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

FIFTH SECTION

DECISION

Application no. 9987/14
Viktor Vsevolodovych BORONENKOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 2 April 2024 as a Chamber composed of:

Georges Ravarani*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to the above application lodged on 5 January 2014,

Having regard to the decision of 2 April 2024 to give notice to the respondent Government of part of the complaints and declare the remainder inadmissible,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Viktor Vsevolodovych Boronenkov, is a Ukrainian national, who was born in 1976 and lives in Zaporizhzhya. He was represented before the Court by Mr S.P. Gayduk, a lawyer practising in Zaporizhzhya.

2. The Ukrainian Government ("the Government") were represented by Ms Marharyta Sokorenko, of the Ministry of Justice.

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

4. On 13 May 2013 the mayor of Zaporizhzhya announced that a celebration of International Family Day would take place in the city centre on Saturday, 18 May 2013, from 8 a.m. to 8 p.m. The City Administration planned a number of public events in the city centre for that celebration.

5. On 17 May 2013 the City Administration applied to the Zaporizhzhya District Administrative Court for an order prohibiting the political party Svoboda, the non-governmental organisation Vympel Ukraniny, and the organisations C. and U. from carrying out public events in the city centre on 18 May 2013. In particular, Svoboda intended to hold a rally in support of the all-Ukrainian campaign "Stand up Ukraine". The aim of the rally was to "draw the public's attention to social and legal problems in Ukraine". The City Administration stated that it would be difficult for them to ensure the organisation of the events planned by those organisations at the same time as the events it had planned in celebration of International Family Day. In addition, the administration had only been notified of those events on 14 and 15 May 2013 and, as such, did not have sufficient time to adjust the security arrangements in the city centre for the date in question.

6. On 17 May 2013 the Zaporizhzhya District Administrative Court allowed the City Administration's request and prohibited Svoboda and a number of other organisations from holding meetings on 18 May 2013 in Mayakovskogo Square.

7. The applicant was an activist for Svoboda. On Friday, 17 May 2013, at around 5 p.m. he informed the Zaporizhzhya City Council that on 18 May 2013 he, in his capacity as a private individual, would organise an event in the city centre in support of the all-Ukrainian campaign "Stand up Ukraine".

8. On 18 May 2013, at around 4.45 p.m., people started gathering in the city centre. They took out and exhibited Svoboda insignia. The applicant addressed the participants through a loudspeaker, calling a start to the rally. Representatives of the City Administration approached the rally, informed the participants of the court decision of 17 May 2013 and asked them to leave. The participants refused, stating that the court decision did not apply to them as they had come to the rally at the applicant's invitation. At around 6 p.m. the participants in the rally held a meeting with representatives of the City Administration. The participants subsequently continued the rally, having removed insignia showing their affiliation to Svoboda. The rally ended at around 9.30 p.m.

9. On 24 May 2013 the police accused the applicant of having committed an administrative offence under Article 185-1 of the Code of Administrative Offences.

10. On 27 May 2013 the Ordzhonikidzevskyy District Court of Zaporizhzhya ordered the applicant to pay a fine of approximately 39 euros for holding a public event contrary to the court decision of 17 May 2013. On 5 July 2013 the Zaporizhzhya Regional Court of Appeal rejected the applicant's appeal and the decision of 27 May 2013 became final. Before the

domestic courts, the applicant claimed that he had organised the event on 18 May 2013 in his capacity as a private individual and that the decision of 17 May 2013 did not apply to him.

RELEVANT LEGAL FRAMEWORK

11. Article 185-1 of the Code of Administrative Offences reads, in so far as relevant, as follows:

> "A violation of the procedure for the organisation and holding of assemblies, rallies, street processions and demonstrations shall be punishable by a reprimand or by a fine of between ten and twenty-five times the minimum monthly income ...
>
> ."

12. Under Ukrainian law a fine as the one provided for under Article 185-1 of the Code of Administrative Offences is not convertible into a heavier penalty.

COMPLAINT

13. The applicant complained under Article 11 of the Convention that his right to freedom of assembly had been violated. He complained under Article 6 of the Convention that the domestic courts had found against him and refused to hear witnesses and examine evidence proposed by him.

THE LAW

14. The Government submitted that the applicant had failed to exhaust domestic remedies as he had not appealed against the decision of 17 May 2013 and had not instituted judicial proceedings under Article 183 of the Code of Administrative Offences seeking removal of restrictions on the exercise of his right to freedom of assembly. They also stated that the fine imposed on the applicant had not caused him a significant disadvantage.

15. The applicant reiterated his complaints.

16. Starting with the Government's second objection, the Court reiterates that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case. The subjective perception must be justified on objective grounds. A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (see *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010 concerning Article 6 and *Obote*

v. Russia, no. 58954/09, § 28, 19 November 2019 concerning Article 11). The Court also reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society (see, among other authorities, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018). In cases concerning freedom of assembly, when applying the admissibility criterion contained in Article 35 § 3 (b) of the Convention, the Court should take due account of the importance of that freedom and exercise careful scrutiny (see *Obote*, cited above, § 31).

17. The Court considers that in the present case, regarding both complaints submitted by the applicant, there are several factors diminishing the significance of any "disadvantage" suffered by the applicant as a result of the events complained of (see, *mutatis mutandis*, *C.P. v. the United Kingdom* (dec.), no. 300/11, §43, 2016).

18. It observes that the notifications submitted by Svoboda and by the applicant, which in essence concerned the same event, a rally in support of the campaign "Stand up Ukraine" in the city centre of Zaporizhzhia on 18 May 2013, aimed at "drawing the public's attention to social and legal problems in Ukraine", a very general description that did not point to a specific issue of vital importance (see paragraph 5 above).

19. The Court further observes that the applicant was ordered to pay a fine, which was rather modest (39 euros). He did not advance any arguments to demonstrate that the fine had been significant to him in the light of his personal situation (see *Obote*, cited above, § 31). Furthermore, there was no danger of the fine being converted into a heavier penalty (see paragraph 12 above).

20. Importantly, the applicant was able to hold the rally in question for its full intended duration, about four hours.

21. In these circumstances, the Court does not consider that the events complained of can be said to have had any "chilling effect" on the applicant's exercise of his right to freedom of assembly. Indeed, he has not substantiated any relevant arguments in that regard.

22. It is true that in several previous cases the Court found that, despite the relative triviality of the penalties imposed on the applicants, the disadvantage they suffered was significant enough to warrant examination of their cases on the merits. The Court, however, considers that the present case differs from those cases in a number of important aspects. In particular, in *Obote v. Russia,* cited above, the police dispersed the event in 20 minutes (compare and contrast with § 8 of the present decision). In *Öğrü and Others v. Turkey* (nos. 60087/10 and 2 others, 19 December 2017), unlike in the present case, the applicants were human rights activists who were fined on numerous occasions and, in view of the applicants' economic circumstances, the amount of the fines could have a significant impact on them (ibid.*,* § 53). It is also notable that in the present case the aim of the demonstration was

rather vague (see § 5 above) and has not been clarified by the applicant at any point in the domestic proceedings or before the Court (contrast with cases in which the applicants were sanctioned despite the public importance of the cause they specifically sought to promote: *Öğrü and Others,* cited above, §§ 7, 11, 15, 19, 23, 26, 30, 34, 38*, Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, §§ 7 and 9, 14 October 2014, and *Akarsubaşı and Alçiçek v. Turkey*, no. 19620/12, § 6, 23 January 2018).

23. On the basis of the above, the Court finds that the applicant did not suffer a significant disadvantage within the meaning of Article 35 § 3 (b) in respect of his complaint under Article 11 of the Convention. Having regard to the link between the applicant's Article 11 complaint and his complaint under Article 6 about procedural shortcomings in the proceedings leading to the imposition of the fine, the Court arrives at the same conclusion in respect of the latter complaint. It also finds, having regard to all the facts of the case, that respect for human rights as defined in the Convention and the Protocols thereto does not require an examination of the applicant's complaints under Articles 6 and 11 on the merits.

24. Accordingly, the Court considers that the application must be declared inadmissible in accordance with Article 35 § 3 (b) of the Convention. It is therefore unnecessary to deal with the Government's non-exhaustion objection.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 7 May 2024.

Victor Soloveytchik Section Registrar	Georges Ravarani President