



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

FIFTH SECTION

CASE OF SUK v. UKRAINE

(Application no. 10972/05)

JUDGMENT

STRASBOURG

10 March 2011

FINAL

10/06/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Suk v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Isabelle Berro-Lefèvre,

Ann Power,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 10972/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Grygoriy Grygorovych Suk (“the applicant”), on 12 March 2005.

2. The applicant was represented by Mr M. Belym, a lawyer practising in the village of Shcherbani, Poltava region. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that the domestic authorities deprived him of his possessions in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 25 January 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in the city of Poltava.

6. In November 2001 the applicant instituted proceedings in the Poltava Kyivsky District Court against his former employer – the Poltava Regional

Fire Safety Department – claiming payment arrears of a monthly subsistence allowance for the years 1999 and 2000.

7. On 27 September 2002 the court found in part for the applicant and awarded him 767.04 Ukrainian hryvnias (UAH).

8. On 11 October 2002 the same court rectified its judgment of 27 September 2002 and increased the amount awarded to UAH 797.04.

9. On 15 April 2003 the Poltava Regional Court of Appeal quashed the decisions of 27 September and 11 October 2002 and rejected the applicant's claims. The appellate court based its findings on the fact that the Budget Act 2000 had not foreseen expenditure for the payments under the applicable Presidential Decree, and therefore held that the applicant had no entitlement to such payments during the impugned period under the Budgetary System Act.

10. On 15 September 2004 the Supreme Court of Ukraine rejected a cassation appeal lodged by the applicant against the decision of 15 April 2003.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

11. The relevant provision of the Constitution reads as follows:

Article 95

“The budgetary system of Ukraine is built on the principles of just and impartial distribution of social wealth among citizens and territorial communities.

All expenditure by the State for social purposes, and the amount and aims thereof, shall be determined by the State Budget Act of Ukraine.

The State aspires to achieve a balanced budget for Ukraine.

Regular reports on revenue and expenditure of the State Budget of Ukraine shall be made public.”

B. Budgetary System Act (in force at the material time)

12. Section 28 of the Act provides, in so far as relevant, as follows:

“... The State Budget Act of Ukraine shall not make ... changes to existing legislation. If necessary, changes or additions are made initially to the relevant laws ...

... If the draft State Budget Act of Ukraine does not provide full funding within available resources of the costs set forth in Ukrainian legislation, the Verkhovna Rada of Ukraine shall enact the State Budget Act of Ukraine without amending current

legislation. Such legislation is valid during the budget year only to the extent that it does not contradict the State Budget Act of Ukraine.

If the Verkhovna Rada has not approved the full costs of salaries and additional payments, the corresponding number of staff of the institutions financed from the budget shall be made redundant.”

C. Presidential Decree no. 926/96 of 4 October 1996 on conditions for the financial subsistence of soldiers and officers and remuneration of employees of the agencies of the Interior (in force at the material time)

13. The relevant part of the Decree reads as follows:

“In order to regulate the financial subsistence of soldiers and officers of the Interior, I decide:

2. To pay:

...

material assistance in the amount of a monthly salary [payable] once a year to soldiers and officers of the Interior ...”

14. The Decree was abolished by Presidential Decree no. 1234/2007 of 18 December 2007.

THE LAW

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

15. The applicant complained that the domestic authorities deprived him of his possessions. He relied on Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

16. The Government maintained that the applicant had never had a final and binding judgment in his favour and the fairness of the domestic proceedings which resulted in ultimate rejection of the applicant's claim for the monthly subsistence allowance had not been questioned by the applicant. Therefore, they considered that the applicant could not claim to be a victim of a violation of his Convention rights.

17. The applicant did not comment.

18. The Court notes that the issue in the present case is not related to a “claim” before the domestic courts, which can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III), but rather entitlement to a payment that derives directly from a valid and foreseeable provision of the domestic law (see *Kechko v. Ukraine*, no. 63134/00, § 23, 8 November 2005). Therefore, the Court rejects this argument of the Government as irrelevant.

19. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The applicant considered that the State authorities' ultimate refusal to afford the subsistence payment to which he had been entitled under the law constituted an interference with his property rights.

21. The Government maintained that the applicant's complaint concerned neither an “existing possession” nor a “legitimate expectation” to receive such a possession. They considered that there was no final and binding judgment confirming his entitlement to such payments and that the domestic legislation clearly provided that payment of the subsistence payment in question could be effected only in case of sufficient budgetary funds.

22. The Court reiterates that the concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning, which is not limited to ownership of physical goods and is independent of the formal classification in domestic law. Certain other rights and interests constituting assets, for instance debts, can also be regarded as “property rights”, and thus “possessions” for the purposes of this provision. The issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant an entitlement to a substantive interest protected by Article 1 of Protocol No. 1 (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 98, ECHR 2002-X).

23. The Court considers that it is within the State's discretion to determine what benefits are to be paid to its employees out of the State budget. The State can introduce, suspend or terminate the payment of such benefits by making the appropriate legislative changes. However, once a legal provision is in force which provides for the payment of certain benefits and any conditions stipulated have been met, the authorities cannot deliberately refuse their payment while the legal provision remains in force (see *Kechko v. Ukraine*, cited above, § 23).

24. The Court observes that the applicant's claim before the domestic authorities was based on an express provision of domestic law which was in effect at the material time (see paragraph 13 above). The subsistence payment in question was payable with reference to a single, objective condition – employment as an active soldier or police officer. As the applicant had fulfilled this condition, he can be said to have had a reasonable expectation, if not a right, to receive the payment in question. It is not the Court's task to replace the domestic authorities in the interpretation of domestic law. However, in the instant case the domestic courts relied in their decisions on the fact that the Budget Act 2000 had not foreseen expenditure for the payments payable under the applicable Presidential Decree, and therefore held that the applicant had no entitlement to such payments during the impugned period under the Budgetary System Act. It therefore appears that the domestic courts ignored the provisions of Section 28 of the Budgetary System Act, which prohibited the annual State Budget Acts from introducing changes to other legislation without the latter having been changed first (see respectively paragraphs 9 and 12 above). Furthermore, the Court does not accept the Government's budgetary argument, as it is not open to a State authority to cite a lack of funds as an excuse for not honouring its obligations (see, *mutatis mutandis*, *Burdov v. Russia*, cited above, § 35). Therefore, the ultimate denial by the domestic authorities of the applicant's entitlement to this benefit for the period in question appears to be arbitrary and not based on the law.

25. Therefore, there has been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant also complained under Article 6 of the Convention about the outcome of the proceedings. He equally complained under Article 14 that he had been discriminated against because one of his colleagues obtained a favourable decision from the courts in a similar dispute.

27. The Court has examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a

violation of the rights and freedoms set out in the Convention or its Protocols.

28. Accordingly, it rejects this part of the application in accordance with Article 35 §§ 3 (a) and 4 of the Convention as being manifestly ill-founded.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

30. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 10 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President