

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

FIFTH SECTION

DECISION

Application no. 38848/05
Anatoliy Pavlovich MAMCHENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 5 November 2013 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Ann Power-Forde,
Helena Jäderblom, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 October 2005,

Having regard to the declaration submitted by the respondent Government on 5 July 2013 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 Anatoliy Pavlovich Mamchenko, is a Ukrainian national, who was born in 1947 and lives in Kirovograd.

The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy, of the Ministry of Justice.

The applicant complained under Article 6 § 1 of the Convention about a breach of the principle of equality of arms by the Supreme Court of Ukraine in the criminal proceedings against him. Referring to the same provision, he also complained that the length of the criminal proceedings had been excessive and that he had had no effective domestic remedy in this respect contrary to Article 13 of the Convention. He further raised several other complaints under Articles 6 § 1, 6 § 3 (a), 6 § 3 (d), 7, 8 and 13 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 7 related mainly to his conviction.

The applicant's complaint under Article 6 § 1 of the Convention alleging that the Supreme Court of Ukraine failed to respect the principle of equality of arms by ignoring his request for a hearing in his presence and allowing the prosecutor to take the active part in it, was communicated to the Government.

THE LAW

1. The applicant complained about a breach of the principle of equality of arms. He relied on Article 6 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 5 July 2013 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 that domestic authorities have violated the applicant's rights, guaranteed by Article 6 § 1 (equality of arms) of the Convention.
>
> I, Nazar Kulchytskyy, Government Agent before the European Court of Human Rights, declare that the Government of Ukraine are ready to pay Mr Anatoliy Pavlovich Mamchenko with the just satisfaction in the amount of EUR 1,080.
>
> 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 of EUR 1,080, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax will be converted into the national currency of the respondent State at the rate applicable on the date of payment, and free of any taxes that may be applicable. 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 above 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 14 August 2013, the applicant indicated that he 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 the principle of equality of arms on account of the right to a public hearing (see, for example, *Zhuk v. Ukraine*, no. 45783/05, 21 October 2010).

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).

2. Relying on Article 6 § 1, the applicant also complained that the length of the criminal proceedings had been excessive and that he had had no effective domestic remedy in this respect contrary to Article 13 of the Convention. He further raised several other complaints under Articles 6 § 1, 6 § 3 (a), 6 § 3 (d), 7, 8 and 13 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 7 related mainly to his conviction.

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 concerning the equality of arms 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

Boštjan M. Zupančič
President