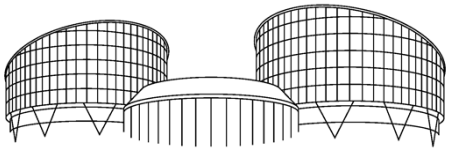

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MARKOV v. UKRAINE

(Application no. 66811/13)

JUDGMENT

STRASBOURG

3 February 2022

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

In the case of Markov 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. 66811/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 October 2013 by a Ukrainian national, Mr Igor Olegovych Markov, born in 1973 and living in Odesa ("the applicant") who was represented by Mr O.L. Kazarnovskyy, a lawyer practising in Odesa;

the decision to give notice of the complaint 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 decision not to admit the Government's belated observations to the case file;

the applicant's observations;

Having deliberated in private on 13 January 2022,

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

SUBJECT-MATTER OF THE CASE

1. The case concerns the allegedly unlawful and arbitrary invalidation of the election results in the constituency, in which the applicant had initially been registered as the winner (Article 3 of Protocol No. 1 to the Convention).

2. The applicant ran as a self-nominated candidate for the parliamentary elections of 28 October 2012 in single-seat constituency no. 133. The Central Election Commission ("the CEC"), which did not receive any complaints regarding that constituency, registered him as the winner (with 5,160 votes ahead) and he started performing his functions as a Member of Parliament ("MP") in December 2012. However, following a complaint from another MP to the prosecution authorities in July 2013 that there had been some mass-media reports of election-related irregularities in constituency no. 133, a criminal investigation was carried out. Relying on expert examinations of ballots, the Ministry of the Interior informed the CEC that 6,038 ballots with votes for the applicant had in fact been falsified. Namely, it appeared that initially marks had been made in front of other candidates' names, but they had been erased and a new mark had been put in front of the applicant's name.

3. On 30 August 2013 the CEC replied to the investigator that there was nothing it could do. On the same date three individuals (including the MP who had raised the complaint to the prosecution authorities) brought an administrative claim against the CEC seeking, in particular, invalidation of the election results in constituency no. 133 and divesting the applicant of his MP mandate.

4. The applicant who was involved in the proceedings as a third party contested the above claim. In addition to pointing out certain inconsistencies in the investigation findings, he submitted that the ostensibly falsified ballots in his favour might have been tampered with during the investigation-related inspection: the erased marks in front of other candidates' names could have been put and erased post-factum to undermine the ballots' validity.

5. On 12 September 2013 the Higher Administrative Court allowed the claim in part. It invalidated the election results in constituency no. 133, quashed the applicant's registration as the elected MP and held that it was impossible to establish the election results in that constituency. It also noted that the applicant's references to certain inconsistencies did not prove that the ballots had not been falsified.

6. On 20 September 2013 the applicant was divested of his parliamentary mandate.

THE COURT'S ASSESSMENT

7. The applicant complained that the invalidation of the election results in his constituency and the cancellation of his MP mandate had been in breach of Article 3 of Protocol No. 1.

8. The Government did not submit observations within the time-limit set for this purpose.

9. The Court notes that this 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.

10. Although originally stated in connection with the conditions on eligibility to stand for election, the principle requiring prevention of arbitrariness is equally relevant in other situations where the effectiveness of individual electoral rights is at stake, including the manner of review of the outcome of elections and invalidation of election results (see *Kerimova v Azerbaijan*, no. 20799/06, § 44, 30 September 2010).

11. The Court takes note of the following circumstances indicating that the invalidation of the election results in the present case was indeed arbitrary: the inexplicable delay in the initiation of the revision of the election results; the vagueness of the arguments in the individual complaint that had led to that revision; the absence of any post-election complaints before the CEC regarding that constituency during the one-month period between the E-day (28 October 2012) and the date of the registration of the applicant as

the winner (23 November 2012); the absence of any allegations of obstacles to raising such complaints in due time; and, finally, the failure of the Higher Administrative Court to duly address the applicant's pertinent arguments.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. The applicant claimed 45,328 euros (EUR) in respect of pecuniary damage, in compensation for the loss of earnings, which he would have received as an MP until November 2014[1]. In substantiation, he provided an information note issued by the Secretariat of the Parliament at his lawyer's request on 28 May 2021 on the salaries and allowances received by the applicant as an MP during the period from December 2012 to September 2013. The applicant noted that he had not been receiving any income during the relevant period, given that he was in detention from 22 October 2013 to 24 February 2014[2] and had left Ukraine thereafter. The applicant also claimed EUR 100,000 in respect of non-pecuniary damage.

14. The Government contested those claims.

15. The Court notes that the applicant submitted detailed information about the income received by him as an MP and provided evidence of the lack of any income until 24 February 2014. This information is in principle a sufficient indication of his "net loss" (compare *Kerimova*, cited above, § 64). The Court therefore considers that the applicant suffered certain pecuniary damage, although this damage cannot be technically quantified in terms of monthly salaries for the entire term of service of an MP (ibid.). Having regards to all the case-file materials, the Court considers it reasonable to award the applicant EUR 12,000 under this head, plus any tax that may be chargeable.

16. The Court also considers that the applicant suffered non-pecuniary damage which cannot be compensated solely by the finding of the violation of Article 3 of Protocol No. 1. Ruling on an equitable basis, the Court awards him EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

17. The applicant did not submit a claim for costs and expenses. Accordingly, the Court will not award him any sum on that account.

18. 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.

[1] The Parliament of Ukraine was dissolved with effect from 27 November 2014.
[2] In the context of unrelated criminal proceedings.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros) in respect of pecuniary damage; and
      (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
   (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 3 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Ivana Jelić
Deputy Registrar	President