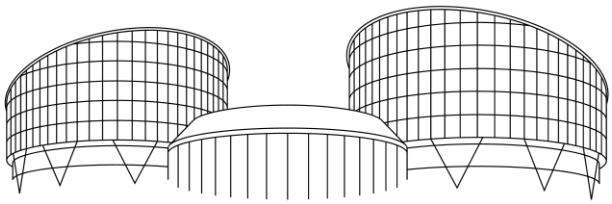

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SHAPOVALOV v. UKRAINE

(Application no. 45835/05)

JUDGMENT

STRASBOURG

31 July 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shapovalov v. Ukraine,

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

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 45835/05) 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 Oleksandr Volodymyrovych Shapovalov ("the applicant"), on 21 November 2005.

2. The applicant, who had been granted legal aid, was represented by Mr A. P. Bushchenko, a lawyer practising in Kharkiv, Ukraine. The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy, of the Ministry of Justice of Ukraine.

3. The applicant alleged, in particular, that the State authorities had hindered him in collecting various information necessary to cover the course of the presidential elections, and that he had not been able to challenge the State authorities' actions in court.

4. On 2 November 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Kherson, Ukraine.

6. The applicant is a journalist and human rights activist. Since April 2003 he has been a member of the Kherson Regional Branch of the Ukrainian NGO "The Committee of Voters of Ukraine" (hereinafter

"CVU") *(Херсонська обласна організація всеукраїнської громадської організації «Комітет виборців України»)* and a reporter for the regional newspaper "Vilnyy vybir" *(«Вільний вибір»),* which was founded by the Kherson Regional Branch of the CVU. Between 26 October 2004 and 10 January 2005 he was also a reporter for the CVU's newspaper "Tochka zoru" *(«Точка зору»).* The CVU's main activities include, inter alia, election monitoring and raising voters' legal awareness during election campaigns.

A. Historical background

7. The Ukrainian presidential elections in 2004 were held on two rounds, on 31 October and 21 November 2004.

8. After the end of the second-round voting of 21 November 2004 mass protests were carried out. The elections were claimed to be marked by massive corruption, voter intimidation and electoral fraud. The protests succeeded in that the results of the original run-off were annulled, and a revote was organised on 26 December 2004.

9. The protests and other political events that took place in Ukraine from late November 2004 to January 2005 were called the Orange Revolution.

B. Events of 31 October 2004 and related events

10. During the Ukrainian presidential elections in 2004 the applicant covered meetings and decisions of Territorial Election Commission no. 186 (hereinafter "the TEC") (*територіальна виборча комісія*).

11. According to the applicant, at 2 p.m. on 31 October 2004, the day of first-round voting in the presidential elections, he requested R., the TEC's secretary, and B., the TEC's Head, to provide him with a copy of the TEC's decision no. P-12-4, adopted earlier on the same day, concerning the possibility for district electoral commissions to make changes to the lists of voters without the approval of the TEC. According to the applicant, such a decision was unlawful. Later, the applicant asked for the voting results for each polling station and for copies of the minutes of the TEC's meetings of 31 October 2004.

12. As the applicant was not provided with the information requested, on the same day at 5 p.m. he submitted a written request to the Head of the TEC. In reply, he was informed that decision no. P-12-4 had been posted on the information stand and that by 4 p.m. 39.1% of voters had voted. According to the applicant, his request for the TEC meeting minutes was ignored. However, according to explanations given by R. to a prosecutor (see paragraph 20), the minutes of the TEC meetings of 31 October and 1 November 2004 had also been displayed on the information stand.

13. That same evening, at around 8 p.m., the applicant was prevented from entering the TEC building to attend its meeting. According to the applicant, he entered the TEC premises half an hour later. It is unclear whether a TEC meeting was actually held at that time and, if so, whether the applicant was finally able to attend.

14. On 5 November 2004 the applicant complained to the Head of the TEC, *inter alia*, about not letting him into the TEC's premises, and requested copies of the TEC meeting minutes of 31 October and 1 November 2004.

15. On 10 November 2004 the TEC adopted a decision to disregard the applicant's complaint.

C. Events of 21 November 2004

16. On 21 November 2004, the day of second-round voting, the applicant requested to be provided with the TEC's decision no. 1-116 of 17 November 2004 allowing the police to be present in polling stations. The applicant stated that he had been shown this decision by the police at one of the polling stations. According to the applicant, his request was ignored. No copy of such a request has been submitted by the applicant.

17. That same evening the TEC decided not to allow the applicant to attend its meetings as he interfered with its work. According to the applicant, that decision was adopted after he had asked the Head of the TEC what the legal basis for one of her decisions adopted at the meeting was. The applicant later tried to enter the TEC premises but was stopped by Z., a TEC member. This was witnessed by Bi., a journalist.

18. The applicant later requested a copy of the minutes of the TEC meeting. In reply he was told that the minutes were posted on the TEC's information stand.

D. Request to institute criminal proceedings against TEC members

19. On 15 May 2006 the Komsomolskyy District Prosecutor's Office rejected the applicant's complaint to institute criminal proceedings against TEC members for obstructing the lawful professional activities of journalists (Article 171 of the Criminal Code of Ukraine).

20. The prosecutor questioned R., the secretary of the TEC, who explained that all the material requested by the applicant on 31 October 2004 had been posted on the information stand on the TEC's premises on the same day or the next day. It was also noted that the Presidential Elections Act did not provide for the possibility of receiving information about detailed voting results for each polling station. R. also submitted that the applicant "had shouted out loud remarks about 'wrong

decisions' of the TEC and had wandered round the TEC's premises, hindering its work".

21. The Head of the TEC, B., explained that on 21 November 2004 the applicant "had behaved inappropriately and hindered the TEC in its work".

22. K., another TEC member, submitted that the applicant "had behaved inappropriately and physically hindered the TEC's work". This was also confirmed by Z., another TEC member. K. also stated that the applicant had threatened her and R. with physical reprisals and this fact had been documented.

23. Bi., a journalist, testified that she had seen the applicant being prevented from entering the TEC's premises on 22 November 2004 between 1 and 2 a.m.

24. Ko., an election observer, submitted that the applicant was requested to leave the TEC meeting after he had asked what the documents on and under the table and in the drawers in the meeting room were. It was decided to exclude him from the meeting for "making remarks from the floor".

E. Court proceedings

25. On 20 December 2004 the applicant instituted proceedings in the Suvorovskiy District Court of Kherson, challenging the TEC's refusals to give him copies of its decisions and to allow him to attend its meetings. He also complained about the failure to provide him with accurate information in a timely manner. In particular, the applicant complained that on 31 October 2004 he had not been provided with a copy of decision no. P-12-4, with written information "about voting results for each polling station in the constituency", or with the minutes of the TEC's meetings of 31 October 2004, and that he had been prevented from entering the premises of the TEC on 31 October 2004. Further, on 21 November 2004 he was not provided with the TEC's decision no. 1-116 of 17 November 2004, was not allowed to attend the TEC's meeting of 21 November 2004 and was not provided with the minutes of that meeting.

26. The applicant lodged his complaint under Chapter 31-A of the Code of Civil Procedure of Ukraine ("the CCP"), which sets out the rules for lodging complaints against decisions, acts or omissions of State bodies.

27. On 3 March 2005 the court held that the applicant's complaint should have been lodged under Chapter 30-B of the CCP and under the Presidential Elections Act 1999 ("the Act"). The court further considered that because (i) the elections had already ended, (ii) the applicant had lodged his complaint about the events of 30 October – 2 December 2004 only on 20 December 2004, and (iii) the applicant had sought the consideration of his complaint under Chapter 31-A, the proceedings should be terminated.

28. On 17 May 2005 the Kherson Regional Court of Appeal upheld the above-mentioned decision. It stated in particular that:

> "... the subject of the complaint in the present case is limited to decisions and actions of the TEC and officials during the elections between 30 October and 2 December 2004. The examination of election-related complaints is regulated by the provisions of the Presidential Elections Act, according to which a journalist cannot lodge such complaints. By the date of the court decision the elections were already over. As it was not possible to examine the applicant's complaint under Chapter 31-A of the Civil Procedure Code, the first-instance court lawfully terminated the proceedings in the case".

29. According to the applicant, he received a copy of this decision on 30 May 2005.

30. On 25 September 2006 the Higher Administrative Court of Ukraine rejected the applicant's appeal, as neither the Act nor Chapter 30-B of the CCP provided for a cassation appeal against a court decision concerning electoral matters.

F. Other events

31. According to the applicant, he received threats from unknown persons. He requested that the police protect him. On 10 January, 15 April and 16 September 2005 the Suvorovskyy District Prosecutor's Office refused to institute criminal proceedings following the applicant's allegations that he had been persecuted.

32. The applicant further complained of alleged violations of his rights to various state authorities, including the Ukrainian Parliamentary Commissioner for Human Rights. He subsequently instituted court proceedings against the Commissioner and several members of her Secretariat for failure to answer his complaints, but was unsuccessful in those proceedings.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure of Ukraine, 1963 (in force at the material time)

33. According to Chapter 31-A of the Code of Civil Procedure of Ukraine, it is possible to challenge the decisions, actions or omissions of any State agency or local self-government body in court, as well as those of any enterprise, establishment, association of citizens or other legal entity, or their officials or administrators.

34. According to Chapter 30-B of the Code, complaints against decisions, acts or omissions of a territorial election commission are

examined by the Supreme Court of the Autonomous Republic of Crimea, by the relevant regional court, or by the Kyiv and Sevastopol City Courts, as appropriate. Such complaints may be lodged by the candidates, their proxies, representatives of political parties or blocs, or by at least twenty voters.

B. Presidential Elections Act, 1999

35. Section 12 of the Act establishes that the subjects of elections are: (i) the voters; (ii) the election commissions formed according to the Act and the Central Election Commission Act; (iii) candidates for the post of the President of Ukraine registered in accordance with the procedure established by the Act; (iv) the parties or blocs who have nominated candidates for the post of President of Ukraine; and (v) the authorised representatives, proxies and official observers of any of the parties or blocs involved in the election process, or candidates for the post of President of Ukraine.

36. Section 104 of the Act provides that a subject of the election process shall have the right to file a complaint against the decisions, actions or inaction of an election commission or an individual member of an election commission. Complaints against the decisions, actions or inaction of territorial election commissions or their members must be filed with the Central Election Commission or with a court of appeal situated in the area covered by the relevant territorial election commission.

C. Information Act, 1992 (in force at the material time)

37. The relevant Articles of the Information Act provide as follows:

"Article 42. Participants in informational relationship

Participants in informational relationship are citizens, legal persons or the state who obtain the rights and obligations stipulated by law in process of information activity.

Principal participants in this relationship are authors, consumers, promoters, keepers (guardians) of information

Article 43. Rights of participants of informational relationship

Participants of informational relationship have the right to receive (produce, obtain), use, disseminate and store information in any form with the use of any means, except for the cases, stipulated by the law.

Every participant of informational relationship to secure his rights, freedoms and legal interests has the right to obtain information on:

activity of governmental authorities;

activity of people's deputies;

activity of local and regional governmental authorities and local administration...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

38. The applicant complained about the refusal of the national courts to consider his complaint against the TEC. He relied on Article 6 § 1 of the Convention, which reads as follows:

> “In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

1. The parties' submissions

39. The Government stated that Article 6 of the Convention was inapplicable to the proceedings in this case since the applicant's aim had been “to establish the legal liability of third parties”, which was not a right guaranteed by Article 6 of the Convention, and the case had not concerned the applicant's civil rights and obligations.

40. The applicant referred to the case of *Kenedi v. Hungary* (no. 31475/05, §§ 33-34, 26 May 2009) and stated that access to relevant information fell within the right to freedom of expression, which was a “civil right” within the meaning of Article 6 § 1 of the Convention.

41. The applicant further noted that if the “real” intentions prompting a plaintiff to sue a defendant in a civil court were relevant to the nature of the dispute, the courts would have the unmanageable task of conducting large-scale investigations of “suspected” intentions before admitting civil complaints for consideration. Moreover, following the rationale behind the Government's argument, any civil dispute was inadmissible if the interest of the plaintiff went beyond pure self-interest – for example, if the plaintiff just intended to “demand justice”. In addition, the applicant underlined that *restitutio in integrum* was possible only in very rare cases, whereas in some cases the establishment of the violations complained of, together with some monetary compensation, could be a sort of redress. The applicant believed that his alleged intention to use the courts' resolutions, in the event of

success, for other purposes, such as shaping administrative and court practice in the sphere of access to information by various legal means, did not deprive the dispute of its "civil nature".

2. The Court's assessment

42. The Court reiterates that for Article 6 § 1, in its "civil" limb, to be applicable there must be a dispute (*contestation*) over a "right" that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question (see *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII).

43. The Court recalls that whether or not a right is to be regarded as a civil right within the meaning of Article 6 of the Convention is to be determined by reference to the substantive content and effects of the right. In particular, the Court has held on numerous occasions that Article 6 of the Convention covers all proceedings the result of which is decisive for private rights and obligations (see, *König v. Germany*, 28 June 1978, §§ 89-90, Series A no. 27). Consequently, if the case concerns a dispute between an individual and a public authority, whether the latter had acted as a private person or in its sovereign capacity is therefore not conclusive (see, *Ringeisen v. Austria*, 16 July 1971, § 94, Series A no. 13).

44. In its early jurisprudence the Commission noted that the wording of Article 6 § 1 of the Convention is taken over from the early drafts for Article 14 § 1, of the United Nations Covenant on Civil and Political Rights and the word "civil" was not contained in the first drafts but inserted subsequently in the drafting process (see *W., X., Y. and Z. v. the United Kingdom* (dec.), nos. 3435/67; 3436/67; 3437/67 and 3438/67, 19 July 1968). Although it made possible the discussion on whether the concept of "civil rights and obligations" within the meaning of Article 6 of the Convention could extend beyond those rights which have a private nature (see, *König v. Germany*, cited above, § 95), in its subsequent practice the Court has never considered this issue.

45. In its practice the Court has expressly recognised that the majority of the Convention rights, including those of non-pecuniary nature, are "civil rights" for the purposes of Article 6 § 1 of the Convention (see *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 55, ECHR 2000-IV (right to life and physical integrity); *Mustafa v. France*, no. 63056/00, § 14, 17 June 2003 (right to change name); *Fayed v. the United Kingdom*, 21 September 1994, Series A no. 294-B (right to reputation); *AB Kurt Kellermann v. Sweden* (dec.), no. 41579/98, 1 July 2003 (freedom of association)).

46. However, in cases where proceedings in question concerned freedom of expression, and, in particular, access to information, the Commission and the Court found that the right to report matters stated in open court (see *G. Hodgson, D. Woolf Productions Ltd. and National Union of Journalists v. the United Kingdom* and *Channel Four Television Co. Ltd. v. the United Kingdom*, nos. 11553/85 and 11658/85, 9 March 1987, Decisions and Reports (DR) 51, p. 136; *Andre Loersch and Nouvelle Association du Courrier v. Switzerland*, nos. 23868/94 and 23869/94, 24 February 1995, DR 80, p. 162, and *MacKay and BBC Scotland v. the United Kingdom*, no. 10734/05, § 22, 7 December 2010) or to obtain copies of various election related documents by an election observer organisation which was not remunerated for this activity (see *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia* (dec.), no. 11721/04, 14 April 2009) could not be described as rights which are civil in nature for purposes of Article 6 § 1.

47. The Court also notes that in some related cases it has left this question open (see *Sdružení Jihočeské Matky v. the Czech Republic* (dec.), no. 19101/03, 10 July 2006, where an environment protection organisation was complaining about lack of access to particular documents on nearby nuclear station).

48. Still, in the case of *Kenedi v. Hungary*, (cited above), which concerned the inability to obtain the enforcement, within a reasonable time, of a final court decision authorising the applicant's access to archived documents, the Court noted that the domestic courts recognised the existence of the right underlying the access sought by the applicant and that the access was necessary for the applicant as a historian to accomplish the publication of a historical study which fell within the applicant's freedom of expression as guaranteed by Article 10 of the Convention. In that connection, the right to freedom of expression was recognised as a "civil right" for the purposes of Article 6 § 1 (see, *Kenedi v. Hungary*, §§ 33-34, cited above).

49. The Court notes that in the present case the applicant is a journalist and claimed the requested information to practice his profession (see, *a contrario, Andre Loersch and Nouvelle Association du Courrier v. Switzerland*, cited above), i.e. for elections related publications. This includes covering presidential elections, and unsuccessful performance of this undertaking could thus damage his professional reputation and career. The dispute before the domestic courts therefore appeared to be important to the applicant's personal and professional interests. Furthermore, his right, as a participant of information relationship, to obtain necessary documents is recognised under domestic law (see paragraph 37). Thus the Court considers that the right of access to particular documents, which fell within the applicant's freedom of expression, is a "civil right" for the purposes of Article 6 § 1 of the Convention.

50. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

51. The applicant insisted that he had lodged his complaint at the national level under the correct head. He disagreed with the Government that his complaint should have been lodged under Chapter 30-B of the Code and under the Act (see paragraph 59), since both of these legal acts gave an exhaustive list of persons eligible to lodge complaints before the courts, and journalists were not included among them. This position was also confirmed by the Court of Appeal in its decision of 17 May 2005. The applicant therefore concluded that his right of access to a court had been breached.

52. The Government did not submit any observations on the merits.

53. The Court reiterates that, under its case-law, Article 6 § 1 embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights (see *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36).

54. In the present case, the applicant's complaint about the alleged failure to allow him access to election-related information was not considered on the merits because he had allegedly lodged it under the wrong provisions of the Civil Procedure Code.

55. The Court reiterates that it is not its task to determine which legal act should have applied in the applicant's case (see, *mutatis mutandis*, *Tserkva Sela Sosulivka v. Ukraine*, no. 37878/02, § 51, 28 February 2008). However, it notes that the domestic authorities were not unanimous in this respect. In particular, while the Government and the first-instance court maintained that the applicant's complaint should have been lodged under Chapter 30-B of the Code and the Presidential Elections Act, the Court of Appeal expressly stated that, according to the Presidential Elections Act, a journalist cannot lodge such complaints (see paragraph 28).

56. It also appears that Chapter 30-B of the Civil Procedure Code was *lex specialis* in respect of Chapter 31-A of the Code, which set up rules for the examination of complaints lodged against State administrative bodies. However, the former provisions explicitly exclude journalists from the list of those entitled to lodge complaints in the course of elections (see paragraph 34). Therefore, in the absence of any example of national case-

law, it is unclear whether the applicant's complaint could have been examined under Chapter 30-B as proposed by the Government.

57. The proceedings in the applicant's case were terminated without the case being examined on the merits. In the Court's view, that situation amounts to a denial of justice which impaired the very essence of the applicant's right of access to a court, as secured by Article 6 § 1 of the Convention. There has consequently been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

58. The applicant complained that the TEC members refused to provide him with certain information and barred him from attending the TEC meeting. He relied on Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers..."

A. Admissibility

59. The Government submitted that the applicant had failed to exhaust effective remedies in respect of his complaint under Article 10 of the Convention. In particular, he had not raised it before the national courts under Chapter 30-B of the Civil Procedure Code of Ukraine.

60. The Government further indicated that the applicant had lodged his complaint before the national courts under Chapter 31-A of the Code, which he had not considered to be an effective remedy he needed to exhaust. As a result, he had missed the six-month time-limit for lodging his complaints, which had to be calculated from the date of the decisions and/or actions of the TEC complained of.

61. The applicant contended that he had used the proper remedies and had lodged his complaint before the national courts under the correct procedure, but that the courts had failed to consider his complaint because of their erroneous interpretation of the domestic law.

62. The applicant further noted that the existence of mere doubts as to the prospects of success of a particular remedy which was not obviously futile was not a valid reason for failing to exhaust domestic remedies (see *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002).

63. The Court reiterates its above findings under Article 6 § 1 of the Convention about the breach of the applicant's right of access to a court (see paragraphs 54-57) and notes that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 37, Series A no. 40; *Akdivar*

and Others v. Turkey [GC], 16 September 1996, § 71, *Reports of Judgments and Decisions* 1996-IV, and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). Given the lack of clarity as to the applicable procedure at the national level, the applicant cannot be reproached for using that remedy which appeared to be least unlikely to succeed. Consequently, he did not miss the six-month time-limit for lodging his application before this Court.

64. In such circumstances, the Court finds that the Government's objections are to be dismissed.

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

66. The Government did not submit any observations on the merits of the applicant's complaint.

67. The applicant stated that by denying him access to the TEC's premises, and by refusing to provide him in good time with information about the progress of the electoral process, the authorities had interfered with his right to collect such information. He further submitted that this interference had not been lawful, had not pursued a legitimate aim and had not been necessary in a democratic society.

68. The Court notes that the gathering of information is an essential preparatory step in journalism and is an inherent, protected part of press freedom (see *Dammann v. Switzerland* (no. 77551/01, § 52, 25 April 2006). Obstacles created in order to hinder access to information which is of public interest may discourage those working in the media or related fields from pursuing such matters. As a result, they may no longer be able to play their vital role as "public watchdogs," and their ability to provide accurate and reliable information may be adversely affected (see *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 38, ECHR 2009-...).

69. In the present case the events in question happened on polling day and concerned matters capable of significantly influencing the outcome of the elections (changes in the lists of voters on election day; presence of the police in the polling stations, and so on). Therefore, it appears imperative that prompt and free access for journalists to such information might have been vital for the press coverage of the election process. This is particularly so considering that numerous irregularities in the elections, identified by the opposition, neutral observers and the press, led to the so-called "Orange Revolution" and a re-run of the second round of the presidential elections.

70. The Court observes that in the absence of observations from the Government on the merits and of any national court decisions on the matter,

the available information about the events in question is limited to the applicant's submissions.

71. According to the available materials, the applicant was provided with some information (although different from what he requested) and all but one of the requested decisions were posted on the information stand on the day of the elections or later (see paragraphs 12, 16, 18 and 20).

72. Concerning the applicant being prevented from entering the premises of the TEC on 31 October 2004, the Court notes that, according to the applicant's own submissions, he had been allowed to enter half an hour later.

73. As for the applicant's expulsion from the TEC meeting on 21 November 2004, the Court cannot conclude from the testimonies of the various witnesses present at the meeting that this decision was unlawful or disproportionate.

74. The Court lastly observes that the applicant, as a journalist, was not prevented from covering the election process and, if he considered the events in question to be unlawful or arbitrary, from reporting on them and attracting public attention to possible irregularities.

75. The Court concludes that there is no evidence that the State authorities interfered with the applicant's performance of his journalistic activity and thus breached his freedom of expression. There is accordingly no violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

76. The applicant complained under Article 13 of the Convention that it had not been possible for him to challenge the refusals to provide him with certain information.

77. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

78. Having regard to the finding relating to Article 6 § 1 of the Convention (see paragraphs 54-57), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see, *Osman v. the United Kingdom*, 28 October 1998, § 158, *Reports of Judgments and Decisions 1998-VIII*).

IV. REMAINING COMPLAINTS

79. The applicant also complained about:

- the length of the proceedings concerning his challenge of the TEC's refusals to provide him with information;
- the authorities' refusals to institute criminal proceedings against the TEC's members and following threats made against him, relying on Article 13 of the Convention;

– a violation of Article 3 of Protocol No. 1 to the Convention;
– the failure of the Ukrainian Parliamentary Commissioner for Human Rights to protect his rights.

80. Having carefully examined the applicant's submissions, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

81. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

> "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

83. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

84. The Government submitted that that amount was exorbitant.

85. The Court, deciding on an equitable basis, awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicant did not claim reimbursement of costs and expenses. The Court makes no award in this respect.

C. Default interest

87. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 6 § 1 (access to court), 10 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 10 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

5. *Holds*
   (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, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Dean Spielmann
Deputy Registrar	President