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

FIFTH SECTION

DECISION

Application no. 66327/13
Oleksandr Mykhaylovych KHOROSHEV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 13 June 2017 as a Committee composed of:

Erik Møse, *President,*
Yonko Grozev,
Gabriele Kucsko-Stadlmayer, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 7 October 2013,

Having regard to the declaration submitted by the respondent Government on 1 March 2017 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, Mr Oleksandr Mykhaylovych Khoroshev, is a Ukrainian national, who was born in 1939 and lives in Vinnytsya.

The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr Ivan Lishchyna, of the Ministry of Justice.

The applicant complained under Article 6 § 1 of the Convention about the unfairness of civil proceedings in his case.

The application was communicated to the Government.

THE LAW

The applicant complained of alleged unfairness of the domestic civil proceedings regarding his pension. More specifically, he complained that

the principle of equality of arms had not been respected given his unawareness of the appellate proceedings and his inability to comment on the arguments of the adversary party's appeal. The applicant relied on Article 6 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 1 March 2017 the Government informed the Court that they 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 violation of the applicant's right to a fair hearing in the determination of his civil rights and obligations.
>
> The Government of Ukraine offer to pay to Mr Oleksandr Mykhaylovych Khoroshev EUR 1,350 (one thousand three hundred and fifty) to cover any pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant.
>
> This sum will be converted into the national currency of the respondent State at the rate applicable on the date of payment, and 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. The payment will constitute the final resolution of the case."

By a letter of 18 April 2017, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

The Court reiterates 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 reiterates 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 has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.),

no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

The Court has already examined the issue raised in the present application on many occasions, including in cases brought against Ukraine (see, for example, *Strizhak v. Ukraine*, no. 72269/01, §§ 38-41, 8 November 2005, *Fyodorov and Fyodorova v. Ukraine*, no. 39229/03, §§ 99-104, 7 July 2011, and *Lopushanskyy v. Ukraine* [Committee], no. 27793/08, §§ 64-70, 2 February 2017).

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 (see *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.

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 the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 6 July 2017.

Anne-Marie Dougin	Erik Møse
Acting Deputy Registrar	President