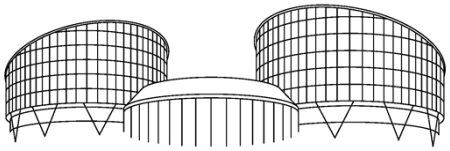

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SOLEYKO v. UKRAINE

(Application no. 78181/12)

JUDGMENT

STRASBOURG

20 September 2022

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

In the case of Soleyko v. Ukraine,

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

Ivana Jelić, *President,*
Ganna Yudkivska,
Arnfinn Bårdsen, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 78181/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 November 2012 by a Ukrainian national, Mrs Nataliya Petrivna Soleyko, born in 1952 and living in Vinnytsya ("the applicant") who was represented by Mr A. Kychenok, a lawyer practising in Kyiv;

the decision to give notice of the complaint concerning the alleged breach of the applicant's right to stand as a candidate in free elections under Article 3 of Protocol No. 1 to the Ukrainian Government ("the Government"), represented by their then Agent, Mr Ivan Lishchyna, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 10 February 2022,

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

SUBJECT-MATTER OF THE CASE

1. The case concerns the alleged breach of the applicant's passive electoral right under Article 3 of Protocol No. 1.

2. The applicant stood as a candidate from the "Batkivshchyna" opposition party in the parliamentary elections of 28 October 2012 in single-seat constituency no. 11. She arrived second having lost the elections to a self-nominated candidate. The applicant brought administrative proceedings against the Constituency Election Commission ("the ConEC") raising allegations of serious irregularities in the tabulation process (including tampering with a large number of ballots, which had initially been counted in her favour, during their storage in the ConEC and a subsequent recount without due safeguards against abuse). She submitted that the accurate voting results could be established on the basis of the original protocols from the Precinct Election Commissions ("the PECs")[1] and that, according to them, she was the rightful winner. The administrative courts found against the applicant, having held that the recount had been in strict compliance with the

[1] According to the law, PECs drew up their protocols on voting results in several originals each having equal legal validity.

law whereas the alternative method of establishing the voting results suggested by the applicant was not based on law. In so far as the applicant alleged any criminal offences, her allegations were dismissed as not confirmed by verdicts. The applicant's administrative claim against the Central Election Commission ("the CEC") in respect of the endorsement of the allegedly inaccurate voting results was equally unsuccessful.

3. The observation mission report of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe ("the OSCE/ODIHR") published in January 2013 contained observations in respect of the tabulation process in the ConEC in question consistent with the applicant's allegations. It noted, in particular, that the ConEC had "established during the recount of majoritarian PEC results that a large number of ballots initially counted in favour of [the] leading [candidate] were found to be marked for more than one candidate and were therefore invalid; these ballots had apparently been tampered with at the [ConEC] premises". The OSCE/ODIHR also observed the vagueness of legal provisions concerning the recount. Namely, it was unclear whether the ConECs could undertake a recount only if the election material had been unsealed before being handed over to them or if complaints about irregularities during the count or the election material's transfer had been filed no later than during that handover, or whether the ConECs were obliged to conduct a recount if there was any indication that the election material packs had been opened, even after the material had been packed properly at the time of receipt by the ConEC.

THE COURT'S ASSESSMENT

4. The applicant complained under Article 3 of Protocol No. 1 that her right to stand as a candidate in free elections had been infringed on account of serious irregularities in the tabulation process at the ConEC's level.

5. The Government submitted that the applicant's allegations had been thoroughly examined by the domestic courts and that there were no reasons for the Court to question their findings.

6. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

7. The general principles of relevance can be found, in particular, in *Davydov and Others v. Russia* (no. 75947/11, §§ 271-77 and 283-88, 30 May 2017) and *Mugemangango v. Belgium* [GC], no. 310/15, §§ 67-73, 10 July 2020). The Court has held, in particular, that a mere mistake or irregularity in the electoral process would not, *per se*, signify unfairness of the elections, if the general principles of equality, transparency, impartiality and independence in the organisation and management of elections were complied with (see *Davydov and Others*, cited above, § 287). The concept of

free elections would be put at risk only if there was evidence of procedural breaches that would be capable of thwarting the free expression of the opinion of the people, and where such complaints received no effective examination at the domestic level (ibid., §§ 283-88).

8. As confirmed by the ConEC's records, it had received all the election-related packages from the PECs without any issues being reported and the tampering with those packages and, possibly, with the ballots therein, had taken place in the ConEC's premises. The recount was carried out by the ConEC following the applicant's main opponent's complaint, allegedly without its scope having been clearly defined and lacking transparency. It revealed that many ballots with a vote for the applicant also contained a vote for another candidate and were therefore invalid. While the applicant had been the winning candidate according to the voting results tabulated by the ConEC by over 80% prior to a break and the subsequent recount, she arrived second according to the recount results.

9. There is no doubt that the irregularities alleged by the applicant were serious enough to thwart the free expression of the people in the choice of the legislature. The OSCE/ODIHR election observation report confirmed their credibility. The domestic courts, however, dismissed the applicant's allegations in a formalistic manner, without any meaningful attempt, firstly, to find out what had really happened and, secondly, to consider the possibility of establishing the election results in a manner more credible than on the basis of the recount raising serious issues.

10. There has therefore been a violation of Article 3 of Protocol No. 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. The applicant claimed the following amounts in respect of pecuniary damage: 180,000 Ukrainian hryvnias (UAH) as the expenses related to her pre-election campaign and UAH 243,000 as the unearned wages. There is no causal link between the violation found and the pecuniary damage related to the applicant's pre-election campaign. She also failed to provide any information about the difference between the salaries that she would have received as a member of parliament and her other income which she had been receiving during the relevant period (compare *Kovach v. Ukraine*, no. 39424/02, § 66, ECHR 2008, and *Kerimova v. Azerbaijan*, no. 20799/06, § 64, 30 September 2010). The Court therefore dismisses the applicant's claims under this head.

12. The applicant also claimed 10,000 euros (EUR), as well as the reopening of the domestic proceedings, in respect of non-pecuniary damage. The Court considers it reasonable to award her EUR 3,000 under this head.

13. Lastly, the applicant claimed EUR 1,000 for costs and expenses. Having regard to the documents in its possession and to its case-law on the

matter, the Court considers it reasonable to award the applicant the claimed sum, to be paid directly into her legal representative's bank account.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros) in respect of legal costs before the Court (to be paid into the bank account of the applicant's lawyer, Mr Kychenok);
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 20 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Ivana Jelić
Deputy Registrar	President