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

FIFTH SECTION

DECISION

Application no. 43925/18
Anatoliy Mykolayovych GORYACHYY
against Ukraine

The European Court of Human Rights, sitting on 24 February 2022 as a Committee composed of:

Mārtiņš Mits, *President,*
Ivana Jelić,
Kateřina Šimáčková, *Judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 43925/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 September 2018 by a Ukrainian national, Mr Anatoliy Mykolayovych Goryachyy, who was born in 1967 and lives in Fastiv ("the applicant");

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their acting Agent, Ms Olga Davydchuk.

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint, under Article 6 § 1 of the Convention, that his right to adversarial proceedings was breached by the domestic courts.

2. The applicant instituted proceedings before the Kyiv District Administrative Court against the Fastiv military enlistment office, challenging the date of his discharge from the armed forces and requesting that the date be rectified. On 8 February 2016 the first-instance court decided in his favour. The defendant appealed against that decision.

3. On 4 April 2016 the Kyiv Administrative Court of Appeal ("the Court of Appeal") sent to the applicant, by registered mail, copies of (i) the decision

to open appeal proceedings and (ii) the defendant's appeal. In the same letter, the applicant was informed of the scheduled date and time of the hearing. The correspondence was returned, marked as undelivered. The Government provided the Court with photocopies of (i) the letter, (ii) the envelope (bearing the words "judicial summons") in which the correspondence had been sent, and (iii) a delivery slip indicating that the correspondence had been returned to the sender following to the expiry of the time-limit for its collection by the intended recipient.

4. The applicant submitted that he had not received the letter sent to him on 4 April 2016 or any notifications from his local post office that he should come and collect it.

5. On 21 April 2016 the Court of Appeal examined the case in the absence of the parties. It quashed the first-instance court's judgment, referring to the erroneous application of the relevant law and rejecting the applicant's claim for rectification of the date of his dismissal.

6. On 26 April 2016 the applicant requested that the Court of Appeal inform him of the status of the appeal proceedings. In reply, he was informed that his case had already been examined on 21 April 2016 and that the relevant decision had been sent to him.

7. The applicant lodged an appeal on points of law against the judgment of 21 April 2016, setting out his arguments regarding the substance of the case and submitting that he had not been able to present them before the Court of Appeal, as he had not been notified of the date scheduled for the appeal hearing. On 13 June 2016 the Supreme Court dismissed the applicant's appeal on points of law and upheld the Court of Appeal's judgment, finding that the latter had correctly applied the relevant law.

8. The applicant complained under Article 6 § 1 of the Convention that his right to adversarial proceedings had been breached, given that he (i) had not been duly notified that the defendant had lodged an appeal and (ii) had accordingly not been able to present his arguments on the matter to the Court of Appeal.

THE COURT'S ASSESSMENT

9. The relevant general principles concerning the right to an adversarial trial have been summarised in *Lazarenko and Others v. Ukraine* (nos. 70329/12 and 5 others, § 36 and 37, 27 June 2017).

10. The Court observes that under domestic law (Article 190 of the Code of Administrative Justice) the Court of Appeal had an obligation to notify the applicant of the upcoming appeal and to invite him to respond. In contrast to many other cases examined by the Court where there was no evidence in the respective case file that the relevant correspondence had been sent to the applicants (see, for example, *Strizhak v. Ukraine*, no. 72269/01, § 39, 8 November 2005; *Hudáková and Others v. Slovakia*, no. 23083/05,

§§ 30-32, 27 April 2010; and *Lazarenko and Others*, cited above, §§ 36 and 43), in the present case the evidence provided by the parties shows that on 4 April 2016 the Court of Appeal did send – by registered mail – notice of the defendant's appeal to the applicant. Thus, it appears that the domestic court duly complied with the requirement prescribed by domestic procedural law.

11. The Court further notes that while the general concept of a fair trial and the fundamental principle that proceedings should be adversarial require that court documents be duly served on a litigant, Article 6 of the Convention does not go as far as obliging the domestic authorities to provide a perfectly functioning postal system (see, for example, *Lazarenko and Others*, cited above, § 37, and, in the context of Article 8 of the Convention, *Foley v. the United Kingdom* (dec.), no. 39197/98, 11 September 2001).

12. In other words, the authorities may only be held responsible for any failure to send the relevant documents to the applicant. The fact that the applicant did not receive the correspondence sent to him by the Court of Appeal is – in and of itself – not sufficient to constitute an arguable basis for the applicant's claim that his rights under Article 6 § 1 of the Convention were breached (see *Yeremeyev v. Ukraine* (dec.) [Committee], no. 64766/12, §§ 31 and 32, 26 March 2019, and *Sydorenko v. Ukraine* (dec.) [Committee], no. 73193/12, § 32, 18 February 2021).

13. Moreover, the applicant was able to present his arguments to the final-instance court, which afforded them due consideration. Nothing in the case file suggests that that court's decision was arbitrary or manifestly unreasonable.

14. It follows that 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,

Declares the application inadmissible.

Done in English and notified in writing on 15 September 2022.

Martina Keller
Deputy Registrar

Mārtiņš Mits
President