



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

DECISION OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (hereinafter: “the Court”), sitting in plenary sessions on 29 June and 6 July 2020 in accordance with Article 4 of Protocol No. 6 to the General Agreement on Privileges and Immunities of the Council of Europe;

HAVING REGARD to the request of the Prosecutor General’s Office of Ukraine of 3 March 2020 submitted through the Permanent Representation of Ukraine to the Council of Europe upon the request of the Ministry of Foreign Affairs of Ukraine to clarify and, if appropriate, waive the immunity which Mr Georgii Volodymyrovych Logvynskyi derives from the immunity of his spouse Judge Ganna Yudkivska, elected to the Court in respect of Ukraine (hereinafter: “the immunity”), in connection with a pre-trial criminal investigation conducted by the National Anti-Corruption Bureau of Ukraine No. 52017000000000361, registered in the Unified Registry of Pre-trial Investigations on 1 June 2017;

HAVING REGARD to the Registrar’s letters of 15 October 2019 and 12 March 2020 clarifying for the benefit of the Ukrainian authorities the position with regard to the immunity of Mr Logvynskyi;

HAVING REGARD to the submissions of the Prosecutor General’s Office of Ukraine transmitted through the Permanent Representation of Ukraine to the Council of Europe;

HAVING REGARD to the submissions of Judge Yudkivska, and to other submissions made on behalf of Mr Logvynskyi, opposing the waiver of his immunity;

CONSIDERING Article 51 of the European Convention on Human Rights, Article 40 of the Statute of the Council of Europe, and Articles 1 and 4 of Protocol No. 6 to the General Agreement on Privileges and Immunities of the Council of Europe;

CONSIDERING that the immunity under Article 1 of Protocol No. 6 to the General Agreement on Privileges and Immunities of the Council of Europe applies to Judges and their spouses, and that under Article 4 of that Protocol the plenary Court has not only the right, but is under a duty, to waive the immunity in any case where the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded;

CONSIDERING that the immunity is accorded not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of Judges’ functions;

CONSIDERING that the concepts of “sending” and “receiving” State in the Vienna Convention on Diplomatic Relations, 18 April 1961, do not apply to relations between the Court and one of the High Contracting Parties to the European Convention on Human Rights, and that therefore there is no exclusion of immunity on the basis that the requesting State is the High Contracting Party in respect of which the concerned Judge has been elected;

CONSIDERING that the immunity of serving Judges' spouses exists irrespective of whether or not their acts are associated with the performance of Judges' functions;

CONSIDERING that the immunity of Judges and their spouses covers the opening of a criminal procedure against one or both of them and the undertaking of any investigative or coercive measures targeting them or questioning them as a witness;

CONSIDERING the need to safeguard the integrity of the waiver procedure, and thus the respect for the independence and authority of the Court;

CONSIDERING that certain investigative measures – in particular covert surveillance – conducted by the National Anti-Corruption Bureau of Ukraine also extended in practice to Mr Logvynskyi, and that such investigative measures with the clear intention of collecting evidence directly related to Mr Logvynskyi amounted to carrying out a criminal investigation concerning him;

CONSIDERING that there is evidence suggesting that when conducting the investigative measures targeting Mr Logvynskyi the National Anti-Corruption Bureau of Ukraine resorted to pressuring witnesses;

CONSIDERING that the above-mentioned actions of the National Anti-Corruption Bureau of Ukraine to obtain evidence to be used against Mr Logvynskyi are incompatible with his immunity under Article 1 of Protocol No. 6 to the General Agreement on Privileges and Immunities of the Council of Europe, and as such run counter to the purpose and meaning of immunity and risk undermining the integrity of the waiver procedure before the Court;

CONSIDERING also that it has not been shown that there are sufficient guarantees concerning the use of evidence obtained by the violation of Mr Logvynskyi's immunity in the domestic criminal proceedings;

CONSIDERING in view of the above that there is no need to make any finding as to the substance of the allegations made at national level;

DECIDES

To dismiss the request for the waiver of immunity which Mr Georgii Volodymyrovych Logvynskyi derives from the immunity of his spouse Judge Ganna Yudkivska, elected to the Court in respect of Ukraine.

Done in Strasbourg, on 6 July 2020

Roderick Liddell
Registrar

Robert Spano
President