



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

FIFTH SECTION

CASE OF FLY SERVICE, PP v. UKRAINE

(Application no. 73173/17)

JUDGMENT

STRASBOURG

8 October 2026

This judgment is final but it may be subject to editorial revision.

In the case of Fly Service, PP v. Ukraine,

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

María Elósegui, *President*,

Diana Sârcu,

Sébastien Biancheri, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 73173/17) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 27 September 2017 by a Ukrainian company, Company Fly Service, PP (“the applicant company”), which was represented by Mr O. Kazarnovskyy, a lawyer practising in Odesa;

the decision to give notice of the application to the Ukrainian Government (“the Government”), represented by their Agent, Ms M. Sokorenko;

the parties’ observations;

Having deliberated in private on 8 October 2026,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged insufficiency of the compensation awarded to the applicant company for the seizure and subsequent sale of its aircraft, as well as the length of the relevant domestic proceedings.

I. BACKGROUND FACTS

2. In February 1996 a Ukrainian limited liability company, the F. company, purchased a passenger TU-154B2 aircraft manufactured in 1982 (“the aircraft”) for 725,000 United States dollars (USD). Mr R. was at that time co-owner and vice-president of the F. company.

3. On 6 March 1998, by way of a series of contributions in kind, ownership of the aircraft was first transferred from the F. company to R., and then from R. to the applicant company, which at that time operated as a joint-stock company in which R. owned 50 per cent of the shares. In January 1999 R. became the sole shareholder of the applicant company and reorganised it into a private company. The aircraft’s book value was recorded as 1,150,810 Ukrainian hryvnias (UAH), equivalent to approximately USD 567,000.

4. Despite the above transfers of title, the aircraft remained in continuous operational use by the T. company, a Ukrainian commercial air carrier, which had leased it first from the F. company and then from the applicant company. According to documents submitted by the Government (namely, records of

questioning carried out within the criminal proceedings in respect of R. – see paragraph 6 below), at the time of the above transactions R. was also co-owner and vice-president of the T. company; it was also planned to merge the applicant company and the T. company into one legal entity. The applicant company did not provide comments in this regard.

II. SEIZURE AND SALE OF THE AIRCRAFT

5. In July 1999, following an audit of the F. company, the tax authorities informed R. that he had failed to declare taxable income in relation to his acquisition of the aircraft in March 1998. They ordered R. to pay UAH 457,386.3 (approximately 157,000 euros (EUR) at the relevant time) in personal income tax and imposed a penalty on him amounting to 200 per cent of that sum.

6. The tax authorities' findings gave rise to two sets of parallel proceedings: criminal proceedings against R. on suspicion of tax evasion, and civil proceedings between R. and the tax authorities over the lawfulness of the tax assessment and the recovery of the impugned amounts.

7. On 12 January 2000, for the purpose of recovering R.'s alleged debt to the State, the tax authorities seized the aircraft and authorised its public sale by the N. company, a Ukrainian limited liability company. After a series of reassessments of the aircraft's market value, on 13 July 2000 the N. company sold it to the T. company for UAH 380,502 (approximately EUR 74,000 at the relevant time).

8. On 16 November 2000 the T. company sold the aircraft to FKZS, a company registered in Cyprus, for USD 75,000. In August 2001 the aircraft left the territory of Ukraine.

III. TECHNICAL CONDITION OF THE AIRCRAFT AND THE DISPUTE BETWEEN THE APPLICANT COMPANY AND THE T. COMPANY

9. As of 3 March 1999, the date of the latest available technical assessment carried out by the applicant company's representatives, the aircraft had accumulated more than 18,000 flight hours, and both its approved service life and airworthiness certificate had expired. The engines and an auxiliary power unit had been prepared for conservation; its passenger cabin required repair; and there was also evidence of fuel leakage. It appears that in December 1999 the aircraft's airworthiness certificate was extended until January 2002.

10. During the aircraft's seizure (see paragraph 7 above), representatives of the tax authorities noted that it was fully equipped. However, 25 of its components, including one engine, belonged to another company and had been installed under a return-and-exchange scheme.

11. In August 2000 the applicant company initiated separate commercial proceedings against the T. company, seeking the annulment of the agreement by which the latter had acquired the aircraft from the N. company (see paragraph 7 above). In the course of those proceedings, the applicant company submitted to the domestic court information indicating that as of June 2013 the T. company was owned by two individuals, N. and D. It appears that at that time R. no longer held any ownership interest in it (compare paragraph 4 above).

12. On 28 August 2013 a commercial court declared the agreement between the N. company and the T. company void, finding that the N. company had not been legally entitled to sell the aircraft.

IV. COMPENSATION PROCEEDINGS

13. In February 2008 the applicant company, acting as a third party within the ongoing proceedings between R. and the tax authorities (see paragraph 6 above), lodged a claim against the tax authorities and the State Treasury. Arguing that the seizure of its aircraft had been unlawful, the applicant company sought compensation of more than UAH 8,000,000 (approximately EUR 1,069,000 at the relevant time) in respect of pecuniary damage. In support of its claim, the applicant company relied on a valuation report prepared in 2004 by a private certified expert.

14. In that report, the expert noted that, as he had been unable to physically access the aircraft, he had had to determine its value on the basis of the cost approach (that is, by calculating the cost of replacing the aircraft and adjusting that figure for depreciation), taking into account the price of similar new aircraft in 1997 (USD 15 million). The expert also stated that he had not examined any market data concerning transactions involving comparable aircraft, as such information was reportedly not available. The aircraft's value was estimated as an aggregate value of the airframe, all its equipment and its engines.

15. On 9 September 2011 the Odesa Circuit Administrative Court allowed the applicant company's claim in part. The court found, in particular, that the aircraft's transfer to R. had indeed given rise to taxable income which should have been properly declared. However, at the time of the seizure, the aircraft had already belonged to the applicant company, which could not be held liable for R.'s tax obligations. On the basis of those and other findings, the domestic court declared the tax authorities' seizure of the aircraft, the subsequent reassessments of its market value, and its sale to the T. company unlawful.

16. As to the amount of pecuniary damage, the domestic court held that the applicant company was entitled to recover the value of the seized aircraft, but declined to accept the value produced by the expert. Instead, it awarded UAH 380,502 (approximately EUR 34,000 at the relevant time), representing

the amount received by the State from the sale of the aircraft to the T. company in 2000 (see paragraph 7 above). In dismissing the expert's report, the domestic court noted, *inter alia*, that it had been prepared without a physical inspection of the aircraft or its equipment. That decision was upheld by the Odesa Administrative Court of Appeal on 14 March 2013.

17. The tax authorities, the State Treasury and the applicant company appealed on points of law to the Higher Administrative Court of Ukraine ("the HACU"). On 17 May 2013, following a request by the State Treasury, the HACU stayed the enforcement of the first-instance court's decision pending the outcome of the cassation proceedings.

18. On 22 May 2017 the HACU dismissed all appeals on points of law and upheld the lower courts' decisions. Endorsing their findings regarding the unreliability of the expert's report, the HACU held that in the absence of any other evidence of the aircraft's value, the price paid for it by the T. company remained the only available indication of its market value.

19. In February 2018 the applicant company submitted a writ of execution to the State Treasury. In October 2018 the above award of compensation was enforced.

20. In November 2023 the domestic courts awarded the applicant company UAH 62,782.23 (approximately EUR 2,200) in statutory interest at 3% per annum for the delay in enforcing the above award and UAH 11,060.71 (approximately EUR 287) in compensation for associated inflation-related losses.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

21. The applicant company complained that the seizure and subsequent sale of its aircraft had been unlawful and that the compensation awarded by the domestic courts for the interference with its property rights had been insufficient.

A. The parties' submissions

22. The Government raised two preliminary objections. They argued that the applicant company had failed to exhaust domestic remedies by not challenging the HACU's decision (see paragraph 17 above) before the Supreme Court. They further submitted that the domestic courts' acknowledgment of the violation and the award of compensation had constituted sufficient redress, depriving the applicant company of victim status under Article 34 of the Convention. On the merits, the Government acknowledged the violation of the applicant company's property rights but

maintained that the domestic courts had properly examined the available evidence and given adequate reasons for rejecting the valuation report.

23. The applicant company submitted that the review procedure before the Supreme Court did not constitute an effective remedy within the meaning of Article 35 § 1 of the Convention and it was not required to use it. It further maintained that the compensation awarded had been much lower than the market value of the aircraft, as confirmed by the 2004 expert report.

B. The Court's assessment

24. The Court does not consider it necessary to decide on the Government's preliminary objections, since the applicant company's complaint is in any event inadmissible for the reasons set out below.

25. Reviewing the facts of the present case in the light of the general principles established in its case-law (see, in particular, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 95-99, 25 October 2012, and *East West Alliance Limited v. Ukraine*, no. 19336/04, §§ 166-68 and 255-57, 23 January 2014), the Court observes that the domestic courts already established that the applicant company's aircraft had been seized and sold unlawfully (see paragraph 15 above), thus acknowledging an interference with its property rights. They also awarded the applicant company compensation. Accordingly, the only issue remaining to be examined by the Court is whether that compensation corresponded to the value of the aircraft at the time of the interference (see *East West Alliance Limited*, cited above, § 257).

26. The Court reiterates that it is not its task to take the place of the domestic courts, which are better placed to resolve such technical issues as the evaluation of facts and the assessment of appropriate compensation. In principle, the Court will not intervene unless the decisions reached by the domestic courts in this regard appear arbitrary or manifestly unreasonable (see, for example, *Malliakou and Others v. Greece*, no. 78005/11, § 65, 8 November 2018). This is all the more so in cases such as the present one, which essentially turned on the correct retrospective estimation of the value of an ageing passenger aircraft with significant time in service and technical defects (see paragraph 9 above).

27. The Court further observes that the applicant company argued throughout the domestic and present proceedings that the compensation ought to have been determined on the basis of the valuation report prepared by the private expert in 2004. The national courts at three levels of jurisdiction examined that report and rejected it as unreliable, finding that it did not reflect the *de facto* condition of the aircraft (see paragraphs 16 and 18 above). The Court finds nothing arbitrary or manifestly unreasonable in that assessment.

28. In this connection, the Court observes that the method used in the valuation report essentially sought to establish the hypothetical cost of

reproducing the aircraft, and not to establish its actual value. It did not take into account any comparable transactions involving similar aircraft. This method also appears to have disregarded the aircraft's actual condition at the time of the seizure, including the fact that its airworthiness certificate was nearing expiry, that it had multiple technical defects, and that 25 of its components, including one engine, belonged to a third party (see paragraphs 9-10 above).

29. In these circumstances, the Court accepts that the domestic courts' decision to determine the amount of compensation on the basis of the price actually paid for the aircraft by the T. company was not without a reasonable foundation. Although that price had been obtained following reassessments that, according to the domestic courts, had been carried out without a proper legal basis, the applicant company did not provide any reliable evidence, beyond the above-mentioned valuation report, suggesting that the amount awarded by the domestic courts had been significantly lower than its value at the time of the interference (see *Kostov and Others v. Bulgaria*, nos. 66581/12 and 25054/15, §§ 81-87 and 91, 14 May 2020). The applicant company did not explain why, in particular, it had not requested the domestic courts to order a fresh valuation or why it had not commissioned a new valuation on its own.

30. Furthermore, the Court cannot but note that the legal entities involved in the series of transactions concerning the aircraft – namely the F. company (the initial owner of the aircraft), the T. company (which continuously leased the aircraft and eventually purchased it at the public sale), and the applicant company – were all historically affiliated with each other through R., who used to hold senior positions and ownership interests in each of them. It also notes the plans to merge the applicant company with the T. company (see paragraphs 2-4 above).

31. In the absence of any explanations by the applicant company concerning those material facts – in particular, the links between R. and the T. company – the Court is not in a position to assess whether, at the time of the interference, R. retained any direct or indirect influence over that company, or, if he had already withdrawn from it by that time, on what terms his withdrawal had taken place. All those facts are directly relevant for assessing the admissibility of the applicant company's complaint.

32. The Court reiterates that the proceedings before it are adversarial in nature. It is therefore for the parties to substantiate their factual arguments by providing the Court with the necessary evidence (see, for example, *Dzhioyeva and Others v. Georgia* (dec.), nos. 24964/09 and 2 others, § 28, 20 November 2018). It is noted in this context that under Rule 44C § 1 of the Rules of Court, where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such

inferences as it deems appropriate (see, *mutatis mutandis*, *Lisnyy v. Ukraine and Russia*, nos. 5355/15, 44913/15 and 50852/15, 5 July 2016).

33. In light of the above, the Court concludes that the applicant company has failed to substantiate its complaint under Article 1 of Protocol No. 1 to the Convention. It must therefore be rejected as manifestly ill-founded in accordance with Article 35 § 3(a) and 4 of the Convention.

II. OTHER COMPLAINTS UNDER WELL-ESTABLISHED CASE-LAW

34. The applicant company also complained under Article 6 § 1 and Article 13 of the Convention about the length of the domestic compensation proceedings, which had concluded in May 2017 (see paragraph 18 above) and the lack of effective domestic remedies in that regard. These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. Accordingly, they must be declared admissible.

35. The proceedings in question (see paragraphs 13-18 above) lasted for more than nine years at three levels of jurisdiction. Having regard to its well-established case-law (see, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Karnaushenko v. Ukraine*, no. 23853/02, 30 November 2006), the Court concludes that the applicant company's complaints under this head disclose violations of Article 6 § 1 and Article 13 of the Convention.

III. REMAINING COMPLAINTS

36. The applicant company also raised other complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Court has examined that part of the application and 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.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. In respect of pecuniary damage, the applicant company claimed the value of the seized aircraft, as calculated in the valuation report (see paragraph 9 above), minus the amount of compensation obtained at the domestic level (that is, 1,453,528 euros (EUR)), as well as EUR 27,754,700 in lost profit, the aircraft's salvage value and interest. In respect of

non-pecuniary damage, the applicant company claimed EUR 30,621,928.00. As to costs and expenses, it claimed EUR 4,100 that it had paid for the valuation report and EUR 1,350 for the court fees in the domestic proceedings related to the compensation of the alleged inflation-related losses (see paragraph 20 above).

39. The Government contested those claims, considering them unfounded and exaggerated.

40. The Court does not discern a causal link between the violation found and the pecuniary damage alleged, nor with the costs and expenses claimed; it therefore rejects these claims. However, it awards the applicant company EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 § 1 and Article 13 of the Convention concerning the length of the compensation proceedings and the lack of effective remedies in that regard admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 and Article 13 of the Convention as regards the length of the compensation proceedings and the lack of effective remedies in that regard;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months, EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

FLY SERVICE, PP v. UKRAINE JUDGMENT

Done in English, and notified in writing on 8 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

María Elósegui
President