



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

FIFTH SECTION

CASE OF MENSHAKOVA v. UKRAINE

(Application no. 377/02)

JUDGMENT

*The version was rectified on 7 June 2010
under Rule 81 of the Rules of the Court*

STRASBOURG

8 April 2010

FINAL

04/10/2010

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

In the case of Menshakova v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 377/02) 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, Ms Aleksandra Yemelyanovna¹ Menshakova (“the applicant”), on 4 December 1999.

2. The applicant was represented by Mr S. Kozlov, a lawyer practising in Sevastopol. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 7 May 2007 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 1941 and lives in Sevastopol.

5. She worked at the State-owned company “Sevastopolskyy Morskyy Zavod” (“the SMZ”). Following her retirement from the SMZ on 30 September 1996 the applicant worked for the SMZ's subsidiary company “Sovmorsudokorpus” (“the SMSK”) until July 1997.

¹ Rectified on 7 June 2010: the text was “Yemelyanova”

6. She instituted several sets of court proceedings against her former employers, seeking initially recovery of salary arrears and subsequently compensation for late payment of salary pursuant to Article 117 of the Labour Code. Under that provision, retired employees were entitled to claim compensation if their salary or related payments due to them were not paid on the day of termination of employment, i.e. such compensation concerned delays in payment after termination of employment.

A. Proceedings against the SMZ

1. First set of proceedings

7. In July 1997 the applicant lodged a claim with the Nakhimovskyy District Court of Sevastopol (“the Nakhimovskyy Court”) against the SMZ. She sought recovery of salary arrears.

8. On 8 July 1997 the court awarded her 492.17¹ Ukrainian hryvnias (UAH) in salary arrears. The period of the applicant's work concerning which she was awarded the above sum in salary arrears was not specified.

2. Second set of proceedings

9. On 26 November 1997 the applicant instituted a new set of proceedings in the same court against the SMZ, seeking compensation for the latter's failure to pay her salary arrears in due time.

10. On 5 August 1998 the court, referring to paragraph 1 of Article 117 of the Labour Code, awarded her UAH 1,574.40² in compensation for non-payment of salary arrears for the period of 1 October 1996 – 5 August 1998, during which her salary arrears had remained unpaid. The court noted that the respondent company failed to appear before it without informing about the reasons for its absence. It further observed that in his written statement submitted to the court on 13 March 1998 the company's representative accepted the applicant's claim as regards the amount of compensation for the period of 1 October 1996 – 13 March 1998.

11. The judgments of 8 July 1997 (salary arrears) and 5 August 1998 (compensation for late payment) were not appealed against and became final. The enforcement proceedings in respect of these judgments were instituted on 15 October 1997 and 5 October 1998 respectively. On 18 March 1999 the applicant received the full amounts of the awards.

1. About 120 euros (EUR).

2. About EUR 340.

12. On 1 October 2001 the SMZ lodged a request with the Supreme Court for leave to appeal against the judgment of 5 August 1998 under the new cassation procedure. In its appeal the SMZ alleged that it had not been responsible for the delay in payment of salary arrears to the applicant, that its representative before the first instance court had not been given the right to accept the applicant's claim, that the SMZ had not been duly informed about the date and time of the hearing before that court, and that the latter's judgment did not contain calculations of the awarded amount. On 23 April 2003 the Supreme Court granted such leave and invited the applicant to participate in the hearing on the SMZ's appeal scheduled for 29 May 2003. On the latter date the Civil Chamber of the Supreme Court quashed the judgment of 5 August 1998 on the ground that the Nakhimovskyy Court had examined the case in the absence of the SMZ and remitted it for fresh consideration.

3. Third set of proceedings

13. Meanwhile, on 15 March 1999 the applicant lodged a new claim with the Nakhimovskyy Court, seeking compensation for the period of 6 August 1998 – 15 March 1999, during which the SMZ had failed to pay her salary arrears awarded by the judgment of 8 July 1997.

4. Joined proceedings

14. On 31 July 2003 the applicant requested the Nakhimovskyy Court to examine her claims of 26 November 1997 and 15 March 1999 jointly. In the course of a hearing on 18 September 2003 the court allowed the applicant's request.

15. On 26 November 2003 the court adopted a judgment dismissing the applicant's claims. Its relevant provisions read as follows:

“... The court, having heard the plaintiff [and] having examined the materials of the civil case, considers that the claims are unsubstantiated and may not be allowed for the following reasons.

In particular, the court established that on 30 September 1996 the plaintiff had retired [from the SMZ]... By the judgment of the Nakhimovskyy Court ... of 8 July 1997, she was awarded 492.17 [Ukrainian hryvnias] in salary arrears... Therefore, the dispute concerning the recovery of sums in the event of termination of employment was determined and [the matter] turned to the stage of enforcement. The said judgment was enforced on 18 March 1999...

In accordance with Article 117 of the Labour Code of Ukraine, if [the employer] fails to pay the employee [whose contract of employment was terminated] the sums due to him within the time-limits set by the law, [the former] shall pay the employee his average wages for the whole period of the delay until the day of the factual payment.

As it appears from the materials of the case, the plaintiff retired on 30 September 1996, the sum of her salary arrears on the day of the retirement was 492.17 [Ukrainian hryvnias] which was recovered by the judgment of 8 July 1997.

Therefore, the dispute concerning the recovery of sums in the event of termination of employment was determined on 8 July 1997 and [the matter] turned to the stage of enforcement. The plaintiff lodged with the court her first claim for compensation under Article 117 of the Labour Code of Ukraine on 26 November 1997 ... having missed the three-month term envisaged by Article 233 of the Labour Code of Ukraine. The plaintiff and her representative did not furnish sufficient and objective evidence demonstrating that there had been a reasonable excuse for missing the procedural term, and she did not request an extension of [that] term; thus, the court [discerns] no grounds to renew it in accordance with the requirements of Article 234 of the Labour Code of Ukraine.

In the light of the foregoing... [the court]

Decided:

To dismiss the claim of Menshakova...”

16. The applicant appealed, contending that the time-limit at issue had started to run on 18 March 1999, the day when she had received her belated salary payment.

17. On 18 March 2004 the Sevastopol Town Court of Appeal (the former Sevastopol Court) upheld the judgment of 26 November 2003. It rejected the applicant's contention that the limitation period under Article 233 of the Labour Code had started to run on 18 March 1999, when she had actually obtained the amount awarded by the judgment of 8 July 1997. It held that the “factual payment” had been made on the latter date and that the limitation period had started to run from that day onwards.

18. On 28 July 2006 a panel of three judges of the Supreme Court rejected the applicant's request for leave to appeal in cassation as unsubstantiated.

B. Proceedings against the SMSK

1. First set of proceedings

19. In May 1998 the applicant instituted proceedings in the Nakhimovskyy Court against the SMSK, seeking recovery of salary arrears and compensation for their prolonged non-payment.

20. On 25 May 1998 the court awarded her UAH 1,767.38¹ in salary arrears and compensation for late payment of these arrears for the period of 7 July 1997 – 25 May 1998. This judgment was not appealed against and became final. On an unspecified date the Nakhimovskyy District Bailiffs' Service instituted enforcement proceedings in respect of the judgment. On 15 June 1999 the enforcement proceedings were discontinued upon the applicant's request. On 12 July 1999 the applicant received the full amount of the award of 25 May 1998.

2. Second set of proceedings

21. In April 1999 the applicant again instituted proceedings in the Nakhimovskyy Court against the SMSK, seeking compensation for the latter's failure to pay her salary arrears from 26 May 1998 onwards.

22. On 19 April 1999 the court rejected the applicant's claims as unsubstantiated. The applicant appealed in cassation, contending that the proceedings instituted by her in May 1998 concerned salary arrears and compensation for their non-payment during the period of 7 July 1997 – 25 May 1998, while in her new claim lodged with the courts in April 1999 she requested compensation for the period after 25 May 1998.

23. On 15 June 1999 the Sevastopol Court quashed the decision of the first-instance court and adopted a new decision by which it discontinued the proceedings in the applicant's case. It held that the matter had already been determined by the Nakhimovskyy Court on 25 May 1998. The relevant parts of the decision of 15 June 1999 read as follows:

“... In accordance with Article 227 § 3 of the Code of Civil Procedure of Ukraine, the court shall discontinue the proceedings, if there is a judgment, which has entered into the force of the law, concerning a dispute between the same parties, on the same subject-matter and grounds.

It appears from the case materials that on 25 May 1998 the Nakhimovskyy District Court adopted a judgment, by which the plaintiff was awarded 1,767.38 [Ukrainian hryvnias] in respect of salary arrears and average wages for the delay in payment in the event of termination of employment during the period of 8 July 1997 to 25 May 1998...

Therefore, [the court finds that] the dispute concerning the recovery of wages for the period of the delay in payment has been determined on 25 May 1998 and that the admission of a new claim concerning the same subject-matter and based on the same grounds would be contrary to Articles 136 § 3 and 227 § 3 of the Code of Civil Procedure...

Pursuant to Articles 310 and 315 of the Code of Civil Procedure of Ukraine, [the court]

Decided:

1. About EUR 382.

To quash the judgment ... of 19 April 1999 and to discontinue the proceedings concerning the claim of Menshakova ... against [the SMSK]...”

C. Other proceedings to which the applicant was a party

24. On 4 December 1995 the Sevastopol Arbitration Court (State court dealing with disputes between companies and other economic entities before June 2001) initiated bankruptcy proceedings against the SMZ. The applicant and Mr K. joined the proceedings as the SMZ's creditors. By a decision of 24 December 1998, the arbitration court ordered the inclusion of the Nakhimovskyy Court's awards of 8 July 1997 and 5 August 1998 in the applicant's favour into the list of creditor's claims.

25. By a decision of 24 March 1999, partially amended by a decision of 2 April 1999, the same court quashed the decision of 24 December 1998 and discontinued the bankruptcy proceedings on the ground that the SMZ had paid the amounts claimed by the applicant and Mr K. in full.

26. On 6 and 24 April 1999 respectively, Mr K. and the applicant lodged with the court requests for supervisory review of the decisions of 24 March and 2 April 1999.

27. On 13 July 1999 the Higher Arbitration Court rejected the request of Mr K. as unsubstantiated.

28. By a letter of 8 October 1999, the Sevastopol Arbitration Court informed the applicant that her request for supervisory review had not been submitted to the Higher Arbitration Court as it had been directed against the same decisions as the request of Mr K.

29. On 3 November 1999 the applicant instituted proceedings in the Leninskyy District Court of Sevastopol against the Sevastopol Arbitration Court, seeking compensation for the latter's failure to consider her request for supervisory review of its decisions of 24 March and 2 April 1999.

30. On 22 May 2000 the Leninskyy District Court discontinued the proceedings on the ground that the applicant's claim was not to be considered by the courts, as the Sevastopol Town Arbitration Court enjoyed immunity from civil proceedings in respect of its procedural activities. On 19 September 2000 the Sevastopol Court upheld the decision of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure of 1963 (repealed on 1 September 2005)

31. The relevant provisions of the Code read as follows:

Article 136**Admissibility of claims in civil cases**

“... A judge shall not [deal with] a claim:

...

3) if there is a judgment, which has entered into the force of the law, concerning a dispute between the same parties, concerning the same subject and based on the same grounds, or a court's ruling endorsing the plaintiff's withdrawal of the claim or a friendly-settlement agreement between the parties...”

Article 227**Grounds [for a decision] to discontinue the proceedings**

“... A court shall discontinue the proceedings:

...

3) if there is a judgment, which has entered into the force of the law, concerning a dispute between the same parties, concerning the same subject and based on the same grounds, or a court's ruling endorsing the plaintiff's withdrawal of the claim or a friendly-settlement agreement between the parties...”

Article 310**Tasks of the [court] of cassation**

In the course of consideration of a case in cassation the court shall verify whether the first instance court's judgment is lawful and well-founded...

The court shall not be bound by the reasons of an appeal in cassation ... and must review the entire case.

Article 315**[Decision] to quash the [first instance court's] judgment and to discontinue the proceedings or to leave the claim without consideration**

The [first instance court's] judgment shall be quashed in cassation and the proceedings shall be discontinued or the claim shall be left without consideration on the grounds envisaged in Articles 227 and 229 of the Code.

B. Labour Code of 1971

32. The relevant provisions of the Code, as worded at the material, read as follows:

Article 116**Time-limits for payment in the event of termination of employment**

“An enterprise, entity, or organisation shall pay the sums due to a [dismissed or retired] employee on the day of termination of his employment. If the employee did not work on the day of his [dismissal or retirement], the abovementioned sums shall be paid to him not later than the day following the day of the submission of his payment request.

In the event of a dispute over the amount to be paid to a [dismissed or retired] employee, [the employer] ... shall pay the undisputed amount within the time-limit envisaged by this [provision].”

Article 117**Responsibility for the delay in payment in the event of termination of employment**

“In the absence of a dispute over the amount to be paid to a [dismissed or retired] employee, [the employer] ... shall pay him his average wages for the whole period of the delay in payment of the amounts envisaged by Article 116 of this Code until the day of their factual payment, if the delay was due to the fault of [the employer]...”

In the event of a dispute over the amount to be paid to a [dismissed or retired] employee, [the employer] ... shall pay him compensation envisaged by this [provision], if the dispute was resolved in favour of the employee. If the dispute was resolved partly in favour of the employee, the amount of compensation for the delay shall be determined by the body deciding on the dispute...”

Article 233**Time-limits for lodging applications with ... courts concerning labour disputes**

“An employee may submit an application concerning a labour dispute directly to a ... court within three months following the day on which he became or should have become aware of a violation of his right...”

C. Resolution no. 13 of the Plenary Supreme Court of 24 December 1999 concerning the application of legislation on payment of salaries by the courts

33. The relevant extracts from the Resolution of the Plenary Supreme Court read as follows:

“20. Having established, in the course of consideration of a case concerning recovery of [average] salary in connection with a delay in payment in the event of termination of employment, that an employee was not paid the amounts due to him ... on the day of his [dismissal or retirement] ... a court shall award, under Article 117 of the Labour Code, the employee average salary for the whole period of the delay in payment; if no such payment has been made before the consideration of the case [the court shall award average salary] until the date of the adoption of the judgment, safe in case the employer proves that it was not responsible [for the delay]. The mere absence of funds shall not exclude the employer's responsibility.

In case no payment [in the event of termination of employment] took place because of a dispute on the amount to be paid, the claims concerning the responsibility for the delay ... shall be allowed in full, if the dispute was determined in favour of the plaintiff or if a court dealing with the case reaches such a conclusion. In case the claim is partly allowed, the court determines the amount of compensation for the delay in payment, taking into account the disputed sum which [the plaintiff] was entitled to receive, the part of the claim it constituted, the value of the part [of the claimed amount] in comparison with average salary and other specific circumstances of the case...

25. ...A failure to pay sums due to an employee on the day of his dismissal or, if he was absent from work on that day, on the day following the submission of his request for payment constitutes a ground for responsibility under Article 117 of the Labour Code. In this case, the running of a three-month time-limit for lodging an application with a court commences on the day following the payment of the above mentioned sums, irrespective of the delay in payment.

A failure to meet the three-month time-limit for an application to a court as such constitutes a ground for dismissal of the claim, however, if the court finds that [the claim] is unsubstantiated, it shall dismiss [the claim] on [the latter] ground...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

34. In her initial submissions of 4 December 1999 the applicant complained under Article 6 § 1 of the Convention about the outcome and unfairness of the proceedings concerning her claims for compensation for late payment of salary against the SMSK. In particular, she alleged that the domestic courts had unlawfully refused to examine the merits of her claims.

35. Subsequently, in her submissions of 11 March 2001, the applicant alleged that the Sevastopol Arbitration Court had unlawfully refused to consider her request for extraordinary review of its decisions of 24 March and 2 April 1999. She also complained about the refusal of the domestic courts to consider her civil law claim against the Sevastopol Arbitration Court. The applicant invoked Articles 6 § 1 and 13 of the Convention.

36. On 21 October 2004 she complained under Article 6 § 1 of the Convention about the quashing of the judgment of the Nakhimovskyy Court of 5 August 1998.

37. On 26 September 2006 the applicant complained about the outcome, unfairness and length of the proceedings concerning her compensation claims against the SMZ. In particular, she alleged that the domestic courts had unlawfully refused to examine the merits of her claims against that company. The applicant further alleged that the hearing of 28 July 2006 before the Supreme Court had not been public. She invoked Article 6 § 1 of the Convention.

38. Articles 6 § 1 and 13 of the Convention read, in so far as relevant, as follows:

Article 6

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

39. The Court notes the applicant's complaint about a violation of her right to a hearing within a reasonable time in respect of her compensation claims against the SMZ raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring it inadmissible.

40. The Court further considers that the applicant's complaints under Article 6 of the Convention that the domestic courts' refusal to consider her compensation claims lodged against the SMZ and the SMSK in November 1997, March and April 1999 amounted to a breach of her right of access to a court must also be declared admissible.

41. The Court has examined the remainder of the applicant's complaints under Articles 6 § 1 and 13 of the Convention and considers that, in the light of all the material in its possession and in so far as the matters complained of were within its competence, they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Length of the joint proceedings against the SMZ

42. The applicant maintained her complaint of the length of the compensation proceedings against the SMZ. In particular, she stated that the case had not been complicated. She had had to make modifications to her claims in order to bring the amounts of compensation she claimed up to date, especially in view of the duration of the proceedings. The applicant further stated that no hearings had been held between May 1999 and May 2003 because the judge dealing with her case had been busy with another case. She also argued that it had been for the courts to ensure, by using all available procedural means, including sanctions, the defendant's appearance at the hearings. Finally, the applicant submitted that there was no explanation for the delay of more than two years when the case was pending before the Supreme Court between March 2004 and July 2006. Therefore, according to the applicant, the courts had not dealt with her case within a "reasonable time" as required by Article 6 § 1 of the Convention.

43. The Government submitted that the length of the relevant proceedings was not unreasonable. They stated that there had been no significant periods of inactivity attributable to the State. On the contrary, there were some periods of delay which had been attributable to the parties to these proceedings and their behaviour had somewhat complicated the proceedings. In particular, the first-instance court and the court of appeal had had to reconsider the case on several occasions following the applicant's and the defendant company's appeals; the applicant had challenged a judge dealing with the case and modified her claims twice; the courts had had to adjourn several hearings because of the parties' failure to appear and in order to summon witnesses and obtain additional information requested by the parties. The Government did not specify the dates of the hearings or the duration of the delays in the proceedings to which they referred in their observations.

44. The Court observes that on 26 November 1997 and 15 March 1999 the applicant lodged with the domestic courts two separate claims against the SMZ, seeking compensation for late payment of her salary. On 5 August 1998 the Nakhimovskyy Court delivered a judgment in respect of the applicant's first claim. It was not challenged before the higher courts, became final, and was subsequently enforced on 18 March 1999. However, some five years later the Supreme Court quashed that judgment and remitted the case for new consideration. The first-instance court joined the applicant's first claim to the proceedings concerning her second claim, which had already been pending since 15 March 1999.

45. The claims were considered jointly and on 28 July 2006 the Supreme Court adopted the final decision in the applicant's case, rejecting both claims as having been lodged out of time. Thus, the impugned proceedings, which started on 26 November 1997 and ended on 28 July 2006, lasted eight years and eight months, excluding the period between 5 August 1998 and 15 March 1999, when no court proceedings were pending (see *Yemanakova v. Russia*, no. 60408/00, § 41, 23 September 2004, and *Efimenko v. Ukraine*, no. 55870/00, § 51, 18 July 2006).

46. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

47. The Court notes that the dispute at hand concerned recovery of salary arrears and compensation for their non-payment. Thus, it was an ordinary civil case the adjudication of which did not require any complicated procedures to be followed. Moreover, the proceedings ended in a decision that the applicant's claims were time-barred.

48. The Court points out that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present application (see, for instance, *Efimenko*, cited above, §§ 55-58).

49. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case.

There has accordingly been a breach of Article 6 § 1 with respect to the length of these proceedings.

2. Access to a court

50. The applicant maintained that the refusals of the courts to consider her compensation claims against her former employers had not been based on the circumstances of the cases and resulted from the incorrect application of the relevant procedural rules by the courts.

51. The Government argued that the decisions adopted by the courts had been in compliance with the relevant procedural rules and, thus, the applicant had not been deprived of the right of access to a court.

52. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, which, according to the Court's case-law, includes not only the right to institute proceedings but also the right to obtain a “determination” of the dispute by a court (see, for instance, *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II).

53. The right to a court is not absolute and may be subject to legitimate restrictions. Where an individual's access is limited either by operation of law or in fact, the restriction will not be incompatible with Article 6 where the limitation does not impair the very essence of the right and where it pursues a legitimate aim, and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93). The Court underlines that in the domain of interpretation of domestic legislation, in particular, procedural rules applicable to judicial proceedings, its role is limited to verifying whether the effects of such interpretation by the domestic authorities, notably the courts, are compatible with the Convention (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 46, ECHR 2002-IX).

54. Turning to the circumstances of the present case, the Court notes that the applicant had access to a court, in that her claims reached the Nakhimovskyy court and the courts of higher instances. However, in the proceedings against the SMZ the domestic courts eventually dismissed the applicant's compensation claims, holding that they had been lodged out of time. The applicant's April 1999 claim against the SMSK was dismissed on the ground that the matter had already been determined by a final judgment of 25 May 1998.

55. The Court observes that the applicant's compensation claims against her former employers were based on her argument that Article 117 of the Labour Code entitled her to compensation for late payment of salary arrears until the day of their factual payment even for periods of non-enforcement of a judgment awarding salary arrears.

56. Despite the difference in the formal outcome of the proceedings against the SMZ and the SMSK, it transpires that the applicant's argument was not accepted by the courts. In particular, the courts' decisions of 15 June 1999 and 26 November 2003 dismissing the applicant's claims were based on the position that the compensation for late payment of salary pursuant to Article 117 of the Labour Code could have been claimed by the applicant only as regards the period before the sums in respect of her salary arrears had been awarded by the judgments of 8 July 1997 and 25 May 1998 and that the three-month time limitation period had started to run on these dates (see in particular paragraph 15 above). With the adoption of those judgments Articles 116 and 117 of the Labour Code were no longer applicable in the applicant's situation and the former employers' obligation to pay salary arrears and compensation was replaced with the obligation to enforce the judgements in the applicant's favour, falling outside the sphere of substantive labour law.

57. In the light of the foregoing, the Court notes that the application of procedural limitations in the applicant's case to a large extent depended on the interpretation of the substantive provisions of the Labour Code. In this context, the Court observes that, according to the wording of Article 117 of the Code, “in the absence of a dispute over the amount” of salary arrears, retired employees were entitled to compensation for late payment of such arrears until their “factual payment” (Article 117 § 1) and, “in the event of a dispute over the amount” of salary arrears, compensation was to be paid if that dispute was resolved in the employee's favour (Article 117 § 2). Particular importance must be attached to the fact that the second paragraph of Article 117 of the Code, which concerns entitlement to compensation in the event of judicial determination of the amount of salary arrears and was applicable to the applicant's claims at issue, does not provide for compensation until the factual payment of salary arrears, unlike the first paragraph of Article 117. Thus, it cannot be reasonably argued that those provisions provided for an entitlement to compensation as regards delays in payment of salary arrears taking place after their amount was determined by a court.

58. While it may be argued that the reasons given by the courts for the impugned decisions somewhat lacked precision and clarity, in that the courts did not specifically address the two-fold operation of Article 117 of the Labour Code, the Court finds that they do not disclose any appearance of unfairness or arbitrariness and that the procedural limitations on the applicant's access to the courts were not applied disproportionately. Moreover, the Court reiterates that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for those courts to interpret domestic law and assess the evidence before them (see, for instance, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I).

59. Accordingly, the Court holds that there has been no violation of Article 6 of the Convention with respect to the applicant's complaint of lack of access to a court.

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

60. In her submissions of 26 September 2006 the applicant complained that her right to peaceful enjoyment of her possessions, within the meaning of Article 1 of Protocol No. 1, had been violated because of the refusal of the domestic courts to consider the merits of the compensation claims against her former employers. Article 1 of Protocol No. 1 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.”

61. The Government argued that the applicant's claims had been rejected by the courts in accordance with the domestic law and this fact did not constitute an unjustified interference with her right to peaceful enjoyment of her possessions. Moreover, they stated that the judgment of the Nakhimovskyy Court of 25 May 1998 allowing her compensation claims against the SMSK had been enforced in full.

62. The applicant submitted that she had a statutory right to receive compensation for the delay in payment of her salary arrears which she could not entertain because of the unlawful rejection of her claims by the courts.

63. The Court notes that the applicant's complaint in respect of her compensation claims against the SMSK was first raised in her submissions of 26 September 2006 and, thus, more than six months after the final domestic decision had been given by the Sevastopol Court (15 June 1999). Accordingly, it must be declared inadmissible, pursuant to Article 35 §§ 1 and 4 of the Convention.

64. As regards the applicant's complaint in respect of the compensation proceedings against the SMZ, the Court reiterates that applicants may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to their “possessions” within the meaning of that provision. “Possessions” can be either “existing possessions” or assets, including claims, in respect of which the applicants can argue that they have at least a “legitimate expectation” of obtaining effective enjoyment of a property right (see, among other authorities, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII; *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX; *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V; and *Bata v. the Czech Republic* (dec.), no. 43775/05, 24 June 2008).

65. In the light of the courts' interpretation of the relevant domestic legislation in the applicant's case, the Court finds that the applicant's compensation claims in respect of the period of 8 July 1997 to 18 March 1999 did not have any legal basis (see paragraphs 56 and 57 above). In particular, Article 117 of the Labour Code could not have been interpreted as establishing the right to compensation for a delay in payment of salary arrears taking place after the latter had been awarded by a court decision.

66. As regards the compensation claims which concerned the period before 8 July 1997, the Court notes that the domestic decision to reject them as lodged out of time does not appear to have been arbitrary or manifestly unreasonable. Furthermore, the Court has limited jurisdiction to interpret domestic rules of procedure and, in principle, it cannot substitute its view for that expressed by the domestic courts.

67. It follows that the complaint under Article 1 of Protocol No. 1 as regards the applicant's claims for compensation against the SMZ is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed UAH 64,803.28¹ in respect of pecuniary damage, which represented the amount of compensation she was allegedly entitled to receive for the delay in payment of her salary by the SMZ during the period of 1 October 1996 – 18 March 1999, adjusted in accordance with the current statutory minimum monthly income. She also claimed 4,500 euros (EUR) in respect of non-pecuniary damage.

70. The Government maintained that the applicant had no entitlement to any payments in respect of her claim for pecuniary damage, which was confirmed by the domestic courts. As to non-pecuniary damage, the Government considered that this claim was unsubstantiated.

71. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim. On the other hand, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant EUR 2,100 in respect of non-pecuniary damage.

1. About EUR 5,511.

B. Costs and expenses

72. The applicant claimed 60.98 United States dollars (USD)¹ for postal expenses incurred in the Convention proceedings.

73. The Government contested this claim.

74. Regard being had to the information in its possession, the Court considers it reasonable to award the applicant the requested amount for costs and expenses.

C. Default interest

75. 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. *Declares* the applicant's complaints under Article 6 § 1 of the Convention concerning the applicant's lack of access to a court in respect of her compensation claims lodged with the domestic courts in November 1997, March and April 1999, as well as concerning the length of the compensation proceedings against the SMZ, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the length of the compensation proceedings against the SMZ;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention with respect to the applicant's complaint of lack of access to a court;
4. *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 2,100 (two thousand one hundred euros) in respect of non-pecuniary damage and EUR 40 (forty euros) for costs and expenses, plus any tax that may be chargeable on the above amounts, which shall be converted into the currency of the respondent State at the rate applicable on the date of settlement;

1. About EUR 40.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President