CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF SUKHOVETSKYY v. UKRAINE

(Application no. 13716/02)

JUDGMENT

STRASBOURG

28 March 2006

FINAL

28/06/2006

In the case of Sukhovetskyy v. Ukraine,

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

Jean-Paul Costa, *President*,
Ireneu Cabral Barreto,
Rıza Türmen,
Karel Jungwiert,
Volodymyr Butkevych,
Antonella Mularoni,
Danutė Jočienė, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 1 February 2005 and 7 March 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 13716/02) 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 Anatoliy Yosypovych Sukhovetskyy ("the applicant"), on 5 March 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Ms Zoryana Bortnovska.

3. The applicant alleged that the requirement to pay an electoral deposit amounted, in the circumstances of his case, to a violation of Article 3 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 1 February 2005, the Chamber declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1939 and lives in the village of Agronomichne, Vinnitsa region.

8. On 30 January 2002 the electoral commission of constituency no. 11 refused to register the applicant as a candidate in the parliamentary elections on account of his failure to pay the electoral deposit, the amount of which was sixty times the tax-free monthly income[1] (1,041 Ukrainian hryvnias (UAH)[2]). On 8 February 2002 the Central Electoral Commission upheld this decision, noting, *inter alia*, that the applicant had submitted all the relevant documents to the local electoral commission, but had failed to pay the electoral deposit as required by the Parliamentary Elections Act of 18 October 2001.

9. The applicant challenged these decisions before the Supreme Court, stating that he was unable to pay the deposit as his annual income (approximately UAH 960[3]) was less than this sum.

10. By a judgment of 15 February 2002, the Supreme Court dismissed the applicant's complaint. In particular, the court found that the applicant was free to stand as a candidate for parliamentary elections on condition that he pay the electoral deposit. The court also referred to the Ukrainian Constitutional Court's decision of 30 January 2002 which stated that the deposit requirement complied with the Constitution.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution of Ukraine

11. The relevant Articles of the Constitution provide as follows:

Article 24

"...There shall be no privileges or restrictions based on ... political ... and other beliefs ..., [or] property status ..."

1. At the material time the amount of the tax-free monthly income (UAH 17) was fixed by Presidential Decree no. 519/94 of 13 September 1994, and constituted a fictional rate used for determining wages, taxes, fines, etc.
2. Approximately 160 euros (EUR).
3. Approximately EUR 140.

Article 76

"... A citizen of Ukraine who has attained the age of 21 on the date of elections has the right to vote and, if that citizen has resided in the territory of Ukraine for the previous five years, may become a member of the national parliament ..."

2. The Parliamentary Elections Act of 18 October 2001

12. Section 8(1) of the Act as worded at the material time established that a Ukrainian citizen who had reached the age of 21 by the date of the elections, had been resident in Ukraine for the last five years before the elections and was entitled to vote was eligible to stand for election to Parliament.

13. Under section 38(2) of the Act, a Ukrainian citizen who was eligible for election to Parliament could put forward his or her own candidature by lodging an application with the competent district electoral commission.

14. Pursuant to section 43(1) and (2), at the material time a party or block of parties, and independent candidates, were required to pay, respectively, an electoral deposit of 15,000 times[1] and 60 times the tax-free monthly income. The deposits were returned to successful candidates and parties (that is, parties which received at least 4% of the national vote) and money deposited by unsuccessful candidates and parties was forfeited.

15. Section 51 provided for State funding of part of the expenses incurred by registered candidates during an electoral campaign. Candidates had equal access to State funding.

16. According to section 52, the competent district electoral commissions were to print 2,000 copies of electoral posters for each registered candidate, the cost being borne by the State budget.

17. Under section 54, State-run local television and radio broadcasting companies were to provide each registered candidate with ten minutes of free air-time to present their programme to the electors. The cost was borne by the State budget.

18. On 1 October 2005 Parliament amended the Act, replacing the mixed proportional/majority electoral system with party-list proportional representation.

3. The Constitutional Court's decision of 30 January 2002

19. Proceedings were initiated before the Constitutional Court following a constitutional petition (*конституційне подання*) by sixty-three members of parliament, who challenged section 43 of the 2001 Act on the ground that it established a property qualification, which discriminated against less successful citizens and was contrary to Article 24 of the Constitution. The

1. UAH 255,000; approximately EUR 42,300.

Speaker of Parliament and the President of Ukraine submitted observations on the issue. The Speaker upheld the disputed provision in principle, but expressed his concern as to the actual amount of the required deposit. The President indicated that he had vetoed the original bill during its passage through Parliament on the ground that the proposed amount was excessive. According to the President, once the deposit had been substantially lowered, this measure ceased to violate human rights and freedoms.

20. The Constitutional Court held that the electoral deposit was not a direct or indirect limitation of the right to stand for election, since it did not predetermine the citizen's right to elect or be elected. The deposit was no more than a precondition for the candidate's registration by the electoral commission. All candidates had to pay the same amount, irrespective of their financial situation, and thus it could not be considered discriminatory on grounds of property. The electoral deposit was intended both to encourage a responsible attitude towards elections on the part of potential candidates and to prevent an abuse of electoral rights. Moreover, it was aimed at preventing excessive or unreasonable expenditure of the State funds allocated to cover candidates' costs.

21. The Constitutional Court also indicated that establishment of the actual amount of the deposit fell within the discretionary powers of the political authorities and was thus outside its jurisdiction.

4. Constituency no. 11

22. The electoral commission of the single-member constituency no. 11 registered twenty candidates for the 2002 parliamentary elections (two subsequently withdrew), twelve of whom were independent candidates, including two professors and a doctor who worked in a public hospital.

III. RELEVANT COMPARATIVE AND INTERNATIONAL LAW AND PRACTICE

A. Electoral deposits in the domestic law of European countries

23. The electoral laws of at least fourteen member States of the Council of Europe require deposits to be made by candidates for election, although in some this condition applies to electoral lists, not individual candidates. Several democratic States outside Europe have also introduced this requirement (see paragraphs 30-33 below).

24. The sum to be paid is calculated in various ways, for example, by multiplying certain amounts predetermined by law (such as the minimum wage in Armenia, the average wage in Lithuania) or by applying a fixed

amount (as in Bulgaria). The actual sum for individual candidates currently varies from EUR 92 (Malta) to EUR 2,600 (Bulgaria).

25. Although registered candidates usually receive various forms of support from public funds (free television air-time, postal services, premises for meetings, etc.), this is not always the case.

26. Deposits are normally refunded if the candidate obtains a certain percentage of the votes cast. Only the laws of Ukraine, Turkey and Lithuania provide that the deposit is forfeited if the candidate does not actually win a seat.

B. Relevant comparative international practice

1. Ireland

27. In the *Redmond* case (*Redmond v. Minister for the Environment* [2001] IEHC 128), the plaintiff argued before the Irish High Court that, since he was unemployed and had virtually no financial resources, he was unable to pay the deposit required for national parliamentary elections and European elections (300 and 1,000 Irish pounds respectively). In his judgment (at paragraph 80), Mr Justice Herbert summarised eight reasons which had been put forward to justify a deposit system or some equivalent filter:

> "1. Excessively ... large numbers of citizens offering themselves for election to membership of Dáil Eireann would undermine the democratic nature of the State.
>
> 2. The presence of a large number of names on a ballot paper would serve to confuse the electorate.
>
> 3. Voters would be likely to make a choice before reading a long list of candidates to the end and this would not serve democracy.
>
> 4. The more unsuccessful candidates there are in an election the more difficult it is to achieve proportional representation so that a major ... increase in the number of candidates would serve to undermine the proportional representation single transferable vote system of election mandated by Article 16, section 2, subsection (5) of the Constitution.
>
> 5. The greater the number of unsuccessful candidates the more difficult it becomes for voters to predict the outcome of the election so that their ability to properly manage their vote is lost or impaired.
>
> 6. The counting of votes would take longer as the numbers of candidates increased and with more candidates there was a greater scope for more and longer recounts.
>
> 7. With many candidates seeking to persuade the electorate within the maximum period of 30 days allowed by Article 16, section 3, subsection (2) of the Constitution, election campaigns would become disruptive and the electorate could become

confused or apathetic.

8. The process of nomination, delivering nominations, and ruling on the validity of nominations would become overwhelmed if large numbers of candidates were to stand for election."

28. Mr Justice Herbert went on to hold that the deposit system discriminated against persons of reduced means and was thus an attack on their human dignity. Having considered the justifications above, he nevertheless concluded that there was no real evidence that abolishing the deposit system would cause such serious disruption, as those arguments were based on surmise. In conclusion, he ruled that, in the absence of some alternative route to the ballot paper, the deposit system was unjust, unreasonable and arbitrary.

29. The following year, the deposit system was replaced by a nomination and signatures system.

2. Canada

30. In *Figueroa v. Canada (Attorney-General)*, the plaintiff, leader of the Communist Party of Canada, challenged various aspects of Canadian electoral law on the ground that they allegedly discriminated against small, unrepresented parties such as his.

31. In the Ontario Court of Justice, Justice Molloy invalidated the existing deposit rule, according to which the 1,000 Canadian dollars (CAD) required from election candidates was only refunded in full to those who obtained more than 10% of the votes cast. Those who obtained less received only CAD 500 of the original deposit. The judge found this to be in violation of section 3 of the Charter of Rights and Freedoms (active and passive voting rights), and recommended the full reimbursement of the deposit irrespective of the candidate's score.

32. Before the Ontario Court of Appeal, Justice Doherty did not accept the lower court's equation of fairness with strict equality of treatment in the matter of electoral law. He held that the essential purpose of section 3 of the Charter was to guarantee the right to effective representation, rather than ensuring absolute parity. Equal treatment was an important consideration, but not the only one.

3. Mauritius

33. In the third periodic report of Mauritius[1], the Mauritian delegation stated:

"With reference to the recent case in which a political organisation had contested the amount by which electoral deposits had been raised, the Supreme Court had decided

1. Presented to the United Nations Human Rights Committee at its 1478th meeting (CCPR/C/64/Add.12).

that the size of the increase would prevent people from standing for election and was therefore unconstitutional. The Government had originally amended the law to stop people from standing for frivolous reasons and obtaining large amounts of air-time in exchange for a very modest deposit. In the wake of the Supreme Court ruling, electoral deposits had reverted to the previous amount of 250 rupees."

4. United Kingdom

34. A political debate concerning the electoral deposit is currently under way in the United Kingdom.

35. The deposit was first introduced in 1918 in the Representation of the People Act, and fixed at 150 pounds sterling (GBP). The refund threshold was one-eighth of the votes cast. The Representation of the People Act 1985 reduced the threshold to 5%, but increased the deposit to GBP 500.

36. In 2003 the Electoral Commission, concerned by growing political absenteeism in the United Kingdom, published a report entitled "Voting for change", in which, *inter alia*, it advocated the abolition of the deposit system. The Commission considered that this requirement clearly disadvantaged small parties and independent candidates (for example, the Green Party lost all of its deposits in the 1992 and 1997 parliamentary elections).

37. The government did not support this proposal, considering that the elimination of the deposit would allow anyone to stand for election and gain access, for instance, to free leafleting, without any proper safeguards or deterrent. This could lead to a proliferation of candidates causing administrative complexity and frivolous candidatures[1]. Instead it proposed to simplify the system of deposits (keeping the deposit for parliamentary elections at GBP 500) and to reduce the refund threshold to 2% of votes cast. In 2005 a bill to this effect was put before Parliament (SN/SG/3779).

C. Relevant international material

1. The Council of Europe's European Commission for Democracy through Law (the Venice Commission)

38. The relevant part of the Code of Good Practice in Electoral Matters[2] provides:

1. The Government's Response to the Electoral Commission's report: Voting for change, December 2004.

2. Adopted by the Venice Commission at its 51st plenary session (5-6 July 2002) (CDL-AD(2002)023)

"Principle I.1.3. Submission of candidatures

...

vi. If a deposit is required, it must be refundable should the candidate or party exceed a certain score; the sum and the score requested should not be excessive."

39. The Venice Commission has offered expert evaluations of the electoral laws of many Council of Europe member States. The issue of electoral deposits was one of the Commission's concerns when assessing the draft amendments to the Armenian Electoral Code. The draft joint opinion of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (the OSCE/ODIHR)[1] stated:

"20. The draft amendments eliminate the requirement of collecting signatures supporting a candidate's nomination and raise the amounts of electoral deposits. This is acceptable in principle. However, the draft (amendments to Articles 71(1), 101(1)(1) and 108(2)), would raise the electoral deposits significantly (in case of presidential elections, from 5,000 to 8,000 [times the minimum salary]; in case of proportional elections, from 2,500 to 4,000 and in case of majority elections from 100 to 150 times the minimum salary). It is recommended that these increased deposit amounts be reconsidered, as it is not apparent that the existing deposit amounts are insufficient to deter frivolous candidates. An unreasonably high electoral deposit also presents a problem under international and European standards. It is an established principle that wrongful discrimination includes discrimination against a person on the basis of social or property status. Thus, the amount of an electoral deposit must be considered carefully to ensure that it does not prevent the candidacy of a serious candidate who happens to be economically disadvantaged."

40. However, as the Armenian authorities followed the Commission's recommendations, electoral deposits ceased to be a matter of concern for international experts. The Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia[2] contained the following passage:

"17. The amendments eliminate the requirement of collecting signatures supporting a candidate's nomination. This is acceptable in principle. Contrary to the various previous drafts, the deposits are not raised in the amended Code (Articles 71(1), 101(1)(1) and 108(2)), and remain the same as in previous elections, e.g. in case of presidential elections, at 5,000; in case of proportional elections, at 2,500; and in case of majority elections at 100 times the minimum salary. This corresponds to the previous Venice Commission and OSCE/ODIHR recommendations. Absent evidence of high numbers of potential frivolous candidates, such deposits seem reasonable."

1. Version of 19 April 2005 (CDL-EL(2005)010).
2. Adopted by the Council for Democratic Elections at its 14th meeting on 20 October 2005 and the Venice Commission at its 64th plenary session on 21-22 October 2005 (CDL-AD(2005)027).

2. The United Nations Human Rights Committee

41. In General Comment no. 25(57), adopted by the United Nations Human Rights Committee under Article 40 § 4 of the International Covenant on Civil and Political Rights, dated 12 July 1996, the Committee referred briefly to the issue of election fees or deposits in the following terms:

> "16. ... Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory."

42. In its Concluding Observations on the report of the United States of America[1], the Committee commented on the broader (but related) issue of the substantial financial investment required of election candidates in the United States:

> "289. The Committee welcomes the significant efforts made in ensuring to everyone the right to vote but is concerned at the considerable financial costs that adversely affect the right of persons to be candidates at elections."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

43. The applicant complained that he had been disenfranchised. He relied on Article 3 of Protocol No. 1, which provides:

> "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. The parties' submissions

1. The Government

44. The Government submitted that under Article 3 of Protocol No. 1 the right to vote was not absolute and that a wide margin of appreciation was to be accorded to Contracting States in determining the conditions under which electoral rights were exercised.

45. The Government maintained that the electoral deposit pursued the interrelated aims of enhancing the responsibility of those standing for election and confining elections to serious candidates, and thus preventing

1. Adopted at the 1413th meeting (fifty-third session), 6 April 1995 (CCPR/C/79/Add.50).

the unreasonable outlay of public funds. They referred in the latter respect to the campaign facilities provided, at public expense, to registered candidates (production of electoral posters, free air-time on local broadcasting media, etc.).

46. The Government also stressed that all candidates had to pay the same amount irrespective of their financial situation. Furthermore, similar provisions existed in the electoral laws of other Contracting States.

47. The amount of the deposit could not be considered excessive, in that the average annual income in Ukraine was UAH 2,445.90 in 2001 and UAH 2,938 in 2002[1] (the method of calculation included under-age children; thus, the average income of eligible persons, that is, persons over 21 years of age, was certainly much higher).

48. With regard to the applicant's personal situation, if he had had any faith in his chances of being elected he could have taken out a bank loan or mortgaged a flat he owned in order to raise the required amount.

2. The applicant

49. The applicant submitted that any limitation of the right set out in Article 3 of Protocol No. 1 impaired the conduct of free elections. He maintained that the amount of the deposit at the material time deprived 80% of the population of Ukraine, who lived below the poverty line, of the possibility of standing for election. (He provided no statistical or other data to support this statement, however.) Thus, in the applicant's opinion, this measure was disproportionate to the aims pursued. In his particular situation, given his low income, he was unable to meet the cost of the deposit, which had effectively eliminated his chances of becoming a candidate in elections.

B. The Court's assessment

1. General principles

50. The Court reiterates that the rights to vote and stand for election are implicit in Article 3 of Protocol No. 1. However, the rights bestowed by Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and Contracting States must be given a wide margin of appreciation in this sphere (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 52, Series A no. 113, and *Py v. France*, no. 66289/01, § 46, ECHR 2005-I).

51. The member States have broad latitude to establish constitutional rules on the status of members of parliament. In particular, the Court has

1. EUR 413 and EUR 497 respectively.

accepted that stricter requirements may be imposed on the eligibility to stand for election to parliament, as distinguished from voting eligibility (see *Melnychenko v. Ukraine*, no. 17707/02, § 57, ECHR 2004-X). Although they have a common origin in the need to ensure both the independence of elected representatives and the freedom of electors, these requirements vary in accordance with the historical and political factors specific to each State. The multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. For the purposes of Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another (see *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II).

52. It is, however, 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 are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV). Any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws which it promulgates. Exclusion of any groups or categories of the general population must accordingly be reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 62, ECHR 2005-IX).

2. Electoral deposits

53. The present case concerns the electoral deposit payable by a person wishing to stand for parliamentary elections.

54. The former European Commission of Human Rights considered deposit restrictions on three occasions. In the early case of *Tête v. France* (no. 11123/84, Commission decision of 9 December 1987, Decisions and Reports (DR) 54, p. 52), the Commission examined a complaint by Green Party activists that their electoral list was discriminated against during elections to the European Parliament by the French legislative provision setting a 5% threshold of votes cast for obtaining a refund of the 100,000 French francs (FRF) deposit. The Commission dismissed this complaint as manifestly ill-founded. It considered that the measure pursued the legitimate aim of encouraging the development of sufficiently representative political movements and, bearing in mind the State's margin of appreciation, was not unreasonable or disproportionate. In a more recent decision in *André v. France* (no. 27759/95, Commission decision of 18 October 1995, unreported), the Commission, referring to its findings in

Tête, dismissed the application in question, which had attempted to challenge the deposit restriction on the ground that candidates from a list of disadvantaged people (unemployed persons, vagrants and invalids) could not afford to pay the required amount.

55. On the same grounds, the Commission dismissed a complaint concerning an electoral deposit required in French parliamentary elections (see *Desmeules v. France*, no. 12897/87, Commission decision of 3 December 1990, DR 67, p. 166). It indicated, *inter alia*, that the impugned provision had its counterpart in other European jurisdictions and that it was not established, or even alleged, that the FRF 8,000 deposit constituted an intolerable burden for the list of candidates headed by the applicant.

56. The Court, however, has never expressed its opinion on this particular point.

3. The present case

57. Turning to the circumstances of the present case, the Court observes that the applicant was refused registration as a candidate in the 2002 parliamentary elections on the sole ground of his failure to pay an electoral deposit of UAH 1,041. The applicant claimed that he was unable to meet this requirement, given that his annual income was approximately UAH 960.

58. The Government did not challenge this claim. The Court, therefore, finds it established that the applicant was unable to raise the required amount from his own income.

59. The Court notes that the parties do not dispute the applicability of Article 3 of Protocol No. 1 or the fact that the measure complained of by the applicant interfered with his electoral rights.

60. The Court will therefore determine whether the impugned measure pursued a legitimate aim in a proportionate manner having regard to the principles identified above.

(a) Legitimate aim

61. The Court notes that the deposit requirement for electoral candidates is not unique to Ukraine. The electoral laws of a number of member States provide for such a measure in order to discourage frivolous candidatures. Moreover, the Venice Commission regarded this aim as legitimate and the deposit requirement as, in principle, an acceptable device for achieving it (see paragraphs 38-39 above). The State's participation in the campaign costs of registered candidates, intended to ensure a level playing field for the candidates, is another relevant factor.

62. The Court reiterates that, unlike certain other provisions of the Convention, Article 3 of Protocol No. 1 does not specify or limit the aim which a measure must pursue. A wider range of purposes may therefore be compatible with this Article (see *Podkolzina*, cited above, § 34).

Accordingly, regard being had to the respondent State's margin of appreciation, the Court concludes that the disputed measure pursued the legitimate aim of guaranteeing the right to effective, streamlined representation by enhancing the responsibility of those standing for election and confining elections to serious candidates, whilst avoiding the unreasonable outlay of public funds.

(b) Proportionality

63. The Court repeats that the case concerns the way in which the applicant's right to stand for election was curtailed by the obligation to pay an electoral deposit which was non-refundable to unsuccessful candidates. The Court notes that the introduction of the deposit was a general measure not specifically addressed to the applicant in this case, although it had obvious consequences for him and other persons in a similar situation.

64. The Court has dealt with cases involving other general measures affecting electoral rights. It has found violations of Article 3 of Protocol No. 1 where blanket denials existed, preventing categories of voters from expressing their opinion in the choice of members of parliament, and where the authorities had failed or were reluctant to investigate and, if need be, to remedy the situation. Thus, in *Matthews* and *Aziz*, the applicants (as a resident of Gibraltar and a member of the Turkish-Cypriot community living in the government-controlled area of Cyprus respectively) had no right to vote in the elections to the European Parliament or the Cypriot House of Representatives due to legislative lacunae (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 64, ECHR 1999-I, and *Aziz v. Cyprus*, no. 69949/01, § 29, ECHR 2004-V). In *Hirst*, the violation was provoked by the general ban on voting rights for convicted prisoners (see *Hirst*, cited above, §§ 79-82).

65. Unlike in the aforementioned cases, the impugned measure has been the subject of considerable parliamentary scrutiny. There was a serious debate on electoral deposits in the Ukrainian parliament before the legislation was adopted. In fixing the amount of the deposit, Parliament sought, *inter alia*, to weigh up the competing interests of deterring frivolous candidatures against that of ensuring universal franchise. Moreover, the fact that a petition to the Constitutional Court was signed by sixty-three members of parliament and that the Speaker also expressed certain reservations indicates the importance of the debate and its controversial nature (see paragraph 19 above).

66. The Court notes that the measure was also subjected to judicial scrutiny: it was challenged before the Constitutional Court on essentially the same grounds as those expressed in the present application. The Constitutional Court examined the basis for the deposit, which was intended to encourage a responsible attitude towards elections on the part of potential candidates and to prevent an abuse of electoral rights. It held that this

restriction was neither unconstitutional nor discriminatory, since it did not predetermine the citizen's right to vote or stand for election but served exclusively as a precondition for the candidate's registration and was applied in a similar manner to all persons seeking to register as candidates. Moreover, quite apart from the electoral issues, other constitutionally valid concerns, such as the need to prevent excessive or unreasonable expenditure from the State budget, served as justification for the measure in question.

67. The Court observes that the policy behind the impugned measure required the State to strike a delicate balance between conflicting interests: on the one hand, deterring frivolous candidates whatever their social standing, and, on the other, allowing the registration of serious candidates, including those who happen to be economically disadvantaged. The Court is satisfied that the electoral deposit system adopted at the material time by the Ukrainian political institutions was an acceptable compromise between these competing interests and, following its enactment, remained the subject of careful consideration by the domestic legislature and judiciary in the light of modern-day conditions (compare and contrast *Hirst*, cited above, §§ 79-80).

68. The Court also recalls the subsidiary role of the Convention. The national authorities are, in principle, better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ, the role of the domestic policy-maker should be given special weight (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII). Moreover, as observed above, the Court has stated on many occasions that States enjoy a wide margin of appreciation in the field of electoral legislation, so that even a system which fixes a relatively high threshold, for example, as regards the number of signatures required to stand for election or a minimum percentage of votes cast nationally to qualify for a local seat, may be deemed compatible with Article 3 of Protocol No. 1 (see *Federación Nacionalista Canaria v. Spain* (dec.), no. 56618/00, ECHR 2001-VI).

69. This margin of appreciation, however, goes hand in hand with European supervision. The Court must therefore ascertain whether the discretion afforded to Ukraine was overstepped, in other words, whether the introduction of the deposit curtailed the applicant's electoral rights to such an extent as to impair their very essence and deprive them of their effectiveness.

70. It is to be noted in this respect that, among European jurisdictions, the amount of the deposit required under Ukrainian law is one of the lowest. As regards the correlation between the deposit and a citizen's income, the Court notes that, when assessing the Electoral Code of Armenia (a country with an economic situation comparable to that of Ukraine), the Venice

Commission in its report of 22 October 2005 found the considerably higher deposit fixed by Armenian law to be reasonable (see paragraph 40 above).

71. The Court finds it important to note that, out of the twenty candidates registered to run in the applicant's electoral district, twelve were independent (see paragraph 22 above), including two professors and a public-sector medical doctor (professions with traditionally low salaries in Ukraine), whose potential to collect the required sum relying solely on their personal incomes appears questionable. Moreover, an increase in electoral costs is a common feature of modern democracies (see paragraph 42 above), so that even relatively well-off candidates in Ukraine and elsewhere in Europe must normally seek external funding for a successful electoral campaign.

72. The Court notes that the forfeiture of the deposit in the event of failure to win a seat is a relatively rare provision in European electoral systems. However, in view of the relatively low amount of the sum involved, the electoral campaign services provided by the State (see paragraphs 15-17 above), and the other burdensome costs of organising elections which such deposits may help to allay, the Court does not find the measure arbitrary or falling outside the State's wide margin of appreciation.

73. The Court concludes, therefore, that the deposit required of the applicant cannot be considered to have been excessive or such as to constitute an insurmountable administrative or financial barrier for a determined candidate wishing to enter the electoral race, and even less an obstacle to the emergence of sufficiently representative political currents or an interference with the principle of pluralism.

74. There has accordingly been no violation of Article 3 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

75. The applicant complained of discrimination contrary to Article 14 of the Convention which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

76. However, the Court notes that the applicant relies on the same arguments which he made in respect of his complaint under Article 3 of Protocol No. 1 taken alone. In the light of its considerations and conclusions above (see paragraphs 62-74), the Court does not consider it necessary to examine separately the discrimination claim.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there is no need to examine separately the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1.

Done in English, and notified in writing on 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Jean-Paul Costa
Deputy Registrar	President