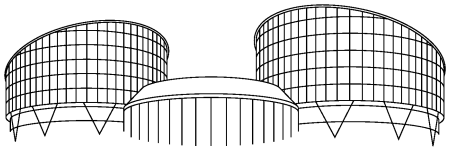

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights

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Right to free elections

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COUNCIL OF EUROPE
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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 3 of Protocol No. 1 to the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was finalised are marked with an asterisk (*).

I. General principles

Article 3 of Protocol No. 1– Right to free elections

"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."

HUDOC keywords

Right to free elections (P1-3) – Periodic elections (P1-3) – Elections by secret ballot (P1-3) – Free expression of opinion of people (P1-3) – Choice of the legislature (P1-3) – Vote (P1-3) – Stand for election (P1-3)

A. Meaning and scope

1. "According to the Preamble to the Convention, fundamental human rights and freedoms are best maintained by 'an effective political democracy'. Since it enshrines a characteristic principle of democracy, Article 3 of Protocol No. 1 is accordingly of prime importance in the Convention system" (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987, § 47).

2. Article 3 of Protocol No. 1 concerns only the choice of the legislature. This expression is not, however, confined to the national parliament. The constitutional structure of the State in question has to be examined (*Timke v. Germany*, Commission decision, 1995). Generally speaking, the scope of Article 3 of Protocol No. 1 does not cover local elections, whether municipal (*Xuereb v. Malta*, 2000; *Salleras Llinares v. Spain* (dec.), 2000) or regional (*Malarde v. France*, 2000). The Court has found that the power to make regulations and by-laws, which is conferred on the local authorities in many countries, is to be distinguished from legislative power, which is referred to in Article 3 of Protocol No. 1, even though legislative power may not be restricted to the national parliament alone (*Mółka v. Poland* (dec.), 2006). However, having examined the Italian constitutional structure, the Court has found that Article 3 of Protocol No. 1 applied to local elections to provincial councils in Italy. By a 2001 constitutional reform, the Italian regions were granted very broad legislative powers, covering all matters which were not expressly reserved to the exclusive powers of the State. As such, the provincial councils were to be considered as part of the "legislature" (*Repetto Visentini v. Italy* (dec.), 2021; *Miniscalco v. Italy*, 2021).

3. The Court has clarified the interpretation to be given to the notion of "elections", thus determining the scope of Article 3 of Protocol No. 1 (*Cumhuriyet Halk Partisi v. Turkey* (dec.), 2017, §§ 33-34 and 37-38).

4. The Court has explained that in principle a referendum does not fall within the scope of Article 3 of Protocol No. 1 (*Cumhuriyet Halk Partisi v. Turkey* (dec.), 2017, §§ 33 and 38; *Moohan and Gillon v. the United Kingdom* (dec.), 2017, § 40;). However, it takes account of the diversity of electoral systems in the various States. It has thus not excluded the possibility that a democratic process described as a "referendum" by a Contracting State could potentially fall within the ambit of Article 3 of Protocol No. 1. In order to do so the process would need to take place "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" (ibid., § 42). In *Forcadell i Lluis and Others v. Spain* (dec.), 2019, the applicants complained that the suspension by the Constitutional Court to hold a plenary sitting of the Catalan Parliament and announce the results a of the referendum on independence of Catalonia had violated the free expression of the opinion of the people in the choice of the legislature. The Court held that

the sitting had been convened pursuant to a law provisionally suspended by the Constitutional Court, and therefore in a manner manifestly at variance with the decisions of that court, which had been aimed at protecting the constitutional order. Consequently, Article 3 of Protocol No. 1 did not apply.

5. The Court has held that the inability to receive the results of opinion polls on voting intentions over a period of two weeks prior to an election did not affect voters sufficiently "directly" for them to claim to be "victims" of a violation of Article 3 of Protocol No. 1, within the meaning of Article 34 of the Convention (*Dimitras and Others v. Greece* (dec.), 2017, §§ 30-32).

6. As regards presidential elections, the Court has taken the view that the powers of the Head of State cannot as such be construed as a form of "legislature" within the meaning of Article 3 of Protocol No. 1. It does not exclude, however, the possibility of applying Article 3 of Protocol No. 1 to presidential elections. Should it be established that the office of the Head of State in question had been given the power to initiate and adopt legislation or enjoyed wide powers to control the passage of legislation or the power to censure the principal legislation-setting authorities, then it could arguably be considered to be a "legislature" within the meaning of Article 3 of Protocol No. 1 (*Boškoski v. the former Yugoslav Republic of Macedonia* (dec.), 2004; *Brito Da Silva Guerra and Sousa Magno v. Portugal* (dec.), 2008). This possibility has never been used, however, and has not even been mentioned in subsequent cases (*Paksas v. Lithuania* [GC], 2011; *Anchugov and Gladkov v. Russia*, 2013, §§ 55-56).

7. The Court has, on a number of occasions, taken the view that the European Parliament forms part of the "legislature" within the meaning of Article 3 of Protocol No. 1 (*Matthews v. the United Kingdom* [GC], 1999, §§ 45-54; *Occhetto v. Italy* (dec.), 2013, § 42).

8. As to the actual features of elections, the text of Article 3 of Protocol No. 1 provides only that they should be free and by secret ballot, as the European Commission of Human Rights ("the Commission") and then the Court have constantly reiterated (*X. v. the United Kingdom*, Commission decision of 6 October 1976). The provision further makes it clear that elections must be held at reasonable intervals. The States have a broad margin of appreciation in such matters. The case-law nevertheless provides the following guidelines:

> "The Commission finds that the question whether elections are held at reasonable intervals must be determined by reference to the purpose of parliamentary elections. That purpose is to ensure that fundamental changes in prevailing public opinion are reflected in the opinions of the representatives of the people. Parliament must in principle be in a position to develop and execute its legislative intentions – including longer term legislative plans. Too short an interval between elections may impede political planning for the implementation of the will of the electorate; too long an interval can lead to the petrification of political groupings in Parliament which may no longer bear any resemblance to the prevailing will of the electorate." (*Timke v. Germany*, Commission decision, 1995)

9. The case-law has continued to develop the requirement of universal suffrage, which is now the benchmark principle (*X. v. Germany*, Commission decision, 1967; *Hirst v. the United Kingdom (no. 2)* [GC], 2005, §§ 59 and 62; *Mathieu-Mohin and Clerfayt v. Belgium*, 1987, § 51). However, while Article 3 of Protocol No. 1 includes the principle of equality of treatment of all citizens in the exercise of their right to vote, it does not follow, however, that all votes must necessarily carry equal weight as regards the outcome of the election. Thus no electoral system can eliminate "wasted votes" (ibid., § 54; *Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia* (dec.), 2007).

10. However, the vote of each elector must have the possibility of affecting the composition of the legislature, otherwise the right to vote, the electoral process and, ultimately, the democratic order itself, would be devoid of substance (*Riza and Others v. Bulgaria*, 2015, § 148). States thus enjoy a broad margin of appreciation in the organisation of the ballot. An electoral boundary review giving rise to constituencies of unequal population does not breach Article 3 of Protocol No. 1 provided that the free will of the people is accurately reflected (*Bompard v. France* (dec.), 2006). Lastly, the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured – whether it be based on proportional representation, the "first-past-the-post"

system or some other arrangement – is a matter in which the State enjoys a wide margin of appreciation (*Matthews v. the United Kingdom* [GC], 1999, § 64).

B. Principles of interpretation

11. Article 3 of Protocol No. 1 differs from the other substantive provisions of the Convention and the Protocols as it is phrased in terms of the obligation of the High Contracting Party to hold elections which ensure the free expression of the opinion of the people rather than in terms of a particular right or freedom. However, having regard to the preparatory work in respect of Article 3 of Protocol No. 1 and the interpretation of the provision in the context of the Convention as a whole, the Court has established that this provision also implies individual rights, comprising the right to vote (the "active" aspect) and to stand for election (the "passive" aspect) (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987, §§ 48-51; *Ždanoka v. Latvia* [GC], 2006, § 102).

12. The rights in question are not absolute. There is room for "implied limitations", and the Contracting States must be given a wide margin of appreciation in this sphere. The concept of "implied limitations" under Article 3 of Protocol No. 1 is of major importance for the determination of the relevance of the aims pursued by the restrictions on the rights guaranteed by this provision. Given that Article 3 is not limited by a specific list of "legitimate aims" such as those enumerated in Articles 8 to 11, the Contracting States are therefore free to rely on an aim not contained in that list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a given case.

13. The concept of "implied limitations" also means that the Court does not apply the traditional tests of "necessity" or "pressing social need" which are used in the context of Articles 8 to 11. In examining compliance with Article 3 of Protocol No. 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people. In addition, it underlines the need to assess any electoral legislation in the light of the political evolution of the country concerned, which means that unacceptable features in one system may be justified in another (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987, § 52; *Ždanoka v. Latvia* [GC], 2006, §§ 103-104 and 115).

14. Stricter requirements may be imposed on eligibility to stand for election to Parliament (the "passive" aspect) than is the case for eligibility to vote (the "active" aspect). In fact, while the test relating to the "active" aspect of Article 3 of Protocol No. 1 has usually included a wider assessment of the proportionality of the statutory provisions disqualifying a person or a group of persons from the right to vote, the Court's test in relation to the "passive" aspect has been limited largely to verification of the absence of arbitrariness in the domestic procedures leading to disqualification of an individual from standing as a candidate (*Ždanoka v. Latvia* [GC], 2006, § 115; *Melnychenko v. Ukraine*, 2004, § 57).

15. As to the question of who is entitled to rely on an alleged violation of the "passive" aspect of the right, the Court has admitted that, where electoral law or national authorities restrict the right of candidates individually to stand for election on a party's list, the party concerned may, in that capacity, claim to be a victim of such a violation independently of its candidates (*Georgian Labour Party v. Georgia*, 2008, §§ 72-74; *Riza and Others v. Bulgaria*, 2015, § 142).

16. In addition, when it subjects a country's electoral system to its examination – whether it concerns the active or the passive aspect –, the Court takes account of the diversity of the States' historical contexts. Those different contexts may thus lead the Court to accepting divergences in electoral rules from one country to another but also to explaining any evolution in the level of requirement depending on the period under consideration.

17. Lastly, Article 3 of Protocol No. 1 covers the post-election period, including the counting of votes and the recording and transmission of the results. The State thus has a positive obligation to ensure

careful regulation of the process in which the results of voting are ascertained, processed and recorded (*Davydov and Others v. Russia*, 2017, §§ 284-285).

II. Active aspect: the right to vote

18. The "active" aspect is subject to limitations. Here, as in any other area under Article 3 of Protocol No. 1, the member States enjoy a certain margin of appreciation which varies depending on the context. It is, for example, possible to fix a minimum age to ensure that individuals taking part in the electoral process are sufficiently mature (*Hirst v. the United Kingdom (no. 2)* [GC], 2005, § 62).

19. However, the supervision exercised consists in a relatively comprehensive review of proportionality. The margin of appreciation afforded to States cannot have the effect of prohibiting certain individuals or groups from taking part in the political life of the country, especially through the appointment of members of the legislature (*Aziz v. Cyprus*, 2004, § 28; *Tănase v. Moldova* [GC], 2010, § 158). In *Aziz v. Cyprus*, 2004, the Court ruled on the inability for members of the Turkish-Cypriot community to vote in legislative elections. It took the view that, on account of the abnormal situation existing in Cyprus since 1963 and the legislative vacuum, the applicant, as a member of the Turkish-Cypriot community living in the Republic of Cyprus, was completely deprived of any opportunity to express his opinion in the choice of the members of the House of Representatives. The very essence of the applicant's right to vote was thus impaired. The Court also found a clear inequality of treatment in the enjoyment of the right in question, between the members of the Turkish-Cypriot community and those of the Greek-Cypriot community. There had accordingly been a violation of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

A. Loss of civic rights

20. When an individual or group has been deprived of the right to vote, the Court is particularly attentive. Deprivation of the right to vote must then pursue a legitimate aim but also pass a more stringent proportionality test. The Court has thus had occasion to examine a number of cases in which the deprivation of voting rights was part of a criminal investigation. The case of *Labita v. Italy* [GC], 2000, concerned the automatic temporary loss of civic rights imposed on an individual suspected of belonging to the mafia. The Court agreed that the measure pursued a legitimate aim. However, taking into account the fact that the measure had only been applied after the applicant's acquittal, it found that it had been disproportionate as there was no actual basis on which to suspect him of belonging to the mafia. In *Vito Sante Santoro v. Italy*, 2004, the applicant had also been deprived of his right to vote for a limited period on account of his placement under police surveillance. However, more than nine months had passed between the order placing him under surveillance and the deletion of his name from the electoral roll. As a result, the applicant had been prevented from voting in two elections, which would not have been the case if the measure had been applied immediately. The Government had not provided any reason to justify that time lapse. The Court thus found that there had been a violation of Article 3 of Protocol No. 1.

21. The question of the loss of civic rights does not only arise in a criminal context. The case of *Albanese v. Italy*, 2006, concerned the suspension of the applicant's electoral rights for the duration of bankruptcy proceedings against him. The Court pointed out that bankruptcy proceedings came within the ambit of civil rather than criminal law and therefore did not imply any deceit or fraud on the part of the bankrupt person. The aim of the restrictions on the person's electoral rights was therefore essentially punitive. The measure thus served no purpose other than to belittle persons who had been declared bankrupt, reprimanding them simply for having been declared insolvent irrespective of whether they had committed an offence. It did not therefore pursue a legitimate aim for the purposes of Article 3 of Protocol No. 1.

22. The Court also examined the loss of voting rights on account of placement under partial guardianship. In *Alajos Kiss v. Hungary*, 2010, it took the view that such a measure could pursue a legitimate aim, namely to ensure that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs. However, the voting ban in question had been imposed as an automatic, blanket restriction, regardless of the protected person's actual faculties and without any distinction being made between full and partial guardianship. The Court further considered that the treatment as a single class of those with intellectual or mental disabilities was a questionable classification, and the curtailment of their rights must be subject to strict scrutiny. It therefore concluded that an indiscriminate removal of voting rights, without an individualised judicial evaluation, could not be considered proportionate to the aim pursued (see also *Anatoliy Marinov v. Bulgaria*, 2022, where the automatic disenfranchisement of an applicant due to a partial guardianship order based on his mental disability with no individualised judicial review of voting capacity, was also found to be disproportionate).

23. In *Strøbye and Rosenlind v. Denmark*, 2021, the Court examined the issue of disenfranchisement of persons divested of their legal capacity. Given that the mentally disabled had not been in general subject to disenfranchisement under Danish law, that there had been an individualised judicial evaluation and that the measure affected a very small number of people, the Court found that there had been no breach of Article 3 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention (see also *Caamaño Valle v. Spain*, 2021).

B. Specific case of prisoners

24. Prisoners in general continue to enjoy all the fundamental rights and freedoms secured by the Convention, except for the right to liberty where lawful detention falls expressly within the scope of Article 5 of the Convention (*Hirst v. the United Kingdom (no. 2)* [GC], 2005, § 69). The rights guaranteed by Article 3 of Protocol No. 1 are no exception. There is no question, therefore, that a prisoner should forfeit his rights under the Convention merely because of his status as a person detained following conviction. That does not preclude the taking of steps to protect society against activities intended to destroy the Convention rights and freedoms.

25. Article 3 of Protocol No. 1 does not therefore exclude that restrictions on electoral rights could be imposed on an individual who has, for example, seriously abused a public position or whose conduct threatens to undermine the rule of law or democratic foundations. The severe measure of disenfranchisement must not, however, be resorted to lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned (*Hirst v. the United Kingdom (no. 2)* [GC], 2005, § 71).

26. To deprive a prisoner of his political rights may thus meet the legitimate aims of preventing crime and enhancing civic responsibility, together with respect for the rule of law and ensuring the proper functioning and preservation of the democratic regime. However, such a measure cannot be imposed automatically or it would not meet the proportionality requirement.

27. The States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction. Accordingly, the application of a voting ban in the absence of a specific judicial decision will not in itself entail a violation of Article 3 of Protocol No. 1 (*Scoppola v. Italy (no. 3)* [GC], 2012, § 102).

28. In *Hirst v. the United Kingdom (no. 2)* [GC], 2005, the Court found a violation of Article 3 of Protocol No. 1 because the voting ban in question had been a blanket ban applied automatically to anyone serving a custodial sentence. It affected 48,000 prisoners, which was a high number, and

concerned all sorts of prison sentences, ranging from one day to life, and for various types of offences from the most minor to the most serious. In addition, there was no direct link between the offence committed by an individual and the withdrawal of his voting rights. The Court also found a violation of Article 3 of Protocol No. 1 in the case of *Söyler v. Turkey*, 2013, where restrictions imposed on the voting rights of convicted persons had an even broader scope and impact because they even applied to those who were not, or no longer, serving time in prison. In *Frodl v. Austria*, 2010, the deprivation of voting rights did not systematically affect all prisoners, but only those who had been sentenced to prison for more than a year for an offence committed voluntarily. Nevertheless, there was no link between the automatic imposition of the measure and the conduct of the individual or the circumstances of the case. The Court thus found that the voting ban was not proportionate to the aims pursued.

29. In *Scoppola v. Italy (no. 3)* [GC], 2012, however, the Court examined a voting ban which applied only to persons convicted of certain well-determined offences or to a custodial sentence exceeding a statutory threshold. The legislature had been careful to adjust the duration of this measure according to the specific features of each case. It had also adjusted the duration of the ban depending on the sentence imposed and therefore, indirectly, on the gravity of the sentence. Many of the convicted prisoners had retained the possibility of voting in legislative elections. In addition, this system had been complemented by the possibility for convicts affected by a permanent ban to recover their voting rights. The Italian system was not therefore marked by excessive rigidity. The Court thus held that there had been no violation of Article 3 of Protocol No. 1. A similar situation arose in *Myslihaka and Others v. Albania*, 2023, where serving prisoners convicted of serious criminal offences were banned from voting in the 2017 parliamentary elections. The restriction of the prisoners' right to vote was found to be proportionate because it had been conditional on the nature and the gravity of the offences.

30. In *Kalda v. Estonia (no. 2)*, 2022, even though domestic law provided for a blanket ban on prisoners' voting rights, the proportionality of its application in the applicant's case was nevertheless assessed by the domestic courts, which found the ban justified given the number, nature and gravity of the offences committed, the applicant's continued criminal behaviour while in prison, and the fact that he had been sentenced to life imprisonment. Moreover, despite having reached this conclusion in the particular circumstances of the applicant's case, the Estonian Supreme Court nevertheless took an overall critical stance against the blanket ban, referring extensively to the Convention and the Court's case-law, and had considered that the ban clearly violated the rights of many prisoners. In view of the above considerations, and in particular the fact that the domestic courts carried out their case-specific proportionality assessment in a manner consistent with the criteria established in the Court's case-law, there was no basis for finding that the domestic courts had overstepped the margin of appreciation afforded to them and found that there had been no violation of Article 3 of Protocol No. 1.

31. It must nevertheless be noted that for a violation of Article 3 of Protocol No. 1 to be found, prisoners must show that they have actually been prevented from voting. It is not sufficient for them to rely on their state of detention alone, because events such as early release or admission to a psychiatric institution, etc., may take place before the date of the elections in question. Such applications are thus declared inadmissible as manifestly ill-founded (*Dunn and Others v. the United Kingdom* (dec.), 2014).

32. Moreover, the Court has never found it appropriate to indicate to States the necessary measures to be taken in order to put an end to violations caused by a prisoner voting ban. At best it has set out a timetable (*Greens and M.T. v. the United Kingdom*, 2010, § 120). However, States cannot rely on the complexity of making changes to the law which led to the violation. In *Anchugov and Gladkov v. Russia*, 2013, the Court took note of the argument that the prohibition had been imposed by a provision of the Constitution which could not be amended by Parliament and could only be revised by adopting a new Constitution, thus implying a particularly complex procedure. However, it pointed out that it was

essentially for the authorities to choose, under the supervision of the Council of Europe's Committee of Ministers, the means to be used to bring the legislation into conformity with the Convention. It is open to governments to explore all possible avenues to ensure compliance with Article 3 of Protocol No. 1, including by a form of political process or by interpreting the Constitution in conformity with the Convention (§ 111).

33. Lastly, in *Moohan and Gillon v. the United Kingdom* (dec.), 2017, convicted prisoners had complained of being unable to vote in the Scottish independence referendum held in 2014. Finding that Article 3 of Protocol No. 1 was inapplicable to such a consultation, the Court dismissed their applications as inadmissible.

C. Political representation and voting rights of minorities

34. In *Bakirdzi and E.C. v. Hungary*, 2022, the applicants, members of officially recognised national minorities in Hungary, complained about the shortcomings of the minority voting system affecting the secrecy of the vote, impacting on voters' free political choice and making it impossible for a national minority candidate to win a seat in Parliament. According to the system, members of the officially recognised thirteen minorities could register as minority voters and candidates from the minority lists could gain a seat in Parliament if they reached a preferential threshold, one-quarter of the number of votes required to gain a 'regular seat'. The Court found that this system restricted the applicants' electoral rights in three ways. Firstly, even though the system provided for a preferential threshold, the total number of minority voters belonging to the same minority in Hungary were not high enough to reach that threshold and to win a minority seat in the 2014 elections. While not all votes must necessarily have equal weight as regards the outcome of the election, and no electoral system could eliminate "wasted votes", the Hungarian statutory scheme created a disparity in the voting power of members of minorities like the applicants, so that the potential value of votes that might be cast for minority lists became diluted. Secondly, since, as a consequence of being registered as minority voters, the applicants could only vote for their respective national minority lists as a whole or abstain from voting altogether, they had neither the choice between different party lists nor any influence on the order in which candidates might be elected from the minority lists. The Court expressed doubts that a system in which a vote might be cast only for a specific closed list of candidates, and which required voters to abandon their party affiliations in order to have representation as a member of a minority ensured "the free expression of the opinion of the people in the choice of the legislature". Thirdly, since voters who registered as minority voters had only one choice – the relevant closed minority list – their electoral choice had indirectly been revealed to everybody, both at a polling station and during the counting procedures, compromising their right to a secret ballot.

35. The Court concluded that, while there was no requirement under the Convention of different treatment in favour of minority parties (see also, in this respect, *Partei Die Friesen v. Germany*, 2016, referenced in paragraph 81 below), once the legislature decided to set up a system intended to eliminate or reduce actual instances of inequality in political representation, it was only natural that it should contribute to the participation of national minorities on an equal footing with others in the choice of the legislature, rather than perpetuating the exclusion of minority representatives from political decision-making at a national level. In this case, the system that had been put in place limited the opportunity of minority voters to enhance their political effectiveness as a group and threatened to reduce, rather than enhance, diversity and the participation of minorities in political decision-making. The combination of the above restrictions on the applicants' voting rights, considering their total effect, had constituted a violation of Article 3 of Protocol No. 1 taken in conjunction with Article 14 of the Convention.

D. Residence, condition of access to voting rights

1. Right of citizens residing abroad to vote

36. In a series of cases beginning in 1961, the Commission declared inadmissible, as manifestly ill-founded, complaints about restrictions on voting rights based on a residence criterion (see the Commission decisions: *X. and Others v. Belgium*, 1975; *X. v. the United Kingdom*, 1976; *X. v. the United Kingdom*, 1979; *X. v. the United Kingdom*, 1982; *Polacco and Garofalo v. Italy*, 1997; *Luksch v. Germany*, 1997).

37. The Court subsequently reiterated the compatibility with Article 3 of Protocol No. 1 of the residence criterion. Such a restriction can be justified for a number of reasons:

- first, the presumption that non-resident citizens are less directly or less continuously concerned by their country's day-to-day problems and have less knowledge of them;
- second, the fact that candidates standing for election to parliament cannot so easily present the election issues to citizens living abroad, who will also have less influence on the selection of candidates or on the drafting of their manifestos;
- third, the close connection between the right to vote in parliamentary elections and the fact of being directly affected by the acts of the political bodies thus elected; and,
- fourth, the legitimate concern the legislature may have to limit the influence of citizens living abroad in elections concerning issues which, while fundamental, primarily affect those living in the country.

38. Even if the person concerned has not severed all ties with his or her country of origin and some of the above-mentioned factors perhaps do not apply to that person, the law cannot always take account of every individual case but must lay down a general rule (*Hilbe v. Liechtenstein* (dec.), 1999; *Doyle v. the United Kingdom* (dec.), 2007; *Shindler v. the United Kingdom*, 2013, § 105).

39. The Court thus considered ill-founded the applications of nationals who had left their country of origin (*Hilbe v. Liechtenstein* (dec.), 1999). In two cases it particularly took account of the fact that non-residents could vote in national elections for the first fifteen years following their emigration and that their right was, in any event, restored if and when they returned to live in their country of origin, thus finding that the measure was not disproportionate (*Doyle v. the United Kingdom* (dec.), 2007; *Shindler v. the United Kingdom*, 2013, § 108). The Court also found it pertinent that Parliament had sought, more than once, to weigh up the competing interests, and had debated in detail the question of the voting rights of non-residents; the evolution of opinions in Parliament was reflected in the amendments to the cut-off period since some non-resident citizens had first been allowed to vote (ibid., § 117).

40. In *Shindler v. the United Kingdom*, 2013, the Court noted that there was a growing awareness at European level of the problems posed by migration in terms of political participation in the countries of origin and residence. However, none of the material examined formed a basis for concluding that, as the law currently stood, States were under an obligation to grant non-residents unrestricted access to the franchise. While there was a clear trend, in the law and practice of the member States, to allow non-residents to vote, and a significant majority of States were in favour of an unrestricted right of access, this was not sufficient to establish the existence of any common approach or consensus in favour of unrestricted voting rights for non-residents. The Court thus concluded that, although the matter might need to be kept under review, the margin of appreciation enjoyed by the State in this area remained a wide one (§§ 109-115).

41. In *Mironescu v. Romania*, 2021, the applicant was not allowed to vote in legislative elections for the sole reason that, on the date of the elections, he was serving a sentence in a prison situated outside the electoral constituency of his place of residence. While the States are afforded a wide margin of appreciation in organising and running their electoral systems, when an individual or group

has been deprived of the right to vote, the Court held that a more stringent proportionality test was to be applied under the Convention. Noting that the applicant, as a person deprived of his liberty, was not in control of his whereabouts and could not freely comply with the territorial requirements of electoral law and noting in addition a strong European consensus (to the effect that prisoners in the applicant's situation be allowed to exercise their right to vote), the Court concluded that the State had failed to provide relevant and sufficient reasons to demonstrate that the restriction of the applicant's right to vote was proportionate.

2. Particular case of certain territories

42. In *Py v. France*, 2005, the Court referred back to the idea of a sufficiently strong tie between the potential voter and the territory concerned. A French national from mainland France and living in Nouméa was refused the right to vote in elections to the Congress of New Caledonia on the ground that he could not prove at least ten years of residence in the territory. The Court took the view that cut-off points as to length of residence addressed the concern that ballots should reflect the will of the population "concerned" and that their results should not be affected by mass voting by recent arrivals in the territory who did not have strong ties with it. Furthermore, the restriction on the right to vote was the direct and necessary consequence of establishing New Caledonian citizenship. The applicant was not affected by the acts of political institutions in New Caledonia to the same extent as resident citizens. Consequently, the residence condition was justified and pursued a legitimate aim. The history and status of New Caledonia – a transitional phase prior to the acquisition of full sovereignty and part of a process of self-determination – could be regarded as constituting "local requirements" warranting a restriction as important as the ten-year residence requirement, a condition which had also been instrumental in alleviating the bloody conflict.

43. The case of *Sevinger and Eman v. the Netherlands* (dec.), 2007, concerned the inability of the residents of the island of Aruba, which enjoyed a certain autonomy, to vote in elections to the Dutch Parliament. They were able, however, to vote in elections to the Parliament of Aruba, which was entitled to send special delegates to the Dutch Parliament. The Court took the view that Dutch nationals residing in Aruba were thus able to influence decisions taken by the Lower House of the Dutch Parliament and that they were not affected by the acts of that Parliament to the same extent as Dutch nationals residing in the Netherlands. It also rejected the complaint under Article 14 taken together with Article 3 of Protocol No. 1. It found that it was only those Dutch nationals residing in Aruba who were entitled to vote for members of the Parliament of Aruba and that therefore their situation was not relevantly similar to that of other Dutch nationals.

44. As regards the geographical and territorial organisation of the ballot within the relevant State, the Court acknowledged that the obligation to seek the deletion of one's name from one electoral roll and its addition to another pursued legitimate aims: to ensure the compilation of electoral rolls in satisfactory conditions of time and supervision, to enable the proper organisation of ballot-related operations and to avoid fraud. It took the view that the obligation to comply with those formalities within the statutory deadline fell within the exercise of the State's broad margin of appreciation in such matters (*Benkaddour v. France*, 2003).

3. Organisation of elections abroad for non-resident nationals

45. Article 3 of Protocol No. 1 does not oblige States to introduce a system that ensures the exercise of the right to vote for their non-resident citizens. In *Sitaropoulos and Giakoumopoulos v. Greece* [GC], 2012, the applicants complained that, in the absence of regulation on that point, they could not exercise their voting right in the country where they lived as expatriates (France) even though the constitution of their country of origin (Greece) provided for that possibility. The Court found that there had been no violation of Article 3 of Protocol No. 1 as the disruption to the applicants' financial, family

and professional lives that would have been caused had they had to travel to Greece would not have been disproportionate to the point of impairing the very essence of their voting rights.

46. However, where national law does provide for such a system, specific obligations may arise as a result, in particular the obligation to hold fresh elections in the foreign country if necessary. In *Riza and Others v. Bulgaria*, 2015, the Court stated that it did not overlook the fact that the organisation of fresh elections in another sovereign country, even in only a limited number of polling stations, might face major diplomatic or organisational obstacles and entail additional costs. It found, however, that the holding of fresh elections, in a polling station where there had been serious anomalies in the voting process on the part of the electoral board on the day of the election, would have reconciled the legitimate aim behind the annulment of the election results, namely the preservation of the legality of the electoral process, with the rights of the voters and the candidates standing for election to Parliament.

47. The case of *Oran v. Turkey*, 2014, concerned the inability for Turkish voters living abroad to vote for independent non-party candidates in polling stations set up in customs posts. Votes cast in those conditions could only be for political parties. That limitation was justified by the fact that it was impossible to assign expatriated voters to a constituency. The Court found that the limitation had to be assessed taking account of generally agreed restrictions on the exercise of voting rights by expatriates and, in particular, the legitimate concern the legislature might have to limit the influence of citizens resident abroad in elections on issues which primarily affect persons living in the country. It also emphasised the role played by political parties, the only bodies which could come to power and have the capacity to influence the whole national regime. Furthermore, the limitation also pursued two further legitimate aims: enhancing democratic pluralism while preventing the excessive and dysfunctional fragmentation of candidatures, thereby strengthening the expression of the opinion of the people in the choice of the legislature. Consequently, the restriction met the legislature's legitimate concern to ensure the political stability of the country and of the government which would be responsible for leading it after the elections. There had not therefore been a violation of Article 3 of Protocol No. 1.

E. Physical access to polling stations

48. In *Toplak and Mrak v. Slovenia*, 2021, the Court examined compliance with positive obligations to take appropriate measures to enable the applicants, suffering from muscle dystrophy and using a wheelchair, to exercise their right to vote on an equal basis with others. Acknowledging that a general and complete adaptation of polling stations in order to fully accommodate wheelchair users would no doubt facilitate their participation in the voting process, the Court reiterated the States' margin of appreciation in this area in light of their limited resources. Given that both applicants voted in a 2015 referendum (about which they had complained), that a ramp was installed at the polling station at the request of the first applicant and that, at the request of the second applicant, a visit to the polling station for his electoral area was arranged a few days beforehand, the Court found that any problems they may have faced did not produce a particularly prejudicial impact on them so as to amount to discrimination. As regards the 2019 European Parliament election, the lack of voting machines was not found to be discriminatory for the first applicant, who was able to be assisted by a person of his own choice under legal duty to respect secrecy.

49. It should also be noted that complaints concerning elections not falling under Article 3 of Protocol No. 1 may, if appropriate, be raised under other Articles of the Convention. Thus, in *Mółka v. Poland*, 2006, the applicant was unable to vote in elections to municipal councils, district councils and regional assemblies. The polling station was not accessible to individuals in wheelchairs and it was not permitted to take ballot papers outside the premises. The Court took the view that it could not be excluded that the authorities' failure to provide appropriate access to the polling station for the applicant, who wished to lead an active life, might have aroused feelings of humiliation and distress

capable of impinging on his personal autonomy, and thereby on the quality of his private life. The Court thus accepted the idea that, in such circumstances, Article 8 was engaged.

III. Passive aspect: the right to stand for election

50. Like the "active" aspect, the "passive" aspect, namely the right to stand as a candidate for election, has been developed in the case-law. The Court has thus stated that the right to stand for election is "inherent in the concept of a truly democratic regime" (*Podkolzina v. Latvia*, 2002, § 35). However, it has been more cautious in its assessment of restrictions under this aspect of Article 3 of Protocol No. 1 than when it has been called upon to examine restrictions on the right to vote: the proportionality test is more limited. The States thus enjoy a broader margin of appreciation in respect of the "passive" aspect (*Etxeberria and Others v. Spain*, 2009, § 50; *Davydov and Others v. Russia*, 2017, § 286).

51. However, the prohibition of discrimination, under Article 14 of the Convention, is equally applicable. In this context, even though the margin of appreciation usually afforded to States as regards the right to stand for election is a broad one, where a difference in treatment is based on race, colour or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible (*Sejdić and Finci v. Bosnia-Herzegovina* [GC], 2009, § 44).

52. In *Sejdić and Finci v. Bosnia-Herzegovina* [GC], 2009, the Court examined an exclusion rule to the effect that only persons declaring affiliation with a "constituent people" were entitled to run for the House of Peoples (second chamber of the State Parliament). Potential candidates who refused to declare such an affiliation could not therefore stand. The Court noted that this exclusion rule pursued at least one aim which was broadly compatible with the general objectives of the Convention, namely the restoration of peace. When the impugned constitutional provisions were put in place a very fragile ceasefire was in effect on the ground. The provisions were designed to end a brutal conflict marked by genocide and ethnic cleansing. The nature of the conflict was such that the approval of the "constituent peoples" (namely, the Bosniacs, Croats and Serbs) was necessary to ensure peace. This could explain, without necessarily justifying, the absence of representatives of the other communities (such as local Roma and Jewish communities) at the peace negotiations and the participants' preoccupation with effective equality between the "constituent peoples" in the post-conflict society. However, there had been significant positive developments in Bosnia and Herzegovina since the Dayton Agreement. In addition, by ratifying the Convention and the Protocols thereto without reservations, the respondent State had voluntarily agreed to meet the relevant standards. The Court thus concluded that the applicants' continued ineligibility (being of Roma or Jewish origin) to stand for election lacked an objective and reasonable justification and had therefore breached Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1.

53. In *Zornić v. Bosnia-Herzegovina*, 2014, the Court found, for the same reasons, a violation of Article 3 of Protocol No. 1 as regards the applicant's ineligibility, for the same reason, to stand for election to the House of Peoples and to the presidency. Observing that there had been excessive delay in executing its judgment in *Sejdić and Finci v. Bosnia-Herzegovina* [GC], 2009, and that the violation complained of was the direct result of that delay, the Court made a ruling under Article 46 of the Convention. It found that, eighteen years after the tragic conflict in Bosnia-Herzegovina, the time had come to adopt a political system capable of affording all citizens of that country the right to stand for election to the House of Peoples and to the presidency without any distinction as to ethnic origin (*Zornić v. Bosnia-Herzegovina*, 2014, § 43).

54. In *Tănase v. Moldova* [GC], 2010, the Court ruled on the question of dual nationality, albeit under Article 3 of Protocol No. 1 alone. It found that there was a consensus that where multiple nationalities were permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as an MP, even where the population is ethnically diverse and the number of MPs with multiple nationalities may be high. In *Kara-Murza v. Russia*, 2022, which concerned the annulment of a dual

national's registration as a candidate for legislative elections, the Court, reiterated its earlier finding concerning the existence of the above-mentioned consensus between member States and held that application of a blanket ban on individuals with multiple nationalities standing for election, the aim of which was "to ensure loyalty to the State", was a particularly restrictive measure, formulated in absolute terms and providing for no exceptions. Such a restriction of electoral rights should be individualised to take account of the actual conduct of particular individuals rather than a perceived threat posed by a group of persons.

A. Inability to stand for election and the democratic order

55. As regards limitations on the right to stand for election, the protection of the democratic order is one of the aims compatible with the principle of the rule of law and the general objectives of the Convention.

56. However, in order to be compatible with the Convention, the rejection of a candidature must in the first place be legal: in particular it must be prescribed by law. In *Dicle and Sadak v. Turkey*, 2015, the applicants, MPs from a political party that had been dissolved, had been sentenced to heavy prison sentences for membership of an illegal organisation. They were given a retrial after a judgment of the European Court of Human Rights. However, their candidatures for the parliamentary elections were rejected on the ground that they had not served their sentences in full. In its examination under Article 6 § 2 of the Convention, the Court noted that it was clear from the national decisions that, following the decision to hold a retrial, the case had to be heard as if the applicants were standing trial for the first time. It concluded that the maintaining of the initial conviction on the applicants' criminal record and the subsequent refusal of their candidature was not prescribed by law and that there had thus been a violation of Article 3 of Protocol No. 1.

57. In addition, any rejection of candidature must also be proportionate to the serious aim of the protection of the democratic order. In *Paksas v. Lithuania* [GC], 2011, the applicant, a former President of Lithuania, was removed from office following impeachment proceedings for committing a gross violation of the Constitution. Following a subsequent change in election legislation, he was permanently disqualified from being a member of parliament. In assessing the proportionality of such a measure, decisive weight should be attached to the existence of a time-limit and the possibility of reviewing the measure in question. The need to provide for a review was also linked to the fact that consideration should be given to the historical and political context in the State concerned, which would undoubtedly evolve so that the initial justification for the restriction could subside with the passing of time. In the present case, however, not only was the restriction unlimited in time, but the rule on which it was based was set in constitutional stone. The applicant's disqualification from standing from election, accordingly, carried a connotation of immutability that was hard to reconcile with Article 3 of Protocol No. 1.

58. In the subsequent *Advisory opinion on the assessment of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings*, requested by the Lithuanian Supreme Administrative Court, 2022, the Court clarified that the criteria, relevant to deciding whether or not a ban on the exercise of a parliamentary mandate in impeachment proceedings had exceeded what was proportionate under Article 3 of Protocol No. 1, should be objective in nature and should take into account in a transparent way relevant circumstances connected not only with the events which led to the impeachment of the person concerned but also – and primarily – with the functions sought to be exercised by that person in the future. They should therefore be identified mainly from the perspective of the requirements of the proper functioning of the institution of which that person sought to become a member, and indeed of the constitutional system and democracy as a whole in the State concerned.

59. In *Etxeberria and Others v. Spain*, 2009, the applicants' candidatures had been annulled on the grounds that they were pursuing the activities of the three political parties which had been declared

illegal and dissolved on account of their support for violence and for the activities of the ETA, a terrorist organisation. The Court found that the national authorities had had considerable evidence enabling them to conclude that the electoral groupings in question wished to continue the activities of the political parties concerned. The Supreme Court had based its reasoning on elements external to the manifestos of the disputed groupings and the authorities had taken decisions to bar individual candidates. After an examination in adversarial proceedings, during which the groupings had been able to submit observations, the domestic courts had found an unequivocal link with the political parties that had been declared illegal. Lastly, the political context in Spain, namely the presence in the government bodies of certain autonomous communities, and in particular in the Basque country, of political parties calling for independence, proved that the impugned measure was not part of a policy to ban any expression of separatist views. The Court thus found that the restriction had been proportionate to the legitimate aim pursued.

60. However, whilst it is less stringent than when it concerns the active aspect of Article 3 of Protocol No. 1, the Court's scrutiny – of the passive aspect – is not absent. In particular, the proportionality test, although relatively flexible, is a real one. The Court has, in particular, found a number of violations of Article 3 of Protocol No. 1 on account of the disproportionate nature of sanctions imposed on MPs after their parties had been dissolved for undermining territorial integrity and the unity of the State, or to preserve the secular nature of the political system.

61. The Court has also stressed the need to afford sufficient safeguards against arbitrariness in the framework of the procedures of the domestic authorities, including the need to provide sufficient reasons. In *Political Party "Patria" and Others v. the Republic of Moldova*, 2020, the disqualification of a party three days before parliamentary elections on account of the alleged use of undeclared foreign funds was found to be arbitrary on account of the lack of sufficient procedural safeguards.

62. It is noteworthy that cases concerning the banning of political parties on account of the incompatibility of their manifestos with democratic principles are usually examined under Article 11 (freedom of assembly and association) of the Convention. Article 3 of Protocol No. 1 is then regarded only as secondary and as not raising a separate issue (*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], 2003; *Linkov v. the Czech Republic*, 2006; *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, 2007).

B. Importance of context

63. Although they have a common origin in the need to ensure both the independence of elected representatives and the freedom of choice of electors, the eligibility criteria vary in accordance with the historical, societal and political factors specific to each State. The multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. Therefore, for the purposes of applying Article 3 of Protocol No. 1, any electoral legislation must be assessed in the light of the political evolution of the country concerned (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987, § 54; *Podkolzina v. Latvia*, 2002, § 33; *Ždanoka v. Latvia* [GC], 2006, § 106).

64. In *Ždanoka v. Latvia* [GC], 2006, the applicant had been a member of the Communist Party of Latvia (CPL) which had attempted to bring about a *coup d'état* in 1991. Her candidature for elections was subsequently rejected a number of times on account of her activities in the party in question, continued after the attempted *coup d'état*. The Court took the view that the applicant's former position in that party, coupled with her stance during the events of 1991, still warranted her exclusion from standing as a candidate to the national parliament. While such a measure might scarcely be considered acceptable, for example, in a country which had an established framework of democratic institutions going back many decades or centuries, it might nonetheless be considered acceptable in Latvia in view of the historical and political context which had led to its adoption and given the threat to the new democratic order. The Court nevertheless found that the Latvian parliament had a duty to

keep the statutory restriction under constant review, with a view to bringing it to an early end. Such a conclusion was all the more justified in view of the greater stability which Latvia now enjoyed, *inter alia*, by reason of its full European integration. Hence, any failure by the Latvian legislature to take active steps in that connection might result in a different finding by the Court (§§ 132-135).

65. The Court subsequently emphasised once again the importance of the passage of time and the need to reassess legislation concerning lustration laws. In *Ādamsons v. Latvia*, 2008, the applicant, a former Prime Minister, had had his candidature refused on the ground that he had been a KGB "official". The Court confirmed its findings on the country's historical context. It added, however, that over the years a mere general suspicion about a group of individuals was no longer sufficient and that the authorities had to justify such a measure on the basis of additional arguments and evidence. The law applied in this case concerned former KGB "officials". In view of the diversity of duties which had existed in that service, the scope was too broad. In those circumstances, it was no longer sufficient merely to find that the person concerned belonged to a particular group. The group in question having been defined too generally, any restriction on the electoral rights of its members should have followed an individualised approach, taking into account their actual conduct. The need for such a case-by-case approach had becoming increasingly important with the passage of time. The applicant had never been accused of being directly or indirectly involved in the misdeeds of the totalitarian regime, or in any act capable of showing opposition or hostility to the restoration of Latvia's independence and democratic order. Moreover, he had only very belatedly been officially recognised as ineligible, after ten years of an outstanding military and political career in the restored Latvia. Only the most compelling reasons could justify the applicant's ineligibility in those circumstances. In addition, the ten-year time-frame during which former KGB officials could be subjected to the restrictions provided for in other legislative instruments had been extended by ten additional years, without any reasons having been given by Parliament or the Government. The Court thus found that this prolongation had been manifestly arbitrary in respect of the applicant.

66. *Ždanoka v. Latvia (no. 2)*, 2024* follows-up on the Grand Chamber judgment of *Ždanoka v. Latvia* [GC], 2006, (referenced in paragraph 64 above). In 2018, following a request by the applicant for a review of the constitutionality of the provision restricting the right to stand for election of persons who had actively participated in the CPL after 13 January 1991, the Constitutional Court confirmed its constitutionality but narrowed the restriction to those active participants who "[had] endangered and still continued to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law". In that year's parliamentary elections, the applicant's name was removed from the list of candidates after the Central Electoral Commission had found that the restriction, as interpreted by the Constitutional Court, applied in her situation. At the outset, the Court emphasised the context: Latvia was a neighbour of Russia, a State that had recently invaded and controlled parts of Georgia and Ukraine in "a clearly discernible trend of events" subsequent to the 2006 Grand Chamber judgment. While the Latvian parliament had rejected proposals to lift the restriction on three occasions and while in other circumstances the Court might consider this limited action as unjustified and capable of tipping the balance in favour of finding a violation, it could not reach such a conclusion in the specific and sensitive context of the case, given that the "greater stability" enjoyed by Latvia (and Europe in general), and referred to by the Grand Chamber in the 2006 judgment, no longer existed. Since that judgment Latvia increasingly had legitimate reasons to fear for its security, territorial integrity and democratic order, and the restriction therefore had to be assessed in the light of the wider margin of appreciation to be afforded to it in this matter. The Constitutional Court's interpretation of the impugned restriction was, in view of the developments, within its interpretative authority and not arbitrary or unreasonable, while the subsequent proceedings before the electoral commission and the appellate court on the application of the impugned restriction and the applicant's disqualification afforded her sufficient safeguards against arbitrariness.

67. The Court has also examined cases aimed at preventing mafia-related infiltration into the public administration. In *Miniscalco v. Italy*, 2021, the applicant was disqualified from standing as a candidate in the regional elections on account of his final conviction for abuse of authority. The Court found that the measure complained of corresponded to the urgent need to ensure the proper functioning of the public authorities and was compatible with the principle of the rule of law and the general objectives of the Convention. Having examined the existing legal framework, the Court concluded that the disqualification had been surrounded by guarantees. In particular, the disqualification was preconditioned on the existence of a final criminal conviction strictly defined by law, it was limited in time and its foreseeability fell within the wide margin of appreciation enjoyed by the State. Similarly, in *Galan v. Italy* (dec.), 2021, the applicant was removed from elected office on account of his criminal conviction for corruption. Unlike in the case of *Lykourezos v. Greece*, 2006, at the moment when the elections took place in the *Galan* case, both the applicant and the electorate had been in a position to know that an elected representative convicted of one of the serious offences set out in law could be removed from office. Although Parliament had a largely discretionary power in this area, the applicant had the possibility to file observations, to be represented by a lawyer and to speak during the proceedings. After an exhaustive report setting out the decision-making process and proposing that the applicant's election be invalidated had been submitted, the Chamber of Deputies in a plenary public session heard the rapporteur's proposal and the views of certain MPs. In such circumstances, the applicant had had the benefit of sufficient and adequate procedural safeguards and his complaint was declared inadmissible.

C. Organisation of elections

68. The practical organisation of elections is a complex subject, requiring as it does the introduction and occasionally the amendment of elaborate legislation. When called upon to examine this subject, the Court does not overlook the complexity or the features specific to each State. As a result, a broad margin of appreciation is also afforded to States in this connection.

69. The Court has taken the view, in particular, that the proper management of electoral rolls is a pre-condition for a free and fair ballot. The effectiveness of the right to stand for election is undoubtedly contingent upon the fair exercise of the right to vote. The mismanagement of an electoral roll could diminish the candidates' chances of standing equally and fairly for election (*Georgian Labour Party v. Georgia*, 2008, §§ 82-83). In a case where the rules for the compilation of electoral rolls had been changed unexpectedly just one month before the election, the Court accepted that the new system of registration was not perfect but attached greater importance to the fact that the authorities had not spared any effort to make the new ballot fairer. In particular, the electoral authorities had had the challenge of remedying manifest shortcomings in the electoral rolls within very tight deadlines, in a "post-revolutionary" political situation, and it would thus have been an excessive and impracticable burden to expect an ideal solution from the authorities. It was up to the electors to verify that they were registered and to request any correction if necessary. The Court found that this fell within the State's margin of appreciation (ibid.).

1. Guaranteeing serious candidatures: the deposit requirement

70. The electoral laws of a number of States provide for the payment of a deposit by candidates to discourage frivolous candidatures. Such measures enhance the responsibility of those standing for election and confine elections to serious candidates, whilst avoiding any unreasonable outlay of public funds. They may therefore pursue the legitimate aim of guaranteeing the right to effective, streamlined representation (*Sukhovetskyy v. Ukraine*, 2006, §§ 61-62).

71. The amount of the deposit must nevertheless remain proportionate, such that it strikes a balance between, on the one hand, deterring frivolous candidates, and, on the other, allowing the registration of serious candidates. The Court thus takes into account the amount of the sum involved, the electoral

campaign services provided by the State and the other burdensome costs of organising elections which such deposits may help to allay.

72. For the proportionality test to be satisfied, the deposit required cannot be considered to have been excessive or to constitute an insurmountable administrative or financial barrier for a determined candidate wishing to enter the electoral race, and even less an obstacle to the emergence of sufficiently representative political currents or an interference with the principle of pluralism (*Sukhovetskyy v. Ukraine*, 2006, §§ 72-73). The requirement to pay an election deposit, and provisions making reimbursement of the deposit and/or campaigning expenses conditional on the party's having obtained a certain percentage of votes, serve to promote sufficiently representative currents of thought and are justified and proportionate under Article 3 of Protocol No. 1, having regard to the wide margin of appreciation afforded to the Contracting States in this matter (*Russian Conservative Party of Entrepreneurs and Others v. Russia*, 2007, § 94). This remains true even where the deposit cannot be refunded (*Sukhovetskyy v. Ukraine*, 2006).

However, the question whether or not a deposit can be refunded may raise questions under Article 1 of Protocol No. 1. In *Russian Conservative Party of Entrepreneurs and Others v. Russia*, 2007, the Court found that the domestic procedure whereby the entire list of a party had been annulled on account of incorrect information having been given by certain candidates had breached the principle of legal certainty. The applicant party had already paid the election deposit. In view of its finding under Article 3 of Protocol No. 1, the Court took the view that a refusal to return that sum breached Article 1 of Protocol No. 1.

2. Avoiding excessive fragmentation of the political landscape

73. Conditions concerning the number of signatures required for the presentation of a list of candidates do not constitute an impediment to the expression of the opinion of the people in the choice of the legislature (*Asensio Serqueda v. Spain*, Commission decision, 1994; *Federación nacionalista Canaria v. Spain* (dec.), 2001; *Brito Da Silva Guerra and Sousa Magno v. Portugal* (dec.), 2008; *Mihaela Mihai Neagu v. Romania* (dec.), 1994, § 31).

74. However, such measures must pursue a legitimate aim, such as that of a reasonable selection among the candidates in order to ensure their representative character and to exclude any improper candidatures, and must be proportionate to that aim. Thus, a threshold of 100,000 signatures, representing 0.55% of all citizens registered on the electoral rolls, was found to be compliant with Article 3 of Protocol No. 1 (*Mihaela Mihai Neagu v. Romania* (dec.), 1994).

75. Similarly, a requirement for such signatures to be accompanied by certificates showing that the signatories were registered on the electoral rolls must pursue the legitimate aim of ensuring that the signatories have voting rights and that each of them is supporting only one candidature. The Court found that it was not therefore disproportionate to reject a candidature which did not satisfy the formalities in question (*Brito Da Silva Guerra and Sousa Magno v. Portugal* (dec.), 2008).

76. However, the imposition of a minimum number of signatures and their verification must comply with the rule of law and protect the integrity of the elections. In *Tahirov v. Azerbaijan*, 2015, the safeguards provided by the Electoral Board, which had rejected the applicant's candidature, were not sufficient, in particular concerning the appointment of the experts who decided on the validity of the signatures. In addition, the applicant had not been able to attend the Board's meetings or submit his arguments, none of which had been examined by the Board. The rejection of the applicant's candidature on account of the alleged invalidity of the signatures he had provided was thus arbitrary. Based on a report by the OSCE, the Court noted the systemic nature of these shortcomings and the number of candidatures arbitrarily rejected on those grounds. It concluded that the Government's unilateral declaration did not suffice to guarantee respect for human rights, rejected it and pursued its examination on the merits.

77. Such threshold criteria have also been accepted by the Court in connection with the allocation of seats according to the results of the elections. Electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: on the one hand to reflect fairly faithfully the opinions of the people, and, on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. Article 3 of Protocol No. 1 thus does not imply that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of winning, and no electoral system can eliminate "wasted votes" (*Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia* (dec.), 2007).

78. The effects of an electoral threshold can differ from one country to another and the various systems can pursue different, sometimes even opposing, political aims. One system might concentrate more on a fair representation of the parties in Parliament, while another one might aim to avoid a fragmentation of the party system and encourage the formation of a governing majority of one party in Parliament. The Court has taken the view that none of these aims can be considered unreasonable in itself. Moreover, the role played by thresholds varies in accordance with the level at which they are set and the party system in each country. A low threshold excludes only very small groupings, which makes it more difficult to form stable majorities, whereas in cases where the party system is highly fragmented a high threshold deprives many voters of representation. This large variety of situations shows the diversity of the possible options. The Court cannot therefore assess any particular threshold without taking into account the electoral system of which it forms a part (*Yumak and Sadak v. Turkey* [GC], 2008, §§ 131-132).

79. As regards, for example, the requirement to fulfil two alternative conditions – to obtain either at least 30% of valid votes cast in an individual island constituency, or at least 6% of valid votes cast in an entire autonomous community – the Court took the view that such a system, far from constituting a hindrance to electoral candidatures, granted a certain protection to smaller political formations (*Federación nacionalista Canaria v. Spain* (dec.), 2001). Similarly, the Court concluded that the threshold of 5% of votes that had to be attained by a list of candidates in order to be considered elected and to participate in the allotment of seats was compliant with Article 3 of Protocol No. 1, in that it encouraged sufficiently representative currents of thought and helped to avoid an excessive fragmentation of Parliament (*Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia* (dec.), 2007).

80. In *Strack and Richter v. Germany* (dec.), 2016, the Court referred back to the Court's case-law on electoral thresholds in the light of the Convention (§ 33). In addition, it addressed the threshold issue for the first time under the active aspect of Article 3 of Protocol No. 1 because the case had been referred to it by voters. The applicants complained about a threshold of 5% of the votes cast at national level for a political party to be able to claim one of the seats allocated to Germany in the European Parliament. In 2011 the German Constitutional Court had declared this legislative provision to be at odds with the Basic Law, but had not invalidated the 2009 election results. The Strasbourg Court dismissed the application, finding that the interference was proportionate to the aim pursued (preservation of parliamentary stability) in the light of the broad margin of appreciation afforded to States in such matters. It noted that the European Union expressly permitted member States to fix electoral thresholds of up to 5% of the votes cast and that a considerable number of member States relied on this faculty.

81. The case of *Partei Die Friesen v. Germany*, 2016, concerned the threshold of 5% of votes cast imposed by the *Land* of Lower Saxony to obtain seats in Parliament. The applicant, a political party representing the interests of a minority group in that *Land*, alleged that the 5% threshold breached its right to participate in elections without discrimination and had requested to be exempted from the rule. The issue was thus the scope of the member States' obligations as regards the protection of minorities in the electoral context. The Court took the view that, even when interpreted in the light of the 1998 Framework Convention on the Protection of National Minorities – which laid emphasis on the participation of national minorities in public affairs – the European Convention did not call for a

different treatment in favour of minority parties in this context. It found no violation of Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1.

82. In *Yumak and Sadak v. Turkey* [GC], 2008, by contrast, the Court found that, in general, a 10% electoral threshold appeared excessive, and concurred with the organs of the Council of Europe, which had recommended that it be lowered. The threshold compelled political parties to make use of stratagems which did not contribute to the transparency of the electoral process. However, the Court was not persuaded that, when assessed in the light of the specific political context of the elections in question, and attended as it was by correctives and other guarantees – such as the possibility of forming an electoral coalition with other political parties or the role of the Constitutional Court – which had limited its effects in practice, the 10% threshold had had the effect of impairing in their essence the rights secured to the applicants by Article 3 of Protocol No. 1.

83. The case of *Cernea v. Romania*, 2018, concerned a ban on members of parties not already represented in Parliament from standing as candidates in by-elections. The applicant alleged discrimination in relation to candidates belonging to parties already represented. The Court found that the aim pursued of preserving the structure of Parliament and avoiding any fragmentation of the political groups within it could justify the limitation in question (§ 49). It found that the limitation of the applicant's right to stand for by-elections had remained within reasonable proportions, in particular because the by-election had been held for a single seat in Parliament and the applicant had been able to stand in the preceding general election (§§ 50-51).

84. In two other cases against Romania, the applicants complained about legislation imposing an additional eligibility condition applicable solely to national minority organisations not already represented in Parliament. Examining those complaints under Article 14 taken in conjunction with Article 3 of Protocol No. 1, the Court accepted that the law in question pursued a legitimate aim of ensuring that organisations not yet represented in Parliament were properly represented and of eliminating frivolous candidates. However, in *Danis and Association of Ethnic Turks v. Romania*, 2015, the law imposing the additional criterion had been enacted just a few months before the elections, with the result that it had been objectively impossible for the applicants to fulfil it. In *Cegolea v. Romania*, 2020, the procedure for obtaining the additional criterion did not afford sufficient safeguards against arbitrariness, and lacked effective judicial scrutiny over discretionary powers of the executive authorities.

85. Finally, a sudden and unforeseeable change in the rules for calculating votes might infringe Article 3 of Protocol No. 1. The Court found a violation of that Article as regards MPs deprived of their seats following an unpredictable departure by the Special Supreme Court from its settled case-law concerning the calculation of the electoral quotient. In particular, it took account of the fact that the change in case-law, after the elections, had changed the meaning and weight given to blank ballot papers and that it had therefore been liable to alter the will of the electorate as expressed in the ballot box. It had also created a disparity in the manner in which sitting MPs had been elected (*Paschalidis, Koutmeridis and Zaharakis v. Greece*, 2008).

D. Other legitimate aims

86. Article 3 of Protocol No. 1 does not contain a list of legitimate aims capable of justifying restrictions on the exercise of the rights that it guarantees. Nor does it refer to the "legitimate aims" listed exhaustively in Articles 8 to 11 of the Convention. As a result the Contracting Parties are entitled to rely on other aims, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances (*Ždanoka v. Latvia* [GC], 2006, § 115).

87. The Court has thus made a distinction between loyalty towards the State and loyalty towards the government. While the need to ensure loyalty towards the State may constitute a legitimate aim

justifying restrictions of electoral rights, that is not the case for loyalty towards the government (*Tănase v. Moldova* [GC], 2010, § 166). Similarly, the obligation to have sufficient knowledge of the official language may pursue a legitimate aim (*Podkolzina v. Latvia*, 2002). The Court has also found that the obligation imposed on candidates in a parliamentary election to submit accurate information on their employment and party membership served to enable voters to make an informed choice with regard to the candidate's professional and political background and thus constituted a legitimate aim (*Krasnov and Skuratov v. Russia*, 2007). By contrast, a candidate's ineligibility founded solely on an allegedly defective form of a document provided by him was not proportionate to the legitimate aim pursued (ibid., §§ 65-66).

88. The Court also declared inadmissible an application complaining about an obligation for a very traditional Protestant party to open its lists of candidates to women. It found that the progression towards gender equality in the member States precluded the State from supporting the idea that the woman's role was secondary to that of the man (*Staatkundig Gereformeerde Partij v. the Netherlands* (dec.), 2012).

89. Moreover, in *Melnychenko v. Ukraine*, 2004, the applicant, a Ukrainian national who had refugee status in the USA, had had his candidature for election to the Ukrainian parliament refused on the ground that he had provided false information about his residence. In accordance with the legislation in force, he had given information from his internal passport, which he still possessed, showing that he lived in Ukraine. The Court agreed that it could be acceptable to impose a residence condition for the registration of candidatures. However, it noted that the applicant had complied with domestic law, which did not require continuous residence in the country. In addition, he was in a situation where he could either stay in Ukraine and face a threat of bodily harm, which would have made it impossible for him to exercise his political rights, or leave the country and no longer qualify to stand for election. The Court thus found there had been a violation of Article 3 of Protocol No. 1.

90. In *Antonenko v. Russia* (dec.), 2006, a court had banned the applicant from standing in the parliamentary elections the day before the ballot on the grounds that there had been financial irregularities and that the election campaign had been unfair. The applicant did not complain about the actual annulment of his candidature, but about the fact that it had been decided shortly before the polling stations opened. The Court found that the timing in question was compliant with domestic law and had no consequence for a possible appeal, as no further appeal lay against the decision.

91. In *Abil v. Azerbaijan (no. 2)*, 2019, where the applicant had been disqualified from parliamentary elections for alleged early campaigning and vote buying, the Court held that the domestic procedures had not afforded him sufficient safeguards against arbitrariness at any stage of the proceedings. The domestic authorities' decisions had lacked sufficient reasoning and adequate assessment of the evidence to establish the applicant's responsibility for the misconduct attributed to him.

92. In *Güngen v. Türkiye* (dec.), 2023, the refusal to register the applicant as a candidate on the list of a pro-Kurdish political party, on the ground that he had not submitted a judgment confirming the restoration of his civic rights following his criminal conviction was found not to be arbitrary, taking into consideration the well-established and foreseeable practice of the relevant authorities. The application was declared inadmissible as manifestly ill-founded.

93. The Court has also accepted, on a number of occasions, that potential candidates may be excluded on account of the positions held by them. In *Gitonas and Others v. Greece*, 1997, legislation precluded certain categories of holders of public office – including salaried public servants and members of staff of public-law entities and public undertakings – from standing for election and being elected in any constituency where they had performed their duties for more than three months in the three years preceding the elections: the disqualification would moreover stand notwithstanding a candidate's prior resignation, unlike the position with certain other categories of public servant. The Court found that this measure served a dual purpose: to ensure that candidates of different political persuasions enjoyed equal means of influence and to protect the electorate from pressure from public officials.

The following year, the Court reiterated that restrictions on the participation of specific categories of local government officers in forms of political activity pursued the legitimate aim of protecting the rights of others, council members and the electorate alike, to effective political democracy at the local level. Having regard to the fact that they only operated for as long as the applicants occupied politically restricted posts, the measures remained proportionate (*Ahmed and Others v. the United Kingdom*, 1998). In *Briķe v. Latvia*, 2000, the Court added that as the ineligibility of civil servants constituted a proportionate response to the requirement that the civil service be independent, this was all the more true for the ineligibility of judges, the purpose of which was to secure to citizens the rights protected by Article 6 of the Convention. It thus concluded that there had been no impairment of the very essence of the guaranteed rights, as the judge could have resigned from her post in order to stand for election.

94. The case of *Dupré v. France* (dec.), 2016, concerned the election of two additional French representatives to the European Parliament in 2011, in the middle of the term, following the entry into force of the Lisbon Treaty. Among three possibilities the French Government had chosen to have the new MEPs appointed by the National Assembly, from among its members, thus preventing the applicant from standing as a candidate. The Court accepted that this form of appointment had pursued a legitimate aim, in view of the risk of low participation, a high cost for only two seats, and organisational complexity (§ 25). On account of its limited impact, the Court found that the measure was not disproportionate to the legitimate aim pursued.

95. However, restrictions on the right to stand for election, even if they pursue a legitimate aim, must not have the result of rendering that right ineffective, either because the conditions are introduced too late or too suddenly, or because they are not clear enough. In *Lykourezos v. Greece*, 2006, legislation making all professional activity incompatible with the duties of a member of parliament was applied immediately to the current legislature and MPs had to forfeit their seats even though that incompatibility had not been announced prior to their election. There were no grounds of pressing importance that could have justified the immediate application of the absolute disqualification. For the first time the Court relied on the principle of legitimate expectation and thus found a violation of Article 3 of Protocol No. 1. It applied that principle again in *Ekoglasnost v. Bulgaria*, 2012. While none of the three new conditions introduced in the electoral legislation raised a problem in itself, on account of their belated introduction the applicant had only had one month to comply. The Court took the view that the conditions of participation in elections imposed on political groups were part of the basic electoral rules. Those conditions should thus have the same stability in time as the other basic elements of the electoral system. The Court has also found that the provisions on the basis of which a former member of the clergy had had his candidature refused were too imprecise and therefore unforeseeable. Consequently, they gave the electoral bodies an excessive margin of appreciation and left too much room for arbitrariness in the application of that restriction (*Seyidzade v. Azerbaijan*, 2009).

E. From the election campaign...

96. In order for the rights guaranteed by Article 3 of Protocol No. 1 to be effective, their protection cannot remain confined to the candidature itself. The election campaign thus also falls within the scope of the provision.

97. Already in a number of cases concerning Article 10 of the Convention, the Court had emphasised the close relationship between the right to free elections and freedom of expression. It has found that these rights, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are inter-related and operate to reinforce each other: for example, freedom of expression is one of the “conditions” necessary to “ensure the free expression of the opinion of the people in the choice of the legislature”. For this reason, it is particularly important in the period

preceding an election for opinions and information of all kinds to be permitted to circulate freely (*Bowman v. the United Kingdom*, 1998, § 42).

98. As these rights are inter-dependent, numerous cases concerning election campaigns are examined under Article 10. The Court, for example, found a violation of Article 10 on account of a fine imposed on a television channel for broadcasting an advertisement for a small political party, in breach of legislation prohibiting any political advertising on television (*TV Vest AS and Rogaland Pensjonistparti v. Norway*, 2008). However, it found no issue under Article 10 in a case where a warning had been issued by an electoral commission to a female politician for describing a rival candidate as a "thief" in her absence on live television in the run up to the election (*Vitrenko and Others v. Ukraine*, 2008).

99. However, cases concerning, in particular, the distribution of airtime during the pre-election campaigning period may raise issues under Article 3 of Protocol No. 1. In a case concerning the equality of airtime granted to the various candidates, the Court stated that, while Article 3 of Protocol No. 1 enshrined the principle of equal treatment of all citizens in the exercise of their electoral rights, it did not guarantee, as such, any right for a political party to be granted airtime on radio or television during the pre-election campaign. However, an issue may indeed arise in exceptional circumstances, for example, if in the run up to an election one party were denied any kind of party political broadcast whilst other parties were granted slots for that purpose (*Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia* (dec.), 2007).

100. In *Communist Party of Russia and Others v. Russia*, 2012, the Court addressed the question whether the State had a positive obligation under Article 3 of Protocol No. 1 to ensure that coverage by regulated media was objective and compatible with the spirit of "free elections", even in the absence of direct evidence of deliberate manipulation. It found that the existing system of electoral remedies was sufficient to satisfy the State's positive obligation of a procedural nature. As to the substantive aspect of the obligation and the allegation that the State should have ensured neutrality of the audio-visual media, it took the view that certain steps had been taken to guarantee some visibility to opposition parties and candidates on TV and to secure the editorial independence and neutrality of the media. These arrangements had probably not secured *de facto* equality, but it could not be considered established that the State had failed to meet its positive obligations in this area to such an extent as to amount to a violation of Article 3 of Protocol No. 1.

101. In a different context, in *Abdalov and Others v. Azerbaijan*, 2019, the applicants were registered late for the 2010 parliamentary elections due to the lack of safeguards against arbitrariness in the candidate registration procedures and to delays in the examination of their appeals attributable to the electoral authorities and the courts. As a consequence, they had no or very little time to campaign. Concluding that the foregoing had curtailed the applicants' individual electoral rights to such an extent as to significantly impair their effectiveness, the Court found a violation of Article 3 of Protocol No. 1.

102. In *Oran v. Turkey*, 2014, the applicant had complained that, as an independent candidate, he had not been able to benefit from nationwide electoral broadcasting on Turkish radio and television, unlike political parties. The Court took the view that, unlike political parties, the applicant, as an independent candidate, had only to address the constituency in which he was standing. In addition, he had not been prevented from using all the other available methods of electioneering, which were accessible to all the unaffiliated independent candidates at the relevant time. The Court thus found that there had been no violation of Article 3 of Protocol No. 1.

103. Lastly, in *Uspaskich v. Lithuania*, 2016, the applicant, who was a politician, complained that his house arrest (in a criminal investigation for political corruption) had prevented him from participating in the legislative elections on an equal footing with the other candidates. In finding that there had been no violation of Article 3 of Protocol No. 1, the Court took particular account of the fact that he had been able to campaign from his home if he so wished. Given that he was a well-known politician and that members of his party had participated in meetings with voters in person, the house arrest

had not prevented the applicant from participating in the elections to the point that the final result had been affected. In addition, domestic law provided for a system of individual complaints and appeals in electoral matters, and the applicant had availed himself of such recourse.

F. ...to the exercise of office

104. From 1984 onwards the European Commission of Human Rights stated that it was not enough that an individual had the right to stand for election; he must also have a right to sit as a member once he has been elected by the people. To take the opposite view would render the right to stand for election meaningless (*M. v. the United Kingdom*, Commission decision, 1984). In that same case, however, it took the view that the inability for an elected MP to take up his seat on the grounds that he was already a member of a foreign legislature was a restriction compatible with Article 3 of Protocol No. 1.

105. In three cases against Turkey the Court examined the consequences for MPs of the dissolution of the political parties to which they belonged. In *Sadak and Others v. Turkey (no. 2)*, 2002, a political party was dissolved for breaching the territorial integrity and unity of the State. The MPs belonging to that party automatically forfeited their seats. The Court took the view that interference with the freedom of expression of an opposition MP required particularly stringent scrutiny. The loss by the applicants of their seats in Parliament was automatic and independent of their political activities in which they engaged on a personal basis. It had thus been an extremely severe measure and one that was disproportionate to any legitimate aim invoked.

106. In *Kavakçı v. Turkey*, 2007, temporary limitations had been imposed on the applicant's political rights on account of the final dissolution of the party to which she belonged. The Court took the view that those measures had the purpose of preserving the secular character of the Turkish political regime and that, having regard to the importance of that principle for the democratic regime in Turkey, the measure pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. As to the proportionality of the sanction, however, the constitutional provisions concerning the dissolution of a political party, as then in force, had a very broad scope. All the acts and remarks of party members could be imputable to the party in finding it to be a centre of anti-constitutional activity and deciding on its dissolution. No distinction was made between the various degrees of involvement of members in the impugned activities. In addition, certain party members who were in a comparable situation to that of the applicant, especially the President and Vice-President, had not been penalised. Consequently, the Court found that the sanction was not proportionate and that there had been a violation of Article 3 of Protocol No. 1.

107. In another case concerning an MP from the same party who had also lost his seat, the Court again found a violation of Article 3 of Protocol No. 1 but noted with interest the adoption of a constitutional amendment reinforcing the status of MPs and probably having the effect of making the disqualification of MPs on such grounds less frequent (*Sobacı v. Turkey*, 2007).

108. In *Lykourezos v. Greece*, 2006, the Court had found that the new professional incompatibility applicable to MPs had not been announced prior to the elections and had surprised both the applicant and those who had voted for him, during his term of office. It took the view that in assessing the applicant's election under the new Article of the Constitution which entered into force in 2003, without taking account of the fact that his election had taken place beforehand perfectly legally, the judge had stripped the applicant of his seat and deprived his voters of the candidate whom they had freely and democratically chosen to represent them for four years, in disregard of the principle of legitimate expectation. Similarly, in *Paschalidis, Koutmeridis and Zaharakis v. Greece*, 2008, the Court had found that an unforeseeable departure from precedent, after the elections, concerning the calculation of the electoral quotient, with the effect of disqualifying a number of elected MPs, had entailed a violation of Article 3 of Protocol No. 1.

109. In *Paunović and Milivojević v. Serbia*, 2016, the Court had occasion to rule on the practice of political parties consisting of using undated resignation letters signed, before taking up office, by their members who are elected to Parliament; the party is thus able to remove those members from office at any time and against their will. The Court began by taking the view that, even though the resignation letter would be presented by the party, only Parliament was entitled to withdraw a seat. It was therefore the State which deprived the MP of his or her seat by accepting the resignation. The application of an MP who had lost his seat was thus admissible *ratione personae*. The Court then found that the impugned practice was at odds with domestic law, which required such resignations to be submitted by the MP in person. There had thus been a violation of Article 3 of Protocol No. 1.

110. The case of *Occhetto v. Italy* (dec.), 2013, concerned the relinquishment of a seat in the European Parliament. After signing a document relinquishing his seat, as a result of an agreement with the co-founder of the political movement to which he belonged, the applicant had changed his mind. However, the candidate next on the list had already taken up the seat in question. The Court found that, following an election, a candidate was entitled to take up a seat in a legislature, but had no obligation to do so. Any candidate could renounce, for political or personal reasons, the office to which he or she was elected, and the decision to register such a renouncement could not be regarded as contrary to the principle of universal suffrage. It added that the refusal to accept the withdrawal of the applicant's relinquishment had pursued the legitimate aims of legal certainty in the electoral process and the protection of the rights of others, in particular the rights of the candidate next on the list. The applicant's wish had been expressed in writing and in unequivocal terms, and he had stipulated that his relinquishment was final. Lastly, the domestic proceedings – in compliance with EU law – had enabled him to submit the arguments that he deemed useful for his defence. The Court thus found that there had been no violation of Article 3 of Protocol No. 1.

111. In *G.K. v. Belgium*, 2019, a senator alleged that she had not signed her resignation letter voluntarily. The Court held that, where a dispute arose as to the resignation of a member of parliament who wished to retract that decision or to contend that the resignation was invalid under domestic law, the decision-making process had to afford minimum safeguards against arbitrariness. Firstly, the discretion enjoyed by the decision-making body must be circumscribed, with sufficient precision, by the provisions of domestic law and, secondly, the procedure itself has to afford safeguards against arbitrariness such as to allow the persons concerned to express their position, while also preventing any abuse of power on the part of the relevant authority. The Court established that a number of failings in the decision-making process for accepting the applicant's resignation had impaired the very essence of her rights under Article 3 of Protocol No. 1.

112. In *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, the Court ruled for the first time on a complaint under Article 3 of Protocol No. 1 about the effects of pre-trial detention of elected MPs on their performance of parliamentary duties. Stressing that the imposition of a measure depriving an MP of liberty did not automatically constitute a violation of Article 3 of Protocol No. 1, the Court held that a procedural obligation under that provision required the domestic courts to show that, in ordering an MP's initial or continued pre-trial detention, they had weighed up all the relevant interests, in particular those safeguarded by Article 3 of Protocol No. 1. As part of this balancing exercise, they must protect the expression of political opinions by the MP concerned, since the importance of the freedom of expression of MPs (especially of the opposition) was such that, where the detention of an MP was incompatible with Article 10, it would also be considered to breach Article 3 of Protocol No. 1. Another important element was whether the charges were directly linked to an MP's political activity. Moreover, a remedy had to be offered by which MPs could effectively challenge their detention and have their complaints examined on the merits. Furthermore, the duration of an MP's pre-trial detention must be as short as possible, and the domestic courts should genuinely consider alternative measures to detention and provide reasons if less severe measures were considered insufficient. In this context, whether there was a reasonable suspicion that the applicant had committed an offence, as required by Article 5 § 1, was equally relevant for the purposes

of Article 3 of Protocol No. 1. The domestic courts had failed to duly consider all of these elements and to effectively take into account the fact that the applicant was not only an MP but also a leader of the opposition, the performance of whose parliamentary duties called for a high level of protection. Although the applicant retained his seat throughout his term of office, it was effectively impossible for him to take part in parliamentary activities. His unjustified pre-trial detention was therefore incompatible with the very essence of his right under Article 3 of Protocol No. 1 to be elected and to sit in Parliament.

113. *Kokëdhima v. Albania*, 2024, concerned the lawfulness of the termination by the Constitutional Court of the mandate of an MP on the ground that, according to the Constitution, it was incompatible with his involvement in business activities through a company of which he was the sole shareholder and that drew income from contracts with State bodies for the provision of services. Even though the contracts had been concluded before the elections and the applicant sold the company several months after he had been elected, the company continued to generate income under those contracts and the applicant, who had failed to take all measures necessary to terminate the ongoing conflict of interest at the time of assuming his mandate, thus continued to derive benefit from the company as its sole shareholder for several months while serving as an MP at the same time. The Court found that the manner in which the relevant domestic legislation was interpreted and applied in the applicant's case was sufficiently foreseeable and not arbitrary.

IV. Electoral disputes

114. Cases concerning election-related disputes have been numerous. The Court has established that the rights guaranteed by Article 3 of Protocol No. 1 cover not only the process of the organisation and management of the voting process, but also the manner of review of the outcome of elections and disputes concerning counting of votes and validation of election results (*Kovach v. Ukraine*, 2008, §§ 55 et seq.; *Namat Aliyev v. Azerbaijan*, 2010, § 81; *Kerimova v. Azerbaijan*, 2010, § 54; *Davydov and Others v. Russia*, 2017; *Mugemangango v. Belgium* [GC], 2020).

115. Article 3 of Protocol No. 1 contains certain positive obligations of a procedural character, in particular requiring the existence of a domestic system for the effective examination of individual complaints and appeals in matters concerning electoral rights. The existence of such a system is one of the essential guarantees of free and fair elections. Such a system ensures an effective exercise of individual rights to vote and to stand for election, maintains general confidence in the State's administration of the electoral process and constitutes an important device at the State's disposal in achieving the fulfilment of its positive obligation under Article 3 of Protocol No. 1 to hold democratic elections (*Namat Aliyev v. Azerbaijan*, 2010, §§ 81 et seq.; *Uspaskich v. Lithuania*, 2016, § 93; *Mugemangango v. Belgium* [GC], 2020, § 69).

116. The Court has held that post-election phases must be surrounded by precise procedural safeguards; the process must be transparent and open, and observers from all parties must be allowed to participate, including opposition representatives. It pointed out, however, that Article 3 of Protocol No. 1 was not conceived as a code on electoral matters designed to regulate all aspects of the electoral process. Thus the Court's level of scrutiny in a given case depended on the aspect of the right to free elections. Tighter scrutiny should be reserved for any departures from the principle of universal suffrage, but a broader margin of appreciation could be afforded to States where the measures prevented candidates from standing for elections. A still less stringent scrutiny would apply to the more technical stage of vote counting and tabulation (*Davydov and Others v. Russia*, 2017, §§ 283-288).

117. A mere mistake or irregularity in the electoral process, and in particular at the more technical stages of it, would not, *per se*, signify unfairness of the elections, if the general principles of equality, transparency, impartiality and independence of the electoral administration were complied with. The concept of free elections would be put at risk only if (i) there is evidence of procedural breaches that

would be capable of thwarting the free expression of the opinion of the people, for instance through gross distortion of the voters' intent; and (ii) where such complaints receive no effective examination at the domestic level (*Davydov and Others v. Russia*, 2017, § 287; *Mugemangango v. Belgium* [GC], 2020, § 72). Accordingly, in order to attract the scrutiny of the Court of the manner in which election-related complaints were dealt at the domestic level, the applicant must demonstrate that those complaints were "serious and arguable" (*Namat Aliyev v. Azerbaijan*, 2010, § 78; *Gahramanli and Others v. Azerbaijan*, 2015, § 73; *Davydov and Others v. Russia*, 2017, §§ 289 et seq.; *Mugemangango v. Belgium* [GC], 2020, §§ 78 et seq.).

118. Decisions to invalidate an election must reflect a genuine inability to establish the wishes of the electors (*Kovach v. Ukraine*, 2008). In *Kerimova v. Azerbaijan*, 2010, the Court found that tampering by two election officials had not succeeded in altering the final result of the election, in which the applicant had been successful. The national authorities had, nevertheless, invalidated the results in breach of domestic electoral law and without taking into account the limited impact of the effects of the tampering. By doing so, the authorities had essentially helped the officials to obstruct the election. This decision had arbitrarily infringed the applicant's electoral rights by depriving her of the benefit of election to Parliament. It had also shown a lack of concern for the integrity and effectiveness of the electoral process which could not be considered compatible with the spirit of the right to free elections. The role of the courts is not to modify the expression of the people. Thus in two cases (*I.Z. v. Greece*, Commission decision, 1994; and *Babenko v. Ukraine* (dec.), 1999) the Convention organs examined complaints by unsuccessful candidates who alleged that the electoral processes had been unfair, but dismissed them for lack of any real damage with regard to the outcome of the election. In *Riza and Others v. Bulgaria*, 2015, the results of 23 polling stations set up abroad had been invalidated on account of alleged anomalies, depriving an MP of his seat. The Court examined both the interference with the voting rights of 101 electors and the right to stand for election of the MP and the party he represented. It found that only purely formal grounds had been given to invalidate the election in a number of polling stations. In addition, the circumstances relied on by the court to justify its decision were not provided for, in a sufficiently clear and foreseeable manner, in the domestic law, and it had not been shown that they would have altered the choice of the voters or distorted the result of the election. In addition, electoral law did not provide for the possibility of organising fresh elections in the polling stations where the ballot had been invalidated – contrary to the Venice Commission's Code of Good Practice in Electoral Matters – which would have reconciled the legitimate aim pursued by the annulment of the election results, namely the preservation of the legality of the election process, with the subjective rights of the electors and the candidates in parliamentary elections. Consequently, the Court found that there had been a violation of Article 3 of Protocol No. 1. Decisions to invalidate a ballot must therefore be based on a genuine inability to establish the wishes of the electors.

119. In *Davydov and Others v. Russia*, 2017, which concerned alleged anomalies in federal legislative and municipal elections, the applicants had participated in these elections in various capacities: they were all registered on the electoral rolls, and some had also stood for election to the legislative assembly (so the case concerned both the active and passive aspects of the right to free elections), and others were members of electoral commissions or observers. The Court found there had been a violation of Article 3 of Protocol No. 1 for the following reasons: the applicants have presented, both to the domestic authorities and to the Court, an arguable claim that the fairness of the elections had been seriously compromised by the procedure in which the votes had been recounted (§§ 310-311). Such irregularities could lead to gross distortion of the voters' intent in all the constituencies concerned. But the applicants had not had their complaints about the recount process effectively examined by the domestic authorities, i.e. the electoral commissions, the public prosecutor, the commission of inquiry or the courts (§§ 336-337).

120. In *Mugemangango v. Belgium* [GC], 2020, the Court further clarified the scope of the adequate and sufficient procedural safeguards to prevent arbitrariness, required for the effective examination

of electoral disputes by Article 3 of Protocol No. 1. The applicant, who had failed to win a seat in the Walloon Region Parliament by only 14 votes, called for a re-examination of about 20,000 ballot papers. While the relevant committee found the applicant's complaint well-founded and proposed a recount, the Walloon Parliament, not yet constituted at the material time, decided not to follow that conclusion and approved all the elected representatives' credentials. The Court firstly emphasised that parliamentary autonomy could only be validly exercised in accordance with the rule of law. It therefore took into account the fact that the Walloon Parliament had examined and rejected the applicant's complaint before its members were sworn in and their credentials were approved. As to the scope of the procedural safeguards against arbitrariness, the Court stressed that the guarantees of impartiality of a decision-making body were intended to ensure that the decision taken was based solely on factual and legal considerations, and not political ones. Given that members of parliament cannot be "politically neutral" by definition, in a system where parliament is the sole judge of the election of its members, particular attention had to be paid to the guarantees of impartiality laid down in domestic law as regards the procedure for examining challenges to election results. Furthemore, the discretion enjoyed by the body concerned must not be excessive and must be circumscribed with sufficient precision by the provisions of domestic law. The procedure in the area of electoral disputes must also guarantee a fair, objective and sufficiently reasoned decision. Complainants must have the opportunity to state their views and to put forward any arguments they consider relevant to the defence of their interests by means of a written procedure or, where appropriate, at a public hearing. Applying the said principles, on the facts of the case, the Court found that the applicant's complaint had been examined by a body which had not provided the requisite guarantees of its impartiality and whose discretion had not been circumscribed with sufficient precision by provisions of domestic law. The safeguards afforded to the applicant during the procedure had likewise been insufficient, having been introduced on a discretionary basis.

121. The above-mentioned principles on adequate and sufficient procedural safeguards to prevent arbitrariness were again applied by the Court in *Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, 2024, which concerned the examination of complaints by two unsuccessful candidates who alleged that there had been irregularities in the counting and recounting of votes cast in their constituency, affecting the election results and the ultimate composition of the Icelandic parliament (*Althingi*). The existing regulatory framework created a decision-making mechanism by which the preparatory credentials committee (appointed by the acting speaker of the *Althingi*) conducted a full inquiry into the complaints and prepared a report, the credentials committee (elected by the new *Althingi*) formulated proposals on the basis of that report, and the full chamber of the *Althingi* debated and voted on the relevant proposals. At the time of examination of the complaints, all of those bodies were composed of newly elected MPs whose credentials had not yet been approved and a fully functioning parliament had yet to be constituted. No rules existed addressing potential conflicts of interest and, in fact, certain MPs voting on the matter had been directly affected by the outcome of the vote and had therefore been "deciding their own fate". While there were no grounds to doubt the credibility of the inquiry and objectivity of the proposals, the absence of specific rules ensuring political and partisan neutrality created genuine impartiality concerns from the standpoint of appearances. Moreover, the discretion of the full chamber of the *Althingi*, regarding the practical consequences of any identified electoral defects, was not circumscribed with sufficient precision by domestic law. At the same time, the Court found that the procedure for the examination of the applicants' complaints had been fair, objective and had guaranteed a sufficiently reasoned decision: the applicants' effective participation had been ensured, the proposals and recommendations had been detailed and reasoned, and the debate in the full chamber had allowed the rationale of the final decision to be understood. Nevertheless, the above-mentioned findings as to the impartiality and the unrestrained discretion of the *Althingi* led the Court to a conclusion that there had been a breach of the requirements of Article 3 of Protocol No. 1 to the Convention.

122. Finally, the Court has confirmed that electoral disputes could not be examined under Article 6 of the Convention, which the Court has found inapplicable. It took the view that an applicant's right to

stand for election to the French National Assembly and to keep his seat was a political one and not a "civil" one within the meaning of Article 6 § 1, such that disputes relating to the arrangements for the exercise of that right lay outside the scope of Article 3 of Protocol No. 1 (*Pierre-Bloch v. France*, 1997, § 50). Nor was the criminal limb of Article 6 engaged as regards penalties imposed for non-compliance with electoral rules (ibid., § 61). In *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia* (dec.), 2009, the applicant NGO had been an observer during parliamentary elections. Following a subsequent dispute as to the failure of the Central Election Commission to transmit various documents, the Court took the view that the outcome of the proceedings in question had not been decisive of the NGO's *civil* rights and that it did not therefore fall within the scope of Article 6 § 1 of the Convention.

V. Effective remedies

123. States must ensure that arguable complaints by individuals concerning election irregularities are effectively addressed and that domestic decisions are sufficiently reasoned.

124. In cases relating to post-election disputes, the Court has made a distinction according to whether the disputes had been examined by a judicial body at domestic level (*Riza and Others v. Bulgaria*, 2015, § 94; *Paunović and Milivojević v. Serbia*, 2016, § 68). Where the domestic law entrusted the consideration of post-election disputes to a judicial body, the Court has examined the case under Article 3 of Protocol No. 1 alone, finding that there was no need for a separate assessment under Article 13 of the Convention (*Podkolzina v. Latvia*, 2002, § 45; *Kerimova v. Azerbaijan*, 2010, §§ 31-32; *Gahramanli and Others v. Azerbaijan*, 2015, § 56; *Davydov and Others v. Russia*, 2017, § 200; *Abdalov and Others v. Azerbaijan*, 2019), or that no separate issue arose under that Article (*Riza and Others v. Bulgaria*, 2015, § 95).

125. On the other hand, where the post-election dispute had not been examined by a judicial body at domestic level, the Court has conducted a separate assessment of the complaint under Article 13 (*Grosaru v. Romania*, 2010; *Paunović and Milivojević v. Serbia*, 2016; *Mugemangango v. Belgium* [GC], 2020; *Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, 2024).

126. The Court has indicated that in electoral matters only those remedies which are capable of ensuring the proper functioning of the democratic process may be regarded as effective (*Petkov and Others v. Bulgaria*, 2009). In *Petkov and Others v. Bulgaria*, 2009, the applicants' names had been struck out of the lists of candidates only ten days before the election day, and on the basis of legislation passed less than three months earlier. Those strike-out decisions were subsequently declared null and void but, as the electoral authorities had not reinstated the applicants as candidates, they were unable to stand for election. The Court took the view that, since the remedy available in the context of the elections offered only pecuniary redress, it could not be regarded as effective under Article 13 of the Convention. In *Grosaru v. Romania*, 2010, the Court noted that the applicant, who was an unsuccessful candidate in legislative elections, had not been able to obtain any judicial review of the interpretation of the impugned electoral legislation and it found a violation of Article 13 taken together with Article 3 of Protocol No. 1. The Court also found a violation of Article 13 in conjunction with Article 3 of Protocol No. 1 in the case of *Paunović and Milivojević v. Serbia*, 2016, concerning the lack of an effective possibility to challenge the illegal removal of an MP from his seat (§§ 68-72).

127. Where a remedy does exist, any deficiencies may be raised before the Court under Article 3 of Protocol No. 1. Such deficiencies may constitute a violation of that Article when they call into question the integrity of the electoral process. The decision-making process concerning ineligibility or a dispute as to election results must be surrounded by certain minimum safeguards against arbitrariness (*Davydov and Others v. Russia*, 2017, § 288). In particular, the findings in question must be reached by a body which can provide minimum guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be exorbitantly wide: it must be circumscribed, with sufficient precision, by the provisions of domestic law. Lastly, the procedure must be such as to guarantee a fair, objective

and sufficiently reasoned decision and prevent any abuse of power on the part of the relevant authority (*Podkolzina v. Latvia*, 2002, § 35; *Kovach v. Ukraine*, 2008, §§ 54-55; *Kerimova v. Azerbaijan*, 2010, §§ 44-45; *Riza and Others v. Bulgaria*, 2015, § 144). Where it engages in such an examination, the Court confines itself, however, to ascertaining whether the decision rendered by the domestic body was arbitrary or manifestly unreasonable in nature (ibid., § 144; *Kerimli and Alibeyli v. Azerbaijan*, 2012, §§ 38-42; *Davydov and Others v. Russia*, § 288, 2017).

128. Noting the existence of arguable complaints of serious electoral anomalies in the counting of votes, the Court found that the domestic remedy should provide sufficient guarantees against arbitrariness. Failure to ensure effective examination of such arguable complaints would constitute violations of Article 3 of Protocol No. 1 (*Davydov and Others v. Russia*, 2017, §§ 288 and 335). In that case, none of the bodies involved – electoral commission, public prosecutor, courts – had carried out a proper examination of the reasons underlying the applicants' complaints.

129. Referring in particular to the Venice Commission's Code of Good Practice in Electoral Matters, the Court has had occasion to find that national authorities had given excessively formalistic reasons to avoid examining the substance of electoral complaints. The fact that there was a wide difference in votes between candidates did not matter when it came to examining, independently, the extent of the irregularities, before determining their effects on the overall result of the election (*Namat Aliyev v. Azerbaijan*, 2010).

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Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk ("*") in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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