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

FIFTH SECTION

DECISION

Application no. 9783/13
Mykola Viktorovych BAKIN
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 11 April 2024 as a Committee composed of:

Carlo Ranzoni, President,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,

and Martina Keller, Deputy Section Registrar,

Having regard to the above application lodged on 18 January 2013,

Having regard to the decision to give notice of the application to the Ukrainian Government ("the Government"),

Having regard to the parties' observations,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mykola Viktorovych Bakin, a Ukrainian national, was born in 1951 and died on 7 April 2021. His son, Mr Vitaliy Bakin, informed the Court that he wished to pursue the application on his late father's behalf.

2. The Government were represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice.

3. By a judgment of 2 August 2007, the Zhovtnevyy District Court of Zaporizhzhya allowed a claim brought by the applicant for pension arrears and ordered the Zaporizhzhya Regional Military Commissariat ("the Commissariat") to pay him 47,345.24 Ukrainian hryvnias (the equivalent of approximately 7,000 euros at the material time). The judgment was not appealed against, became final and was enforced in full.

4. By a decision of 11 June 2008, the same court quashed the judgment of 2 August 2007 at the Commissariat's request in the light of "newly discovered circumstances" and reopened the proceedings. The court found

that in the original proceedings the representative of the Commissariat had not been duly authorised to pursue the case on its behalf and had failed to point to the key legal issues which had consequently remained unexamined by the court. The decision of 11 June 2008, of which the applicant was informed on an unspecified date prior to August 2008, was not amenable to appeal.

5. By a decision of 1 August 2008, the Zhovtnevyy District Court terminated the reopened proceedings on the grounds that the matter did not fall within the jurisdiction of the civil courts and that the applicant's claim would have to be lodged with the administrative courts. It also ordered the applicant to return the sum paid to him in pension arrears pursuant to the judgment of 2 August 2007, because that judgment had been quashed on 11 June 2008. Appeals by the applicant against the decision of 1 August 2008 were eventually rejected as unsubstantiated by the Higher Specialised Court of Civil and Criminal Matters on 7 November 2012.

COMPLAINTS

6. The applicant complained that the quashing of the judgment of the Zhovtnevyy District Court of 2 August 2007 and the court's order of 1 August 2008 to return the sum paid to him in accordance with that judgment were contrary to Article 6 § 1 and Articles 13 and 17 of the Convention and Article 1 of Protocol No. 1.

THE LAW

7. The Court reiterates that the quashing of a final judgment is an instantaneous act which does not create a continuing situation, even if it entails the reopening of the proceedings, as in the present case (see *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004; *Khanyan v. Armenia* (dec.), no. 19065/05, 5 July 2007; *Uzhavka v Ukraine* (dec.), no. 68856/13, 16 September 2014; and *Kordonchik v. Ukraine* (dec.), no. 47924/13, § 21, 26 August 2021). Accordingly, in so far as the applicant's complaints concern the quashing of the judgment of the Zhovtnevyy District Court of 2 August 2007, the applicable six-month time-limit must be calculated from the date on which the applicant was informed of that court's decision of 11 June 2008 making the quashing order, against which there was no right of appeal. This occurred sometime prior to 1 August 2008 and thus more than six months before the application was lodged with the Court on 18 January 2013 (see paragraph 4 above). It follows that this part of the applicant's complaints was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

8. In so far as the applicant complained about the decision of the Zhovtnevyy District Court of 1 August 2008 ordering him, as a result of the

quashing decision, to return the sum which had been previously paid to him pursuant to its judgment of 2 August 2007, the Court finds no indication that the contested order was unlawful or disproportionate. In essence, the applicant's grievance is based on a different reading of the domestic law, for which he failed to put forward any convincing argument. Nor did the applicant argue that he had been prevented from lodging his claim for pension arrears with the administrative courts, as the Zhovtnevyy District Court had suggested in its decision of 1 August 2008. Accordingly, this part of his complaints does not disclose any appearance of a violation of the provisions of the Convention on which the applicant relied, and should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 May 2024.

Martina Keller
Deputy Registrar

Carlo Ranzoni
President