IN THE NAME OF THE RUSSIAN FEDERATION

The Constitutional Court of the Russian Federation

Judgment

of 19 April 2016 No. 12-П/2016

in the case concerning the resolution of the question of possibility to execute the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia* in accordance with the Constitution of the Russian Federation in respect to the request of the Ministry of Justice of the Russian Federation

The Constitutional Court of the Russian Federation composed of the President V.D. Zorkin, Judges K.V. Aranovsky, A.I. Boitsov, N.S. Bondar, G.A. Gadzhiev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, S.D. Knyazev, A.N. Kokotov, L.O. Krasavchikova, S.P. Mavrin, N.V.Melnikov, Yu.D. Rudkin, O.S. Khokhryakova, V.G. Yaroslavtsev,

with participation of the representative of the Ministry of Justice of the Russian Federation – Deputy Minister of Justice of the Russian Federation G.O. Matyushkin,

guided by Article 125 of the Constitution of the Russian Federation, Item 3^2 of Section 1, Sections 3 and 4 of Article 3, Articles 36, 74, 104^1, 104^2, 104^3 and 104^4 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open session considered the case concerning the resolution of the question of possibility to execute the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia* in accordance with the Constitution of the Russian Federation.

The reason for the consideration of the case was the request of the Ministry of Justice of the Russian Federation. The ground for the consideration of the case was the discovered uncertainty in the question of the possibility to execute the Judgment of the European Court of Human Rights of 4 July 2013 in the case

of *Anchugov and Gladkov v. Russia* in accordance with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S.D. Knyazev, statements of the representative of the Ministry of Justice of the Russian Federation as a party having petitioned the Constitutional Court of the Russian Federation with the request, interventions by those invited to the hearing S.B. Anchugov, representatives of V.M. Gladkov lawyers S.V. Kleshchov and V.V. Shukhardin, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F. Vyatkin, Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I. Alexandrov, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V. Krotov, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation M.Yu. Barshchevsky, Plenipotentiary Representative of the Prosecutor General of the Russian Federation T.A. Vasilyeva, as well as representatives: M.V. Grishina from the Central Electoral Commission of the Russian Federation, I.G. Shablinsky from the Presidential Council on Development of Civil Society and Human Rights, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

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

1. According to Article 32 (Section 3) of the Constitution of the Russian Federation citizens who are recognized as incapable by a court and citizens who are kept in places of deprivation of liberty (“imprisonment”) under a court sentence shall not have the right to elect and be elected. This constitutional prescription is reproduced in Item 3 of Article 4 of the Federal Law of 12 June 2002 No. 67-ФЗ “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, Item 4 of

Article 3 of the Federal Law of 10 January 2003 No. 19-ФЗ "On Elections of the President of the Russian Federation" and Section 4 of Article 5 of the Federal Law of 18 May 2005 No. 51-ФЗ "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation".

Article 3 "Right to Free Elections" of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms provides that the High Contracting Parties (States – Parties to the Convention) 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.

The European Court of Human Rights in the Judgment of 4 July 2013 (final as of 9 December 2013) in the case of *Anchugov and Gladkov v. Russia* (applications nos. 11157/04 and 15162/05) arrived at a conclusion that a restriction on electoral rights of citizens who are kept in places of deprivation of liberty under a court sentence, envisaged under Article 32 (Section 3) of the Constitution, violated the subjective right to take part in elections ensured by Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

In this connection the Ministry of Justice of the Russian Federation as a federal body of executive power invested with the power in the field of ensuring of the activity to protect interests of the Russian Federation in consideration in the European Court of Human Rights of complaints lodged against Russia on the ground of the Convention for the Protection of Human Rights and Fundamental Freedoms, assuming that the Judgment in the case of *Anchugov and Gladkov v. Russia* in the part obliging Russia to take measures for its execution is based on Article 3 of Protocol No.1 to the Convention in the interpretation leading to its divergence from Article 32 (Section 3) of the Constitution of the Russian Federation, petitioned the Constitutional Court of the Russian Federation in the procedure of Articles 104^1 and 104^2 of the Federal Constitutional Law "On the

Constitutional Court of the Russian Federation" with the request to resolve the question of possibility to execute this Judgment.

1.1 The case of *Anchugov and Gladkov v. Russia* was initiated on the basis of two applications lodged with the European Court of Human Rights by citizens of the Russian Federation – S.B. Anchugov, who for murder, thefts and swindling was sentenced to death penalty, commuted by court of cassation instance to deprivation of liberty for the term of 15 years, and V.M. Gladkov, who for murder, robbery, participation in the organized criminal group and putting up resistance to staff-members of law-enforcement bodies was also sentenced to death penalty, subsequently commuted to deprivation of liberty for the term of 15 years.

After entry of the rendered sentences into legal force the petitioners, as deprived of the active electoral right on the basis of Article 32 (Section 3) of the Constitution of the Russian Federation and federal legislation on elections reproducing its provisions, were refused participation in voting at elections of deputies of the State Duma held on 7 December 2003 and 2 December 2007 (as well as supplementary elections held on 5 December 2004) and elections of the President of the Russian Federation held on 26 March 2000, 14 March 2004 and 2 March 2008, which served as the reason for their application to the European Court of Human Rights with complaints against violation by the Russian Federation of the right to free elections, recognized in Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Rendering the Judgment in the case of *Anchugov and Gladkov v. Russia*, the European Court of Human Rights proceeded from an assumption that there was no place under the Convention system for automatic disenfranchisement based purely on an individual's status as a convicted prisoner, and that the principle of proportionality (and, in broader sense, of restriction of electoral rights of convicted persons) required a discernible and sufficient link between

the sanction and the conduct of the individual concerned, and specific circumstances of a case, hence, the severe measure of disenfranchisement must not be resorted to lightly (paragraph 97).

Having accepted that the measure under its examination pursued the aims of enhancing civic responsibility and respect for the rule of law and ensuring the proper functioning and preservation of civil society and the democratic regime, and that those aims could not, as such, be excluded as untenable or incompatible with the provisions of Article 3 of Protocol No. 1 (paragraph 102), the European Court of Human Rights did not accept the arguments of the Government of the Russian Federation regarding the proportionality of the restriction in question, considering it as being excessively broad. Having rejected the argument that only those who had been convicted of criminal offences sufficiently serious to warrant an immediate custodial sentence were disenfranchised, the Court noted that the Government of the Russian Federation did not indicate any figures to illustrate that assertion. In the opinion of the European Court of Human Rights, blanket ban on voting rights, even though a large category of persons – those in detention during judicial proceedings – retain their right to vote, nonetheless concerns a wide range of offenders and sentences, ranging from offences of the utmost seriousness to relatively minor offences; moreover, the Government of the Russian Federation provided no evidence that, when deciding whether to impose custodial sentence, Russian courts took into account the fact that such a sentence would involve the disenfranchisement of the offender concerned (paragraphs 104-106).

Having emphasized that its considerations were only pertinent for the purpose of appraisal of the Russian Government's relevant argument, and were not to be regarded as establishing any general principles, the European Court of Human Rights reiterated its opinion expressed in the Judgment in the case of *Scoppola v. Italy (no. 3)* rendered on 22 May 2012 according to which the removal of the right to vote without any judicial decision did not, in itself, give

rise to a violation of Article 3 of Protocol No. 1, while with a view to securing the rights guaranteed by Article 3 of Protocol No. 1, the Contracting States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied in order to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction (paragraphs 102 and 104). The Russian Government's argument that *Anchugov and Gladkov* case was distinguishable from similar cases against other States, as in the Russian Federation a provision imposing a voting ban on convicted prisoners was laid down in the Constitution adopted following a nationwide vote – rather than in a law enacted by a parliament, had also been dismissed by the European Court of Human Rights which opined that no legal acts, regardless of their internal status, of States Parties to the Convention may be excluded from scrutiny under the Convention, therefore, the direct provision of that ban in the Constitution, notwithstanding a wide margin of appreciation in dealing with relevant matters, could not justify the indiscriminate and disproportionate restriction of the active voting right of respective citizens (paragraph 108).

As to the execution of the Judgment, the European Court of Human Rights underscored that in view of a particularly complex procedure of amending the Constitution of the Russian Federation, it was up to the Russian Government to choose the possible means to ensure the compatibility of existing restrictive measures with Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms including by interpreting Article 32 (Section 3) of the Constitution of the Russian Federation allowing to avoid a conflict between them, or through some form of political process (paragraph 111). At the same time the European Court of Human Rights dismissed the applicants' claim for monetary compensation holding that the finding of a

violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by them (paragraph 122).

1.2 The Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation is an integral part of its legal system, and therefore, the State is obliged to execute a judgment of the European Court of Human Rights, passed on the basis of the provisions of the Convention on a complaint against Russia with respect to persons participating in the case and within the framework of a specific subject-matter of a dispute; in this case realization of measures envisaged by the judgment of the European Court of Human Rights – both of individual and general character – must be carried out in accordance with Article 15 (Section 4) of the Constitution of the Russian Federation also on the basis of recognition of such judgment as an integral part of Russia's legal system.

At the same time, the interaction of the European conventional and the Russian constitutional legal orders is impossible in the conditions of subordination, so far as only a dialogue between different legal systems is a basis of their appropriate balance, and the effectiveness of norms of the Convention for the Protection of Human Rights and Fundamental Freedoms in the Russian legal order in many respects depends on the respect of the European Court of Human Rights for the national constitutional identity; recognizing the fundamental significance of the European system of the protection of human and civil rights and freedoms, judgments of the European Court of Human Rights being part of it, the Constitutional Court of the Russian Federation is ready to look for a lawful compromise for the sake of maintaining this system, reserving the determination of the degree of its readiness for it, so far as it is the Constitution of the Russian Federation which outlines the bounds of compromise in this issue.

It follows from the adduced legal position, expounded in the Judgment of the Constitutional Court of the Russian Federation of 14 July 2015 No. 21-П,

that the Constitutional Court of the Russian Federation as the last instance of resolving, within the framework of the operating constitutional regulation, of the question of the possibility to execute judgments of the European Court of Human Rights as the inter-State body for the protection of human rights and freedoms must, in accordance with international obligations of Russia, find reasonable balance in carrying out this power, so that the decision taken by it should, on the one hand, answer the letter and spirit of a judgment of the European Court of Human Rights, and on the other – not come into conflict with the fundamental principles of the constitutional order of the Russian Federation and legal regulation of human and civil rights and freedoms established by the Constitution of the Russian Federation.

In this connection, the Constitutional Court of the Russian Federation deems it necessary to note that the decisions passed by it on this issue earlier predetermine no conclusion on the possibility or impossibility to execute on the whole in accordance with the Constitution of the Russian Federation the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia*.

1.3 Thus, bearing in mind the prescriptions of Item 3^2 of Section 1 of Article 3, Articles 104^1, 104^2, 104^3 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case is the question of the possibility to execute the Judgment of the European Court of Human Right of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia*, passed on the basis of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights in accordance with the Constitution of the Russian Federation, including its Article 32 (Section 3).

2. According to the Constitution of the Russian Federation, in Russia as a democratic law-governed State (Article 1, Section 1) free elections side by side

with a referendum are the supreme direct expression of the power of the people (Article 3, Section 3); citizens of the Russian Federation have the right to participate in managing State affairs both directly and through their representatives (Article 32, Section 1), including the right to elect and be elected to State government bodies and local self-government bodies, as well as to participate in referenda (Article 32, Section 2).

As follows from the legal position formulated by the Constitutional Court of the Russian Federation in the Judgment of 10 October 2013 No. 20-П, in order to be stable legal democracy needs effective legal mechanisms able to guard it, apart from other things, against abuses and criminalization of public authority, whose legitimacy in many respects leans on confidence of the society. Creating such legal mechanisms, the State – lest there arise doubts about lawfulness and disinterestedness of actions of citizens participating in managing its affairs both directly and through their representatives, – is entitled to use certain restrictions of active and passive electoral rights for the achievement of these goals.

The possibility of restrictions of the right to participate in elections, including the right to vote, follows from the constitutional nature of electoral rights, which embodies the unity of subjective electoral powers of a citizen and common (collective) interest in forming legitimate bodies of people's representation on the basis of the principle of free elections. Proceeding from this, the Constitution of the Russian Federation, its Article 32 (Section 3) directly fixes that citizens who are kept in places of deprivation of liberty under a court sentence shall not have the right to elect and be elected. This restriction in view of its particular significance has been singled out by the constitutional legislator as a separate case of restriction of the right to elect and be elected guaranteed by Article 32 (Sections 1 and 2) of the Constitution of the Russian Federation.

Besides, by virtue of Articles 17 (Section 3) and 55 (Section 3) of the Constitution of the Russian Federation the federal legislator is entitled, guided by principles of validity and commensurateness (proportionality), to provide for other restrictive conditions of carrying out electoral rights – to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people and for ensuring the defense of the country and the security of the State. The conditions (restrictions) of this kind may also be dictated by the need to ensure forming legitimate bodies of people's representation, maintenance of public legal order and minimization of the risks of criminalization of electoral relations.

Neither do international treaties of the Russian Federation, which according to Article 15 (Section 4) of the Constitution of the Russian Federation make up an integral part of its legal system, exclude the possibility of a lawful restriction of electoral rights. For instance, in accordance with Article 25 (b) of the International Covenant on Civil and Political Rights every citizen shall have the right and the opportunity, without any distinctions and without unreasonable restrictions to vote and to be elected at genuine periodic elections which shall be held by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors. Appraising the significance of that norm of international law, the Human Rights Committee remarked that the grounds for deprivation of citizens of their right to vote should be objective and reasonable; if conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence; persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote (paragraph 14, General Comment No. 25 [1996] to Article 25 of the International Covenant on Civil and Political Rights).

Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, while committing States Parties to the

Convention 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, does not in and of itself envision admissibility of any restrictions in the matter that it regulates. However, the European Court of Human Rights in its relevant case-law has consistently adhered to the concept of "implied restrictions" according to which rights enshrined in that Article were not absolute and provided for a certain, though quite broad, margin of appreciation in their national regulation by the States Parties to the Convention.

In the opinion of the European Court of Human Rights there may be numerous ways of organizing and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each State to mould into its own democratic vision; at the same time States Parties to the Convention must guarantee universal suffrage as a fundamental principle of modern democracy, while any restriction, without interfering with the very essence of the right to free elections and depriving them of their effectiveness, should pursue a legitimate aim and be proportionate thereto (*Mathieu-Mohin and Clerfayt v. Belgium*, Judgment of 2 March 1987; *Gitonas and Others v. Greece*, Judgment of 1 July 1997; *Podkolzina v. Latvia*, Judgment of 9 April 2002; *Hirst v. the United Kingdom (no. 2)*, Judgment of 6 October 2005; *Scoppola v. Italy (no. 3)*, Judgment of 22 May 2012, *et al*.).

3. With respect to restriction of electoral rights of individuals sentenced to deprivation of liberty the European Court of Human Rights employs two complementary approaches – discretionary and legal.

The first one was evident in *Hirst v. the United Kingdom (no. 2)*, Judgment of 6 October 2005. Having heard the case, the European Court of Human Rights arrived at the following conclusions: the prohibition challenged by the applicant applied to a broad range of offenses (from relatively minor misdemeanors to exceptionally grave crimes) and penalties (from one day to life

imprisonment); the legislation of the United Kingdom that deprived all convicted prisoners in prison of their right to vote was applied automatically and indiscriminately, that is irrespective of the length of the sentence or the nature and gravity of the offence, and irrespective of personal circumstances, therefore it was incompatible with Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (paragraphs 32, 71, 77 and 82). Proceeding from the assumption that the principle of proportionality required a discernible and sufficient link between the sanction, circumstances of a specific case, and the conduct of the individual concerned, the European Court of Human Rights made a reference, as an argument in that case, to the recommendation of the European Commission for Democracy through Law (the Venice Commission) that the withdrawal of political rights should only be carried out by judicial decision (subparagraph "d", paragraph 1.1 of the Code of Good Practice in Electoral Matters, 2002) because, as in other contexts, an independent court, applying an adversarial procedure, provided a strong safeguard against arbitrariness. That legal position was reaffirmed by the European Court of Human Rights in *Frodl v. Austria*, Judgment of 8 April 2010 and *Greens and M.T. v. the United Kingdom*, Judgment of 23 November 2010 whereby the Court stated that disenfranchisement of a convicted (imprisoned) person should be decided individually by a court.

Accordingly, the European Court of Human Rights identified violations of the Convention for the Protection of Human Rights and Fundamental Freedoms in that restrictions of electoral rights in those cases, firstly, embraced an excessively broad range of criminal offenses, including lesser felonies; secondly, they were imposed upon convicted (imprisoned) persons automatically and indiscriminately, irrespective of the length of the sentence or the nature and gravity of the offence, or specific circumstances; thirdly, they were not based on a discretionary law-applying decision establishing a link

between the need of disenfranchisement and the circumstances of a specific case.

Consequently the European Court of Human Rights, as it refined approaches to dealing with the matter, recognized as admissible the restriction of electoral rights of convicted persons – subject to it being proportionate and differentiated – not only under a discretionary court decision, but also by other equivalent means, thereby avoiding a possible reproach for and arbitrary interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms that crosses the thin line between interpretation of norms of law and their supplementation, the latter being at odds both with the subsidiary role of that international judicial body, and the principle of national State sovereignty.

So the Grand Chamber of the European Court of Human Rights recognized in *Scoppola v. Italy (no. 3)*, Judgment of 22 May 2012 that the Italian legal provisions defining the circumstances in which individuals may be deprived of the right to vote showed the legislature's concern to adjust the application of the measure to the particular circumstances of the case in hand, taking into account such factors as the gravity of the offence committed and the conduct of the offender; such restrictions would not necessarily be automatic, general and indiscriminate simply because they were not ordered by a judge; the circumstances in which the right to vote is forfeited may be clarified in the law, making its application conditional on such factors as the gravity of the offence committed; the deprivation of the right to vote absent a judicial decision would not, in and of itself, result in a violation of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (paragraphs 106, 108 and 110).

Based on the aforementioned arguments, the European Court of Human Rights in the case of *Scoppola v. Italy (no. 3)* did not find violations of the requirements of the Convention for the Protection of Human Rights and

Fundamental Freedoms regarding the free expression of the opinion of the people in the choice of the legislature in that individuals convicted for serious criminal offences were deprived of voting rights not only under a judicial decision, but also based on criteria established by a legislative act, in particular with respect to crimes committed against the State or justice, as well as offenses where the sentence was 3 years or more. In doing so the European Court of Human Rights in fact augmented the discretionary approach to the matter by legal approach.

In *Anchugov and Gladkov* Judgment the European Court of Human Rights reiterated that removal of the right to vote without any *ad hoc* judicial decision did not, in itself, give rise to a violation of Article 3 of Protocol No. 1, and that with a view to securing the rights guaranteed by Article 3 of Protocol No. 1, the Contracting States may decide either to leave it to the courts to determine the proportionality of a measure restricting convicted (imprisoned) persons' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it will be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction (paragraph 107).

4. The resolution of the question of the possibility to execute the Judgment of the European Court of Human Rights in the case of *Anchugov and Gladkov v. Russia* on the basis of the principle of proportionality, including by means of fulfilment of the obligation addressed to Russia to ensure differentiated restriction of the active electoral right of citizens kept in places of deprivation of liberty under a court sentence, requires elucidation of the true meaning and significance of normative content of Article 32 (Section 3) of the Constitution of the Russian Federation, *i.e.* contemplates analysis of this constitutional norm – both of its own literal meaning and in its interconnection with other constitutional norms and legislative acts concretizing it.

4.1 Normative prescription, according to which citizens who are kept in places of deprivation of liberty under a court sentence do not have the right to elect and be elected, has been introduced into Russia's legal system directly by the Constitution of the Russian Federation, its Article 32 (Section 3), and the federal legislation on elections only reproduces it. Accordingly, operation of the ban on the realization of active electoral right with respect to these citizens is limited by terms of the real serving of criminal penalty in the form of deprivation of liberty established by a court sentence, and indefinite (life) refusal of exercise the right to elect may take place only if life imprisonment has been prescribed by court with an indispensable reservation about the possibility in certain cases to release a person from serving sentence provided for by the criminal law.

The formulation "citizens who are kept in places of deprivation of liberty ("imprisonment") under a court sentence shall not have the right to elect and be elected" from the linguistic (grammatical) point of view represents an imperative ban, meaning with all certainty that all those convicted serving sentence in places of deprivation of liberty have no electoral rights with no exceptions. The attempts to interpret the respective provision of Article 32 (Section 3) of the Constitution of the Russian Federation as allowing the federal legislator to restrict electoral rights not of all citizens kept in places of deprivation of liberty, but only of those sentenced to deprivation of liberty for the commission of grave crimes or, proceeding from the principle of universality of suffrage, to turn down this ban at all do not accord with the indicated constitutional imperative, unconditionally extending to all convicted persons serving penalty in places of deprivation of liberty under a court sentence.

Article 32 has been included in Chapter 2 "Human and Civil Rights and Freedoms" of the Constitution of the Russian Federation, the ban established by it belongs to the fundamental principles of the legal status of the individual in the Russian Federation and may not be repealed otherwise than in a special

procedure, established for the adoption of the new Constitution of the Russian Federation, *i.e.* by the Constitutional Assembly or by referendum (Articles 64, 134 and 135 of the Constitution of the Russian Federation).

Besides, within the meaning of Article 16 (Section 2) of the Constitution of the Russian Federation, according to which no other provisions of the Constitution of the Russian Federation may conflict with the fundamental principles of the constitutional order of the Russian Federation, all its provisions on the whole constitute a non-contradictory system unity. Accordingly, the prescription of Article 32 (Section 3) of the Constitution of the Russian Federation can by no means be interpreted as violating the principles of free elections and universality of suffrage fixed by it (Article 3, Section3; Article 32, Sections 1 and 2; Article 81, Section 1), as well as not answering the criteria of admissible restrictions of constitutional rights and freedoms (Article 55, Section 3). It is proceeding from the assumption that review of conformity of any provision of the Constitution of the Russian Federation to other provisions of the Constitution of the Russian Federation is excluded (that, in its turn, excludes investing the Constitutional Court of the Russian Federation with respective powers), the Constitutional Court of the Russian Federation by the Ruling of 27 May 2004 No. 177-O dismissed the complaint of V.M. Gladkov against violation of his constitutional rights by Article 32 (Section 3) of the Constitution of the Russian Federation.

It should also be borne in mind that during the preparation of the Draft Constitution of the Russian Federation different versions of restriction of electoral rights of persons subject to deprivation of liberty under a court sentence were discussed. With this, constitutional regulation having operated earlier was taken into consideration. For instance, the Constitution of the RSFSR of 1918 provided for exclusion of persons, convicted for mercenary and defaming crimes for a term established by law or a court sentence, from the number of subjects of suffrage (Article 65), and according to the RSFSR

Constitution of 1937 convicted persons could not participate in elections of deputies and be elected only in cases of disenfranchisement by court (Article 139). The RSFSR Constitution of 1978 in the initial wording contained no prescriptions at all restricting suffrage of convicted persons, including those sentenced to deprivation of liberty, and only by the Law of the RSFSR of 27 October 1989 "On Amendments to the Constitution (Basic Law) of the RSFSR" a provision was included in it, according to which could not participate in elections the persons who were kept in places of deprivation of liberty under a court decision or a prosecutor's sanction as well as those kept in places of forced medical treatment under a court decision (Section 4 of Article 92).

Materials of the Constitutional Assembly of 1993 testify that in the discussion of the Draft Constitution of the Russian Federation its participants suggested, in particular, to deprive citizens to whom any criminal punishment connected with deprivation of liberty has been prescribed by court of the right to elect and be elected, or to ban participation in elections for a respective category of citizens only under a special prescription in the sentence, or to deprive them of the right to be elected having retained active electoral right, *i.e.* in preparation of the Draft Constitution of the Russian Federation, undoubtedly, there was a possibility to turn down absolute ban to participate in elections, established for citizens kept in places of deprivation of liberty under a court sentence. However – since the preference was given to the formulation fixed in Article 32 (Section 3) of the Constitution of the Russian Federation and excluding selective (personal) approach to the restriction of the right to vote with respect to citizens kept in places of deprivation of liberty under a court sentence, – it is necessary to admit that constitutional legislator in this case expressed his will quite clearly and definitely, having extended the restriction established by him to all convicted persons s belonging to this category.

4.2 The constitutional-law collisions, connected with the interpretation and implementation of the individual provisions of the Convention for the Protection

of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation in its legal system, must be regarded and resolved in the context of the circumstances and conditions, on which Russia has signed and ratified it.

By virtue of Articles 4 (Sections 1 and 2), 15 (Sections 1 and 4), 79 and 125 (Item "d" of Section 2 and Section 6) of the Constitution of the Russian Federation which establish sovereignty of Russia, supremacy and supreme legal force of the Constitution of the Russian Federation in Russia's legal system (including in relation to international treaties of the Russian Federation), the conditions of Russia's participation in international treaties and their ratification, whose observance is ensured also by means of constitutional control, the Russian Federation was entitled to sign and ratify the Convention for the Protection of Human Rights and Fundamental Freedoms only in the event if its provisions did not contradict the fundamental principles of the constitutional order of the Russian Federation fixed in Chapter 1 of the Constitution of the Russian Federation and entailed no restriction of human and civil rights and freedoms as they are regulated in its Chapter 2.

Accordingly, judgments of the European Court of Human Rights based on the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms, including those containing proposals on the need to make amendments to the national legal provisions, do not abrogate the priority of the Constitution of the Russian Federation for Russia's legal system, and therefore – in the context of its Article 15 (Sections 1 and 4) – are subject to realization on the basis of the principle of supremacy and supreme legal force of exactly the Constitution of the Russian Federation in the legal system of Russia, international-law acts being an integral part of it. To the number of these acts also belongs the Convention for the Protection of Human Rights and Fundamental Freedoms itself, which as an international treaty of the Russian Federation possesses in the law-applying process stronger legal force than a

federal law, but not equal and not stronger than that of the Constitution of the Russian Federation.

Within the meaning of the adduced provisions of the Constitution of the Russian Federation, Russia is not entitled to conclude international treaties not conforming to the Constitution of the Russian Federation, – otherwise they may not be brought into effect and applied in the Russian Federation, *i.e.* may not be ratified. Consequently, in 1996 Russia signed and in 1998 ratified the Convention for the Protection of Human Rights and Fundamental Freedoms proceeding from the understanding that Article 32 (Section 3) of the Constitution of the Russian Federation was fully in accord with the prescriptions of Article 3 of Protocol No. 1 to the Convention and therefore needed no alteration. The Council of Europe had no concerns connected with possible contradictions between them either. In other words, both Russia and the Council of Europe recognized that Article 3 of Protocol No. 1 to the Convention by the moment of its ratification by the Russian Federation and Article 32 (Section 3) of the Constitution of the Russian Federation were in full accord with each other. From that moment and until now these provisions (rules) corresponding to each other underwent no textual changes.

Meanwhile, in the Judgment in the case of *Anchugov and Gladkov v. Russia* the European Court of Human Rights attributed to Article 3 of Protocol No. 1 to the Convention the meaning, implicitly contemplating alteration of Article 32 (Section 3) of the Constitution of the Russian Federation, to which Russia as a High Contracting Party to the multilateral international treaty, which is the Convention for the Protection of Human Rights and Fundamental Freedoms, gave no consent during its ratification, so far as assumed (including bearing in mind absence of any objections on the part of the Council of Europe) that Article 32 (Section 3) of the Constitution of the Russian Federation and Article 3 of Protocol No. 1 to the Convention did not contradict each other.

In this connection, the Constitutional Court of the Russian Federation is compelled to establish that the conclusion about violation of Article 3 of Protocol No. 1 to the Convention by the Russian Federation, to which the European Court of Human Rights has come, is based on the interpretation of its provisions, diverging from their meaning from which the Council of Europe and Russia as a party to this international treaty proceeded during its signing and ratification. In such circumstances the Russian Federation has the right to insist on the interpretation of Article 3 of Protocol No. 1 to the Convention and its implementation in Russia's legal expanse in the understanding, which was taking place in bringing into effect of this international treaty of the Russian Federation as an integral part of Russia's legal system.

4.3 The Constitutional Court of the Russian Federation observes that legal positions of the European Court of Human Rights with respect to the prerogative of a State to restrict voting rights of convicted (imprisoned) persons have been undergoing "evolutive" alteration and may hardly be considered as well-established.

For instance, in *Labita v. Italy*, Judgment of 6 April 2000, the European Court of Human Rights found that while the disenfranchisement of the applicant violated Article 3 of Protocol No. 1 since his association with a criminal group had not been established, it did not, however, challenge the compatibility of temporary removal from the register of electors with the Convention, should the guilt of a defendant had been properly proven. In *M.D.U. v. Italy*, Admissibility Decision of 28 January 2003, the Court reached a conclusion that a ban on voting for a two-year period imposed in connection with a conviction for tax fraud met the proper functioning and preservation of the democratic regime, and, two years later, that disenfranchisement was possible only if an individual was convicted for committing a "serious offense", notably on the condition that it was directly referred to in the sentence (*Hirst v. the United Kingdom (no. 2)*, Judgment of 6 October 2005).

That legal position was reiterated by the European Court of Human Rights in *Frodl v. Austria*, Judgment of 8 April 2010, and *Greens and M.T. v. the United Kingdom*, Judgment of 23 November 2010, however, in *Scoppola v. Italy (no. 3)*, Judgment of 22 May 2012 the Court acknowledged that it would be sufficient if disenfranchisement was based on law, that is, without a specific reference in the court sentence, for that measure to be compatible with the Convention.

Therefore, through decades and by means of "evolutive" interpretation of Article 3 of Protocol No. 1 to the Convention the specific content of criteria of "non-automatism", proportionality and differentiation in legal positions of the European Court of Human Rights has been subject to substantial changes. The European Court of Human Rights itself has underscored on multiple occasions that its legal positions always reflected a consensus existing among member States of the Council of Europe (*D.H. and Others v. the Czech Republic*, Judgment of 13 November 2007, *Kimlya and Others v. Russia*, Judgment of 1 October 2009, *Kiyutin v. Russia*, Judgment of 10 March 2011, *et al*.), and that a European consensus would have emerged if there was an established general consent of a majority of States Parties to the Convention, or at least a relative commonality of approaches to a particular legal matter (*Dudgeon v. the United Kingdom*, Judgment of 22 October 1981; *R.R. v. Poland*, Judgment of 26 May 2011, *Konstantin Markin v. Russia*, Judgment of 22 March 2012, *et al*.).

Meanwhile, comparative data regarding regulation of elections in 43 States Parties to the Convention contained in paragraphs 42 – 45 of the *Anchugov and Gladkov* Judgment demonstrate that there is no such consensus with respect to the restriction of electoral rights of convicted (imprisoned) persons: in 19 States (Denmark, Finland, Spain, Sweden, Switzerland *et al*.) no restrictions are placed on the right of convicted prisoners to vote; 7 States (Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia and the United Kingdom) automatically deprive all convicted prisoners serving sentences of the

right to vote; 17 States (Austria, Belgium, France, Germany, Greece, Italy *et al*.) have adopted an intermediate approach: disenfranchisement of convicted persons depends on the type of the crime and/or the length of the custodial sentence, while in some of the states in this category the decision to deprive convicted prisoners of the right to vote is left to the discretion of the criminal court (Portugal, Romania, San Marino *et al*.).

It should be recalled that within the context of subsidiarity principle by which the European Court of Human Rights is guided in its activities, the "evolutive" interpretation of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms must have substantial basis confirmed by consent, whether explicit or implied, of States Parties to the Convention regarding respective standards. However that consensus, as aforementioned data shows, has not yet emerged, because in considerable number of States convicted (imprisoned) persons are either completely deprived of electoral rights, or in one way or another are restricted in their active electoral right (the right to vote), while such restrictions envisaged in national laws, as long as they do not infringe upon the very essence of the right to vote and are not arbitrary, may not be considered unfounded in accordance with the Universal Declaration of Human Rights (Articles 21 and 29), International Covenant on Civil and Political Rights (Article 25), Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the member States of the Commonwealth of Independent States (Article 18), and Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

4.4 Thus, the Constitutional Court of the Russian Federation has no grounds to interpret the ban established by Article 32 (Section 3) of the Constitution of the Russian Federation as allowing the possibility – directly by virtue of a federal law or under special indication in a court sentence – of deprivation of the active electoral right only with regard to certain categories of

convicted persons serving sentence in places of deprivation of liberty, for example for commission of crimes of medium gravity, grave and particularly grave crimes stipulated by Russian criminal law ("serious crimes" according to the terminology of the European Court of Human Rights). Neither are there grounds for its interpretation as contemplating (on which insisted among others S.B. Anchugov and V.M. Gladkov) discretional power of the federal legislator, proceeding from the principles of free elections and universality of suffrage, to remove respective restriction with respect to all convicted persons (with the exception of those who were subject to life imprisonment). Other would disagree with both the literal meaning of Article 32 (Section 3) of the Constitution of the Russian Federation and with its meaning in the system of constitutional norms and – taking into account the historical context of elaboration of the Draft Constitution of the Russian Federation by the Constitutional Assembly, including the discussion about final formulation of this constitutional norm, – would imminently lead to ignoring of clearly expressed intentions of the constitutional legislator having received approval of the multinational people of Russia by means of the referendum.

Implementation of the Judgment of the European Court of Human Rights in the case of *Anchugov and Gladkov v. Russia* and, therefore, also of the interpretation of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms carried out thereby to the legal system of Russia is admissible, if it conforms to the provisions of the Constitution of the Russian Federation, pertaining to the fundamental principles of the constitutional order and of the legal status of the individual in Russia. Since it is the Constitution of the Russian Federation which sets the parameters of such implementation, the interpretation of Article 32 (Section 3) of the Constitution of the Russian Federation by the Constitutional Court of the Russian Federation in the spirit of the interpretation of Article 3 of Protocol No.

1 to the Convention by the European Court of Human Rights may not go beyond the bounds outlined by the requirements of the logic of legal interpretation.

Taking into consideration its multiannual experience of a constructive cooperation and mutually respectful dialogue with the European Court of Human Rights, the Constitutional Court of the Russian Federation notes that if it deems it necessary to enjoy the right to objection as an exceptional case, it is only in order to make contribution to the crystallization of the developing practice of the European Court of Human Rights in the field of suffrage protection, whose decisions are called upon to reflect the consensus having formed among States Parties to the Convention.

If by virtue of the fundamental principles of Russia's constitutional order it is impossible (bearing in mind the logic of legal interpretation) to interpret the norm of Article 32 (Section 3) of the Constitution of the Russian Federation in accordance with the interpretation of Article 3 of Protocol No. 1 to the Convention, given by the European Court of Human Rights in the Judgment in the case of *Anchugov and Gladkov v. Russia* and contemplating that not all convicted persons serving sentence in places of deprivation of liberty may be limited in the right to elect, the Constitutional Court of the Russian Federation, according to the Constitution of the Russian Federation (Article 15, Section 1; Article 79; Article 125, Sections 2 and 6), is obliged, in the course of the established partnership relations, to inform the European Court of Human Rights about the absence of such possibility.

At the same time, bearing in mind the significance of the system which judgments of the European Court of Human Rights form a part of, and for the sake of maintaining its appropriate and successful functioning the Constitutional Court of the Russian Federation is ready for the search of a lawful compromise, whose bounds are outlined by the Constitution of the Russian Federation. The activity of the Constitutional Court of the Russian Federation (which is confirmed by many dozens of its decisions) concerning the implementation of

the Convention for the Protection of Human Rights and Fundamental Freedoms and judgments of the European Court of Human Rights based on it into Russia's legal system is the pledge of responsible and restrained approach to the solution of this problem.

Recognizing the objective necessity of the activity of the European Court of Human Rights with regard to the revelation of structural defects of national legal systems and offering the ways to remove them, the Constitutional Court of the Russian Federation also pays attention to the presence of problems connected with possible deviations from the principle of subsidiarity, on the basis of which the European Court of Human Rights is called upon to exercise powers entrusted to it, which, in its turn, can lead to a conflict with constitutional legislator, whose powers are based on the principles of State sovereignty, supremacy and supreme legal force of the Constitution of the Russian Federation in the legal system of Russia, the integral part of which is the Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation.

5. Revealing of the real meaning of Article 32 (Section 3) of the Constitution of the Russian Federation in Russia's legal system contemplates also the analysis of its regulatory role in the context of the corresponding federal legislation and established practice of restriction of electoral rights of citizens kept in places of deprivation of liberty under a court sentence from the point of view of the criteria of proportionality and differentiation.

5.1 Article 32 (Section 3) of the Constitution of the Russian Federation connects the restriction of electoral rights stipulated by it with the presence of two grounds – the criminal-law one, following from the court sentence, by which penalty in the form of deprivation of liberty has been prescribed to a citizen, and the criminal-executive one, consisting in serving such penalty in places of deprivation of liberty. Accordingly, this restriction is operating during the period of actual presence of the person sentenced to deprivation of liberty in

the conditions of isolation from society under a court sentence having entered into legal force.

With this, Article 32 (Section 3) of the Constitution of the Russian Federation definitely fixes, convicted persons of which category have no right to elect and to be elected – "citizens who are kept in places of deprivation of liberty ("imprisonment") under a court sentence". And the definition of what is deprivation of liberty as a kind of criminal penalty, connected with isolation of the convicted person from society in places of deprivation of liberty, and how is it distinguished from other kinds of criminal penalty, connected with isolation from society in places of deprivation of liberty, and from other measures, connected with lawful keeping in custody, but not being a criminal penalty, as well as the definition of places of deprivation of liberty themselves and the regimes of serving sentence in them are, by virtue of Article 71 (Item "n") of the Constitution of the Russian Federation, the prerogative of the federal legislator.

Filling of the constitutional notion of deprivation of liberty as a criminal penalty with a concrete content is carried out by the Criminal Code of the Russian Federation, which establishes, as follows from Section 2 of its Article 2, the ground and principles of criminal responsibility, defines which actions, dangerous for person, society or the State, are recognized as crimes and establishes the kinds of penalties and other measures of criminal-law character for the commission of crimes.

Within the meaning of Section 1 of Article 56 of the Criminal Code of the Russian Federation, the wording "citizens who are kept in places of deprivation of liberty under a court sentence" means "convicted persons isolated from society in colonies-settlements, educational colonies, medical correctional facilities, correctional colonies or in prisons", *i.e.* "deprivation of liberty" in the context of Article 32 (Section 3) of the Constitution of the Russian Federation must be understood as a special kind of criminal penalty – unlike similar kinds of criminal penalty, connected with restriction of liberty in a broad sense, such

as correctional labor, custodial restraint, arrest, confinement in a disciplinary military unit (Article 44 of the Criminal Code of the Russian Federation). In particular, such kind of criminal penalty as arrest, also being isolation of a convicted person from society, is not deprivation of liberty in the criminal-law sense.

This means that only deprivation of liberty in its special criminal-law meaning – as a separate and independent kind of penalty – entails keeping in places of deprivation of liberty, defined in Section 1 of Article 56 of the Criminal Code of the Russian Federation and, accordingly, the deprivation of a convicted person of the right to elect.

However in *Anchugov v. Gladkov* the European Court of Human Rights translated the term "deprivation of liberty ("imprisonment")" found in Article 32 (Section 3) of the Constitution of the Russian Federation as "detention" (paragraph 31). It should be born in mind that the term "deprivation of liberty ("imprisonment")" as a type of criminal penalty, as implied by Article 32 (Section 3) of the Constitution of the Russian Federation and Articles 44, 56 and 57 of the Criminal Code of the Russian Federation is, in its content, dissimilar to the term "deprivation of liberty by law" found in Article 5 (paragraph 1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, the latter embracing any lawful apprehension, taking into custody, remand in custody (detention), one kind of which is "the lawful detention of a person after conviction by a competent court" (subparagraph "a") *i.e.* a criminal penalty, along with other types of "deprivation of liberty by law" executed by means of lawful apprehension, taking into custody, remand in custody, which are not considered as criminal penalties (subparagraphs "b", "c", "d", "e", "f").

The European Court of Human Rights in its interpretation of Article 5 (paragraph 1) of the Convention for the Protection of Human Rights and Fundamental Freedoms assumes that deprivation of liberty by law may acquire various forms, not always matching the classic detention in prison; the

difference between deprivation of and restriction of liberty is merely one of degree or intensity, and not one of nature or substance: their perception should be based on essential, rather than formal, features, such as confinement to restricted space, isolation of an individual from society and family, impossibility to move freely and communicate with indeterminate group of people (*Guzzardi v. Italy*, Judgment of 6 November 1980; *Murray v. the United Kingdom*, Judgment of 28 October 1994; *Nolan and K. v. Russia*, Judgment of 12 February 2009; *Aleksey Borisov v. Russia*, Judgment of 16 July 2015, *et al*.).

Therefore, in its law-enforcement effect the deprivation of active voting right within the context of Article 32 (Section 3) of the Constitution of the Russian Federation which exclusively applies to individuals who really serve the sentence imposed by a court in the form of deprivation of liberty as it is defined by Articles 56 and 57 of the Criminal Code of the Russian Federation and does affect those individuals who, under a court sentence, serve other types of penalty, comparable in their essence with deprivation of liberty (compulsory labor, arrest etc.), does not entail a general and indiscriminate restriction of active electoral right of all citizens, deprived of liberty under a court decision, as that term is interpreted by the European Court of Human Rights.

5.2 As follows from *Scoppola v Italy (no. 3)* (paragraphs 106, 108 and 110) and *Anchugov and Gladkov v. Russia* (paragraph 100) judgments, crimes punishable by 3 or more years of deprivation of liberty are deemed by the European Court of Human Rights "sufficiently serious" to be considered as grounds – without violation of the requirement of proportionality – for having persons who were found guilty of committing them, forfeit their voting rights under a direct legislative instruction (not only while serving the sentence, but also for the duration of 2 years after release); persons sentenced to 5 years or more may be deprived of their right to vote for life, as ordered by a court.

According to Article 15 "Categories of Crimes" of the Criminal Code of the Russian Federation, actions envisaged by this Code depending on their

nature and the degree of public danger are subdivided into crimes of small gravity, crimes of medium gravity, grave crimes and particularly grave crimes (Section 1); with this as crimes of small gravity are recognized intentional and careless actions, for the commission of which maximum penalty stipulated for by this Code does not exceed 3 years of deprivation of liberty (Section 2), as crimes of medium gravity – intentional actions, for the commission of which maximum penalty does not exceed 5 years of deprivation of liberty, and careless actions, for the commission of which maximum penalty exceeds 3 years of deprivation of liberty (Section 3), as grave crimes – intentional actions, for the commission of which maximum penalty does not exceed 10 years of deprivation of liberty (Section 4), as particularly grave crimes – intentional actions, for the commission of which this Code envisages penalty in the form of deprivation of liberty for the term of more than 10 years or more strict penalty (Section 5).

According to Section 1 of Article 56 of the Criminal Code of the Russian Federation, penalty in the form of deprivation of liberty may be prescribed by court to a convicted person having committed a crime of small gravity for the first time only in the presence of aggravating circumstances enumerated in Article 63 of this Code, with the exception of three kinds of crimes connected with illegal turnover of narcotic means and psychotropic substances (Section 1 of Article 228, Section 1 of Article 231 and Article 233 of the Criminal Code of the Russian Federation) or only if a respective Article of the Particular Part of this Code envisages deprivation of liberty as the only kind of penalty (at present such Articles are absent in the Criminal Code of the Russian Federation).

According to Article 60 of the Criminal Code of the Russian Federation, a just penalty is prescribed to a person, recognized as guilty of commission of a crime, within the bounds stipulated by a respective Article of the Particular Part of this Code with account taken of its General Part; stricter kind of penalty from the number of those envisaged for a committed crime is prescribed only in the event if less strict kind of penalty would not be able to ensure achievement of

goals of the penalty (Section 1); when prescribing a penalty, nature and the degree of public danger of the crime and the personality of the guilty are taken into account, including circumstances, extenuating and aggravating the penalty, as well as the influence of the prescribed penalty on the correction of the convicted person and on living conditions of his family (Section 3).

Within the meaning of the adduced legislative provisions, Russian criminal law practically fully excludes the possibility of application of deprivation of liberty to persons having committed crimes of small gravity for the first time in the absence of aggravating circumstances, and therefore, restriction of their electoral rights is not admitted. Courts, taking into account these provisions, prescribe for the commission of crimes of small gravity penalties in the form of a real deprivation of liberty (with serving sentence in a colony-settlement or – taking into consideration circumstances of the commission of a crime and the personality of the guilty person – in a correctional colony) only in cases when they come to the conclusion that the guilty person cannot be corrected without his isolation from society. The ground for the prescription for such a person of a penalty in the form of deprivation of liberty – in accordance with Articles 56, 60 and 63 of the Criminal Code of the Russian Federation and the practice established on their basis – is his commission of a crime during a probation period, prescribed under the previous court sentence or during the unserved term of penalty prescribed under a court sentence, or after conditional early release from serving sentence in the form of deprivation of liberty (parole) as well as in the case of a repeated crime. Besides, the penalty prescribed by court – bearing in mind the prescriptions of Sections 1 and 3 of Article 60 of the Criminal Code of the Russian Federation and the provisions of its Particular Part – may not be connected with deprivation of liberty also in the event of the commission by a person of a crime of medium gravity and even grave crime.

Proceeding from the fact that the Constitution of the Russian Federation has supreme legal force, direct effect and is applicable on the entire territory of

the Russian Federation, and laws and other legal acts, which are adopted in the Russian Federation, must not contradict it (Article 15, Section 1, of the Constitution of the Russian Federation), courts, sentencing a person to deprivation of liberty for the commission of a crime of medium gravity, grave or particularly grave crime or a crime of although small gravity, but in the presence of aggravating circumstances, must take into consideration the fact that such sentence will mean for the convicted person also the restriction of his electoral rights prescribed by Article 32 (Section 3) of the Constitution of the Russian Federation.

Thus, in the context of the operation of Article 32 (Section 3) of the Constitution of the Russian Federation in the system of criminal legislation and court practice based on it court sentence is not only a formal ground for deprivation of liberty of a person, but also the main direct source of his special legal status as a convicted one serving sentence in places of deprivation of liberty, which entails for him also restriction of electoral rights which, being the consequence of such penalty, is carried out, in essence, not automatically, but in a differentiated manner, since the penalty in the form of deprivation of liberty itself is prescribed in conformity with concrete circumstances of a case, with consideration of such factors as character and gravity of the committed crime and criminal's conduct (including with consideration of the presence or absence of extenuating and aggravating circumstances).

5.3 The conclusion about excessive mass character of the restriction in Russia of electoral rights of persons convicted to deprivation of liberty, contained in the Judgment *Anchugov and Gladkov vs. Russia*, the European Court of Human Rights recognizes as having only the nature of an assumption, accepted as a ground for rendering decision only because Russia as the respondent State has not given examples from the national judicial practice, confirming that only persons convicted for the commission of the most serious crimes are deprived of active suffrage (paragraphs. 101 and 104).

In doing so, the European Court of Human Rights obviously means not examples, leaning on specific court acts (the decision of the Lipetsk Regional Court is adduced and analyzed by it), but statistical data used in its practice as a means of proof in cases on discrimination, including electoral one, which may be ascribed to *modus operandi* (for instance, in the Judgment of 6 January 2005 in the case of *Hoogendijk v. the Nederlands* the European Court of Human Rights considered adducing of the official statistical data by one of the parties as sufficient grounds for shifting off the burden of proof on the opposite party).

However, official statistics on the question under consideration is maintained in Russia. For instance, according to data of the Judicial Department attached to the Supreme Court of the Russian Federation *(www.cdep.ru),* the portion of those sentenced to the real deprivation of liberty for crimes of small gravity in 2011-2015 is within the bounds of 8,8-11,5%, whereas the part of those sentenced to the real deprivation of liberty for crimes of medium gravity amounts to 18-32%, for grave crimes – to 46-47%, for particularly grave crimes – to 91-95%. In particular, in 2015 with regard to all criminal cases in Russia 733,607 people were convicted, including 342,267 for the commission of crimes of small gravity, and out of them sentenced to the real deprivation of liberty (as a general rule, with serving sentence in colonies-settlements) only 36,218 people, i.e. 10,58%, which means that the others 306,049 convicted for the crimes of this category were not deprived of liberty and, accordingly, of electoral rights. Bearing in mind that on the whole in 2015 211,121 people were sentenced to the real deprivation of liberty for all kinds of crimes, the number of those convicted for crimes of small gravity having not got to places of deprivation of liberty and therefore not disenfranchised, is almost 10 times more than the number of those sentenced to deprivation of liberty for the commission of crimes of small gravity and almost 1,5 times – the number of those sentenced to deprivation of liberty for all the crimes and, accordingly, all those dismissed from participation in elections as a result of sending to places of deprivation of

liberty to serve sentence. In the same year for crimes of medium gravity 176,665 people were convicted, out of them sentenced to deprivation of liberty – 53,363 (30,21%); for grave crimes – 172,782, out of them sentenced to deprivation of liberty – 81,906 (47,4%); for particularly grave crimes – 41,903, out of them sentenced to deprivation of liberty – 39,634 (94,5%).

The adduced official data – bearing in mind the obligation of courts when prescribing penalty to take into account that convicted persons sent to places of deprivation of liberty are restricted in electoral rights – refute the arguments about absence of effective differentiation, proportionality and "non-automatism" in the Russian legal and judicial system, allowing to approach the decision on restriction of electoral rights of citizens who are kept in places of deprivation of liberty under a court sentence in the spirit of favoring the basic principle of universality of suffrage.

5.4 As the European Court of Human Rights reiterated on multiple occasions, its function, in principle, is to evaluate the compatibility of measures, provided in national legislation, with the Convention for the Protection of Human Rights and Fundamental Freedoms and that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order for the discharge of its obligation under Article 46 of the Convention (*Öcalan v. Turkey*, judgment of 12 May 2005). In judgments in cases where the European court of Human Rights found a systemic violation of the Convention, it could, to assist the respondent State in fulfilling its obligation, identify a type of a measure that could be taken to resolve the situation (*Broniowski v. Poland*, Judgment of 22 June 2004 and *Hirst v. the United Kingdom (no. 2)*, Judgment of 6 October 2005). If the nature of an established violation of the Convention was such as to limit the choice of measures, the European Court of Human Rights could indicate one specific measure (*Assanidze v. Georgia*, Judgment of 8 April 2004).

In *Anchugov and Gladkov v Russia* Judgment the European Court of Human Rights suggested to the Russian Federation to execute its decision through some form of political process or by interpreting the Russian Constitution by the competent authorities – the Russian Constitutional Court in the first place – in harmony with the Convention in such a way as to coordinate their effects and avoid any conflict between them.

The Constitutional Court of the Russian Federation supposes that the interpretation of Article 32 (Section 3) of the Constitution of the Russian Federation in the interconnection with the provisions of the Criminal Code of the Russian Federation, including its Articles 15, 56, 58, 60 and 63, and the judicial practice based on them suggested by it in the present Judgment allows to avoid similar collisions concerning restrictions of electoral rights of citizens kept in places of deprivation of liberty under a court sentence.

5.5 At the same time the federal legislator is not deprived of the possibility, consistently realizing the principle of humanism in the criminal law, to optimize the system of criminal penalties, including by means of transfer of individual regimes of serving deprivation of liberty to alternative kinds of penalties, although connected with forced restriction of liberty of convicted persons, but not entailing restriction of their electoral rights.

For instance, by virtue of Item "a" of Section 1 of Article 58 of the Criminal Code of the Russian Federation, for persons sentenced to deprivation of liberty for crimes committed due to carelessness, as well as persons sentenced to deprivation of liberty for the commission of intentional crimes of small and medium gravity having earlier not served deprivation of liberty, serving deprivation of liberty, as a general rule, is prescribed in colonies-settlements, representing, as follows from Articles 128 and 129 of the Criminal Executive Code of the Russian Federation, correctional institutions with a semi-liberal regime of serving the sentence, whose task is correction and adaptation of convicted persons to the conditions of life in freedom. Such regime to a

significant extent is close to the regime of serving sentence, limiting convicted persons' freedom by a complex of limiting conditions (obligations) and bans established by court, fulfilled by them without isolation from society under the supervision of a specialized State body (Section 1 of Article 53 of the Criminal Code of the Russian Federation, Articles 47^1 and 50 of the Criminal Executive Code of the Russian Federation).

In accordance with Article 129 of the Criminal Executive Code of the Russian Federation, convicted persons serving deprivation of liberty in the colony-settlement are restricted in the freedom of movement, but are kept without guard, can freely move across the territory of the colony-settlement and out of the colony within the bounds of a municipal entity, on the territory of which it is located; the convicted persons may be permitted to live with their families on the rented or their own dwelling space on the territory of the colony-settlement or outside of its bounds, but within the boundaries of the municipal entity, on the territory of which the colony-settlement is located. Practically, such individuals acquire the status, which – as compared with other regimes of serving sentence in the form of deprivation of liberty – is characterized by an essentially smaller amount of restrictions: they may wear civilian clothes, have money and valuables on them, receive parcels and post wrappers; may have visits without limitation of their number; they are entitled to work as well as study by correspondence in educational organizations of higher education and professional educational organizations.

With this in mind, the federal legislator is competent to make amendments to the criminal and criminal-executive legislation, in accordance with which serving sentence in colonies-settlements by persons, sentenced to deprivation of liberty for crimes committed due to carelessness, as well as persons, sentenced to deprivation of liberty for the commission of intentional crimes of small or medium gravity having earlier not served deprivation of liberty, – as a variety of the regime of deprivation of liberty within the meaning of Article 56 of the

Criminal Code of the Russian Federation – would be transformed into a separate kind of criminal penalty, to which the restriction envisaged by Article 32 (Section 3) of the Constitution of the Russian Federation does not extend.

6. According to Article 34 "Individual applications" of the Convention for the Protection of Human Rights and Fundamental Freedoms the European Court of Human Rights may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto; the High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Hence, a case about an alleged violation of the active electoral right guaranteed by Article 3 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be resolved without trying it *in concreto*. In accordance with this requirement the European Court of Human Rights in *Anchugov v. Gladkov* Judgment indicated that in cases arising from individual petitions, its task is not to review the relevant legislation or an impugned practice in the abstract, rather it must confine itself, as far as possible, without losing sight of the general context, to examining the issues raised by the case before it (paragraph 51). Therefore the task of the European Court of Human Rights in that particular case was not to review, *in abstracto*, the compatibility with the Convention of Article 32 (Section 3) of the Constitution of the Russian Federation, but to determine, *in concreto*, the effect of those provisions on the applicants' rights secured by Article 3 of Protocol No. 1 to the Convention (paragraph 52).

Proceeding from standards established by the European Court of Human Rights itself, disenfranchisement for serious crimes, that is, crimes punishable by 3 or more years of imprisonment, does not violate the principle of proportionality. However, citizens S.B. Anchugov and V.M. Gladkov were sentences to 15 years of imprisonment (as commutation of death sentences) for

particularly grave crimes and in that respect were deprived of their electoral rights, therefore they may not be considered victims of a violation, neither have their rights guaranteed by Article 3 of Protocol No. 1 been infringed upon. Therefore, in that sense the *Anchugov and Gladkov* Judgment is essentially the act of *in abstacto* review of a norm exercised by the European Court of Human Rights.

7. According to established practice the execution of decisions of the European Court of Human Rights implies taking of individual measures by a respondent State in pursuit of discontinuation of on-going violations, and remedying the effects of past violations in order to restore, to the extent possible, the situation that prevailed prior to the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (*restitutio in integrum*). However, such restoration may not be possible if, considering the very nature of a violation, the situation cannot be restored to a state as it had been prior to a violation.

Citizens S.B. Anchugov and V.M. Gladkov had no right to vote at the elections of deputies of the State Duma and the President of the Russian Federation held during the period from 2000 to 2008. Since holding of these elections at present is unrealizable, execution of measures of individual character *(restitutio in integrum)* with respect to these citizens does not seem possible.

The legislation of the Russian Federation also contemplates taking of measures of individual character, expressing themselves in reconsideration of judicial decisions of national courts on the case of a citizen, with respect to whom the European Court of Human Rights has ascertained violation of the provisions of the Convention (Judgment of the Constitutional Court of the Russian Federation of 6 December 2013 No. 27-П). The procedure of such reconsideration is stipulated by the branch legislation (Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation, Item 4 of

Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceeding Code of the Russian Federation).

Meanwhile, S.B. Anchugov and V.M. Gladkov were convicted for the commission of particularly grave crimes and could not, even according to criteria elaborated by the European Court of Human Rights, count on access to electoral rights, and therefore reconsideration of judicial decisions in their cases and compensation of any damage is impossible.

Proceeding from the expounded above and guided by Articles 71, 72, 74, 75, 78, 79 and 104^4 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

h o l d s:

1. To recognize execution of the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia* (applications nos. 11157/04 and 15162/05), taken on the ground of the provisions of Article 3 "Right to Free Elections" of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in their interpretation by the European Court of Human Rights, in accordance with the Constitution of the Russian Federation, its Articles 3 (Sections 1-3), 15 (Sections 1 and 4), 32 (Sections 1 and 2), 46 (Section 3) and 79, – with regard to the measures of general character, contemplating insertion of amendments to Russia's legislation (and thereby alteration of the judicial practice based on it), which would allow to restrict in electoral rights not all convicted persons serving a sentence in places of deprivation of liberty under a court sentence, – as impossible, so far as the prescription of Article 32 (Section 3) of the

Constitution of the Russian Federation, having supremacy and supreme legal force in Russia's legal system, with all certainty means an imperative ban, according to which all convicted persons serving sentence in places of deprivation of liberty defined by the criminal law have no electoral rights with no exceptions.

2. To recognize execution of the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia*, taken on the ground of the provisions of Article 3 "Right to Free Elections" of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in their interpretation by the European Court of Human Rights, in accordance with the Constitution of the Russian Federation, its Articles 3 (Sections 1-3), 15 (Sections 1 and 4), 32 (Sections 1 and 2), 46 (Section 3) and 79, – with regard to measures of general character, ensuring justice, proportionality and differentiation of application of the restriction of electoral rights, – possible and realizable in Russia's legislation and judicial practice, so far as in accordance with Article 32 (Section 3) of the Constitution of the Russian Federation and the provisions of the Criminal Code of the Russian Federation concretizing it, as a general rule, the penalty in the form of deprivation of liberty and thereby deprivation of electoral rights of convicted persons having committed crimes of small gravity for the first time is excluded, and for crimes of medium gravity and grave crimes deprivation of liberty as a stricter kind of penalty from the number of envisaged by the Particular Part of this Code for the commission of a respective crime, is prescribed under a court sentence and, consequently, entails disenfranchisement only in the event if less strict kind of penalty cannot ensure achievement of goals of the penalty.

At the same time, guided by the Constitution of the Russian Federation, including its Article 32 (Section 3), and legal positions of the Constitutional Court of the Russian Federation expressed in the present Judgment, federal legislator is competent, consistently realizing the principle of humanism in

criminal law, optimize the system of criminal penalties, including by means of transfer of individual regimes of serving deprivation of liberty to alternative kinds of penalties, although connected with forced restriction of liberty of convicted persons, but not entailing restriction of their electoral rights.

3. To recognize execution of the Judgment of the European Court of Human Rights of 4 July 2013 in the case of *Anchugov and Gladkov v. Russia*, taken on the ground of the provisions of Article 3 "Right to Free Elections" of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in their interpretation by the European Court of Human Rights, in accordance with the Constitution of the Russian Federation, its Articles 3 (Sections 1-3), 15 (Sections 1 and 4), 32 (Sections 1 and 2), 46 (Section 3) and 79, – with regard to measures of individual character, which are stipulated by the effective legislation of the Russian Federation, – with respect to citizens S.B. Anchugov and V.M. Gladkov as impossible, since these citizens were sentenced to deprivation of liberty for long terms for the commission of particularly grave crimes, and therefore could not count, even according to criteria elaborated by the European Court of Human Rights, on access to electoral rights.

4. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon announcement, shall be directly applicable and shall not require confirmation by other authorities and officials.

5. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and on the official Internet-portal of legal information *(www.pravo.gov.ru.)* The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court

of the Russian Federation

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