



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

THIRD SECTION

CASE OF KARA-MURZA v. RUSSIA

(Application no. 2513/14)

JUDGMENT

Art 3 P1 • Disproportionate annulment of dual national's registration to stand for election by automatic application of blanket legislative ban on multiple nationals, without individual assessment • Absence of special historical or political considerations justifying necessity of impugned restriction • Need to "individualise" electoral right restrictions, through specific measures, taking into account individuals' actual conduct rather than a perceived threat posed by a group of persons

STRASBOURG

4 October 2022

FINAL

04/01/2023

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kara-Murza v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

Darian Pavli,

Anja Seibert-Fohr,

Andreas Zünd,

Frédéric Krenc,

Mikhail Lobov, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 2513/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British and Russian national, Mr Vladimir Vladimirovich Kara-Murza (“the applicant”), on 16 December 2013;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning the annulment of the applicant’s registration as a candidate for election to a regional legislature and discrimination against him on the grounds of his having two nationalities;

the decision by the United Kingdom Government not to exercise their right to intervene in the proceedings;

the parties’ observations;

Having deliberated in private on 30 August 2022,

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

INTRODUCTION

1. The case concerns the annulment of the applicant’s registration as a candidate for election to a regional legislature on the ground of his having two nationalities.

THE FACTS

2. The applicant was born in 1981 and lives in Moscow. He was represented before the Court by Mr V. Prokhorov, a lawyer practising in Moscow.

3. The Government were initially represented by Mr A. Fedorov and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in that office, Mr M. Vinogradov.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant is an opposition politician and journalist. He held Russian nationality at birth and lived in Moscow until the age of 15, when he moved with his mother to the United Kingdom and obtained a residence permit in that country. On an unspecified date thereafter, without renouncing his Russian nationality, he was granted British nationality.

6. In 2003 the Union of Right Forces political party, of which the applicant was a member, nominated him as a candidate for election to the Russian State Duma (the lower chamber of the Russian Parliament). In accordance with electoral legislation as in force at the material time, information about the applicant's nationalities was mentioned on the ballot and posters at the polling stations. The applicant lost that election, having finished in second place.

7. On 16 December 2006 the Union of Right Forces' electoral association nominated the applicant as a candidate for election to the Moscow Regional Duma (a regional legislature). The electoral association then withdrew his candidature, referring to a recently enacted ban on persons with multiple nationalities standing for election ("Law no. 128-FZ") (see paragraph 19 below). The applicant challenged the withdrawal in the domestic courts. By a final decision of the Moscow City Court of 29 March 2007, his claim was dismissed. A subsequent constitutional complaint lodged by the applicant was declared inadmissible by the Russian Constitutional Court on 4 December 2007 (see paragraph 20 below).

II. ELECTION TO THE YAROSLAVL REGIONAL DUMA

8. In 2012 the applicant joined the Republican Party of Russia – People's Freedom Party (an opposition political party belonging to the Alliance of Liberals and Democrats for Europe) and became a member of its executive body.

9. In 2013 that party nominated the applicant as a candidate for election to the Yaroslavl Regional Duma (a regional legislature) on 8 September 2013. The applicant accepted his nomination and informed the Electoral Commission of the Yaroslavl Region thereof on 23 July 2013. He also informed it of his personal details, including his nationalities. The Electoral Commission registered his candidature for election on 6 August 2013.

10. Two days later the applicant published an article on his blog noting the improvement of domestic practice in respect of the registration of candidates with two nationalities. He alleged that his registration was a reaction by the Russian authorities to the Court's judgment in *Tănase v. Moldova* ([GC], no. 7/08, ECHR 2010).

11. On 9 August 2013 the prosecutor's office of the Yaroslavl Region challenged his registration as a candidate for election before the Yaroslavl Regional Court ("the Regional Court"), referring to Law no. 128-FZ.

12. The applicant contested the challenge, alleging that the prosecutor was not entitled to seek the annulment of his registration. He also pointed out that Law no. 128-FZ breached the Russian Constitution and Article 3 of Protocol No. 1 to the Convention as it had been interpreted in *Tănase*.

13. On 13 August 2013 the Regional Court examined the case. It considered that the prosecutor's office was entitled to challenge the applicant's registration on account of its general power to protect in court the rights and interests of the general public (Article 45 § 1 of the Code of Civil Procedure) and its power to challenge the Electoral Commission's decisions (Article 259 § 1 of the Code of Civil Procedure) (see paragraph 23 below).

14. Turning to the merits of the case, the Regional Court found that the Electoral Commission had unlawfully registered the applicant's candidature. The registration had breached the Electoral Rights Act as amended by Law no. 128-FZ, as the latter stated that people with two nationalities did not have passive suffrage. Citing the Constitutional Court's decision of 4 December 2007 (see paragraph 20 below), the court noted that the restriction on passive suffrage did not run counter to the Russian Constitution or international law. It dismissed the applicant's references to *Tănase*, finding that the Court's judgment in that case was country-specific and therefore inapplicable to the applicant's situation.

15. The applicant appealed against the above-mentioned judgment to the Supreme Court of Russia, which dismissed his appeal in a summary manner on 26 August 2013. A subsequent application by the applicant for a supervisory review of his case was dismissed by the Supreme Court of Russia on 18 December 2013.

16. The annulment of the applicant's registration prevented him from participating in the election of 8 September 2013.

RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

17. The relevant provisions of the Russian Constitution of 1993, as in force at the material time, read as follows:

Article 6

“...

2. Every citizen of the Russian Federation shall enjoy all rights and freedoms on its territory and shall bear equal responsibilities as envisaged in the Constitution of the Russian Federation ...”

Article 18

“Human and civil rights and freedoms shall have direct force. They shall determine the meaning, content and implementation of laws, the functioning of the legislative and executive authorities and of local self-government, and shall be guaranteed by law.”

Article 19

“1. All persons shall be equal before the law and the courts.

2. The State shall guarantee the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, membership of public associations, or other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be prohibited ...”

Article 32

“1. Citizens of the Russian Federation shall have the right to participate in managing State affairs, both directly and through their representatives.

2. Citizens of the Russian Federation shall have the right to elect and be elected to State government bodies and local self-government bodies, as well as to participate in referendums.

3. Citizens who are recognised as incapable by a court, and citizens who are kept in places of imprisonment under a court sentence, shall not have the right to vote and be elected ...”

Article 62

“1. A citizen of the Russian Federation may have citizenship of a foreign State (dual citizenship) in accordance with federal law or an international treaty of the Russian Federation.

2. The possession of foreign citizenship by a citizen of the Russian Federation shall not diminish his or her rights and freedoms and shall not release him or her from the obligations required for Russian citizenship, unless otherwise specified by federal law or an international treaty of the Russian Federation ...”

18. Amendments to the Russian Constitution approved in a nationwide vote on 1 July 2020 added new requirements for members of the State Duma of the Russian Federation and holders of the highest positions in the country. The amendments provided that only Russian nationals without foreign nationality, foreign residence permits or other documents entitling them to reside in the territory of a foreign State could be elected or appointed to those positions.

B. The Electoral Rights Act

19. The relevant provision of the Electoral Rights Act (Federal Law no. 67-FZ of 12 June 2002) was inserted in section 4 (“Universal suffrage and the right to participate in referendums”) on 25 July 2006 by Federal Law no. 128-FZ. It reads as follows:

“3.1. Citizens of the Russian Federation with foreign State citizenship, or with a residence permit or other document certifying the right of the citizen of the Russian Federation to permanently reside in the territory of a foreign State, shall not be entitled to be elected. Such citizens shall only be entitled to be elected to bodies of local self-government if this is provided for in an international treaty of the Russian Federation.”

C. The position of the Constitutional Court

20. The relevant part of the Constitutional Court’s decision no. 797-O-O of 4 December 2007 delivered in the applicant’s case reads as follows:

“2.1. As follows from Article 32 § 2 of the Constitution of the Russian Federation, the right to be elected to public office is vested specifically in Russian citizens as people who have stable political and legal ties with the State. At the same time, the content of passive suffrage might be affected by the presence of [additional] political and legal ties with another State which a Russian citizen may have, such as by his or her foreign citizenship.

The Constitution of the Russian Federation clearly states in Article 62 § 2 that a federal law may provide for exceptions to the general principle that the possession of foreign citizenship by a citizen of the Russian Federation does not diminish his or her rights and freedoms and does not release him or her from the obligations attaching to Russian citizenship ... That approach is consistent with the generally recognised principles and rules of international law, including the Universal Declaration of Human Rights (Article 21), and the International Covenant on Civil and Political Rights, which allows justified restrictions on every citizen’s right to be elected in periodic elections, which are to take place by way of universal and equal suffrage and are to be held by secret ballot, guaranteeing the free expression of the will of the electors (Article 25). From the [Court’s] case-law it follows that the right to stand for election, despite its importance, is not an absolute right, because Article 3 of Protocol No. 1 to the [Convention] recognises that right without setting it forth in express terms, let alone defining it; it thus gives room for so-called “implied limitations” (*Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987); accordingly, the States enjoy considerable latitude in establishing in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification (*Gitonas and Others v. Greece*, 1 July 1997).

In the light of the above, the restriction on the opportunity for Russian citizens with foreign citizenship to be elected to public office, which is provided for by [Law no. 128-FZ], is based on the express rule of Article 62 § 2 of the Constitution of the Russian Federation and complies with legally binding universal principles and rules of international law, as well as with international treaties of the Russian Federation. The federal legislature introduced that restriction bearing in mind that it pursued an aim of constitutional importance: that of protecting the foundation of the Russian Federation’s constitutional order ...

2.2. Since a citizen of the Russian Federation who also has citizenship of a foreign State has political and legal ties with the Russian Federation and at the same time with the respective foreign State, towards which he or she has constitutional obligations and obligations based on the laws of that State, the importance of his or her Russian citizenship as an expression of the political and legal value of the tie with [Russia] objectively decreases. The expression of the will of that person – in the event of his or her election as a member of a legislative (representative) body – ... can be determined not only by the requirements of the constitutional order of the Russian Federation and its people, but also by the requirements which follow from his or her citizenship of a foreign State. At the same time, the formal or factual subordination of a member of a legislative (representative) body not only to the will of Russian people, but also to the will of the people of a foreign State, is not compatible with the constitutional principles of the independence of a deputy's mandate and the independence of the State's sovereignty and may cast doubt on the supremacy of the Constitution of the Russian Federation.

3. In the light of the above, [Law no. 128-FZ] ... does not contain any uncertainty and cannot be seen as breaching the applicant's constitutional rights and freedoms ...”

21. On 25 October 2018 the Constitutional Court endorsed the above findings in its decision no. 2553-O. It declared inadmissible an application lodged by a person who alleged that Law no. 128-FZ and the Electoral Code of the City of Moscow breached her constitutional rights. Those provisions had been cited by an electoral commission which had dismissed her candidature for local elections on account of her having two nationalities (Russian and Italian).

22. On 16 March 2020 the Constitutional Court delivered its opinion (*заключение*) no. 1-3 on the federal law amending the Russian Constitution (see paragraph 18 above). With reference to its decision no. 797-O-O of 4 December 2007, it held that the law was compatible with the Russian Constitution.

D. The Code of Civil Procedure

23. The relevant provisions of the Code, as in force at the material time, read as follows:

Article 45. Participation of a prosecutor in court proceedings

“1. A prosecutor shall have the right to apply to a court to protect the rights, freedoms and legitimate interests of ... the general public ...”

Article 259. Application for the protection of Russian citizens' electoral rights and the right to participate in referendums

“1. ... a prosecutor who considers that a decision or action (or inaction) by ... [an electoral commission] ... breaches Russian citizens' electoral rights or right to participate in a referendum shall have the right to lodge an application with a court.

...

3. An application for the annulment of the registration of a candidate in an election may be submitted by ... a prosecutor if a federal law so provides.”

II. COUNCIL OF EUROPE MATERIAL

24. At its 126th plenary session, held on 19-20 March 2021, the Venice Commission adopted its interim opinion on constitutional amendments and the procedure for their adoption in the Russian Federation. The relevant part of the opinion reads as follows:

“63. ... The Amending Law introduced citizenship, age and permanent residence conditions for the candidates/holders of all the highest positions in the country. It also introduced a negative condition: candidates/office holders may not have the citizenship of a foreign state or a (right to) permanent residence within the territory of a foreign state ...

65. The Venice Commission notes that it is common to subject candidates to/office holders of the highest position in the State to certain requirements that usually relate to citizenship, age, permanent residence and/or moral integrity. The Commission however also notes that it is not common to prohibit the candidates/office holders from having, or even having had in the past, more than one citizenship and/or, even more so, permanent residence. The Venice Commission is aware of the change in the Russian legislation which made it possible for the citizens of the Russian Federation to acquire another citizenship without losing the Russian one. This legislative change has implemented Article 62 (1) of the Constitution, by virtue of which ‘a citizen of the Russian Federation may have the citizenship of a foreign State (dual citizenship) according to the federal law or an international agreement of the Russian Federation’.

66. In view of this legislative change, there might be legitimate reasons to exclude from standing as candidates to the highest positions in the State those who would avail themselves of this new possibility and would acquire another citizenship, in addition to the Russian one. However, it is more difficult to understand why this restriction should apply to a rather extensive range of professions (including all judges and prosecutors), why it should be applied retrospectively (for the President) and why it should even apply to those who hold or held in the past (for the President), permanent residence in another country. Excluding all such individuals from the circle of potential candidates to a relatively extensive range of positions constitutes a very broad interference with the right of citizens to participate in managing state affairs, including directly, to enjoy equal access to State service and to participate in the administration of justice (Article 32 of the Russian Constitution). Article 19 of the Constitution guarantees the right to equality.

67. Further, Article 32 (2) of the Constitution as well as, in respect of elected officials, Article 3 Protocol 1 ECHR, as interpreted by the European Court of Human Rights, guarantee the right to be elected which, in the instant case, might be considered as severely curtailed.”

III. OTHER MATERIAL

25. The relevant international law material and comparative law observations are summarised in *Tănase v. Moldova* ([GC], no. 7/08, §§ 86-93, ECHR 2010). Further developments are reflected in the Committee of

Ministers of the Council of Europe's Resolution no. CM/ResDH(2012)40 of 8 March 2012 and the action plan to which it refers. In accordance with those documents, the ban on members of parliament with multiple nationalities taking seats in the Moldovan Parliament, which Mr Tănase had contested, was lifted on 31 December 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

26. The applicant complained that the annulment of his registration as a candidate for election to the Yaroslavl Regional Duma on the grounds of his having two nationalities had breached Article 3 of Protocol No. 1 to the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. *The parties' submissions*

(a) **The applicant**

28. The applicant submitted that the ban on people with multiple nationalities standing for election breached the Russian Constitution, which stated that Russian nationals could hold foreign nationality, and which did not restrict their right to stand for elections.

29. He also submitted that the ban did not pursue any legitimate aims. It had been introduced in 2006, that is to say, sixteen years after the onset of democratic changes in Russia and thirteen years after the adoption of the Russian Constitution. By that time the Russian political system had already been shaped. According to the applicant, the argument that a candidate with foreign nationality could have conflicting obligations *vis-à-vis* the respective States and threaten the sovereignty of Russia was based on the archaic ideology of the Soviet era and contradicted the presumption of innocence and *bona fides*. Many people with multiple nationalities had been elected to various posts in Russia. There had been no incidents of any misconduct related to their foreign nationalities.

30. The applicant noted that the ban affected a large number of Russian nationals, who had acquired nationalities of new countries formed after the dissolution of the Soviet Union. For example, 15,453 people in the Pskov Region (2.3% of the regional population) had multiple nationalities in 2017. In the Pechora District of the Pskov Region, that proportion was even higher (5,776 people, or 28.5% of the district population). In an interview on 19 June 2015, the head of the Federal Migration Service estimated that about six million Russians (4% of the Russian population) were multiple nationals.

31. Turning to the circumstances in which his registration had been annulled, the applicant submitted that the prosecutor's office had not been entitled to challenge his registration because there was no specific legal provision which would entitle the office to bring such an action. The applicant also submitted that the domestic courts had not taken into account his individual situation. They had not examined the circumstances in which he had obtained British nationality or posed questions about the duties and obligations which were attached thereto. The courts' only task was to verify whether or not he was a multiple national.

(b) The Government

32. The Government submitted that the interference with the applicant's right to free elections had been based on clear and precise provisions of domestic law, of which the applicant had been aware. The lawfulness of the interference had been confirmed by the domestic courts, which had duly examined the case without any sign of arbitrariness in their assessment (by way of comparison, the Government cited *Ždanoka v. Latvia* ([GC], no. 58278/00, § 97, ECHR 2006-IV).

33. The Government pointed out that the right to stand for election was not absolute and that it provided room for "implied limitations", in respect of which the Contracting States had to be given a margin of appreciation (*ibid.*, § 103). In the Government's view, the impugned ban was reasonable. The rationale behind it had been explained by the Constitutional Court in its decision (cited in paragraph 20 above).

34. According to the Government, the annulment of the applicant's registration had pursued the legitimate aims of protecting the independence of the members of the Yaroslavl Regional Duma and the Russian constitutional order, as well as ensuring compliance with electoral legislation. The Government insisted that the annulment had been proportionate to those aims.

35. The Government lastly emphasised that the present case was different from *Tănase*, on which the applicant had relied in his arguments, in several respects. Firstly, the restriction on Mr Tănase's passive suffrage had been introduced shortly before the election, whereas the ban contested by the applicant had been in existence for seven years at the time of the events complained of. Secondly, the Romanian nationality of Mr Tănase could be

explained by the close historical ties between Romania and Moldova, whereas no such ties existed between the United Kingdom and Russia. Thirdly, Mr Tănase had applied for the renunciation of his Romanian nationality, whereas the applicant had not done so in respect of his British nationality. Lastly, Mr Tănase had eventually been elected as a member of the Moldovan Parliament, whereas the applicant had not participated in the election in issue.

2. *The Court's assessment*

(a) **General principles**

36. For the applicable general principles, see *Ždanoka* (cited above, §§ 98-115), and *Tănase* (cited above, §§ 154-61).

(b) **Application of the general principles to the present case**

(i) *Interference*

37. The Court accepts that the annulment of the applicant's registration as a candidate for election amounted to an interference with his right under Article 3 of Protocol No. 1 (compare *Abil v. Azerbaijan* (no. 2), no. 8513/11, § 82, 5 December 2019, and *Miniscalco v. Italy*, no. 55093/13, § 93, 17 June 2021). Such interference will constitute a violation unless it meets the requirements of lawfulness, pursues a legitimate aim and is proportionate.

(ii) *Lawfulness*

38. The parties did not dispute, and the Court has no grounds to doubt, that the annulment of the applicant's registration for election had basis in domestic law – specifically in the Electoral Rights Act as amended by Law no. 128-FZ (see paragraph 19 above). It was couched in sufficiently clear terms, was accessible for the applicant and was foreseeable in its effect.

39. The applicant contested the lawfulness of the interference, alleging that its legal basis – the ban on multiple nationals standing for election – was contrary to the Russian Constitution. The Court cannot accept that argument, as it is not its role to decide on the constitutionality of the contested provisions, particularly since the Constitutional Court has already expressed its opinion on the issue (see paragraph 20 above).

40. The applicant further submitted that the prosecutor's office had not been entitled to act as the claimant in the proceedings against him and that the domestic courts' decision to annul his registration at its request had therefore been unlawful. The Court observes that that argument has already been examined by the domestic courts, which considered that the prosecutor's office could seek the annulment of candidates' registration in the exercise of its general power or its special power to challenge decisions by electoral commissions (see paragraph 13 above). Taking into account that it is

primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Gitonas and Others v. Greece*, 1 July 1997, § 44, *Reports of Judgments and Decisions* 1997-IV, and *Melnychenko v. Ukraine*, no. 17707/02, § 60, ECHR 2004-X) and that the domestic courts' reasoning in the applicant's case does not appear to be arbitrary, the Court is ready to subscribe to their conclusions in the applicant's case.

41. In the light of the above, the Court considers that the requirement of lawfulness in the present case was met.

(iii) *Legitimate aim*

42. Unlike Articles 8, 9, 10 and 11 of the Convention, Article 3 of Protocol No. 1 does not itself set out a list of aims which can be considered legitimate for the purposes of restrictions of the right under that Article. Several aims were relied upon by the Government to justify the interference with the applicant's right, namely protecting the independence of the members of the Yaroslavl Regional Duma and of the Russian constitutional order, as well as ensuring compliance with electoral legislation. The Constitutional Court stated that the ban on people with multiple nationalities standing for election was aimed at ensuring the loyalty of elected officials and protecting the constitutional order, the State's sovereignty and the officials' independence.

43. The Court has recognized that the need to ensure loyalty to the State may constitute a legitimate aim justifying restrictions on electoral rights (see *Tănase*, cited above, § 166). However, the Court notes that as alleged by the applicant and not disputed by the Government, there has not been a single example of a member of a Russian legislative body with dual nationality showing disloyalty to the Russian State before Law no. 128-FZ was introduced in 2006 (see paragraph 19 above). Neither did the Constitutional Court explain why the applicant's dual nationality might have threatened the sovereignty of Russia and the independence of members of the legislature in the event of his election to the regional legislature.

44. The Court is therefore not entirely satisfied that the contested measure was aimed at ensuring the loyalty and independence of members of the legislature or the protection of the State's sovereignty. Even if the Court might be prepared to accept that the legitimate aim of the interference was the protection of the constitutional order and ensuring compliance with domestic legislation, it does not consider it necessary to reach a conclusion on this question in view of its findings concerning the proportionality of the contested measure (see below). Accordingly, the Court leaves open the question of whether the interference in question pursued a legitimate aim.

(iv) Proportionality

45. In *Tănase* the Court established that there was a consensus among the Contracting States on the question of whether people with multiple nationalities could sit as members of parliament. According to its findings in that case, where multiple nationalities were permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as a member of parliament, even where the population was ethnically diverse and the number of members of parliament with multiple nationalities might be high (see *Tănase*, cited above, § 172). The lifting of the impugned ban in Moldova in December 2009 made that consensus even stronger (see paragraph 23 above).

46. Notwithstanding this consensus, the Court has held that different approaches may be justified where special historical or political considerations exist which render a more restrictive practice necessary (see *Tănase*, cited above, § 172). The Court will therefore examine whether such special considerations existed in the present case.

47. The Court observes that the Government did not put forward any historical or political considerations explaining the necessity of the impugned measure. It was not shown that there was an external threat to the independence of Russia or its democracy. As noted by the applicant, the ban on multiple nationals standing for election was introduced sixteen years after the beginning of the onset of democratic changes and thirteen years after the adoption of the Constitution, by which time the Russian political system had already been shaped.

48. The Court notes that the ban prohibiting the applicant to stand for election was a particularly restrictive measure, notwithstanding the wide margin of appreciation available to the national authorities in this area (see *Ždanoka*, cited above, §§ 103 and 106). The ban was formulated in absolute terms and provided for no exceptions for any multiple nationalities or particular circumstances. The Court is not satisfied in that regard by the Government's argument that the interference with the applicant's right was justified by the absence of close ties between the United Kingdom and Russia (comparable to those between Moldova and Romania noted in *Tănase*) because the ban applied to candidates with any foreign State citizenship or even to those holding a residence permit issued by any foreign State. Furthermore, even if the proportion of dual nationals in Russia was not as high as in Moldova (see *Tănase*, cited above, § 173), the impugned ban affected a large number of Russian nationals, excluding them from the circle of potential candidates for a relatively extensive range of positions (see the interim opinion of the Venice Commission cited in paragraph 24 above).

49. The Court has already emphasised the need to "individualise" the restriction of electoral rights and to take account of the actual conduct of individuals rather than a perceived threat posed by a group of persons (see *Adamsons v. Latvia*, no. 3669/03, §§ 123-25, 24 June 2008). Such

individualisation may be achieved, for example, by means of sanctions for illegal conduct or conduct that threatens national interests, which are likely to have a preventive effect and enable any particular threat posed by an identified individual to be addressed. Security clearance for access to confidential documents may ensure the protection of confidential and sensitive information. In the present case, measures of that kind, or any other measures concerned with identifying a credible threat to State interests, in particular circumstances based on specific information, rather than operating on a blanket assumption that all multiple nationals pose a threat to national security and independence, would be the Court's preferred approach (compare *Tănase*, cited above, § 175). However, the impugned ban was applied to the applicant automatically (see paragraphs 14 and 15 above).

50. In the light of the above, the Court finds that the annulment of the applicant's registration for election stemming from the application of Section 4 of the Electoral Rights Act (as amended by Law no. 128-FZ) to the applicant was disproportionate to the alleged legitimate aims. Its disproportionality could not be mitigated by the fact that the ban on people with multiple nationalities standing for election was introduced well in advance of the 2013 election. This also means that the applicant cannot be reproached for his failure to comply with the impugned ban by way of renouncing his British nationality.

51. Accordingly, there has been a breach of Article 3 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

52. The applicant complained under Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 that he had been subjected to discrimination on account of his multiple nationalities in respect of his right to stand for election. Having regard to the facts of the case, the submissions of the parties and its findings under Article 1 of Protocol No. 3 to the Convention, the Court considers that there is no need to give a separate ruling on the admissibility and the merits of the complaint under Article 14 taken in conjunction with Article 3 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

54. The applicant did not submit a claim for just satisfaction.

55. Accordingly, the Court considers that there is no call to award him any sum on that account (see *Naltakyan v. Russia*, no. 54366/08, § 206, 20 April 2021).

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the applicant's complaint under Article 3 of Protocol No. 1 to the Convention admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
3. *Holds*, unanimously, that there is no need to examine the complaint under Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1.

Done in English, and notified in writing on 4 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Seibert-Fohr joined by Judge Zünd;
- (b) dissenting opinion of Judge Lobov.

G.R.
M.B.

CONCURRING OPINION OF JUDGE SEIBERT-FOHR
JOINED BY JUDGE ZÜND

1. I agree with the majority's finding of a violation of Article 3 of Protocol No. 1 to the Convention for the reasons given in paragraph 47 of the judgment. Whereas a requirement of loyalty to a State for members of the legislative branch constitutes a legitimate aim justifying restrictions on electoral rights (see *Tănase v. Moldova* [GC], no. 7/08, § 166, ECHR 2010), the Government have failed to explain (see paragraph 34 of the judgment) why it was necessary to introduce this restriction for dual nationals thirteen years after the adoption of the Constitution, by which time the Russian political system had already been shaped (see paragraph 47 of the judgment and *Tănase*, cited above, § 172).

2. I am less persuaded by the majority's critique that the ban was formulated in absolute terms for any multiple nationalities without providing for exceptions for particular circumstances (see paragraphs 48-49 of the judgment). While the Court asks for an individualisation of restrictions on Convention rights protected under Articles 8 to 11 of the Convention, the same rationale does not automatically also apply to the right to equal suffrage. The Court has recognised that the degree of individualisation required under Article 3 of Protocol No. 1 is different from that under Articles 8 to 11 (see *Adamsons v. Latvia*, no. 3669/03, § 111, 24 June 2008). This applies also to the passive rights protected under Article 3 of Protocol No. 1.

3. In the context of election law there is a need for general rules regarding the right to stand for elections. The enactment of generally applicable norms is a correlate to the principle of general elections. Therefore, States are not required to make an individualised assessment of the particular circumstances of each candidate (see *Scoppola v. Italy (no. 3)* [GC], no. 126/05, § 102, 22 May 2012), recognising, in the context of the right to vote, generally applicable laws which are based on a balance between the competing interests). Moreover, as a matter of non-discrimination, a restriction on the right to stand for elections depending on the national origin of a dual national, in the absence of objective grounds for justification, would be equally questionable (for non-discrimination in elections, see also the judgment of the Court of Justice of the European Union of 12 September 2006 in *Eman and Sevinger*, C-300/04, EU:C:2006:545, paragraph 61).

DISSENTING OPINION OF JUDGE LOBOV

1. I voted against the finding of a violation of Article 3 of Protocol No. 1 to the Convention in the present case.

2. To explain my position, a brief reminder of the key principles arising from the Court’s established case-law would be in order (emphasis added):

“There are *numerous ways of organising and running electoral systems and a wealth of differences, inter alia, in historical development, cultural diversity and political thought* within Europe which it is for each Contracting State to mould into [its] own democratic vision.” (see *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, § 61, ECHR 2005-IX)

“[T]he Contracting States enjoy *considerable latitude in establishing constitutional rules on the status of members of parliament, including criteria governing eligibility to stand for election.*” (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 106, ECHR 2006-IV)

“Article 3 of Protocol No. 1 ... do[es] not prevent, in principle, Contracting States from introducing *general policy schemes by way of legislative measures whereby a certain category or group of individuals is treated differently from others*, provided that the interference with the rights of the statutory category or group as a whole can be justified under the Convention.” (ibid., § 112)

“[T]he competent authorities *cannot take account of every individual case in regulating the exercise of voting rights, but must lay down a general rule.*” (see *Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, § 79, ECHR 2012)

3. Hidden behind a perfunctory reference in paragraph 36 of the judgment, these cogent fundamentals established by generations of Strasbourg judges sitting in the Grand Chamber should have compelled the Chamber to display greater caution in applying the *Tănase* approach, which was tied to radically different factual, historical, cultural and political circumstances (see *Tănase v. Moldova* ([GC], no. 7/08, §§ 11-18, 26 and 173, ECHR 2010).

4. Bearing in mind the above principles, the Chamber should also have shown greater “process-based” deference towards the Russian Constitutional Court, which gave a detailed and meaningful assessment of the impugned legislation in the light of both the Constitution and the European Court’s case-law.

5. A closer attention to the wide margin of appreciation, which is only incidentally mentioned in the text (see paragraph 48), would likewise have added weight to the Chamber judgment.

6. Indeed, the Grand Chamber has consistently emphasised that Article 3 of Protocol No. 1 goes no further than prescribing “free” elections held at “reasonable intervals”, “by secret ballot” and “under conditions which will ensure the free expression of the opinion of the people (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 54, Series A no. 113, and *Sitaropoulos and Giakoumopoulos*, cited above, § 65). Admittedly, the deprivation of the passive electoral rights of some 30% of the Moldovan population who held both Moldovan and Romanian citizenship may, by its

nature and extent, have impaired the very essence of free elections, thus violating Article 3 of Protocol No. 1, as the Grand Chamber unanimously found in *Tănase* (cited above). Two years later, however, the Grand Chamber unanimously held in *Sitaropoulos and Giakoumopoulos* (cited above) that the impossibility of remote voting in the case of the applicants, who were among four million Greeks living abroad (as compared to ten million living in the mainland), did not violate the same provision. The impact in the present case of the restrictions on the right to be elected in Russia is simply incomparable to that of the restrictions observed either in Greece or in Moldova. The majority's conclusion is therefore contradicted by both the case-law and the reality on the ground.

7. Lastly, the Chamber regrettably missed a crucial point of what “citizenship” (“*citoyenneté*”) may really mean beyond “nationality” (“*nationalité*”) in different political and cultural contexts. According to the Russian Constitutional Court, “*the right to be elected to public office is vested specifically in Russian citizens as people who have stable political and legal ties with the State. ... Since a citizen of the Russian Federation who also has citizenship of a foreign State has political and legal ties with the Russian Federation and at the same time with the respective foreign State, towards which he or she has constitutional obligations and obligations based on the laws of that State, the importance of his or her Russian citizenship as an expression of the political and legal value of the tie with [Russia] objectively decreases*” (see paragraph 20 of the judgment for more details). The Chamber remained deaf to this line of reasoning, limiting its analysis to the loyalty and security discourse to such an extent that it strikingly failed to recognise the legitimate aim of the legal restrictions at issue (see paragraphs 43-44 and 49 of the judgment).

8. The misunderstanding of citizenship as an ensemble of stable political and legal ties with the State and of its variable implications has led the majority, in my view, to erroneous legal conclusions which are at odds with the predominant approach in the Court's case-law. The attempt to find support in the Council of Europe's reports and recommendations is of little help in the present case. None of the texts referred to by the majority forms a basis for concluding that, as the law currently stands, States are under an obligation to grant the right to be elected to persons with dual citizenship (see, *mutatis mutandis*, *Sitaropoulos and Giakoumopoulos*, cited above, § 75).