



ECHR finds no violation in case of Donetsk pensioners' complaints about access to a court

In today's **Chamber judgment**¹ in the case of **Tsezar and Others v. Ukraine** (applications nos. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15, and 7289/15) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right of access to court) of the European Convention on Human Rights.

The case concerned a complaint by seven residents of Donetsk that they had not been able to bring cases challenging a suspension of pension payments and other social benefits ("social benefits") before a court in the city where they lived.

The Court noted that because of the conflict in eastern Ukraine the authorities had moved the Donetsk courts to neighbouring regions which were under Government control. There was no evidence that the applicants' personal circumstances had prevented them from travelling to the area where the courts were now located to file claims and the Government's actions had not impaired the very essence of their right of access to a court.

The Court declared a complaint by the applicants under **Article 1 of Protocol No. 1 (protection of property)** to the Convention about the suspension of the social benefits inadmissible for failure to use available legal remedies as they had not gone to court in the neighbouring regions, even though that option had been available to them.

Principal facts

The applicants, Lyubov Tsezar, Nikolay Tsezar, Svetlana Karlyuk, Kateryna Vanina, Tetyana Chernovol, Tetyana Vysla and Anatoliy Vyslyy, are Ukrainian nationals who were born in 1954, 1952, 1964, 1926, 1952, 1960, and 1956 respectively and live in Donetsk (Ukraine).

After the outbreak of the conflict in eastern Ukraine in April 2014, payments of social benefits to people living in areas which were outside Government control were suspended. The areas included settlements of the Donetsk and Luhansk regions. In September 2014 the jurisdiction of the Donetsk courts was relocated to neighbouring Government-controlled territory.

Some of the applicants continued to receive their social benefits until June 2014 and some to August of that year. In June 2015, the Tsezars registered with the Labour and Social Security Department of a neighbouring Government-controlled area. They had their social benefits reinstated and back-dated.

Ms Vysla registered with a social security office in Kyiv in September 2015 but did not apply for reinstatement of her social benefits. None of the other applicants applied for the reinstatement of social benefits in Government-controlled areas. The Government stated that Ms Vysla and Mr Vyslyy had travelled to such an area in October 2015.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and/or Article 13 (right to an effective remedy) of the Convention, the applicants complained of not being able to challenge the suspension of their social benefits in court as the courts had been removed from the area of hostilities. They also complained about the suspension itself under Article 1 of Protocol No. 1 (protection of property) to the Convention. Several applicants raised an issue under Article 14 (prohibition of discrimination) in conjunction with Article 6 and Article 1 of Protocol No. 1 about discrimination based on their place of residence.

The first three applications were lodged with the European Court of Human Rights on 10 November 2014 and the other applications were lodged on 14 January 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **De Gaetano** (Malta), *President*,
Ganna **Yudkivska** (Ukraine),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia **Motoc** (Romania),
Carlo **Ranzoni** (Liechtenstein),
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court decided to treat the complaints under Article 6 and Article 13 in conjunction with Article 1 of Protocol No. 1 under the heading of Article 6 § 1 alone.

It noted that the domestic courts in the city of Donetsk had been moved to areas under Government control after the outbreak of the conflict in eastern Ukraine. It had therefore to examine whether the authorities had taken all the measures available to them to organise its judicial system in a way that would ensure that the rights protected by Article 6 were effective in practice.

In [Khlebiuk v. Ukraine](#) it had found that the Government had done all it could to organise its judicial system in a way that was in compliance with Article 6 in the situation of an ongoing conflict. In this case too it decided that the domestic authorities had taken all the steps that could reasonably have been expected of them to ensure access to the judicial system for residents of territories outside Government control.

Given that there was no evidence that the applicants' personal situations prevented them travelling to the neighbouring regions, the Court concluded that the very essence of their right of access to a court had not been impaired. The limitation of that right had been due to the objective situation of the hostilities in the areas the Government do not control and had not been disproportionate. There had therefore been no violation of the provision in question.

Article 1 of Protocol No. 1

The Court decided that the applicants' complaint that the suspension of their social benefits had breached their property rights was inadmissible for failure to use all the legal remedies available to them as they had not challenged that decision before the domestic courts, even though they had been able to travel to the neighbouring Government-controlled regions.

Other Articles

The Court rejected the applicants' complaints under Article 14 in conjunction with Article 6 and Article 1 of Protocol No. 1 as manifestly ill-founded. It found that the applicants, who had complained of discrimination based on their place of residence, were not in the same situation as other residents of Ukraine. The Government did not exercise effective control of their city and had had to take special measures which were not needed in other parts of the country. It also dismissed a complaint by the first three applicants under Article 2 (right to life), related to their low standard of living, as inadmissible for failure to exhaust domestic legal remedies.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.