



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

FORMER SECOND SECTION

**CASE OF PRONINA v. UKRAINE**

*(Application no. 63566/00)*

JUDGMENT

STRASBOURG

18 July 2006

**FINAL**

*18/10/2006*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Pronina v. Ukraine,**

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 10 January and 27 July 2006,

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

## PROCEDURE

1. The case originated in an application (no. 63566/00) 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, Mrs Svetlana Vladimirovna Pronina (“the applicant”), on 25 October 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr. Yu. Zaytsev, of the Ministry of Justice.

3. The applicant alleged, in particular, that the domestic courts had failed to give sufficient reasons for their decisions in her civil case.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 10 January 2006, the Court declared the application partly admissible.

6. On 1 April 2006 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within the former Second Section.

7. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1944 and lives in the city of Yalta, Ukraine.

9. In March 2000 the applicant lodged a claim with the Yalta City Court against the local social welfare department, challenging the refusal of the latter to award her a higher pension. In her claim, the applicant maintained that, under Article 46 of the Constitution and Article 19 of the Law on Pensions, her pension should not be lower than the minimum living standard. Therefore, given that her pension was fixed at UAH 74.70 per month and the minimum living standard was established at UAH 118.30 per month, the applicant claimed a corresponding increase in her pension.

10. On 4 April 2000 the court decided against the applicant. The court established in particular that, although Article 19 of the Law on Pensions provided the possibility for a higher pension, it also limited the amount to a maximum sum which the applicant in fact received. The court did not consider the applicant's argument about the inconsistency of the amount of her pension with the minimum living standard guaranteed by Article 46 of the Constitution.

11. The applicant appealed against the judgment of the Yalta City Court to the Supreme Court of the Autonomous Republic of Crimea. In her cassation appeal the applicant repeatedly claimed that her pension should not be lower than the minimum living standard, as defined in Article 46 of the Constitution, and that the constitutional provisions have supremacy over the provisions of normal laws.

12. On 3 July 2000 the Supreme Court of the Autonomous Republic of Crimea upheld the decision of the first instance court. The court did not consider the applicant's appeal from the viewpoint of Article 46 of the Constitution.

### II. RELEVANT DOMESTIC LAW

#### *1. Constitution of Ukraine of 1996*

13. The relevant provisions read as follows:

#### **Article 8**

“... The norms of the Constitution of Ukraine are norms of direct effect. Appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen directly on the grounds of the Constitution of Ukraine are guaranteed.”

**Article 46**

“... Pensions and other types of social payments and assistance that are the principal sources of subsistence, shall ensure a standard of living not lower than the minimum living standard (*прожитковий мінімум*) established by law.”

**Article 147**

“The Constitutional Court of Ukraine is the sole body of constitutional jurisdiction in Ukraine.

The Constitutional Court of Ukraine decides on issues of conformity of laws and other legal acts with the Constitution of Ukraine, and provides the official interpretation of the Constitution of Ukraine and the laws of Ukraine.”

**Article 150**

“The jurisdiction of the Constitutional Court of Ukraine encompasses:

1) deciding on issues of conformity with the Constitution of Ukraine (the constitutionality) of the following:

- laws and other legal acts of the Verkhovna Rada of Ukraine;
- acts of the President of Ukraine;
- acts of the Cabinet of Ministers of Ukraine;
- legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea.

These issues are considered on the appeals of: the President of Ukraine; at least forty-five National Deputies of Ukraine; the Supreme Court of Ukraine; the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; the Verkhovna Rada of the Autonomous Republic of Crimea;

2) the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

On issues envisaged by this Article, the Constitutional Court of Ukraine adopts decisions that are mandatory for execution throughout the territory of Ukraine, that are final and shall not be appealed.”

*2. The Code of Civil Procedure of 1963 (repealed as of 1 September 2005)*

14. Article 11 of the Code provided that courts should decide a case on the basis of the Constitution, other legislative acts or the international treaties of Ukraine, under the procedure provided for in the Code.

Article 202 of the Code foresaw that a court decision should mention the facts of the case established by the court, evidence on which the court's conclusion was based, and reasons for admitting or rejecting this or that argument, as well as the laws applied by the court.

3. *Law on the Constitutional Court of Ukraine of 16 October 1996*

15. The relevant provisions read as follows:

**Article 83. Issues of constitutionality that arise in the proceedings before the courts of general jurisdiction**

“When, in the proceedings before the courts of general jurisdiction, a dispute arises over the constitutionality of norms applied by a court, the examination of the case shall be suspended.

In such circumstances, constitutional proceedings shall be initiated and the case shall be considered by the Constitutional Court of Ukraine immediately.”

**Article 94. Ground for a constitutional appeal**

“The ground for a constitutional appeal in order to obtain an official interpretation of the Constitution of Ukraine and laws of Ukraine is a lack of uniform application of provisions of the Constitution or laws by the courts of Ukraine, or other organs of State authorities, if the subject of the right to a constitutional appeal considers that it may lead or has led to a violation of his or her constitutional rights and freedoms.”

4. *Law of Ukraine on Pensions of 5 November 1991*

16. Article 19 of this Law provides as relevant:

“Old age pensions shall be established in the amount of 55% of the salary, but not less than the minimum amount of pensions (*мінімальний розмір пенсії*)...

The minimum amount of an old age pension shall be established in relation to the minimum consumer budget (*мінімальний споживчий бюджет*). In case of economic crisis and a fall in production, the minimum amount of pensions shall be established in an amount which is not lower than the basic standard of income (*межа малозабезпеченості*). ...

The maximum amount of an old age pension shall not exceed ... three times the minimum amount of pensions ...”

5. *Law of Ukraine on Establishing the Amount of the Basic Standard of Income and the Amount of the Minimum Wage for 1999 (25 December 1998)*

17. The Law set the basic monthly standard of income (*межа малозабезпеченості*) at UAH 90.7<sup>1</sup> for the first half of 1999, and UAH 118.3<sup>2</sup> for the second half.

6. *Law of Ukraine on Increasing the Minimum Amount of Pensions (15 July 1997)*

18. This Law set the minimum amount of pensions (*мінімальний розмір пенсії*) at UAH 24.9<sup>3</sup>.

7. *Resolution of the Plenary of the Supreme Court of Ukraine on the Application of the Constitution of Ukraine on the Administration of Justice (1 November 1996)*

19. The relevant parts of the Resolution read as follows:

“2. Since the Constitution of Ukraine, as stipulated in its Article 8, has the highest legal force, and its norms are norms of direct effect, the courts, in consideration of concrete cases, shall assess the content of any law or any other legal act for its compliance with the Constitution of Ukraine and, where necessary, shall apply the Constitution as an act of direct effect. The court decisions shall be based on the Constitution and the current legislation which does not contradict it.

In case of doubt as to the compliance with the Constitution of Ukraine of a particular law, as applied or applicable in a case, the court, upon the motion of the parties to the proceedings or of its own motion, shall suspend consideration of the case and apply, by way of a reasoned decision (ruling), to the Supreme Court of Ukraine which, under Article 150 of the Constitution, may raise before the Constitutional Court the issue of compliance of laws and other legal acts with the Constitution. Such decisions can be taken by the first instance court, court of cassation or the court which considers a supervisory review...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. The applicant complained that the courts had failed to examine her arguments in full, in particular that concerning the amount of her pension in

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1. Around EUR 15.  
2. Around EUR 18.5.  
3. Around EUR 3.9.

relation to the minimum living standard established by Article 46 of the Constitution. The applicant invoked in substance Article 6 § 1 of the Convention, which provides insofar as relevant as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

21. The Government recalled the Court’s case-law that Article 6 § 1 of the Convention did not oblige domestic courts to give a detailed answer to each argument of the plaintiff. They further maintained that, despite the fact that the applicant mentioned the constitutional provision in her claim and in her cassation appeal, she did not make any oral submissions on this issue during the hearing, but grounded her claim on the provisions of the Law on Pensions. The Government concluded that mere reference to her constitutional rights in her written submissions to the court had not obliged the latter to examine this issue in detail.

22. The applicant maintained that the State authorities had failed to follow the constitutional provision about the social welfare of retired persons.

23. The Court reiterates that Article 6 § 1 of the Convention obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is, moreover, necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. Thus the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29).

24. The Court recalls that the Convention does not guarantee, as such, a right of access to a court with competence to invalidate or override a law, or to give an official interpretation of a law (see, *mutatis mutandis*, *Gorizdra v. Moldova* (dec.), no. 53180/99, 2 July 2002; and *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 81). Neither does it guarantee any right to have a case referred by a domestic court to another national or international authority for a preliminary ruling (see *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 114, ECHR 2000-VII). In the Ukrainian legal system, where a physical person has no right of individual petition to the Constitutional Court of Ukraine, it is for the domestic courts to look into the issue of the compatibility of legal acts with the Constitution and, in case of doubt, to request that constitutional proceedings be initiated (see paragraphs 14 and 15 above). From the

relevant legislation, however, this system could not be understood as requiring the ordinary courts to examine in detail any issue of constitutionality raised by a party to the civil proceedings, or obliging them to refer every such issue of constitutionality to the Constitutional Court. It appears that the courts of general jurisdiction exercise some discretion in dealing with issues of constitutionality which have been raised in the framework of civil proceedings. Therefore, the question whether a court has failed to provide reasons for its judgment in this respect can only be determined in the light of the circumstances of the case, as mentioned above.

25. In the instant case, the applicant requested the domestic courts to determine her pension dispute with the social welfare authority. The applicant referred, in particular, to the provision of Article 46 of the Constitution, stating that her pension should not be lower than the minimum living standard. However, the domestic courts made no attempt to analyse the applicant's claim from this standpoint, despite the explicit reference before every judicial instance. It is not the task of the Court to decide what would have been the most appropriate way for the domestic courts to deal with this argument. However, in the Court's opinion, the domestic courts, by ignoring the point altogether, even though it was specific, pertinent and important, fell short of their obligations under Article 6 § 1 of the Convention.

There has accordingly been a breach of this provision.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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.”

### A. Damage

27. The applicant requested non-pecuniary damage, but did not specify an amount, leaving its determination to the Court's discretion.

28. The Government maintained that the finding of a violation, if any, would constitute sufficient just satisfaction in the case. Alternatively, they invited the Court to decide the issue on equitable basis.

29. Making its assessment on equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant EUR 1,500 in respect of non-pecuniary damage.

**B. Costs and expenses**

30. The applicant did not make any claim under this head; the Court therefore makes no award.

**C. Default interest**

31. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
  - (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President