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Human Rights Committee

Communication No. 1857/2008

Decision adopted by the Committee at its 107th session (11–28 March 2013)

Submitted by:	A.P. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	20 May 2008 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 December 2008 (not issued in a document form)
Date of adoption of decision:	28 March 2013
Subject matter:	Restrictions on being able to register as a candidate for elections individually; coercion to accept ideology; limitation of legal personality; denial to determine rights in a suit at law by a competent, independent and impartial tribunal established by law
Substantive issue:	Right to be elected
Procedural issue:	Level of substantiation of claims
Articles of the Covenant:	14, paragraph 1, read in conjunction with articles 2; 16; 18, paragraph 2; 25, paragraphs (a) and (b)
Article of the Optional Protocol:	2

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (107th session)

concerning

Communication No. 1857/2008*

Submitted by:	A.P. (not represented by counsel)
Alleged victim:	The author
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The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 28 March 2013,

Adopts the following:

Decision on admissibility

1. The author is A.P., a Russian national born in 1969. He claims to be a victim of violations by the Russian Federation of his rights under article 14, paragraph 1, read in conjunction with articles 2, 16, 18, paragraph 2, and 25 (a) and (b), of the International Covenant on Civil and Political Rights.[1] The author is not represented by counsel.

The facts as presented by the author

2.1 On 12 September 2007, the author submitted an application to the Chairperson of the Central Election Commission of the Russian Federation (CEC) with a request to register him as a candidate in the forthcoming elections to the State Duma (lower house) of the Federal Assembly of the Russian Federation.

2.2 On 18 September 2007, the author received a reply from a member of the CEC, explaining that in accordance with article 37, part 1, of the Federal Law on the Election of

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.
The text of an individual (dissenting) opinion by Committee members Mr. Yuval Shany and Mr. Konstantine Vardzelashvili is appended to the present decision.

[1] The Optional Protocol entered into force for the State party on 1 January 1992.

Deputies of the State Duma of the Federal Assembly of the Russian Federation (the federal law on the election of deputies of the State Duma), not later than three days after the day of the official publication of the decision to call the election of deputies of the State Duma, each citizen of the Russian Federation who is entitled to a passive electoral right and is not a member of any political party may apply to any regional branch of any political party for his inclusion in the federal list of candidates to be nominated by that political party. The CEC does not have the authority to decide on the inclusion of citizens of the Russian Federation in the federal list of candidates.

2.3 On 4 October 2007, the author appealed the refusal of the CEC to register him as a candidate for the Supreme Court, claiming that it breached a number of constitutional provisions.[2]

2.4 On 8 October 2007, the Supreme Court rejected the author's appeal under article 28 of the Federal Law on Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum (the federal law on the right to participate in a referendum), pursuant to which the Supreme Court may only examine complaints challenging the CEC decisions that have been taken collegially and signed by the Commission's Chairperson and its Secretary. The CEC reply sent to the author on 18 September 2007 and signed by a single official did not constitute such a "decision" and cannot be appealed to the Supreme Court.

2.5 On 8 October 2007, the author complained to the Constitutional Court of the Russian Federation, requesting to have assessed whether articles 3, 4, 7 and 37 of the federal law on the election of deputies of the State Duma are compatible with the provisions of articles 3, 13, 19 and 30 of the Constitution. On the same day, the author sent an open e-letter to the President of the Russian Federation, asking him to refer to the Constitutional Court a request to assess the constitutionality of the federal law on the election of deputies of the State Duma.

2.6 On 10 October 2007, the author's open letter to the President was posted on a number of mass media and civil society information websites.

2.7 On 18 October 2007, the author appealed the CEC refusal to register him as a candidate to the Tversk District Court of Moscow and requested it to order the CEC to register him as a candidate. On 19 October 2007, the Tversk District Court rejected the author's appeal, explaining that the CEC did not have the authority to decide on the inclusion of citizens of the Russian Federation in the federal list of candidates (under the federal law on the election of deputies of the State Duma). On 25 October 2007, the author appealed the ruling of the Tversk District Court to the Moscow City Court.

2.8 On 19 October 2007, the author again requested the Chairperson of the CEC to examine his application of 12 September 2007 at the regular session of the CEC. On 26 October 2007, the Secretary of the CEC, in a letter, explained to the author the procedure for registration of the candidates to the Duma, as established by the federal law on the election of deputies of the State Duma. The Secretary stated explicitly that the inclusion in the federal

[2] Article 3: (1) The multinational people of the Russian Federation is the vehicle of sovereignty and the only source of power in the Russian Federation. (2) The people of the Russian Federation exercise their power directly, and also through organs of state power and local self-government. (3) The referendum and free elections are the supreme direct manifestation of the power of the people … Article 13: (1) Ideological plurality is recognized in the Russian Federation. (2) No ideology may be instituted as a state-sponsored or mandatory ideology … Article 19: … (2) The state guarantees the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance … Article 30: … (2) No one may be coerced into joining any association or into membership thereof … .

list of candidates has to be made through a political party, but the candidate did not have to be a member of that party. In order to be a candidate, the author should have applied to any regional branch of any political party for his inclusion in the federal list of candidates before the deadline of 8 October 2007.

2.9 On 25 October 2007, the author received a reply from the Chief Consultant of the Department of Constitutional Basis of Public Authority and Federative Structure of the Constitutional Court of the Russian Federation, stating that the author's complaint of 8 October 2007 did not fulfil the requirements set out in article 125, part 4, of the Constitution and articles 3, part 1, paragraph 3; 96 and 97 of the Federal Constitutional Law on the Constitutional Court of the Russian Federation, according to which the Constitutional Court reviews the constitutionality of the law applied or due to be applied in a specific case in accordance with procedures established by federal law. The Chief Consultant concluded that the reply of a member of the CEC dated 18 September 2007 was of an informative nature and that it did not transpire from the author's complaint of 8 October 2007 that articles 3, 4, 7 and 37 of the federal law on the election of deputies of the State Duma were applied in his specific case. On 30 October 2007, the author submitted his written arguments to the Chairperson of the Constitutional Court, challenging the reply of 25 October 2007.

2.10 On 31 October and 1 November 2007, the author wrote to the President, the Chairpersons of both houses of the Federal Assembly, the Head of the Government, and the Chairperson of the Supreme Court, requesting them to request the Constitutional Court to have the constitutionality of the federal law on the election of deputies of the State Duma assessed.

2.11 On an unspecified date, the author received a phone call from an official of the Government Administration, informing him that a referral to the Constitutional Court falls outside the scope of the Government's authority. On 3 November 2007, the author was informed by the Head of the Department of Information and Documentation of the Federation Council (upper chamber of the Parliament) that his letter of 31 October 2007 had been forwarded to the Committee on Constitutional Legislation.

2.12 On 11 December 2007, the author received a reply from the Supreme Court, explaining that it could refer to the Constitutional Court a request to assess the constitutionality of a federal law applied in a specific case, but at that time no such case was pending before the Supreme Court. The author argues, however, that at the time in question, he had a complaint of 13 November 2007 pending before the Supreme Court (see para. 2.15 below).

2.13 On 2 November 2007, the author received a reply dated 26 October 2007 (see para. 2.6 above) from the Presidential Administration, stating that there were no grounds to refer a request to assess the constitutionality of the federal law on the election of deputies of the State Duma to the Constitutional Court. On 6 November 2007, the author submitted his written arguments to the attention of the President, challenging the reply of 26 October 2007.

2.14 On 6 November 2007, the author appealed the reply of the CEC of 26 October 2007 (see para. 2.8 above) to the Supreme Court. On 9 November 2007, a judge of the Supreme Court returned his complaint given that the CEC had no authority to include candidates in the federal lists and that, therefore, according to article 134, part 1, of the Civil Procedure Code, his complaint may not be examined through the civil proceedings.

2.15 On 13 November 2007, the author complained to the Supreme Court against the Supreme Court ruling of 9 November 2007. On 27 December 2007, the Cassation College of the Supreme Court upheld the ruling of 9 November 2007. On 5 February 2008, the author requested the Presidium of the Supreme Court to initiate a supervisory review of the ruling of 9 November 2007. On 24 March 2008, his request was rejected.

2.16 By letter of 1 November 2007, the Chief Adviser of the Citizens' Petitions Department of the Presidential Administration replied to the author's letter of 31 October 2007 (see para. 2.10 above). The author was informed that neither the President nor the Administration could interfere with the work of the judiciary. On 13 November 2007, the author made a request to the Head of the Presidential Administration that his written arguments, challenging the reply of 1 November 2007, be transmitted directly to the President. On 23 November 2007, the author received a reply from the Presidential Administration, reiterating that there were no grounds to refer to the Constitutional Court a request to assess the constitutionality of the proportionate electoral system in the Russian Federation.

2.17 On 20 November 2007, the author requested the Chairperson of the CEC to postpone the elections to the State Duma of the Federal Assembly until such time when the Constitutional Court examined his complaint of 8 October 2007 (see para. 2.5 above).[3] In December, the author received a reply from the Secretary of the CEC dated 27 November 2007, informing him that there were no grounds to postpone the elections.

2.18 On 20 November 2007, the Moscow City Court examined the author's complaint of 25 October 2007 (see para. 2.7 above), quashed the ruling of a judge of the Tversk District Court of Moscow of 19 October 2007 and ordered a new examination of the author's case. On 30 November 2007, the Tversk District Court of Moscow dismissed the author's case on the ground of articles 21 and 28 of the federal law on the right to participate in a referendum, and article 25 of the federal law on the election of deputies of the State Duma.

2.19 On 3 December 2007, the author appealed the decision of the Tversk District Court of Moscow of 30 November 2007 to the Moscow City Court, pointing out that under article 25, parts 9 and 12; and article 44, parts 1, 8 and 9, of the federal law on the election of deputies of the State Duma, the CEC, rather than political parties, takes a decision to register or not register a federal list of candidates. The author submitted a supplementary appeal on 5 December 2007. On 13 December 2007, the Moscow City Court dismissed the author's appeal pursuant to article 75 of the federal law on the right to participate in a referendum, and article 28 of the federal law on the election of deputies of the State Duma. On an unspecified date, the author requested the Tversk District Court of Moscow and, on 13 December 2007, the Moscow City Court, to request the Constitutional Court to have the constitutionality of the federal law on the election of deputies of the State Duma assessed. According to him, however, neither gave suit to his request.

2.20 On 6 February 2008, the author requested the Presidium of the Moscow City Court to initiate a supervisory review of the decision of 30 November 2007 of the Tversk District Court and of the ruling of the Moscow City Court of 13 December 2007. No reply was received.

2.21 At the end of February 2008, the author received a decision of the Constitutional Court of 18 December 2007, on the inadmissibility of his complaint. The Constitutional Court decided that the author was primarily challenging a transition from the majoritarian-proportional electoral system to a proportional electoral system that does not envisage elections of members (deputies) to the State Duma from single-member constituencies, nor self-nomination of candidates. At the same time, the federal law on the election of deputies of the State Duma does not exclude the right of a citizen who is not a member of a political party to be elected as a member (deputy) of the State Duma – he or she could be included in the federal list of candidates from a political party either upon his or her own initiative or

[3] Reference is made to article 98 of the Federal Constitutional Law on the Constitutional Court of the Russian Federation.

upon the party's nomination. Therefore, none of the provisions challenged by the author (arts. 3, 4, 7 and 37 of the federal law on the election of deputies of the State Duma) violated any of the rights guaranteed by the Constitution.

The complaint

3.1 The author claims that the State party has violated his right under article 25 (a) and (b) of the Covenant to take part in the conduct of public affairs and to be elected at genuine periodic elections, because by virtue of articles 7 and 37 of the federal law on the election of deputies of the State Duma, the exercise of a passive electoral right is made conditional upon political parties.

3.2 He further claims a violation of his right under article 18, paragraph 2, of the Covenant, as no one should be coerced to accept an ideology of any political party to be eligible to be included in the federal list of candidates to the State Duma of the Federal Assembly of the Russian Federation.

3.3 In addition, all Russian citizens who are not members of any political party, including the author himself, are limited in their legal personality, in breach of their rights under article 16 of the Covenant.

3.4 The author maintains that, in violation of his rights under article 14, paragraph 1, read in conjunction with article 2 of the Covenant, the courts incorrectly denied him the right to have his rights and obligations determined in a suit at law by a competent, independent and impartial tribunal, established by law.

State party's observations on admissibility

4.1 On 31 March 2009, the State party challenged the admissibility of the communication. It notes that election procedures vary in different countries of the world and usually they are established not by the Constitution, but by law. It depends on the legislative body whether the election system is a majoritarian, proportional or semi-proportional one. The choice of a particular system depends on the sociopolitical environment. In the Russian Federation, the system is determined by the the Federal Assembly.

4.2 The State party further clarifies, inter alia, that the guarantees for the realization of passive electoral rights of citizens are enshrined in article 37 of the federal law on the election of deputies of the State Duma. Pursuant to this article, every citizen of the Russian Federation having passive electoral rights and not being a member of a political party is entitled to approach any regional political party and request to have his/her name included in the federal list of candidates proposed by that party. Moreover, upon obtaining a written consent from the person in question, a political party may list him/her as a candidate in the federal list of candidates even if the individual in question is not a member of the party.

4.3 In this connection, the State party notes that the Constitutional Court of the Russian Federation has ascertained that the federal law on the election of deputies of the State Duma does not exclude the right of a citizen who is not a member of any political party to be elected as a Deputy of the State Duma – he/she could be included in the federal list of candidates from a political party either upon his/her own initiative or upon the party's nomination. However, in the present case, in the light of the case-file materials, it transpires that the author has never requested any regional department of a political party to list him in the federal list of candidates. The State party explains that in a case of a refusal by the respective political party to include him in the federal list of candidates, the author could have challenged such a refusal before the national courts. The author, however, has challenged through administrative and civil proceedings the actions of the CEC, which was not the appropriate institution in such situations. For these reasons, the courts of the State party were unable to examine the author's claims on the merits and could not have applied

the law which subsequently could have been submitted to the Constitutional Court with the aim to assess its compatibility with the Constitution.

4.4 Hence, the State party notes that the author has never expressed a willingness to employ the rights to entertain his passive electoral rights in line with the procedure set out in the federal law on the election of deputies of the State Duma. The State party clarifies that the author was informed on a number of occasions by different domestic authorities, including by the CEC, of the proceedings he had to undertake in order to be included in the list of candidates, on 18 September 2007 and on 27 November 2007, respectively.

4.5 Moreover, the federal law on the election of deputies of the State Duma was officially published in May 2005 in an official journal and the electoral campaign concerning the deputies of the State Duma commenced in September 2007. Consequently, the author had at his disposal opportunity to take the necessary steps in order to implement his passive electoral rights.

4.6 The State party reiterates that the author challenged the lawfulness of the CEC decisions within the administrative and civil proceedings. However, complaints regarding the refusal to register the author as a candidate did not fall within the jurisdiction of administrative or civil courts. Had he been refused registration as a candidate by any party, the author could have challenged such a refusal within the court proceedings. But, according to the case-file materials, the author did not even attempt to seek registration within any party.

4.7 In the light of the above, the State party submits that the present communication should be declared inadmissible as constituting an abuse of the right of submission. Moreover, the author has not exhausted all the available domestic remedies. Consequently, the State party submits that the present communication does not meet all the admissibility criteria in line with the Optional Protocol to the Convention.

Author's comments on the State party's observations

5.1 By letter of 11 May 2009, the author noted that it was unclear from the State party's observations on what grounds it considered his communication to be an abuse of the right of submission.

5.2 The Supreme Court and the Constitutional Court of the Russian Federation have already adjudicated his case and there were no further available domestic remedies to exhaust. The author challenges the State party's argument that he did not apply to any regional branch of any political party for his inclusion in the federal list of candidates to be nominated by such political party and submits that in fact all his complaints at the domestic level and the communication to the Committee are based on his inability to exercise a passive electoral right (right to be elected) through the "organs of State power". He refers to article 3 of the Constitution of the Russian Federation, according to which: "(1) The multinational people of the Russian Federation is the vehicle of sovereignty and the only source of power in the Russian Federation. (2) The people of the Russian Federation exercise their power directly, and also through organs of state power and local self-government." In addition, the author recalls that he challenged in the Constitutional Court the compatibility with the Constitution of articles 3, 4, 7 and 37 of the federal law on the election of deputies of the State Duma. The author contends that the State party has misrepresented the subject matter of his complaint to the Committee.

5.3 The author admits that it is up to the legislative power to choose what type of electoral system (majority rule, proportional representation or semi-proportional) to retain. Whatever

type of electoral system is chosen, however, it should not infringe upon citizens' exercise of their passive electoral right. The author describes the cumbersome procedures[4] for the nomination of a non-party individual as a candidate to the State Duma by a political party and for the distribution of parliamentary mandates among the candidates. He argues that the exercise of a passive electoral right in the Russian Federation by non-party individuals (97.5 per cent of all voters who took part in the 2007 elections) depends on the will of members and leaders of political parties. In support of his argument, he points out that there is not a single non-party member in the current composition of the State Duma.

5.4 As to the State party's argument that its courts could not have examined his claim on the merits and could not have applied the law which subsequently could have been submitted to the Constitutional Court, the author questions the compatibility of the State party's judiciary with the requirements of independence and impartiality set out in article 14, paragraph 1, of the Covenant. According to article 128 of the Constitution, the judges of the Constitutional Court, the Supreme Court and the Higher Arbitration Court shall be appointed by the Council of the Federation upon the proposals of the President of the Russian Federation. Judges of other federal courts shall be appointed by the President of the Russian Federation according to the rules set out by the federal law. At the same time, the Council of the Federation includes two representatives from each entity of the Russian Federation: one from the legislative branch and one from the executive branch. The Legislative Assembly of an entity of the Russian Federation is formed through a procedure similar to the one for the State Duma, whereas a representative from the executive branch is appointed by a governor, mayor or president of the constituent entity of the Russian Federation, who, in turn, is appointed by the President of the Russian Federation. The author submits that although de jure the judiciary in the State is formed by the President of the Russian Federation and the Council of the Federation, de facto the initiative emanates from the President of the Russian Federation and leaders of the dominating political parties.

5.5 For these reasons, the author believes that courts of all instances are not independent and cannot be impartial in the examination of his case.

Additional observations by the State party

6.1 On 21 July 2009, the State party reiterated that the author's allegations are unfounded. According to the federal law on the election of deputies of the State Duma, deputies of the State Duma are elected from the federal election district proportionally to the number of votes given for the lists of candidates who have been nominated and included in that list by the respective political party in line with the Federal Law on Political Parties. However, the right to exercise one's passive election rights, as well as the procedure for how it may be exercised, if that person does not belong to any political party, is prescribed under article 37 of the federal law on the election of deputies of the State Duma.

[4] For example, pursuant to article 36, paragraph 8, of the federal law on the election of deputies of the State Duma, the federal list of the candidates, as well as the inclusion of candidates, is approved by the respective political party. Thus, the author concludes that the decision to list or not to list a person as a candidate is dependent on the decision of the respective party. Further, an independent candidate may request the regional branch of a political party to list him as a candidate. However, when requesting his/her inclusion on the list of candidates, he/she must obtain support from at least 10 members of that political party. The final decision concerning the inclusion of a person on the list of candidates is adopted during the conference of the regional branch of the respective political party. One of the reasons for the refusal to list a person may be the fact of the limitations on the number of candidates at the regional level. In addition, even if an individual obtains approval during the regional conference, his/her candidature must be further approved during the general conference of the respective political party, in order to be listed as a candidate for the federal elections.

6.2 The State party observes that the author did not follow the procedure under article 37 of the above-mentioned federal law, in order to exercise his passive election rights. Contrary to the prescribed procedure, the author approached the CEC with a request to register him as a candidate in the list of deputies of the State Duma. Hence, his request could not have been satisfied.

6.3 The State party further noted that, according to the case-file materials, the author is not satisfied with the election procedure of the State Duma deputies of the Federal Assembly of the Russian Federation, the procedure established by the legislature of the Russian Federation. In addition, on 26 October and 23 November 2007, the Presidential Administration informed the author that the Constitutional Court of the Russian Federation did not find the proportional election system unconstitutional. In its judgement of 18 December 2007 in case No. 921-O-O, which was initiated by the author, the Constitutional Court noted that election procedures are regulated, as a rule, not by a constitution, but through the legislative process. It is in the domain of the legislature, taking into account the sociopolitical environment and political practicability, to establish whether the election system will be majoritarian, proportional or semi-proportional. Further, in line with the amendments of 16 July 2007 to the federal law on the election of deputies of the State Duma, the election system was reformed, whereby the majoritarian-proportional system was replaced with a proportional system. The Court pointed out that in accordance with the national legal regulation, political parties, being the owners of specific public functions, are single subjects of the election process.

6.4 The State party reiterates that according to the above-mentioned judgement of the Constitutional Court, the federal law on the election of deputies of the State Duma does not exclude the right of a citizen who is not a member of any political party to be elected as a deputy of the State Duma. Such individuals may be included on the federal list of candidates from a political party on their own initiative or on the party's initiative. In this connection, the State party notes that the author has never availed himself of the mentioned opportunity. The federal law on the election of deputies of the State Duma was officially published in May 2005. The election campaigns for the fifth call-up of the State Duma commenced in September 2007. Consequently, irrespective of his political opinions, the author had enough time to exercise his right to passive elections within the existing procedure as set out in article 37 of the federal law on the election of deputies of the State Duma.

6.5 Furthermore, the State party reiterates that the author has not exhausted all available domestic remedies prior to submitting his communication to the Committee. In addition, it was clearly explained to him by the courts that in the context of his claim to be registered as a candidate, the respondent party should not have been the CEC, but rather a political party. Consequently, since he has never been registered in any political party, his right to passive elections was not violated.

6.6 The State party reiterates its view that the communication should be declared inadmissible, as the author has not exhausted all the available domestic remedies. Moreover, the present communication constitutes an abuse of the right of submission. Consequently, the State party submits that the present communication does not meet all the admissibility criteria set out in article 3 and article 5, paragraph 2 (b), of the Optional Protocol to the Covenant.

Author's further submission

7.1 By letter of 13 October 2009, the author reiterated that according to article 3 of the Constitution, "the people" is the only source of power in the Russian Federation. The people of the Russian Federation exercise their power directly, and also through organs of State power and local self-government. In line with that democratic principle, the author submitted to a State institution a request to be registered on the list of candidates of deputies of the State Duma. He explains that he approached the CEC because it is the State institution authorized

to register candidates of deputies. Political parties do not register candidates. They merely make lists of candidates which then are submitted to the CEC for registration. Consequently, the author appealed against the negative decision of the CEC to different national institutions and courts. Hence, he has exhausted all the available domestic remedies.

7.2 As to the Constitutional Court's judgement of 18 December 2007, he submits that the Constitutional Court, in fact, did not examine his claims regarding incompatibility of articles 3, 4, 7 and 37 of the federal law on the election of deputies of the State Duma with the Constitution. Consequently, the author maintains that the Constitutional Court has not affirmed the constitutionality of the mentioned articles of the federal law. In this connection, the author notes that regardless of whether he does or does not support the election process of deputies of the State Duma, the national court should have examined his claims and not disregarded them. In the author's opinion, such an attitude on the part of the Constitutional Court demonstrates that the judicial branch in the State party is not independent.

7.3 Finally, the author points out that the State party has not addressed his claim of a violation of article 14, paragraph 1, of the Covenant.

State party's further submission

8.1 On 19 August 2010, the State party reiterated that the present communication is inadmissible as the author has not exhausted all the available remedies, and because it constitutes abuse of the right to submission.

8.2 It rejects the author's argument that the State party has not commented on the alleged violation of article 14, paragraph 1, of the Covenant, and notes that its two previous submissions on the inadmissibility of the case concern the author's communication as a whole, as well as all the mentioned alleged violations of the Covenant.

8.3 The State party explains that all the domestic proceedings by the competent national institutions were carried out with due diligence. The fact that the author is not satisfied with the results of the proceedings per se does not indicate that the judiciary in the State party lacks independence or is incompetent. In this connection, the State party argues that such speculations demonstrate the author's abuse of the right to submission within the meaning of article 3 of the Optional Protocol to the Covenant.

8.4 The State party reiterates that the author has not exhausted all the available domestic remedies. The State party notes that the author challenged the lawfulness of the CEC decisions within the administrative and civil proceedings. However, the examination of the author's complaints, that is, the refusal to register him as a candidate, did not fall within the jurisdiction of administrative or civil courts. The national court clearly explained to the author that in the context of his claim to be registered as a candidate, the respondent party should have been not the CEC, but a political party.

8.5 As to the alleged violation of the author's right to passive election, the State party reiterates that he could have exercised his right to passive election pursuant to article 37 of the federal law on the election of deputies of the State Duma. However, the author has never tried to exercise this right.

8.6 The State party also notes that the author challenges the constitutionality of the provisions regulating the election process of the deputies of the State Duma of the Federal Assembly of the Russian Federation. In this regard, the State party recalls that this issue has already been examined by the Constitutional Court on 20 November 1995, whereby the Court found the challenged provisions regulating election process to be compatible with the Constitution of the Russian Federation.

Author's additional submissions

9.1 On 19 September 2010, with regard to article 14 of the Covenant, the author explained that he is not alleging that the judicial branch in the State party is incompetent or that he is not satisfied with the results of the proceedings before the national courts. He claims that the judiciary is not independent, and as a consequence, his claims before the national courts were not examined objectively or fairly. The author recalls that judges are appointed by the President of the Russian Federation and the Federal Council of the Federal Assembly. Consequently, the judiciary could not examine independently and objectively his claims, which were of a political nature.

9.2 The author further disagrees with the State party's argument that the CEC was not the appropriate respondent party concerning an individual's registration, as the deputy candidate falls outside the sphere of competence of the CEC. He points out that, inter alia, pursuant to article 44 of the federal law on the election of deputies of the State Duma, the CEC "no later than within 10 days after it has received all the documents necessary for registration of the federal list of candidates, adopts a decision concerning registration of the list of candidates or issues a reasoned refusal".

9.3 Finally, the author points out that, by its decision of 20 November 1995, the Constitutional Court rejected the request submitted, inter alia, by a group of deputies of the State Duma, to examine the compatibility of the federal law on the election of deputies of the State Duma with the Constitution.

9.4 On 18 September 2011, the author presented a brief analysis of the judgement of 7 July 2011 of the Constitutional Court on the constitutionality of article 23, paragraph 3, of the Federal Law on General Principles of Organization of Local Self-government of the Russian Federation and article 9, paragraphs 2 and 3, of the Law of the Chelyabinsk Region on Municipal Elections in the Chelyabinsk Region. He pointed out that the Court concluded, inter alia, that the fact that an individual may approach a particular party in order to be listed as a candidate may not result in his/her inclusion on the list of candidates, as such a decision is subject to the collective view of the political party.

9.5 In the light of above, the author reiterates that it is clear that his right to passive elections under article 25 of the Covenant was violated in 2007 and that the Constitutional Court, by its judgement of 18 December 2007, had not duly examined his claims, in violation of article 14, paragraph 1, of the Covenant.

9.6 On 5 October 2012, the author submitted a report, dated 15 July 2012, entitled "How to ensure independence of judges in Russia", prepared by the Institute on the Rule of Law, which according to the author demonstrates that the judiciary in the Russian Federation is not independent.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

10.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a), of the Optional Protocol.

10.3 The Committee has noted the State party's observations that the author has failed to exhaust available domestic remedies in the present case. The Committee notes that the State party has not provided any explanation as to the remedies available to the author, in

particular, regarding his claims under article 25 of the Covenant. In this respect, the Committee considers that the State party has not shown that its laws offer the author a remedy capable of addressing his claims under article 25 of the Covenant. Accordingly and in the absence of any other pertinent information on the file, the Committee considers that, in this particular case, it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication for purposes of admissibility.

10.4 As concerns the alleged violation of article 14, paragraph 1, read in conjunction with article 2, of the Covenant, the Committee notes that the author has merely claimed general lack of independence of the judiciary. In the absence of other pertinent information on the file, the Committee considers that this claim is insufficiently substantiated and, therefore, declares it inadmissible under article 2 of the Optional Protocol.

10.5 Further, with regard to the alleged violations of article 16 and article 18, paragraph 2, of the Covenant, the Committee notes that the author has not provided detailed information concerning these alleged violations. Accordingly and based on the information available in the case file, the Committee considers that the author's allegations under article 16 and article 18, paragraph 2, of the Covenant are insufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

10.6 The Committee has noted the author's claims under article 25, paragraphs (a) and (b), of the Covenant to the effect that he could not take part in the conduct of public affairs or to be elected at genuine periodic elections, because the State party's federal electoral system, at the time, did not allow him to stand as an independent candidate in the Duma elections other than by passing through a list of a political party registered for the elections in question. In this connection, the author claims that he did not want his name to be associated with any of the existing parties as he did not subscribe to any of their ideologies, without, however, providing further details thereon. The Committee further notes that the State party explained that for independent candidates, it was possible to be listed for the federal elections through one of the lists of parties registered for such elections. The State party also explained that if one of the registered parties refused to place an independent candidate on its list, the individual concerned could have complained about this in court. In this connection, the State party notes, however, that the author could not apply to court, as he had not made any attempt whatsoever to try to have his name placed as an independent candidate through the existing parties' lists. Significantly, the case file contains no information as to why the author could not create his own political party together with individuals sharing similar political opinions and stand for elections through it.

10.7 The Committee considers that the information before it does not permit it to verify whether the restrictions imposed on the author, as an independent candidate, in federal parliamentary elections through the requirements of the electoral system in place at the time, were in compliance with the provisions contained in article 25 of the Covenant. In this connection, the Committee notes that authors must provide sufficiently detailed information to allow the Committee to make a well-founded decision on the merits of the claim. Accordingly, the Committee considers that the present communication is inadmissible under article 2, of the Optional Protocol.

11. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion by Committee members Mr. Yuval Shany and Mr. Konstantine Vardzelashvili (dissenting)

1. The Committee found the author's communication inadmissible for failure to substantiate a violation under article 25 of the Covenant. This conclusion is based on the premise that the author carries the burden of proving that the federal law on the election of deputies of the State Duma, as it stood at the time and as was applied to him, placed unreasonable restrictions on his right to be elected.

2. We respectfully disagree with the majority opinion, as we are of the view that the information before the Committee is sufficient to reverse the burden of proof so as to require the State party to justify the restrictions found in the legal framework of the federal law on the election of deputies of the State Duma, as applied to the author. Such information includes the following items:

- The text of the federal law on the election of deputies of the State Duma (as it stood at the time), which requires candidates to stand for election through existing parties.
- The unchallenged claim of the author that the process of listing non-party members on party lists is cumbersome, and that not a single non-party member was represented at the State Duma when the events described in the communication took place.
- The position of the European Court of Human Rights, in its judgement of 12 April 2011, which was reiterated by the European Commission for Democracy Through Law (Venice Commission) in its opinion of 19 March 2012, that the conditions for registering new political parties in the Russian Federation (and for maintaining the registered status of existing ones) are unduly excessive.[a]
- The Parliamentary Assembly of the Council of Europe report on the observation of the 2011 parliamentary elections in the Russian Federation, detailing the high numbers of members and amount of support required to register new parties in the Russian Federation. According to the report, "several attempts to register political parties were made since the elections of 2007 and only one, the 'Right Cause' (Pravoe Delo), managed to get registered for the 2011 elections. All other formations were denied registration."[b]

3. In the present case, the author complains about his inability to stand for election as an independent candidate. The State party retorted by noting that the author may request an existing party to list him as a candidate on their behalf even if he is not a member of the party. The State party did not provide, however, sufficient information on whether such a

[a] European Court of Human Rights, *Republican Party of Russia* v. *Russia*, application No. 12976/07, judgement of 12 April 2011, para. 58; opinion of the European Commission for Democracy Through Law on the Federal Law on the Election of the Deputies of the State Duma of the Russian Federation, adopted by the Council for Democratic Elections at its 40th meeting (15 March 2012) and by the Venice Commission at its 90th plenary session (16–17 March 2012).

[b] Parliamentary Assembly of the Council of Europe, "Observation of the parliamentary elections in the Russian Federation (4 December 2011)", 23 January 2012, Doc. 12833, para. 19. ("The Law on Political Parties requires all political parties to have at least 45 000 members and regional branches with at least 450 members in more than half of the subjects of the Federation", ibid.).

course of action was practicable, in the light of the power held by political parties to determine their own list of candidates and in view of the absence of any non-party members at the State Duma at the relevant time. It also did not provide sufficient information as to whether another course of action for running in the election, such as establishing a new party, was open before the author. The information before the Committee raises serious doubts about the feasibility of both of these options and the State party provided no sufficient information to dispel such doubts.

4. Furthermore, the State party failed to explain whether requiring individuals to stand for election through existing parties is not tantamount to requiring them to join such parties. Clearly, the latter requirement would stand in conflict with the language of paragraph 17 of the Committee's general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, which provides that "the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties". The distinction between formal membership and inclusion in a party-sponsored list of candidates, on which the State party appears to rely, seems to us to be nominal in nature. It may be reasonably assumed that candidates running on a party platform identify with that party's ideology and political programme, and have associated themselves with the party in a way that is even stronger than formal party membership.

5. The combination of factors in the present case – that is, domestic legislation which requires standing for election through existing parties and which appears to render the creation of new parties extremely difficult – leads us to conclude that the federal law on the election of deputies of the State Duma (as it stood at the time) and its application to the author were prima facie incompatible with article 25 of the Covenant. While States enjoy broad discretion in designing the electoral system, their relevant legislation should always be aimed at facilitating the rights guaranteed by the Covenant rather than unreasonably limiting them. Still, the law and practice on registration of individual candidates and political parties in the State party, as applied to the author, feature far-reaching legal and practical limitations,[c] which seem to fall below the standards prescribed by the Covenant.

6. We are therefore of the view that a system which, in effect, requires candidates to stand for election through existing parties, whether or not they are members of the said parties, runs contrary to the object and purpose of article 25 of the Covenant, which aims to protect the individual's right to seek election and to facilitate a healthy degree of democracy and political pluralism. It also fails to comport to the principle that association with political parties must be voluntary in nature and that no individual should be forced to join or belong to any association against their will.[d]

7. Since the State party did not provide the information necessary to remove the existing concerns about the prima facie incompatibility of its laws and practices with the Covenant, we believe the Committee should have found a violation of article 25, and should have requested the State party to provide the author with an effective remedy by taking all necessary measures to bring its elections laws into conformity with the Covenant.

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee's annual report to the General Assembly.]

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[c] See also the opinion of the European Commission for Democracy Through Law on the Federal Law on the Election of the Deputies of the State Duma of the Russian Federation; *Republican Party of Russia* v. *Russia*, paras. 61-62.

[d] See, for example, European Court of Human Rights, *Young, James and Webster* v. *United Kingdom*, application No. 7601/76; 7806/77, judgement of 13 August 1981, para. 52.