

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

FIFTH SECTION

CASE OF MARUSHCHAK v. UKRAINE

(Application no. 62341/16)

JUDGMENT

STRASBOURG

14 November 2024

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



In the case of Marushchak v. Ukraine,

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

María Elósegui*, President*,
Kateřina Šimáčková,
Stéphane Pisani*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 62341/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 22 October 2016 by a Ukrainian national, Ms Natalia Ivanivna Marushchak ("the applicant"), who was born in 1955, lives in Rokytne and was represented by Ms T.I. Marushchak, a lawyer practising in Kyiv;

the decision to give notice of the complaints concerning Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention, to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 17 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the suspension of the applicant's old-age pension while she was employed by a municipal newspaper. She relied on Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

2. The applicant was employed as editor-in-chief of the municipal newspaper *Visnyk Rokytnianshchyny*. Alongside her salary, she received an old-age pension, calculated in accordance with the Civil Service Act (see paragraph 8 below).

3. On 1 April 2015 amendments to the Compulsory State Pension Insurance Act and other legislative acts ("Law no. 213-VIII") entered into force, suspending until 31 December 2015 the disbursement of old-age pensions determined under the Civil Service Act to individuals who were concurrently employed in positions which conferred entitlement to such pensions. Individuals in other forms of employment who were also in receipt

of an old-age pension under the Civil Service Act which exceeded the statutory amount[1] were subject to a 15% reduction in their pension.

4. In accordance with the aforementioned Law, the disbursement of the applicant's old-age pension was suspended as of 1 April 2015.

5. The applicant instituted administrative proceedings, seeking the resumption of her pension payments.

6. Although the first-instance court found in the applicant's favour, stating that she was not a civil servant and that the amendments in question did not apply to her, a ruling by the Kyiv Administrative Court of Appeal of 7 April 2016, upheld by the Higher Administrative Court of Ukraine on 27 April 2016, overturned the first-instance court's decision, and the applicant's claim was rejected in full. The higher courts determined that although the applicant was not a civil servant, the amendments in question were applicable to her, in that she held a position which conferred entitlement to a pension determined under the Civil Service Act.

7. As of 1 May 2016, the disbursement of the applicant's old-age pension was resumed, given that the Civil Service Act was no longer in effect.

RELEVANT DOMESTIC LAW AND PRACTICE

8. Under section 16 of the Law "On State Support of Media and Social Protection of Journalists" of 23 September 1997, as worded at the material time, the pensions of journalists employed by State or municipal media were to be calculated in accordance with the same norms, methodology, and procedures as those applied to civil servants.

9. Under the final provisions of Law no. 213-VIII (sections 4 and 5), as in force at the material time, the Government were required to put forward, by 1 May 2015, draft legislation proposing that all pensions (except those of military personnel and academic researchers) be administered on an identical basis. Should no such law be enacted by 1 June 2015, the legal provisions governing pensions under, *inter alia,* the Civil Service Act would cease to take effect as of that date.

10. In a series of rulings concerning the suspension of pensions for editors of municipal newspapers (see, for example, cases nos. 126/2198/16-a of 3 July 2018, 484/470/17 of 17 July 2019 and 471/744/16-a of 9 June 2021) the Supreme Court held that, in view of the failure to enact the Law referred to in the final provisions of Law no. 213-VIII (see paragraph 9 above), the legal provisions governing pensions under the Civil Service Act ceased to take effect on 1 June 2015 and thus, from that date onwards, the suspended pension payments for those individuals should have resumed.

[1] 150% of the statutory minimum amount payable to persons who had lost their capacity to work.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

11. The applicant complained that the suspension of the disbursement of her old-age pension from 1 April 2015 to 30 April 2016 amounted to a violation of Article 1 of Protocol No. 1 to the Convention.

A. The parties' submissions

12. The Government argued that the interference with the applicant's property rights had been the result of legislative changes in respect of which there had been no effective remedies. Accordingly, they claimed that she had lodged her application with the Court out of time. In the alternative, the Government contended that the interference in question had complied with the requirements of Article 1 of Protocol No. 1.

13. The applicant argued that she had lodged the application within the time-limit after exhausting all domestic remedies. She further asserted that suspension of the disbursement of her old-age pension had been unlawful and disproportionate.

B. The Court's assessment

1. Admissibility

(a) Six-month rule

14. The Court has already analysed the question of compliance with the six-month rule in the context of Law no. 213-VIII and its application to working pensioners, in the case of *Charnomskyy and Others v. Ukraine* (dec.), nos. 13417/16 and 7 others, §§ 13-21, 20 February 2018. It held in that case that since the domestic courts could not override the statutory provision which, in the applicants' complaints, violated their rights, the domestic proceedings could not be considered effective and, accordingly, the six-month period commenced from the day on which the relevant legislative amendments entered into force.

15. In contrast to the case of *Charnomskyy and Others*, where the applicants were civil servants, the applicant in the present case was employed at a municipal newspaper, which, as confirmed in the course of the domestic proceedings (see paragraph 6 above), was not considered to be part of the civil service. The applicant's claim, therefore, did not concern a statutory provision of Law no. 213-VIII as such, but rather its interpretation by the domestic authorities in her case (compare *Pichkur v. Ukraine*, no. 10441/06, §§ 35-36, 7 November 2013, and *Myroshnychenko v. Ukraine* (dec.), no. 10205/04, 3 April 2007). In such circumstances, bearing in mind that the

first-instance court initially found in the applicant's favour, the Court is of the view that by lodging her claim with the domestic courts the applicant made normal use of a domestic remedy which was likely to be effective and sufficient.

16. Given that the applicant lodged her application within six months of the date of the Higher Administrative Court of Ukraine's ruling, obtained by her in the process of exhaustion of domestic remedies, the Court considers that she complied with Article 35 § 1 of the Convention and dismisses the Government's objection in this respect.

(b) Other admissibility criteria

(i) Suspension of the applicant's pension payments from 1 April to 31 May 2015

17. As regards the suspension of the applicant's pension for the period from 1 April to 31 May 2015, the Court notes that it had a basis in domestic law (see paragraph 3 above) and that the applicable statutory provisions were sufficiently accessible, precise and foreseeable. In this connection, the Court subscribes to the reasoning of the domestic courts in the applicant's case, to the effect that Law no. 213-VIII applied not only to civil servants, but also to persons who were employed in positions which conferred entitlement to pensions under the Civil Service Act.

18. Furthermore, bearing in mind the wide margin of appreciation enjoyed by the States in implementing social and economic policies (see, *mutatis mutandis*, *Wieczorek v. Poland*, no. 18176/05, § 59, 8 December 2009), the Court finds no reason to doubt that the suspension of the simultaneous disbursement of salaries and pensions to which the applicant was subjected served the general interest of the protection of the public purse. Finally, having regard to its findings in *Fábián v. Hungary* ([GC], no. 78117/13, §§ 69-85, 5 September 2017), the Court concludes that a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights, and that she was not made to bear an excessive individual burden. The Court therefore rejects the applicant's complaint in respect of this period as manifestly ill-founded.

(ii) Suspension of the applicant's pension payments from 1 June 2015 to 30 April 2016

19. By contrast, with regard to the applicant's complaint in respect of the period from 1 June 2015 to 30 April 2016, the Court considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

20. It is not disputed between the parties that the suspension of the applicant's pension amounted to an interference with her right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1.

21. The general principles relevant to the present case have been summarised in *Béláné Nagy v. Hungary* ([GC], no. 53080/13, §§ 112-18, 13 December 2016) and, most recently, in *Shylina v. Ukraine* (no. 2412/19, §§ 33-36, 15 February 2024). Thus, in order to be compatible with Article 1 of Protocol No. 1 to the Convention the impugned measure must fulfil three conditions: it must be lawful, pursue a legitimate aim and strike a fair balance between the general interest of the community and the individual's fundamental rights.

22. The Court cannot accept the Government's argument that the suspension of the applicant's pension payments during the period from 1 June 2015 to 30 April 2016 had a sufficient basis in domestic law. As is evident from the text of the final provisions of Law no. 213-VIII (see paragraph 9 above), the continued suspension of pension payments from 1 June 2015 was conditional on the enactment of special legislation in the pension sphere. However, as confirmed by the Supreme Court's case-law, no such legislation was enacted and as of 1 June 2015 the legal provisions governing the disbursement of pensions under the Civil Service Act for journalists working in State and municipal media ceased to take effect (see paragraph 10 above). Thus, the grounds for continued suspension of the applicant's pension no longer existed.

23. This is sufficient for the Court to conclude that the suspension of the applicant's pension from 1 June 2015 could not be considered lawful within the meaning of Article 1 of Protocol No. 1. In view of this finding, it is unnecessary to examine whether the interference in question pursued a legitimate aim and was proportionate to that aim.

24. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. REMAINING COMPLAINT

25. The applicant also complained under Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1, of the alleged discriminatory nature of suspension of her pension payments, as compared to other working pensioners whose pensions were reduced by only 15%.

26. The Court reiterates that in order for an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations, and that it is incumbent on the applicant to demonstrate the existence of that differential treatment (see *Fábián*, cited above, §§ 112-17). In the present case, however, the applicant failed to substantiate her claim and provided no detailed explanation of her reasoning

on the issue. It follows that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must therefore be rejected pursuant to Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed 162,204.34 Ukrainian hryvnias (UAH; the equivalent of 4,214.85 euros (EUR))[2] in respect of pecuniary damage, consisting of EUR 2,012.47 for 13 months of outstanding pension payments (April 2015 – April 2016), EUR 1,717.83 for inflation-related losses and EUR 484.55 of statutory interest, provided for by domestic law at 3% per annum. She also claimed EUR 10,000 in respect of non-pecuniary damage.

28. The Government considered the applicant's claims exorbitant and unsubstantiated.

29. Without wishing to speculate on the precise amount of the pension to which the applicant would have been entitled had the violation of Article 1 of Protocol No. 1 not occurred, the Court must have regard to the fact that she undoubtedly suffered pecuniary and non-pecuniary damage. Ruling on an equitable basis, as required by Article 41 of the Convention, and having regard to the fact that it has found a violation of Article 1 of Protocol No. 1 in respect of the period of 11 months from June 2015 to April 2016, the Court awards the applicant EUR 4,000 to cover all heads of damage (see, *mutatis mutandis*, *Muñoz Díaz v. Spain*, no. 49151/07, § 86, ECHR 2009), plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 in respect of the period between 1 June 2015 and 30 April 2016 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the above period;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

[2] Hereafter, the amounts specified in UAH have been converted into the equivalent amount in EUR at a rate applicable on the date of the submission of the claim.

(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;

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

Done in English, and notified in writing on 14 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President