



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

FIFTH SECTION

DECISION

Application no. 38707/04
Vladislav Anatolyevich KRIVOBOKOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 19 February 2013 as a Chamber composed of:

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 13 October 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladislav Anatolyevich Krivobokov, is a Ukrainian national who was born in 1968 and lives in Antratsyt, the Lugansk region, Ukraine. He is a former Presidential candidate, having stood in the 2004 presidential election in Ukraine. The respondent Government were represented by their Agent, Mr Nazar Kulchytskyy.

A. The circumstances of the case

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

On 4 July 2004 the “People’s Party of Depositors and Social Protection” (*Народна партія вкладників та соціального захисту*, hereinafter – “the Party”), a political party, decided at its national party conference to put the applicant forward as a candidate for the 2004 presidential election.

On 8 July 2004 the Central Electoral Commission refused to register the applicant as a candidate for the presidential election, as he had failed to pay the required electoral deposit of 500,000 hryvnias (UAH) and to complete a declaration of means by hand.

The applicant sought judicial review of this decision by the Supreme Court, submitting that the sum of UAH 500,000 was unreasonable and that the Law on Presidential Elections did not provide that the declaration of means was to be completed by hand.

On 15 July 2004 the Supreme Court upheld the decision and rejected the applicant’s complaints as being unsubstantiated.

On 22 July 2004 the Party lodged UAH 500,000 in respect of the electoral deposit with the Central Electoral Committee. The deposit would be refunded to it if the applicant obtained 7 % votes.

On 28 July 2004 the Central Electoral Committee registered the applicant as a candidate for the presidential election. On the same date it issued a candidate identification card to him.

In the first round of the election, held on 31 October 2004, the applicant received 0.03% votes and did not proceed to the second round.

B. Relevant domestic law

According to Articles 75 – 112 of the Constitution of Ukraine of 28 June 1996, in force at the material time, the legislative power in Ukraine was exercised by the Parliament of Ukraine (*Verkhovna Rada*).

Pursuant to Article 102 of the Constitution, the President of Ukraine is the Head of State and is the guarantor of the state sovereignty and territorial indivisibility of Ukraine, and of the observance of the Constitution of Ukraine and human and citizens’ rights and freedoms.

The relevant provisions of the Constitution of Ukraine, 28 June 1996, read as follows:

Chapter IV Parliament of Ukraine

Article 75

The sole body of legislative power in Ukraine is Parliament — the Verkhovna Rada of Ukraine (“Parliament”).

Article 91

Parliament adopts laws, resolutions and other acts by a majority of its constitutional composition, except in cases envisaged by this Constitution.

Article 93

The right of legislative initiative in Parliament belongs to the President of Ukraine, the Members of Parliament, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine.

Bills identified as urgent by the President of Ukraine shall be considered on a priority basis by Parliament.

Article 94

The Chairman of Parliament shall sign any Act of Parliament and forward it without delay to the President of Ukraine.

Within fifteen days of the receipt of an Act, the President of Ukraine shall sign it, accepting it for implementation, and officially promulgate it, or return it to Parliament with a reasoned proposal for repeat consideration.

In the event that the President of Ukraine has not returned an Act for repeat consideration within the established term, the Act is deemed to have been approved by the President of Ukraine and shall be signed and officially promulgated.

If an Act, during its repeat consideration, is again adopted by Parliament by no less than two-thirds of its constitutional composition, the President of Ukraine is obliged to sign and to officially promulgate it within ten days.

An Act of Parliament enters into force in ten days from the date of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the date of its publication.

Chapter V**President of Ukraine****Article 106**

The President of Ukraine:

- (1) ensures national independence, national security and the legal succession of the State;
- (2) addresses the people with messages and Parliament with annual and special messages on the domestic and foreign situation of Ukraine;

(3) represents the state in international relations, manages the foreign political activity of the State, conducts negotiations and concludes international treaties entered into by Ukraine;

(4) adopts decisions on the recognition of foreign states;

(5) appoints and dismisses heads of diplomatic missions of Ukraine to other states and to international organisations; accepts credentials and letters of recall of diplomatic representatives of foreign states;

(6) calls a national referendum regarding amendments to the Constitution of Ukraine in accordance with Article 156 of this Constitution, proclaims a national referendum on popular initiative;

(7) calls parliamentary by-elections within the terms established by this Constitution;

(8) terminates the authority of Parliament if plenary meetings fail to commence within thirty days of one regular session;

(9) appoints the Prime Minister of Ukraine with the consent of Parliament; terminates the authority of the Prime Minister of Ukraine and adopts a decision on his or her resignation;

(10) appoints, on the submission of the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, the chief officers of other central bodies of executive power, and the heads of local state administrations, and terminates their appointment to these positions;

(11) appoints the Prosecutor General of Ukraine to office with the consent of Parliament, and dismisses him or her from office;

(12) appoints one-half of the Council of the National Bank of Ukraine;

(13) appoints one-half of the National Council of Ukraine on Television and Radio Broadcasting;

(14) appoints to office and dismisses from office, with the consent of Parliament, the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State Property Fund of Ukraine and the Chairman of the State Committee on Television and Radio Broadcasting of Ukraine;

(15) establishes, reorganises and liquidates, on the submission of the Prime Minister of Ukraine, ministries and other central bodies of executive power, acting within the limits of funding envisaged for the maintenance of bodies of executive power;

(16) revokes acts of the Cabinet of Ministers of Ukraine and acts of the Council of Ministers of the Autonomous Republic of Crimea;

(17) is the Commander-in-Chief of the Armed Forces of Ukraine; appoints to office and dismisses from office the high command of the Armed Forces of Ukraine and other military units; manages the national security and defence of the State;

(18) heads the Council of National Security and Defence of Ukraine;

(19) forwards proposals to Parliament for a declaration of a state of war, and adopts decisions on the use of the Armed Forces in the event of armed aggression against Ukraine;

(20) adopts decisions in accordance with the law on general or partial mobilisation and the introduction of martial law in Ukraine or in its particular areas, in the event of a threat of aggression, or danger to the national independence of Ukraine;

(21) adopts decisions, in the event of necessity, on the introduction of a state of emergency in Ukraine or in its particular areas, and also in the event of necessity, declares certain areas of Ukraine as zones of an ecological emergency situation — with subsequent confirmation of these decisions by Parliament;

(22) appoints one-third of the Constitutional Court of Ukraine;

(23) establishes courts by the procedure determined by law;

(24) confers high military ranks, high diplomatic and other high special ranks and class orders;

(25) confers national awards; establishes presidential distinctions and confers them;

(26) adopts decisions on the grant of citizenship of Ukraine and the termination of citizenship of Ukraine, and on the granting of asylum in Ukraine;

(27) grants pardons;

(28) creates, within the limits of the funds envisaged in the State Budget of Ukraine, consultative, advisory and other subsidiary bodies and services for the exercise of his or her authority;

(29) signs laws adopted by Parliament;

(30) has the right to veto Acts adopted by Parliament with their subsequent return for repeat consideration by Parliament;

(31) exercises other powers determined by the Constitution of Ukraine.

The President of Ukraine shall not transfer his or her powers to other persons or bodies.

The President of Ukraine, on the basis and for the implementation of the Constitution and the laws of Ukraine, may issue decrees and directives whose implementation is mandatory on the territory of Ukraine.

Acts of the President of Ukraine, issued within the limits of authority as envisaged in subparagraphs 3, 4, 5, 8, 10, 14, 15, 17, 18, 21, 22, 23 and 24 of this Article, are co-signed by the Prime Minister of Ukraine and the Minister responsible for the Act and its implementation.

COMPLAINTS

The applicant complained of a violation of his electoral rights, stating that the obligation to pay an electoral deposit had been unreasonable and that there had not been any obligation under Ukrainian law to complete the declaration of means by hand. He referred in this respect to Article 3 of Protocol No. 1 to the Convention.

He also complained of the unfairness of the decision of the Supreme Court, alleging that it had erred in its assessment of facts and application of the law. He referred to Article 6 § 1 of the Convention.

THE LAW

1. Under Article 3 of Protocol No. 1 to the Convention the applicant complained that the obligation to pay an electoral deposit violated his right to stand as a candidate in the 2004 presidential election in Ukraine. Article 3 of Protocol No. 1 to the Convention states 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."

The Government stated that the applicant's complaints under this provision of the Convention should be declared inadmissible as being incompatible *ratione materiae*. In particular, they stressed that the Ukrainian legislation clearly and in absolute terms determined that the Parliament of Ukraine was the only legislative body in Ukraine. Thus, they concluded that provisions of Article 3 of Protocol No. 1 did not apply. They further stated that the complaints were incompatible *ratione personae* as the applicant had been proposed as a candidate on behalf of the Party and did not act as a candidate in the 2004 presidential elections in his personal capacity. They further concluded that the applicant's rights under this provision, even assuming that it was applicable, were not breached.

The applicant disagreed, having repeated his complaints under Article 3 of Protocol No. 1 to the Convention.

The Court reiterates that Article 3 of Protocol No. 1 guarantees the "choice of the legislature" and that the word "legislature" does not necessarily mean the national parliament. That word has to be interpreted in the light of the constitutional structure of the State in question (see, *mutatis mutandis*, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 53, Series A no. 113, and *Matthews v. the United Kingdom* [GC], no. 24833/94, § 40, ECHR 1999-I). In two earlier cases, the Commission held that the powers of a Head of State could not as such be construed as a "legislature" within the meaning of Article 3 of Protocol No. 1 (see *Habsburg-Lothringen v. Austria*, no. 15344/89, Commission decision of

14 December 1989, Decisions and Reports 64, p. 211; *Baskauskaite v. Lithuania*, no. 41090/98, Commission decision of 21 October 1998).

Having regard to the relevant provisions of the Ukrainian Constitution (Articles 75 – 112) in force at the material time, the Court observes that legislative power in Ukraine was exercised by Parliament (*Verkhovna Rada*) and not by the President of Ukraine. Pursuant to Article 102 of the Constitution, the President of Ukraine is the Head of State and is the guarantor of the state sovereignty and territorial indivisibility of Ukraine, and of the observance of the Constitution of Ukraine and human and citizens' rights and freedoms.

However, the Court does not exclude the possibility of applying Article 3 of Protocol No. 1 to presidential elections (see *Boškoski v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 11676/04, ECHR 2004-VI; see also *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 54, ECHR 2009). Should it be established that the office of Head of State has been given the power to initiate and adopt legislation or enjoys wide powers to control the passage of legislation or the power to censure the principal lawmaking authorities, then that office could arguably be considered to be a "legislature" within the meaning of Article 3 of Protocol No. 1.

In the present case, the Court finds no indication that the powers of the Ukrainian Head of State are such as to make that office part of the "legislature" of the respondent State.

First, it observes that the President of Ukraine has the formal power to initiate legislation (see Article 93 of the Constitution). However, this power is not accompanied by a power to adopt it (see Article 106 of the Constitution).

Second, the President of Ukraine has not been granted wide powers to control the passage of legislation or the power to censure the principal institutions responsible for initiating and adopting legislation. In particular, under Article 106 §§ 29 and 30 of the Constitution, the President has the power to sign laws adopted by Parliament and has the right to veto laws adopted by Parliament, with the result that those laws are subsequently returned to Parliament for repeat consideration by it. Thus, the President of Ukraine has not been given in law a right of absolute veto over the legislation adopted by Parliament.

Furthermore, the President can only dissolve Parliament if its plenary meetings fail to commence within thirty days of one regular session (Article 106 § 8 of the Constitution). The President can also call parliamentary by-elections within the terms established by the Constitution (Article 106 § 7 of the Constitution).

Finally, the President has not been vested by law or in practice with unlimited discretion to appoint or dismiss the Government or its members without Parliament having the final say on the matter.

As to the nature of the acts issued by the President, the Court observes that the President may not interfere with the power to legislate, in other

words, the power to adopt laws having supreme legal force, which belongs exclusively to Parliament. The President may not issue any decree (*указ*) or order (*розпорядження*) that would contradict or supersede Parliament's legislation and is essentially confined in his or her powers to the implementation of such legislation.

Therefore, though the Ukrainian Constitution provides for a separation of powers between the branches of Government, the President's powers are accessory to Parliament's legislative power (see the section of the Constitution of Ukraine relating to the powers of the Parliament of Ukraine). Accordingly, the Court considers that the President's power to issue decrees and orders, as well as to sign or veto the legislative acts adopted by Parliament, is to be distinguished from the legislative power itself.

The Court concludes that Article 3 of Protocol No. 1 is not applicable in the present case, because the election of the President of Ukraine cannot be interpreted as a "choice of the legislature" within the meaning of that Article.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) thereof.

2. The applicant also complained under Article 6 § 1 of the Convention that the Supreme Court had not reached a reasoned decision and had not responded to his arguments.

Article 6 of the Convention provides, in so far as relevant, as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Court observes that the object of the proceedings in issue was the determination of the applicant's political rights, in particular, his right to stand for presidential election. It notes that proceedings concerning electoral disputes fall outside the scope of Article 6 of the Convention in so far as they concern the exercise of political rights and do not, therefore, have any bearing on "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Pierre-Bloch v. France*, 21 October 1997, § 50, *Reports of Judgments and Decisions*, 1997-VI, and *Cheminade v. France* (dec.), no. 31599/96, ECHR 1999-II).

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 § 3 (a) of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President