CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11901/02
by Oleksandr Sergiyovych PANTELEYENKO
against Ukraine

The European Court of Human Rights (Second Section), sitting on 15 March 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 30 November 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Oleksandr Sergiyovych Panteleyenko, is a Ukrainian national who was born in 1960 and lives in Chernigiv.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The applicant's criminal case and related derivative proceedings

a. Criminal charge against the applicant

On 3 May 1999 the Chernigiv City Prosecutor instituted criminal proceedings against the applicant for abuse of power and forgery of official documents. The prosecution's case was that the applicant, while acting in his official capacity as a notary, had certified a title and real-estate transactions using invalid registration forms. On 21 May 1999 officials from the Chernigiv City Prosecutor's Office (the "Prosecutor's Office") searched the applicant's office. On 28 July 1999 P., an investigator at the Prosecutor's Office, closed the case given the lack of any *corpus delicti*.

On 20 September 2000 the acting Chernigiv City Prosecutor overruled the investigator's decision of 28 July 1999 as it had been proved that the applicant had committed the offence, but ordered the discontinuation of proceedings due to its insignificance. The applicant challenged this finding, claiming that he had not committed any offence. On 21 December 2000 the Desniansky District Court of Chernigiv rejected the complaint.

On 26 February 2001 the Presidium of the Chernigiv Regional Court (hereafter "the Regional Court"), in the course of supervisory proceedings, quashed the decision of the Desniansky District Court of 21 December 2000 and ordered a further examination of the grounds for terminating the criminal case against the applicant.

On 4 April 2001 the Desniansky District Court quashed the City Prosecutor's ruling of 20 September 2000 and ordered a further pre-trial investigation.

On 26 May 2001 P. terminated the criminal proceedings. He generally repeated the reasoning from the ruling of 20 September 2000 concerning the insignificance of the applicant's offence. On 4 July 2001 the City Prosecutor quashed P.'s ruling and ordered the further investigation of the case.

On 4 August 2001 P. closed the criminal case against the applicant due to the insignificance of the offence which had been committed. The applicant challenged this ruling before the Desniansky District Court, which was rejected on 6 November 2001 as being unsubstantiated. In particular, the court indicated that the applicant's guilt had been proved by the evidence collected in the course of the investigation.

On 24 January 2002 the Regional Court quashed the decision of 6 November 2001 as the first instance court had failed to specify the evidence in support of its opinion as to the applicant's guilt. The case was remitted for a fresh consideration.

On 26 June 2002 the Desniansky District Court rejected the applicant's complaint against the Prosecutor's Office's ruling of 4 August 2001 on the ground that the applicant's guilt had been fully established by the evidence which had been collected, but that his offence was too insignificant to

attract criminal punishment. On 9 September 2002 the Regional Court upheld this decision. On 13 December 2002 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

b. Compensation proceedings

In January 2000 the applicant instituted proceedings against the Prosecutor's Office seeking monetary compensation for the material and moral damage suffered as the result of the allegedly unlawful search of his office (i.e. loss or damage of personal items and the seizure of documents essential for his professional activity). On 28 August 2000 the Novozavodsky District Court of Chernigiv granted this claim, indicating that, contrary to Article 183 of the Code of Criminal Procedure, the applicant (who at that time was undergoing hospital treatment) had not been informed in a timely manner about the search, and the warrant had not been served on him. Moreover, in violation of Article 186 of the Code, officials from the Prosecutor's Office, instead of collecting the evidence relating to the criminal case, seized all the official documents in the applicant's office. This effectively denied the applicant an opportunity to perform his professional duties until 6 August 1999 when the relevant documents were returned to him.

On 16 January 2001 the Regional Court, on an appeal from the Prosecutor's Office, quashed the decision of 28 August 2000 and remitted the case for fresh consideration because the legal basis for this decision (namely the termination of the criminal proceedings on "exonerative" grounds) had ceased to exist.

On 26 December 2001 the Novozavodsky District Court examined the applicant's claim and rejected it as being unsubstantiated. The court, referring to the Prosecutor's Office's ruling of 4 August 2001, found that the applicant's case had been terminated on non-exonerative grounds, within the meaning of Article 2 of the Compensation for Unlawful Criminal Prosecution Act 1994, and therefore the applicant had no standing to claim compensation for any acts or omissions allegedly committed by the authorities in the course of the investigation.

On 23 May 2002 the Regional Court stayed the appeal proceedings until the determination of the applicant's complaint against the ruling of the Prosecutor's Office of 4 August 2001 (i.e. the grounds for the closure of his criminal case). On 3 January 2003 the appeal proceedings were renewed and the applicant's appeal against the judgment of 26 December 2001 was rejected.

c. The administrative complaint

On 16 November 2001 the Desniansky District Court dismissed the applicant's administrative complaint about alleged irregularities in the City Prosecutor's ruling of 4 July 2001 on the ground that this issue did not fall

within its administrative jurisdiction and had to be examined in the course of the criminal proceedings. On 5 June 2002 the Regional Court upheld this decision. On 8 January 2003 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

d. The criminal complaint against the investigator

In April 2001 the applicant lodged with the General Prosecutor's Office a criminal complaint against the investigator P. Having received no response, he challenged the inactivity of the General Prosecutor's Office before the court. The complaint was dismissed on many occasions due to procedural shortcomings. On 17 April 2003 the Novozavodsky District Court allowed this complaint and ordered the Prosecutor's Office to handle the applicant's complaint in the manner prescribed by the Code of Criminal Procedure.

On 27 June 2003 the Chernigiv Regional Prosecutor's Office rejected the applicant's criminal complaint as being unsubstantiated. The applicant challenged this ruling. The case was examined on two occasions: On 11 December 2003 the Novozavodsky District Court rejected the applicant's complaint. On 12 February 2004 the Regional Court upheld this decision.

e. The request for information

In 2001, following the applicant's complaint about the irregularities of the investigation in his criminal case, the General Prosecutor's Office requested the case-file from the Chernigiv City Prosecutor's Office for examination. The case-file was subsequently returned with a circular letter which, according to the applicant, contained certain instructions as to the handling of the case. The applicant requested a copy of this circular letter from the General Prosecutor's Office; however, on 3 December 2001 his request was refused as having no legal ground.

In December 2001 the applicant challenged this refusal before the court. On 3 June 2002 the Pechersky District Court of Kyiv rejected the applicant's complaint, stating, *inter alia*, that the Law on Information exempts internal correspondence prior to the adoption of a decision from the general rule that the public has unrestricted access to unclassified official documents. On 19 September 2002 the Kyiv City Court of appeal upheld this judgment. On 19 February 2003 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

2. Disputes between the applicant and his employer

f. Defamation proceedings

In December 2001 the applicant instituted proceedings against the Chernigiv Law College (the applicant's employer, hereinafter the “College”) and its Principal for defamation. The applicant alleged that, during the

Attestation Commission's hearing on 14 May 2001, the Principal had made three statements about him which were libellous and abusive. The applicant demanded apologies and compensation for moral damage.

On 3 June 2002 the Novozavodsky District Court rejected the applicant's claim as unsubstantiated. The court found that the applicant had failed to prove that the defendant had made remarks about his sanity, or that he had barred the access of other professors to his classes. As to the statement about the applicant's pedagogical skills, it was in no way offensive and was based on a general assessment of the applicant's professional conduct.

On 21 March 2002, during the consideration of the case, the court granted the defendant's application and requested from the Chernigiv Regional Psycho-Neurological Hospital information concerning the treatment which the applicant had undergone in that establishment. On 5 April 2002 the requested information was submitted to the court and read out at one of the subsequent hearings; however, no reference to this evidence was made in the judgment of 3 June 2002.

The applicant appealed, challenging, *inter alia*, the lawfulness of the court's request for information about his mental state.

On 1 October 2002 the Regional Court upheld the judgment. On the same day the court issued a separate ruling to the effect that the first instance court's request for information concerning the applicant's mental health from the public hospital was contrary to Article 32 of the Law on Information 1992 and Article 6 of the Law on Psychiatric Aid 2000. In particular, the court indicated that information about a person's mental health is confidential, and its collection, retention, use and dissemination fall under a special regime. Moreover, the court held that the requested evidence had no relevance to the case.

Summing up the above considerations, the Regional Court found that the judges of the lower courts lacked training in the field of confidential data protection and notified the Regional Centre for Judicial Studies about the need to remedy this lacuna in their training program.

On 24 June 2003 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

g. Dispute about the applicant's workload

In August 2003 the applicant instituted proceedings against the College, alleging that his planned workload for the next year was unfairly heavy. On 14 November 2002 the Novozavodsky District Court rejected this claim as unsubstantiated, a decision upheld by the Regional Court on 17 February and the Supreme Court on 12 May 2004.

3. Tax proceedings

h. The proceedings concerning State pension contributions for the applicant's employee

In January 2001 the applicant lodged with the Desniansky District Court a claim against the State Pension Fund, alleging that he, being a private notary, was exempted from the payment of pension contributions for his employee. On 22 May 2001 the court rejected this claim as unsubstantiated. On 6 November 2001 and 25 March 2002 the Regional and Supreme Courts rejected the applicant's appeal and request for leave to appeal, respectively.

i. The dispute about the overpayment of pension contributions

In June 2001 the applicant instituted further proceedings against the State Pension Fund, disputing the amount of overpayment of his contributions in the year 2000, which had been acknowledged by the Fund. On 3 August 2001 the Desniansky District Court rejected this claim, pointing out that the overpayment had been correctly calculated and refunded to the applicant in due time and in full. On 20 February 2002 the Regional Court upheld this decision. On 24 October 2002 the Supreme Court dismissed the applicant's cassation appeal as having been lodged out of time.

j. The dispute about the alleged overpayment of income tax

In April 2002 the applicant instituted proceedings against the Chernigiv City Tax Administration alleging that he had paid too much income tax and seeking the recovery of the overpayment. On 3 June 2002 the Novozavodsky District Court rejected this claim as unsubstantiated. On 6 September 2002 and 23 July 2003 the Regional and Supreme Courts rejected the applicant's appeal and request for leave to appeal, respectively.

k. The dispute about the method of payment of income tax

In July 2002 the applicant challenged before the court a letter from the Deputy Head of the Chernigiv City Tax Administration which demanded that he pay his income tax in advance quarterly instalments. He claimed that his notary business income was secondary to his earnings as a professor and, therefore, he should pay his taxes in the manner prescribed for employees rather than the self-employed. On 24 January 2003 the Novozavodsky District Court allowed this claim and annulled the Tax Administration's letter. On 3 June 2003 the Chernigiv Regional Court of Appeal reversed this judgment and rejected the applicant's claim as unsubstantiated. On 22 September 2003 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

COMPLAINTS

1. As regards the applicant's criminal case and the related derivative proceedings, the applicant complains that

- contrary to Article 6 § 1 of the Convention, the criminal and the ensuing compensation proceedings were excessively long;

- the termination of the criminal case on non-exonerative grounds, which resulted in the rejection of his claim for compensation, was contrary to Article 6 § 2;

- the search of his office was conducted in breach of domestic law and that the closure of his criminal case on non-exonerative grounds effectively denied him any opportunity to claim damages for the impugned search. He invokes Articles 8 and 13 of the Convention;

- the dismissal of his administrative complaint infringed his right of access to a court, contrary to Article 6 § 1 of the Convention;

- the rejection of his criminal complaint against the investigator was unfair, contrary, in substance, to Article 6 § 1 of the Convention; and

- the proceedings concerning the refusal of his request for information were also unfair as the courts erred in their application of domestic law.

2. As regards the disputes with his employer, the applicant complains that

- he did not have a fair hearing with respect to his defamation claim, since the domestic courts erroneously assessed the evidence before them, contrary to Article 6 § 1 of the Convention;

- the first instance court's request to the public hospital for information about his mental health was contrary to domestic legislation and Article 8 of the Convention (private life);

- his inability to claim any compensation from the State for the alleged violation of his right to respect for private life violated Article 13 of the Convention; and

- the proceedings concerning his heavy workload were unfair in that the courts failed to apply correctly the relevant domestic legislation, contrary to Article 6 § 1 of the Convention.

3. As regards the tax proceedings, the applicant complains that

- contrary to Article 6 § 1 of the Convention, he was denied a fair hearing, particularly as the courts erred in their application of domestic law and the assessment of the evidence before them;

- contrary to Article 13 of the Convention, the State Pension Fund officials failed to respond properly to his applications; and

- the quarterly income tax payment proceedings were contrary to Article 8 of the Convention.

THE LAW

1. The criminal and compensation proceedings

a) The applicant complains that the authorities' refusal to pay him damages under the "compensation for unlawful criminal prosecution" scheme contravened the presumption of innocence. He invokes Article 6 § 2 of the Convention, which provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The applicant further complains that the search in his office violated his right to respect for private life, home and correspondence. He also complains that in the circumstances of this case he was denied any opportunity to claim compensation for the search. He refers to Article 8 of the Convention, which provides insofar as relevant as follows:

> "1. Everyone has the right to respect for his private ... life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, ..."

The applicant also complains about a lack of domestic remedies with respect to his complaint about the search in his office. He invokes Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

b) The applicant complains about the length of the criminal and compensation proceedings. He invokes Article 6 § 1 of the Convention, which as far as relevant reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

The Court notes that the criminal proceedings were instituted against the applicant in May 1999 and ended with the decision of the Regional Court in September 2002. Therefore the period to be considered lasted three years and four months. Although, this period may seem excessive given the final outcome of the proceedings (terminated due to the insignificance of the offence), the Court discerns no period of inactivity attributable to the State.

Moreover, the Court notes that the numerous re-openings were largely due to the applicant's complaints. In the circumstances, therefore, the Court concludes that the criminal proceedings were not unduly lengthy.

As to the compensation proceedings, the Court observes that they lasted from January 2000 to January 2003, that is a total of three years. It notes the inactivity of the domestic courts between 26 December 2001 (the judgment of the first instance court) and January 2003 (the appellate hearing). However, the compensation issue could not be resolved before the closure of the criminal case. The Court recalls that the reasonable need for the parallel progression of two different cases, as in the present application may justify a longer delay (see *Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 38). The Court further observes that there was no other period of inactivity attributable to the domestic authorities. In these circumstances, the Court also concludes that the compensation proceedings were not unduly lengthy.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

c) The applicant further complains about a violation of his right of access to court on account of the dismissal of his administrative complaint against one of the Prosecutor's rulings in his criminal case. He refers to Article 6 § 1 of the Convention, cited above. However, the Court observes that the applicant's complaint was rejected as it had been lodged incorrectly. Moreover, similar complaints were raised by the applicant and received proper examination by the domestic courts within the criminal proceedings. Therefore, the applicant had adequate access to court in this matter and his complaint is to be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

d) As regards the applicant's complaint under Article 6 § 1 of the Convention about the allegedly unreasonable rejection of his criminal complaint against P. (an investigator in his criminal case), the Court recalls that Article 6 does not guarantee any right to have criminal proceedings instituted against a third person (see, *Nardelli and others v. Italy*, (dec.), no. 51631/99, 15 October 2002). Therefore, this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

e) The applicant finally complains that the proceedings involving the request for information about the General Prosecutor's instructions in his case were unfair within the meaning of Article 6 § 1 of the Convention. However, the Court cannot examine alleged errors of facts and law committed by the domestic judicial authorities, insofar as no unfairness of the proceedings can be detected and the decisions reached were not arbitrary. The Court notes that the applicant enjoyed the right to adversarial proceedings with the participation of interested parties. Within the

framework of the proceedings, the applicant was able to present all necessary arguments defending his interests, and the judicial authorities considered them properly. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

2. Disputes between the applicant and his employer

The applicant complains under Article 8 of the Convention, cited above, about the disclosure by the local court of confidential information concerning his mental health, held by a public hospital, for which disclosure he had no effective compensatory remedy, contrary to Article 13 of the Convention, cited above.

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

The applicant further complains under Article 6 § 1 of the Convention that the hearings concerning his claims of defamation and an excessive workload were unfair. However, the Court refers to its general considerations above under point 1e), which are of equal pertinence here. The Court does not discern any arbitrariness or procedural unfairness in the decisions of the domestic courts in these matters and rejects the complaint, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

3. The tax proceedings

The applicant complains about the unfairness of the hearings in the four tax proceedings, again invoking Article 6 § 1 of the Convention. However, the Court recalls that tax matters still form part of the hard core of public-authority prerogatives, the public nature of the relationship between the taxpayer and the community being predominant. Therefore tax disputes fall outside the scope of civil rights and obligations (see. *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII). It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4.

As regards the applicant's complaint under Article 13 of the Convention (cited above) that officials from the State Pension Fund failed to respond properly to his applications, the Court observes that Article 13 does not require a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see *Z.R. v. Poland*, (dec.) no. 32499/96, 05.10.2000). This the applicant had, as the relevant issues were duly examined on the merits by the

domestic courts, albeit unfavourably to the applicant. It follows that this complaint must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

Finally, insofar as the applicant complains that the impugned tax proceedings infringed his rights under Article 8 of the Convention (cited above), the Court finds no evidence whatsoever in the case-file which might disclose any appearance of an unjustified interference in breach of this provision. The Court, therefore, rejects this part of the application, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Article 6 § 2 of the Convention in relation to the compensation proceedings, and Articles 8 and 13 of the Convention in relation to the search of his office and the disclosure of confidential medical information;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President