

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

FIFTH SECTION

DECISION

Application no. 27263/10
Igor Yuriyovych ZHOVNIRENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 25 September 2012 as a Committee composed of:

Mark Villiger, *President,*
André Potocki,
Paul Lemmens, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 April 2010,

Having regard to the declaration submitted by the respondent Government on 31 May 2012 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:

THE FACTS

The applicant, Mr Igor Yuriyovych Zhovnirenko, is a Ukrainian national, who was born in 1959 and lives in Zaporizzhya.

The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, succeeded by Nazar Kulchytskyy, of the Ministry of Justice.

In 2003 the applicant instituted proceedings seeking reinstatement at the State Bailiff's Service and compensation for damages, which is still pending.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention as to the length of the proceedings; this complaint was communicated to the Government. He also complained under the same provision about the alleged unfairness of the proceedings and formulated some other complaints.

THE LAW

1. By letter dated 31 May 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue of the excessive length of the proceedings raised by 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 the excessive duration of the consideration of the applicant's case before the national courts.
>
> The Government of Ukraine offer to pay 4,600 (four thousand six hundred) euros to Mr Igor Yuriyovych Zhovnirenko.
>
> 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.
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> This sum is to cover any and all non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable, and converted into the national currency of the respondent State at the rate applicable on the date of settlement. 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.
>
> This payment will constitute the final resolution of the case."

The applicant objected to the Government's 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.

The Court has established in a number of cases, including those brought against Ukraine, its practice concerning complaints about the violation of the right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 39-52, 6 September 2005; and *Moroz and Others v. Ukraine*, no. 36545/02, §§ 52-61, 21 December 2006).

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 in the part regarding the length of the domestic proceedings (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*).

2. The applicant also complained under Article 6 § 1 of the Convention that the proceedings were unfair. The Court notes that those proceedings are still pending. Accordingly, this complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention.

3. Having carefully examined the remainder of the application in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in 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 (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 excessive length of the civil proceedings;

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 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Stephen Phillips Deputy Registrar	Mark Villiger President