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

FIFTH SECTION

Application no. 48408/12
Veniamin Vyacheslavovych TYMOSHENKO and others
against Ukraine
lodged on 17 July 2012

STATEMENT OF FACTS

The applicants (whose list is set out in the appendix) are Ukrainian nationals. They are employed by the CJSC "AEROSVIT Airlines" as aircraft cabin crew. The first applicant is the head and the other applicants are members of the company's trade union.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

On 16 February 2011 the National Mediation and Reconciliation Service ("the NMRS") registered a collective labour dispute between the employees and the administration of the "AEROSVIT Airlines". The employees' requirements concerned, in particular, the following issues:

- the repairs of the aircraft electric catering and air-conditioning equipment;
- enhancing safety of on-flight technological processes;
- salary payment no later than three days before a period of leave;
- complete and timely salary payment twice per month;
- increase of wages by 3% and their recalculation for 2009 and 2010;
- salary payment on the basis of the exchange rate of the US dollar and the Ukrainian hryvnia as established by the National Bank of Ukraine, with the salary recalculation starting from 2008;
- recalculation of the long-service bonuses;
- ensuring transportation of the aircraft cabin crew to and from the airport;
- establishing at USD 50 *per diem* for all foreign flights;
- uniform cleaning and ironing at the employer's expense;

- allocation of at least 0.3% of the salary budget for cultural and sport events;
- granting the employees a bonus of 3.23% from the 2008 profits; and
- inflation adjustment of the salary following its delayed payment, starting from December 2008.

On 16 March and 12 April 2011 the NMRS deregistered some of the employees' requirements as resolved, with reference to decisions of the reconciliation commissions of 28 February, 10 and 30 March 2011 (not presently in the case file).

On 27 May 2011 the NMRS Labour Arbitration Court delivered its decision on the employees' remaining requirements, following a hearing with the participation of representatives of both parties. It recognised most of the requirements as legitimate and directed the employer to comply with them.

As this did not happen, the "AEROSVIT Airlines" aircraft cabin crew, including the applicants, decided to resort to a strike.

On 9 September 2011 the general meeting of the "AEROSVIT Airlines" employees announced a strike of 150 aircraft cabin crew members (scheduled for 28 September 2011) seeking resolution of the labour dispute. It specified that during the strike all foreign flights started prior to its beginning would be completed. The meeting appointed a strike committee and vested it with the necessary representative and organisational powers.

By 12 September 2011 the strike committee notified the following authorities about the decision to hold a strike: the employer, the National Mediation and Reconciliation Service, the Infrastructure Ministry, the State Aviation Administration, the Social Policy Ministry, the State Labour Inspection, the Parliament's Ombudsman, as well as a number of other institutions and organisations.

On 28 September 2011 the administration of the "AEROSVIT Airlines" instituted judicial proceedings against the strike committee to have the strike declared unlawful.

On 29 September 2011 the Boryspil City Court ("the Boryspil Court") prohibited the strike committee to hold the strike as an interim measure pending the adjudication of the employer's claim.

On 6 October 2011 the Boryspil Court found the strike unlawful and banned it. The court relied on Section 18 of the Transportation Act prohibiting strikes at transport enterprises if they affect passenger carriages. It noted that the "AEROSVIT Airlines" was an important passenger carrier with over eighty international flights in thirty-three counties. Furthermore, given that one of the major tasks of the aircraft cabin crew was ensuring the safety of passengers, the court considered applicable Section 24 of the Resolution of Labour Disputes Act prohibiting strikes if they would endanger human life or health. It also made a general reference to Article 44 of the Constitution.

The applicants, together with other trade union members, appealed.

On 22 November and 19 December 2011 the Kyiv Regional Court of Appeal and the Higher Specialised Court for Civil and Criminal Matters, respectively, upheld the judgment of 6 October 2011.

On 20 January 2012 the final ruling of the Specialised Court was served on the applicants.

B. Relevant domestic law and practice

1. Constitution of Ukraine (1996)

Article 44.

"Employees have the right to strike in order to protect their economic and social interests.

The procedure for exercising the right to strike shall be established by law, taking into account the need to ensure national security, the protection of health, and the rights and freedoms of other persons.

No one shall be forced to participate or to not participate in a strike.

A strike may only be prohibited on the basis of law."

2. Transport Act (1994)

Section 18. Strikes at transport enterprises.

"Cessation of work (strike) at transport enterprises may take place if the enterprise administration fails to comply with tariff agreements, except in cases where transportation of passengers or servicing continuous flow production are concerned, as well as where a strike endangers human life or health."

3. Resolution of Labour Disputes (Conflicts) Act (1998)

Section 3. Parties to a collective labour dispute

"Parties to a collective labour dispute are:

at an occupational level – employees (certain categories of employees) ... or a trade union, or another organisation authorised by employees [to represent their interests] and the owner of an enterprise ... or [the employer's] representative. ...

A body authorised by employees to represent [their interests] shall be the only authorised representative of employees during the time such a dispute exists. ..."

Section 17. Strike

"A strike is a temporary, collective and voluntary cessation of work by employees (non-appearance at work, breach of labour duties) ... with the aim of resolution of a collective labour dispute.

Striking shall be an extreme means of resolution of a collective labour dispute (when all other possibilities [of such resolution] have been exhausted) if [the employer] refuses to allow the claims of employees or of a body authorised by them, or of a trade union, or of an association of trade unions or of a body authorised by them."

Section 18. The right to strike

"Pursuant to Article 44 of the Constitution of Ukraine employees have the right to strike in order to protect their economic and social interests.

The procedure for exercising the right to strike is established by this Act.

A strike may be commenced if conciliatory procedures have not led to the settlement of a collective labour dispute or if [the employer] avoids conciliatory procedures or does not comply with an agreement reached in the course of the resolution of a collective labour dispute. ..."

Section 24. Cases in which it is prohibited to strike

"Striking shall be prohibited if the cessation of work by employees endangers human life or health or the environment, or if it hinders prevention of a natural disaster, an accident, a catastrophe, an epidemic or an epizootic, or impedes rectification of their consequences.

Employees (with the exception of technical and maintenance personnel) of prosecution authorities, courts, military forces, state authorities, security and law-enforcement bodies shall be banned from striking. ...

PART V. FINAL PROVISIONS.

...

3. Until other laws and bylaws are brought into compliance with this Act, they shall apply so far as they do not contradict it.

4. The Cabinet of Ministers of Ukraine shall submit proposals for bringing other laws and bylaws in compliance with this Act within three months. ..."

C. Relevant international law and practice

1. International Covenant on Economic, Social and Cultural Rights (1966)

Article 8 § 1 of the Covenant reads as follows:

"1. The States Parties to the present Convention undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organisations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country."

2. ILO principles concerning the right to strike

The pertinent principles of the International Labour Organisation (ILO) are summarised in its publication *"ILO Principles Concerning the Right to Strike"*, first published in the International Labour Review, Vol. 137 (1998), No. 4, with further edition in 2000. The relevant extracts read as follows:

Introduction.

"... Two resolutions of the International Labour Conference itself – which provide guidelines for ILO policy – in one way or another emphasized recognition of the right to strike in member States. The "Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation", adopted in 1957, called for the adoption of "laws ... ensuring the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers " (ILO, 1957, p. 783). Similarly, the "Resolution concerning Trade Union Rights and Their Relation to Civil Liberties", adopted in 1970, invited the Governing Body to instruct the Director-General to take action in a number of ways "with a view to considering further action to ensure full and universal respect for trade union rights in their broadest sense", with particular attention to be paid, inter alia, to the "right to strike" (ILO, 1970, pp. 735-736). The right to strike has also been affirmed in various resolutions of the ILO's regional conferences and industrial committees, as well as by other international bodies (see *Hodges-Aeberhard and Odero*, 1987, pp. 543 and 545). ...

1. General issues.

The basic principle of the right to strike.

"From its very earliest days, during its second meeting, in 1952, the Committee on Freedom of Association declared strike action to be a right and laid down the basic principle underlying this right, from which all others to some extent derive, and which recognizes the right to strike to be one of the principal means by which workers and their associations may legitimately promote and defend their economic and social interests (ILO, 1996d, paras. 473-475). Over the years, in line with this principle, the Committee on Freedom of Association has recognized that strike action is a right and not simply a social act, and has also:

1. made it clear it is a right which workers and their organizations (trade unions, federations and confederations) are entitled to enjoy ...;

2. reduced the number of categories of workers who may be deprived of this right, as well as the legal restrictions on its exercise, which should not be excessive;

3. linked the exercise of the right to strike to the objective of promoting and defending the economic and social interests of workers ...;

4. stated that the legitimate exercise of the right to strike should not entail prejudicial penalties of any sort, which would imply acts of anti-union discrimination.

These views expressed by the Committee on Freedom of Association coincide in substance with those of the Committee of Experts. ...

3. Workers who enjoy the right to strike and those who are excluded.

It should be noted, first and foremost, that Article 9 of Convention No. 87 states that "the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations" (ILO, 1996a, p. 528). As a result, the Committee on Freedom of Association has refused to find an objection to legislations which deny the right to strike to such groups of workers.

Since the Committee on Freedom of Association first laid down its earliest principles on the subject of strikes, and given that strike action is one of the fundamental means for rendering effective the right of workers' organizations "to organize their ... activities" (Article 3 of Convention No. 87), the Committee has chosen to recognize a general right to strike, with the sole possible exceptions being those which may be imposed for public servants and workers in essential services in the strict sense of the term. Obviously, the Committee on Freedom of Association also accepts the prohibition of strikes in the event of an acute national emergency (ILO, 1996d, para. 527). ...

Essential services in the strict sense of the term

Over time, the supervisory bodies of the ILO have brought greater precision to the concept of essential services in the strict sense of the term (for which strike action may be prohibited). In 1983, the Committee of Experts defined such services as those "the interruption of which would endanger the life, personal safety or health of the whole or part of the population" (ILO, 1983b, para. 214). This definition was adopted by the Committee on Freedom of Association shortly afterwards.

Clearly, what is meant by essential services in the strict sense of the term "depends to a large extent on the particular circumstances prevailing in a country"; likewise, there can be no doubt that "a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population" (ILO, 1996d, para. 541). The Committee on Freedom of Association has none the less given its opinion in a general manner on the essential or non-essential nature of a series of specific services.

Thus, the Committee has considered to be essential services in the strict sense, where the right to strike may be subject to major restrictions or even prohibitions, to be: the hospital sector; electricity services; water supply services; the telephone service; air traffic control (ibid., para. 544).

In contrast, the Committee has considered that, in general the following do not constitute essential services in the strict sense of the term, and therefore the prohibition to strike does not pertain (ibid., para 545):

• radio and television; • the petroleum sector; • ports (loading and unloading); • banking; • computer services for the collection of excise duties and taxes; • department stores; • pleasure parks; • the metal sector; • the mining sector; • transport generally; • refrigeration enterprises; • hotel services; • construction; • automobile manufacturing; • aircraft repairs; • agricultural activities; • the supply and distribution of foodstuffs; • the Mint; • the government printing service; • the state alcohol, salt and tobacco monopolies; • the education sector; • metropolitan transport; • postal services.

These few examples do not represent an exhaustive list of essential services. The Committee has not mentioned more services because its opinion is dependent on the nature of the specific situations and on the context which it has to examine and

because complaints are rarely submitted regarding the prohibition of strikes in essential services.

Obviously, the Committee on Freedom of Association's list of non-essential services is not exhaustive.

Attention should in all events be drawn to the fact that, in examining a complaint which did not involve an essential service, the Committee maintained that the possible long-term serious consequences for the national economy of a strike did not justify its prohibition (ILO, 1984b, 234th Report, para. 190).

Furthermore, pursuant to its examination of particular national legislations, the Committee on Freedom of Association has recommended that amendments should be introduced in order to prohibit only strikes in the essential services in the strict sense of the term, particularly when the authorities have held discretionary powers to extend the list of essential services (ILO, 1984a, 233rd Report, paras. 668 and 669).

The Committee of Experts, for its part, has stated the following:

"Numerous countries have provisions prohibiting or limiting strikes in essential services, a concept which varies from one national legislation to another. They may range from merely a relatively short limitative enumeration to a long list which is included in the law itself. Sometimes the law includes definitions, from the most restrictive to the most general kind, covering all activities which the government may consider appropriate to include or strikes which it deems detrimental to public order, the general interest or economic development. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

Furthermore, it is of the opinion that it would not be desirable – or even possible — to attempt to draw up a complete and fixed list of services which can be considered as essential.

While recalling the fundamental importance which it attaches to the universal nature of standards, the Committee considers that account must be taken of the special circumstances existing in the various member States, since the interruption of certain services which in some countries might at worst cause economic hardship could prove disastrous in other countries and rapidly lead to conditions which might endanger the life, personal safety and health of the population. A strike in the port or maritime transport services, for example, might more rapidly cause serious disruptions for an island which is heavily dependent on such services to provide basic supplies to its population than it would for a country on a continent. Furthermore, a non-essential service in the strict sense of the term may become essential if the strike affecting it exceeds a certain duration or extent so that the life, personal safety or health of the population are endangered (for example, in household refuse collection services). In order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility ("services d'utilité publique") rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (ILO, 1994a, paras. 159 and 160)."

Terminological clarification regarding the concept of essential service and minimum service

... it would be useful to clarify particular terminological points, since a full understanding of the supervisory bodies' principles regarding the so-called essential services may otherwise not be assured. In some countries, the concept of essential services is used in legislation to refer to services in which strikes are not prohibited but where a minimum operational service may be required; in other countries, the idea of essential services is used to justify substantial restrictions, and even prohibition of strike action. When formulating their principles, the ILO supervisory bodies define the expression "essential services" in the latter sense. They also employ an intermediate concept, between essential services (where strikes may be prohibited) and nonessential services (where they may not be prohibited), which is that of services of "fundamental importance" (Committee on Freedom of Association terminology) or of "public utility" (Committee of Experts terminology), where the ILO supervisory bodies consider that strikes may not be banned but a system of minimum service may be imposed for the operation of the undertaking or institution in question. In this regard, the Committee of Experts has stated that, because of the diversity of terms used in national legislation and texts on the subject, some confusion has sometimes arisen between the concepts of minimum service and essential services; they must therefore be defined very clearly.

When the Committee of Experts uses the expression "essential services" it refers only to essential services in the strict sense of the term (i.e. those the interruption of which would endanger the life, personal safety or health of the whole or part of the population), in which restrictions or even a prohibition may be justified, accompanied, however, by compensatory guarantees. Nevertheless, a "minimum service" "would be appropriate in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met and that facilities operate safely or without interruption" (ibid., para. 162). Specifically, the Committee considers this type of minimum service might be established in services of public utility (ibid., para. 179). Indeed, "nothing prevents authorities, if they consider that such a solution is more appropriate to national conditions, from establishing only a minimum service in sectors considered as 'essential' by the supervisory bodies according to the criteria set forth above, which justify wider restrictions to or even a prohibition of strikes" (ibid., para. 162). ..."

3. European Social Charter (revised)

Article 6 – The right to bargain collectively

"With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1. to promote joint consultation between workers and employers;

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Article 31 – Restrictions

"The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed."

Appendix to the Social Charter.

"Article 6, paragraph 4

It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31."

4. European Committee of Social Rights' Conclusions in respect of Ukraine, December 2010

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

"The Committee* takes note of the information contained in the report submitted by Ukraine.

Article 44 of the Constitution guarantees workers the right to strike to protect their economic and social interests.

In addition Section 27 of the Law on Trade Unions guarantees the right of trade unions to, inter alia, organise and stage strikes in order to protect workers labour and socioeconomic rights. The Law on the Procedure of settlement of collective disputes contains provisions on the right to strike, including the procedure to be followed prior to exercising the right to strike etc. ...

Specific restrictions to the right to strike

Under Article 6 § 4 the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

* The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter.

Restrictions related to essential service/sectors

The Committee notes that there are restrictions on the right to strike for workers in the emergency and rescue services, workers at nuclear facilities, workers in underground undertakings as well as workers at electric power engineering enterprises. The Committee recalls that restricting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, is not deemed proportionate to the specific requirements of each sector, but providing for the conformity with Article 6 § 4.

Therefore the Committee asks for further information on the extent of the restrictions on the right to strike in these sectors, in particular as regards "underground undertakings".

In addition the Committee notes that according to the report strikes in the transport sector may be prohibited, *inter alia*, if the transportation of passengers is affected. The Committee seeks confirmation that this interpretation is correct, in this respect it refers above to its case law mentioned above. ..."

5. *Report of the PACE Committee on Economic Affairs and Development no. 10546 of 11 May 2005 "The right to strike in essential services: economic implications" – for debate in the Standing Committee*

"...

3. While there is consensus that the right to strike is an indispensable instrument for the exercise of workers' economic and social rights, there is an ongoing debate about the need to strike a balance between the protection of these rights and the need to guarantee essential public services in order to safeguard citizens and their well-being. ...

41. The concept of essential services is now unanimously recognised in Europe, but the term and others like it require some clarification. The Green Paper on services of general interest presented by the Commission of the European Communities in May 2003 gives a number of definitions. *Services of general interest* cover both market and non-market services which the public authorities class as being of general interest and which are subject to specific public-service obligations. The term *services of general economic interest* refers to services of an economic nature which EU countries or the Union have chosen to subject to specific public-service obligations by virtue of a general-interest criterion. The concept covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications. The term *public service* sometimes refers to the fact that a service is provided to the general public or that a particular role has been assigned to it in the general interest. It may also refer to the ownership or status of the entity providing the service. The term *public-service obligations* generally refers to specific requirements that the public authorities impose on the service provider in order to ensure that certain public-interest objectives are met – for instance, in the areas of air, rail, road transport and energy. ...

44. Generally speaking in Europe, services considered essential are transport, public broadcasting, water, gas and electricity supply, prison administration, the justice system, national security services, medical care and emergency services. ...

80. The exercise of the right to strike in essential public services in the Council of Europe member states countries is not only a legal question. With the enlargement of

the European Union and liberalisation of certain sectors, it is important to preserve what is a fundamental freedom, and at the same time guarantee real quality of life to every European citizen. Unions, employers and workers alike see strikes as a sign of failure. Only a few months ago (October 2004) a normally consensual country like the Netherlands was hit by a strike wave across the whole transport sector. It also involved for example firemen, over plans by the government to cut various social advantages in order to reduce the budget deficit. So the issue is highly topical and even urgent to consider from a European viewpoint. ..."

6. PACE Resolution 1442 (2005) "The right to strike in essential services: economic implications" adopted on 6 June 2005

"1. As Europe undergoes rapid political, economic, social and cultural integration – within the European Union and in the wider Council of Europe area – the vulnerability of each country to disruptions in others is becoming increasingly pronounced. This holds also for strike actions in essential services, whether in public or private ownership, such as in the transport sector (especially air transport), or in public health, at a time of intensified international contacts and labour mobility. The wide differences in national legislation and practices between European countries are, against this background, increasingly at variance with the overall state of European integration and prejudicial to it.

2. Of further concern is the lack of balance in many countries between, on the one hand, the right to strike, including in essential services, as enshrined in various treaties from the Council of Europe's revised European Social Charter (ETS No. 163) to the European Union's Charter of Fundamental Rights, and, on the other hand, the fundamental right of citizens to pursue their lives unhindered, preserve their health and well-being, and the right of society to function and to maintain its overall ability to function as well as protect the health and welfare of its citizens. In certain European countries, this balance is seriously tilted against citizens and society.

3. The Parliamentary Assembly, against this background, calls on the governments of the member states of the Council of Europe:

- to carry out studies on the cost of strikes in essential public services to the national economy, companies and citizens, both directly in the form of lost output and indirectly such as through impaired social relations and harm done to a country's international reputation, and to collate and compare the results at the level of the Council of Europe;

- to intensify research and the exchange of information on laws and regulations in force in diffeent Council of Europe member states as regards the right to strike in essential services or limitations thereto;

- to harmonise as far as possible national legislation governing strikes in essential services so that citizens throughout the Council of Europe area can be protected adequately and in a homogeneous manner;

- to make the fullest possible use toward this end of the provisions of the revised European Social Charter governing the right to strike and the protection of other social rights of citizens, including in the Charter's enforcement mechanism;

- to encourage similar efforts within the more limited membership of the European Union, via EU legislation capable of subsequently being applied, with the necessary adaptations, in the Council of Europe area as a whole."

7. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")

Article 8. Trade Union Rights

"1. The States Parties shall ensure:

a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;

b. The right to strike.

2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law. ..."

COMPLAINTS

The applicants complain that the prohibition for the "Aerosvit" aircraft cabin crew members to hold a strike has been in breach of their rights under Article 11 of the Convention.

QUESTIONS TO THE PARTIES

1. Did the ban on the "AEROSVIT Airlines" employees' strike constitute an interference with the applicants' freedom of association, within the meaning of Article 11 § 1 of the Convention?

2. Was that interference prescribed by law? Did the applicable legislation comply with the "quality of law" requirement? In particular, was it formulated with sufficient precision and clarity (see *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I)?

3. Was that interference necessary in a democratic society?

The parties are invited to submit to the Court copies of all the relevant documents, which are not yet in the case file, including but not limited to: decisions of the reconciliation commissions of 28 February, 10 and 30 March 2011; minutes and decisions of the conference of the

"AEROSVIT Airlines" employees of 9 September 2011; claims, appeals and cassation appeals lodged within the domestic judicial proceedings.

APPENDIX

1) Veniamin Vyacheslavovych TYMOSHENKO, born in 1975, lives in Kyiv;
2) Andriy Mykolayovych BORODIN, born in 1973, lives in Boryspil;
3) Olga Valeriyivna IVANOVA, born in 1971, lives in Kyiv;
4) Oleg Petrovych PUSHNYAK, born in 1972, lives in Kyiv;
5) Taras Oleksandrovych TOVSTYY, born in 1984, lives in Kyiv.