

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

FIFTH SECTION

CASE OF ANDRUSHKO v. UKRAINE

(Application no. 45252/14)

JUDGMENT

STRASBOURG

20 June 2024

This judgment is final but it may be subject to editorial revision.



In the case of Andrushko v. Ukraine,

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

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 45252/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 June 2014 by a Ukrainian national, Mr Mykola Vasylyovych Andrushko ("the applicant"), who was born in 1964, lives in Chernihiv and was represented by Mr I.O. Siryy, a lawyer practising in Chernihiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 30 May 2024,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns the refusal of the domestic courts to allow the applicant's claim for reimbursement of expenses incurred in purchasing his uniform during his military service. The applicant complained of violations of Article 6 § 1 and Article 13 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

2. On 11 December 2013 the applicant, who at the time was serving in the Ukrainian armed forces, requested monetary compensation from his commander for various items of military uniform that had not been provided to him during his service. As no compensation was paid, the applicant brought administrative proceedings against the military base in which he was serving. According to the Government, on 14 December 2013 the applicant was discharged from military service.

3. On 24 December 2013 the Chernihiv Circuit Administrative Court ("the first-instance court") allowed the applicant's claim in full. With reference to section 9-1 of Law no. 2011-XII On Social and Legal Protection of Servicemen and Members of their Families ("Law no. 2011-XII") and paragraph 20 of the Regulations on Material Support of Servicemen in the Armed Forces and Other Military Formations in Peacetime, as approved by Resolution no. 1444 of the Cabinet of Ministers of Ukraine of 28 October 2004 ("Regulations no. 1444"), as well as two certificates issued by the

applicant's former military base on 23 December 2013 that determined the amount due to the applicant, the first-instance court ordered the military base to pay the applicant a total of 9,589.73 Ukrainian hryvnias (equivalent at the time to approximately 850.58 euros (EUR)) by way of reimbursement of the uniform expenses. The domestic court noted that it had taken into account the ruling of the Supreme Court of Ukraine of 18 June 2013 which had established that, under Law no. 2011-XII, only active military officers were entitled to reimbursement of uniform expenses, while those who had retired could not claim it.

4. On 25 February 2014 the Kyiv Administrative Court of Appeal ("the Court of Appeal") quashed the decision of the first-instance court and found against the applicant. The Court of Appeal noted, *inter alia*, that the applicant, as an active serviceman, could not rely on paragraph 27 of Regulations no. 1444 and therefore was not entitled to the reimbursement in issue.

5. On 20 March 2014 the applicant appealed on points of law to the Higher Administrative Court ("the HAC").

6. On 28 March 2014 the HAC dismissed the applicant's appeal on points of law as being unsubstantiated. It referred to the findings of the Supreme Court of 11 June 2013 in an apparently similar case.

7. On 16 April 2014 the applicant sought leave from the HAC to appeal to the Supreme Court.

8. On 22 April 2014 the HAC refused the applicant leave to appeal to the Supreme Court.

THE COURT'S ASSESSMENT

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

9. The applicant complained under Article 6 § 1 and Article 13 of the Convention that both the Court of Appeal and the HAC had failed to provide sufficient reasoning in their decisions. Additionally, he contended that the Court of Appeal had ignored his specific argument regarding entitlement to reimbursement as an active serviceman.

10. The Government asserted that the national courts, including the HAC, had duly considered the applicant's arguments and had given well-grounded decisions. As regards the examination of the applicant's appeal on points of law, the Government noted that the HAC had additionally referred in its decision to the judgment of the Supreme Court in a similar case.

11. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

12. According to the Court's case-law, Article 6 § 1 obliges the domestic courts to give reasons for their judgments. This duty cannot be understood as

requiring a detailed answer to every argument, and the question of compliance with that duty can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A, and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Those principles have been applied in a number of Ukrainian cases (see, for example, *Pronina v. Ukraine*, no. 63566/00, § 25, 18 July 2006; *Benderskiy v. Ukraine*, no. 22750/02, §§ 42-47, 15 November 2007; and *Bogatova v. Ukraine*, no. 5231/04, §§ 18-19, 7 October 2010).

13. In the instant case, the applicant submitted in the Ukrainian courts that as an active serviceman he was entitled under the domestic law to reimbursement of uniform expenses. As can be seen from the decision of the first-instance court, he referred in support of these allegations to, among other authorities, section 9-1 of Law no. 2011-XII and paragraph 20 of Regulations no. 1444, both of which provided for the right of active servicemen to obtain such compensation. In the Court's view, given its decisive role for the outcome of the case, this pertinent and important argument required a detailed reply from the domestic courts.

14. However, when examining the applicant's case, the Court of Appeal did not react in any manner to that argument. After citing various unrelated legal provisions, it noted that the applicant, as an active serviceman, could not rely on paragraph 27 of Regulations no. 1444, because it applied exclusively to retired servicemen. The applicant's explicit reference to paragraph 20 of Regulations no. 1444, which applied to active servicemen, was ignored altogether. Similarly, the Court of Appeal did not assess whether section 9-1 of Law no. 2011-XII or the ruling of the Supreme Court (see paragraph 3 above) were relevant to the applicant's claim. The Court is of the view that this omission by the Court of Appeal, which completely disregarded the applicant's key arguments, cast doubt on whether his case had been truly heard and undermined the overall fairness of the judicial process.

15. There is nothing to suggest that the principal issue raised by the applicant was further examined by the HAC, which dismissed his appeal on points of law. In this connection, the Court cannot agree with the Government's assertion that the HAC's decision had benefited from the inclusion of the reference to a judgment of the Supreme Court in a similar case (see paragraph 10 above). The circumstances of the cited case are markedly different from those of the applicant's case. In particular, the claimant in the cited case, a retired serviceman, had his compensation claim denied solely on account of his retired status. The applicant, in contrast, was an active serviceman.

16. In view of the above, the Court finds that both the Court of Appeal and the HAC failed in their duty to provide reasons for their decisions and did not address the pertinent and important arguments raised by the applicant. This prompts the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

17. Reiterating that the role of Article 6 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6, the Court considers that it is not necessary to examine the complaint under Article 13 of the Convention (see, for instance, *Grzęda v. Poland* [GC], no. 43572/18, § 352, 15 March 2022).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

18. The applicant complained under Article 1 of Protocol No. 1 to the Convention of an interference with his property rights on account of the rejection by the domestic courts of his claim for reimbursement of expenses incurred in purchasing his military uniform. He further contended that he had had legitimate expectations of obtaining compensation on the basis of the relevant provisions of domestic law.

19. The Government submitted that the applicant's complaint was inadmissible for failure to exhaust domestic remedies. In particular, the applicant could have claimed the compensation in question following his discharge from military service. As to the merits, the Government stated that they were unable to provide any information concerning the applicant's allegations because the case file had been destroyed on the expiry of the statutory storage period, but maintained that the decisions of the domestic courts had been well founded. The Government submitted in addition that the applicant could not have had legitimate expectations of obtaining the compensation in question because, under the legislation in force, it had been suspended in respect of active servicemen.

20. The applicant disagreed.

21. The Court notes that the complaint under Article 1 of Protocol No. 1 is directly connected with the one examined under Article 6 § 1 of the Convention. Having regard to its conclusions under that Article, it considers that it cannot speculate as to what the situation would have been if the applicant's principal arguments had been duly assessed by the domestic courts. Consequently, it does not consider it necessary to rule on the question whether the applicant had a possession within the meaning of Article 1 of Protocol No. 1 or on the admissibility and merits of the complaint based on that Article (see *Leonidov v. Ukraine* [Committee], no. 2064/12, § 30, 22 September 2022, and the refence made therein, *mutatis mutandis*, to *Glod v. Romania*, no. 41134/98, § 46, 16 September 2003).

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22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested that claim.

24. Ruling on an equitable basis, in view of its findings under Article 6 § 1 of the Convention, the Court awards the applicant EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

25. The Court considers it appropriate that the default interest rate 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 complaints under Article 6 § 1 and Article 13 of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 900 (nine hundred euros), to be converted into the national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) 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;

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

Done in English, and notified in writing on 20 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mārtiņš Mits President