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

FIFTH SECTION

DECISION

Application no. 50824/21
Oleg Yuriyovych MAKOVETSKYY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 19 May 2022 as a Committee composed of:

Stéphanie Mourou-Vikström, President,
Lətif Hüseynov,
Kateřina Šimáčková, judges,

and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 September 2021

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the question of whether administrative-offence proceedings concerning the refusal by the applicant to wear a face mask (part of the measures to control the spread of the SARS-CoV-2 virus causing the COVID-19 disease) were in breach of the applicant's rights under Articles 6 and 7 of the Convention.

2. On 30 December 2020 the applicant entered a supermarket without wearing a face mask and refused a security guard's request to put one on. The supermarket staff called the police. A police officer drew up an administrative-offence report by which the applicant was found guilty of an offence under Article 44-3 § 2 of the Code of Administrative Offences, which provides for fines from 170 Ukrainian hryvnias (UAH) to UAH 250 for not wearing a face mask in public buildings and on public transport during quarantine. A fine of UAH 170 (about 4.90 euros at the time) was imposed.

3. In his subsequent appeal to a court, the applicant did not contest the fact of his refusal to wear a face mask, but rather the legitimacy and necessity of the pandemic-control measures, notably mask-wearing, imposed by the authorities.

4. The requirement to wear a face mask in public buildings and on public transport was established by Resolution of the Cabinet of Ministers no. 1236 of 9 December 2020, as part of the measures to control the COVID-19 pandemic.

5. On 1 March 2020 the Suvorovskyi Local Court of Odessa dismissed the applicant's appeal and upheld the fine imposed. The court ruled that the relevant legislation establishing the pandemic-control measures and liability for non-compliance with the requirement to wear a face mask had been in force at the material time and that, therefore, the police officer's actions had been lawful.

THE COURT'S ASSESSMENT

6. The Court notes at the outset the very modest amount of the fine imposed on the applicant. The Court has held, however, that a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting a pecuniary interest (see, for example, *Burov v. Moldova* (dec.), no. 38875/03, § 30, 14 June 2011). Bearing in mind also the fact that at the material time, the applicant was registered as unemployed, and given its conclusions below in respect of the other aspects of his complaints, the Court is prepared to proceed on the assumption that the applicant might have suffered a significant disadvantage as a result of the alleged violations of the Convention.

7. The Court reiterates that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance in respect of decisions of the domestic courts. According to the Court's case-law, the domestic courts are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, most recently, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 89, 17 October 2019).

In the instant case, the Court notes that there is nothing in the case file which could lead it to conclude that the domestic courts acted in an arbitrary or unreasonable manner in assessing the evidence, establishing the facts or interpreting the domestic law. The Court further notes that the applicant, who was present at the first-instance court hearing, essentially argued that the imposition of pandemic-control measures, including the requirement to wear a face mask and the consequent actions of the police in fining him, had been unlawful. The domestic courts duly examined the applicant's arguments, established that he had committed an administrative offence punishable under the legislation in force and found against him.

8. There is accordingly no indication that the applicant was prevented in any way from making his case or that the findings of the domestic courts were arbitrary or manifestly unreasonable.

9. As to the applicant's argument that the police officer imposing the fine had not been "a tribunal established by law", the Court reiterates its settled

case-law according to which, even where an administrative body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1" (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 132, 6 November 2018).

10. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

11. The applicant also complained that his conviction had been in breach of Article 7 of the Convention. The Court notes that the kind of offence for which the applicant was held liable could be punished only by a fine of a negligible amount. The fine at issue could not be converted into deprivation of liberty in the event of non-payment. It follows that the proceedings in question did not involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention and that this provision accordingly did not apply to those proceedings under its criminal limb. In these circumstances, and for reasons of consistency in the interpretation of the Convention and the Protocols thereto taken as a whole, Article 7 of the Convention cannot be regarded as being applicable either (see, *mutatis mutandis*, *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, §§ 112-13, 22 December 2020).

12. The Court therefore finds that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto, and must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 September 2022.

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President