

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

FIFTH SECTION

# CASE OF TSIMEYKO v. UKRAINE

*(Application no. 32960/13)*

JUDGMENT

STRASBOURG

27 June 2024

*This judgment is final but it may be subject to editorial revision.*



**In the case of Tsimeyko v. Ukraine,**

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

Lado Chanturia*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 32960/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 May 2013 by a Ukrainian national, Mr Bogdan Andreyevich Tsimeyko ("the applicant"), who was born in 1958, lives in Kyiv and was represented by Mr M.V. Kamenyev, a lawyer practising in Kyiv;

the decision to give notice of the complaints under Articles 11 and 13 of the Convention to the Ukrainian Government ("the Government"), represented by the Acting Agent, Ms Olga Davydchuk, and to declare the remainder of the application inadmissible

Having deliberated in private on 6 June 2024,

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

## SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint that he had been prevented from holding public events and that he did not have a remedy in that respect (Articles 11 and 13 of the Convention).

2. The applicant was the owner of company S. and the head of an NGO representing investors of bank O. which had gone bankrupt.

## I. THE APPLICANT'S DEMONSTRATION IN FRONT OF THE CENTRAL ELECTORAL COMMISSION

3. Parliamentary elections were scheduled for 28 October 2012. On 23, 25 and 26 October 2012 several non-governmental organisations informed the Kyiv State Administration that they intended to hold demonstrations in front of the Central Electoral Commission.

4. On 27 October 2012 the Kyiv District Administrative Court imposed a general ban on holding public events in front of the Central Electoral Commission from 28 October to 12 November 2012. The court referred to Article 39 of the Constitution and Article 182 of the Code of Administrative Justice.

5. Company S. appealed against this decision.

6. On 29 October 2012 the applicant arrived at the Central Electoral Commission intending to hold a demonstration. The police informed him that,

pursuant to a judgment of 27 October 2012, he was not allowed to do so and he left. The police charged the applicant with an administrative offence under Article 185-1 of the Code of Administrative Justice (violation of the procedure for conducting public events), but the courts acquitted him, having found no *corpus delicti* in his actions, pointing out that the police had not specified in what manner the applicant had violated that provision.

7. On 20 December 2012 the Kyiv Administrative Court of Appeal rejected the appeal of company S. and upheld the decision of 27 October 2012 additionally invoking the Decision of the Kyiv City Council of 24 June 1999 on the approval of the Temporary Regulations on the procedure for organising and holding non-governmental public events concerning politics, religion, culture, education, sport or other issues.

8. On 22 February 2013 the Higher Administrative Court rejected the appeal in cassation lodged by company S.

## II. THE APPLICANT'S DEMONSTRATIONS IN FRONT OF THE NATIONAL BANK

9. Every Thursday from 2006 to 2012 the applicant conducted peaceful demonstrations in front of the National Bank.

10. On 2 February and 15 October 2012, the applicant informed the Kyiv State Administration that he intended to hold demonstrations in front of the National Bank protesting against an allegedly ineffective criminal investigation against an official of the National Bank, and against alleged illegal actions of the police in respect of the applicant's business.

11. On 29 October 2012 the Kyiv District Administrative Court, referring to Article 182 of the Code of Administrative Justice, banned demonstrations which the non-governmental organisations T., K., A, V., and P. intended to hold in front of the National Bank from 30 October to 31 December 2012.

12. On 1 November and 8 November 2012, the applicant, accompanied by a group of people, arrived at the National Bank to hold his usual Thursday demonstrations. The police dispersed the demonstrations, referring to a decision of 29 October 2012 (see paragraph 11 above).

13. The police charged the applicant with an administrative offence under Article 185-1 of the Code of Administrative Justice (violation of the procedure for conducting public events), but the courts acquitted him, having found that he had not violated any legislation and that the judgment of 29 October 2012 did not apply to him.

14. In 2013 the applicant complained to the prosecutors, seeking to institute criminal investigations into the actions of the police preventing him from holding demonstrations on 1 and 8 November 2012. Criminal proceedings into the applicant's complaint were closed and re-opened several times. On 12 February 2020 the Pecherskyy District Court quashed the prosecutors' decision to terminate the proceedings and ordered them to

resume the investigation. It remains unknown what happened to the proceedings after that.

### III. COURT DECISIONS OF 5 DECEMBER 2012 AND 28 FEBRUARY 2013

15. On 5 December 2012 the Kyiv District Administrative Court prohibited Company S. and all other persons from organising public events in front of the National Bank from 6 December 2012 to 31 March 2013.

16. The court referred to Article 39 of the Constitution, Article 182 of the Code of Administrative Justice, the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 on the procedure for organising and holding meetings, rallies, street marches and demonstrations in the USSR, and the Decision of 24 June 1999 (see paragraph 7 above). On 19 March 2013 the Kyiv District Court of Appeal upheld this decision adding that company S. had not informed the State Administration how many people would participate at its event which prevented the authorities from properly preparing for the demonstration. On 9 April 2013 the Higher Administrative Court rejected the appeal in cassation lodged by company S.

17. On 28 February 2013 the Kyiv District Administrative Court prohibited all demonstrations in front of the Prosecutor General's Office from 1 March to 30 April 2013 citing Article 182 of the Code of Administrative Justice. The applicant appealed but to no avail.

## THE COURT'S ASSESSMENT

18. The applicant complained, referring to Article 11 of the Convention, that he had been prevented from holding public events in front of the Central Electoral Commission on 29 October 2012, and in front of the National Bank on 1 and 8 November 2012, as well as from 6 December 2012 to 31 March 2013. He also complained under the same provision that a court decision of 28 February 2013 banned all demonstrations in front of the Prosecutor General's Office. The applicant further complained that he did not have an effective remedy in respect of the above complaints (Article 13 of the Convention).

19. The Government's observations were not included in the case file as they had been lodged out of time.

20. In his observations the applicant maintained his complaints.

### I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

21. The general principles applicable in the present case and the relevant domestic law are summarized in *Vyerentsov v. Ukraine*, no. 20372/11,

§§ 52-57, 11 April 2013, and *Cheremskyy v. Ukraine*, no. 20981/13, §§ 11-13 and §§ 25-33, 7 December 2023.

### A. Events on 29 October, 1 and 8 November 2012

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

23. The Court observes that on 29 October 2012 the police prohibited the applicant's demonstration referring to a general ban on demonstrations imposed by a court decision of 27 October 2012. On 1 and 8 November 2012 the police dispersed the applicant's demonstrations in front of the National Bank referring to a court decision of 29 October 2012.

24. Later on, the police charged the applicant with administrative offences for the events on 29 October, 1 and 8 November 2012, but the courts acquitted him having stated that he had not violated any legislation (see paragraphs 6, 13 and 14 above).

25. This is sufficient for the Court to conclude that the actions of the police on 29 October, 1 and 8 November 2012 were not based on law within the meaning of Article 11 § 2 of the Convention and there has been a violation of that provision.

### B. Court decision of 5 December 2012

26. From 6 December 2012 to 31 March 2013 the applicant could not hold his usual demonstrations in front of the National Bank because a court decision of 5 December 2012 banned all demonstrations there during that period.

27. The Court notes that it examined in detail the legislative provisions to which the Kyiv District Administrative Court referred in its decision of 5 December 2012 (see *Cheremskyy v. Ukraine*, cited above, §§ 29-40) and found that they did not meet the Convention requirements of quality of the law. In particular, the rule-making exercise by local authorities on such an important matter as freedom of assembly does not appear to have a legal basis in Ukrainian law. The Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988, Article 39 of the Constitution and Article 182 of the Code of Administrative Justice, taken separately or cumulatively, also do not constitute a sufficient legal ground for imposing restrictions on the right to freedom of assembly. Therefore, there is no need to verify whether the other two requirements (legitimate aim and necessity of the interference) set forth in Article 11 § 2 have been complied with.

28. The Court sees no reason to depart from its findings in the present case. Accordingly, there has been a violation of Article 11 of the Convention.

### C. Decision of 28 February 2013

29. As so far as the decision of 28 February 2013 is concerned, the Court observes that the applicant's complaint in this respect is rather general, and it is unclear whether the applicant actually intended to hold a demonstration in front of the Prosecutor General's Office. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, his complaint in this respect does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. In view of its finding under Article 11 in respect of the decision of 28 February 2013, the Court considers that the applicant did not have an arguable claim under Article 13 in respect of this decision.

31. As regards the rest of the disputed court decisions, in view of its findings under Article 11 of the Convention, the Court concludes that the applicant had an arguable claim concerning his rights under Article 13.

32. The notion of effective remedy meant that the applicant should have been able to have his appeals against the decisions of 27 and 29 October 2012 and 5 December 2012 examined by the courts before the date of the planned events (see *Baczkowski and Others v. Poland*, no. 1543/06, §§ 83-84, 3 May 2007).

33. When the applicant arrived at the Central Electoral Commission on 29 October 2012 and the National Bank on 1 November 2012, he was not aware of the court decisions prohibiting public events near those institutions. For these reasons he could not appeal against them before the dates of his planned events.

34. It is also notable that the courts were not obliged by any legally binding time-frame to give their final decisions before the planned date of the applicant's events. The Court is not therefore persuaded that the remedies available to the applicant, all of them being of a post-hoc character, could provide adequate redress in respect of the alleged violations of the Convention (see *Baczkowski and Others v. Poland*, cited above).

35. The Court observes that the investigation into the applicant's complaint regarding the police actions on 1 and 8 November 2012 remained pending from 2013 until at least 2020.

36. In the light of the above, the Court considers that the applicant did not have an effective remedy in respect of his complaints under Article 11 and there was a violation of Article 13 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government submitted that this claim was fully unsubstantiated because the applicant's rights under the Convention had not been violated.

39. Having regard to the nature of the applicant's complaints, the Court considers that the finding of a violation, triggering the respondent State's obligation to take measures aimed at ensuring the respect of the right to freedom of assembly indicated in the judgment of *Vyerentsov v. Ukraine*, no. 20372/11, 11 April 2013, constitutes sufficient just satisfaction.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the decision of 28 February 2013 inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

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

Done in English, and notified in writing on 27 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Martina Keller<br>Deputy Registrar | Lado Chanturia<br>President |