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

FIFTH SECTION

DECISION

Application no. 70105/13
Andriy Vitaliyovych KLIMOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 13 February 2025 as a Committee composed of:

Andreas Zünd*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 70105/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 5 November 2013 by a Ukrainian national, Mr Andriy Vitaliyovych Klimov ("the applicant"), who was born in 1978 and lives in Kharkiv;

the decision to give notice of the complaint under Article 10 of the Convention to the Ukrainian Government ("the Government"), represented by their Acting Agent, Ms Olga Davydchuk, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's complaint that the domestic courts ordered him to retract statements which he had made in a magazine article. The applicant relied on Article 10 of the Convention.

2. The applicant wrote an article which was published in the print and online versions of the magazine *Independent auditor*. The article concerned a congress of auditors and contained the following statements:

> "Some people in the meeting room were not congress delegates ... some of them at that moment were not even certified auditors ...

...

The Chamber [of Auditors] has periodically increased the fees that it collects for the certification of auditors, professional training and the inclusion of companies and individual auditors in the register. The Chamber of Auditors of Ukraine has constantly increased the price for the mandatory International Auditing Standards, continuing to sell books through a commercial company linked to the Chamber while fully restricting free access to the electronic version of the document.

...

In 2010 the Chamber introduced 'free' reporting. Using it required buying software from a commercial company which belonged to a family member of one of the Chamber's officials.

...

The International Federation of Accountants aims to make its standards widely available and does not restrict the distribution of free electronic versions of its documents. For all these years the Chamber obtained a right to translate the standards and 'accidentally' forgot to publish them on its website.

...

The European Union has acknowledged that the body entrusted with regulating auditing activities in our country does not comply with the requirements set out in [Commission Decision] 2008/627/EC and excluded Ukraine from the list of countries whose auditors are recognised in the European Union.

...

... oftentimes State officials are not interested in the work of the Chamber and take the liberty of not participating in its work, skipping its meetings.

...

The method by which the Chamber assigned auditors to particular regions remains a mystery ... But some auditors for this reason were not allowed to attend regional meetings and consequently they could not participate in the congress.

...

The Chamber established that 136 delegates had to be nominated to the congress from Kyiv. It remains unknown how this number was calculated.

...

... rating nomination is not envisaged by any normative act.

...

... a formal appearance of elections was created, but no real elections took place ... because the organisers put only their own list of candidates to the vote ... two other lists were not put to the vote at all.

...

... the list of candidates from Kyiv, later published on the Chamber's website, was different from the one that the organisers drew up at the Kyiv regional meeting.

...

> ... members of the Chamber ... persecuted their colleagues – disciplinary proceedings were instituted against those auditors who actively expressed their disagreement with the violations. Apart from that, the Chamber ... disseminated defamatory material via its website ... with the aim of damaging the excellent reputations of respectable heads of Ukrainian non-governmental organisations.
>
> ...
>
> ... members of the press were not allowed into the meeting room.
>
> ...
>
> Some auditors who were nominated as Chamber members were not allowed into the meeting room. ... the organisers communicated with the auditors in a rude and insulting manner. There was not even a vote on the candidates nominated by the congress for the Counting Commission.
>
> ...
>
> ... Almost all suggestions from the audience were ignored by the organising committee and were not even put to the vote.
>
> ...
>
> Ukrainian auditors have thus witnessed a repeated fraudulent [seizure of power] ... our colleagues use deceit as a source of power. Deceiving Ukrainian auditors, professional unions, State bodies and international organisations ...”

3. The Chamber of Auditors of Ukraine instituted proceedings against the applicant and the publisher of the magazine, the S. company, seeking a retraction of the above-mentioned statements in that they were untrue and damaging to the Chamber’s reputation.

4. Before the first-instance court, the applicant provided an expert report stating that the above-mentioned statements constituted value judgments.

5. On 24 December 2012 the Pecherskyi District Court of Kyiv found against the applicant and ordered the publisher to issue a retraction in the magazine and to take down the article from its website. The court also ordered the applicant to pay the Chamber 35 Ukrainian hryvnias in court fees. The court noted that the above-mentioned statements were statements of fact that were not supported by any evidence. The court was not convinced by the expert report and noted that it fell within the jurisdiction of the court to decide whether certain statements constituted statements of facts or value judgments.

6. On 4 March 2013 the Kyiv Court of Appeal upheld the first-instance court’s decision.

7. On 15 April 2013 the Higher Specialised Court in Civil and Criminal Matters rejected a cassation appeal lodged by the applicant.

8. The S. company also lodged a cassation appeal against the lower courts’ decisions. The applicant joined that appeal. On 20 May 2013 the Higher Specialised Court rejected the appeal lodged by the S. company as being unsubstantiated. On 5 November 2013 the applicant sent his first letter to the Court.

RELEVANT DOMESTIC LAW

9. Article 277 of the Civil Code, as in force at the material time, read as follows:

Retraction of untrue information

"1. An individual whose non-pecuniary rights have been infringed as a result of the dissemination of untrue information about [them] ... shall have the right to ... the retraction of that information ...

...

3. Negative information disseminated about a person shall be considered untrue if the person who disseminated it does not prove the contrary.

4. Untrue information shall be retracted by the person who disseminated the information ..."

THE COURT'S ASSESSMENT

10. The applicant complained under Article 10 of the Convention that his freedom of expression had been violated.

11. The Government submitted that the applicant had lodged his application with the Court more than six months after the judgment of the Higher Specialised Court in Civil and Criminal Matters of 15 April 2013, so outside the six-moths' time-limit prescribed by the Convention. They further argued that the courts' decisions had had a basis in law and that the applicant had not proved the veracity of the information that he had published.

12. The applicant maintained his complaints.

13. The Court observes that the final decision in the applicant's case was delivered on 20 May 2013 and that the applicant lodged the application (the first letter) with the Court on 5 November 2013 (see paragraph 8 above). The Government's preliminary objection must therefore be rejected.

14. The Court considers that the decisions of the domestic courts constituted an interference with the applicant's rights under Article 10 of the Convention. It accepts that the courts' decisions had a basis in law (see paragraph 9 above) and pursued a legitimate aim, namely the protection of the rights of others. It remains to be examined whether the interference was necessary in a democratic society.

15. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their margin of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; the Court looks at the interference complained of in the light of the case as a whole, including the content of the statement held

against the applicant and its context. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see *Zana v. Turkey*, 25 November 1997, § 51, Reports 1997-VII, and *Uj v. Hungary*, no. 23954/10, § 18-19, 19 July 2011).

16. The Court does not see a reason to depart from the findings of the domestic courts that the disputed statements constituted the statements of fact and not value judgments as asserted by the applicant.

17. It observes that the domestic courts applied standards which were in conformity with the principles embodied in Article 10 of the Convention. Moreover, they relied on an acceptable assessment of the relevant facts (see *Halet v. Luxembourg* [GC], no. 21884/18, § 110 with further references, 14 February 2023). In particular, the courts established that the applicant had not presented sufficient evidence to support the statements of fact contained in the disputed article (see *Barata Monteiro da Costa Nogueira and Patrício Pereira v. Portugal*, no. 4035/08, § 38, 11 January 2011).

18. The Court also points out that no sanctions were imposed on the applicant for publishing the disputed information.

19. In the light of these circumstances, the Court finds no reason to substitute its own view for that of the domestic courts and concludes that 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,

Declares the application inadmissible.

Done in English and notified in writing on 13 March 2025.

Martina Keller Deputy Registrar	Andreas Zünd President