

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

FIFTH SECTION

DECISION

Application no. 41578/09
Anatoliy Makarovych BILYY and Lidiya Ivanivna BILA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 18 June 2013 as a Committee composed of:

Angelika Nußberger, *President,*
Ganna Yudkivska,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 July 2009,

Having regard to the declaration submitted by the respondent Government on 6 December 2011 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicants, Mr Anatoliy Makarovych Bilyy and Ms Lidiya Ivanivna Bila, are Ukrainian nationals, who were born in 1936 and 1935 respectively and live in Kryvyy Rig.

The Ukrainian Government ("the Government") were initially represented by their Agent, Ms V. Lutkovska, of the Ministry of Justice.

The applicants complained under Article 6 of the Convention about the length, the unfairness and the outcome of the domestic proceedings. They further complained under Article 13 about the lack of an effective remedy in domestic law.

The part of the application concerning the length of the domestic proceedings and the lack of an effective remedy in that respect had been communicated to the Government.

THE LAW

1. The applicants complained about the length of the domestic proceedings, which had lasted for more than six years, and the lack of an effective remedy. They relied on Articles 6 and 13 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 6 December 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government of Ukraine acknowledge the excessive duration of the consideration of the applicant's case before the national courts and lack of an effective domestic remedy in their case.
>
> I, Valeria Lutkovska, Government Agent, declare that the Government of Ukraine offer to pay 1,000 (one thousand) euros to Mr Anatoliy Makarovych Bilyy and Mrs Lidiya Ivanivna Bila.
>
> The Government therefore invite the Court to strike the application out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable, and converted into the national currency of the respondent State at the rate applicable on the date of settlement. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> This payment will constitute the final resolution of the case. "

By a letter of 20 February 2012, the applicants indicated that they were not satisfied with the terms of the unilateral declaration.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified,

under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Ukraine, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Yuryeva and Yuryev v. Ukraine,* no. 3431/03, § 54, 31 July 2012).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

2. Relying on Article 6 of the Convention the applicants also complained about the unfairness and the outcome of the domestic proceedings.

Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

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.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Articles 6 and 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the part of the application concerning the length of the domestic proceedings and the lack of an effective remedy in that respect out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President