



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

FIFTH SECTION

CASE OF BILOTSEKIVSKA v. UKRAINE

(Application no. 17313/13)

JUDGMENT

STRASBOURG

3 February 2022

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

In the case of Bilotserkivska 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. 17313/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 22 February 2013 by a Ukrainian national, Ms Rimma Mykolayivna Bilotserkivska, born in 1963 and living in Syevyerodonetsk (“the applicant”), who was granted leave to present her own case in the proceedings before the Court;

the decision to give notice of the complaints under Article 3 of Protocol No. 1 and Article 13 of the Convention 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 13 January 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 (Article 3 of Protocol No. 1) and the lack of an effective domestic remedy in that regard (Article 13 of the Convention).

2. The Central Election Commission (“the CEC”) refused to register the applicant as a self-nominated candidate in a single-seat constituency for the parliamentary elections of 28 October 2012 on the grounds that her autobiography did not contain the legally required information about her citizenship, even though the applicant had indicated (*albeit* without using the word “citizenship”) that she was Ukrainian and had submitted a copy of her passport. The administrative courts upheld the CEC’s position. At about the same period the Higher Administrative Court (“the HAC”), however, allowed a similar claim from another person whose candidacy had been refused by the CEC on the grounds that he had used the title “biographical note” instead of “autobiography” and had not indicated that he was a Ukrainian citizen. The HAC held that a wrong title and the absence of information about a potential candidate’s citizenship were to be considered as mere errors and that there should be a possibility of their rectification. Both parties provided the Court with a copy of the above-mentioned HAC’s decision: the applicant to show the lack of uniformity in the HAC’s approach to similar situations, and the

Government to show that, unlike the applicant, the claimant in the cited case had simply erred in the title of the document.

3. Relying on Article 3 of Protocol No. 1 and Article 13 of the Convention, the applicant complained that the refusal of her candidacy for the parliamentary elections had been arbitrary and that the courts had not provided an effective examination of her complaint in that regard.

THE COURT'S ASSESSMENT

4. The applicant complained that the CEC had arbitrarily refused her the possibility to run for the parliamentary elections and that the administrative courts had failed to duly examine her related complaint.

5. The Government submitted that the only reason for the refusal of the applicant's candidacy had been her own failure to comply with the clear legal requirement to indicate her citizenship. According to the Government, the applicant's allegations had been thoroughly examined by the domestic courts and there were no reasons for the Court to question their findings.

6. Given that the dispute in question was examined by judicial bodies at the domestic level, the Court considers it appropriate to examine the present case under Article 3 of Protocol No. 1 alone, even if the applicant additionally relied on Article 13 of the Convention (see *Mugemangango v. Belgium* [GC], no. 310/15, § 125, 10 July 2020).

7. 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.

8. The general principles of relevance are summarised, for example, in *Melnychenko v. Ukraine*, no. 17707/02, §§ 53-59, ECHR 2004-X, and *Mugemangango*, cited above, §§ 67-73).

9. It is not in dispute in the present case that the applicant complied with the Ukrainian citizenship eligibility condition. It is also established that she provided the CEC with documentary evidence to prove that. The rejection of her application by the CEC was founded solely on an allegedly defective form of the autobiography provided by her. The administrative courts' approach to the matter was equally formalistic (compare *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 85, 8 April 2010). It follows that the refusal of the applicant's candidacy was not proportionate to the legitimate aim pursued (compare *Krasnov and Skuratov v. Russia*, nos. 17864/04 and 21396/04, §§ 65-66, 19 July 2007).

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 100,000 euros (EUR) in respect of non-pecuniary damage. The Court considers it reasonable to award her EUR 750 under this head.

12. 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, EUR 750 (seven hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
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
Deputy Registrar

Ivana Jelić
President