice how to prepare the documents (see, *mutatis mutandis*, *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 90, ECHR 2006-..., and *Tsonev v. Bulgaria*, no. 45963/99, § 55, 13 April 2006). This had not, however, been done. On the contrary, in the view of independent observers of the election, the ruling on

Mr Skuratov's application "suggested an inconsistent and selective application of the registration rules" (see paragraph 36 above).

62. Finally, as regards the second applicant's employment situation, the Court considers that it could not be seriously maintained that the difference between the positions of professor and acting head of the same department was capable of misleading the voters. In any event, the second applicant was a well-known public figure because of his past employment as the Prosecutor General of the Russian Federation (see paragraph 33 above), and his current academic position must have been of lesser relevance.

63. As regards the submission by the second applicant of allegedly incorrect information on his party membership, the Court observes that his membership of the Communist Party was never disputed or called into question. The domestic authorities' decisions were based solely on the form of the membership certificate and more specifically on the fact that it had been addressed to the Central Election Commission rather than to the District Election Commission as they claimed it should have been (see paragraphs 19, 26 and 34 above).

64. The Court notes that the Election Act, read literally, did not require any specific form of party membership confirmation and that the election commissions and the courts did not refer to any other legal provision establishing a requirement to address that confirmation to the District Election Commission. In their submissions to the Court the respondent Government did not point to any such provision either. The Court finds, as it already has above, that the interpretation adopted by the domestic authorities did not meet the Convention standard of "lawfulness" and foreseeability, in that there was no clear legal guidance allowing the second applicant to foresee that the submission of a membership certificate addressed to the Central Election Commission would entail a decision on his ineligibility.

65. In any event, the Court reiterates that what is relevant for its assessment is the existence of a reasonable relationship of proportionality between the measures employed by the domestic authorities and the legitimate aim sought to be achieved (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 117, ECHR 2005-...). As the Court has found above, the legitimate aim was to avoid the situation where voters would have been misled by false representations by candidates. However, it has never been claimed that the second applicant was *not* a member of the Communist Party. In these circumstances, the Court cannot accept that the decision on Mr Skuratov's ineligibility, in so far as it was founded solely on the allegedly defective form of the membership certificate, which however was genuine in substance, was indeed taken with the aim of preventing voters from forming a misconception of the second applicant's political leaning. It follows that a reasonable relationship of proportionality between that measure and the legitimate aim was lacking.

66. Having regard to the above considerations, the Court finds that the domestic authorities' decision on the second applicant's ineligibility grounded on his alleged failure to submit accurate information on his employment and party membership was not based on relevant and sufficient reasons and did not accord with the undisputed facts. It was therefore disproportionate to the legitimate aim pursued. The Court's finding is applicable both to Mr Skuratov's disqualification in the single-mandate constituency and to his exclusion from the party-roll election because the grounds relied upon in the second set of proceedings repeated those given in the first set.

67. There has therefore been a violation of Article 3 of Protocol No. 1 in respect of the second applicant, Mr Skuratov.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

68. The second applicant also complained under Article 14 of the Convention that he had been the only one of the 163 candidates nominated by the Communist Party to have been denied registration for a failure to confirm his party membership, although all the candidates had submitted identical party certificates signed by the party Chairman and addressed to the Central Election Commission. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

69. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been invoked both on its own and together with Article 14, and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, § 67).

70. In the circumstances of the present case the Court considers that the inequality of treatment, of which the second applicant claimed to be a victim, has been sufficiently taken into account in the above assessment that led to the finding of a violation of Article 3 of Protocol No. 1. It follows that there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. Mr Skuratov claimed 42,033 euros (EUR) in respect of compensation for non-pecuniary damage. He submitted that the unlawful decisions of the domestic authorities had greatly affected his political and professional reputation and he undertook to use that amount for publication of the Court's judgment in three national and three regional newspapers.

73. The Government submitted that the Court should reject the claim because there had been no violation of Mr Skuratov's rights.

74. The Court accepts that Mr Skuratov must have suffered frustration and distress as a result of the domestic authorities' decisions preventing him from standing in the election. The particular amount claimed by Mr Skuratov is, however, excessive, irrespective of its intended use. Making its assessment on an equitable basis, the Court awards Mr Skuratov EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

75. Mr Skuratov claimed EUR 7,000 in respect of legal fees in the domestic proceedings and the following expenses in the proceedings before the Court:

- 40,233 Swiss francs (CHF) for 134 hours of work by his representative Dr Eckstein at CHF 300 per hour;
- CHF 1,196.30 for 17 hours of work by an assistant lawyer;
- CHF 2,024.50 and CHF 127 for translation expenses;
- CHF 356.40 for secretarial expenses; and
- CHF 331.30 in postal expenses.

76. The Government claimed that no "financial documentation" had been enclosed with the claim for costs and expenses and that the expenses had not been necessary and reasonable because they had exceeded the average cost of representation and standard of living in Russia.

77. The Court notes that Mr Skuratov did not submit any documents relating to legal costs in the domestic proceedings and accordingly it rejects this part of the claim. As regards the Strasbourg proceedings, Mr Skuratov produced Dr Eckstein's invoice accompanied by a detailed time-sheet

showing, in particular, that Dr Eckstein had prepared his initial application and two memoranda in the case and conducted correspondence with the Court. Whereas Dr Eckstein's hourly rate appears standard for a Swiss lawyer, the Court nevertheless considers excessive the amount of time claimed. Having regard to the material in its possession, the Court awards Mr Skuratov EUR 12,000 in respect of costs and expenses, plus any tax that may be chargeable on that amount, and rejects the remainder of his claim.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 3 of Protocol No. 1 in respect of the first applicant, Mr Krasnov;

2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 in respect of the second applicant, Mr Skuratov;

3. *Holds* that no separate examination of the second applicant's complaint under Article 14 of the Convention is required;

4. *Holds*

(a) that the respondent State is to pay the second applicant Mr Skuratov, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;

(ii) EUR 12,000 (twelve thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable;

(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;

5. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President