



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

## FIFTH SECTION

### CASE OF TOMENKO v. UKRAINE

*(Application no. 79340/16)*

### JUDGMENT

Art 3 P1 • Right to free elections • Early termination of applicant's mandate as member of parliament ordered by his political party following his withdrawal from its parliamentary faction • Impugned measure not foreseeable • No legal framework to protect applicant's passive electoral right against abuse • Impugned measure unlawful, disproportionate and thwarted the free expression of the people in the choice of the legislature

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 July 2025

**FINAL**

**10/10/2025**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Tomenko v. Ukraine,**

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

Kateřina Šimáčková, *President*,

María Elósegui,

Georgios A. Serghides,

Gilberto Felici,

Diana Sârcu,

Mykola Gnatovskyy,

Vahe Grigoryan, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 79340/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Mykola Volodymyrovych Tomenko (“the applicant”), on 13 December 2016;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaint concerning the early termination of the applicant’s mandate of a member of parliament (Article 3 of Protocol No. 1 to the Convention) and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 17 June 2025,

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

## INTRODUCTION

1. The case concerns the applicant’s complaint that the early termination of his mandate of a member of parliament (MP) in 2016 was in breach of Article 3 of Protocol No. 1 to the Convention.

## THE FACTS

2. The applicant was born in 1964 and lives in Kyiv. He was represented by Ms O. Steshenko and subsequently by Ms A. Zhegulina, lawyers practising in Kyiv.

3. The Government were represented by their Agent, Ms M. Sokorenko.

4. The facts of the case may be summarised as follows.

5. The applicant was a well-known Ukrainian politician, who had been elected to the Parliament (*Verkhovna Rada*) of Ukraine in 2002, 2006, 2007, 2012 and 2014.

6. Although he did not belong to any political party at the material time, the applicant stood as a candidate in the early parliamentary elections of

26 October 2014 and was elected from the list of the political party “Bloc of Petro Poroshenko “Solidarity”<sup>1</sup>. He became the deputy head of that party’s parliamentary faction.

7. On 25 December 2015 the applicant submitted to the Head of the Parliament a written statement about his withdrawal from the faction, having explained that step by his profound disagreement with the faction’s approach to the 2016 State budget, which he considered to be “anti-humanitarian” and “anti-social”.

8. On 25 March 2016 the party “Bloc of Petro Poroshenko “Solidarity” held an extraordinary congress, at which it firstly amended its charter so as to empower its congress to terminate a parliamentary mandate early “on the grounds envisaged by law” and secondly terminated the parliamentary mandate of the applicant and another parliamentarian, Mr F.<sup>2</sup>, with the reference to Article 81 § 2 (6) of the Constitution of Ukraine (that is, for the reason of their withdrawal from the parliamentary faction of the political party, on the list of which they had been elected – see paragraph 19 below).

9. Although there had been numerous similar withdrawals from parliamentary factions before, it appears that this was the first time when that entailed early termination of an MP’s mandate by a political party.

10. By the time of the events, ten MPs elected from the list of the party “Bloc of Petro Poroshenko “Solidarity” had withdrawn from the parliamentary faction of that party at various dates in 2015 and 2016<sup>3</sup>. For unknown reasons, the party’s extraordinary congress of 25 March 2016 decided to terminate the mandate of only two of those MPs (the applicant being one of them). The remaining eight MPs continued to sit in the Parliament either as faction-free or having joined a different faction or group. Eight further MPs, who had been elected from the list of that political party, subsequently withdrew from the respective faction at various dates after March 2016 but did not have their MP’s mandate terminated for that reason.

11. On 28 March 2016 the Central Election Commission (“the CEC”), with the reference to the decision of the extraordinary congress of the party “Bloc of Petro Poroshenko “Solidarity” of 25 March 2016, declared two other candidates from the party list as elected to the Parliament instead of the applicant and Mr F.

12. On the same date the Head of the Verkhovna Rada ordered to terminate the payment of MP’s salary and allowances to the applicant.

13. On 13 May 2016 the applicant lodged a claim with the Higher Administrative Court (“the HAC”) challenging the early termination of his

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<sup>1</sup> The applicant’s name was the eighth on the party’s electoral list of 193 candidates. 135 candidates made it to the Parliament.

<sup>2</sup> Like the applicant, Mr F. had been elected from the list of the political party “Bloc of Petro Poroshenko” and had withdrawn from the faction of that party.

<sup>3</sup> As indicated in the publicly accessible archives on the Parliament’s website.

MP's mandate by the party congress as unlawful. He pointed out that the constitutional provision in question had provided for the possibility of a political party to early terminate the mandate of an MP elected on its list in case of his withdrawal from the respective parliamentary faction only "on the basis of a law". However, no such law had ever been passed. The applicant therefore contended that his mandate had been terminated in the absence of a legally established procedure.

14. On 28 July 2016 the HAC found against the applicant. Referring, in particular, to the decisions of the Constitutional Court of 19 April 2001 and 25 June 2008 (see paragraphs 33-37 below for their summaries), the HAC held that the early termination of the applicant's mandate as an MP complied with paragraphs 2 (6) and 6 of Article 81 of the Constitution. It was noted that the ruling of the HAC was to enter into force in compliance with Article 171-1 § 7 of the Code of Administrative Justice (see paragraphs 25 and 26 below).

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### A. Relevant domestic law and practice

#### 1. *Constitution of Ukraine*

##### (a) Provisions on the early termination of an MP's mandate and relevant legislative developments

15. Article 81 as worded in the Constitution of 1996 provided for early termination of an MP's mandate only in the event of:

- resignation on personal application;
- a final verdict finding the MP guilty of a criminal offence;
- a judicial declaration of the legal incapacity or "missing person" status of the MP;
- termination of the MP's Ukrainian citizenship or departure from Ukraine for permanent residence abroad; or
- the MP's death.

16. In 2004 the Constitution was amended. In particular, two new grounds for the early termination of an MP's mandate were introduced: failure to remove grounds for incompatibility and failure to join or remain in the parliamentary faction corresponding to the political party (or electoral bloc) from whose list the MP had been elected.

17. By its decision of 30 September 2010, the Constitutional Court declared the 2004 constitutional amendments to contradict the procedure. As a result, the 1996 Constitution was returned.

18. On 21 February 2014 some of the constitutional provisions in the 2004 version, including Article 81, were reinstated.

19. The relevant provisions of Article 81 of the Constitution (as worded from 8 December 2004 to 30 September 2010 and from 22 February 2014 onwards) read as follows:

“... [§ 2.] The powers of a People’s Deputy of Ukraine shall terminate prior to the expiration of his term in office in the event of:

... (6) his failure, as having been elected from a political party (an electoral bloc of political parties), to join the parliamentary faction representing that political party (electoral bloc of political parties) or his withdrawal from such a faction; ...

[§ 6.] Where a People’s Deputy of Ukraine who has been elected from a political party (an electoral bloc of political parties) fails to join the parliamentary faction representing that political party (electoral bloc of political parties) or withdraws from such a faction, his powers shall be terminated early, on the basis of a law, pursuant to a decision of the highest steering body of the respective political party (electoral bloc of political parties), with the termination taking effect on the date of such a decision.”

20. It is also stipulated in Article 81 § 4 that, in cases of an MP’s resignation, termination of Ukrainian citizenship or departure from Ukraine for permanent residence abroad, a decision on the early termination of his MP’s mandate shall be taken by the Ukrainian Parliament. As regards the early termination of an MP’s mandate on the grounds of incompatibility, the relevant decision shall be taken by a court.

**(b) Other relevant provisions**

21. Article 8 § 3 provides, in particular, that the provisions of the Constitution have direct effect.

22. Article 79 § 1 stipulates that, before assuming office, MPs shall take the following oath:

“I swear allegiance to Ukraine. I commit myself to protect the sovereignty and independence of Ukraine with all my deeds, to provide for the good of the Motherland and for the welfare of the Ukrainian people. I swear to abide by the Constitution of Ukraine and the laws of Ukraine, to carry out my duties in the interests of all compatriots.”

23. Article 83 § 6 reads as follows:

“A coalition of parliamentary factions consisting of majority of the constitutional composition [of the Parliament] shall be formed in the Verkhovna Rada of Ukraine based on the election results and following the coordination of political positions.”

*2. Code of Administrative Justice (as worded at the relevant time)*

24. Under Article 18 § 4, the HAC was to examine at first instance, in particular, claims concerning the early termination of an MP’s mandate.

25. Article 171-1 § 7 provided that the HAC’s rulings in respect of claims concerning decisions, actions or omissions of the Parliament, the President of Ukraine, the Higher Council of Justice or the Qualification and Disciplinary Commission of Prosecutors would enter into force either after the expiry of

the deadline for applications for review by the Supreme Court or following the entry into force of the latter's related ruling.

26. Article 237 contained an exhaustive list of grounds for review of judicial decisions by the Supreme Court. Those were: divergent application of the substantive or procedural law by a cassation court, or its failure to comply with the Supreme Court's findings made in respect of similar legal situations; a finding by an international court, whose jurisdiction was recognised by Ukraine, that a domestic judicial decision had been in breach of Ukraine's international obligations; or a violation of substantive or procedural law which had led to an illegal decision by the HAC on the matters referred to in Article 171-1 of the Code.

*3. Parliamentary Election Act (2011, with further amendments)*

27. Section 53 § 2 stipulated that a party could nominate both its members and politically unaffiliated people as candidates.

*4. Status of MPs Act (1992, with further amendments)*

28. The relevant provisions of section 1 read as follows:

"1. A People's Deputy of Ukraine (hereafter "a People's Deputy") is a representative of the Ukrainian people in the Verkhovna Rada of Ukraine elected pursuant to the [Parliamentary Election Act] and empowered [by the people] to exercise, throughout the term of his parliamentary mandate, the powers set out in the Constitution and laws of Ukraine.

...

3. In the exercise of his powers, a People's Deputy shall be guided by the Constitution and laws of Ukraine, as well as by generally recognised standards of conduct."

29. Section 4, which concerns the early termination of an MP's mandate, reads as follows:

"An MP's mandate shall be terminated early in the following cases:

- 1) resignation on personal application;
- 2) a final verdict finding him guilty of a criminal offence;
- 3) a judicial declaration of legal incapacity or "missing person" status;
- 4) the termination of Ukrainian citizenship or departure from Ukraine for permanent residence abroad;
- 5) death;
- 6) a breach of [the incompatibility requirements]."

30. Section 5 sets out the procedures to be followed in the situations listed in section 4.

31. Under section 13 § 1, "[MPs] have the right to get united in parliamentary factions (groups)".

32. Section 13 §§ 5 and 6 allowing MPs to freely withdraw from a parliamentary faction or not join any were declared unconstitutional by the Constitutional Court in decision no. 12-pn/2008 of 25 June 2008 (see paragraph 36 below).

*5. Case-law of the Constitutional Court of Ukraine*

**(a) Decision no. 4-pn/2001 of 19 April 2001**

33. In this decision, which concerned an unrelated case, the Constitutional Court held, *inter alia*:

“Under Article 8 § 3 of the Constitution of Ukraine, the provisions of the Constitution have direct effect. They are applicable directly regardless of whether relevant laws or regulations have been adopted for their implementation.”

**(b) Decision no. 12-pn/2008 of 25 June 2008**

34. Following an application by fifty MPs, the Constitutional Court was called, in particular, to give an official interpretation to Article 81 § 2 (6) of the Constitution (see paragraph 19 above) and to examine whether the then applicable provision of the Status of MPs Act, which entitled MPs to freely withdraw from a parliamentary faction (see paragraph 32 above), was in compliance with the above-mentioned constitutional provision.

35. The Constitutional Court interpreted Article 81 § 2 (6) of the Constitution as follows (section 5.2 of the decision):

“Having regard to the purposes and tasks of creation of parliamentary factions and their role in the implementation by the elected political party (electoral bloc) of its programme, “failure” of an [MP] elected from a political party (electoral bloc) “to join” the parliamentary faction representing that political party (electoral bloc) should be understood as his refusal to become a member of the [respective] parliamentary faction. The term “withdrawal” of an [MP] from a parliamentary faction of a political party (electoral bloc) should be understood as the termination by an [MP] of his membership in a registered parliamentary faction of the political party (electoral bloc), from which he was elected to the Parliament. The procedure for the failure to join or withdrawal from a parliamentary faction by an [MP] elected from the political party (electoral bloc) forming that faction must be determined by a law.”

36. The Constitutional Court also found the relevant provision of the Status of MPs Act to be incompatible with Article 81 § 2 (6) of the Constitution (section 5.3 of the decision). It held as follows:

“Under the Constitution of Ukraine, the faction-type structure of the Verkhovna Rada of Ukraine and creation of coalitions of parliamentary factions are mandatory preconditions for Parliament to function. As set out in Article 83 § 6 of the Constitution, a coalition of parliamentary factions is formed in the [Parliament] based on the election results and following coordination of political positions. A coalition is formed by the majority of MPs ... Pursuant to Article 90 § 2 (1), if no [such] coalition ... is formed within a month, the President of Ukraine is entitled to dissolve [Parliament].

Under the Constitution, the affiliation of an MP with a faction is his constitutional duty rather than right. Failure to join or withdrawal from a parliamentary faction by

an [MP] elected from the political party (electoral bloc) forming that faction leads to early termination of his MP's mandate (Article 81 § 2 (6) of the Constitution).

In sum, the Constitution links the validity of an MP's mandate to his joining and staying within the parliamentary faction of the political party (electoral bloc of political parties), on the list of which he has been elected. Accordingly, the provisions of section 13 §§ 5 and 6 of the [Status of MPs Act] allowing MPs to freely withdraw from a parliamentary faction or not join any contradict Article 81 § 2 (6) and Article 83 § 6 of the Constitution."

37. Furthermore, the Constitutional Court was requested to provide official interpretation to Article 81 § 6 of the Constitution (see paragraph 19 above). One of the questions raised in the MPs' application was whether adoption of new laws was necessary for implementation of that constitutional provision. The Constitutional Court held as follows in that regard (section 6.1 of the decision):

"...the procedure of and the grounds for the early termination of an MP's mandate must be determined exclusively by legislation. The Constitutional Court has emphasised on many occasions that the issue of legislative regulation is beyond its competence. Adoption of laws and amending the existing laws is the prerogative of the [Parliament] ...

... according to the legal position expressed by the Constitutional Court in its decision no. 4-пп/2001 of 19 April 2001 ..., the provisions of the Constitution ... have direct effect and are applicable directly regardless of whether relevant laws or regulations have been adopted for their implementation ... Pending the legislative regulation of the requirements of Article 81 §§ 2 (6) and 6 of the Constitution, ... the issues of early termination of an MP's mandate must be dealt with on the basis of Article 8 § 3 of the Constitution (concerning the direct effect of constitutional provisions) and applicable provisions of the existing laws. The requisite preconditions for the early termination of an MP's mandate are: the existence of at least one of the grounds referred to in Article 81 § 6 of the Constitution and the relevant decision of the highest steering body of the respective political party (electoral bloc of political parties)."

**(c) Decision 3-p/2017 of 21 December 2017**

38. The Constitutional Court found to be unconstitutional the provisions of the Parliamentary Election Act allowing political parties to delete a candidate from its electoral list after the voting and before the Central Election Commission's decision about that candidate's election to the Parliament. It held, in particular, that that provision placed political parties above the electorate and allowed them to thwart the free expression of the people in the choice of the legislature.

39. It was noted (section 2.6 of the decision) that Article 81 § 6 of the Constitution allowed the early termination of an MP's mandate in case of his failure to join or withdrawal from the parliamentary faction corresponding to the political party (or electoral bloc), on whose list he was elected, following a decision to that effect by the highest steering body of the respective political party (electoral bloc of political parties). The Constitutional Court held in that regard:

“Early termination of an [MP’s] mandate is possible only on the basis of a law, which must determine the conditions and procedures therefor.”

*6. Other domestic case-law cited by the parties*

40. The parties referred to a case concerning the early termination of an MP’s mandate in circumstances similar to those of the applicant. Mr F., like the applicant, had been elected to the Parliament on the list of the political party “Bloc of Petro Poroshenko “Solidarity” and had had his mandate as an MP terminated early by a decision of that party’s extraordinary congress on 25 March 2016 (see paragraph 8 above). Also like the applicant, he challenged that decision before the HAC, which rejected his claim on 3 June 2016. Although it was noted in the HAC’s ruling that it was final and was not amenable to appeal, Mr F. applied to the Supreme Court for review. On 3 November 2019 the Supreme Court returned that application without examination on the grounds that there was no proof of payment of the court fee.

**B. Relevant Council of Europe documents**

*1. The Parliamentary Assembly (“the PACE”)*

41. In its Resolution 1364 (2004) “Political crisis in Ukraine” of 29 January 2004, the PACE launched “an urgent appeal to the parties, blocks, parliamentary factions, and groups represented in the Verkhovna Rada” to, *inter alia*, “reconsider their position regarding the imperative mandate of national deputies”.

42. On 5 October 2005 the PACE adopted Resolution 1466 (2005) “Honouring of obligations and commitments by Ukraine”, the relevant part of which read as follows:

“14. The Assembly ... deeply regrets that the constitutional amendments of 8 December 2004, adopted as part of a package deal to halt the political turmoil, contained provisions which the Venice Commission has repeatedly found incompatible with the principles of democracy and the rule of law, in particular with regard to the imperative mandate of people’s deputies ...”

43. On 19 April 2007 the PACE adopted Resolution 1549 (2007) entitled “Functioning of democratic institutions in Ukraine”, the relevant part of which read as follows:

“9. The Assembly reaffirms that the recall of people’s representatives by the political parties (“imperative mandate”) is a practice which is unacceptable in a democratic state. The relevant constitutional provisions need to be abrogated in line with the recommendations made by the Venice Commission in 2004 and similar provisions also need to be deleted from ordinary legislation. The Assembly believes that a consistent political programme, responsible and committed party membership and scrupulous screening of parties’ candidates are more effective tools for encouraging party and faction discipline.”

44. On 23 January 2008 the PACE adopted Resolution 1601 (2008) “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament”, which read as follows in the relevant part:

**“Guidelines on the rights and responsibilities of the opposition in a democratic parliament**

1. Parliamentarians must exercise their mandate independently. They shall not be bound by any instruction or receive a binding mandate...”

45. On 25 June 2008 the PACE adopted Resolution 1619 (2008) “State of democracy in Europe. The functioning of democratic institutions in Europe and progress of the Assembly’s monitoring procedure”, which stated, *inter alia*:

“... constitutional and legislative provisions providing for the recall of peoples’ representatives by the political parties (the so-called ‘imperative mandate’) should be abrogated in the Russian Federation, Serbia and Ukraine;

...

the recall of peoples’ representatives by the political parties (the so-called ‘imperative mandate’) is unacceptable and contrary to the principles of the rule of law and the separation of powers.”

46. On 23 June 2010 the PACE adopted Resolution 1747 (2010) “State of democracy in Europe and the progress of the Assembly’s monitoring procedure”, which stated, *inter alia*:

“... the Assembly urges ... the Parliaments of the Russian Federation, Serbia and Ukraine to abrogate constitutional and legislative provisions providing for the recall of peoples’ representatives by the political parties (the so-called ‘imperative mandate’) ...”

47. The PACE stated in its Resolution 2145 (2017) “The functioning of democratic institutions in Ukraine” of 25 January 2017:

“11. The Assembly ... expresses its concern about the fact that Article 81 of the Constitution of Ukraine allows for the dismissal of a member of parliament who switches his/her allegiance to a party or faction other than the one in respect of which he/she was elected. This is contrary to European standards and this constitutional article should be amended in the context of the ongoing constitutional reform. ...”

2. *The European Commission for Democracy through Law (“the Venice Commission”)*

48. On 15 December 2003 the Venice Commission published its Opinion no. 230/2002 “Opinion on three draft laws proposing amendments to the Constitution of Ukraine” (CDL-AD(2003)019), which read as follows in the relevant part (footnotes omitted):

“56. In accordance with the proposed amendments, a deputy’s mandate would be terminated on his or her leaving, not joining or being dismissed from the parliamentary faction from which he or she was elected ... The relevant decision would be taken by the highest steering body of the respective political party (election bloc of political party). Whilst the idea for having this provision in the Draft Law is presumably to

promote stability and the effectiveness of the governing party or bloc in circumstances where fragmentation of parliamentary blocs is a problem, it would also have the effect of weakening the Verkhovna Rada itself by interfering with the free and independent mandate of the deputies, who would no longer necessarily be in a position to follow their convictions and at the same time remain a member of the Parliament.

57. The proposed procedure would also give the parties the power to annul electoral results. In this regard, the Commission recalls its opinion on the Ukraine constitutional reform project of 2001, in which it stressed that linking “the mandate of a national deputy to membership of a parliamentary faction or bloc infringes the independence of the deputies and might also be unconstitutional...bearing in mind that Members of Parliament are supposed to represent the people and not their parties.” The oath to be taken by Deputies contained in Article 79 expresses this clearly. Furthermore, such a rule would “put the parliamentary bloc or group in some ways above the electorate which [...] is unable to revoke individually a parliamentary mandate conferred through election”.

58. The Commission therefore strongly recommends to withdraw the proposed provision from the Draft Law.”

49. On 13 June 2005 the Venice Commission published its Opinion no. 339/2005 “Opinion on the amendments to the Constitution of Ukraine adopted on 8.12.2004” (CDL-AD(2005)015), the relevant part of which reads as follows:

“10. The Commission welcomes the amendment to Article 81 § 2 (6) on national deputies’ mandate which removed from the text the provision providing for the termination of a deputy’s mandate on his or her dismissal from the parliamentary faction to which he or she belonged at the time of the election.

11. On the other hand, it is to be regretted that according to the revised Article 81 § 2 (6), a deputy’s mandate would be terminated on his or her leaving or not joining the parliamentary faction to which he or she belonged at the time of the election. The relevant decision would be taken by the highest steering body of the respective political party, or election bloc of political party (Article 81 § 6).

12. Keeping the proposed procedure in the Constitution give the parties the power to annul electoral results. It might also have the effect of weakening the Verkhovna Rada itself by interfering with the free and independent mandate of the deputies, who would no longer necessarily be in a position to follow their convictions and at the same time remain a member of the Parliament. As the Commission has stressed in its previous opinion, linking a mandate of a national deputy to membership of a parliamentary faction or bloc is also inconsistent with the other constitutional provisions bearing in mind that Members of Parliament are supposed to represent the *people* and not their parties.

13. The Commission thus strongly recommends that Article 81 § 2 (6) and 81 § 6 be removed from the Constitution. Instead, the free and independent mandate of the deputies should be explicitly guaranteed.

...

CONCLUSION

...

51. On the basis of the above considerations, the Commission considers that, in order to bring the Law on amendments into compliance with the principles of pluralist democracy and the rule of law, the Law should be further discussed and some improvements made.

Attention should particularly be given to the following:

- the provisions on the National Deputies should not link an individual deputy to membership of a parliamentary faction or bloc, thus infringing his or her free and independent mandate (a deputy must be free to leave or not join the parliamentary faction from which he or she was elected); ...”

50. On 16 June 2009 the Venice Commission published its “Report on the imperative mandate and similar practices” (Study No. 488/2008, CDL-AD(2009)027), which had been adopted by the Council for Democratic Elections and the Venice Commission. The relevant extracts read as follows (footnotes omitted):

**“4. The Ukrainian case. The wrongly called “imperative mandate”: a case of a practice against floor crossing**

32. The Constitution of Ukraine promulgated in 1996, did not initially contain provisions against the so-called “floor crossing” practices. Article 81 regulated situations for termination of mandate which can be considered standard within European practice. However, parliamentary life witnessed a growing practice of switching parties. According to some sources, between the 3rd and 4th legislatures (1998-2002 and 2002-2006), about 60% of Ukrainian parliamentarians switched their party affiliation at least once. In some extreme cases, MPs changed their parliamentary group as much as 10 times. This prompted the reaction of Ukrainian legislators in several moments. In 2001, a proposal of amending the Constitution flirted for the first time with the possibility of terminating deputies’ mandate because of their lack of links with the nominating party.”

51. The report further summarised the relevant findings of the Venice Commission in respect of the proposed amendment and subsequent legislative developments.

52. The report’s conclusions were worded as follows:

“39. At present, imperative mandate *stricto sensu* and recall are unknown in practice in Europe. Moreover, there are very few countries among the Council of Europe member States which have legislation giving the power to political parties to make members of the elected bodies resign if they change their political affiliation. The mechanisms of control of individual representatives proposed in the Serbian or Ukrainian cases cannot be equalled to “imperative mandate” which is a practice forbidden in virtually all European countries. These mechanisms come closer to the model of “party administered mandate” which is or has been characteristic in countries such as India or South Africa with the objective of preventing massive turn round of voters’ decision by means of party switching. Whilst in these countries these practices have considered consistent with their own constitutions, the Venice Commission has consistently argued that losing the condition of representative because of crossing the floor or switching party is *contrary to the principle of a free and*

*independent mandate.* Even though the aim pursued by this kind of measures (i.e. preventing the “sale” of mandates to the top payer) can be sympathetically contemplated, the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism.”

53. On 9 October 2017 the Venice Commission published its Opinion no. 885/2017 “On the amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine” (CDL-AD(2017)026). It relevant extracts read as follows (footnotes omitted):

*“1. Composition of the Rada and political process.*

27. The proposed regulations on parliamentary factions and the coalition of factions try to further develop the corresponding provisions of Chapter IV of the Constitution. Several articles in the constitutional text, notably on coalitions and on factions, were aimed at strengthening the Parliament by creating a stable parliamentary majority. This was seen as an appropriate solution in the case of a split of political parties in Parliament and a remedy to difficulties in parliament’s normal operation due to the electoral law and the lack of political culture. The constitutional provisions on this coalition, repeated in the Rules of procedure of the Parliament could be seen as a kind of catalyst to create a stronger coalition.

28. Nevertheless, some of the concerns previously expressed by the Venice Commission with respect to this approach, notably as to the status of MPs and party discipline have to be repeated in this opinion.

29. According to Article 81 par. 6 of the Constitution, the authority of a People’s Deputy of Ukraine terminates prior to the expiration of his/her term of office in the event of his or her failure (as having been elected from a political party or an electoral bloc of political parties) to join the parliamentary faction representing the same political party. As far as rules on coalition are concerned, there is also a strong “constitutional” pressure to form a coalition since the President has the power to dissolve the parliament if political factions fail to form a coalition (Article 90 paragraph 1). These provisions are reflected and developed by the text of the current amendments to the Rules of procedure of the Verkhovna Rada.

*a. Mandate of MPs.*

30. The new amendments to the Rules of procedure further develop the provisions of Article 81 par. 2 of the Constitution on the right of political parties to strip MPs of their mandate if they fail to join the faction of the party on whose list they were elected. This practice has been criticised by the Venice Commission on several occasions ... According to a generally accepted principle in modern democracies, the parliamentary mandate belongs to an individual MP, because he/she receives it from voters via universal suffrage and not from a political party.

31. The value of a free mandate for the democratic systems was underlined in a number of international documents. For example, the report on the impact of political party control over the exercise of the parliamentary mandate prepared under the auspices of the Inter-parliamentary Union in 2013 recommended that: “The national legislature should consequently protect the basic elements of the free parliamentary mandate, in particular the MPs’ responsibility to represent the entire nation, the MPs’ freedom to determine their political affiliation, and their irrevocability. The national legislature should also refrain from legislation which subjects the MPs to excessive party control possibly resulting in the early termination of their mandates. In particular,

direct or indirect (by means of expulsion from the party) revocation of the mandate by political parties should be avoided. Where such a possibility has been established by law, the legislators should consider revisiting the issue in order to ensure conformity of the law with the principles of the free parliamentary mandate.”

32. The establishment of an obligatory link between an elected national deputy (who belongs to the electoral list of a party or bloc of parties) and his or her parliamentary group or bloc has the effect that a breach of this link (withdrawal or exclusion of a deputy belonging to a particular parliamentary group or bloc from his or her parliamentary group of bloc) would therefore ipso facto put an end to the parliamentary mandate of the deputy concerned. This is contrary to the principle of a free and independent mandate.

33. Even if the question of belonging to a parliamentary group or bloc is distinct from the question of submission to the group’s or bloc’s discipline in concrete situations, the freedom of the mandate implies the deputy’s right to follow his or her convictions. The deputy can be expelled from the parliamentary group or bloc, or can leave it, but the expulsion or withdrawal from the group or bloc should not involve per se the loss of the deputy’s mandate.

34. The Venice Commission has repeatedly opposed the imperative mandate or similar practices which contradict European democratic standards. Any imperative mandate or similar practice in existence should be phased out and not further strengthened. In particular, it cannot be up to a political party to terminate a mandate. Such a solution like the one adopted in the Ukrainian system de facto has changed the free mandate into an imperative one. This was strongly criticised already in the 2005 opinion of the Venice Commission on the new Constitution, which recommended to the authorities “[...] that Article 81 § 2 (6) and 81 § 6 be removed from the Constitution. Instead, the free and independent mandate of the deputies should be explicitly guaranteed.”

35. Political party control over implementation of the mandate by MPs, including the enforcement of party discipline, should be basically seen as an internal matter of political parties and their membership. Specific measures to ensure the internal democracy of political parties, transparency of parties’ regulations and clear rules in their statutes by contrast can have a positive impact on the elected representatives as part of internal accountability. The national legislature should avoid linking the relationship between MPs and their political parties with the legal status of parliamentarians. In particular, breaches of party discipline, including public statements or voting inconsistent with the party line should not be recognised by law as a sufficient basis for early termination of the MP’s mandate.

36. Pending the necessary constitutional revision abolishing the mechanism of revocation of MPs mandate, the Rules of procedure of the Rada should aim at minimizing the negative impact of this power of political parties by establishing internal checks by the parliament in cases an MP is under threat of losing his/her mandate...”

54. On 24 June 2019 the Venice Commission published its Opinion no. 845/2016 “Parameters on the relationship between the parliamentary majority and the opposition in democracy: a checklist” (CDL-AD(2019)015), which read as follows in the relevant part (footnotes omitted):

**“3. Free mandate, floor crossing and party discipline**

*1. Is it possible for an MP to change political allegiance or vote against the party line without losing the mandate?*

51. The Venice Commission has always expressed preference for the free and independent mandate (CDL-AD(2009)027, § 39, CDL-AD(2017)026, § 33), even though some forms of imperative mandate exist in some European democracies. Free mandate means that the deputy may change party allegiance (or “cross the floor”) or become independent without the risk of losing the mandate. Free mandate also implies that there is space for a dissenting vote, without definitive floor crossing.

52. That being said, the very notion of an institutionalised majority or opposition group in Parliament requires that MPs *normally* vote in line with their party policy. Certain legislatures have a member who plays the function of a party whip whose main task is to ensure the party discipline. Serious breaches of party discipline may entail exclusion from the parliamentary group and/or the political party, with the loss of special positions and privileges associated with the membership in this group/party, but should not result in the loss of mandate. However, where cross-party defections are common, the will of the voters is thwarted, so it is legitimate to introduce counter-measures preventing the “sale” of mandates (or of the votes, in relation to a particular bill) to the top payer (CDL-AD(2009)027, § 39). Some of these measures, falling short of the withdrawal of the mandate, will be examined below.

*2. What legal mechanisms can be used to prevent floor crossing or for the breach of the party discipline?*

53. In many European states, party switching in Parliament is prevented not by constitutional or legal mechanisms but otherwise (CDL-AD(2009)027, § 17). Generally, it is better to maintain party discipline by political, rather than purely legal means; the only exception may relate to the special rights given to the MP as a member of a particular political group. It should always be possible for a group to expel a deputy (CDL-AD(2015)014, § 51).

54. Measures against floor crossing may be adopted by parties individually or through inter-parties’ agreements. In some countries, floor crossing has been curtailed by specific mechanisms which however avoid depriving representatives from their mandates.

55. The party leadership may try to put informal pressure on their members in order to prevent dissenting votes. Such pressure may be prevented, for example, by a secret voting procedure, which, if it is provided for in the regulations, should then be followed in practice (CDLAD(2017)005, § 22). Secret voting may favour the internal opposition within the governing party (which is quite distinct from the formally recognised external opposition); however, it cannot be considered as a standard procedure appropriate for all situations.”

55. On 9 December 2019 the Venice Commission published its Opinion no. 971/2019 “Amicus curiae brief for the Constitutional Court of Ukraine on draft law 1027 “On the early termination of a Deputy’s mandate”<sup>4</sup> (CDL-AD(2019)029). Its relevant extracts read as follows (footnotes omitted):

“21. Article 81.2.6 [of the Constitution of Ukraine] provides that in cases of failure to join or of exit from a parliamentary faction the mandate of an MP elected from a party list is automatically terminated by a decision of “the highest governing body of

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<sup>4</sup> The draft law in question (still pending in the Parliament) provided for amendments to Article 81 of the Constitution with a view to introducing two additional grounds for the early termination of an MP’s mandate, namely: absence without valid reasons and non-personal vote (that is, voting instead of another MP).

the respective political party”. While Article 81 does not formally subject Ukrainian members of parliament to an imperative mandate, which would allow the representative to be recalled by the voters or expelled *as having been elected from a political party*, by the party, it nonetheless limits the possibility for the MP, for whatever political or personal reason, to become independent and even possibly to change party affiliation, lest he or she lost the membership in the parliament.

...

23. The common democratic traditions of the European peoples, referred to by the preamble of the Statute of the Council of Europe (1949), privilege representative democracy rather than party, and even less factional, democracy. In other words, in choosing our representatives, we take into consideration, beyond party affiliation, the candidates’ skills, honesty and openness. Because, as stressed by Edmund Burke in his famous address to the electors of Bristol (1774), *“parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament”*.

24. The Venice Commission has consistently argued that losing the status as a member of parliament due to ‘crossing the floor’ or switching party is contrary to the principle of a free and independent mandate, which forms part of the European constitutional tradition.

25. The same principle flows from Article 25(a) of the International Covenant on Civil and Political Rights, which guarantees the right to participate in public affairs “through freely chosen representatives”. General Comment no. 25 of the United Nations Human Rights Committee prohibits unreasonable limits to the right to stand for election by requiring candidates to be members of parties or of specific parties.

26. The same fundamental principle can be observed from the ECtHR case law on Article 3 of Protocol 1 to the ECHR. While States enjoy a wide margin of appreciation, in particular in relation to imposing conditions on the right to stand for elections, such conditions must not “thwart ‘the free expression of the opinion of the people in the choice of the legislature’”. Depriving lawfully elected representatives of their mandate to serve in the parliament due to a representative’s political affiliation, which includes the choice of rejecting membership in parties or political factions, is an interference with the people’s choice of legislature. Choosing political affiliation and changing political parties or factions lies within each representative’s right to freedom of expression and association and should be considered as fundamentally democratic actions. Interferences must have a legitimate aim and be proportional. For example, the Venice Commission has expressed the view that the withdrawal of the right to be elected and to serve as a representative due to criminal conviction for serious offences should be considered as a means of preserving democracy and the voters’ trust in it.

27. The stated aim of the amendment is to ensure parliamentary discipline. The Venice Commission has recognised that frequent and sudden changes of affiliation to political parties by members of parliament may be problematic for political stability, and that States may adopt certain legal measures to prevent floor crossing or breach of party discipline. However, such measures must be proportionate, and the Venice Commission has consistently warned against the termination of mandate due to floor crossing.”

56. On 14 December 2020 the Venice Commission published the second edition of the Guidelines on political party regulation prepared jointly with the Office for Democratic Institutions and Human Rights of the Organisation

for Security and Cooperation in Europe (OSCE/ODIHR) (study no. 881/2017, CDL-AD(2020)032). Its relevant extracts read as follows (footnotes omitted):

“e. Free Mandate

131. There should be no imperative mandate, that is an MP should not be legally bound by his/her electorate’s or party’s instructions when debating or voting on a particular issue. According to a generally accepted democratic principle, the parliamentary mandate belongs to an individual MP, because he/she receives it from voters via universal suffrage and not from a political party. Parties, given that they are “instruments, not owners of the social contract between the electors and the parliament,” should thus not have the power to retroactively annul an MP’s electoral appointment. At the same time, parliamentary parties should be free to expel any MP from the party group, while taking into account the principle of non-discrimination, and to deprive an expelled parliamentarian of any committee position or public resources allocated to the party. However, the expulsion of an MP from his/her parliamentary group should not result in the loss of the parliamentary mandate, nor should party/coalition leadership have any say as to the loss of an individual parliamentary mandate. Although in some states there is such legislation, the Venice Commission has argued that, “the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism.”...

132. Some parties have adopted voluntary measures to respond to changes in political affiliation, such as multiparty codes of conduct that oblige parties to refuse membership to elected officials attempting to change affiliation. It is the right of a political party to refuse membership in a case where it believes a person does not fundamentally uphold the party’s values, and on the other hand it has the right to accept elected officials as new members if this is deemed warranted and desired.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1 TO THE CONVENTION

57. The applicant complained that the early termination of his mandate as an MP had been in breach of Articles 8 and 10 of the Convention, as well as Article 3 of Protocol No. 1. He also complained under Article 13 of the Convention that he had not had any effective domestic remedy available to him.

58. The Court, being master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the issues raised should be examined solely from the perspective of Article 3 of Protocol No. 1 to the Convention (see *Lykourazos v. Greece*, no. 33554/03, §§ 59-60, ECHR 2006-VIII, *Paunović and Milivojević v. Serbia*, no. 41683/06, § 43, 24 May 2016, and *Mugemangango v. Belgium* [GC], no. 310/15, § 125, 10 July 2020).

Article 3 of Protocol No. 1 reads 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.”

## **A. Admissibility**

### *1. Compatibility ratione personae*

#### **(a) The applicant's victim status**

59. The Government submitted that the applicant could not claim to be a victim of an alleged violation of Article 3 of Protocol No. 1, given that the early termination of his mandate as an MP had merely been a predictable consequence of his own actions.

60. The applicant disagreed. He argued that he could not have expected that his withdrawal from the parliamentary faction would lead to the early termination of his mandate as an MP.

61. The Court notes that the word “victim”, in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

62. It is undisputed in the present case that the early termination of the applicant's mandate as an MP directly concerned his passive electoral right under Article 3 of Protocol No. 1. He therefore can claim to be a victim of the violation alleged.

63. Accordingly, the Government's objection should be rejected.

#### **(b) Responsibility of the State**

64. The Government further argued that no State responsibility had been engaged in the present case, since the applicant's mandate as an MP had been terminated by the decision of a political party rather than a State authority.

65. The applicant contested that argument. He pointed out that the issue of the early termination of MPs' mandates was governed by rules set by the State. The applicant further emphasised that it was for the State alone to ensure that his right, once elected, to sit as a member of the national legislature was respected.

66. The Court has noted that, while the other provisions of the Convention and its Protocols guarantee rights, Article 3 of Protocol No. 1 is phrased in terms of the obligation of the High Contracting Parties to hold elections which ensure the free expression of the opinion of the people rather than in terms of a particular right or freedom. Having regard to the *travaux préparatoires* of Article 3 of the Protocol and the way the provision has been interpreted in the context of the Convention as a whole, the Court has established that Article 3 of Protocol No. 1 to the Convention guarantees

individual rights, including the right to vote and the right to stand for election. It has taken the view that the special wording of that provision can be explained by the desire to give greater solemnity to the commitment undertaken by the Contracting States and has emphasised that this is a sphere in which they are under an obligation to take positive measures and not just refrain from interference (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 50, Series A no. 113, and *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, §§ 56-57, ECHR 2005-IX).

67. The aforementioned principle indicates that it is for the State to regulate election-related matters.

68. The Court has also held that a State cannot absolve itself from responsibility under the Convention by delegating its obligations to private bodies or individuals (see, *mutatis mutandis*, *Kotov v. Russia* [GC], no. 54522/00, § 92, 3 April 2012).

69. The Court agrees with the applicant's argument that it was the State's duty to ensure his right to stand for election and, once elected, to sit as a Member of Parliament. Accordingly, the State responsibility was engaged in the alleged interference with that right.

70. The Court therefore rejects this objection of the Government too.

## 2. *Exhaustion of domestic remedies*

### (a) *The parties' submissions*

#### (i) *As regards the applicant's failure to challenge the HAC's ruling of 28 July 2016*

71. The Government submitted that, as it followed from the HAC's ruling of 28 July 2016, it had been open for the applicant to seek its review by the Supreme Court, which he had failed to do. The Government observed in that connection that on 3 November 2019 the Supreme Court had declined to review a comparable case only because of a failure to pay the court fee (see paragraph 40 above).

72. Accordingly, the Government argued that the applicant had not exhausted the available domestic remedies.

73. The applicant submitted that, although the HAC's ruling of 28 July 2016 had indeed contained a reference to Article 171 1 § 7 of the Code of Administrative Justice, under which it was possible to apply for review by the Supreme Court, that reference must have been erroneous. The applicant pointed out in that connection that the respondent in his case had been a political party, whereas the legal provision in question concerned adjudication of claims regarding decisions, actions or omissions of the Parliament, the President of Ukraine, the Higher Council of Justice or the Qualification and Disciplinary Commission of Prosecutors.

74. As regards the case cited by the Government (see paragraphs 40 and 71 above), the applicant pointed out that on 3 June 2016 (that is, more than a month before delivering its ruling in the applicant's case) the HAC had

indeed examined a very similar case, and had stated that its ruling was final and not amenable to appeal (see paragraph 40 above). Nonetheless, the claimant in that case had applied to the Supreme Court for a review, but his application had been rejected for failure to pay the court fee. This did not mean, in the applicant's view, that the Supreme Court would have otherwise proceeded with a review of that case.

*(ii) As regards the applicant's failure to challenge the CEC decision of 28 March 2016*

75. The Government further submitted that, if the applicant had considered that there had been a breach of his rights by the State, he should have challenged the CEC decision of 28 March 2016 "on the basis of which his mandate as an [MP] had been terminated" in the domestic courts. The applicant's failure to do so indicated, in the Government's view, that he had not exhausted the available domestic remedies.

76. The applicant asserted in reply that the CEC decision in question had merely referred to the early termination of his mandate as an established fact and that there would have been no point in his challenging it.

**(b) The Court's assessment**

77. The Court refers to the principles governing the exhaustion of domestic remedies as set out in particular in its judgment in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-45, 27 November 2023).

*(i) As regards the applicant's failure to challenge the HAC's ruling of 28 July 2016*

78. In the Court's view, the Government failed to show that the applicant's application for review to the Supreme Court would have had any prospect of success. Indeed, as pointed out by the applicant, in the only comparable case cited by the Government, the HAC's ruling had been final and not amenable to appeal (see paragraph 40 above). Although in its ruling on the applicant's claim the HAC referred to a legal provision enabling further review, that provision was inapplicable in the circumstances (see paragraphs 14, 25 and 26 above).

*(ii) As regards the applicant's failure to challenge the CEC decision of 28 March 2016*

79. The Court notes that, as pointed out by the applicant, his mandate as an MP was terminated not by the CEC but by the extraordinary congress of the party "Bloc of Petro Poroshenko "Solidarity". The CEC only relied on that decision as grounds for declaring another candidate from the party list as elected to the Parliament instead of the applicant (see paragraph 11 above).

The Government did not explain how challenging the CEC decision could have remedied the applicant's situation.

*(iii) Conclusion*

80. It follows that the Government's non-exhaustion objection should be rejected on both points.

*3. Compliance with the six-month time-limit*

81. In the alternative to their objections discussed above, the Government submitted that the applicant had failed to comply with the six-month time-limit, which should be calculated as running either from 25 March 2016 (the date of the relevant decision of the political party's extraordinary congress) or from 28 March 2016 (the date of the CEC decision).

82. The applicant submitted that he could not be blamed for having had recourse to a remedy that had appeared effective at the material time. He therefore considered that there had been no grounds for calculating the six-month time-limit starting from the dates indicated by the Government.

83. According to the Court's well-established case-law, the six-month period, as in force at the relevant time, runs, as a rule, from the date of the final decision in the process of exhaustion of domestic remedies (see, for example, *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018).

84. The Court notes that, in raising this objection, the Government neither disputed the competence of the HAC to examine claims concerning early termination of an MP's mandate nor referred to any particular reasons as to why the applicant should have regarded that remedy as obviously futile.

85. Consequently, noting that the applicant introduced his application less than six months after the HAC's ruling, the Court rejects the Government's objection of non-compliance with the six-month rule.

*4. Conclusion on admissibility*

86. The Court notes that the application 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.

**B. Merits**

*1. The parties' submissions*

**(a) The applicant**

87. The applicant submitted that, although the Constitution of Ukraine provided for early termination of an MP's mandate in the event of the withdrawal of the MP from the parliamentary faction representing the political party, from whose list he or she had been elected, it was

stipulated in the relevant constitutional provision that that could be done “on the basis of a law”. The applicant emphasised that no such law had been adopted. He further submitted that the approach of the Constitutional Court to the issue had evolved over time: while in 2008 it had held that the constitutional provisions regarding early termination of an MP’s mandate remained applicable even in the absence of further laws, in 2017 it had found that the early termination of an MP’s mandate under Article 81 § 6 of the Constitution was possible only on the basis of a law determining the conditions and procedures therefor.

88. The applicant also drew the Court’s attention to the fact that, prior to the early termination of his mandate as an MP, there had been no similar cases in the history of the Ukrainian parliament: none of the MPs who had withdrawn from the parliamentary faction of the political force, on the list of which he or she had been elected, had had his mandate terminated early on that ground.

89. Relying on the above considerations, the applicant argued that the interference with his passive electoral right could not be regarded as lawful.

90. The applicant further submitted that, even assuming that the impugned measure might have been aimed at “maintaining party discipline”, it had been grossly disproportionate.

91. Lastly, referring to the consistent criticism of the applicable legal regulations by the Venice Commission, the applicant contended that early termination of a parliamentary mandate for the reason a withdrawal from a political faction was unacceptable in a democratic society.

**(b) The Government**

92. The Government argued that the State had not overstepped its wide margin of appreciation and invited the Court to assess the circumstances which had given rise to the present application in the light of the political evolution of the country and its particularities.

93. The Government submitted that the procedure for the early termination of an MP’s mandate in Ukraine was set out explicitly and clearly in the Constitution. They noted that the Constitutional Court had made it clear in its decisions that no further legislation was necessary.

94. The Government contended that, by having voluntarily withdrawn from the parliamentary faction of the political party on whose list he had been elected, the applicant had in fact renounced his mandate as an MP.

95. They therefore argued that there had been no violation of Article 3 of Protocol No. 1.

## 2. *The Court's assessment*

### (a) General principles established in the Court's case-law

96. The Court reiterates that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see, among many other authorities, *Tănase v. Moldova* [GC], no. 7/08, § 154, ECHR 2010, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 382, 22 December 2020).

97. The Court has held that Article 3 of Protocol No. 1 guarantees individual rights, including the right to stand for election, which goes beyond the mere opportunity to take part in an election as a candidate. Once elected, the person concerned must also be entitled to sit as a member of parliament (see, among other authorities, *Selahattin Demirtaş*, cited above, § 386). According to the Court's case-law, the right would be merely illusory if an elected representative could be arbitrarily deprived of it at any moment (*ibid.*).

98. The rights enshrined in Article 3 of Protocol No. 1 are not absolute. There is room for "implied limitations", and the Contracting States have a wide margin of appreciation in this sphere (see, for example, *Paksas v. Lithuania* [GC], no. 34932/04, § 96, ECHR 2011 (extracts), and *Selahattin Demirtaş*, cited above, § 387).

99. While the Contracting States' margin of appreciation is wide, it is not all-embracing. It is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they meet the requirement of lawfulness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate or arbitrary (see *Political Party "Patria" and Others v. the Republic of Moldova*, nos. 5113/15 and 14 others, § 32, 4 August 2020, with further case-law references).

100. The Court refers to its well-established case-law to the effect that an impugned measure must have some basis in domestic law and also be compatible with the rule of law, a principle which is expressly mentioned in the Preamble to the Convention and is inherent in all of its Articles. The expressions "lawfulness" or "prescribed by law" within the meaning of the Convention and the Court's case-law also refer to the quality of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects (see, for example, *Ždanoka v. Latvia (no. 2)*, no. 42221/18, § 51, 25 July 2024).

101. The Court has held that the law is "foreseeable" when an individual is able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may

entail, and when it indicates the scope of discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interferences (see *Kokëdhima v. Albania*, no. 55159/16, § 53, 11 June 2024).

102. In assessing whether a restriction on the rights enshrined in Article 3 of Protocol No. 1 pursues a legitimate aim, the Court has noted that Article 3 of Protocol No. 1 is not limited by a specific list of “legitimate aims” such as those enumerated in Articles 8 to 11 of the Convention and that Contracting States are free to rely on an aim not included in that list in order to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a case (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 115 (b), ECHR 2006-IV).

103. Furthermore, the concept of “implied limitations” under Article 3 of Protocol No. 1 (see paragraph 98 above) means that the Court does not apply the traditional tests of “necessity” or “pressing social need” which are used in the context of Articles 8 to 11 of the Convention. In examining compliance with Article 3 of Protocol No. 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people (*ibid.*, § 115 (c)).

104. Lastly, the Court has held that the Convention establishes a close nexus between an effective political democracy and the effective operation of Parliament. Accordingly, there can be no doubt that the effective functioning of Parliament is a value of key importance for a democratic society (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 141, 17 May 2016).

**(b) Application of the above principles to the present case**

105. It is not disputed that the early termination of the applicant’s mandate as an MP constituted an interference with his rights protected under Article 3 of Protocol No. 1.

106. It is also common ground between the parties that the impugned measure was based on Article 81 §§ 2 (6) and 6 of the Constitution of Ukraine (see paragraphs 19, 87 and 93 above). A primary issue in dispute concerns the foreseeability of those constitutional provisions. According to the applicant, they should not have been applied to his case in the absence of a specific implementing law, whereas the Government asserted that those provisions were both applicable and self-sufficient. Both parties referred to the relevant jurisprudence of the Constitutional Court, which they considered to support their respective arguments (see paragraphs 87 and 93 above).

107. The Court notes that, in accordance with the consistent approach of the Constitutional Court, constitutional provisions are directly applicable, irrespective of the existence of any supporting legislation (see, in particular,

paragraph 33 above). Contrary to the Government's argument, the Constitutional Court has never ruled against the necessity for a separate law, as such, referred to in Article 81 § 6 of the Constitution. In fact, it explicitly stated in its decision of 25 June 2008 that "the procedure of and the grounds for early termination of an MP's mandate [had to] be determined exclusively by legislation". The Constitutional Court noted that the issue of legislative regulation was beyond its competence, however. In line with the principle of the direct applicability of the constitutional provisions, it held that "pending the legislative regulation of the requirements of Article 81 § 2 (6) and Article 81 § 6 of the Constitution, ... the issues of early termination of an MP's mandate [were to be regulated by the pertinent constitutional provisions] (see paragraph 37 above). In its decision of 21 December 2017, the Constitutional Court also stated that the early termination of an MP's mandate was possible only on the basis of a law determining the relevant conditions and procedures (see paragraph 39 above).

108. At the time of the impugned interference in the present case the legal regulation of the issue of early termination of an MP's mandate for the MP's failure to join or remain in the parliamentary faction corresponding to the political party (or electoral bloc) on whose list the MP was elected had not gone beyond the constitutional provisions (Article 81 §§ 2 (6) and 6) merely stating the existence of such a possibility. In other words, there was no legal framework indicating the scope of discretion conferred on the political parties under the constitutional provisions in question and the manner of its exercise; nor were there any rules on the procedures to be followed or safeguards to be put in place against abuse.

109. The Court also finds it relevant that Article 79 of the Constitution, which contains the text of the oath to be taken by MPs before assuming office, states that they are supposed to represent the Ukrainian people and to carry out their duties in the interests of all the compatriots (see paragraph 22 above). The same principle is reaffirmed in section 1 of the Status of MPs Act, which explicitly states that MPs hold their mandate from the people (see paragraph 28 above). Furthermore, the list of grounds for early termination of an MP's mandate under section 4 of that Act does not mention the failure to join or the withdrawal from a parliamentary faction by an [MP] elected from the political party (electoral bloc) forming that faction (see paragraph 29 above).

110. Despite the existence of numerous instances of MPs withdrawing from the parliamentary faction of the political party, from whose list they had been elected to the Parliament, the constitutional provisions providing for early termination of an MP's mandate on that ground had never been applied in practice prior to the events of the present case. It is also noteworthy that the party "Bloc of Petro Poroshenko "Solidarity" decided to terminate the mandate of two out of the ten MPs elected from its list who had withdrawn from its parliamentary faction. It remained unknown by which criteria

the party had been guided in selecting those two MPs (including the applicant).

111. In the circumstances, the Court considers that the applicant could not have reasonably been expected to foresee that his withdrawal from the parliamentary faction of the party “Bloc of Petro Poroshenko “Solidarity” would lead to early termination of his mandate as an MP.

112. Moreover, there was no legal framework, let alone an adequate one, which would ensure effective substantive protection of his passive electoral right against abuse. Indeed, the situation where a political party enjoyed unfettered discretion to choose whether and, if so, when, to put an end to the mandate of an MP who had left its parliamentary faction, with no explanations to give and no procedures to follow (see paragraphs 101 and 108 above), could only be interpreted as effectively removing such decisions from the remit of the law. It was therefore incompatible with the rule of law.

113. Accordingly, the Court concludes that the interference with the applicant’s passive electoral right was unlawful.

114. The above conclusion would in principle be sufficient for the Court to find a violation of Article 3 of Protocol No. 1. However, the Court notes that the circumstances of the present case also raise a serious question of proportionality, without addressing which its analysis would be incomplete and would risk sending a wrong message that early termination of an MP’s mandate by a political party would be otherwise acceptable.

115. The Court emphasises that it has consistently held that it must take into account relevant international instruments and reports, and in particular those of other Council of Europe organs, in order to interpret the guarantees of the Convention and to establish whether there is a common European standard in the field. It is for the Court to decide which international instruments and reports it considers relevant and how much weight to attribute to them (see *Tănase*, § 176, and *Mugemangango*, § 99, both cited above).

116. The Court takes note of the position consistently expressed by the Venice Commission and shared by the PACE and the OSCE/ODIHR, according to which the imperative mandate or similar practices are contrary to the principle of a free and independent mandate, which forms part of the European constitutional tradition (see paragraphs 41-56 above). The Court has no reasons for taking a different approach.

117. Furthermore, in the case *Paunović and Milivojević*, (cited above, § 63), which concerned the “imperative mandate” in Serbia, although not having found it necessary to analyse the proportionality aspect, the Court explicitly upheld the position of the Serbian Constitutional Court, according to which “MPs held a mandate from the people, not from their party”.

118. The Court has no doubt that strengthening party discipline and preventing the fragmentation of parliamentary blocs are important for ensuring effective functioning of Parliament (see paragraph 104 above).

The Court shares the Venice Commission's conclusion that, where cross-party defections are common, the will of the voters is thwarted, so it is legitimate to introduce counter-measures preventing the "sale" of mandates or votes (see paragraph 54 above). However, it would be unacceptable, under the pretext of such counter-measures, to place political parties above the electorate and to give them the power to annul electoral results, as was *de facto* done in the present case.

119. In sum, the Court considers that the impugned measure in the present case was not only unlawful (see paragraph 113 above) but also clearly disproportionate and thwarted the free expression of the people in the choice of the legislature.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. Article 41 of the Convention provides:

### Article 41

"If the Court finds that there has been a violation of the Convention or the Protocols thereto and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

#### 1. *Pecuniary damage*

122. The applicant claimed 55,373.52 euros (EUR) in respect of pecuniary damage, as compensation for the loss of the earnings which he would have received as an MP for the period from 25 March 2016 to 29 August 2019<sup>5</sup>. In support of his claim, he provided copies of the regulations setting out the amounts payable to MPs by way of salary and allowances.

123. The Government contested that claim in general terms.

124. The Court notes that, indeed, if the applicant's mandate as an MP had not been terminated prematurely, he would have continued to receive his MP's salary and allowances until 29 August 2019. That is not, however, sufficient to award the sum claimed, because it would have to be set off against other income which the applicant may have been receiving during the period in question and which he would have had to forgo if he had continued to sit in Parliament. The applicant has given details of the salary he would have received as an MP but has not specified his net loss. Although he

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<sup>5</sup> The Parliament of Ukraine was dissolved with effect from 29 August 2019.

argued that his political career had been terminated, he did not allege that he was unable to continue any professional activity at all.

125. The Court accordingly dismisses the applicant's claim under this head (compare *Kovach v. Ukraine*, no. 39424/02, § 66, ECHR 2008, *Kerimova v. Azerbaijan*, no. 20799/06, § 64, 30 September 2010, and *Markov v. Ukraine* [Committee], no. 66811/13, § 15, 3 February 2022).

## 2. Non-pecuniary damage

126. The applicant also claimed compensation in respect of non-pecuniary damage, but left the amount at the Court's discretion. He submitted that the alleged violation of his rights under Article 3 of Protocol No. 1 had led to an abrupt and early termination of his political career.

127. The Government reiterated their arguments that there had been no violation of the applicant's rights and invited the Court to reject his claim in respect of non-pecuniary damage on that ground.

128. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated for 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.

## B. Costs and expenses

129. The applicant claimed EUR 500 for costs and expenses incurred in the proceedings before the Court. He submitted a copy of a legal assistance contract with Ms Steshenko of 10 November 2023, under which the cost of her services was EUR 500, payable in advance. The applicant also provided a copy of a receipt showing that he had paid the specified amount to Ms Steshenko on 21 November 2023.

130. The Government contested that claim as unsubstantiated.

131. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant's claim for costs and expenses in full, plus any tax that may be chargeable to him.

## C. Default interest

132. The Court considers it appropriate that the default interest 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

1. *Declares*, unanimously, the application admissible;
2. *Holds*, unanimously, that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
3. *Holds*, unanimously,
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, 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 plus any tax that may be chargeable; and
    - (ii) EUR 500 (five hundred euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant;
  - (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*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik  
Registrar

Kateřina Šimáčková  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

## PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. As stated in paragraph 57 of the present judgment, the applicant complained that the early termination of his term of office as MP was in breach of Articles 8 and 10 of the Convention, and also of Article 3 of Protocol No. 1. He further complained under Article 13 of the Convention that no effective domestic remedy had been available to him. However, the judgment confines the examination of the application to Article 3 of Protocol No. 1, absorbing the issues under Articles 8, 10, and 13 of the Convention into the complaint under Article 3 of Protocol No. 1. Paragraph 58 of the judgment states that the Court, being master of the characterisation to be given in law to the facts of a case, considers that the issues raised should be examined solely from the perspective of Article 3 of Protocol No. 1 to the Convention.

2. My disagreement with the judgment is twofold. I take issue first with the lack of a separate examination of the complaints under Articles 8, 10 and 13, which is not reflected in any point of the operative provisions, and second with point 4 of these provisions, which dismisses the remainder of the applicant's claim for just satisfaction to the extent that such a dismissal may concern the just satisfaction relating to complaints under Articles 8, 10 and 13 of the Convention.

3. In line with the views that I have expressed in many separate opinions, I disagree with the approach taken in paragraph 58 of the judgment, which absorbs or embeds the complaints under Articles 8, 10 and 13 into the complaint under Article 3 of Protocol No. 1. In my humble view, such an approach is erroneous as it cannot be compatible with the autonomous and independent nature of Articles 8, 10 and 13, the concept of individual application, the principle of indivisibility of human rights, the principle of effectiveness, the principle of the rule of law, or the legitimacy of the Court. See, *inter alia*, my partly dissenting opinions in *L.F. and Others v. Italy*, no. 52854/18, 6 May 2025, *Kavečanský v. Slovakia*, no. 49617/22, 29 April 2025, *Adamčo v. Slovakia (no. 2)*, nos. 55792/20, 35253/21 and 41955/22, 12 December 2024, *Bednarek and Others v. Poland*, 58207/14, 10 July 2025, *Mandev and Others v. Bulgaria*, nos. 57002/11 and 4 others, 21 May 2024, and *Italgomme Pneumatici S.R.L. and Others v. Italy*, nos. 36617/18 and 12 others, 6 February 2025, as well as my joint partly dissenting opinion with Judge Adamska-Gallant in *Cioffi v. Italy*, no. 17710/15, 5 June 2025.

4. As I have argued elsewhere (see paragraph 6 of my partly dissenting opinion in *L.F. and Others v. Italy*, cited above), it is one thing to interpret one Convention provision in harmony with another – an interpretation which is an aspect or dimension of the principle of effectiveness – and quite another to find it unnecessary to examine a complaint under a given Article of the Convention simply because the Court has addressed another or a similar complaint under a different provision, as the Court did in the present case. In

my humble opinion, no Convention right can serve as a substitute for another, nor can one right absorb or override another to the point of rendering it meaningless. Such an approach would contradict not only the text of the Convention provisions but also the intention of its drafters, whose aim was to ensure that all the rights enshrined therein would coexist and be fully effective. Indeed, each right has its own distinct value, content, and purpose within the human rights framework, and the principle of effectiveness requires that each provision be interpreted in a manner that gives practical and tangible effect to its guarantees. Reducing one right to a mere accessory to another undermines the holistic protection that the Convention is designed to provide. As I have also argued previously (*ibid*), a right under the Convention is not a bottle, half full, passively waiting to be filled by the content of another right or by whatever meaning is convenient or expedient in a given case. Each right has a specific core content, a defined scope, and a legal and moral essence that must be respected. To treat a right as a formless container is to risk distorting its purpose and undermining the integrity of the Convention system. Interpretation must be principled and faithful to the original character and nature of each right. The Court has a duty to ensure that these rights are not blurred, diluted, or repurposed in a way that erodes their individual significance or leads to the disappearance of distinct protections under the guise of efficiency or “judicial economy”.

5. As I have argued elsewhere (see paragraph 5 of my partly dissenting opinion in *Mandev and Others v. Bulgaria*, cited above, and paragraph 6 of my partly dissenting opinion in *Italgomme Pneumatici S.R.L. and Others v. Italy*, cited above), the Court has used the principle that “it is the master of the characterisation to be given in law to the facts of the case” in a misguided manner in several cases. I would argue the same in the present case. In my submission, this tool as it has been applied so far, save in a few cases, has been used and developed as a manifestation of the principle of effectiveness. Its aim is to save complaints that, although factually established in the applicants’ pleadings, do not rely on the appropriate legal basis; it is the task of the Court to consider the complaints under the appropriate Convention Articles or provisions of its own accord. Surely, the aim of this practice is not to refrain from examining *prima facie* admissible complaints, but rather to allow the Court to examine an application under the Convention Article or provision that it considers properly applicable, even if the applicants did not refer to it in their pleadings. For instance, the Court, in its judgment in the landmark Grand Chamber case of *Guerra and Others v. Italy* (19 February 1998, §§ 44 and 46, *Reports of Judgments and Decisions* 1998-I), by following the aforementioned principle, held that it had jurisdiction to consider the case not only under Article 10 of the Convention, which was expressly relied on by the applicants, but also under Articles 8 and 2 of the Convention, which the applicants did not expressly invoke. In the end, the Court found a violation of Article 8 of the Convention and considered that it

was unnecessary to consider the case under Article 2. Unlike its treatment of the complaints under Articles 8, 10 and 13 in the present judgment, the Court did not refrain from examining the complaint under Article 10; on the contrary, it thoroughly examined it (see paragraphs 47-54 of that judgment) and ultimately concluded that Article 10 was not applicable to the case.

6. It has not escaped my attention that in two separate cases, against the same member State, decided on the same day in the same Section, the Court – using two different approaches – decided not to examine certain complaints separately. In one case (the present judgment), the Court decided not to examine some of the complaints separately, but instead to absorb them into another complaint (here, the Court made use of the fact that it is the master of characterisation to be given in law to the facts of the case). In the other case, namely *Korniyets and Others v. Ukraine* (nos. 2599/16 and two others, 10 July 2025), the Court decided not to examine separately certain complaints which it considered to be “secondary”, after having categorised each complaint as either “main” or “secondary” (there, it referred to *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, ECHR 2014). Regrettably, both approaches appear to result in the failure to examine some of the applicants’ complaints, a failure which raises significant concerns in my view. This omission not only risks undermining the integrity of the overall process but also has the potential to leave valid issues unaddressed, thus eroding trust in the system and diminishing accountability.