

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

FIFTH SECTION

DECISION

Application no. 42009/07
Yevgen Pavlovych MOROZ
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 6 March 2012 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 8 September 2007,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Yevgen Pavlovych Moroz, is a Ukrainian national who was born in 1980 and lives in Kyiv. He was represented before the Court by Ms I. Boykova, a lawyer practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska and Mr Nazar Kulchytskyy, of the Ministry of Justice.

The applicant complained under Article 3 of the Convention about ill-treatment in police custody on 25 August 2003. He also complained under Article 6 § 1 of the Convention that he was unable to bring compensation

proceedings for the unlawful institution of criminal proceedings against him as, allegedly, he was not provided with a copy of a procedural decision taken in the course of the criminal proceedings against him.

THE LAW

1. The applicant complained about ill-treatment in police custody on 25 August 2003. He relied on Article 3 of the Convention which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

By a letter dated 15 November 2011 the Government submitted a declaration with a view to settling the issue raised by the above complaint. The declaration read as follows:

> "The Government of Ukraine acknowledge that the applicant was subjected to ill-treatment in police custody on 25 August 2003 in breach of Article 3 of the Convention and the investigation undertaken by the domestic authorities into the applicant's allegation thereof was also in breach of Article 3 of the Convention.
>
> I, Nazar Kulchytskyy, for the Government Agent before the European Court of Human Rights, declare that the Government of Ukraine are ready to pay Mr Yevgen Pavlovych Moroz the just satisfaction in the amount of EUR 10,000. Besides, for the purpose of prevention of analogical violations in future the Government of Ukraine undertake to bring to the notice of law-enforcement authorities and authorities empowered to conduct an investigation of facts of ill-treatment on part of law-enforcement authorities, case-law of the European Court in part of prevention of ill-treatment and conducting of effective investigation upon arguable complaints about ill-treatment.
>
> 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 10,000, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into the national currency of the respondent State at the rate applicable on the date of payment, and [will be] 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 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 and taking of the above-mentioned measures will constitute the final resolution of the case".

In a letter of 3 January 2012 the applicant's representative informed the Court that the applicant had agreed with the terms of the above declaration.

In light of the above, the Court considers that the parties have actually reached a friendly settlement in respect of this part of the application. Therefore, it should be struck out of the list in accordance with Article 39 § 3 of the Convention.

2. Having carefully examined the applicant's remaining complaint in the light of all the material in its possession, and in so far as the matter complained of is within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that the complaint 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

Takes note of the terms of the respondent Government's declaration in respect of the applicant's complaint under Article 3 of the Convention and the applicant's agreement with the terms of that declaration;

Decides to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 39 § 3 of the Convention;

Declares the remainder of the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President