



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

FIFTH SECTION

CASE OF VOLOVIK v. UKRAINE

(Application no. 15123/03)

This version was rectified on 3 March 2008
under Rule 81 of the Rules of Court

JUDGMENT

STRASBOURG

6 December 2007

FINAL

31/03/2008

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 Volovik v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 15123/03) 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 Yuriy Timofeyevich Volovik (“the applicant”), on 10 April 2003.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mr Y. Zaytsev and Mrs I. Shevchuk.

3. On 22 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Zaporizhzhya.

A. Background of the case

5. On 25 April 1993 the applicant's son, who was a Russian national and served in the Russian Army, died because of an accident while on duty. The Russian State Military Insurance Company paid his wife and child, who

resided in Russia, the insurance settlement to which they were entitled under the Russian law.

6. In 2001 the applicant lodged several requests with the Zaporizhzhya Regional Enlistment Office and the Ukrainian State Insurance Company “Oranta” (the “Oranta Company”), seeking the insurance settlement allegedly due to him under the Treaty on Payment of Pensions to Military Servicemen and Their Families and on State Insurance of Military Servicemen of the Member States of the Commonwealth of Independent States of 15 May 1992 (the “CIS Treaty of 15 May 1992”, see Relevant domestic law), which had entered into force in respect of Ukraine on that day. By letters of 9 July and 1 August 2001 respectively, the Oranta Company and the Enlistment Office rejected the applicant's requests on the ground that his son had served in the Russian Armed Forces and, thus, the applicant was not entitled to receive an insurance settlement under Ukrainian law.

7. In 2002 the applicant sought the insurance settlement by the Russian State Military Insurance Company. By letter of 27 September 2002, that company refused his request and informed the applicant that the amounts due to him because of the death of his son were to be paid by the Oranta Company pursuant to the CIS Treaty of 15 May 1992.

B. Proceedings for recovery of the insurance settlement

8. In December 2001 the applicant instituted proceedings in the Komunarsky District Court of Zaporizhzhya against the Oranta Company, seeking the recovery of the insurance settlement which the latter allegedly had to pay him because of his son's death. He also sought compensation for non-pecuniary damage. The applicant argued that he was entitled to receive the insurance settlement in respect of his son on the ground that he, the applicant, resided on the territory of Ukraine, which had undertaken, pursuant to the CIS Treaty of 15 May 1992, to make such payments if a military serviceman had died while on duty in the Armed Forces of one of the CIS Member States.

9. On 10 April 2002 the court ruled against the applicant. This judgment was upheld by the Zaporizhzhya Court of Appeal on 18 July 2002 and the Supreme Court on 8 January 2003.

10. The courts found that under Ukrainian law the applicant was not entitled to receive the insurance settlement payable in similar cases to the relatives of Ukrainian military servicemen. The courts held that according to the CIS Treaty of 15 May 1992, read in conjunction with the decision of the Economic Court of the Commonwealth of Independent States (the “CIS Economic Court”) of 20 March 1997, such a payment should have been made by the Russian Federation, in the Armed Forces of which his son had served.

C. Proceedings for recovery of a special pension

11. In 2002 the applicant instituted proceedings in the Zhovtnevy District Court of Zaporizhzhya against the Zaporizhzhya Regional Enlistment Office, seeking the recovery of a special pension, which he was allegedly entitled to receive under the Law of Ukraine on Social and Legal Protection of Military Servicemen and Their Families of 20 December 1991 (the “Law of 1991”), read in conjunction with the provisions of the CIS Treaty of 15 May 1992, because of his son's death. He relied on the same reasons as in respect of his claim against the Oranta Company.

12. On 17 October 2002 the court ruled against the applicant, finding that he was not entitled to receive the pension under Ukrainian law, since his son had been a Russian national and had served in the Russian Armed Forces.

13. On 6 November 2002 the applicant lodged an appeal with the same court.

14. On 7 November 2002 the court invited the applicant to rectify certain shortcomings in his appeal by 25 November 2002. In particular, the court noted that the appeal did not contain the correct names of the parties, reasons for challenging the judgment of 17 October 2002, or an exact formulation of the applicant's request.

15. On 20 November 2002 the applicant lodged with the court the corrected version of his appeal, in which the opposite party was named as the Zaporizhzhya Regional Enlistment Office. As regards the reasons for his disagreement with the judgment of 17 October 2002, the applicant stated that the first-instance court had wrongly interpreted and applied specific provisions of the Law of 1991 and that it had disregarded the guarantees contained in the CIS Treaty of 15 May 1992. He requested that the Zaporizhzhya Court of Appeal quash the impugned judgment and adopt a new decision on the merits of his claim.

16. On 28 November 2002 the Zhovtnevy District Court declared the applicant's appeal inadmissible. Referring to the applicant's appeal of 6 November 2002, the court stated that the applicant had failed to make the necessary corrections to it by the deadline set by the court. The applicant was sent back both versions of his appeal along with a copy of the decision of 28 November 2002 by the court.

17. On 6 December 2002 the applicant lodged with the same court an appeal against the decision of 28 November 2002. The applicant requested its annulment on the ground that the Zhovtnevy District Court, deciding on the admissibility of his appeal against the judgment of 17 October 2002, had not taken into account the corrected version of his appeal lodged with that court on 20 November 2002.

18. In his appeal of 6 December 2002 the applicant cited the parts of his appeal of 20 November 2002 that contained the reasoning for and the formulation of his request.

19. In a cover letter accompanying his appeal of 6 December 2002 the applicant stated that he annexed three copies of that appeal, copies of his appeals of 6 and 20 November 2002, and copies of the judgment of 17 October 2002 and the decisions of 7 and 28 November 2002.

20. On 6 December 2002 the Zhovtnevy District Court found that the applicant's appeal of the same day did not comply with the procedural formalities. In particular, it held that the appeal was directed against the decision of 28 November 2002 and the judgment of 17 October 2002 at the same time and that it did not contain sufficient reasoning or a list of annexed documents. The court invited the applicant to rectify the shortcomings of his appeal by 20 December 2002.

21. On 18 December 2002 the applicant lodged with the Zhovtnevy District Court an appeal against its decision of 6 December 2002. On 10 January 2003 the Zaporizhzhya Regional Court of Appeal held that the latter decision could not be appealed against and refused to consider the applicant's appeal.

22. On 27 January 2003 the Zhovtnevy District Court declared the applicant's appeal against the decision of 28 November 2002 inadmissible on the ground that the applicant had failed to rectify the shortcomings indicated in its decision of 6 December 2002.

23. The applicant did not appeal against the decision of 27 January 2003.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure of 1963 (“the Code of 1963”) (repealed as of 1 September 2005)

24. Article 139 of the Code of 1963 provided that the judge to whom the case had been allocated should not entertain a claim which had not been lodged in compliance with the requirements set out in the Code or in respect of which court fees had not been paid. The judge was to grant a time-limit to rectify the shortcomings in the claim.

The claim was to be declared inadmissible and sent back to the claimant if the latter had not followed the instructions of the judge.

25. According to Article 290, the parties were entitled to appeal against the judgment (decision on the merits of the case) of the first-instance court in full or in part. A ruling (procedural decision) of the first-instance court was to be appealed against separately from the judgment in the cases envisaged by the Code.

26. Under Article 291, a first-instance court's ruling could be appealed against if it impeded the further progress of the case. The parties could submit their objections against the rulings which were not to be appealed against along with their appeal against a judgment in the case.

27. Article 293 envisaged that an appeal should be typewritten. It was to set out

- (a) the name of the court with which the appeal was lodged;
- (b) the name of the appellant, and his contact details;
- (c) the full and exact names of other persons participating in the case, their places of residence and contact details;
- (d) reference to the judgment or ruling against which the appeal was lodged and the scope of that appeal;
- (e) the reasons for the appeal: explanation as to the alleged wrongfulness of the judgment (ruling), circumstances of the case or the law on which the appeal was based; new facts or means of proof important for the case or objections against the evidence, which the first-instance court had allegedly groundlessly refused to admit or which, for good reasons, could not have been submitted before; the list of evidence admitted by the first-instance court which the appellant sought to have reconsidered by the court of appeal;
- (f) the petition (object of the appeal);
- (g) a list of the written materials annexed to the appeal.

The appeal should be signed by the appellant or his representative. It should be accompanied by a power of attorney, if necessary, and copies of the appeal and written materials. The number of copies should correspond to the number of persons involved in the case.

28. According to Article 294, an appeal should be submitted to the court of first instance that had dealt with the case. The court should apply the rules contained in Article 139 of the Code in respect of an appeal which did not comply with the requirements set out in Article 293 or in respect of which court fees had not been paid.

29. Pursuant to Article 295, if an appeal was lodged in compliance with the requirements of the Code the court of first instance should send copies of it to the persons participating in the case in order that they could submit any comments they might wish to make.

Upon the expiry of the time-limit for lodging an appeal the same court should send the appeal together with the case file to the court of appeal.

30. Under Articles 301 and 305, the court of appeal verified whether a judgment or ruling of the first-instance court was lawful and duly reasoned. The court of appeal had the power to examine new evidence, and evidence which allegedly had not been examined in compliance with the Code. When considering an appeal against a judgment, the court of appeal was entitled

- (a) to reject the appeal;
- (b) to quash the judgment and to remit the case for a fresh consideration, if a procedural violation prevented the court of appeal from examining new evidence or the evidence which the first-instance court had not examined;
- (c) to quash the judgment and to discontinue the proceedings;
- (d) to change the judgment or to adopt a new judgment.

31. According to Article 310, when considering an appeal against a ruling of the first-instance court, the court of appeal was entitled

- (a) to reject the appeal, if the ruling had been delivered in compliance with the law;
- (b) to change the ruling, if it was a correct decision, though the provisions of the Code had been wrongfully applied;
- (c) to quash the ruling and to remit the matter to the first-instance court for a fresh consideration, if it had not been delivered in accordance with the procedure for its consideration;
- (d) to quash the ruling and to deliver a new ruling on the matter, which had been resolved by the first-instance court in violation of the provisions of the Code.

B. Code of Civil Procedure of 2004 (“the Code of 2004”) (in force as of 1 September 2005)

32. Article 296 of the Code of 2004 provides that an appeal shall be submitted through the court of first instance that adopted the contested decision. The court shall refer an appeal or appeals together with the case file to the court of appeal within three days of the expiry of the time-limit for lodging the appeal or if all persons who wish to contest the decision have lodged their appeals. Appeals arriving after the referral of the case file to the court of appeal shall be referred to the same court not later than the next working day.

33. Pursuant to Article 295 § 1, a judge of the court of appeal appointed as rapporteur shall decide on the admissibility of an appeal.

C. The Treaty on Payment of Pensions to Military Servicemen and Their Families and on State Insurance of Military Servicemen of the Member States of the Commonwealth of Independent States of 15 May 1992 (the “CIS Treaty of 15 May 1992”)

34. The relevant provisions of the CIS Treaty of 15 May 1992 read as follows:

Article 1

“Payment of pensions to and compulsory State insurance of military servicemen of the Armed Forces of the Member States of the Commonwealth [of Independent States] ..., as well as payment of pensions to the families of those military servicemen shall be arranged on the basis of the conditions, norms and in the manner established or which will be established by the legislation of the Member States, on the territory on which the aforementioned military servicemen and their families reside, while before the [relevant] laws are adopted by these States [payment of pensions and compulsory State insurance shall be arranged] on the basis of the conditions, norms and in the manner envisaged in the legislation of the former Union [of Soviet Socialist Republics] ... [T]he level of pension payments ... shall not be lower than that established by the legislation ... of the former Union [of Soviet Socialist Republics].”

Article 2

“...

The amount of allowance (salary) [necessary] for calculation of pension payments to be made to military servicemen and their families shall be determined in accordance with the legislation of the Member States on whose territory the military servicemen and their families reside.”

Article 3

“The Member States shall bear the expenses [in respect of] payment of pensions to military servicemen and their families and compulsory State insurance of military servicemen ... without reciprocal payments between the States.”

Article 5

“The questions concerning the application of the present Treaty shall be considered, if necessary, by the Council of Ministers of Defence of the Member States, as well as by the Ministries of Defence ... of the Member States of the Commonwealth on a bilateral or multilateral basis.”

Article 6

“The Treaty enters into force when signed [by the Parties].”

D. The Law of Ukraine on Social and Legal Protection of Military Servicemen and Their Families of 20 December 1991 (the “Law of 1991”)

35. Section 3 of the Law of 1991 read, as worded at the material time, as follows:

“This Law applies to:

[i] military servicemen serving on the territory of Ukraine, and military servicemen, who are nationals of Ukraine, serving outside Ukraine;

[ii] family members of servicemen who perished, died, disappeared, or became disabled in the course of their service;

[iii] reservists called for training, and their family members.”

III. PRACTICE OF THE ECONOMIC COURT OF THE COMMONWEALTH OF INDEPENDENT STATES

36. According to Article 32 of the Statute of the Commonwealth of Independent States of 22 January 1993 and Article 5 of the Statute of the Economic Court of the Commonwealth of Independent States of 6 July 1992, the CIS Economic Court is entitled to give interpretation to treaties and other acts of the Commonwealth. Ukraine, not having ratified either the Statute of the Commonwealth or the Statute of the CIS Economic Court, does not recognise the latter's jurisdiction.

37. Pursuant to the judgment and the ruling, delivered by the CIS Economic Court on 4 September 1996 and 20 March 1997 respectively, on the interpretation of several treaties of the Commonwealth, including the CIS Treaty of 15 May 1992, the payment of an insurance settlement or of a lump sum payment to a member of the family of a deceased military serviceman shall be made by the State in which the serviceman was insured, irrespective of his family member's country of residence. The insurance company or other competent authority of the State, in the Armed Forces of which the military serviceman served, shall be responsible for the fulfilment of the obligations under the insurance contract of that serviceman.

THE LAW

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

38. The applicant complained of the outcome and unfairness of the proceedings concerning his claim for the recovery of the insurance settlement, alleging that the domestic courts had disregarded his arguments, that they had misapplied the relevant law, and that they had not been impartial. He submitted that the courts should not have based their decisions on the case-law of the CIS Economic Court, the jurisdiction of which had not been recognised by Ukraine. The applicant also maintained that the interpretation given by the CIS Economic Court approximately five years

after the CIS Treaty of 15 May 1992 entered into force and four years after the death of his son (25 April 1993) was inapplicable in his case.

The applicant further complained that he had been unlawfully deprived of the right of access to a court in order to challenge on appeal the judgment of the Zhovtnevyi District Court of Zaporizhzhya of 17 October 2002 in the proceedings on the recovery of special pension¹.

He invoked Articles 6 § 1 and 17 of the Convention the relevant parts of which provide as follows:

Article 6

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

Article 17

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

39. The Court observes that the applicant's arguments under Article 17 of the Convention do not go beyond the allegation of an unfair hearing and, therefore, must be examined under Article 6 § 1 of the Convention.

40. The Court further observes that the applicant's complaints concern two separate sets of proceedings, one of which involved only a court of first instance deciding on his claim. Furthermore, the issues raised by the applicant with regard to each set of proceedings differ substantially. Thus, the Court considers that the complaints should be examined separately in respect of each set.

A. Admissibility

1. Proceedings for recovery of the insurance settlement

41. The Government submitted that the applicant had had a fair hearing in his case against the Oranta Company. The domestic courts, relying on the CIS Economic Court's interpretation of the international agreement applicable in the applicant's case – the Treaty of 15 May 1992, had acted in compliance with the principle of lawfulness of the proceedings.

42. The applicant disagreed.

1. Rectified on 3 March 2008. The words “the Komunarskyi District Court of Zaporizhzhya of 10 April 2002” have been replaced by “the Zhovtnevyi District Court of Zaporizhzhya of 17 October 2002”.

43. The Court recalls that it is not its function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain*, [GC], no. 30544/96, § 28, ECHR 1999-I).

44. The Court observes in the present case that the applicant was able to put forward his arguments fully, that adequate reasons for refusing his claim were provided, and that there is nothing in the case file which might disclose any arbitrariness or prejudice in the handling of the applicant's claim by the domestic courts.

45. As regards the fact that the courts used the case-law of the CIS Economic Court for their interpretation of the CIS Treaty of 15 May 1992, the Court notes that it is primarily for the national authorities, notably the courts of appeal and of first instance, to resolve problems of interpretation of domestic legislation, the international treaties ratified by a given State forming its part. Equally, it is for the domestic courts to choose the means of such interpretation, which can normally include acts of legislation, relevant case-law, academic resources etc. Thus, the Court does not discern any issue under Article 6 § 1 of the Convention in the way the courts interpreted the law applicable in the applicant's case.

46. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

2. Proceedings for recovery of special pension

47. The Government contended that the applicant had not exhausted domestic remedies as he had failed to appeal against the ruling of 27 January 2003, by which the Zhovtnevy District Court had declared the applicant's appeal against its ruling of 28 November 2002 inadmissible.

48. In reply, the applicant stated that in his case it would have been futile to lodge with the court a new appeal against the decision of the same court that had twice refused to transfer his similar appeals to the higher courts.

49. The Court finds that the question of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint of lack of access to a court. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits of that complaint.

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

B. Merits

51. In their observation on the merits of the applicant's complaint of lack of access to a court the Government maintained that the ruling of the Zhovtnevyi District Court of 27 January 2003 was in compliance with Articles 139 and 294 of the Code of Civil Procedure of 1963. The Government also argued that, instead of challenging the ruling of that court of 6 December 2002, the applicant should have corrected his appeal of the same day.

52. The applicant disagreed, alleging that the Zhovtnevyi District Court had had no lawful grounds to declare his appeals inadmissible. The applicant stated that his appeal against the ruling of 6 December 2002 had been an attempt to draw the higher court's attention to the injustice which he had allegedly suffered on account of the first-instance court.

53. The Court recalls that under Article 6 § 1 of the Convention, should an appeal system exist in the domestic legal order, the State is required to ensure that persons within its jurisdiction enjoy before courts of appeal the fundamental guarantees enshrined in Article 6, regard being had to the special features of the proceedings in question, and that account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see, for instance, *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 62, 26 July 2005).

54. The Court notes that the applicant alleged that he had been unlawfully denied access to the Zaporizhzhya Regional Court of Appeal, which had the power to review the case both as to facts and as to law and was also competent to consider new facts which had not been examined in the first-instance proceedings (see paragraph 30 above). In his appeal against the first-instance judgment the applicant contested the latter's findings as to law. Thus, the Court considers that, given the nature of the review on appeal under Ukrainian law, the applicant's right of access to a court of appeal was protected by the fundamental guarantees contained in Article 6 of the Convention.

55. In this context, the Court recalls that the right to a court, of which the right of access is one aspect, is not absolute; it may be subject to limitations permitted by implication, particularly regarding the conditions of admissibility of an appeal. However, such limitations must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Podbielski and PPU Polpure*, cited above, § 63).

56. Turning to the circumstances of the present case, the Court notes that at the material time Articles 294 and 295 of the Code of Civil Procedure of 1963 provided for the filter of appeals against the first-instance courts' judgments and rulings by the same courts which were entitled to decide on their admissibility. The grounds for declaring appeals inadmissible were

non-compliance with requirements as to their form and content, non-observance of time-limits, and non-payment of court fees (see paragraphs 24, 27-29 above).

57. The Court does not doubt that this procedure was designed to assure the proper administration of justice. Nevertheless, having regard to the procedural rules in force at the material time and the way they were applied in the applicant's case, it considers that the means employed to achieve that aim were not proportionate.

58. In particular, by two rulings of 28 November 2002 and 27 January 2003, the Zhovtnevy District Court stopped the applicant's appeals against the decisions of that court at the first-instance level on the ground of non-compliance with the legislative requirements as to the form and content of appeals. Although, formally, the applicant could lodge an appeal against the ruling of 27 January 2003, it would still have to go through the same court. The Zaporizhzhya Regional Court of Appeal had no power to consider the applicant's appeal unless the Zhovtnevy District Court allowed it to pass.

59. The Government did not suggest that there were any safeguards available in the domestic legal system against potentially arbitrary refusals to refer an appeal to a court of appeal. Thus, the Court considers that the first-instance courts were granted the uncontrolled power to decide whether appeals against their decisions could reach the higher courts. This situation could arguably lead, as it did in the applicant's case, to an appeal never reaching the higher instance.

60. Furthermore, the Court observes that the applicant made amendments to improve his appeals in line with the court's instructions and legislative requirements. The court's decision yet not to grant him leave to appeal appears over-formalistic and not corresponding to the filtering purpose.

61. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was denied the right of access to a court. In conclusion, the Court rejects the Government's objection as to the exhaustion of domestic remedies and finds that in the present case there has been a violation of Article 6 § 1 of the Convention.

62. The Court duly notes that with the entry into force of the new Code of Civil Procedure in September 2005, the first-instance courts lost the power to filter appeals against them, the courts of appeal having become the sole jurisdiction competent to decide on the admissibility and merits of such appeals (see paragraphs 32 and 33 above).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

63. The applicant complained of a violation of his right to property on account of the refusal of the Ukrainian authorities to pay him an insurance

settlement and special pension because of the death of his son. He relied on Article 1 of Protocol No. 1 to the Convention, which provides 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.”

64. The Government argued that Ukraine had no obligation to pay the applicant an insurance settlement, as under the CIS Treaty of 15 May 1992 it was for the State in the Armed Forces of which the applicant's son had served to make such payments. Thus, they suggested that this aspect of the applicant's complaint under Article 1 of Protocol No. 1 was incompatible *ratione personae*.

65. The Government also argued that the applicant's complaint in respect of special pension should be declared inadmissible for non-exhaustion of domestic remedies, since the applicant had failed to appeal against the judgment of the Zhovtnevyi District Court of 17 October 2002 in compliance with the relevant procedural requirements.

66. The Court considers that it is not necessary to deal with the Government's specific arguments concerning the admissibility of the applicant's complaints under Article 1 of Protocol No. 1, as it considers that they are in any case inadmissible for the following reasons.

67. 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, for instance debts, constituting assets, may also be regarded as “property rights”, and thus “possessions” for the purposes of this provision. Where the proprietary interest is in the nature of a claim it may be regarded as an “asset” only where it has a sufficient basis in national law or if it is sufficiently established by a final and enforceable judicial decision (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 52, ECHR 2004-IX, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

68. The Court is of the opinion that the applicant's claims for an insurance settlement and a special pension under Ukrainian law cannot be regarded as “possessions” within the meaning of Article 1 of Protocol No. 1, since they have not been recognised and determined by a judicial decision having final effect. Nor did the Ukrainian legislation (see the Domestic law Part) contain any provision which could lead to the

conclusion that the applicant had at least a legitimate expectation to receive the amounts he claimed.

69. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed UAH 52,850¹ in respect of pecuniary damage and the same amount in respect of non-pecuniary damage.

72. The Government maintained that the applicant's claims were unsubstantiated.

73. The Court does not discern a causal link between the breach of Article 6 § 1 of the Convention in the applicant's case and the alleged pecuniary damage. There is, therefore, no ground for an award under this head.

74. As to compensation in respect of non-pecuniary damage, the Court considers that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction in the circumstances (see, *mutatis mutandis*, *Mežnarić v. Croatia*, no. 71615/01, § 44, 15 July 2005).

B. Costs and expenses

75. The applicant did not submit any claim under this head. The Court therefore makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection concerning the exhaustion of domestic remedies in respect of the applicant's complaint under Article 6 § 1 of the Convention of lack of access to a court, and dismisses it;

1. Around 7,896 euros.

2. *Declares* the complaint under Article 6 § 1 of the Convention of lack of access to a court admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President