SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 72713/01
by UKRAINIAN MEDIA GROUP
against Ukraine

The European Court of Human Rights (Second Section), sitting on 18 May 2004 as a Chamber composed of

 Mr J.-P. Costa, *President*,
 Mr A.B. Baka,
 Mr L. Loucaides,
 Mr C. Bîrsan,
 Mr K. Jungwiert,
 Mr V. Butkevych,
 Mr M. Ugrekhelidze, *judges*,

and Mrs S. Dollé, *Section Registrar*,
Having regard to the above application lodged on 12 December 2000,

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, the Ukrainian Media Group (“Українська Прес-Група”), is a privately-owned legal entity registered and situated in Kyiv, Ukraine. This entity owns an all-Ukrainian daily newspaper “The Day”. The respondent Government, initially represented by their Agent Mrs Valeria Lutkovska, are now represented by their Agent Mrs Zoryana Bortnovska.

A.  The circumstances of the case

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

1.  Proceedings in respect of the publication of 21 August 1999

On 21 August 1999 “The Day” published an article by Ms Tetyana E. Korobova entitled “Is this a Second Yurik for Poor Yoriks, or a Ukrainian Version of Lebed?” The article read as follows:

“*Epigraph: All of this is about her, our Natasha as well as yours. About the position that a progressive socialist Natalia Vitrenko may or may not hold - depending on which of the scenarios from Bankova [the name of the street where the President's Administration is situated] will eventually win the “tender” offered by office No. 1. Certainly, given a certain margin of error, it will be possible to forecast which of the nominees would be easier to manipulate from the said office.*

The first version [concerning her position] was predicted by “The Day” as far back as the spring, and was based on the assumption that, from the point of view of Bankova, Petro Symonenko [leader of the Communist Party] *was not “nice or bright” enough for the role of “a scarecrow” in the pre-election scenario à la russe: “the reformer against the red threat”. Natalia Vitrenko, with her “Uran mines” and Volodymyr Marchenko, are much more impressive and the best political scientists and sociologists told us, therefore, that she was the only person able to defeat Kuchma in the second round of the elections with a predicted 33 per cent of the poll. Political scientists and sociologists were soon proved wrong and Natalia Vitrenko's rating substantially decreased. However, this is due perhaps to the freedom of scientific debate and discord around the main body [that of the President]* *rather than Ms Vitrenko's real ratings. Of course, it is hard to believe that one third of the country's population, watching a TV programme where Natasha battered a deputy who had been knocked to the floor with the help of Marchenko's fists, would choose not to call an ambulance and medical help, but instead would race to vote for “progressive socialism”.* It is evident, however, that the “Zhirinovskiy percentage” of 10-11% is a normal result in a normal country, but not one where the society is mainly composed of ill people and beggars ... *Natalia Vitrenko's special role was confirmed by the “painful” recounting of the number of signatures in support of her [registration as a candidate] at the Central Electoral Committee (CEC).* Today the highly respected President of the CEC Mr Mykhaylo Ryabets told us how wrong the Supreme Court was when it ignored the required one million signatures and compelled the CEC to register the nominated candidates for the position of the President in neglect of this norm. But only recently the same Ryabets shared his insights with the public which, if translated from the confidential-emotional language used, could sound like this: all the candidates registered by the CEC (acting on its own!) should not have been registered, because if the signatures submitted by the nominees had been subjected to serious scrutiny, none of the candidates, including Kuchma, would have withstood the verification. What then was the criterion? Was it a presumption on the part of the CEC and its President about which scenario would be the best at the pre-election stage? *For the CEC as well, apparently it is not a secret which discussions preceded the decision of Bankova to register Natalia Mykhaylivna, who had problems for various reasons.* *Perhaps, Vadym Rabinovych, who left our country prematurely and in a very untimely manner, might be able to disclose the details? Or maybe Kuchma's election agent, Mr Volkov, who fought for and won Natasha's registration?*

As it was discovered, it was not the apprehension in the event of her failure to register, of having Vitrenko as a wild force that could break loose which influenced the final decision of Bankova, but the scenario "Kuchma vs. Symonenko", which is urgently being modified because of Petro Mykolayovych's [Symonenko's] alleged unreliability. The issue concerns the certainty repeatedly demonstrated by the speaker [of the Parliament] Tkachenko, that they [Bankova] would manage to agree with Symonenko, and the steady position of the Communist Party (CPU) ideologists who believe that the CPU does not want a clear loss, or a clean victory (referring to Bulgaria). This provoked even more commotion in Bankova. The Russian scenario that was used in the past is rusting away, and there is nothing else! *Therefore an improved scenario was introduced: taking Natalia Vitrenko to the second round, nominating her against Kuchma - with the certainty that the fear of having Vitrenko and Marchenko managing the country would line everyone up to vote for Kuchma, including the left-wing.*

The boys at Bankova are desperate gamblers. Because their venture might be answered adequately. For instance, the headquarters of all the main candidates who already dropped out from the competition might negotiate and decide to let their supporters vote freely. *Of course, they would not ask them to support Vitrenko, but to work in such a way that the motto “Anyone but Kuchma!” would be as topical as ever.* Eventually, it is no less immoral than the scenarios of Kuchma's headquarters. And if our “green” democracy has to have “the mumps”, the earlier the better: the acquired immunity would be stronger; as children's diseases have to be contracted in childhood.

*In a country under President Vitrenko it would be both frightful and enjoyable, but not for a long time.* Like in the Crimea under Yurik Meshkov. And what country-wide insanity that was ... At the beginning it was bizarre and then funny. He would come out, yell in front of the people, so self-assured, artistic, his voice so confident, metallic, everything clear, elderly ladies screaming and sobbing, trying to kiss his hands... And not a single institution obeying him. He seized an automatic gun and rushed to replace the head of the police. [He] replaced him. But nobody cared about the new one. Then he rushed to the SBU [Security Service of Ukraine]. And here they spoke to him politely, and they threw the people he had just appointed down the stairs and promised they would have something torn out ... Time flies and the differently-coloured opposition is becoming united, the gangsters who left are returning, public servants from housing maintenance offices up to Government officials are sabotaging [him], the Verkhovna Rada is imposing restrictions on presidential powers - all of them are gathering against Yurik, life is not getting any better, his personal charisma is falling to pieces, people are sobering up. Some people say: this was the Crimea, it was backed by Kyiv. But we are not going to dwell upon the matter of who backed it and when they appeared. However, the point is that Autonomy is not the State. Had there been an army, everything would have been over sooner, citizens... Marchenko of course will seek to order General Kuzmuk about and make him resign. This would be something worth seeing... And the Verkhovna Rada will become such a friendly body, and constitutional amendments will be adopted without delays! The heyday of Parliamentarism! *Are pre-term presidential elections likely to be held in spring? Natalia Mykhaylivna, may God give her health, will finally put an end to disputes about whether the Ukrainian soil can bear its own “Newtons” in skirts.* And the only prospective evil as a result of this experiment might be the complexities that will confront Yulia Tymoshenko as a female candidate during the next elections... Some people say: and what about the country and the people!? Ladies and gentlemen, do not prevent people from exercising their own sacred right to vote, if you are democrats. And do not prevent the same people from facing the consequences of their choice and their responsibility for it ...

*However, we are unlikely to see the full extent of the people's joy or our Natasha's triumph, as long as there remain a few “real raving madmen” in Bankova.* As a result, apparently, the blueprint of the Russian headquarters will be developed directly along the lines of the “Russian scenario”. And here we will discover great news about who can claim the role of the Russian Lebed in our country, who had been appointed to the Security Council prior to the elections and later surrendered to the incumbent President [Yeltsin], and thus largely determining the latter's victory during the new elections. *According to an information source, the scenario of “the homegrown Lebed” emerging before the first round of the elections is as follows. At the end of August it is planned to launch a mass media campaign supporting the idea of setting up a People's Audit Committee (Alas! But Natalia Mykhaylivna seems to have already mentioned the need to revive this structure). In the first half of September, at the numerous requests of the workers, the President will issue a decree setting up this committee. It will start functioning immediately. One of the events that will be widely covered by the media is to be held in conjunction with the CEC and is to prevent violations of electoral law. At the same time, the media will launch an anti-Vitrenko campaign (only the pro-presidential media will move with this idea and they will be fully involved in it). And then the President, in accordance with the plan, should make a speech sternly demanding that the dirty propaganda campaign against the people's defender be terminated. The people will applaud the President and then, at the end of September, he will appoint the grateful Natalia Mykhaylivna as the Head of the People's Audit Committee. This would be followed by an official statement of candidates Kuchma and Vitrenko, as a result of which only one candidate will remain. Natalia Mykhaylivna will be dancing Saint-Sense. It means that she is still unlikely to hear the “swan song” of her political career, but the Russian scenarists are rubbing their hands with glee, waiting for the electoral campaign to be over with a feeling that their strategic duty has been completely fulfilled. One should admit that the scenario is not weak. The matter to be addressed is the extent to which Natalia Mykhaylivna is ready for the originality of those who are using her and to what extent she is aware of the level of cynicism of the system that has been preparing the background for five years to allow this progressive socialist to demonstrate her brilliant abilities in accounting and auditing on behalf of the people? The chain is getting tighter and the leash is getting shorter...* *However, the Berezovsky-guided Lebed was quickly dismissed from his post and he eventually landed, with his [Berezovsky's] help, in rich territory. The headquarters' scenarists commissioned by the Russian oligarch, are unlikely to have the same long-term and prospective intentions for our Natasha. However, it is quite possible that even perceiving the danger of this for herself Natalia Mykhaylivna will be compelled to understand that she has been made an offer she cannot refuse. It is hardly a coincidence that the Sumy governor Volodymyr Scherban is telling the media that he financially supported the PSPU's [Progressive Socialist Party of Ukraine] Congress. Then Mr Pinchuk will also recollect how he promoted Ms Vitrenko in Dnipropetrovsk.* *And here Mr Rabinovych who started work on Mr Moroz's ratings (“Rabinovych vs. Moroz”, ... despite the feelings that Rabinovych may arouse in the majority of the population), following the advice from the Presidential Administration, will recollect prospects pertaining to the PSPU... And then it will be corroborated that Bankova had been helping Natalia Mykhaylivna not merely because their family and that of Mr Razumkov were on friendly terms. It is possible that no one will have any more doubts that the cool opposition member is just “a loudspeaker” of the administration of the President of Ukraine whose role is that of the Russian Zhirinovsky (as some slanderers would say) and is employed and paid personally. The role is simple: you might say whatever you like, but act “correctly”, without making the Father [the President] grieve, and undermine his enemies.*

So, if the theme of the “people's audit” is outlined, the Russian plan will be launched. And Kuchma's competitor will be Petro Symonenko. The electoral palette will increasingly gain more clear-cut contours. Kostenko and Onopenko [MPs] have initiated another electoral block, an alliance that constitutes an alternative to that of the “three whales”: Marchuk - Moroz - Tkachenko – the reasons are quite understandable. However, Kostenko's “Rukh” [Ukrainian Political Party] appears and disappears now and then. But definitely there are still Zayets [MP] and other loyal followers of the tactics of Chornovil [leader of another fraction of the “Rukh” at the time] even though they were knocked down [by Kostenko's “Rukh”]. Fidgeting behind the State authorities on an ideological underlay with anti-left colouring. It will be determined here, today, which one of the “Rukhs” is better prepared for defending the national-patriotic masses. Poor Onopenko who is used to various kinds of “kydalovo” (deception) could not possibly answer the question: “If they promise you the PM's office, will you go against Kuchma?” After the centre-right had been joined by the “green” Kononov [a member of the Green Party] whose main idea was to avoid Kuchma's anger while not working for him, there were no more doubts that the ideology of the block lies in self-preservation. And Oliynyk, an “unidentified object” who joined them, has crafty ideas himself. The general perception has not therefore changed.

Thus, only the “triple alliance” of Marchuk - Moroz - Tkachenko joined by “an active bayonet” Yuri Karmazin still remains within Bankova's firing line, and on this alliance depends how successful all the candidates will be in Bankova's game aimed at Kuchma's victory. ... Sometimes it really seems that our country deserves Kuchma-2, or another Yurik ... Are we poor Yoriks indeed? And had there not been the fear that the election results might be declared null and void, - such fears being unanimously spoken about by the pro-presidential people, - it might have been possible to think that they were alright ...”

On 21 August 1999 Ms Natalia M. Vitrenko (leader of the PSPU “Progressive Socialist Party of Ukraine”) lodged a complaint with the Minsky District Court of Kyiv against “The Day” seeking compensation for moral and pecuniary damage because the information contained in the article published on 21 August 1999 was untruthful and damaged her dignity and reputation as a member of Parliament. On 3 March 2000 the Minsky District Court of Kyiv allowed her claims in part and ordered “The Day” to pay Ms Natalia M. Vitrenko UAH 1,000 in compensation for moral damage. It also found that the whole article published in “The Day” was untruthful, since the applicant had failed to prove the credibility of the information which it had published. In particular, the court held that:

“... the court disagrees with the arguments raised by the respondents, since the information disseminated by them in “The Day” of 21 August 1999 was untruthful. This article was published on page 4 in the column entitled “details” and “prognosis”, however it was not specified to the reader of the newspaper how he/she could distinguish “the prognosis for the future” from the facts and, moreover, “details” ...

... the above-mentioned Article 42 of the Law of Ukraine on Printed Mass Media (Press) has a specific list of circumstances which exempt the editorial board from liability. This list does not include the “prognosis with the details”, and therefore the liability of the respondents is engaged regardless of “whether they had an intention to evaluate the developments in the course of the previous Presidential elections in Ukraine...

... the expressions “second Yurik for poor Yoriks and the Ukrainian modification of Lebed”, “our and your Natasha”, “scarecrow (*strashylka*)”, “loudspeaker of the Administration of President, acting as Zhirinovsky in Ukraine”, as used by the author, may be [regarded as] ... the author's imagination and are not “generally accepted political rhetoric”, and are moreover the author's own “value judgments”...

... Also, the court disagrees ... that this article pertains to Natalia Vitrenko as a candidate for the Presidency of Ukraine, but not to [her] private life ... The article pertains not to Vitrenko herself but deals with the existence of certain plans of the “Bankova” [administration of the President of Ukraine] and how Natalia Vitrenko could be manipulated by it ... The court considers that the personal life of the respondent as a person, a human being, is closely connected with her political views and beliefs and with her role in the political structure of the society. Therefore the role of a *strashylka* (scarecrow), which, according to the prognosis of the respondent, Ms Tetiana E. Korobova, was planned by the Administration of the President of Ukraine is not truthful. The court considers this to be the product of the author's imagination ...

The court considers that such [as disseminated in the article] “value judgments” defame the honour and dignity of the plaintiff and her reputation, whereas she is the leader of the PSPU, ... a member of the Verkhovna Rada, and a candidate for the position of President... This means that the article concerns her both as a public and a private person. ...”

On 12 July 2000 the Kyiv City Court upheld this decision. In particular, it stated that the findings of the Minsky District Court of Kyiv were correct since the respondents had failed to prove and the court did not establish that the disseminated information was truthful.

2. Proceedings in respect of the publication of 14 September 1999

On 14 September 1999 “The Day” published an article by Ms Tetiana E. Korobova entitled *“On the Sacred Cow and the Little Sparrow: Leader of the CPU as Kuchma's Last Hope*”. The relevant extracts of the article read as follows:

“... Petro Mykolayovych was allegedly visited by a person resembling Oleksandr Volkov, Kuchma's election agent, and who allegedly told the CPU leader: “If you withdraw from the race [Presidential elections], you will lose your head. You withdraw your name from the list [of candidates] today - you will be buried tomorrow ...

... they are ready to go right to the “end” following the resolutions of the Congress [of the Communist Party] and after Kuchma's election to collaborate with him and have the Government delivered to them as a present for their services ...

... Petro Mykolayovych might be offended by “The Day” again. In vain. Here a parable has just dawned on me. In bitter weather a little sparrow was frozen while flying and collapsed. A cow was passing by and a cowpat fell directly onto the little sparrow. He warmed up, put his little head out and started chirping, in a gleeful mood. And at this point a cat enters, sneaks up on him and there is no more little sparrow. The moral: if you get into dung, just sit there and do not chirp. And remember, not everyone who excretes on you is your enemy and not everyone who pulls you out of the dung is your friend. I apologise for being so straightforward.”

In December 1999 Mr Petro M. Symonenko (the leader of the Communist Party) lodged a complaint with the Minsky District Court of Kyiv against “The Day” and Ms Tetiana E. Korobova alleging that the information contained in the publication was untruthful. He also sought to defend his honour, dignity and reputation and to obtain compensation for non-pecuniary damage. On 8 June 2000 the Minsky District Court of Kyiv partly allowed the Symonenko's complaints and ordered “The Day” to pay him UAH 1,000 in compensation for moral damage. In particular, it held that:

“... in examining this case, account has to be taken of the fact that Mr Petro M. Symonenko is a political leader and the article relates to the area of his activity as a politician, and not that of an average citizen. ...

As to the other extracts from the article referred to by the plaintiff in his claim, the court considers that they were found to be untruthful during the court hearing, since the respondent could not provide the court with evidence proving the truthfulness of the information contained in the publication. ( ...)

The respondent's representative maintained during the hearing that these extracts were merely presumptionsof the author of the article. However, he failed to confirm this. The court is sceptical, since from the text of the article it cannot be understood that the journalist refers to her statements as presumptionsand that the reader has to identify the text as a presumption*.* The comparison of the plaintiff to “*gorobchyk*” [a little sparrow] is in his [Mr Petro M. Symonenko's] opinion humiliating*.* Moreover, there was no evidence as to an existing agreement before the elections between Mr Petro M. Symonenko and the officials in office as inferred by the headline of the article “The Leader of the CPU (Communist Party of Ukraine) as Kuchma's Last Hope”.

... this [moral] damage resulted from the fact that the article was published before the Presidential elections, in which the plaintiff was also a candidate. Therefore (...) he was compelled to explain to the electorate the issues raised in the article. (... ) The applicant considers that this article accused him of betraying his party members, colleagues and the electorate. Damage was inflicted on him as a man of honour, taking into account the allegories that the author used in her article. Thus, the “CJSC Ukrainian Media Group” had published information that it had not verified and disseminated data that was untruthful (...) and Ms Tetiana E. Korobova invented information that was not truthful and disseminated it....”

The court also concluded that the following be adjudged untruthful:

“... the headline of the article on the first page “On a Sacred Cow and a Little Sparrow: The leader of the CPU as Kuchma's last hope.”

... Petro Mykolayovych was allegedly visited by a person resembling Oleksandr Volkov, Kuchma's election agent, and who allegedly told the CPU leader: “If you withdraw from the race [Presidential elections], you will lose your head. You withdraw your name from the list [of candidates] today - you will be buried tomorrow” ...

... they are ready to go right to the “end” following the resolutions of the Congress [of the Communist Party] and after Kuchma's election to collaborate with him and have the Government delivered to them as a present for their services. ...”

On 16 August 2000 the Kyiv City Court upheld this decision. In particular, it stated that the Minsky District Court of Kyiv came to a correct conclusion that the respondent in this case had not proved the truthfulness of the information disseminated about Mr Petro M. Symonenko. It also held that the conclusions of the court were based on the case file and complied with the legislation in force.

B.  Relevant domestic law and practice

1.  Constitution of Ukraine of 28 June 1996

Article 32

“... Everyone is guaranteed judicial protection of the right to rectify incorrect information about himself or herself and members of his or her family, and of the right to demand that any type of information be rectified, and also the right to compensation for material and moral damage inflicted by the collection, storage, use and dissemination of such incorrect information.”

Article 34

“Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.

The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crime, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or maintaining the authority and impartiality of justice.”

2.  Civil Code of 1960

Article 7

Protection of Honour, Dignity and Reputation

“A citizen or an organisation shall be entitled to demand in a court of law that information be refuted if it is not truthful or is set out untruthfully, degrades their honour and dignity or reputation or causes damage to their interests unless the person who disseminated the information proves that it is truthful.

... Information disseminated about a citizen or an organisation that does not conform to the truth and causes damage to their interests, honour, dignity or reputation shall be subject to rectification, and pecuniary and non-pecuniary damage can be recovered. A limitation period of one year shall apply to claims concerning rectification of such data and compensation.”

3.  Law of Ukraine on Information

Article 47

Liability for the Infringement of Legislation on Information

“... The liability for the infringement of legislation on information shall be borne by the persons found guilty of such infringements such as:

... dissemination of information that does not correspond to the truth;

... dissemination of information that is untruthful [or] defames the honour and dignity of a person;...”

4.  Law of Ukraine on the Printed Media (Press)

Article 26

The Rights and Obligations of Journalists

“... A journalist is obliged to:

...

2) provide objective and truthful information for publication; ...”

Article 37

Rectification of Information

“Citizens, legal entities and State bodies and their legal representatives have the right to demand rectification of information published about them or data that does not correspond to the truth or defames their honour and dignity.

If the editorial board does not have any evidence of the fact that the information published by it corresponds to the truth, it has to rectify this information at the request of the plaintiff in the next issue of the printed media or to publish a rectification at its own initiative. ...”

Article 42

Indemnity from Liability

“The editorial board and journalists are not liable for the publication of information that is not truthful, defames the honour and dignity of citizens and organisations, infringes their rights and lawful interests or constitutes abuse of the freedom of activity of the media and the rights of journalists if:

1) this information was received from the news agencies or from the media owner (co-owners);

2) the information contains responses to a formal request for access to official documents or to a request for written or oral information, provided in accordance with the Law on information;

3) the information is a verbatim reproduction of any official address of the officials of State bodies, organisations and the citizens' unions;

4) the information is a verbatim reproduction of materials published by other printed media which refer to that information;

5) the information contains secrets that are specifically protected by law, but the journalist received this information lawfully.”

5.  Resolution of the Plenary Supreme Court of Ukraine No. 4 of 31 March 1995 "On the Court Practice in Cases of Compensation for Moral (non-pecuniary) Damage"

“... 11. ... The critical assessment of certain facts ... could not serve as a basis for allowing the claims for compensation for non-pecuniary damage. However, if other rights of a person protected by law were violated (for instance confidential information was disseminated without his/her consent), then this could lead to the award of compensation for moral damage [by the court] ...”

COMPLAINTS

The applicant complains that the domestic courts erred in their assessment of the facts and in the application of the domestic law in the course of the proceedings initiated upon the claims of Ms Natalya M. Vitrenko and Mr Petro M. Symonenko. It also maintains that the courts failed to apply the case-law of the Strasbourg Court concerning Article 10 of the Convention, in particular the case of *Lingens v. Austria* (judgment of 8 July 1986, Series A no. 103)*,* in the assessment of their value judgments. In this connection, the applicant relies on Article 6 § 1 of the Convention since its legal arguments were not dealt with by the Ukrainian courts.

The applicant also complains that the domestic courts found that the publications at issue did not correspond to the truth. It maintains that the courts were not able to distinguish between “value judgments” and “facts” contained in the impugned publications of 19 August 1999 and 14 September 1999. The applicant also alleges that the court decisions interfered with its right to impart information freely. The applicant invokes Article 10 of the Convention.

THE LAW

1. The applicant complains that the domestic courts violated the principles of a fair hearing as they refused to take into account the case-law of the European Court of Human Rights. It further maintains that the domestic courts unfairly obliged the applicant to prove the truth of the views expressed in the publications at issue. The judgments given by the domestic courts were therefore unlawful. The applicant refers to Article 6 § 1 of the Convention, which in so far as relevant provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

The Government did not comment on the applicant's complaints.

As to the complaint about the fairness of the proceedings, in so far as it may be understood to concern the assessment of evidence and application of the domestic law, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, for example*,* *Cekic and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999‑I). Finally, the Court recalls that although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument raised by a party to the proceedings.

Turning to the facts of the present case, the Court finds that there is nothing to indicate that the domestic courts' evaluation of the facts and evidence in the applicant's case contravened the fairness guarantees of Article 6 § 1 of the Convention. The applicant was able to present its arguments and to challenge the evidence adduced against it. There was a public hearing at first instance and before the Court of Cassation, and both these courts gave reasons for their decisions. Having regard to the facts as submitted, the Court has not found any reason to conclude that the proceedings did not comply with the requirements of Article 6 of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant further alleges that its right to express freely views and opinions and to disseminate information was infringed. It alleges that Article 10 of the Convention was infringed, which provides:

“1.  Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2.  The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The Government conceded that there was an interference with the applicant's rights under Article 10 of the Convention. However, they maintained that the interference was prescribed by law (in particular by Article 7 of the Civil Code of Ukraine) and pursued a legitimate aim, namely the protection of the reputation of the plaintiffs who brought the defamation action. They submitted that the applicant and the journalist were, with justification, found liable for the dissemination of untrue information. In this connection, they maintained that the provision of true information about the real political views of candidates in elections was legitimate. It was not legitimate, however, to mislead the electorate. They further stressed that the interference was necessary in a democratic society since the cases against the applicant before the domestic courts confirmed that the information disseminated was untrue. Moreover, in the opinion of the Government the interference with the applicant's rights was proportionate as the sums awarded to the plaintiffs against the applicant and the journalist were moderate and much lower than the amounts claimed. Accordingly, there had been no breach of Article 10.

The applicant disagreed. It considered that the interference was not necessary because the articles referred not to facts, but to value judgments, which were not susceptible of proof. The courts' decisions were in fact a form of political censorship of the opinion of the journalist and were aimed at removing it from the political discussion of persons in public life. Furthermore, the sanctions imposed were aimed at preventing it from acting as a source of information and a control mechanism over public power. The applicant maintained that the assessment of the personal and management qualities of the candidates for presidency and of their ability to form a team of like-minded persons, to deliver what they had promised and to provide moral and intellectual leadership for the benefit of the nation, was at the core of the issues discussed in the impugned publications. Furthermore, open criticism of politicians and discussion about their qualities were necessary preconditions for the holding of free and democratic elections. It concluded therefore that the fundamental guarantees enshrined in Article 10 of the Convention had been infringed.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

*Declares* admissible, without prejudging the merits, the applicant's complaint about the infringement of Article 10 of the Convention;

*Declares* inadmissible the remainder of the application.

 S. Dollé J.-P.Costa
 Registrar President