



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

FIRST SECTION

DECISION

Application no. 36958/21
RUSSIA
against Ukraine

The European Court of Human Rights (First Section), sitting on 4 July 2023 as a Chamber composed of:

Marko Bošnjak, *President*,
Alena Poláčková,
Gilberto Felici,
Lətif Hüseyinov,
Raffaele Sabato,
Erik Wennerström,
Mykola Gnatovskyy, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to the above application lodged on 22 July 2021,
Having deliberated, decides as follows:

INTRODUCTION

1. The case originated in an application (no. 36958/21) against Ukraine lodged with the European Court of Human Rights (“the Court”) under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the Russian Federation on 22 July 2021.

PROCEDURE

2. On 24 February 2022 the Russian President announced the start of what he termed a “special military operation” in Ukraine and the deployment of Russian troops there (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14, and 28525/20, § 90, 25 January 2023).

3. Subsequently, on 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of

the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, whereby the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

4. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1 of the Rules of Court, adopted the “Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights”. The Resolution stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022 (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 12-13 and 68, 17 January 2023).

5. On 5 September 2022 the Plenary Court took formal notice of the fact that the office of judge with respect of the Russian Federation would cease to exist after 16 September 2022 (see *Fedotova and Others*, cited above, § 10; see also *Kutayev v. Russia*, no. 17912/15, § 7, 24 January 2023). This, as a consequence, entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent Contracting Party and, as regards the present application, the applicant Contracting Party (see Rule 51 § 2 of the Rules of Court).

6. By letter of 20 June 2023, the parties were informed that the President of the Section intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of the present case (applying by analogy Rule 29 § 2 of the Rules of Court). They were invited to comment on that arrangement by 30 June 2023, but they did not submit any comments.

7. Accordingly, the President of the Chamber decided to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 (b).

THE FACTS

8. In their application the Russian Government alleged an administrative practice in Ukraine of, among other things, killings, abductions, forced displacement, interference with the right to vote, restrictions on the use of the Russian language and attacks on Russian embassies and consulates. They also complained that the water supply to Crimea via the North Crimean Canal had been cut off and alleged that Ukraine was responsible for the deaths of those on board Malaysia Airlines flight MH17 because it had failed to close its airspace (see also paragraph 18 below).

9. In their application the Russian Government also invited the Court to “establish that the Ukrainian authorities should take general measures to eliminate the violations indicated in this application and other similar

violations, and implement them under the supervision of the Committee of Ministers of the Council of Europe”.

10. On 23 July 2021 the President of the Court gave notice of the application to the Ukrainian Government in accordance with Rule 51 § 1 of the Rules of Court. The President also decided to assign the application to the First Section of the Court. As the application form and its appendices were in Russian, the Russian Government were requested to submit a translation of those documents into one of the official languages of the Court. They complied with that request on 15 September 2021 (application form) and 15 November 2021 (appendices).

11. On lodging their application the Russian Government also asked the Court, under Rule 39 of the Rules of Court, to indicate interim measures to the Ukrainian Government to stop restrictions on the rights of Russian-speaking persons, notably in respect of the use of their mother tongue in schools, the media and the Internet, and to order the Ukrainian authorities to suspend the blockade of the North Crimean Canal. On 22 July 2021 the Court rejected the request on the ground that its subject matter did not involve a serious risk of irreparable harm to a core right under the Convention.

12. On 6 August 2021 the Court refused a fresh request made by the Russian Government to reconsider its above-mentioned decision rejecting their request for interim measures.

13. When lodging their application, the Russian Government also made a request for their application to be joined to the above-mentioned inter-State case of *Ukraine and the Netherlands v. Russia*. On 19 October 2021 the Grand Chamber, which had been seized of the above-mentioned case, decided to reject the request on the basis that accepting it would not be in the interests of the efficient administration of justice (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, §§ 28-29).

14. In a letter which was dated 15 March 2022 but which was sent to the Court on 1 April 2022, the Russian Government provided the Court with “copies of the supporting documents of the authorities of the Russian Federation together with the list of annexes and further additional pieces of evidence” in respect of the present application. Having regard to the large volume of the documents – over 2,000 sets of documents – the Court asked the Russian Government to make them available on a data storage device. The Russian Government complied with that request on 19 April 2022.

15. These documents, submitted of the Russian Government’s own motion and without any request to that effect having been made by the Court, were all in Russian. On 4 May 2022 the Court forwarded them to the Ukrainian Government for information and, at the same time, invited the Russian Government to provide a translation of them into one of the official languages of the Court by 30 September 2022.

16. Since no reply had been received from the Russian Government by the deadline indicated above, the Court reiterated its request on 21 November

2022 and asked the Russian Government to provide a translation of the documents by 9 January 2023. In the same letter, the Russian Government were also requested to inform the Court whether they wished to maintain the application and warned that, in the event of their failure to provide a statement to that effect, the Court might conclude, pursuant to Rule 44E of the Rules of Court, that they were no longer interested in pursuing the application and decide to strike it out of its list of cases in accordance with Article 37 § 1 (a) of the Convention.

17. No reply has been received to the above-mentioned letter.

COMPLAINTS

18. The Russian Government maintained that there was an administrative practice contrary to Articles 2, 3, 5, 8, 10, 13, 14, 18, 33 and 34 of the Convention, Articles 1, 2 and 3 of Protocol No. 1 and Article 1 of Protocol No. 12 on the part of Ukraine and argued that the Ukrainian Government bore responsibility for the following alleged events:

- the killing of a number of persons during the Maidan events in Kyiv in 2014;
- the killing of a number of persons and injuries to a number of others during an arson attack on the Trade Union building in Odesa in 2014;
- the killing of civilians and damage to properties in the Luhansk and Donetsk regions as a result of shelling carried out by the Ukrainian military;
- the deaths of the persons on board Malaysian Airlines flight MH17 on account of Ukraine's failure to close its airspace in the area and its failure to inform other States and airlines of potential sources of danger in its airspace, as well as the suffering caused to the relatives of the victims;
- abductions and forced disappearances of Ukrainian nationals by Ukrainian authorities in parts of the Luhansk and Donetsk regions which were not controlled by the Ukrainian Government;
- interference with the right to vote of the people living in parts of Donbas in a number of elections held in Ukraine in 2014 and 2019;
- the forced displacement of Ukrainian nationals from eastern Ukraine to Russia as a result of the actions of the Ukrainian military forces in their anti-terrorist operations;
- interference with the right of the Russian-speaking population of Ukraine to speak Russian at schools and universities;
- abductions and killings of, and attacks and interferences directed at, journalists and political figures in Ukraine and lawyers representing those journalists;
- the disconnection of opposition and Russian-language television broadcasting and blocking of other sources of information;
- the persecution and harassment of Ukrainian nationals for speaking Russian in the public sphere;

- killings and enforced disappearances of Russian nationals, causing of injuries to Russian nationals and destruction of their property, both in the Luhansk and Donetsk regions and also in areas inside Russia which bordered Ukraine, as a result of the military operations conducted by the Ukrainian military;
- the cutting off of the water supply to Crimea via the North Crimean Canal after April 2014;
- attacks on Russian embassies, consulates and the Russian Centre of Science and Culture in Ukraine, as well as on the employees working in those entities;
- the imposition by the Ukrainian authorities of unlawful measures on Russian commercial organisations in Ukraine in sectors such as telecommunications, energy and banking, thereby causing them pecuniary damage and forcing them to cease their activities in Ukraine;
- publication of personal information and data on the Mirotvorets website without obtaining permission from the persons concerned; and
- failure to carry out effective investigations into the above events.

THE LAW

I. PRELIMINARY REMARKS

19. The Court observes at the outset that since the cessation of the Russian Federation's membership of the Council of Europe, the Russian Government have failed to respond to a number of requests made by the Court, including for submission of their observations, in the examination of applications directed against the Russian Federation (see, *inter alia*, *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, § 8, 28 April 2023; *B. v. Russia*, no. 36328/20, § 8, 7 February 2023; *Kutayev*, cited above, §§ 4-8; *Svetova and Others v. Russia*, no. 54714/17, § 9, 24 January 2023; and *Fedotova and Others*, cited above, § 15, 17 January 2023).

20. Indeed, the lack of any communication from the Russian Government and their abstention from further participation in the Court proceedings has already been noted by the Court in its recent judgment in *Glukhin v. Russia* (no. 11519/20, § 42, 4 July 2023, not final).

21. In the context of the present application the Court notes that, as already mentioned above, it received the most recent correspondence from the Russian Government on 19 April 2022, on which date they provided the Court with a data storage device containing the additional documents that they had submitted in support of the application (see paragraph 14 above). They subsequently failed to reply to the Court's letter of 4 May 2022 asking them to provide a translation of those additional documents (see paragraph 15 above) and to the letter of 21 November 2022 asking them to state whether they intended to pursue the present application (see paragraphs 16-17 above).

22. In this connection the Court points out that it continues to use the electronic secured Government website as the means of communication with the authorities of the Russian Federation (see the Practice Direction on secured electronic filing by Governments, issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 September 2008 and amended on 29 September 2014 and 5 July 2018), in order to respect the adversarial nature of the proceedings before it. The site remains secure and accessible to the authorities of the applicant State (see *Glukhin*, cited above, § 43).

II. APPLICATION OF ARTICLE 37 § 1 OF THE CONVENTION

23. Article 37 § 1 (a) of the Convention, in so far as relevant, provides:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application;

...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

Rule 44E of the Rules of Court, which deals with failure to pursue an application lodged with the Court provides:

“In accordance with Article 37 § 1 (a) of the Convention, if an applicant Contracting Party or an individual applicant fails to pursue the application, the Chamber may strike the application out of the Court’s list under Rule 43.”

24 It is to be noted that the word “*applicant*” in Article 37 § 1 (a) is not limited to the individuals or organisations entitled to lodge applications with the Court under Article 34 of the Convention; Rule 44E makes it clear that the Court may also strike out of its list inter-State applications brought under Article 33 of the Convention if the applicant Contracting Party fails to pursue the application.

25. In the light of the foregoing and having regard, in particular, to the Russian Government’s repeated failure to reply to the Court’s correspondence and to inform it whether they intend to pursue the application, the Court considers that the Russian Government should be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention and Rule 44E.

26. Moreover, for the reasons stated below, the Court finds no grounds relating to respect for human rights as defined in the Convention and the Protocols thereto which, in accordance with Article 37 § 1 *in fine*, would require it to continue the examination of the present application.

27. In this connection, the Court notes that the Russian Government’s declared purpose of bringing the present application was to obtain a ruling from the Court on the alleged violations of the Convention by Ukraine

obliging the Ukrainian authorities to “take general measures to eliminate the violations indicated in this application and other similar violations, and implement them under the supervision of the Committee of Ministers of the Council of Europe” (see paragraph 9 above). The Court observes that the events which unfolded in 2014 in various parts of Ukraine, including the Autonomous Republic of Crimea and the city of Sevastopol, as well as various parts of eastern Ukraine, have already given rise to some 8,500 pending individual applications which have been lodged under Article 34 of the Convention and which are directed against Ukraine, Russia or both States (see *Ukraine and the Netherlands v. Russia*, cited above, § 388). The complaints submitted in some applications overlap with those raised by the Russian Government in the present case (see, for instance, *Ioppa v. Ukraine and three other applications*, nos. 73776/14, 973/15, 4407/15 and 4412/15, concerning flight MH17, communicated on 5 July 2016). Moreover, the Court has already examined applications against Ukraine emanating from the Maidan protests (see *Lutsenko and Verbytskyy v. Ukraine*, nos. 12482/14 and 39800/14, 21 January 2021) and its examination of cases concerning alleged attacks or interferences directed at journalists and political figures is under way (see, *inter alia*, *Yanukovych v. Ukraine*, no. 50744/15, communicated on 11 October 2021).

28. Lastly, the Court notes that under Article 34 of the Convention, it is open to persons, non-governmental organisations or groups of individuals claiming to be victims of a violation by Ukraine of their rights set forth in the Convention or the Protocols thereto to bring individual applications against Ukraine, which remains a member State of the Council of Europe and a Contracting Party to the Convention.

29. In view of the above, the Court considers it appropriate to strike the application out of its list of cases, pursuant to Article 37 § 1 (a) of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 18 July 2023.

Renata Degener
Registrar

Marko Bošnjak
President