

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

FIFTH SECTION

DECISION

Application no. 16429/04
Albina Georgiyevna CHERNOVA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 17 April 2012 as a Committee composed of:

Boštjan M. Zupančič, President,
Elisabet Fura,
Ann Power-Forde, judges,

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 April 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Albina Georgiyevna Chernova, is a Ukrainian national who was born in 1956 and lives in Gaspra. The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, of the Ministry of Justice.

In 1991 the applicant, while on a journey on behalf of her employer, a subsidiary of company L., was injured in a traffic accident. In 1993 she was declared permanently and severely disabled as a result of the accident.

In August 1997 the applicant instituted proceedings against the company L. and its subsidiary claiming pecuniary and non-pecuniary damages in respect of her disability, which ended with a judgment of the Supreme Court of 10 November 2006.

COMPLAINTS

The applicant complained under Articles 6 § 1 and 13 of the Convention of the unreasonable length and the outcome of the proceedings against company L. and its subsidiary and the lack of effective remedies in that respect. She also complained under Article 1 of Protocol No. 1 that she had been unlawfully deprived of her entitlement to the disability-related payments. Lastly, the applicant made a general reference to Article 17 of the Convention.

THE LAW

1. By letter dated 9 March 2011, the Government informed the Court that they had proposed to make a unilateral declaration with a view to resolving the issue raised by 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.
>
> I, Valeria Lutkovska, the Government Agent before the European Court of Human Rights, declare that the Government of Ukraine offer to pay *ex gratia* 2,600 (two thousand six hundred) euros to Ms Albina Georgiyevna Chernova.
>
> 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 *ex gratia* is to cover any 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."

The applicant objected to the Government's 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 applicant wishes 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 the right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 39-52, 6 September 2005; and *Moroz and Others v. Ukraine*, no. 36545/02, §§ 52-61, 21 December 2006).

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*).

2. Having carefully examined the remainder of the application in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in 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 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the excessive length of the civil proceedings;

Decides to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President