



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

SECOND SECTION

CASE OF THE GEORGIAN LABOUR PARTY v. GEORGIA

(Application no. 9103/04)

JUDGMENT

STRASBOURG

8 July 2008

FINAL

08/10/2008

In the case of the Georgian Labour Party v. Georgia,

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

Françoise Tulkens, *President*,

Ireneu Cabral-Barreto,

Riza Türlen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Antonella Mularoni,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 4 September 2007 and on 17 June 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 9103/04) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the Georgian Labour Party (“the applicant party”) on 16 December 2003.

2. The applicant party was represented before the Court by Mr Sh. Natelashvili, its Chairman. The applicant party’s first legal representative, Ms L. Mukhashavria, was replaced on 20 February 2007 by Mr G. Mamporia, Ms K. Utiashvili and Ms M. Tsutskiridze, lawyers practising in Georgia. On 24 June 2007 the applicant party appointed Ms J. Rinceanu, a lawyer practising in Germany, for the purposes of oral proceedings before the Court.

3. The Georgian Government (“the Government”) were successively represented by their Agents Mr B. Bokhashvili and Mr D. Tomadze of the Ministry of Justice.

4. The applicant party alleged, in particular, violations of its rights under Article 3 of Protocol No. 1 and Article 14 of the Convention during the repeat parliamentary election of 28 March 2004 as a result of domestic electoral mechanisms and the *de facto* disfranchisement of around 60,000 voters in two electoral districts.

5. On 18 September 2006 the Government filed their observations on the admissibility and merits of the application. The applicant party did not produce any observations in reply.

6. In a final decision of 22 May 2007, the Court declared the application partly admissible.

7. A hearing on the merits took place in public in the Human Rights Building, Strasbourg, on 4 September 2007 (Rule 59 § 3 of the Rules of Court).

There appeared before the Court:

(a) *for the Government*

Mr D. TOMADZE, *Agent,*
Mr G. CHALAGASHVILI, *Chairman of the Central Electoral Commission,*
Mr A. ANASASHVILI, *Legal Officer at the Central Electoral Commission;*

(b) *for the applicant party*

Ms J. RINCEANU, *Counsel,*
Mr SH. NATELASHVILI, *Chairman of the Georgian Labour Party,*
Mr M. BEKOV,
Mrs D. CHADADZE-POLLMAN, *Advisers.*

The Court heard addresses by Mr D. Tomadze, Mr G. Chalagashvili, Mr A. Anasashvili and Ms J. Rinceanu.

8. The applicant party filed its claims for just satisfaction at the hearing. On 23 October 2007 the Government submitted their comments on those claims.

9. On 1 February 2008 the Court changed the composition of its Sections, but the present case was retained by the Former Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant party is a political party.

A. The Rose Revolution

11. On 20 November 2003 the Central Electoral Commission (“the CEC”) announced the final results of the votes in the regularly scheduled parliamentary election of 2 November 2003, according to which seven parties had cleared the 7% legal threshold required by Article 105 § 6 of the Electoral Code (“the EC”, see paragraph 44 below). The opposition party, the Saakashvili-National Movement, took third place with 18.04% of the vote (giving them 32 seats in Parliament), followed by the applicant party with 12.04% of the vote (20 seats) and the United Democrats, a coalition led

by the President of the Parliament, Ms N. Burjanadze, with 8.79% of the vote (15 seats).

12. On account of numerous instances of ballot fraud reported by election observers, the Saakashvili-National Movement and the United Democrats refused to accept the election results. With general support from the population, they called for President Shevardnadze's resignation. When the newly elected parliament convened for its first session on 22 November 2003, the opposition forces broke into the parliament building, disrupted the President's inaugural speech and ousted the members of parliament (MPs).

13. On 23 November 2003 Mr E. Shevardnadze resigned and Ms N. Burjanadze became the interim President of Georgia, as provided for by the Constitution. Those events were later referred to as the "Rose Revolution".

B. Repeat parliamentary election of 28 March 2004

14. As the parliament elected in November 2003 had been ousted by the revolutionary forces, the interim leadership recalled the previous parliament elected in 1999 (see Article 50 § 4 of the Constitution, paragraph 42 below) until such time as a new parliament was elected.

15. On 25 November 2003 the Supreme Court of Georgia annulled the CEC vote tally of 20 November 2003 in the part concerning the election results under the proportional system. The results in single-seat constituencies remained in force.

16. On 28 November 2003 the Chairman of the CEC, who had been appointed by ex-President Shevardnadze, resigned. On 30 November 2003 the interim President dismissed five members of the CEC who had been appointed by the ex-President, and Parliament elected a new Chairman of the CEC on the basis of a candidature proposed by the interim President.

17. In view of the partial annulment of the election results of the initial parliamentary election of 2 November 2003 by the Supreme Court on 25 November 2003, on 2 December 2003 the CEC Chairman issued Ordinance no. 167/2003 which, under Article 106 § 4 of the EC, set the date of the repeat parliamentary election ("the repeat election") for 25 January 2004. On the same day, however, the CEC Chairman applied to the interim President of Georgia (Decree no. 50/2003), requesting that a later date be set for the election, arguing that it would hardly be possible to ensure its proper administration within such a short time frame. This application was finally granted on 9 January 2004 and the repeat election was scheduled for 28 March 2004 by the interim President.

18. The applicant party challenged CEC Ordinance no. 167/2003 in court, claiming that the CEC had erroneously relied on Article 106 § 4 instead of Article 105 § 17 of the EC when setting the date for the repeat election. By a judgment of 8 December 2003, the Tbilisi Regional Court

dismissed the claim, reasoning that the applicant party lacked victim status. That judgment was quashed on 26 December 2003 by the Supreme Court which noted that, since the applicant party was running for election, there was a direct and consequential link between its interests and the decisions of the CEC. However, the Supreme Court dismissed the claim as manifestly ill-founded.

19. On 7, 9 and 12 December 2003 the CEC issued Ordinances by which voters were required to attend electoral precincts and fill out special forms; this would enable them to cast their ballots during the presidential election of 4 January 2004.

20. Along with other opposition parties, the applicant party challenged the lawfulness of those rules in court. On 15 December 2003 the Tbilisi Regional Court dismissed the claim as unsubstantiated. With regard to the applicant party, the court stated that it lacked victim status as it had failed to show what direct and specific harm the preliminary voter registration procedure for the presidential election could possibly have caused to its interests.

21. On 15 January 2004 Mr M. Saakashvili was declared President of Georgia. By an Ordinance of 31 January 2004, the new President appointed five members of the CEC, one of whom was given authority to appoint five members in the District Electoral Commissions ("the DEC's") under Article 128(1) § 4 of the EC.

22. Nineteen political parties and blocs were registered by the CEC on 21 February 2004 as candidates for the repeat parliamentary election, including the applicant party and the ruling coalition of the President's National Movement and Ms Burjanadze's United Democrats. The presidential National Movement had previously won the 2002 municipal elections in Tbilisi.

23. For the purposes of the repeat election, the CEC passed another decree on 27 February 2004 (Decree no. 30/2004), pursuant to which the Precinct Electoral Commissions ("the PEC's") had to post preliminary lists of voters in their bureaux, data which had been gathered in the course of the preliminary registration of voters for the presidential election. Between 8 and 21 March 2004, voters were to attend the electoral precincts again to verify that their names were on the lists. If a voter found that he or she was missing from the list, a petition for correction was to be filed with the relevant PEC. On 21 March 2004 the PECs were to send corrected versions of the preliminary electoral rolls to the relevant DEC, which was required to produce final electoral rolls and remit them to the PECs for a further public examination. Between 23 and 27 March 2004, voters were to recheck the final lists and request corrections if necessary. The Decree also envisaged adding the names of voters who had not been included in the preliminary registration to the lists on election day itself.

24. The rationale behind the introduction of this system of voter registration was explained by the CEC Chairman in a public statement: “If a voter does not want to participate in the election, does not engage in politics, does not want to cooperate with the State, then the State is also under no obligation to ensure that this voter is on the unified electoral roll.”

25. The repeat election, based on the system of proportional representation, was held as planned on 28 March 2004. Numerous complaints about irregularities on election day were subsequently filed with electoral commissions, including the CEC, and with the courts.

26. On 2 April 2004 the CEC issued Ordinance no. 82/2004, which annulled the election results for all the PECs in the Khulo and Kobuleti electoral districts (nos. 81 and 84) in the Ajarian Autonomous Republic (“the AAR”), where 42,011 and 17,263 voters were registered respectively. The CEC Ordinance did not explain which legal provision had entitled it to take this annulment decision. It simply noted that complaints had been filed about voting irregularities in these two districts. The complaints requested that the investigative measures envisaged by Article 105 § 13 of the EC be undertaken by the CEC. However, “in view of the nature of the irregularities alleged in the complaints”, there was, according to the CEC, no point in resorting to such measures. Consequently, the challenged election results in the Khulo and Kobuleti districts were to be annulled and, in accordance with Article 105 § 12 of the EC, the polls were to be repeated there. The new date was set for 18 April 2004 (for more details, see paragraphs 50 and 53 below).

27. On 6 April 2004 the CEC issued rules of procedure (Decree no. 45/2004) for the posting of electoral rolls in the various precincts of the Khulo and Kobuleti districts. As before the presidential election of 4 January 2004 and the repeat parliamentary election of 28 March 2004, voters were expected to pay preliminary visits to the precincts in order to ensure that their names were on the lists.

28. On 18 April 2004, election day, the polling stations in the Khulo and Kobuleti districts failed to open (see paragraph 50 below). On the same day, however, the CEC tallied the votes in the repeat election of 28 March 2004. It stated that 1,498,012 votes had been cast, while 2,343,087 voters had registered. The applicant party received 6.01% of the vote, which was not enough to clear the 7% threshold and thus to obtain seats in Parliament.

29. According to the minutes of the CEC meeting of 18 April 2004, the applicant party’s representative, as one of the fifteen members of the CEC, objected to the finalisation of the election results. The representative argued that the CEC could not lawfully end the countrywide election without first having held an election in the Khulo and Kobuleti districts. The Chairman of the CEC replied that the fact that the polling stations had not opened in those districts was the fault of the Ajarian authorities. He also added that, even if the election had been conducted in those districts, this would not

have affected the final results. By a majority vote, the Chairman's proposal to approve the vote tally was accepted and the relevant Ordinance (no. 94/2004) was adopted on the basis of Articles 64 and 105 of the EC.

30. On 22 April 2004 the newly elected parliament convened for its first session. After several weeks of tension, the Head of the AAR, Mr A. Abashidze, stepped down on 6 May 2004, fleeing the country.

C. Remedies pursued by the applicant party

1. Proceedings before the Supreme Court

31. On 20 April 2004 the applicant party appealed to the Supreme Court against Ordinance no. 94/2004 (see paragraph 29 above). Alongside the main claim for annulment of the Ordinance in question, the applicant party asked the court to apply an interim measure whereby Parliament would be forbidden from convening for its first session until the dispute had been resolved. The applicant party argued that, if Parliament convened, it would become impossible to enforce the judgment should the court find in the applicant party's favour. On 20 April 2004 the Supreme Court declared the claim admissible but refused to apply the requested interim measure. It reasoned that the claim could not have any suspensive effect under Article 77 § 3 of the EC and noted that, pursuant to Article 51 of the Constitution, the first sitting of a newly elected parliament was to be held within twenty days of the finalisation of the election results.

32. The applicant party submitted four major arguments to the Supreme Court, which dismissed its claim on 26 April 2004.

33. Firstly, the applicant party challenged the rules on the composition of electoral rolls. It claimed that many eligible voters who had failed to comply with the procedure for preliminary registration had been refused the right to cast their votes on election day. At the same time, the obligation to register in advance had created a kind of carousel to facilitate ballot fraud in which some voters could register in different electoral precincts and thus cast their vote more than once. As a result of those irregularities, the applicant party claimed that it had lost votes. It also complained that the CEC had not had competence to change the rules on the composition of electoral rolls, this prerogative being reserved solely for Parliament, which alone was entitled to make the relevant legislative amendments to the EC. In the applicant party's view, the fact that many voters had been refused the right to vote because of the new rules, and that the Government had total control over the electoral administration, had allowed the election results to be rigged. Based on statistical data about high voting activity across the country at particular times, provided by its representatives in the electoral commissions of the Kvemo Kartli, Meskhet-Javakheti and Ajarian regions, the applicant party claimed that vote-riggers had fraudulently cast around

500,000 ballots in favour of the presidential and pro-presidential parties at 12 noon, 5 p.m. and 8 p.m. on election day.

34. The Supreme Court found the latter allegation unsubstantiated, reasoning that the applicant party had submitted no relevant evidence in support of it. As to the voter registration rules, the court noted that the CEC had issued Decree no. 30/2004 (see paragraph 23 above) by which it had remedied the deficiency of Article 9 § 12 of the EC, the effect of which had been suspended by the Constitutional Court on 26 December 2003 (see paragraph 45 below). Since that Ordinance allowed voter registration on the day of election, the allegation that the voters who had missed preliminary registration deadlines were subsequently denied the right to vote was held to be ill-founded.

35. Secondly, the applicant party complained that its representatives at various levels in the electoral commissions had been prevented by other members from fulfilling their duties properly. They had been threatened and instructed not to write complaints about violations observed, namely when votes cast in favour of the Georgian Labour Party were attributed to the presidential and pro-presidential parties. The applicant party complained that such permissive conduct was due to the composition of the electoral commissions, since, in every commission at all levels, eight out of the fifteen members were representatives of the presidential and pro-presidential parties.

36. Thirdly, the applicant party argued that the impugned Ordinance of 18 April 2004 was contrary to Article 105 § 19 of the EC, since it did not specify the total number of voters and the number of votes cast in each district.

37. In reply to these latter arguments, the Supreme Court reasoned that the applicant party should first have complained about the threats to its representatives before a district court. However, it gave no response to the complaint about the pro-presidential composition of the electoral commissions. As to the CEC's failure to include information in the Ordinance about the total number of voters and the number of votes cast in each district, the court stated that this was not a gross violation of electoral legislation and could not therefore be regarded as grounds for invalidating that administrative act.

38. Lastly, the applicant party claimed that the finalisation of the countrywide election results without elections being held in the Khulo and Kobuleti districts had been unlawful. In view of the fact that there were at least 60,000 voters in those districts and that the applicant party needed only 16,000 votes in order to clear the 7% legal threshold, it complained that it had been unlawfully deprived of a genuine chance to obtain seats in Parliament. It noted that the Georgian Labour Party was, by and large, supported in the Ajarian constituency.

39. The Supreme Court replied as follows:

“It is true that the repeat parliamentary election results were annulled in the Khulo and Kobuleti electoral districts and the CEC called a new repeat election by its Ordinance ... [of 2 April 2004]. However, due to well-known events [tensions between the central and local authorities], the election was not held ... in those districts on account of factual circumstances, this being a ground for the annulment of an administrative act [the CEC Ordinance of 2 April 2004] under Article 60 § 1 (g) of the General Administrative Code of Georgia.”

Relying on Article 105 § 3 of the EC, the Supreme Court decided that the repeat election could be considered as having been held, since, according to the vote tally, more than a third of the total number of voters had taken part in it.

2. Constitutional proceedings

40. Acting as a private individual, the Chairman of the applicant party challenged CEC Decree no. 30/2004 of 27 February 2004 (the rules on the composition of electoral rolls) and Ordinance no. 94/2004 of 18 April 2004 (the vote tally) before the Constitutional Court. He claimed that the system of preliminary voter registration, the disfranchisement of the Khulo and Kobuleti constituencies and the presidential control of the electoral administration had infringed the constitutional principle of free and fair elections.

41. On 25 May 2004 the Constitutional Court declared the claim inadmissible. It reasoned that, since it was not a normative act, the disputed Ordinance could not be challenged before the Constitutional Court. As to the impugned Decree, it considered that, firstly, the claimant had failed to substantiate how this normative act had infringed any of his constitutional rights. Secondly, it stated that the claimant, as a private person, did not have standing to challenge the constitutionality of the election, this right being reserved by section 37 of the Constitutional Court Act for the President of Georgia and a specific number of MPs.

II. RELEVANT DOMESTIC LAW

42. The Constitution of Georgia, as worded prior to 6 February 2004, provides:

Article 50 § 4

“The mandate of the previous Parliament shall cease immediately after the first meeting of the newly elected Parliament.”

Article 51

“The first sitting of the newly elected Parliament shall be held within twenty days of the elections. The day of the first sitting shall be determined by the President. Parliament shall begin its work when the election of two-thirds of the members of parliament has been confirmed.”

43. The General Administrative Code, as worded at the material time, provides:

Article 60 § 1 (c) – “A void legal-administrative act”

“A legal-administrative act shall be void as from its adoption if its implementation is impossible for factual reasons.”

44. The Electoral Code (“the EC”), as amended on 28 August 2003 and in force at the material time, provides:

Article 9 – “General electoral roll and the procedure for its compilation”

“1. The general electoral roll is a list of persons with active electoral rights, who are registered in accordance with the law ...

5. The general list of voters shall be compiled ... on the basis of the data available at the territorial agencies of the Georgian Ministry for the Interior, ... data available at the corresponding agencies of the Ministry of Justice, ... data from local self-government and/or administrative agencies, ... data on internally displaced persons communicated by the Ministry of Refugees and Settlement or by its territorial agencies, ... data communicated by the Ministries of Defence, the Interior and State Security, the State Department of State Border Protection and the Special State Protection Service, ... [and] data communicated by Georgian consular authorities ...

7. A registered party ... and voters ... shall be entitled to consult the public version of the general list available at the Central, District and Precinct Electoral Commissions (an elector having the right to consult only the data concerning his/her person and his/her family members ...) and, in the event of any inaccuracy, to request – not later than twenty-three days prior to the date of the election – that the appropriate amendments be made to the voters’ data and the electoral roll ...

8. The electoral administration shall, on its own initiative or following an application under § 7 of this Article, review the general electoral roll ... A decision by the District Electoral Commission rejecting [petitions for] amendments to the voters’ data and electoral roll shall be reasoned and, if requested, transmitted to the applicant from the day following its adoption.

12. [The above-mentioned decision] can be appealed to the competent district/city court within two days of its adoption. Where the court rules in favour of the applicant, the ruling shall, within three days but no later than by the thirteenth day prior to the election date, be delivered to the District Electoral Commission, which shall immediately furnish the relevant information to the Central Electoral Commission ...

Electoral commissions shall immediately make the appropriate amendments to the electoral rolls ...

It is prohibited to make amendments to the electoral roll in the last ten days prior to the election date; from the nineteenth to the tenth day before [the election date], amendments shall be made only by a court ruling.”

The application of several provisions of Article 9 regulating the time-limits for compiling and examining electoral rolls, including § 12, was suspended on 26 December 2003 by the Constitutional Court. Finally, § 12 was invalidated on 24 January 2005 by the same court (see paragraph 45 below).

Article 10 – “Special list of voters”

Under Article 10 § 1, the special list of voters included (a) electoral administration officers who, on election day, were working in an electoral precinct other than that of their residence; (b) voters who, on election day, were being treated in hospital or another in-patient centre; (c) voters who, on election day, were being held in police custody or pre-trial detention; (d) voters who were at sea on election day (they are enrolled at the relevant vessel’s port of registration); and (e) voters who were abroad on election day and registered at the relevant Georgian consulate as well as voters who were not on the consular register, but had registered in a PEC formed abroad or in a consulate.

Article 10 §§ 2, 3, 4, 5, 6 and 7 stipulated that the head of the appropriate institution with responsibility for the voters referred to Article 10 § 1 was to compile the special list, be responsible for the accuracy of the data entered on it, which was to be attested by his/her signature, and was to deliver it to the competent electoral commission.

Article 17 – “The status and system of the electoral administration of Georgia”

“1. The electoral administration of Georgia is a legal entity of public law, which is established in accordance with this Law and shall exercise public authority within the limits specified by it. ...

3. The electoral administration is independent, within the limits of its competence, from other State institutions.

4. The electoral administration is a centralised system composed of the Central Electoral Commission of Georgia [CEC], ... District Electoral Commissions [DECs], [and] Precinct Electoral Commissions [PECs] ... The CEC is the supreme body of the electoral administration of Georgia. ...

6. The CEC is accountable to the Parliament of Georgia ...”

Article 18 § 3 – “Composition of the electoral administration”

“A member of the electoral administration may not join a party, and if he [or she] was a party member, [that person] must withdraw from the party or suspend his [or her] membership for the term of office in the electoral administration ...”

Article 22 – “The working rules of electoral commissions”

“... ”

7. The decision of an electoral commission shall be considered to have been adopted if it is supported by the majority of the votes cast (unless the Law requires a higher quorum), but not less than one third of the commission members.

8. If the vote is tied, the chairman of the session shall have the casting vote. ...

13. The CEC shall adopt decrees by two-thirds of its members. No decree shall be adopted less than four days before the election date.”

Pursuant to Articles 34 § 2 (f), 61 § 5, 62 and 63 §§ 1 and 4, a DEC was competent to receive, examine and decide on requests for a recount or to annul election results in the relevant precincts, based on allegations of voting irregularities.

Article 64 – “Consolidation of the election results at the CEC of Georgia”

“1. No later than eighteen days after the date of the ballot, the CEC, based on the protocols received from the DEC and PECs, shall consolidate the results of the parliamentary and presidential elections ... and approve by its Ordinance the final protocol of the vote tally.

1(1) The CEC is prohibited from finalising the election results before the resolution of election-related disputes in the courts of general jurisdiction and without consideration of the outcome of those disputes. ...

The CEC shall consolidate the election results and determine: (a) the total number of voters; (b) the turnout of voters; (c) the number of ballots deemed invalid; ... and (e) the number of votes received by candidates.”

Article 77 § 3 – “The time-limits and procedure for the consideration of disputes”

“Lodging appeals with a court shall not have a suspensive effect on the decision.”

Under Article 100 § 2, a party or bloc could cancel the nomination of one of its candidates even after the latter’s authority as an MP had been officially recognised.

Article 105 – “Consolidation of the election results at the CEC of Georgia”¹

“...

3. An election held under the proportional system shall be considered to have been held if at least one-third of the total number of voters took part in it. ...

6. Seats in Parliament shall be awarded only to party lists that receive no less than 7% of the votes cast.

7. In order to determine the number of seats received by a party list, the number of votes received by this list must be multiplied by 150 and divided by the total number of the votes received by the parties [which cleared the 7% threshold] ...

12. If, due to gross violation of the present law, the voting results are deemed invalid in more than half of the electoral precincts, or in ... precincts where the total number of voters represents more than 50% of the total number of voters in the electoral district concerned, the election results for the entire electoral district shall be deemed invalid and the CEC shall set a date for a repeat election.

13. If any application, complaint or dissenting opinion by a DEC member is submitted requesting revision or invalidation of the voting results, the CEC shall take a decision by passing an Ordinance for or against the opening of packages and the recounting of ballot papers (special envelopes) received from the relevant PEC. The CEC is empowered to collate the election results based on the PEC protocols. ...

16. A second ballot under the proportional representation system shall be held when the total number of voters in the precincts [where the voting results were invalidated] is more than 10% of the total number of voters in Georgia. In such cases, the second ballot shall be held within two weeks of the general election.

17. If the election under the proportional representation system is declared to have been held but none of the parties or electoral blocs have managed to clear the required threshold, a repeat election shall be held within two weeks of the general election, by Ordinance of the CEC.

18. Only those parties and electoral blocs which received 2% of the votes in the general election shall have the right to take part in the repeat election. The party lists ... shall remain unchanged. Amendments to them may be introduced only in accordance with the general rules established by this Law.

19. The summary protocol of the final election returns must disclose the names and numbers of those electoral districts and precincts in which the election was declared invalid, as well as the number of voters in them, the reason for declaring the election invalid, the total number of voters in each electoral district, the turnout of voters, [and] the number of members of parliament elected, with their names listed in alphabetical order.”

1. Articles 64 and 105 have the same titles in their original version.

Article 106 §§ 3, 4, and 7 – “... Mid-term and other elections ... the procedure for the succession of MPs”

“...

3. If an election is declared ‘not held’, or if the election results are deemed invalid in a multi-seat electoral district, a repeat election shall be held. If the mandate of the parliamentarian elected in such a district is suspended before its term, a mid-term election shall be held.

4. The repeat election shall be held within two months ... The CEC shall set the election date and time-limits for electoral arrangements by Ordinance no later than seven days after the initial election ...

7. If an MP who resigns was elected through the party list of a party participating independently in the elections, the seat of such an MP shall be occupied within one month by the next candidate on the same list, provided that that candidate agrees to become an MP within fifteen days of the vacancy arising. Otherwise the vacant seat shall be occupied by the next candidate on the list, etc. If there is no other candidate named in the party list, the parliamentary mandate shall be deemed cancelled.”

Unlike the parliamentary election under the majority system, neither Article 106 nor any other provision of the EC provided for the possibility of conducting mid-term, repeat or other types of interim polls as under the proportional system after the countrywide election results had been finalised by the CEC (see paragraph 118 below).

An amendment to the EC, introducing provisional Articles 128, 128(1) and 128(2), was enacted on 5 August 2003 for the specific purpose of reforming the CEC for the regular parliamentary election of 2003.

Pursuant to Article 128 § 2, the CEC was to be composed of fifteen members and its sessions were considered to be valid if attended by more than half of the members. Article 128 § 3 initially stated that the chairman of the CEC was to be appointed by Parliament following his or her nomination by the Organisation for Security and Cooperation in Europe (OSCE). However, this provision was amended on 28 November 2003 and, under the new rule, the chairman was to be appointed by the President of Georgia, with the approval of Parliament. Article 128 § 4 further established that five members of the CEC were also to be appointed by the President.

Pursuant to Article 128 § 5, the remaining nine members of the CEC were to be appointed as follows:

(a) three members by the party/electoral bloc which had come second in the parliamentary election of 1999;

(b) two members by the party/electoral bloc which had come third in the parliamentary election of 1999; and

(c) one member by each of the four parties/electoral blocs which had obtained the best results in the 2002 local election in Tbilisi, held under the proportional electoral system, unless that party/electoral bloc was entitled to

appoint a commission member under the preceding sub-paragraphs (a) and (b).

Pursuant to Articles 128(1) § 2 and 128(2) § 2, the composition of the DEC and PECs was similar to that of the CEC. The chairman of the DEC was appointed by the President of Georgia with the approval of Parliament (Article 128(1) § 3), while the chairman of the PEC was appointed by the chairman of the corresponding DEC (Article 128(2) § 3). Five members of the DEC were appointed by one of the members of the CEC who had been appointed by the President of Georgia and granted this power by him or her (Article 128(1) § 4). Five members of the PECs were appointed by one of the five members of the corresponding DEC, appointed in accordance with Article 128(1) § 4.

By an amendment of 22 April 2005, the provisional rules under Articles 128, 128(1) and 128(2), as described above, were annulled.

45. Following an application by two voters, on 26 December 2003 the Constitutional Court suspended the effect of Article 9 §§ 7, 8, 10 and 12 and Article 10 §§ 1 (e) and 6 of the EC in the part regulating the time-limits for adding and revising voters' names on electoral rolls. On 24 January 2005 the Constitutional Court invalidated Article 9 § 12 of the EC, upholding the constitutionality of the rest of the disputed provisions. The relevant part of the judgment provides as follows:

“... The registration of voters through the unified electoral roll is what provides citizens with the basis for exercising their right to vote. Consequently, under the disputed provision the right to vote is being denied to those citizens who do not find their names on the roll and are unable to register during the ten days preceding the election date, whereas a court ruling is necessary for registration between the nineteenth and tenth day prior to the election ...

The registration of voters is the responsibility of the relevant State authorities. When a citizen's name is not found on the electoral roll, this is [the State authorities'] omission and should not limit the citizen's right to vote. The Electoral Code should secure not merely formal but real mechanisms that would enable the exercise of the constitutional right.”

III. RELEVANT INTERNATIONAL LEGAL DOCUMENTS

A. Resolution 1363 (28 January 2004) of the Parliamentary Assembly of the Council of Europe (PACE) - “Functioning of Democratic Institutions in Georgia”

46. The relevant provisions of the Resolution provide as follows:

“...

7. ... [T]he Assembly asks the Georgian authorities to adopt without delay a number of measures, which must be fully implemented when the forthcoming parliamentary elections are held on 28 March 2004, in particular:

(i) to amend the Electoral Code and all other electoral legislation and regulations, ... so as to:

(a) modify the composition of the Central Electoral Commission and the electoral commissions at lower levels, in order to promote the principle of balanced, fair and equal representation of all political forces;

...

(c) ensure a clear segregation between governmental structures and the electoral authorities, and introduce a principle that the latter must be completely impartial; ...

(ii) to revise the electoral rolls, and create as soon as possible a single, centralised and computerised register of electors, and to put an end to the practice of registering voters' names on supplementary lists on election day itself, a practice which entails a considerable risk of fraud.

8. The Assembly also declares its concern about the current reshaping of Georgian political life and the risk of the disappearance of all parliamentary opposition after the forthcoming elections and, in consequence, of any true institutional counterweight. If the elections were to culminate in the sole representation in Parliament of the ruling coalition, the Assembly might fear for the future of democratic pluralism in Georgia. It therefore recommends that the Georgian authorities amend the corresponding legislation so as to reduce the electoral threshold in the proportional representation system from 7% to at least 5%."

B. European Commission for Democracy through Law ("the Venice Commission")

47. The Code of Good Practice in Electoral Matters was adopted by the Venice Commission at its 51st Plenary Session (5-6 July 2002) and submitted to the PACE on 6 November 2002. Its relevant provisions provide as follows:

2. "Regulatory levels and the stability of electoral law"

"(a) Apart from rules on technical matters and detail – which may be included in the regulations of the executive –, rules of electoral law must have at least the rank of a statute.

(b) The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law."

3.1. “The organisation of elections by an impartial body”

“(a) An impartial body must be in charge of applying electoral law.

(b) Where there is no long-standing tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.

(c) The central electoral commission must be permanent in nature.

(d) It should include:

(i) at least one member of the judiciary;

(ii) representatives of parties already in Parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters.

It may include:

(iii) a representative of the Ministry of the Interior;

(iv) representatives of national minorities.

(e) Political parties must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality may be construed strictly or on a proportional basis ...

(f) The bodies appointing members of electoral commissions must not be free to dismiss them at will.

(g) Members of electoral commissions must receive standard training.

(h) It is desirable that electoral commissions take decisions by a qualified majority or by consensus.”

48. A selected passage from the Venice Commission’s Report on Electoral Law and Electoral Administration in Europe, issued on 9-10 June 2006, provides as follows:

“34. Although in many countries the influence of the executive government on the composition of the electoral commissions has, in general, greatly been reduced, in a few States still a significant number of commission members are nominated and appointed by the executive government, e.g. the President of the Republic or the Ministry of the Interior or Justice. For example, in Georgia five (out of fifteen) members of the Central Electoral Commission are appointed by the President, not including those members appointed by the governing parties in Parliament. To avoid the risk of governmental interference in the commission’s work, as a rule the number of commission members nominated and appointed by the executive government should, if at all, be very low.”

C. The Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Election Observation Mission Report on the Parliamentary Election of 2 November 2003 (Part 1, Warsaw, 28 January 2004)

49. The relevant excerpts from the Report read as follows:

“Preliminary voter registers released in early October contained significant anomalies and errors. The number of voters registered in a number of individual districts showed a wide variation from previous elections ...

Inaccurate lists were of concern not only because errors could deny eligible citizens the right to vote but ... increased the possibility of election fraud.

Reports on errors in voter lists included: omitting entire apartment blocks or streets; voters being listed in the wrong districts; listing many deceased persons; and large numbers of duplicate entries. Despite the enormity of the task, many PECs worked conscientiously to rectify errors. However, some DEC failed to supply the PECs with voter lists, and many PECs appeared unfamiliar with new registration procedures and applied inconsistent methods. Many failed to display lists in a systematic or practical manner ...

Other problems included: a 2,250-page list of deceased persons in Tbilisi that was unusable as it was not broken down by district or precinct; IDP [internally displaced person] voters not being systematically included in lists; and significant numbers of voters lacking ID documents ...

Unexpectedly, on 26 October, the CEC decided to cease work on the central database altogether, thereby jettisoning the effort to improve the accuracy and transparency of voter registers. The PECs were permitted to use either handwritten or computerised lists. This decision dramatically altered the voter registration framework and caused a complete lack of uniformity in the type of list used.”

D. The OSCE/ODIHR Election Observation Mission Report on the Repeat Parliamentary Election of 28 March 2004 (Part 2, Warsaw, 23 June 2004)

50. This Report was submitted by the respondent Government as part of their observations. Selected passages from its summary provide as follows:

“Conditions in the Autonomous Republic of Ajaria were once again not conducive to democratic elections. Intimidation and physical abuse of opposition supporters and journalists underlined the democratic deficit in Ajaria evident during this election process, effectively creating a dual standard for elections in Georgia.

The CEC administered these elections in a credible and professional manner. However, at times the CEC appeared to exceed its authority, for example, by extending legal deadlines or modifying other legal provisions through decrees. Several aspects of the election process were improved over previous elections, although some CEC decisions in the post-election period cast doubts about its impartiality.

Voter registers were further improved and consolidated in a computerised database ... However, further efforts are needed to complete voter lists, correct remaining errors, and improve their accuracy.

The lack of political balance on election commissions remained a source of concern. Some DEC and PECs failed to maintain appropriate distance from the ruling parties, and some local authorities interfered in the work of lower-level election commissions. President Mikheil Saakashvili's offer to reduce the number of his appointees on the DEC and PECs from five to three addressed some of these concerns. However, these changes came late in the electoral process and should have been extended to the CEC. ...

The tabulation of results at district level was marred by irregularities in a number of DEC. In some cases, election material was delivered unsealed or inadequately secured, protocols were completed or changed at the DEC level, and in at least one case, the DEC members 'negotiated' the results. The handling of election-related complaints at some DEC was also inadequate.

An analysis of the PEC results made available by the CEC showed a number of anomalous or implausible results in a significant minority of districts. Such anomalies included: a rapid increase in voter turnout during the last three hours of voting; an implausible voter turnout, in some cases exceeding 100%, and sometimes coupled with a share of the vote for the ruling parties in excess of 95%; and instances of an unusually high percentage of invalid votes.

A total of fifty-two polling stations were invalidated by the DEC due to irregularities. The CEC cancelled the results in two districts in Ajaria (Khulo and Kobuleti) and ordered repeat elections for 18 April, which did not take place due to security reasons. The CEC's decision to cancel the results and repeat elections in entire districts appeared to be based on questionable legal arguments.

Overall, the following elements marked positive developments for the election process:

- improvements in the administration of the election process;
- the enhanced professionalism and openness of the CEC;
- commendable efforts to improve, computerise and consolidate the voter lists, although they remain incomplete;
- with the exception of Ajaria, a peaceful and free pre-election period, although there was a late and very limited campaign;
- freedom of expression enjoyed by the media, with the exception of Ajaria; ...

However, some aspects of the process need to be addressed in order to remedy issues of concern and continue forward progress, including:

- the continuing lack of a clear separation between State administration and political party structures, and the ongoing potential for misuse of State administrative resources;

- the inability to ensure the balanced composition of election commissions at all levels;
- the interference by some local authorities in the functioning of a number of lower-level commissions, thereby lessening their independence;
- continuing irregularities in some polling stations, as indicated by implausible and anomalous results;
- irregularities at a relatively high number of DEC's during the tabulation process, and the failure of some DEC's to properly address complaints after election day;
- the adoption of some decisions by the CEC, such as the cancellation of results in two entire districts, which seem of questionable legality and could be perceived as having been politically motivated ...”

51. With regard to the new system of voter registration, the Report noted as follows:

“The CEC implemented a number of recommendations made by the OSCE/ODIHR in previous reports, including: ...

- consolidating the voter list into a central, computerised database;
- providing an additional period for citizens to register to vote and for a periodic display of newly-printed voter lists ...

The number of registered voters under-represented the number of eligible voters, partly because an active system of voter registration was instituted in December and again in March. Under an active system, citizens unwilling or unable to register are excluded from the lists ...

[T]he CEC began the consolidation of handwritten voter lists into a single computerised database. The accuracy of this data was verified, and many errors were eliminated.

The CEC produced voter lists according to the language in which they were originally compiled, which increased the transparency of the process for non-Georgian speaking voters ... While observers expressed increased confidence in the voter lists, particularly compared to November 2003, shortcomings were noted ...

After the election, the CEC announced that some 145,000 voters had registered to vote on election day, bringing the total number of registered voters to 2,343,087.”

52. The Report gave an account of the tensions between the central and Ajarian authorities on the eve of the repeat parliamentary election of 28 March 2004:

“The situation in the [AAR] remained tense, especially after a state of emergency was imposed on 23 November. The state of emergency decreased civil liberties, and consequently limited even further the campaign opportunities for parties in opposition to Ajarian leader Aslan Abashidze. Relations between the Georgian government and the Ajarian authorities deteriorated following the November events. On 14 March,

President Saakashvili was denied entry into Ajaria, where he intended to campaign. The Georgian government reacted by imposing economic sanctions on Ajaria, and tensions mounted significantly. The situation seemed to improve after an agreement was reached during a meeting between Saakashvili and Abashidze on 18 March. However, the partial implementation of the agreement did not significantly reduce the tension prior to the elections ...

Opposition gatherings were violently suppressed or attacked by supporters of the Ajarian authorities ... Offices of parties in opposition to the Ajarian authorities and of non-governmental organisations (NGOs) were ransacked, opposition activists and journalists were assaulted or abducted, and members of election commissions were intimidated. While incidents of violence and intimidation also marred previous elections in Ajaria, the intensity and frequency with which they occurred this time was higher. Overall, the environment in Ajaria was once again not conducive to a meaningful democratic contest during this election process.”

53. The Report also commented on the situation surrounding the CEC’s decision of 2 April 2004 to cancel the election results in the Khulo and Kobuleti districts and call for repeat polls in those districts:

“On 2 April, the CEC decided to annul the district-wide election results in Khulo and Kobuleti and repeat polling in these two districts on 18 April. In addition, the CEC dismissed the entire membership of the two DEC’s and created two temporary groups composed of CEC members and CEC staff members to organise the repeat elections.

On 12 April, the CEC temporary groups were dispatched to Ajaria but they rapidly encountered active resistance. On 13-14 April, the temporary groups were forced to leave the Ajarian territory by crowds of people. On the same day, the CEC Chairman was prevented from entering Ajaria at Choloki checkpoint on the administrative border. On 16 April, at a press conference, the CEC Chairman declared that for security reasons elections in Khulo and Kobuleti would not be held on 18 April. Nevertheless, the elections were not officially cancelled.

The CEC based its decision to annul the district-wide election results in Khulo and Kobuleti and repeat polling in these two districts, respectively on Articles 105 § 13 and 105 § 12 of the EC.

Prior to election day, the EOM [the Election Observation Mission] attempted to clarify with the CEC Chairman whether the CEC had the authority to cancel the DEC results. During these discussions, he [the CEC Chairman] indicated that it was certainly a questionable issue. While EC Article 105 § 13 grants the CEC the right to examine the PEC documentation, recount ballots and sum up results based on PEC protocols, the EC does not specifically grant the CEC the authority to annul the results in an entire district.

In fact, the CEC simply cancelled the entire district results without hearing testimony or investigating the circumstances at each PEC or establishing with any certainty if the number of votes at the annulled polling stations was sufficient to meet the criteria outlined in Article 105 § 12. Furthermore, the CEC did not examine the electoral material. Elsewhere, where results were annulled this was done by DEC’s or local courts.

Notwithstanding the fact that violations took place in Khulo and Kobuleti districts, the decision to annul their results and call a repeat polling appeared inconsistent with the fact that major violations in other districts did not result in the annulling of the DEC results there. Moreover, the legal arguments used and legal basis were weak. The EOM believes that Article 105 § 12 relates to majoritarian elections rather than the proportional contest. The citing of this article rather than Article 105 § 16 (which specifically mentions its applicability to proportional elections) raises the question as to whether Georgia is a single electoral unit for the proportional election or seventy-five ‘fragments’. This issue is not adequately defined in the EC. ...

Should Article 105 § 16 be applied, then elections should also be repeated elsewhere, as more than 10% of voters within a district were affected by the annulling of results. Thus, it appeared that the CEC adopted different and legally questionable procedures just for these two districts.

[Election observers] appealed the CEC decision to invalidate the election results and to set repeat elections in Khulo and Kobuleti. In the course of the hearing it became apparent that CEC Order 82/2004 was based on a questionable decision-making procedure. The CEC could not prove that it made the decision to annul the district results on a PEC-by-PEC basis. The Tbilisi District Court upheld the CEC decision and challenged the election observers’ authority to bring the case. The court decided that their appeals were [in]admissible because their legitimate rights or interests were not damaged. [The observers] appealed this decision at the Supreme Court, that ruled against [them] in a closed session.

The decision to dismiss the case, based on the plaintiffs not having the legal right to appeal, was highly questionable. The EC does not clearly state that observers can appeal a CEC decision to invalidate the DEC results since there is no provision in the EC that the CEC can overrule a DEC in such cases. Consequently, the decision of the CEC had to be questioned, not the rights of observers. The dismissal of such an important and well-founded case ... contributed to the impression that the [electoral] law was applied in a non-transparent and inconsistent manner.”

IV. COMPARATIVE LAW

A. Systems for voter registration in Europe (Working Documents of the French Senate, Comparative Legislation Series, March 2006)

54. In one of its working documents, the French Senate examined the systems of voter registration in Belgium, Denmark, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom.

55. With the exception of Portugal and the United Kingdom, the initial registration of voters and subsequent amendments to the electoral rolls in these States are automatically carried out by the authorities on the basis of mandatory domiciliary declarations by the population.

56. In Portugal, the compilation and modification of electoral rolls depend on the voters’ individual requests to that end. Portuguese law even

envisages individual criminal responsibility for those who fail to take the necessary steps for electoral registration.

57. In the United Kingdom, the system is mixed. The authorities compile electoral rolls automatically, on the basis of domiciliary declarations and the general census of the population. However, all subsequent modifications to the rolls are contingent upon voters' individual declarations to that end.

B. Electoral administration in Europe

58. Having examined the systems of electoral administration in Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Germany, Hungary, Italy, Moldova, Portugal, Serbia, Spain, Sweden and the United Kingdom, the Court notes that there is no uniform system of electoral administration in Europe.

59. As the Venice Commission has pointed out (Code of Good Practice in Electoral Matters, Explanatory Report, 18-19 October 2002, §§ 70 and 71), "in States where the administrative authorities have a long-standing tradition of independence from the political authorities ... it is acceptable for elections to be organised by administrative authorities, and supervised by the Ministry of the Interior". However, in States with less experience of organising pluralist elections, electoral commissions not falling under the authority of the government have been set up to ensure that elections are properly conducted.

60. The International Institute for Democracy and Electoral Assistance (IDEA) has identified three broad types or models of electoral management – the independent, governmental and mixed models (see *Electoral Management Design: The International IDEA Handbook*). The independent model of electoral management exists in those countries where elections are organised and managed by an electoral management body which is institutionally independent and autonomous from the executive branch of government, and which has, and manages, its own budget. It may be accountable to the legislature, the judiciary, or the Head of State, but not to the government. The governmental model exists in those countries where elections are organised and managed by the executive branch through a ministry (such as the Ministry of the Interior) and/or through local authorities. In the mixed model of electoral management, there are usually two component bodies, and dual structures exist: a policy, monitoring or supervisory body that is independent of the executive branch of government and an implementation body located within a Department of State and/or local government.

61. According to the classification system adopted by the IDEA, among the forty-seven member States of the Council of Europe there are twenty-two countries, mostly from central and eastern Europe, which follow the independent model. There are sixteen States which have adopted the

governmental model, and nine the mixed model. Among the thirteen Contracting States considered in the IDEA handbook, four are classified as following the independent model (Bosnia and Herzegovina, Bulgaria, Moldova and Serbia), six the governmental model (Belgium, the Czech Republic, Germany, Italy, Sweden and the United Kingdom) and three the mixed model (Hungary, Portugal and Spain).

62. There are no common standards among Contracting States as regards the composition of electoral commissions and the appointment of their members. As regards the authority which is competent for formally appointing the commission members, there are some countries which provide for a unique institution (the parliament in Bosnia and Herzegovina, Hungary and Serbia; the Head of State in Bulgaria and the United Kingdom; and the government in Sweden). Even in these cases, however, other institutions and actors may intervene in the nomination process. For instance, in Bulgaria the members of the CEC are appointed after consultation with parliamentary parties and coalitions. In Hungary, the members of the National Election Committee are elected on the basis of a motion submitted by the Minister of the Interior, after taking the parties' recommendations into account. In the United Kingdom, Her Majesty appoints the commission members on an address from the House of Commons, made after consultation with the leaders of registered parties.

63. There are other systems which provide for a mixed appointment by different State organs, including the judiciary. In Moldova, one member is appointed by the President, one by the government and seven by the Parliament. In Portugal, the National Election Commission is composed of a judge appointed by the judiciary, citizens designated by the Parliament and three specialists designated by governmental departments. The Spanish electoral boards have a quasi-judicial composition, since the majority of their members are directly appointed from among sitting judges by the General Council of the Judicial Power, whereas the rest are selected from among experts proposed by the political parties.

64. In systems which can be regarded as governmental from the standpoint of electoral management, such as Belgium or Germany, the majority of the assessors of the electoral boards/committees are appointed by the chairman (a judge in Belgium; the Federal Returning Officer nominated by the Ministry of the Interior in Germany) among electors. In Germany, most of the assessors are proposed by the political parties. In Italy, electoral boards responsible for the lawfulness of the electoral lists and candidates are created within the Court of Cassation and other tribunals. The difference with the countries mentioned above is that, in such countries, electoral bodies are set up for the exclusive purpose of specific elections.

65. In some States, such as Bosnia and Herzegovina, Hungary, Portugal, Spain and Sweden, the electoral commissions may be classified as

expert-based. In others, such as Bulgaria, Moldova or Serbia¹, the commissions are composed of experts and representatives of political parties (combined membership). The electoral legislation in Hungary and Serbia provides for the possibility of expanded membership of the commissions to include representatives of political parties which have submitted electoral lists.

66. The general trend is that decisions are taken by a simple majority (Germany, Hungary, Moldova, Portugal, Serbia, Spain and Sweden). Only in Bosnia and Herzegovina (a two-thirds majority, except for municipal commissions), Bulgaria (a two-thirds majority) and the Czech Republic (an absolute majority), is a qualified majority required. In Bosnia and Herzegovina, if a decision cannot be reached at the first meeting, then at the second meeting the decision is taken by a majority vote.

67. In the case of a tie, the chairman has the casting vote in Germany, Portugal, Spain and Sweden. This helps to avoid eventual obstructions to the decision-making process. By contrast, in the Czech Republic, in the event of a tie, the proposal is deemed to be rejected. The fact that a chairman with the casting vote is directly appointed by the president of the Republic or the executive government, as in Georgia, is of course a relevant factor to be borne in mind for the assessment of the independence of an electoral agency. This can only be compared to the position of the Federal Returning Officer or the Land Returning Officer in the Federal Electoral Committee and the Land Electoral Committees in Germany, whose appointment depends on the Federal Ministry of the Interior or the Land Government. In both cases, the officer is the chairman of the committee and has a casting vote. By contrast, in the majority of the countries examined, the chairman is elected by the electoral commission itself (Bosnia and Herzegovina, Hungary, Moldova, Serbia and Spain).

68. One of the guarantees of election commissions' independence is that persons who could be involved in an inherent conflict of interests should not be allowed to be appointed to electoral commissions, in particular registered candidates. This kind of rule can be found in the majority of the Contracting States considered (Belgium, Bosnia and Herzegovina, the Czech Republic, Germany, Hungary, Moldova, Portugal, Serbia, Spain and the United Kingdom). Apart from candidates standing for election, incompatibility requirements may apply to members of political parties or organisations nominating candidates (Hungary and Moldova), members or employees of registered parties (the United Kingdom), members of parliament, judges in the Supreme Court, servicemen in the armed forces, officers in the Ministry of the Interior (Bulgaria), the president of the Republic, heads of administrative offices, civil servants, and mayors (Hungary).

1. This classification is based on the classification of *The International IDEA Handbook*, pp. 304-23.

69. In order to achieve an adequate balance between political representatives in the commission, there are some systems which provide specific rules. For instance, in Bulgaria and Serbia, no political party or coalition may have a majority within the commission. In Bulgaria, the chairman and the secretary must belong to different political parties. In the Czech Republic, the chairman and the vice-chairman of an electoral board may not be representatives of the same political party or coalition.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1

70. The applicant party complained under Article 3 of Protocol No. 1 about the system of voter registration as set out in CEC Decree no. 30/2004 of 27 February 2004. It further challenged the presidential control over electoral commissions at all levels at the time of the repeat parliamentary election of 28 March 2004. Lastly, the applicant party complained that the countrywide election had been finalised by the vote tally of 18 April 2004 without elections having been held in the Khulo and Kobuleti electoral districts.

71. Article 3 of Protocol No. 1 provides 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. The applicant party’s victim status

72. The Court reiterates that, under its case-law, the notion of “individual rights” (see *Aziz v. Cyprus*, no. 69949/01, § 25, ECHR 2004-V, and *Ždanoka v. Latvia* [GC], no. 58278/00, § 102, ECHR 2006-IV) or “subjective rights” (see *Melnychenko v. Ukraine*, no. 17707/02, § 54, ECHR 2004-X) to stand for election under Article 3 of Protocol No. 1 have mostly been confined to physical persons. However, it has been recently accepted that, when electoral legislation or the measures taken by national authorities restrict individual candidates’ right to stand for election through a party list, the relevant party, as a corporate entity, could claim to be a victim under Article 3 of Protocol No. 1 independently of its candidates (see *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, §§ 53-67, 11 January 2007.).

73. As to the circumstances of the present case, the Court observes that, pursuant to Article 106 § 7 of the EC, if an MP elected through a party list

resigned, then the corresponding seat was occupied by the next candidate from the same party list. Moreover, by virtue of Article 100 § 2 of the EC, a party or bloc could cancel the nomination of its candidate even after the latter had been elected and formally recognised as an MP. In other words, once a party obtained seats in Parliament under the proportional representation system, those seats did not, under the domestic legislation in force at the material time, impart immutable parliamentary authority to its individual members and, in the event of the cessation of the latter's parliamentary activities, would nevertheless remain within the party's possession until the expiry of Parliament's mandate.

74. Having regard to the above considerations, the Court finds that, in the present case, the applicant party, as a political party, may validly claim victim status under Article 3 of Protocol No. 1 for the purposes of Article 34 of the Convention.

B. Voter registration

1. The Government's submissions

75. The Government asserted that CEC Decree no. 30/2004 of 27 February 2004, amending the voter registration system, was aimed at ensuring that every person was able to cast a vote. The state of the electoral rolls as they stood before the initial parliamentary election of 2 November 2003 – lacking in accuracy and compiled from different handwritten voter lists of dubious origin – was the main reason for the massive falsification of that election's results. By introducing an active system of voter registration, the CEC, on the contrary, successfully tackled the problem of inaccuracy in the electoral rolls and managed to create a unified list of voters. Regard was to be had to the urgency of the situation in which the CEC was obliged to work, when the results of the previous parliamentary election had been invalidated and the presidential and repeat parliamentary elections were only a few weeks away. The CEC had no other option but to assume responsibility for changing the system of voter registration, in so far as Parliament had failed to do so for lack of time. The Government further noted in this regard that, after the Constitutional Court suspended on 26 December 2003 the EC provisions regulating the time-limits for compiling the voter lists (see paragraph 45 above), the CEC Decree in question was nothing other than an urgent measure aimed at filling the resulting legislative vacuum.

76. The Government stated that the introduction of the active system for voter registration encouraged otherwise passive voters to become more actively involved in the election process. By shifting the burden of registration partly onto the voters, the authorities substantially improved the accuracy of the general electoral list and, consequently, the repeat

parliamentary election of 28 March 2004 was conducted more fairly than the previous one. The Government invited the Court to take into account the international election observers' appraisals in this regard (see paragraph 50 above).

77. According to the Government, the applicant party did not submit any evidence in support of the allegation that the change in the voter registration system had violated any of its rights under Article 3 of Protocol No. 1. Finally, they argued that the authorities should be granted a wide margin of appreciation in the choice of a voter registration system.

2. The applicant party's submissions

78. The applicant party replied that the system of voter registration, as amended by CEC Decree no. 30/2004 of 27 February 2004, undermined the effectiveness and practicability of the guarantee of free elections set out in Article 3 of Protocol No. 1.

79. In the opinion of the applicant party, the above-mentioned Decree also breached Articles 9 and 10 of the EC. In particular, Article 9 § 5 of the EC provided that the electoral roll of voters should be compiled not on the initiative of voters but on the basis of the data available at the relevant State agencies. Furthermore, Article 9 § 8 of the EC provided that the electoral administration should review the general electoral roll instead of the voters. Finally, the impugned Decree excluded *ab initio* all voters mentioned in Article 10 of the EC – those, for example, who, on election day, were being held in police custody or pre-trial detention, were in hospital, etc. – as they could not comply with the procedure for preliminary registration.

80. According to the applicant party, by introducing a deliberately aberrant system of voter registration contrary to the provisions of the EC, the CEC not only facilitated various possibilities of electoral fraud – voters could, for example, register in different electoral precincts and thus cast their vote more than once, whereas others who had failed to comply with the preliminary registration were unable to cast a vote – it also shifted the burden of registration from the State onto the voters. This, in turn, was not compatible with the Contracting State's positive obligations under Article 3 of Protocol No. 1. Moreover, the sudden change in the rules on registration to which voters had been accustomed by virtue of the long-standing electoral legislation resulted in a reduction of the latter's electoral activity.

81. Lastly, the applicant party denounced as untrue the Government's argument that Parliament had been unable to function normally because of time constraints, referring to the fact that in February 2004 the legislative body examined and approved a substantial package of important constitutional amendments.

3. The Court's assessment

82. The Court considers that the proper management of electoral rolls is a pre-condition for a free and fair ballot. Permitting all eligible voters to be registered preserves, *inter alia*, the principles of universality and the equality of the vote, and maintains general confidence in the State administration of electoral processes. The inaccuracy of electoral rolls may, in the eyes of the Court, seriously taint the effectiveness and practicability of electoral rights under Article 3 of Protocol No. 1 (see, *mutatis mutandis*, *Melnychenko*, cited above, § 59).

83. In particular, a deficient electoral roll would affect *a priori* voters' rights, which, admittedly, is not the issue in the instant case. However, the effectiveness of the right to stand for election is undoubtedly contingent upon the fair exercise of the right to vote. Thus, if an electoral roll omits to include some voters and/or allows the multi-registration of others, such mismanagement would not only undermine voters' interests but could also diminish the candidates' chances to stand equally and fairly for election. The Court thus finds that a sufficiently close causal link exists between the applicant party's right to stand in the repeat parliamentary election of 28 March 2004 and its complaint about the voter registration system prevailing at that time.

84. The applicant party mainly complained that the CEC had exceeded its authority and breached the EC by issuing the impugned Decree no. 30/2004 of 27 February 2004. However, it should be recalled that the Court's competence to verify the compliance of national authorities' decisions with domestic law is limited (see *Håkansson and Stureson v. Sweden*, 21 February 1990, § 47, Series A no. 171-A). Furthermore, it is not for the Court to take the place of the domestic courts, which are best suited for resolving problems of the interpretation of domestic legislation (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I). Its real task, in the present case, is not to pronounce on the compliance of the CEC Decree with the domestic law, but to examine whether the active system of voter registration was, in all the circumstances, compatible with the applicant party's right to stand for election (see, *mutatis mutandis*, *Melnychenko*, cited above, § 60).

85. Taking into account the findings of the OSCE/ODIHR Election Observation Mission Report on the Parliamentary Election of 2 November 2003 (see paragraph 49 above), the Court endorses the Government's opinion that one of the main reasons for the failure of the parliamentary election of 2 November 2003 was the absence of accurate electoral rolls. As disclosed by the above-mentioned Report, the electoral rolls, as they stood at the material time, omitted "entire apartment blocks or streets", listed many deceased persons, contained a large number of duplicate entries, listed voters in the wrong districts, and so on. Another problem was that the PECs "failed to display lists in a systematic or practical manner". The Court, in

this regard, is particularly struck by the fact that the CEC was unable to create a central list of voters, which caused a complete lack of uniformity in the type of lists used by the PECs in the course of that parliamentary election.

86. In contrast, as acknowledged by the OSCE/ODHIR Election Observation Mission Report on the Repeat Parliamentary Election of 28 March 2004 (“the 28 March 2004 EOM Report”; see paragraphs 50 and 51 above), the situation with respect to voter lists was somewhat improved after the adoption of the impugned Decree no. 30/2004 of 27 February 2004, which introduced a new, “active” system of voter registration. As a result of the requirement for voters to attend electoral precincts a number of times, in order to register and then to double-check their registration, “many errors were eliminated” and the CEC, moreover, was able to consolidate “handwritten voter lists into a single computerised database”. The impugned Decree also allowed voters to register on election day, which, as noted by the 28 March 2004 EOM Report, enfranchised an additional 145,000 voters. Furthermore, the Court notes that, by amending the system for the registration of voters, the CEC directly enforced the recommendations of various international election observers, who subsequently commended the authorities for their efforts to improve, computerise and consolidate the electoral rolls (see paragraphs 46, 50 and 51 above).

87. Admittedly, the 28 March 2004 EOM Report also disclosed several shortcomings in the new system for the registration of voters (see paragraph 51 above). However, it would have been an excessive and impracticable burden to expect from the authorities an ideal solution to the problem of chaotic electoral rolls given the short time frame between 25 November 2003, when the results of the scheduled parliamentary election were annulled, and 28 March 2004, the date of the repeat election. In the Court’s view, it is more important that the authorities, taking account of the reasons for the failure of the scheduled election, acknowledged the existence of the problem of electoral rolls and, as disclosed by the 28 March 2004 EOM Report, spared no effort in tackling it so that the repeat election could be fairer.

88. Referring to the applicant party’s argument that the sudden change in the registration system was unexpected for voters, the Court considers that, as a matter of policy, it would indeed be preferable to maintain the stability of electoral law (see also the Venice Commission’s recommendation in this respect, paragraph 47 above). Fundamental electoral rules, such as those concerning voter registration, should not normally be amended too often and especially on the eve of an election, otherwise the State risks undermining respect for and confidence in the existence of the guarantees of a free election.

89. However, it is to be recalled that, 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, so that features that would be unacceptable in the context of one system may be justified in the context of another (see, among other authorities, *Py v. France*, no. 66289/01, § 46, ECHR 2005-I). As was noted above, in the present case, the electoral authorities had the challenge of remedying manifest shortcomings in the electoral rolls within very tight deadlines, in a “post-revolutionary” political situation (see paragraphs 11-13 and 19-23 above). Consequently, the Court concludes that the unexpected change in the rules on voter registration one month before the repeat parliamentary election of 28 March 2004 was, in the very specific circumstances of the situation, a solution devoid of criticism under Article 3 of Protocol No. 1.

90. As to whether or not the active system of voter registration, which partly shifted responsibility for the accuracy of electoral rolls from the authorities onto the voters, was compatible with the Contracting States’ positive obligations to ensure the free expression of the opinion of the people (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 57, ECHR 2005-IX), the Court considers that the respondent State should be granted a wide margin of appreciation in this regard.

91. Moreover, it must be noted that the respondent State was not alone in opting for such a system of voter registration: several western European democracies, in particular Portugal and the United Kingdom, also rely to a considerable extent on voters’ individual declarations when compiling the national electoral rolls; Portuguese law even envisages individual criminal responsibility for those who evade taking the necessary steps for electoral registration (see paragraphs 54-57 above). Thus, there can be a diversity of possible choices in the system of voter registration among the Contracting States. None of these criteria should, however, be considered more valid than any other, provided that the expression of the will of the people through free, fair and regular elections is guaranteed (see, *mutatis mutandis*, *Russian Conservative Party of Entrepreneurs and Others*, cited above, § 49).

92. The Court consequently considers that the active system of voter registration cannot in itself amount to a breach of the applicant party’s right to stand for election. Contrary to the applicant party’s allegation, in the particular circumstances of the present case, this system proved not to be the cause of the problem of ballot fraud but a reasonable attempt to remedy it, while not providing a perfect solution.

93. In the light of the above considerations, the Court concludes that, on balance, given the specific circumstances of the political situation in the respondent State, there has been no violation of the applicant party’s right to stand for election, as understood by Article 3 of Protocol No. 1, on account of the introduction on 27 February 2004 of the new voter registration system.

C. Composition of the electoral commissions

1. The Government's submissions

94. The Government submitted that the provisional rules on the composition of the electoral commissions – Articles 128, 128(1) and 128(2) of the EC – had not been introduced on the eve of the repeat parliamentary election but on 5 August 2003, that is even before the regularly scheduled parliamentary election of 2 November 2003. They pointed to the fact that the applicant party had been satisfied with those rules pending the scheduled parliamentary and presidential elections, and had complained only after the finalisation of the legitimate but unfavourable results of the repeat parliamentary election.

95. The Government argued that Article 18 § 3 of the EC provided a sufficient guarantee to secure the independence and impartiality of the electoral administration. Thus, although the candidates for membership of electoral commissions were representatives of political parties, they were obliged, under the above-mentioned provision, to quit their respective parties once appointed to office.

96. Lastly, the Government submitted that the applicant party had not shown any real evidence or referred to specific facts in support of its allegations that the electoral commissions had either lacked independence or impartiality, or that its representatives had been illegally hampered from properly fulfilling their administrative duties. As to the composition of the electoral administration itself, the Government stressed that the respondent State should be granted a particularly wide margin of appreciation in this respect.

2. The applicant party's submissions

97. The applicant party acknowledged that the disputed provisional rules on the composition of electoral commissions, whereby the President of Georgia was entitled to appoint five out of fifteen members of the CEC, had been adopted prior to the regularly scheduled parliamentary election of 2 November 2003. However, under another important amendment made on 28 November 2003, that is immediately after the “Rose Revolution” and specifically for the purposes of the repeat parliamentary election of 28 March 2004, the chairman of the CEC was also to be appointed by the President. The President thus gained the right to nominate directly six out of the fifteen CEC members, including the Chairman, while another two members were representatives of a pro-presidential party. Moreover, the composition of the DEC and PEC was similar to that of the CEC.

98. Such a composition of electoral commissions at all levels established, in the applicant party's view, a plethora of possibilities for electoral fraud. The applicant party alleged that its representatives had been

threatened and instructed not to write complaints about violations observed, namely when votes cast in its favour were attributed by the presidential majority of electoral commissions to the presidential party. Other examples of abuses could be read into the 28 March 2004 EOM Report (see paragraph 50 above).

99. The composition of the electoral commissions at the time of the repeat parliamentary election was not, in the applicant party's view, independent and impartial and thus contravened Article 3 of Protocol No. 1.

3. *The Court's assessment*

100. The Court has often underlined the necessity to maintain the political neutrality of those civil servants, judges and other persons in State service who exercise public authority, so as to ensure that all citizens receive equal and fair treatment that is not vitiated by political considerations (see *Rekvényi v. Hungary* [GC], no. 25390/94, §§ 41 and 46, ECHR 1999-III; *Briķe v. Latvia* (dec.), no. 47135/99, 29 June 2000; and *Vogt v. Germany*, 26 September 1995, § 58, Series A no. 323).

101. As a corollary to the above principle, and recalling that the rights guaranteed by Article 3 of Protocol No. 1 are crucial to establishing and preserving the foundations of a meaningful democracy (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113), the Court finds it particularly important for an agency in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation.

102. The Court notes that the applicant party's complaint is mostly based on the arguments that the composition of and decision-making process within the electoral commissions as such amounted to a violation of Article 3 of Protocol No. 1.

103. Having examined the relevant electoral legislation of several Contracting States, the Court comes to the conclusion that there is no uniform system for the composition and functioning of electoral administrative bodies in Europe (see paragraphs 58-69 above). There is a diversity of possible choices in this area. Those choices vary in accordance with the historical and political factors specific to each State. The Court therefore considers that the Contracting States should indeed be granted a margin of appreciation in the sphere of organising their electoral administrations, as long as the chosen system provides for conditions which ensure the "free expression of the opinion of the people in the choice of their legislature" (see, *mutatis mutandis*, *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II).

104. However, while recognising the respondent State's latitude in organising its electoral administration, the Court must establish whether there were any specific acts of the electoral commissions which marred the applicant party's right to stand in the repeat parliamentary election of

28 March 2004. After all, it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been met (see *Mathieu-Mohin and Clerfayt*, cited above, § 52).

105. The Court observes that, pursuant to provisional Articles 128, 128(1) and 128(2) of the EC, five members out of the fifteen-member boards of the electoral commissions at every level, as well as their chairmen, were either directly or indirectly appointed by the President of Georgia. In addition, under Article 128 § 5, at least one member of those electoral commissions was a representative of the President's National Movement party, since the latter had won the local elections in Tbilisi in 2002 (paragraph 22 *in fine* above). Pro-presidential forces thus had a relative majority *vis-à-vis* the representatives of other political parties in electoral commissions at every level.

106. Although there can be no ideal or uniform system to guarantee checks and balances between the different State powers within a body of electoral administration, the Court considers that a proportion of seven members out of fifteen-member electoral commissions, including the chairmen who have the casting votes (Article 22 § 8 of the EC) and are appointed by the President of Georgia and his party, is particularly high in comparison to other legal orders in Europe (see also the opinion of the Venice Commission in this regard, paragraph 48 above).

107. Furthermore, so long as the presidential party – the National Movement – was simultaneously running in the repeat parliamentary election, the Court does not find it implausible that other candidate parties, including the applicant party, might have been placed in an unfavourable position by the presidential majority in the electoral administration. The Government's argument that, once appointed to office, the members of the electoral commissions had to quit their respective political parties or to suspend their membership, is not reassuring in this regard. The Court is not convinced that a party's representative to an electoral commission, whom that party has most likely nominated because of his or her loyalty to its values and discipline, would necessarily and immediately become an independent and impartially thinking civil servant just by virtue of filing a formal declaration to that end.

108. The Court further observes that, in contrast to the electoral commissions in the respondent State, in the systems of the Contracting States which it has examined there exist, in one form or another, guarantees against the appointment to electoral commissions of those persons who could reasonably be considered to be involved in an inherent conflict of interests. Moreover, in Bulgaria, Hungary, Moldova, Serbia and the United Kingdom, this incompatibility requirement directly applies to members of political parties or those organisations nominating candidates for election. In the latter two countries, no political party or coalition can obtain a majority within the electoral administration. Such incompatibility rules are aimed at

guaranteeing the electoral bodies' independence and impartiality (see paragraphs 68-69 above). Ultimately, the *raison d'être* of an electoral commission is to ensure the effective administration of free and fair polls in an impartial manner, which, in the Court's opinion, would be impossible to achieve if that commission becomes another forum for political struggle between election candidates.

109. The Court notes, however, that the applicant party did not submit any evidence that the presidential majority in the electoral commissions had misappropriated the votes cast in its favour or otherwise limited its rights and legitimate interests during the repeat parliamentary election. The applicant party's reference to the 28 March 2004 EOM Report is, in the Court's view, insufficient. Admittedly, this Report criticised the lack of political balance in the electoral commissions and noted some instances of the improper functioning thereof (see paragraph 50 above). However, nowhere did it specifically state that the applicant party's rights and interests were directly limited by the acts or omissions of the electoral commissions. The Court cannot find a violation of Article 3 of Protocol No. 1 solely on the basis of the allegation, no matter how plausible it is, that the system created possibilities for electoral fraud; instead, the applicant party should have submitted evidence of specific incidents of alleged violations.

110. With due regard to the above, the Court concludes that the contested composition of electoral commissions at all levels indeed lacked sufficient checks and balances against the President's power and that those commissions could hardly enjoy independence from the outside political pressure. However, in the absence of any proof of particular acts of abuse of power or electoral fraud committed within the electoral commissions to the applicant party's detriment, no breach of the latter's right to stand for election can be established.

111. There has accordingly been no violation of Article 3 of Protocol No. 1.

D. Exclusion of the Khulo and Kobuleti electoral districts from the nationwide vote tally

1. The Government's submissions

112. The Government submitted that, in the Khulo and Kobuleti electoral districts, the Ajarian authorities had falsified the results of the repeat parliamentary election of 28 March 2004. Consequently, on 2 April 2004 the CEC annulled the election results in those districts, discontinued the authority of the corresponding electoral commissions and commissioned a different group of electoral administrators for the purposes of holding new polls on 18 April 2004. However, the Ajarian authorities did not allow that

group to cross the administrative border of the Ajarian Autonomous Republic (“the AAR”) and, on the latter date, the polling stations failed to open.

113. The Government claimed that tensions between the central and local authorities at the material time had degenerated into an armed clash with “armed criminals serving Mr A. Abashidze [the Head of local authorities]”. Thus, Mr G. Chalagashvili, one of the Government’s representatives before the Court, claimed that he, as a member of the electoral group commissioned by the CEC to organise new polls in the Khulo and Kobuleti districts on 18 April 2004, had witnessed some one hundred armed persons opening fire at the group on the administrative border. According to the Government, those persons were later convicted of the offence of obstruction of the electoral process. However, they did not submit a copy of the verdict or any other material related to the relevant criminal proceedings. As sole evidence of the tense relations between the central and Ajarian authorities, the Government referred to the circumstances of the case of *Assanidze v. Georgia* ([GC], no. 71503/01, ECHR 2004-II).

114. The Government also asked the Court to pay particular attention to the political situation in Georgia at the material time. They submitted that, since the then Parliament had almost suspended its activity pending the repeat parliamentary election of 28 March 2004, any further delay in the finalisation of the countrywide election results would have caused public disorder and led to a collapse of the normal legislative process. Failure to finalise the election results on 18 April 2004 would have breached the principle of holding an election “at a reasonable interval” within the meaning of Article 3 of Protocol No. 1.

115. The Government further argued that the disfranchised population’s votes in the two Ajarian districts could be considered to be “wasted votes”, which is an unavoidable phenomenon in any democratic country. They considered that the exclusion of a certain part of the electorate from an election, “even if this part consists of several million voters”, did not block the emergence of political alternatives within society and thus did not interfere in the democratic processes of the State. Moreover, according to the Government, the repeat parliamentary election could legally be considered to have been held, even without counting the votes from the Khulo and Kobuleti districts, as more than one-third of the total number of registered voters had taken part (Article 105 § 3 of the EC). Mr Chalagashvili, as the Chairman of the CEC, further underlined that, since the exclusion of the Khulo and Kobuleti electoral districts from the vote tally was lawful, there was no need for the Government to show the Court any particular justification for that decision.

116. The Government submitted that, in any event, the applicant party had failed to substantiate its claim that it could have received sufficient

votes from those districts to enable it to overcome the 7% legal threshold. Referring to the relevant statistical data, the Government noted that, in the two previous elections held on 2 November 2003 and 28 March 2004, the applicant party had received only 703 and 600 votes respectively from the two Ajarian districts in question. Consequently, it was inconceivable that the applicant party would have received more than 16,000 votes – the number necessary to have reached the 7% threshold – during the third attempt on 18 April 2004.

2. The applicant party's submissions

117. The applicant party replied that Article 105 § 3 of the EC should not be interpreted as justifying disfranchisement merely because more than one-third of the total number of voters had been able to cast ballots. The applicant party further noted that, having ousted the local authorities and regained complete control over the Ajarian region on 6 May 2004, there had been nothing to prevent the central authorities from holding another repeat parliamentary election in the Khulo and Kobuleti districts. According to the applicant party, given that voters in those two districts were completely deprived of any opportunity to vote, the very essence of the right to free elections as guaranteed by Article 3 of Protocol No. 1 was impaired. This fact not only breached the principle of universal suffrage but also violated the applicant party's right to stand for election.

3. The Court's assessment

(a) General considerations

118. The Court notes that the countrywide repeat parliamentary election of 28 March 2004 was finalised by the vote tally of 18 April 2004 without the election having been held in Khulo and Kobuleti, two major electoral districts in the AAR. As a consequence, around 60,000 registered voters in those districts were unable to vote. This number represented approximately 2.5% of registered voters in the country as a whole (see paragraphs 26, 28 and 38 above).

119. The Court considers that the Khulo and Kobuleti voters' inability to participate in the repeat parliamentary election held under the proportional system has to be questioned under the principle of universal suffrage. It reiterates in this regard that exclusion of any groups or categories of the general population must be reconcilable with the underlying principles of Article 3 of Protocol No. 1, including that of universal suffrage (see, *mutatis mutandis*, *Aziz*, cited above, § 28). The unjustified departure from the latter principle risks undermining the democratic validity of the legislature thus elected and the laws which it promulgates (see *Hirst*, cited above, § 62).

120. The Court cannot base its reasoning on the Government's argument that the applicant party has failed to prove that it would have been able to receive from the Khulo and Kobuleti districts the number of votes sufficient to overcome the 7% legal threshold. It considers that an intention to vote for a specific party is essentially a thought confined to the *forum internum* of a voter and its existence cannot be proved or disproved until and unless it has manifested itself through the act of voting (see *Russian Conservative Party of Entrepreneurs and Others*, cited above, § 76). As to the Government's argument that the applicant party had not been a popular candidate in the Ajarian districts during the two previous polls, the Court notes that a voter's preference is not static but may evolve in time, influenced by political events and electoral campaigning. A sudden and sweeping change in voters' intentions is a well-documented political and social phenomenon (*ibid.*).

121. In any event, what is at stake in the present case is not the applicant party's right to win the repeat parliamentary election but its right to stand freely and effectively for it. The applicant party was entitled under Article 3 of Protocol No. 1 to rely on the electorate of Khulo and Kobuleti, irrespective of its chances to obtain a majority of their votes (see also in this regard paragraphs 73 and 74 above). Disfranchisement of voters, especially if it is an arbitrary act, can impede the effective exercise of an election candidate's right to stand for election.

122. The Court does not share the Government's view that the votes of the disfranchised electorate of Khulo and Kobuleti could be considered to be "wasted votes". The latter notion presupposes that, while all citizens must be given an equal chance to cast a ballot under any electoral system, no electoral system can guarantee that all the votes cast should necessarily have equal weight as regards the outcome of the election (see *Bompard v. France* (dec.), no. 44081/02, ECHR 2006-IV). In the present case, on the contrary, the very essence of the principle of equal treatment of all citizens in the exercise of their right to vote is at stake. Logically, one cannot argue about the legitimacy of "wasting" votes which have never been cast.

123. The Government further erred in claiming that, since the disfranchisement of Khulo and Kobuleti voters was allegedly compatible with domestic law, there is no need to justify it before the Court (see paragraph 115 *in fine* above). Although the Georgian State enjoys a wide margin of appreciation in the sphere of elections, it is always for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with (see *Mathieu-Mohin*, cited above, § 52). This is especially true when it is not merely an individual instance of a limitation on the right to vote or stand for election which is at stake, but when the State fails to remove impediments to maintaining the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage (see *Hirst*, cited above, § 62).

124. As to the Court's examination of the compliance of the impugned disfranchisement with the principles of Article 3 of Protocol No. 1, it must focus mostly on whether there was arbitrariness or a lack of proportionality between the restriction in question and the legitimate aim pursued by the respondent State. Given the concept of "implied limitations" under Article 3 of Protocol No. 1, the respondent States are always free to rely on any legitimate aim which could be proved to be compatible, in the particular circumstances of a case, with the principles of the rule of law and the general objectives of the Convention (see *Ždanoka*, cited above, § 115).

125. The Court must consequently examine whether, in the present case, the State authorities did everything that could reasonably have been expected of them in order to ensure the inclusion of Khulo and Kobuleti voters in the repeat parliamentary election prior to the final vote tally. The applicant party's argument that the respondent State could have held an election in those districts after the vote tally of 18 April 2004 is in this regard irrelevant, since neither Article 106 nor any other provision of the EC envisaged the possibility of holding a mid-term or other type of interim election under the proportional system once the countrywide elections had been finalised by the CEC (see paragraph 44 above).

(b) Annulment of the election results in the Khulo and Kobuleti electoral districts on 2 April 2004

126. In the Court's view, the exclusion of the Khulo and Kobuleti electorate from the repeat parliamentary election cannot be said to be a consequence only of the CEC's vote tally of 18 April 2004. Rather, the exclusion originated in the annulment of the election results for those two electoral districts by virtue of the CEC Ordinance of 2 April 2004 (see paragraph 26 above). Consequently, when examining the disfranchisement of those constituencies, the Court cannot neglect the manner in which the CEC adopted the Ordinance in question. In this regard, the Court will rely to a considerable extent on the 28 March 2004 EOM Report, which, submitted by the Government as part of their observations, was also endorsed by the applicant party as evidence (see paragraphs 50 and 98 above).

127. In line with the findings of the above-mentioned Report, the Court notes that the lawfulness of the CEC's decision to annul the election results in the Khulo and Kobuleti districts was questionable (see paragraph 53 above). While it was based solely on Article 105 §§ 12 and 13 of the EC, the latter provisions did not provide for the CEC's power to annul results in electoral districts. These provisions rather referred to the conditions in which the CEC could exercise its right to organise repeat polls and to resort to various investigative measures in reply to electoral complaints (see paragraph 44 above). The CEC Chairman's opinion is very important in this regard. According to the 28 March 2004 EOM Report (see paragraph 53 above):

“Prior to election day, the EOM [the Election Observation Mission] attempted to clarify with the CEC Chairman whether the CEC had the authority to cancel the DEC results. During these discussions, he [the CEC Chairman] indicated that it was certainly a questionable issue. While EC Article 105 § 13 grants the CEC the right to examine the PEC documentation, recount ballots and sum up results based on PEC protocols, the EC does not specifically grant the CEC the authority to annul the results in an entire district.”

128. The Court is particularly concerned by the fact that the CEC cancelled the electoral district results for Khulo and Kobuleti in their entirety without hearing testimony, investigating the circumstances in each precinct or establishing if the number of votes at the annulled polling stations was sufficient to meet the criteria outlined in Article 105 § 12 of the EC. The CEC did not even examine the electoral material. Elsewhere, where results were annulled, this was done by the DEC's or local courts, as prescribed by law (Articles 34 § 2 (f), 61 § 5, 62 and 63 §§ 1 and 4 of the EC and paragraphs 50 and 53 above).

129. This leads the Court to conclude that, by annulling the election results in the Khulo and Kobuleti electoral districts, the CEC not only apparently exceeded its authority but also acted in a manner which excluded the possibility of resorting to legal investigative measures and remedies.

130. The Court does not call into question the veracity of the Government's submission that irregularities took place at polling stations in Khulo and Kobuleti. Rather, the source of the Court's concern is that the CEC set aside the results for the electoral districts as a whole without a proper legal basis or the guarantees of due process, thus suggesting arbitrariness on the part of the electoral authorities (see, *mutatis mutandis*, *Babenko v. Ukraine* (dec.), no. 43476/98, 4 May 1999). The decision to annul those results and call for new polls appears to be inconsistent with the fact that major violations in other precincts did not result in the annulment of the results of entire electoral districts (see paragraph 53 above). The Court is not aware of any convincing explanation for the CEC's annulment decision, as the impugned Ordinance of 2 April 2004 contains no reasoning except for the reference to the nature of the voting irregularities alleged in the relevant electoral complaints (see paragraph 26 above). Nor did the respondent Government explain the reasons for which the CEC, without having examined the electoral material from each PEC and heard witnesses, came to the conclusion that all of the results provided by the Khulo and Kobuleti DEC's merited annulment. The CEC's choice to disregard the investigative measures envisaged by Article 105 § 13 – the opening of electoral packages and the recounting of ballots – and to annul the election results solely in view of allegations of voting irregularities (see paragraph 26 above), smacks of arbitrariness, in the Court's view.

(c) Failure to secure the repeat election in Khulo and Kobuleti and the vote tally of 18 April 2004

131. The Government's main argument is that the failure to hold elections in Khulo and Kobuleti on 18 April 2004 should be imputed solely to the Ajarian authorities which were responsible for escalating tensions in the region (see paragraphs 112-13 above). However, the Court notes that the Georgian State did not avail itself of the right of derogation under Article 15 of the Convention at the time of the alleged emergency situation in the AAR. This absence of a derogation suffices in itself for the Court to conclude that the respondent State cannot validly claim absolution from its obligations under Article 3 of Protocol No. 1.

132. Furthermore, in the landmark case of *Assanidze*, to which the Government themselves referred, the central authorities of the Georgian State were found by the Court to be strictly liable under the Convention for the conduct of the Ajarian authorities (see *Assanidze*, cited above, §§ 144-50). Consequently, even assuming that the failure to secure Khulo and Kobuleti voters' participation in the repeat parliamentary election lay fully within the power of the local authorities, the respondent State cannot be absolved from its responsibility under Article 3 of Protocol No. 1, read in conjunction with Article 1 of the Convention. The general duty imposed on the State by Article 1 of the Convention entails and requires the implementation of a national system capable of securing compliance with the Convention throughout the territory of the State for everyone (*ibid.*, § 147).

133. The malfunctioning of parts of the State machinery in Georgia, and the resultant lack of effective subordination between the central and Ajarian authorities, do not mean that the actual facts out of which the allegations of violations arose in the present case were not within the jurisdiction of the Georgian State (*ibid.*, § 143). In particular, the Court cannot discern from the material in its possession that the situation in the AAR at the relevant time was significantly different from that described in the *Assanidze* case. It is regrettable that, in making a far-reaching allegation that tensions between the central and local authorities had degenerated into an armed clash, the Government did not corroborate it with any material evidence (official reports, video materials, articles in the press, etc.). The Court is therefore unable to assess the significance of this submission in particular, or the relevant historical events in general. Furthermore, it is striking that, when the assertion was made that the armed individuals who attacked the electoral group had been convicted of obstructing the electoral process (see paragraph 113 above), no copies of the relevant criminal records were submitted to the Court for examination. The case file does not contain any report or other working document drawn up by the electoral group in question which could account for the events on the AAR administrative border.

134. The only evidence at the Court's disposal which gives an account of the tensions between the central and Ajarian authorities is the 28 March 2004 EOM Report. This Report discloses instances of intimidation committed by the Ajarian authorities against representatives of opposition parties, especially against President Saakashvili's supporters, preventing the latter from campaigning freely in the region. It further notes that the central authorities imposed, in reply, economic sanctions on the AAR and that some sort of agreement was reached between Mr A. Abashidze and President Saakashvili on the eve of the repeat parliamentary election of 28 March 2004. As to the subsequent developments in April 2004, which is more relevant to the issue at hand, the Report reads as follows:

"On 12 April, the CEC temporary groups were dispatched to Ajaria but they rapidly encountered active resistance. On 13-14 April, the temporary groups were forced to leave the Ajarian territory by crowds of people."

135. Acknowledging that the above-mentioned circumstances could hardly be conducive to a meaningful electoral process in Ajaria, the Court is nevertheless unable to conclude, on the sole basis of the scant information contained in the above Report, that the situation in the AAR at the time of the repeat polls of 18 April 2004 was distinguishable from the Court's findings in the *Assanidze* case, to the extent that the AAR could be considered as not falling within the jurisdiction of the Georgian State.

136. In sum, the evidence adduced by the respondent Government has not satisfied the Court that the Georgian State could be absolved from its responsibility under Article 3 of Protocol No. 1 with respect to the failure to conduct the polls in Khulo and Kobuleti on 18 April 2004.

137. The circumstances of the present case further disclose that, contrary to its positive obligations under Article 3 of Protocol No. 1 (see *Hirst*, cited above, § 57), the respondent State did not attempt any further action aimed at including the Khulo and Kobuleti voters in the countrywide election after the failure to open polling stations on 18 April 2004. On the contrary, the CEC suddenly decided to finalise the repeat parliamentary election results on the very same day. Such hastiness is inexplicable in the light of Article 64 § 1 of the EC, which apparently provided for a period of eighteen days for the finalisation of the election results (see paragraph 44 above).

138. Given the concept of implied limitations under Article 3 of Protocol No. 1, the Court could, in principle, accept the Government's argument that the finalisation of the election results on 18 April 2004 served the legitimate interest of securing the maintenance of the normal legislative process (see paragraph 114 above). However, the Government did not explain in what way the interim Parliament of 1999, which was recalled by the country's leadership in November 2003 to serve until such time as a new parliament was elected (see paragraph 14 above), was dysfunctional and unable to serve for a further limited period beyond 18 April 2004.

139. Against such vague arguments from the Government, the Court, taking into account the importance of the principle of universal suffrage, cannot accept the legitimate interest of having a new parliament elected “at a reasonable interval” as a sufficient justification for the respondent State’s inability or unwillingness to undertake further reasonable measures for the purpose of enfranchising 60,000 Ajarian voters after the failure to open the polling stations on 18 April 2004.

140. Finally, it should be noted that, following the above-mentioned failure, the CEC did not issue any act annulling the Ordinance of 2 April 2004 and officially cancelling the repeat election in the Khulo and Kobuleti districts (see also paragraph 53 above). In the Court’s view, Article 105 § 3 of the EC could not be substituted for the CEC’s formal decision in this regard. Had it been truly impossible to enforce the Ordinance of 2 April 2004, it would have been more compatible with the fundamental principles of the rule of law for the CEC to cancel the scheduled polls in the Khulo and Kobuleti districts in the form of a clear-cut, formal decision, by adducing relevant and sufficient justification for the disfranchisement of some 60,000 voters.

(d) Conclusion

141. In the light of the above considerations, the Court concludes that the CEC’s decision of 2 April 2004 to annul the election results in the Khulo and Kobuleti electoral districts was not made in a transparent and consistent manner. The CEC did not adduce relevant and sufficient reasons for its decision, nor did it provide adequate procedural safeguards against an abuse of power. Furthermore, without resorting to additional measures aimed at organising elections in the Khulo and Kobuleti districts after 18 April 2004, the CEC took a hasty decision to terminate the countrywide election without any valid justification. The exclusion of those two districts from the general election process was void of a number of rule of law requisites and resulted in a *de facto* disfranchisement of a significant section of the population (see, *mutatis mutandis*, *Matthews v. the United Kingdom* [GC], no. 24833/94, §§ 64-65, ECHR 1999-I).

142. There has accordingly been a violation of the applicant party’s right to stand for election under Article 3 of Protocol No. 1 on account of the *de facto* disfranchisement of the Khulo and Kobuleti voters.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

143. Relying on Article 14 of the Convention, the applicant party alleged that, as a result of the unfair electoral processes complained of under Article 3 of Protocol No. 1, it had been unable to enter Parliament and, thus, had been discriminated against on the basis of its political opinion. Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

144. The Court recalls that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols thereto, since it protects individuals, placed in similar situations, from any discrimination in the enjoyment of the rights set forth in those other provisions (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III).

145. In the light of all the material in its possession, the Court does not find any evidence which might arguably suggest that either the challenged electoral mechanisms – the system for voter registration and the composition of electoral commissions – or the events which took place in Khulo and Kobuleti were exclusively aimed at the applicant party and did not affect the other candidates standing for that election.

146. The Court thus finds that there has been no violation of Article 14 of the Convention, taken in conjunction with Article 3 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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. Pecuniary damage

148. The applicant party claimed 212,306.30 euros (EUR) in pecuniary damages. It submitted that such an amount would compensate for the expenses it had incurred in the course of its electoral campaigns for the regularly scheduled and repeat parliamentary elections in 2003-04. The amount claimed would also provide compensation for the salaries its members would have received had they been elected to Parliament. Lastly, this sum included funds which, under the relevant domestic law on the financing of political associations, were to be paid to the applicant party, in its capacity as a political party, from the State budget in 2007-08.

149. In reply, the Government noted that there was no causal link between the applicant party’s claims and the alleged violations.

150. The Court considers that the applicant party’s reference to the expenses incurred in the course of the regularly scheduled parliamentary

election of 2 November 2003 is irrelevant, as only the circumstances surrounding the repeat election of 28 March 2004 were at stake. As regards the repeat election, the Court reiterates that the present application was about the applicant party's right to stand for, rather than win it (see paragraph 121 above). It cannot be assumed that, had the Khulo and Kobuleti electorate voted, the applicant party would necessarily have entered Parliament. It is therefore impossible for the Court to speculate whether the applicant party's members would have received salaries as parliamentarians, or that the expenditure on its electoral campaign is to be considered as a pecuniary loss. Lastly, the Court does not see any connection between the funds allegedly unpaid from the State budget in 2007-08 and the violation found with respect to the repeat election of 28 March 2004.

151. In conclusion, the Court does not discern any causal link between the only violation found in the present case and the pecuniary damage claimed. It accordingly dismisses the applicant party's claims under this head.

B. Non-pecuniary damage

152. With respect to non-pecuniary damage, the applicant party claimed EUR 2,000,000. It submitted that it had suffered severe harassment, repression and discrimination on account of its political opinions. The applicant party also contended that the above amount would compensate for the fact that it had been prevented from entering Parliament, taking part in political life and enjoying democracy.

153. The Government submitted that the applicant party had failed to prove any instances of discrimination on account of its political opinions.

154. The Court notes that the applicant party's claim for non-pecuniary damage is mostly based on the allegations of discrimination and thus is irrelevant to the only violation found in the present case under Article 3 of Protocol No. 1.

155. The Court does not rule out that the applicant party, as a legal entity (see *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, § 102, 11 January 2007, and *Kommersant Moldovy v. Moldova*, no. 41827/02, § 52, 9 January 2007), might have suffered some non-pecuniary damage on account of the disfranchisement of the Khulo and Kobuleti voters. However, the Court considers that the nature of the violation found, namely the arbitrary departure from the principle of universal suffrage, constitutes sufficient just satisfaction for the breach of the applicant party's right to stand for election under Article 3 of Protocol No. 1.

C. Costs and expenses

1. *Domestic proceedings*

156. The applicant party claimed EUR 1,832 in reimbursement of the court fees paid for the domestic proceedings bearing on various electoral disputes, mostly unrelated to the present case. In support of its claims, the applicant party submitted copies of numerous court decisions ordering it to pay fees.

157. The Government submitted that the above claim was unsubstantiated.

158. The Court reiterates that, where a violation of the Convention has been found, it may award the applicant the costs and the expenses incurred before the national courts for the prevention or redress of the violation (see, among other authorities, *Papon v. France*, no. 54210/00, § 115, ECHR 2002-VII).

159. In the instant case, the violation found relates to the disfranchisement of the Khulo and Kobuleti voters. As disclosed by the circumstances of the case, the only relevant set of proceedings which could arguably have prevented or remedied that violation was that brought by the applicant party before the Supreme Court on 20 April 2004 (see paragraphs 31 and 38 above). For these, there is evidence of only one order issued by the Supreme Court requiring the applicant party to pay 100 Georgian laris (approximately EUR 43) in court fees.

160. Consequently, the Court awards the applicant party EUR 43, dismissing the remainder of its claim for costs and expenses incurred in the domestic proceedings.

2. *Proceedings before the Court*

161. Ms J. Rinceanu submitted to the Court a legal services contract of 28 August 2007, signed by herself and the Chairman of the applicant party, Mr Sh. Natelashvili. According to the terms of this contract, the applicant party was to pay Ms Rinceanu, upon signature, EUR 4,165, a sum which included 19% value-added tax (VAT) in accordance with German tax law, for “all types of activities” conducted by the lawyer in the interests of the client. Ms J. Rinceanu also submitted a copy of an invoice dated 3 September 2007, requesting the applicant party to pay her EUR 21,420 for its representation before the Court, which had involved 61.6 hours of work on the case at a rate of EUR 300 per hour, including 19% VAT.

162. The Government commented that, in view of the short period during which the applicant party had been represented by Ms J. Rinceanu (see paragraph 2 above), the latter sum was unreasonable. They submitted that a rate of EUR 300 per hour for legal services was exorbitant.

163. The Court notes that, since no claim was made in respect of the applicant party's other representatives (see paragraph 2 above), there is no call to make any award for their involvement in the proceedings.

164. As to the applicant party's representation by Ms J. Rinceanu, the Court first recalls that it is not bound by domestic fee scales and practices (see *Assanidze v. Georgia* [GC], no. 71503/01, § 206, ECHR 2004-II). Moreover, the second sum of EUR 21,420 has not been shown to have been reasonably or necessarily incurred on behalf of the applicant party (see, among many authorities, *Assanidze*, cited above, § 206; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 77, Series A no. 316-B; and *Malama v. Greece* (just satisfaction), no. 43622/98, § 17, 18 April 2002). This part of the claim cannot therefore be accepted by the Court in full.

165. Ruling on an equitable basis, the Court awards the applicant party the sum of EUR 10,000 in respect of its representation by Ms J. Rinceanu before the Court.

D. Default interest

166. 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

1. *Holds* unanimously that the applicant party may claim to be a "victim" under Article 34 of the Convention of alleged violations of Article 3 of Protocol No. 1;
2. *Holds* unanimously that there has been no violation of Article 3 of Protocol No. 1 on account of the introduction on 27 February 2004 of a new system of voter registration for the repeat parliamentary election of 28 March 2004;
3. *Holds* by five votes to two that there has been no violation of Article 3 of Protocol No. 1 on account of the composition of the electoral commissions at the material time;
4. *Holds* unanimously that there has been a violation of Article 3 of Protocol No. 1 on account of the disfranchisement of the Khulo and Kobuleti voters;

5. *Holds* unanimously that there has been no violation of Article 14 of the Convention, taken in conjunction with Article 3 of Protocol No. 1;
6. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant party;
7. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant party, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,043 (ten thousand and forty-three euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant party;
 - (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;
8. *Dismisses* unanimously the remainder of the applicant party's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
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) partly dissenting opinion of Judge Mularoni;
- (b) partly dissenting opinion of Judge Popović.

F.T.
S.D.

PARTLY DISSENTING OPINION OF JUDGE MULARONI

I am in full agreement with the majority as to the reasoning and the conclusions concerning the applicant party's victim status and the first complaint raised by it, namely the voter registration system.

Consequently, this opinion addresses the two other complaints, namely the composition of the electoral commissions and the exclusion of the Khulo and Kobuleti electoral districts from the countrywide vote tally.

A. Composition of the electoral commissions

As the majority recognises, there is no uniform system for the composition and functioning of electoral administrative bodies in Europe (see paragraphs 58-69 and 103 of the judgment). Accordingly, Contracting States enjoy a wide margin of appreciation in this field, so long as the selected system does not hinder the free expression of the opinion of the people in the choice of the legislature.

The crucial element for the Court's assessment is, consequently, whether or not the shortcomings found are significant enough to amount to a breach of Article 3 of Protocol No. 1.

Like the majority, I observe that the total number of members of the electoral commissions who were to be appointed by the President of Georgia was particularly high in comparison to other legal orders in Europe (see paragraphs 105-06 of the judgment). However, this element alone would not suffice for me to find a violation of Article 3 of Protocol No. 1, since:

- members appointed by the President of Georgia did not represent the majority inside the commissions; and
- I consider that the Court's task is to examine the specific circumstances of the individual case lodged with the Court, and not the theoretical issues.

Having said that, unlike the majority I consider that there was a breach of Article 3 of Protocol No. 1 in the present case. I do not share the view that the applicant party's reference to the OSCE/ODIHR Election Observation Mission Report on the Repeat Parliamentary Election of 28 March 2004 (see paragraphs 50-53 of the judgment) was insufficient.

That Report, which was submitted by the Government as part of their observations, contains, *inter alia*, the following passages:

“The CEC [the Central Electoral Commission] administered these elections in a credible and professional manner. However, at times the CEC appeared to exceed its authority, for example, by extending legal deadlines or modifying other legal provisions through decrees. Several aspects of the election process were improved over previous elections, although some CEC decisions in the post-election period cast doubts about its impartiality ...

The lack of political balance on election commissions remained a source of concern. Some DEC [District Electoral Commissions] and PEC [Precinct Electoral Commissions] failed to maintain appropriate distance from the ruling parties, and some local authorities interfered in the work of lower-level election commissions. President Mikheil Saakashvili's offer to reduce the number of his appointees on the DEC and PEC from five to three addressed some of these concerns. However, these changes came late in the electoral process and should have been extended to the CEC.

...

The tabulation of results at district level was marred by irregularities in a number of DEC. In some cases, election material was delivered unsealed or inadequately secured, protocols were completed or changed at the DEC level, and in at least one case, the DEC members 'negotiated' the results. The handling of election-related complaints at some DEC was also inadequate.

An analysis of the PEC results made available by the CEC showed a number of anomalous or implausible results in a significant minority of districts. Such anomalies included: a rapid increase in voter turnout during the last three hours of voting; an implausible voter turnout, in some cases exceeding 100%, and sometimes coupled with a share of the vote for the ruling parties in excess of 95%; and instances of an unusually high percentage of invalid votes.

A total of fifty-two polling stations were invalidated by the DEC due to irregularities. The CEC cancelled the results in two districts in Ajaria (Khulo and Kobuleti) and ordered repeat elections for 18 April, which did not take place due to security reasons. The CEC's decision to cancel the results and repeat elections in entire districts appeared to be based on questionable legal arguments. ...

In fact, the CEC simply cancelled the entire district results without hearing testimony or investigating the circumstances at each PEC or establishing with any certainty if the number of votes at the annulled polling stations was sufficient to meet the criteria outlined in Article 105 § 12. Furthermore, the CEC did not examine the electoral material. Elsewhere, where results were annulled this was done by DEC or local courts.

Notwithstanding the fact that violations took place in Khulo and Kobuleti districts, the decision to annul their results and call a repeat polling appeared inconsistent with the fact that major violations in other districts did not result in the annulling of DEC results there. ..."

This is more than enough for me to conclude that Article 3 of Protocol No. 1 was breached in this respect.

B. Exclusion of the Khulo and Kobuleti electoral districts from the countrywide vote tally of 18 April 2004

Here, I share the conclusion of the majority that there was a breach of Article 3 of Protocol No. 1. However, I come to this conclusion for reasons which partly differ from those of my distinguished colleagues.

I start by saying that my analysis will be limited to the failure to secure a repeat election in the Khulo and Kobuleti electoral districts in the vote tally of 18 April 2004.

I do not share the majority's approach of examining the annulment of the election results in these districts by virtue of the CEC Ordinance of 2 April 2004 (see paragraphs 126-30 of the judgment). I consider that this aspect is outside the scope of our examination, the applicant having never raised it before our Court (see its complaints in paragraph 70 above) or the domestic courts, for a very simple and understandable reason: in the repeat election of 28 March 2004 the applicant party did not reach the 7% threshold necessary to enter Parliament. It was consequently very much interested in having that election repeated.

Since the role of our Court is to examine the complaints raised by applicants, I do not see any convincing reason for examining *ex officio* an issue that has been thoroughly investigated and criticised by other international bodies.

As to the failure of the respondent State to secure repeat elections in Khulo and Kobuleti, I would make the following observations.

The Government recognised the failure in issue, but considered that it should be imputed solely to the Ajarian authorities (see paragraphs 112-13 and 131 of the judgment).

The existence of tensions between the central and Ajarian authorities on the eve of the repeat parliamentary election of 18 March and 18 April 2004 were confirmed by the above-mentioned OSCE/ODIHR Election Observation Mission Report (see paragraphs 50-53 of the judgment). That Report also made clear the difficulties encountered during the pre-election period in Ajaria, where only a late and very limited campaign could take place and no freedom of expression was enjoyed by the media.

I have consequently no difficulty in accepting the respondent Government's argument that the situation was difficult and dangerous and that the Ajarian authorities bear a great responsibility for what happened.

However, the fact remains that no election took place in those two electoral districts.

I observe that no derogation was notified by the respondent Government to the Secretary General of the Council of Europe under Article 15 of the Convention. This represents the only way for Contracting States validly to derogate from their obligations under the Convention and its Protocols, and is accompanied by a strict verification by the Council of Europe and the Convention bodies of the legality, necessity and proportionality of the adopted measure.

In these circumstances, I need no other reason to conclude that there was a breach of Article 3 of Protocol No. 1 in this respect also.

PARTLY DISSENTING OPINION OF JUDGE POPOVIĆ

I subscribe to Judge Mularoni's dissenting opinion in its part A, concerning the composition of the electoral commissions.