



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

THIRD SECTION

CASE OF DROZDOV v. RUSSIA

(Application no. 66212/12)

JUDGMENT

STRASBOURG

22 February 2022

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

In the case of Drozdov v. Russia,

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

Georgios A. Serghides, *President*,

Anja Seibert-Fohr,

Frédéric Krenç, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 66212/12) 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 Russian national, Mr Maksim Vladimirovich Drozdov (“the applicant”), on 25 September 2012;

the decision to give notice of the application to the Russian Government (“the Government”);

the parties’ observations;

the decision to reject the Government’s objection to examination of the application by a Committee;

Having deliberated in private on 25 January 2022,

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

INTRODUCTION

1. This case concerns the applicant’s allegations of a fraudulent change in a protocol of an electoral commission during election to the Russian State Duma on 4 December 2011 that received no effective examination at the national level.

THE FACTS

2. The applicant was born in 1975 and lives in Krasnodar. The applicant was represented by Ms Yu. Fedotova, a lawyer practising in Krasnodar.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 4 December 2011 a general election to the State Duma of the Federal Assembly of the Russian Federation (the lower chamber of the Russian parliament, hereinafter referred to as “the Duma”) was held.

6. General information about the organisation of elections, the parties and the system of vote counting, tabulation and reporting in the Russian Federation is outlined in *Davydov and Others v. Russia* (no. 75947/11, §§ 10-16, 30 May 2017).

7. On the day of the election the applicant was an observer on behalf of the Yabloko party at a polling station for precinct no. 22-80 in Krasnodar. The poll, organised in a classroom in a school building, closed at 8 p.m. The members of the precinct electoral commission ("PEC") proceeded with the counting of the votes which was completed by 10.30 p.m. The chairperson of the PEC announced the results but did not draw up a protocol ("PEC protocol") immediately. The applicant waited until around 4 a.m. and then left as he needed to be at work that morning. The PEC protocol, drawn up on a sheet of paper in the A3 format, was released to the observers at 7 a.m. on 5 December 2011.

8. Three days later the applicant obtained a photocopy of the PEC protocol on a sheet of paper in the A4 format from an observer on behalf of Spravedlivaya Rossiya at that party's headquarters. The observer in question had been present at the polling station for precinct no. 22-80 on the morning of 5 December 2011 at the moment of the release of the PEC protocol.

9. The data in the copy of the PEC protocol regarding precinct no. 22-80 did not correspond to the results that appeared in the consolidated table (*«сводная таблица»*) published on the website of the Electoral Commission of the Krasnodar Region ("REC"):

	Data from the copy of the PEC protocol	Data from the consolidated table
Valid ballots	1,100	1,113
Votes cast for Spravedlivaya Rossiya	137 (12.45%)	137 (12.31%)
Votes cast for LDPR	192 (17.45 %)	93 (8.36 %)
Votes cast for Patrioty Rossiyi	7 (0.64 %)	2 (0.18 %)
Votes cast for the Communist Party of the Russian Federation	218 (19.82%)	218 (19.59%)
Votes cast for Yabloko	38 (3.45 %)	24 (2.16 %)
Votes cast for Yedinaya Rossiya (the ruling party)	503 (45.73 %)	638 (57.32 %)
Votes cast for Pravoye Delo	5 (0.45 %)	1 (0.09 %)

10. The applicant concluded that the chair of the PEC had intentionally distorted the polling results when submitting them to the REC with a view to increasing the number of votes cast for Yedinaya Rossiya.

11. On an unspecified date the applicant brought a complaint challenging the veracity of the published results of the election before the Prikubanskiy District Court of Krasnodar ("the District Court"). The REC and the territorial electoral commission of the Prikubanskiy Circuit ("TEC") participated in the proceedings as interested persons (*«заинтересованные лица»*). Among other things, the applicant argued that the published results for precinct

no. 22-80 significantly differed from the published results for precinct no. 22-27 adjacent to precinct no. 22-80 (its polling station had been located in another classroom in the same school building). The applicant requested the District Court to annul the results of the election for precinct no. 22-80 and to order higher electoral commissions to amend the data in the consolidated table of the election results.

12. On 31 January 2012 the District Court examined the applicant's complaint. The District Court heard as witnesses the chairs of the TEC and the REC, who submitted that the case materials did not contain a copy of the PEC protocol given that the copy of the PEC protocol provided by the applicant did not bear a stamp and was printed on a sheet of paper of the wrong format (A4 instead of A3). At the same time, the District Court denied the applicant's motion to summon as witnesses the chair of the PEC for precinct no. 22-80 and the observer on behalf of Spravedlivaya Rossiya who had furnished a copy of the PEC protocol. The District Court noted that it could not rely on the copy of the document in the absence of an original and refused to admit into evidence the copy of the PEC protocol submitted by the applicant. It noted that the applicant himself had waived his right to obtain a copy of the PEC protocol by leaving the polling station before its release and dismissed the complaint as unsubstantiated. As regards the applicant's allegations regarding the marked difference in the results published in the consolidated table regarding two adjacent precincts, the District Court observed that "they [were] based exclusively on the complainant's assumptions, his political preferences, and the idea of the desired results of the election that had been formed in advance".

13. The applicant appealed to the Krasnodar Regional Court ("the Regional Court"). He presented the Regional Court with a new copy of the PEC protocol received by another observer for precinct no. 22-80 from the chair of the PEC on the morning of 5 December 2011. The record of an appeal hearing bore a note that the document had been admitted into evidence. However, it disappeared from the case materials for unknown reasons. The applicant's complaints to the President of the Regional Court regarding the disappearance of evidence were to no avail.

14. On 5 April 2012 the Krasnodar Regional Court upheld the judgment of 31 January 2012 on appeal reiterating the District Court's arguments.

15. The applicant was not successful on cassation appeal.

16. The materials at the Court's possession contain, in particular, two documents, each printed in the A3 format. One is a copy of the PEC no. 22-80 protocol signed by the PEC members but bearing no stamp, and another one is that of the protocol sent by the chair of the PEC to higher electoral commissions. The numbers of votes cast for each party except for Spravedlivaya Rossiya as noted in each of these two documents differ. The data sets contained in the table (see paragraph 9 above) reflect accurately the information contained in the two documents in the Court's possession.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

17. The domestic legal framework and practice governing the electoral process relevant at the material time as well as relevant international documents have been described in *Davydov and Others* (cited above, §§ 173-98).

18. Article 57 § 1 of the Russian Code of Civil Procedure 2002 as in force at the material time stipulated that parties to the proceedings and other persons involved in them were to submit material evidence («доказательства»). The court sitting on a case had the right to invite the persons in question to produce additional evidence. Where they had experienced difficulties in collecting evidence, the court rendered, upon their request, assistance in collecting and reclaiming material evidence.

THE LAW

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

19. The applicant complained that the official results of the election of 4 December 2011 for precinct no. 22-80 in Krasnodar did not reflect the correct results of the vote, in breach of in 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

20. The Court notes that the application 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

21. The applicant emphasised in particular that the domestic courts had denied his motions to summon witnesses and failed adequately to assess the key evidence.

22. The Government argued that the applicant’s allegations of serious irregularities in the electoral process had been “based on an ‘unofficial’ copy of the protocol of voting results, which [had been] prepared by an unidentified person and received by the applicant from an unknown person”. The District Court had examined the document and refused to admit it into evidence on the grounds that it had not been duly certified. The applicant had left the

polling station before the official protocol had been drawn up through his own volition. The Government insisted that all electoral laws and regulations had been fully complied with in the course of the Duma election of 4 December 2011.

23. The general principles established in the Court's case-law regarding Article 3 of Protocol No. 1 have been summarised in *Davydov and Others* (cited above, §§ 271-88), and *Mugemangango v. Belgium* ([GC], no. 310/15, §§ 67-73, 10 July 2020). In particular, the Court's task in the present case is to ascertain whether the applicants' allegations were sufficiently serious and arguable and whether they received an effective examination, i.e. that the findings of the domestic authorities were not arbitrary or manifestly unreasonable.

24. Turning to the circumstances of the present case, in view of the documents in its possession (see paragraph 16 above), and considering its findings regarding similar allegations of a violation of Article 3 of Protocol No. 1 in the context of the same elections of 4 December 2011 (see *Davydov and Others*, cited above, and *Russian United Democratic Party Yabloko and Others v. Russia* [Committee] (nos. 41982/12 and 6599/14, 28 September 2021), the Court is satisfied that the applicant put forward, both to the domestic authorities and to the Court, an arguable claim that the fairness of the elections was seriously compromised by the procedure in which the votes were recorded. Indeed, comparing the data from the copy of the PEC protocol with the data from the consolidated table, 135 of the votes cast representing 12% of the valid ballots were reallocated in favour of the ruling party so that its share of the votes increased from 46% to 57%, while one of the opposition parties lost ninety-nine votes, and its share of the votes dropped from 17% to 9% (see paragraph 9 above). An irregularity of this sort if duly confirmed to have taken place, would be capable of leading to a gross distortion of the voters' intentions in precinct no. 22-80. The applicant's allegations were supported by his own statements and by copies of the PEC protocols allegedly issued to two observers present at the announcement of the results.

25. The Court has already established in a judgment concerning the elections held in Russia on 4 December 2011 to the Duma and to regional legislative assemblies that the Russian courts were empowered to consider complaints from participants in the electoral process, to obtain and examine relevant evidence and, if the irregularities were sufficiently serious, to overturn the decisions of the relevant electoral commissions (see *Davydov and Others*, cited above, § 336). The Court's task thus is to establish whether the decision-making process of the domestic courts was accompanied by adequate and sufficient safeguards ensuring, in particular, that any arbitrariness could be avoided. The procedure must be such as to guarantee a fair, objective and sufficiently reasoned decision (see *Mugemangango*, cited above, § 70).

26. The Court notes that the District Court dismissed the applicant's complaint on the grounds that the photocopy of the PEC protocol he had furnished had been printed on a smaller sheet of paper (see paragraph 12 above). The Court is not convinced that the District Court's arguments supplied to justify the refusal to admit a key piece of evidence was adequate and sufficient. The District Court refused to call in additional witnesses requested by the applicant to clarify the matter. Furthermore, the District Court also had ample opportunity to request the applicant to furnish material evidence and, if need be, could have assisted him in collecting it (see paragraph 18 above). As a result, and having dismissed this key piece of evidence for a purely formalistic reason, the District Court left unaddressed the pertinent issue of the difference between the numbers of votes cast that has been announced at the PEC to the observers (as alleged by the applicant) and those in the published results of the election at precinct no. 22-80 (see paragraph 9 above).

27. On appeal, the Regional Court admitted into evidence a new copy of the PEC protocol, in the A3 format (see paragraph 13 above). However, it did not reconsider the findings of the District Court on appeal as the new copy had disappeared from the case materials. The Regional Court failed to explain the disappearance from the case materials of this key element of material evidence.

28. The Court finds that although the applicant's claims were admitted by the domestic courts for examination on the merits, the courts effectively refrained from going into the substance of the allegations without engaging in any real examination of the reasons for his challenge (see *Davydov and Others*, cited above, § 333). The Court reiterates in this connection its previously expressed position that it must be clear from the public statement of reasons by the relevant decision-making body that the complainants' arguments have been given a proper assessment and an appropriate response (see *Mugemangango*, cited above, § 116).

29. The Court further observes that the respondent Government in their observations focused on the fact that the applicant had left the polling station before the release of the PEC protocol and that his allegations had been based on an "unofficial" copy of the PEC protocol "prepared by an unidentified person" and received "from an unknown person" (see paragraph 22 above). As noted above, the domestic courts have failed to properly elucidate the matter, for example by summoning and questioning as witnesses the observers from whom the applicant had received the new copies of the PEC protocol, or the PEC chairperson (see paragraphs 12 and 13 above).

30. In such circumstances the Court is satisfied that the applicant was denied an effective examination of his complaint regarding the veracity of the results of the election to the Duma of 4 December 2011 as regards precinct no. 22-80.

31. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

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

A. Damages

33. The applicant claimed 7,500 euros (EUR) in respect of non-pecuniary damage.

34. The Government considered the amount claimed excessive.

35. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

36. The applicant submitted no claims in respect of costs and expenses. The Court thus makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President