

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 15 January 2002 No. 1-II

in the case concerning the review of the constitutionality of several provisions of Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” and Article 92 of the Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation” in connection with a complaint of A. M. Traspov.

Moscow, 15 January 2002

The Constitutional Court of the Russian Federation composed of Presiding Judge B. S. Ebzeev and Judges N. S. Bondar, N. V. Vitruk, G. A. Gadzhiev, A. L. Kononov, T. G. Morshchakova, Yu. D. Rudkin, A. Ya. Sliva, O. I. Tiunov, V. G. Yaroslavtsev,

in the attendance of A. M. Traspov; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, Representative of the Council of the Federation A. S. Avtonomov, PhD in Law, and Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3 of Article 3, Subsection 3, Section 2 of Article 22, Articles 36, 74, 96, 97, 99 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of several provisions of Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” and Article 92 of the Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation”.

The reason for the consideration of the case is complaint of A. M. Traspov about violation of his constitutional rights by the abovementioned provisions.

Having heard the report of Judge-Rapporteur Yu. D. Rudkin, statements by the parties and their representatives, interventions by the invited representatives V. Yu. Zaytsev, Judge of the Supreme Court of Russian Federation, R. T. Biktagirov for the Central Electoral Commission of the Russian Federation; G. G. Nikitina for the Commissioner for Human Rights in the Russian

Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. A. M. Traspov challenges the constitutionality of Section 3, Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” of 19 September 1997 and Section 3, Article 92 of Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation” to the extent it concerns the power of a court on an appropriate level of jurisdiction to annul an electoral commission’ decision as to the election returns and outcome of the elections in an electoral district. Other grounds for the annulment of these provisions include violation of electoral legislation, such as unlawful denial to register a candidate, but only where it becomes impossible to determine genuine expression of will by the voters.

As follows from the submissions, on 19 October 1999 the Stavropol Regional Court ruled in favour of A. M. Traspov, who complained against the denial of the district electoral commission in charge of Stavropol single-seat electoral district No. 55 to register him as a candidate for deputy during the 1999 election of the State Duma. However, the district electoral commission, which by the same decision was ordered to consider registration of A. M. Traspov as a candidate for deputy by 24 October 1999, once again denied registering him on 22 October 1999.

A. M. Traspov’s complaint against the latter decision of the district electoral commission was dismissed by the Stavropol Regional Court on 17 December 1999. The Supreme Court of the Russian Federation decision of 1 February 2000 partially ruled in favour of A. M. Traspov’s cassation appeal. On 4 May 2000, the Presidium of the Supreme Court of the Russian Federation, having considered the case within supervisory review proceedings, annulled the abovementioned decisions and ordered reconsideration of the case by the Stavropol Regional Court. The latter court annulled the decision of the district electoral commission, on 22 October 1999, from the moment it was issued.

Since the election to the State Duma was finished by that time, A. M. Traspov requested the Stavropol Regional Court to annul the election results in Stavropol single-seat electoral district No. 55. However, the action was dismissed on the grounds that unlawful denial of his registration as a candidate for deputy did not influence the determination of genuine expression of will by the voters, who participated in the election of 19 December 1999. This decision of the Stavropol Regional Court was upheld by the Supreme Court of the Russian Federation.

In his complaint to the Constitutional Court of the Russian Federation, A. M. Traspov states that it is in principle impossible to determine genuine expression of will by the voters during an election if a candidate is denied registration. Hence, the challenged provisions which foresee annulment of the elections results by a court only if it is impossible to determine genuine expression of will by the voters, preclude the exercise of the right to be elected for a person whose registration was unlawfully denied. Thus, these provisions contradict Section 2, Article 32 of the Constitution of the Russian Federation and international human rights instruments.

2. Section 3, Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” and Section 3 of Article 92 of the Federal law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation” provide that a court of an appropriate level of jurisdiction may annul a decision of an electoral commission on the election returns and outcome of the election in an electoral district, in case of violation of the rules on preparation of electoral registers, appointment of officials to electoral commissions, voting and counting of the votes procedures (including interference with election monitoring), determination of the outcomes of the elections, and other violations of electoral legislation, including unlawful denial to register a candidate, provided that such act (or failure to act) preclude determination of genuine expression of will by the voters.

The provisions which prescribe annulment of an electoral commission’s decision on election returns and outcomes if it is impossible to determine genuine expression of will by the voters are also present in Section 2, Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” and Section 2, Article 92 of Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation”. These provisions taken together with Section 1, Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” and Section 1, Article 92 of the Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation” provide a non-exhaustive list of grounds for denial or annulment of a candidate’s registration, both for the reasons mentioned in these norms and other violations.

Therefore, the scope of review in the case is limited to provisions of Section 3, Article 64 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” and Section 3, Article 92 of the Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation”. These provisions stipulate for judicial annulment of an electoral commission’s

decision on the election returns and outcome in case of electoral legislation violation (including unlawful denial or annulment of a candidate's registration) under the sole and unconditional requirement of evidence proving inability to determine genuine expression of will by the voters who participated in the elections.

At the same time, the power of an electoral commission to annul registration of a candidate as such shall not be reviewed by the Constitutional Court of the Russian Federation since it was not challenged by the applicant.

3. The rights and freedoms of man and citizen are recognized and guaranteed in the Russian Federation according to the Constitution of the Russian Federation and generally recognized principles and norms of international law, which constitute an integral part of its legal system (Section 4 of Article 15; Section 1 of Article 17 of the Constitution of the Russian Federation).

Under the Constitution of the Russian Federation, free elections along with referenda are the supreme direct expression of the power of the people; citizens of the Russian Federation have the right to vote and to be elected to state and municipal government bodies (Section 3 of Article 3; Section 2 of Article 32). These constitutional provisions are in accord with the provisions of the International Covenant on Civil and Political Rights, which stipulates that every citizen shall have the right and opportunity, without any discrimination or unreasonable restrictions, to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing free expression of the voters' will (Section "b" of Article 25), and Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees that free elections shall be held under conditions ensuring free expression of the people's opinion (Article 3 of Protocol No. 1).

Genuinely free democratic elections held by universal and equal suffrage with secret ballot imply, *inter alia*, the right of any person eligible under electoral legislation and fulfilling the requirements provided thereby to participate in elections as a candidate and the rights of other persons to express their opinion about them by voting "yes" or "no". Therefore, unlawful deprivation of a citizen of the opportunity to participate in elections as a candidate distorts the free nature of elections not only for candidates but also for the voters, whose free expression of will may be limited by depriving them of the right to vote for any of the duly nominated candidates.

The law shall guarantee protection of both active and passive electoral rights and provide for responsibility of electoral commissions for unlawful actions that interfere with due exercise of these rights; *inter alia*, by establishing legal consequences of unlawful denial to register a person as a candidate or excluding a person from the list of registered candidates, and by

determining an appropriate judicial remedy. A decision of a court to restore an infringed passive electoral right, including the right to be registered as a candidate, cannot be in all cases interpreted as a violation of active electoral right of the citizens who took part in the election, but rather shall be considered as a means of protection of the latter right. Such remedy shall be effective not only where violations of the right to be elected are established before the voting, but also after it. Consequently, in order to ensure genuinely free elections, annulment of their outcome shall not be precluded, since it serves as a means to restore the right to be elected.

However, the challenged provisions imply that the exercise of electoral rights during elections is in itself a sufficient ground to ignore considerable violations of particular candidates' and voters' rights. Precisely this interpretation of law guided the law-enforcement bodies – district electoral commission and courts – in the A. M. Traspov's case.

Such approach does not conform to the requirements arising from Articles 17 and 55 of the Constitution of the Russian Federation, which jointly imply that the aim of protection of rights of others may be served only by proportional restrictions imposed by a federal law. At the same time, neither the legislator, nor the executive or judiciary shall believe that a significant violation of a right or denial to afford judicial protection might be justified with reference to the abovementioned aim. Any other interpretation would result in the denial of the right as such. The aim served by the challenged provision is perceived by the legislative, executive and judicial authorities in a distorted way, leading to denial of both electoral rights and the right to judicial protection (Section 3 of Article 3; Sections 1 and 2 of Article 32; Sections 1 and 2 of Article 46 of the Constitution of the Russian Federation).

4. As follows from the judicial decisions in A. M. Traspov's case, the district electoral commission and courts failed to protect the applicant's passive electoral right in a timely and effective fashion, thus unlawfully depriving him of the opportunity to participate in the election as a candidate for deputy.

However, a judicial decision shall be an effective remedy for a violated right. Under Article 6 of the Federal Constitutional Law "On the Judicial System of the Russian Federation" and Section 3, Article 63 of the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" the court decision is binding on everyone, including electoral commissions, and it shall be a sufficient ground for registration (restoration of registration) and shall not be conditioned to any approval.

Such approach, relying on principles of independence of the judiciary and justiciability of claims based on the rights and freedoms of man and citizen, including the right to judicial protection (Articles 10, 18 and Section 1, Article 46 of the Constitution of the Russian Federation), corresponds with the interpretation of the European Court of Human Rights

concerning access to court and fair trial rights, provided in Article 6 § 1 of the Convention of Human Rights and Fundamental Freedoms. The European Court of Human Rights' Judgment in *Hornsby v. Greece* of 19 March 1997 confirmed its well-established opinion that the "right to a court" would be illusory if the State's domestic legal system allowed a final, binding judicial decision to remain inoperative, because enforcement of a judgment given by any court must be regarded as an integral part of the trial for the purposes of Article 6 of the Convention.

5. The failure of the district electoral commission to rectify, before the voting, the unlawful denial of registration violating the applicant's right and court failure to annul the outcome of the election in the district were based on the assumption that the challenged provisions are applicable only if it can be proven that the violation affected the determination of genuine expression of the voters' will. However, in case of unlawful denial of candidate registration, this fact is virtually impossible to prove. Consequently, courts were guided not by the necessity to ensure proper conditions for genuinely free expression of the voters' will during initial or repeated elections, but merely by formal examination of the authenticity of the ballots, the accuracy of voting and returns, i.e. review of the outcome of the elections, which took place. However, evaluation of whether the outcome of the election adequately reflects the voters' will is not limited to such formal review. Annulment of election results is also possible in other cases, namely, if necessary conditions substantially affecting the free expression of the voters' will were not provided.

Therefore, the words of the law "genuine expression of the voters' will" allow judicial authorities dealing with relevant cases to refrain from consideration of the influence substantial violations had on the election. Consequently, the question of how adequate the reflection of the voters' will is remains unresolved, denying in practice effective judicial protection of electoral rights. This approach contradicts the Constitution of the Russian Federation.

6. According to Section 4, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", where the recognition of a normative act as unconstitutional results in a regulatory gap the Constitution of the Russian Federation shall be directly applicable, including the principle of proportionality pre-determined by the nature of the Russian Federation as a rule of law state (Section 1 of Article 1; Section 3 of Article 55 of the Constitution of the Russian Federation). According to this principle, courts shall find proper remedies for passive and active electoral rights. In case denial of candidate registration is declared unlawful, they shall not limit themselves solely to the recognition of electoral rights violation. Any other interpretation would not conform to the provisions of Article 18 of the Constitution of the Russian Federation ensuring through administration of justice of the direct application of rights and freedoms.

Moreover, the principle of proportionality requires that in every case of electoral rights violation appropriate redress or compensation should exist. These remedies shall be devised in a manner consistent with the specificity of these rights, namely, the exercise of an individual voting right in the course of elections aimed to express the common will of voters. This, however, shall not lead to denial of compensatory mechanisms to eliminate the consequences of a violation and shall not relieve actors in the electoral process, including electoral commissions, of their liability.

Under the conditions prescribed by law, a court may find it inappropriate to order a new round of election to restore a passive electoral right. However, negative consequences caused by unlawful action or omission of electoral commissions, which are vested with public functions, have to be compensated in any case and the citizen's reputation must be restored. It directly follows from Article 53 of the Constitution of the Russian Federation that any person suffering damages from actions of the State shall be entitled to universal remedy of recognition and compensation of a violation.

7. Further legislative regulation appears to be necessary in order to preclude unreasonable denial or annulment of a candidate's registration. Such regulation would ensure timely restoration of electoral rights and absence of the need for *ex post* invalidation of the election results.

These legislative measures may include, among others, institution of more precise grounds for denial of registration; revision of relevant powers and liability of electoral commissions; alteration of trial procedures, securing timely restoration of electoral rights before the elections; and setting up appropriate compensatory arrangements to remedy a right violated by unlawful denial of a registration.

Concluding from the above and pursuant to Sections 1 and 2 of Article 71, Articles 72, 74, 75, 79, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

h e l d :

1. To recognize, as non-conforming to the Constitution of the Russian Federation, its Articles 3 (Sections 1, 2, and 3), 32 (Sections 1 and 2) and 46 (Sections 1 and 2), provisions of Section 3, Article 64 of the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Section 3, Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", which in cases of unlawful denial to register a candidate limit the power of courts to annul the election returns and outcomes, and the power to evaluate if

they adequately reflect the voters' will. By replacing such evaluation with formal "determination of genuine expression of will by the voters who participated in the elections" the electoral rights and the right to judicial protection are effectively restricted and denied.

2. Pursuant to Section 2, Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" and according to the opinions expressed in this Judgment, A. M. Traspov may have recourse to judicial remedy in order to protect his violated rights.

3. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities or state officials.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 1-II