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

FIFTH SECTION

DECISION

Application no. 77114/17
Viktor Mykolayovych SHOKIN
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 8 September 2022 as a Committee composed of:

Arnfinn Bårdsen*, President,*
Kateřina Šimáčková*,*
Mykola Gnatovskyy*, judges,*
and Martina Keller, Deputy Section Registrar,

Having regard to:

the application (no. 77114/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 October 2017 by a Ukrainian national, Mr Viktor Mykolayovych Shokin ("the applicant"), who was born in 1952 and lives in Kyiv, and was represented before the Court by Mr V.V. Maksymov and Ms O.Y. Sapozhnikova, lawyers practising in Kyiv;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the question whether the refusal to examine the applicant's claims on the merits, on the grounds that they had been lodged outside the statutory limitation period, was in breach of his right of access to a court under Article 6 § 1 of the Convention.

2. On 10 February 2015 the applicant was appointed Prosecutor General of Ukraine. On 19 February 2016 the applicant submitted his resignation to the President of Ukraine. On 3 April 2016 the President dismissed the applicant from his post, following an endorsement by the Ukrainian Parliament.

3. On 13 March 2017 the applicant challenged before the Higher Administrative Court ("the HAC") the relevant parliamentary resolution and

the presidential decree dismissing him, arguing that his resignation from the post had resulted from psychological pressure put on him by the President of Ukraine. He further complained of a breach of the voting procedure during the vote in Parliament.

4. On 20 April 2017 the HAC rejected the applicant's claims as lodged outside the statutory one-month limitation period for civil service-related disputes pursuant to Article 99 § 3 of Code of Administrative Justice. The court held that the applicant had known about the alleged psychological pressure at the time of his dismissal and that a violation of the parliamentary voting procedure was not sufficiently proven. The court ruled that those considerations had therefore not suspended the running of the statutory limitation period.

5. On 11 June 2017 the Supreme Court upheld the HAC's judgment, fully endorsing its reasoning.

6. Subsequently, the applicant repeatedly sought a review of the judgment in view of "newly discovered circumstances", namely evidence allegedly proving that the then Vice-President of the United States of America had put pressure on the Ukrainian President to dismiss the applicant from his post. The courts rejected the requests, ruling that only decisions on the merits were subject to the reopening of proceedings in view of newly discovered circumstances. The applicant then lodged a new appeal against his dismissal, based on the same evidence. The courts dismissed his appeal as lodged outside the one-month statutory limitation period, using the same reasoning as in the previous decisions.

THE COURT'S ASSESSMENT

7. The Court notes that the domestic proceedings concerned a dispute over the applicant's dismissal from the post of Prosecutor General, the post to which he had been appointed for a term of six years. The applicant, as ruled by the courts themselves, was entitled to seek reinstatement in the post under the domestic law. The applicant's claims were not examined on the merits solely because of his failure to comply with the prescribed time-limit. In the light of the foregoing, the national law did not "expressly exclude access to a court" for the applicant's claim. This is sufficient for the Court to conclude that Article 6 § 1 of the Convention is applicable under its civil limb (see, for example, *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-IV, and *Baka v. Hungary* [GC], no. 20261/12, § 118, 23 June 2016).

8. Thus, the Court will examine whether the applicant was denied access to a court. The relevant principles of the Court's case-law are set out in *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 89, 29 November 2016).

9. Turning to the facts of the present case, the Court notes that the applicant challenged the parliamentary resolution and the presidential decree twice. The first set of proceedings started almost one year after his dismissal and the second set of proceedings started almost four years after the dismissal. However, under the relevant provision of domestic law, they should have been initiated within one month after the adoption of the relevant measures (see paragraph 4 above). There is no reason to doubt that this time-limit served the purpose of assuring a proper administration of justice and legal certainty. In both sets of proceedings, the courts rejected the applicant's claims as lodged out of time.

10. The applicant argued before the domestic courts that he had been coerced into resigning and that there had been procedural violations during the parliamentary vote. The Court sees no reason to put in doubt the domestic courts' reasoning to the effect that while the former reason was known to the applicant on the day of his resignation, the latter was not sufficiently substantiated to justify the reopening of proceedings.

11. In view of the above, the Court does not find that the HAC's decision amounted to a disproportionate hindrance impairing the very essence of the applicant's right of access to a court as guaranteed under Article 6 § 1 of the Convention or transgressed the margin of appreciation afforded to the domestic courts in the field.

12. The Court therefore concludes that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

13. The applicant also complained under Article 6 of the Convention that there had been a breach of his right of access to a court on account of the domestic courts' failure to examine his requests for the reopening of proceedings in view of newly discovered circumstances. He further contended that the HAC had lacked impartiality.

14. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

15. It follows that this part of the application must likewise be rejected, in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Martina Keller Deputy Registrar	Arnfinn Bårdsen President