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

# FIFTH SECTION

# DECISION

Application no. 41710/06
Nadiya Ivanivna GAVRYLOVA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 26 August 2014 as a Committee composed of:

Ann Power-Forde, *President,*
Ganna Yudkivska,
André Potocki, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

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

Having regard to the declaration submitted by the respondent Government on 31 January 2011 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

The applicant, Ms Nadiya Ivanivna Gavrylova, is a Ukrainian national, who was born in 1942 and lives in Zhytomyr.

The Ukrainian Government ("the Government") were represented by their Agent.

The applicant complained under Article 6 § 1 of the Convention about the length of the domestic proceedings to which she was the party.

Relying on Article 13 of the Convention, she also alleged that the court and the prosecutor had not taken adequate measures to protect her property rights since all her complaints made to these bodies had not been successful. She further complained under Article 1 of Protocol No. 1 that due to the lengthy proceedings, she had suffered financial loss. Finally, without invoking any article of the Convention, she raised a complaint concerning lack of access to court.

The part of the application concerning the length of the domestic proceedings was communicated to the Government.

# THE LAW

1. The applicant complained about the length of the domestic proceedings. She relied on Article 6 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 31 January 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 case before the national courts.
>
> I, Valeria Lutkovska, Government Agent, declare that the Government of Ukraine offer to pay *ex gratia* 650 (six hundred fifty) euros to Mrs Nadiya Ivanivna Gavrylova.
>
> 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.
>
> The sum 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 18 March 2011, the applicant indicated that she was 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 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 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 *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 39-52, 6 September 2005).

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).

In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaint.

2. Relying on Article 13 of the Convention, the applicant alleged that the court and the prosecutor had not taken adequate measures to protect her property rights since all her complaints made to these bodies had not been successful. She further complained under Article 1 of Protocol No. 1 that due to the lengthy proceedings, she had suffered financial loss. Finally, without invoking any article of the Convention, she raised a complaint concerning lack of access to court.

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 Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike part of the application 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

Ann Power-Forde
President