

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

FIFTH SECTION

DECISION

Application no. 23254/06
Stefaniya Myronivna BERZHAVYCH and Vitaliy Yaroslavovych BERZHAVYCH
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 26 April 2016 as a Committee composed of:

André Potocki, *President,*
Ganna Yudkivska,
Síofra O'Leary, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 May 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Stefaniya Myronivna Berzhavych and Mr Vitaliy Yaroslavovych Berzhavych, are Ukrainian nationals, a mother and her son, who were born in 1955 and 1977 respectively. The first applicant lives in Kalush. The second applicant is serving a prison sentence in Kopychyntsi prison no. 112.

The Ukrainian Government ("the Government") were represented by their Acting Agent, most recently Ms Olga Davydchuk.

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

A. Criminal proceedings against the second applicant

On 11 October 2004 the Kalush Town Court found the second applicant guilty of inflicting fatal bodily injuries on a certain S. and sentenced him to eight years' imprisonment.

On 19 May 2005 and 24 January 2006 the Ivano-Frankivsk Regional Court of Appeal and the Supreme Court respectively upheld that judgment.

On 30 March 2006 the ruling of the Supreme Court was served on the second applicant.

B. The applicants' correspondence with the Court

On 24 May 2006 the first applicant sent an introductory letter to the Court, the structure of which resembled that of an application form. She indicated herself as the only applicant in the case and outlined complaints under Articles 6 and 13 of the Convention in respect of her son's conviction (see below).

On 20 June 2006 the Registry of the Court acknowledged receipt of that letter and sent her a blank application form and an application pack containing an explanatory note for applicants.

On 14 July 2006 the first applicant sent a completed application form to the Court, in which she once again indicated herself as the only applicant and reiterated her earlier complaints concerning her son.

On 28 August 2006 the Registry asked her to send a duly completed authority form, by which her son authorised her to represent his interests in the proceedings before the Court, as well as a new application form indicating him as an applicant, if he was to be one. If, however, the first applicant was to remain the only applicant in the case, she was requested to specify that.

On 20 November 2006 the first applicant replied as follows:

> "I inform the Court that I am the applicant in this case. I am acting on the basis of an authorisation letter issued by my son, [which] I attach hereto."

She enclosed an authorisation letter given to her by the second applicant on 28 April 2006, which read as follows:

> "I ... hereby authorise [the first applicant] ... to represent my interests before investigating authorities, courts and international legal organisations.
>
> For this purpose, I entitle her to lodge applications, receive information notes and documents and to undertake all other actions related to this mandate on my behalf."

On 10 January 2007 the Registry wrote to the first applicant that it appeared from the documents submitted by her that she was complaining of violations of her son's rights, acting as his representative. However, she had indicated herself as the applicant in the case. Her attention was drawn to the fact that a duly completed application form was the only official document

on which the Court would base a decision on the admissibility and merits of the case. Accordingly, the Court proposed to the first applicant that her son complete and sign an application form on his own behalf if he wished to be considered as the applicant in this case.

On 6 March 2007 the second applicant lodged an application form with the Court in his own name. Its content was identical to that of the applications lodged earlier by the first applicant.

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention that the second applicant's conviction had been unlawful. They also complained, relying on Article 13 of the Convention, that they had not been able to attend the hearing at the Supreme Court, in breach of the second applicant's right to a legal defence.

THE LAW

A. The first applicant's complaints

The first applicant complained of a violation of the rights of her son, under Articles 6 § 1 and 13 of the Convention.

The Court reiterates that, in order to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall into one of the categories of petitioners mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation. Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts), with further references).

The Court notes that in the present case the first applicant was not a victim of the alleged violations. It therefore considers that her complaints are incompatible *ratione personae* with the provisions of the Convention,

within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4 of the Convention.

B. The second applicant's complaints

The second applicant repeated, in his own name, the complaints submitted earlier by his mother.

His complaint under Article 6 § 1 of the Convention about his and his representative's absence from the hearing before the Supreme Court was communicated to the Government.

The Government did not submit any objections as regards the admissibility of that complaint.

The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

Turning to the present case, the Court observes that the second applicant lodged his application on 6 March 2007, whereas he had been notified of the final domestic judicial decision in his case on 30 March 2006. Accordingly, the Court considers that the second applicant's complaints were lodged outside the six-month time-limit and must be rejected as inadmissible, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 May 2016.

Milan Blaško
Deputy Registrar

André Potocki
President