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

THIRD SECTION

CASE OF SARUKHANYAN v. ARMENIA

(Application no. 38978/03)

JUDGMENT

STRASBOURG

27 May 2008

FINAL

27/08/2008

This judgment may be subject to editorial revision.

In the case of Sarukhanyan v. Armenia,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 38978/03) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Gagik Sarukhanyan ("the applicant"), on 6 November 2003.

2. The applicant, who was granted legal aid, was represented by Mr A. Grigoryan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 16 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Yerevan.

A. Privatisation of the flat where the applicant resided

5. The applicant had shared a flat with his parents since 1973. It measured 64.7 sq. m. and had been provided for them by the authorities under the Soviet housing legislation. It was registered in the name of the applicant's father (the tenant), who died in 1982. In 1988 the applicant's wife moved in with the applicant. They had two children, who were born in 1989 and 1992.

6. On 10 June 1993 the then Supreme Council (*ՀՀ գերագույն խորհուրդ*) adopted the Law on Privatisation of the State and Public Housing Fund (*Հայաստանի Հանրապետության պետական և հանրային բնակարանային ֆոնդի սեփականաշնորհման մասին ՀՀ օրենք*), which outlined the procedure for privatisation of State-owned housing.

7. On 21 February 1994 the applicant's mother filed an application with the then Executive Committee of People's Deputies of the Shahumyan District Council of Yerevan (*Երևան քաղաքի ժողովրդական պատգամավորների Շահումյանի շրջանային խորհրդի գործադիր կոմիտե*) for a declaration that she was the tenant of the flat in question and an order for its privatisation. The relevant sections of this application were filled out in the following manner:

> "10. We, the adults having the right to accommodation, agree that: (a) the flat be privatised in the name of the tenant, [the applicant's mother's name]...
>
> 11. We, the adults having the right to accommodation, wish the flat to be privatised as (underline as necessary): (a) a joint tenancy of all family members; [or] (b) a tenancy in common of all family members. [Note: none of these two options was underlined.]
>
> 12. Written consent of the adults enjoying the right to the accommodation that is to be privatised: [three signatures, including those of the applicant, his mother and his wife].

8. On 27 October 1994 the Executive Committee decided to grant the application. This decision stated:

> "In accordance with the Law on Privatisation of the State and Public Housing Fund of 29 June 1993 ...
>
> The Executive Committee decides:
>
> 1. To allow the tenancy card of [the flat in question] to be changed from [the applicant's father's] name to the name of his wife, [the applicant's mother], and to privatise [the flat] ..."

9. On 18 November 1994 the authorities furnished an ownership certificate (no. 15351 – *թիվ 15351 սեփականության վկայագիր*), which indicated:

> "The entire ~~/share/~~ [flat in question] is owned by [the applicant's mother]."

B. The parliamentary election of 25 May 2003

10. On 25 May 2003 a general election to the National Assembly of Armenia was to be held to elect 131 members for a term of four years. Of these, 75 seats were to be allocated by proportional representation (*համամասնական ընտրակարգ*) to candidates nominated on the party voting lists. The remaining 56 members were to be elected by a single constituency vote (*մեծամասնական ընտրակարգ*) from single-mandate district constituencies.

C. The annulment of the registration of the applicant's candidacy for the parliamentary election

11. On 15 March 2003 the applicant submitted the required documents, including a declaration of property (*սեփականության մասին հայտարարագիր*), to District Election Commission no. 12 (*թիվ 12 ընտրատարածքային ընտրական հանձնաժողով*) in order to be registered as a single constituency candidate for the relevant constituency.

12. On 19 April 2003 the District Election Commission registered the applicant as a single constituency candidate for constituency no. 12.

13. On 28 April 2003 Election Commission no. 12 addressed a letter to the State Committee of the Real Estate Registry (*ՀՀ կառավարության առընթեր անշարժ գույքի կադաստրի պետական կոմիտե*), inquiring about the property status of several candidates registered in its constituency, including the applicant.

14. On 29 April 2003 the Malatia-Sebastia District Council of Yerevan (*Երևանի Մալաթիա-Սեբաստիա թաղապետարան*) issued an archival extract addressed to the Shengavit District Division of the State Committee of the Real Estate Registry, informing it that six persons were registered and residing in the flat at the time it was privatised:

> "1. Sarukhanyan Kerob [the applicant's father], who was born in 19...;
>
> 2. Sarukhanyan Yeghisapet [the applicant's mother], who was born in 1938;
>
> 3. Sarukhanyan Gagik [the applicant], who was born in 1962;
>
> 4. Sarukhanyan Yevgenya [the applicant's wife], who was born in 1966;
>
> 5. Sarukhanyan Yelizaveta [the applicant's older daughter], who was born in 1989; [and]
>
> 6. Sarukhanyan Tatevik [the applicant's younger daughter], who was born in 1992."

15. On the same date the Real Estate Registry issued a memorandum in reply to the Election Commission's inquiry stating that the flat was co-owned by six people, including the applicant, on a joint tenancy.

16. On 3 May 2003 the District Election Commission held a meeting at which it decided to annul the registration of the applicant's candidacy with reference to Article 108 § 7(2) of the Electoral Code, since there was a discrepancy between the memorandum and the applicant's declaration of property, which contained no mention of the flat.

17. The applicant contested the decision of 3 May 2003 before the Shengavit District Court of Yerevan (*Երևան քաղաքի Շենգավիթ համայնքի առաջին ատյանի դատարան*). In his application, he stated that he had not falsified any documents and had not, therefore, contravened Article 108 § 7(2). He explained that he had been living in the flat since 1973 and that it had been privatised in his mother's name by the decision of the Executive Committee of People's Deputies of the Shahumyan District Council of Yerevan of 27 October 1994. According to the ownership certificate of 18 November 1994, the entire flat was owned solely by his mother. The memorandum of 29 April 2003 contradicted those two documents and did not correspond to the reality. There were not six people in his family, since his father had died in 1982. He finally submitted that he had been unaware of these discrepancies and had filled out the declaration of property in reliance upon the official documents he had in his possession. The District Election Commission had wrongly equated the notions of falsification and inaccuracy.

18. On 8 May 2003 the Shengavit District Court of Yerevan dismissed the applicant's application. The judgment stated:

> "The court, having heard the parties and having examined the circumstances of the case and assessed the evidence, [namely] the protocol decision ... of 3 May 2003 of District Election Commission no. 12, the declaration filled in on 15 March 2003 by G. Sarukhanyan concerning the property (possessions) of the citizen nominated as a parliamentary candidate in the single constituency vote to the National Assembly and his and his family's income in the last year, the decision ... [adopted] on 27 October 1994 by [the Executive Committee of People's Deputies of the Shahumyan District Council of Yerevan], ownership certificate no. 15351 of 18 November 1994, the memorandum ... [issued] on 29 April 2003 by the [Real Estate Registry], the memorandum ... [issued] on 29 April 2003 by the Malatia-Sebastia District Council of Yerevan, and the memorandum [issued] on 6 May 2003 by the Charbakh Unit of the Shengavit Police Department, finds that the applicant's claim is unfounded and must be rejected on the ground that District Election Commission no. 12, in adopting the decision ... of 3 May 2003, was guided by the requirements of Article 108 § 7(2) of the Electoral Code, according to which the district election commission must annul the registration of a parliamentary candidate if it is disclosed following the registration that the documents submitted for registration have been falsified[. I]n particular, the applicant G. Sarukhanyan, by falsifying the declaration, concealed his right of joint tenancy in respect of [the flat in question]."

19. The judgment further stated that, in accordance with Article 155 of the Code of Civil Procedure (*ՀՀ քաղաքացիական դատավարության օրենսգիրք*), it was final and not subject to appeal.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure of 1999

20. The relevant provisions of the Code of Civil Procedure, as in force at the material time, read as follows:

Article 28: Rights and obligations of the parties

"1. The parties have the right to ... [*inter alia*] appeal against judicial acts."

Article 155: A court judgment [(վճիռ)] and its enforcement

"1. A court judgment in which a violation of a citizen's or party's (union of parties) electoral rights is found shall provide grounds ... for putting an end to ... [the] violations of the right to vote and to stand for election.

2. The court judgment shall become effective on the date of its delivery and shall not be subject to appeal."

B. The Electoral Code of 1999

21. The relevant provisions of the Electoral Code, as in force at the material time, read as follows:

Article 40: Appeals against decisions, acts or omissions of election commissions

"1. ...[T]he decisions, acts or omissions of an election commission ... may be appealed against to a higher election commission or to a court within two days from the [date of] delivery of the decision, performance of the act or disclosure of the violation caused by the omission...

The decision [(որոշում)] of the first-instance court shall be final with the exception of disputes concerning the non-registration or the annulment of a registration of candidates for the [presidential and parliamentary] elections, including party electoral lists in the vote by proportional representation. In such disputes the court of appeal and the Court of Cassation shall take a decision within three and two days respectively. Court decisions concerning electoral disputes shall become effective from the moment of their delivery..."

Article 106: Conditions for nominating a candidate to the National Assembly in the single constituency vote

"1. The decision of ... a party and the application (decision) of an initiative group to nominate a parliamentary candidate to the National Assembly in the single constituency vote shall contain the number of the constituency and the following information about the nominated candidate: (1) surname, first name, patronym; (2) date of birth; (3) place of registration; (4) place of work and post (occupation); (5) party affiliation; (6) declaration of his property (possessions) and of his and his family's income in the previous year; and (7) passport number..."

Article 108: Registration of candidates to the National Assembly nominated in the single constituency vote

"1. Candidates to the National Assembly nominated in the single constituency vote shall be registered by a decision of a district election commission.

2. At least 45 days before the election to the National Assembly, the parties and initiative groups, shall submit the following [documents] for the purpose of registering candidates in the single constituency vote: (1) 500 signatures of voters residing in the constituency concerned, confirming with their signatures the nomination of the citizen; (2) the invoice for the election deposit in the amount of one hundred times the minimum wage; (3) a certificate of Armenian nationality for the previous five years; and (4) a certificate of permanent residence in Armenia for the previous five years...

...

7. The district election commission shall annul the registration of a parliamentary candidate, if it is disclosed following the registration that: (1) restrictions provided by this Code are applicable to the candidate; and (2) the documents submitted for registration have been falsified. The registration of a candidate shall be annulled by a decision ... of a district election commission...

...

9. The decision of the district election commission ... annulling the registration of a parliamentary candidate may be contested before a court..."

C. The Civil Code of 1999

22. The relevant provisions of the Civil Code (*ՀՀ քաղաքացիական օրենսգիրք*) read as follows:

Article 189: The concept of common ownership and its origin

"1. A property owned by two or more persons shall belong to them through the right of common ownership.

2. A property in common ownership may be in shares divided between each of the owners (tenancy in common) or in undivided shares (joint tenancy)."

D. The Housing Code of 1982 (no longer in force as of 26 November 2005)

23. The relevant provisions of the Housing Code (*ՀՀ բնակարանային օրենսգիրք*) read as follows:

Article 4: The housing fund

"Apartment buildings and accommodation in other constructions situated on the territory of Armenia shall comprise the housing fund..."

Article 9: Housing rights of citizens

"Armenian citizens shall be entitled to receive accommodation in State or public housing fund houses... through a prescribed procedure..."

Article 49: Accommodation voucher

"On the basis of the decision to allocate accommodation in a State or public housing fund property, the [relevant] executive committee shall provide the citizen with a certificate which shall serve as the sole basis for occupying the allocated accommodation..."

Article 51: The accommodation tenancy agreement. Concluding the accommodation tenancy agreement

"Accommodation tenancy agreements in respect of State and public housing fund properties shall be concluded in writing, on the basis of the accommodation certificate, between the lessor, that is the organisation responsible for the maintenance of the building ..., and the tenant, that is the citizen in whose name the certificate has been issued..."

Article 53: Rights and obligations of members of the tenant's family

"Member of the tenant's family living with him or her shall jointly enjoy all the rights and bear all the obligations arising under the accommodation tenancy agreement..."

Article 54: A member of the tenant's family

"Members of the tenant's family shall include his spouse, their children and their parents..."

E. The Law on Privatisation of the State and Public Housing Fund of 1993 (later renamed the Law on Privatisation of the State, Public and Community Housing Fund)

24. The relevant provisions of the Law on Privatisation of the State and Public Housing Fund, as in force at the material time, read as follows:

Section 12

"The privatisation of flats (accommodation) belonging to the State and public housing fund shall be effected on the basis of an application filed by the tenant with the executive body of deputies of the relevant city council, the governor or the mayor of Yerevan provided there is written consent from the adult family members sharing the accommodation..."

Section 13

"The privatisation of housing fund flats shall, with the consent of the adult members of the tenant's family, be registered in the name of the tenant or any adult member of the tenant's family as a joint tenancy or as a tenancy in common of all family members.

The members of the tenant's family living with him or her shall enjoy ... all the rights arising from the privatisation of the flat."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

25. The Government claimed that the applicant had failed to exhaust the domestic remedies, as required by Article 35 of the Convention. While, in accordance with Article 155 of the Code of Civil Procedure (CCP), the first-instance court's decision concerning an alleged violation of election rights was final, Article 40 of the Electoral Code provided an exception to this rule as far as disputes related to, *inter alia*, the annulment of the registration of parliamentary candidates were concerned. The applicant had been informed at the court hearing, in the presence of his lawyer, of the rights guaranteed to him under Article 28 of the CCP, which included the right to appeal, but he had not availed himself of this right.

26. The applicant submitted that the first-instance court had applied the restriction imposed by Article 155 of the CCP, this being clearly stated in the court's judgment. He had never been informed by the court of his right to appeal and the Government's claim to the contrary was untrue. There was, in reality, a contradiction between the CCP and the Electoral Code. Accordingly, he had been under no obligation to try to comply with Article 40 of the Electoral Code, especially considering that he had not been informed of such a possibility. Furthermore, the above contradiction suggested that the national law did not comply with the principle of legal certainty. He could not therefore be blamed for not having lodged an appeal against the judgment of 8 May 2003.

B. The Court's assessment

27. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Assenov and Others v. Bulgaria*

no. 24760/94, § 85, ECHR 1999-VIII). Furthermore, the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among other authorities, *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, p. 19, § 39; and *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

28. Turning to the circumstances of the present case, the Court notes at the outset that there is no evidence in the case file, contrary to what the Government claimed, that the applicant was informed of the right to appeal against the judgment of 8 May 2003. On the contrary, the judgment explicitly stated, with reference to Article 155 of the CCP, that it was final and not subject to appeal (see paragraph 19 above). The Court further notes that the Government did not submit any evidence (such as examples of domestic practice) in support of their claim that Article 40 of the Electoral Code, which provides an exception to Article 155 of the CCP, was applicable to the applicant's case. Nor is the applicability of this Article sufficiently clear from its wording: while it speaks about the "*decisions*" of a first-instance court, the judicial act adopted in the applicant's case was a "*judgment*", the finality of which is prescribed by Article 155 of the CCP.

29. Nevertheless, even assuming that Article 40 was applicable to the applicant's case, this would mean that the court examining the applicant's case erred in the application of domestic law. The Court considers that the applicant cannot be held responsible for such an omission on the part of the domestic court and was not obliged, in such circumstances, to try a remedy whose applicability and effectiveness were uncertain.

30. In the light of the above, the Court concludes that, in the circumstances of the present case, the applicant had no effective remedy to exhaust which was clearly available to him both in theory and in practice. The Government's preliminary objection must therefore be rejected.

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

31. The applicant complained about his disqualification from standing in the parliamentary election and invoked Article 3 of Protocol No. 1, which 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

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

B. Merits

1. The parties' submissions

(a) The applicant

33. The applicant submitted that the interference with his right to stand for election did not pursue a legitimate aim and was disproportionate. He had filled out the declaration of property in reliance on official documents at his disposal, such as the ownership certificate and the decision of the Shahumyan District Council of 27 October 1994, which – in spite of the provisions of the Law on Privatisation – named his mother as the sole owner of the flat in question. The form of this ownership certificate was introduced by the authorities and contained no information on the existence of the joint tenancy and the joint tenants. According to the applicant, the authorities had accepted some years later that the standard form was incorrect and introduced a new form which included the names of all the joint tenants when property was held under a joint tenancy. Thus, the misunderstanding based on the absence of any information on common ownership in the ownership certificate had wrongly been qualified by the domestic court as "falsification". Furthermore, the judgment of the domestic court was based, *inter alia*, on the memorandum issued by the Real Estate Registry on 29 April 2003, which contained information contradicting the ownership certificate it had previously issued. These discrepancies could not be blamed on him and could not be considered falsification of documents, since he had had no such intention. Moreover, the memorandum itself did not correspond to the reality: his family did not have six members, since his father had died in 1982. Finally, the notion of "falsification" was an offence under the criminal law. The domestic court had thus confirmed the fact of "falsification" in a civil case, despite the fact that he had never been convicted of such an offence by a criminal court.

34. The applicant further submitted that the authorities had wrongly applied Article 108 § 7(2) of the Electoral Code to his case. In particular, his candidacy could not have been annulled on the ground of falsification of documents submitted for *registration* as envisaged by that provision, since the declaration of property belonged to the list of documents to be submitted when *nominating* a candidate under Article 106 of the Electoral Code, as

opposed to the documents required when *registering* a candidate under Article 108, which were two distinct stages in the electoral process.

(b) The Government

35. The Government submitted that the applicant jointly owned the flat in question and had been aware of that fact. According to the archival extract issued on 29 April 2003 by the Malatia-Sebastia District Council of Yerevan, six people, including the applicant, were registered at the flat at the time of privatisation. According to the decision of 27 October 1994, the flat had been privatised in the applicant's mother's name as a joint tenancy. This had been done with the consent of all the adult family members – including the applicant – who had signed the application for privatisation of 21 February 1994 in accordance with Sections 12 and 13 of the Law on Privatisation of the State, Public and Community Housing Fund. It was obvious that the applicant could not have given his consent and signed the application for privatisation without knowing that he was a co-owner of the flat in question. Furthermore, the decision of 27 October 1994 made reference to the above Law and therefore the applicant could not claim to have been unaware of its content.

36. The Government further submitted that the annulment of the registration of the applicant's candidacy was compatible with the requirements of Article 3 of Protocol No. 1. The rights guaranteed by that Article were not absolute and there was room for implied limitations. Every candidate was required by law to submit certain documents, including a declaration of property, to an election commission, and was responsible for the accuracy of those documents. The requirement to submit a declaration of property could not be considered a limitation impairing the very essence of the rights guaranteed by Article 3 of Protocol No. 1. The authorities had not overstepped the margin of appreciation and were entitled to define such a requirement for all the candidates, including the applicant, and to supervise its implementation. The applicant, though aware of the requirement and of the fact that he jointly owned the flat in question, had submitted false documents. His arguments that he was not aware of this were groundless. Finally, the applicant's reference to criminal law had nothing to do with the subject matter of his application. In sum, the annulment of the registration pursued the legitimate aim of protecting the electoral system and ensuring equal conditions for all the candidates, and was proportionate to the aim pursued.

2. The Court's assessment

(a) General principles regarding the right to stand for election

37. Article 3 of Protocol No. 1 enshrines a fundamental principle for effective political democracy, and is accordingly of prime importance in the

Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 22, § 47).

38. The Court reiterates that implicit in Article 3 of Protocol No. 1 are the subjective rights to vote and to stand for election. Although these rights are important, they are not absolute and there is room for implied limitations. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 of Protocol No. 1. They have a wide margin of appreciation in this sphere, but 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 are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Sadak and Others (no. 2) v. Turkey*, nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, § 31, ECHR 2002-IV).

39. More particularly, States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. Though originating from a common concern – to ensure the independence of members of parliament, but also the electorate's freedom of choice – the criteria vary according to the historical and political factors peculiar to each State. The number of situations provided for in the Constitutions and electoral legislation of many member States of the Council of Europe shows the diversity of possible choice on the subject. None of these criteria should, however, be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections (see *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II; and *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports* 1997-IV, pp. 1233-34, § 39).

40. The Court further reiterates that the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations practical and effective as opposed to theoretical or illusory. The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would be illusory if one could be deprived of it, arbitrarily, at any moment. Consequently, while States have a wide margin of appreciation when establishing eligibility criteria, nevertheless, in order for rights to be effective, any candidate's failure to meet such criteria must be determined in accordance with procedures that contain sufficient safeguards against arbitrariness (see *Podkolzina*, cited above, § 35; *Melnychenko v. Ukraine*, no. 17707/02, § 59, ECHR 2004-X; and *Russian*

Conservative Party of Entrepreneurs and Others v. Russia, nos. 55066/00 and 55638/00, § 50, 11 January 2007).

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

41. Turning to the present case, the Court notes that the applicant applied for registration to stand as a candidate in the general election to the National Assembly. Having initially registered the applicant's candidacy, District Election Commission no. 12 then decided to annul the registration on the ground that he had submitted false information about his property status. As a result, the applicant did not take part in the election. Accordingly, the Court has to examine whether the decision to disqualify the applicant from standing in the election pursued a legitimate aim and whether it was proportionate to that legitimate aim, having regard to the State's margin of appreciation.

42. As regards the legitimate aim, the Court reiterates that each State has a legitimate interest in ensuring the normal functioning of its own institutional system. That applies all the more to the national parliament, which is vested with legislative power and plays a primordial role in a democratic State (see *Podkolzina*, cited above, § 34). The Court considers that the requirement to submit information on the candidate's property status serves to enable voters to make an informed choice with regard to the candidate's fortune, a factor not unimportant for forming an opinion about the candidate. The introduction of such a requirement therefore does not appear arbitrary or unreasonable (see, *mutatis mutandis*, *Krasnov and Skuratov v. Russia*, nos. 17864/04 and 21396/04, § 44, 19 July 2007). It is also undoubtedly legitimate to ask the candidates that the information submitted be accurate to the best of their knowledge, to avoid the electorate being misled by false representations. Accordingly, requiring candidates for election to the national parliament to submit truthful information on their property status is a legitimate aim for the purposes of Article 3 of Protocol No. 1 (ibid.).

43. As regards the proportionality of the applicant's disqualification to the legitimate aim pursued, the Court notes that the applicant was disqualified on the ground that he had falsified his declaration of property by concealing that he jointly owned a flat with five other members of his family. It is not in dispute between the parties that the applicant enjoyed – by virtue of the law – the right of common ownership in respect of the flat in question. The Government argued that the applicant was aware of this fact and had intentionally concealed it. The same reason for disqualification can be inferred from the findings of the domestic authorities, which made a reference to Article 108 § 7(2) of the Electoral Code and concluded that "by falsifying the declaration, [the applicant] concealed his right of joint tenancy". The applicant disagreed and claimed that the authorities were responsible for his omission.

44. In this connection, the Court notes that the right of common ownership was conferred on the applicant as a result of the reform of the Soviet housing system through the privatisation of State-owned flats by their residents. Section 13 of the Law on Privatisation of the State and Public Housing Fund passed in June 1993, which regulated the privatisation process, provided that privatised flats were to be registered in the name of either the tenant or any adult member of the tenant's family as a joint tenancy or as a tenancy in common of all family members. The Court notes however that, notwithstanding the effect of Section 13, the ownership certificate provided by the Real Estate Registry indicated the applicant's mother as the owner of the entire flat, with the word "share" being expressly crossed out (see paragraph 9 above). The Government did not provide any explanation for this. Furthermore, contrary to what the Government claimed, the decision of 27 October 1994 did not specify the form of ownership the privatisation would take (see paragraph 8 above). In such circumstances, the Court does not find it unreasonable that the applicant, relying on the official documents he had in his possession, had grounds for believing that he was not a joint owner of the flat in question.

45. The Government nevertheless argued that the applicant was aware of his property status as he had given his consent to the privatisation of the flat by signing the application for privatisation of 21 February 1994 and the decision of 27 October 1994 made a reference to the Law on Privatisation. The Court, however, is not convinced by this argument. Having regard to the application for privatisation filed by the applicant's mother, the Court notes that the applicant and other adult members of his family, while giving their consent to the privatisation of the flat by signing the application, did not choose either of the two options listed in Section 11 of the application and simply requested that the flat be privatised in the applicant's mother's name (see paragraph 7 above). Such an alternative, however, was apparently not envisaged by Section 13 of the Law on Privatisation. This suggests that the applicant and other members of his family were either not aware of the requirements of that provision or, even if they were, had misconstrued them. It therefore cannot be said that the applicant was fully aware of the legal consequences of his written consent to the privatisation of the flat in question.

46. Furthermore, despite the fact that the alternative chosen by the applicant's family was apparently inconsistent with the intended meaning of Section 13, at no point did the authorities bring this misapprehension to their attention. On the contrary, the Executive Committee examined and – by its decision of 21 February 1994 – granted the application for privatisation, without specifying the form of ownership of the flat following privatisation, while the Real Estate Registry issued an ownership certificate indicating the applicant's mother as the sole owner of the entire flat. It therefore appears that the authorities followed the same line and accepted

that the flat was being privatised as the applicant's mother's property. In view of such an inconsistent application of Section 13, the Court is prompted to conclude that the privatisation rules and procedures were not sufficiently clear and therefore cannot be relied upon by the Government in support of their position.

47. Finally, the Court finds it hard to imagine why a parliamentary candidate would intentionally conceal such a piece of information as a small share in a flat, thereby putting at risk his standing in the election.

48. The Court notes, however, that the domestic court failed to make any reasoned assessment of these circumstances. Furthermore, the Court cannot overlook the fact that, in reaching their conclusions, the domestic authorities relied, *inter alia*, on evidence containing information which did not correspond to the reality, such as the statement that the applicant's father – who had died long before the flat was privatised – was a co-owner of the flat (see paragraphs 14, 15 and 18 above). In such circumstances, and in view of all the above factors, the Court considers that the conclusions of the domestic authorities that the applicant had falsified his declaration of property – which, in the Court's opinion, implies an intentional omission on his part – were not sufficiently supported by the evidence and the circumstances of the case and cannot be regarded as reasonable.

49. In any event, the Court reiterates that what is relevant for its assessment is the existence of a reasonable relationship of proportionality between the measures employed by the domestic authorities and the legitimate aim sought to be achieved (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 117, ECHR 2005-XI; and *Krasnov and Skuratov*, cited above, § 65). As the Court has indicated above, the legitimate aim was to avoid a situation in which voters were misled by false representations by candidates and, in that respect, the Court notes that, even if unintentionally, the information submitted by the applicant was objectively inaccurate. However, it considers that the applicant cannot be regarded as having acted in bad faith since, as already mentioned above, he had good reason to believe that the information was accurate, all the more so considering that his omission was the result of misleading privatisation rules and practices and could not reasonably be blamed on him. The Court further notes that the information the applicant was found to have allegedly concealed concerned only a small share in a flat having a total surface area of 64.7 sq. m. and it cannot seriously be maintained that information of such minor importance was capable of carrying any real risk of misleading the electorate as far as the applicant's property status was concerned.

50. In such circumstances, in view of the lack of compelling evidence substantiating an intention on the part of the applicant, the existence of objectively justified and sufficient reasons for his omission and the minor nature of his property rights, the Court concludes that the applicant's disqualification was disproportionate to the legitimate aim pursued.

51. There has accordingly been a violation of Article 3 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

52. The applicant complained that he had been deprived of the right to appeal he enjoyed under Article 40 of the Electoral Code, because the District Court had misinterpreted the law by stating that its judgment was final. He invoked Articles 6 and 13 of the Convention which, in so far as relevant, provide:

Article 6 § 1

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Admissibility

1. Article 6 § 1 of the Convention

53. The Court observes that the proceedings complained of concerned the annulment of the registration of the applicant's candidacy for the parliamentary election. Accordingly, they related to the exercise by the applicant of election rights, namely the right to stand in the parliamentary election. Such rights, by their nature, are political rights and fall outside the concept of "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see *Priorello v. Italy*, no. 11068/84, Commission decision of 6 May 1985, Decisions and Reports (DR) 43, p. 195; *Pierre-Bloch v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 50; and *Gorizdra v. Moldova* (dec.), no. 53180/99, 2 July 2002). As a consequence, this provision of the Convention does not apply to the proceedings in question.

54. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. Article 13 of the Convention

55. The Court recalls that this provision cannot be interpreted as affording a right of appeal from an inferior court to a superior court (see, among other authorities, *S. and Others v. the United Kingdom*,

no. 13135/87, Commission decision of 4 July 1988, DR 56, p. 268; and *Mkrtchyan v. Armenia* (dec.), no. 6562/03, 20 October 2005).

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

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL NO. 1

57. The applicant complained that he had been discriminated against on political grounds, in that in particular: (1) in another case with identical circumstances but involving a different candidate the domestic court had granted the relevant application; and (2) District Election Commission no. 12 had not annulled the registration of another candidate in constituency no. 12 despite the fact that this other candidate had submitted an allegedly false document. He invoked Article 14 of the Convention, which, in so far as relevant, provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such ... political or other opinion..."

Admissibility

58. The Court notes that the registration of the applicant's candidacy was annulled on the ground that he had submitted false information. There is nothing in the materials before it to suggest that this annulment was the result of any sort of discrimination.

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

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

60. In his observations submitted on 28 March 2006, the applicant complained that he had been hindered in the effective exercise of his right to apply to the Court. He submitted that, during the period when the Government were preparing their observations, he had repeatedly received telephone calls from unknown parties who had made veiled threats such as "Haven't you settled down yet?". Several days before the expiry of the deadline for submitting his observations, namely on 21 January 2006, he had been assaulted in the street by a stranger and had sustained injuries. He had complained to the police on 23 January 2006 but no investigation had been carried out. The applicant invoked Article 34 of the Convention, which provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Admissibility

61. The Court notes at the outset that the applicant has failed to submit a copy of the complaint he allegedly lodged with the police on 23 January 2006. In any event, there is no evidence in the case file to suggest that the alleged assault or telephone calls were in any way related to the applicant's application before the Court.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed a total of 19,800,000 Armenian drams (AMD) (approximately 42,560 euros (EUR)) in respect of pecuniary damage, including the cost of his electoral campaign amounting to AMD 5,400,000 (approximately EUR 11,607), and the salary which he was supposed to receive, if elected, amounting to a total of AMD 14,400,000 (approximately EUR 30,953) for four years. He also submitted that he had suffered distress because of his unjustified disqualification and subsequent inability to find a job, and claimed non-pecuniary damage in the amount of EUR 100,000.

65. The Government submitted that there was no causal link between the costs of the applicant's electoral campaign and the violation alleged. Furthermore, the claim for loss of salary was of a speculative nature. As regards the non-pecuniary damage claimed, the Government submitted that there had been no violation of Article 3 of Protocol No. 1, and even assuming there had been, no causal link between the violation alleged and the non-pecuniary damage claimed.

66. The Court does not discern any causal link between the violation found and the expenses which the applicant allegedly bore in connection with his electoral campaign. Furthermore, it cannot speculate on the outcome of the election, had the applicant not been disqualified, and

therefore rejects his claim for loss of future income (see *Sılay v. Turkey*, no. 8691/02, § 39, 5 April 2007). However, the Court accepts that the applicant must have suffered frustration and distress as a result of the domestic authorities' decisions preventing him from standing in the election, although the amount claimed is excessive. Ruling on an equitable basis, it awards him EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant claimed EUR 3,750 for 75 hours of work by his representative Mr A. Grigoryan at EUR 50 per hour, as stipulated under the contract signed between them. A copy of this contract was attached to his claim. He also claimed AMD 64,350 (approximately EUR 138) for postal expenses, claiming that he had sent a total of at least thirteen letters to the Court, with the cost of each letter amounting to AMD 4,950 (approximately EUR 9).

68. The Government submitted that the applicant had failed to prove that the costs and expenses claimed had actually been incurred. Pursuant to paragraphs 6.2 and 6.3 of the contract, the relevant legal fees were to be paid upon the presentation by the lawyer, on a monthly basis, of the payment documents stating the total amount of time spent on services actually provided. However, the applicant had failed to submit any monthly detailed payment documents allegedly received from his lawyer. Thus, he had failed to present a detailed bill of costs stating the tasks carried out and the hours worked. As regards the postal expenses, the applicant had submitted only one postal receipt showing that he had paid AMD 4,950 to send a letter to the Court.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the documents submitted by the applicant do not fully reflect the total amount of fees claimed. It cannot therefore allow the claim in full (see *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 79, 9 April 2002). Making its assessment on an equitable basis, the Court awards the applicant a total sum of EUR 1,850 for costs and expenses, less EUR 850 received by the applicant from the Council of Europe by way of legal aid.

C. Default interest

70. 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 UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's disqualification under Article 3 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 of the Convention;

3. *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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 1,850 (one thousand eight hundred and fifty euros), less EUR 850 (eight hundred fifty euros) received by the applicant from the Council of Europe by way of legal aid, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President