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

FIFTH SECTION

DECISION

Application no. 14767/16
NAFTOGAZVYDOBUVANNYA, PJSC
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 7 December 2023 as a Committee composed of:

Lado Chanturia*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 14767/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 March 2016 by Naftogazvydobuvannya, PJSC, a private joint-stock company registered in Ukraine ("the applicant company"), which was represented by Mr A. Bailin, Ms T. Jaber, Ms N. Zar and Ms N. Heffinck, lawyers practising in London, as well as Ms O. Vovkotrub and Mr N. Kulchytskyy, lawyers practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms Marharyta Sokorenko;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant company is the biggest privately owned gas producer in Ukraine. Some of its assets[1] were subject to fourteen injunctions in 2015 in the context of the criminal investigations into the abduction of its high-level official and into the company's suspected tax evasion. Its application before

[1] Shares, bank accounts and hydrocarbons extracted from its wells.

the Court concerned five injunctions, which had been imposed by the final rulings of the Kyiv City Court of Appeal on various dates in June and July 2015, in hearings attended by the applicant company's representatives. Following several rounds of unsuccessful requests for lifting the injunctions, the applicant company finally had such requests granted in December 2015, and the injunctions were lifted.

2. The applicant company complained that "the imposition of the fifth, the sixth, the seventh, the ninth and the eleventh [injunctions] had violated its rights under Article 1 of Protocol No. 1, as well as Articles 6 and 13 of the Convention". More specifically, it complained under Article 1 of Protocol No. 1 that the injunctions had not been in compliance with domestic law and had been disproportionate. Furthermore, the applicant company complained under Article 6 of the Convention that the injunctions had been imposed following hearings conducted with various procedural violations and that the courts had lacked independence. Lastly, it complained under Article 13 of the Convention that it had had no effective domestic remedies for the above complaints, given that "although all the [injunctions] had been ultimately lifted, that had only occurred after seven months and some five rounds of revocation motions, and it [was] not possible to claim any compensation".

RELEVANT LEGAL FRAMEWORK

3. As stipulated by the Code of Criminal Procedure of 2012 ("the CCP"), a freezing injunction (*арешт майна*) was amenable to an appeal (Article 309), but not to any further appeal on points of law (Article 424). Furthermore, such an injunction could be lifted fully or in part upon a request, in particular, by the property owner if the latter proved that that measure was no longer required or that its imposition had been groundless (Article 174).

THE COURT'S ASSESSMENT

4. The Government submitted that the application had been lodged outside the six-month time-limit calculated from the dates of the injunctions' imposition by the final judicial rulings. In the alternative, they argued that the applicant company had failed to exhaust domestic remedies, given that it had not claimed damages at the domestic level. Lastly, the Government invited the Court to declare the application inadmissible as being manifestly ill-founded.

5. The applicant company submitted that the injunctions complained of were to be regarded not as instantaneous acts but rather as having produced a continuing situation, given that it had been denied access to its property during the whole period of the enforcement of those measures. It noted that the Court had consistently viewed retention of property as a continuing situation and that the same approach was to be applied to the present case.

Given that the applicant company had had the injunctions lifted in December 2015 and that it had introduced its application in March 2016, it considered that it had complied with the six-month time-limit. The applicant company also contested the Government's submission that it had had the possibility to claim damages.

6. The Court finds that it is not necessary to address all the Government's objections, as the application is inadmissible for the following reasons.

7. The Court notes that in its application form the applicant company only summarily mentioned the duration of the injunctions in question (see paragraph 2 above). According to the Court's case-law, it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto, in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not. This means that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (see *Grosam v. the Czech Republic* [GC], no. 19750/13, §§ 90 and 91, 1 June 2023). In another recent Grand Chamber's judgment, *Fu Quan, s.r.o. v. the Czech Republic*, the Court held that the applicant company's mentioning of the duration of the storage of its merchandise by the authorities in its application form was too ambiguous to be interpreted as raising the complaint about the prolonged seizure of that merchandise. The Court went on to state that, had it been the wish of the applicant company at that stage to complain of the prolonged seizure of its property, it should have stated so in its application form in a clear manner ([GC], no. 24827/14, § 148, 1 June 2023). The Court considers that the applicant company in the present case, likewise, failed to clearly formulate a complaint about the duration of the control of the use of its property and that the essence of its grievances concerned the imposition of the five injunctions.

8. The Court notes that the impugned injunction orders became final on various dates in June and July 2015 (see paragraph 1 above), that is more than six months before the introduction of the present application (11 March 2016). In so far as the applicant company argued that those measures had created "a continuing situation", the Court considers that this argument is ill-founded in the light of its relevant case-law, since, whenever the alleged violation of a Convention right is caused by a particular event produced at a particular time (the delivery of a court decision or other written legal act being a vivid example), the legal consequences of such an event, which may even stretch over significant time, do not qualify as "a continuing situation" for the purposes of the calculation of the six-month rule contained in Article 35 § 1 of the Convention (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 263, 18 July 2019, and the case-law references therein). Even though the cycle of injunctions in respect of the

applicant company's assets could be viewed by it as constituting a pattern, those were discrete incidents, and nothing prevented the applicant company from raising its related grievances before the Court in due time. The circumstances of the present case are distinguishable from cases concerning a repetition of the same events rendering the applicant a victim, such as, for example, detainees' routine handcuffing, in which the Court considered that it would be excessively formalistic to demand that an applicant denouncing such a situation filed a new application at regular intervals for as long as that situation persisted (see, for example, *Shlykov and Others v. Russia*, nos. 78638/11 and 3 others, §§ 61 and 62, 19 January 2021).

9. The Court next notes that the applicant company's requests for lifting the injunctions could not be regarded as having interrupted the running of the six-month time period, since they had not been subject to any legal restrictions in respect of time-limits, frequency or number, thus creating unacceptable uncertainty as to the final point in the proceedings and rendering nugatory the six-month rule as such (see *Rustavi 2 Broadcasting Company Ltd and Others*, cited above, § 267, with further references). Nor can the Court undertake a separate assessment of their compliance with Article 13 of the Convention, given that those were extraordinary remedies not forming part of the ordinary chain of domestic exhaustion in injunction proceedings.

It follows that the applicant company introduced its application before the Court beyond the six-month time-limit, and it should therefore be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2024.

Martina Keller Deputy Registrar	Lado Chanturia President