

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

FIFTH SECTION

CASE OF PICHKUR v. UKRAINE

(Application no. 10441/06)

JUDGMENT

STRASBOURG

7 November 2013

FINAL

07/02/2014

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



In the case of Pichkur v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges,*
Stanislav Shevchuk, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 15 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 10441/06) 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, Mr Anatoliy Andriyovych Pichkur ("the applicant"), on 21 November 2005.

2. The applicant was represented by Mr V. Shapoval, a lawyer practising in Hannover, Germany. The Ukrainian Government ("the Government") were represented by their Agent, Ms V. Lutkovska, from the Ministry of Justice.

3. On 21 September 2010 the Court declared the application partly inadmissible and decided to communicate the complaint concerning discriminatory deprivation of retirement pension to the Government.

4. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Mr Stanislav Shevchuk to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in Bremen, Germany.

6. In 1996, after having worked for forty years in Ukraine, the applicant retired and began receiving a retirement pension.

7. From 1999 the applicant authorised his mother to receive his pension.

8. In August 2000 the applicant emigrated to Germany. Prior to his departure, he was supposed to inform the local department of the Pension Fund that he was leaving for permanent residence abroad and to receive six months' pension payments in advance, with subsequent termination of all pension payments during the whole period of his stay abroad (see Relevant domestic law below). However, the applicant did not follow this procedure and his mother continued to receive his pension after his departure. The monthly amount of the applicant's pension varied from 107 Ukrainian hryvnias (UAH), which was equivalent of around 21 euros (EUR) at the material time, in February 2001 to UAH 365.41 (EUR 58) in September 2005 and totalled in UAH 10,872.40.

9. On 23 September 2005, on discovering that the applicant was no longer resident in Ukraine, the Zaporizhzhya Leninskiy District Department of the Pension Fund (hereinafter "the Pension Fund Department") took a decision in accordance with Section 49 § 1 (2) of the General State Pension (Obligatory Insurance) Act to terminate pension payments to the applicant with effect from 1 September 2005 on the ground that he lived permanently abroad.

10. At the request of the Pension Fund Department, on 6 April 2006 the Zaporizhzhya Leninskiy District Court (hereinafter "the District Court") ordered the applicant to pay back the amount of UAH 10,872.40 Ukrainian hryvnias unlawfully received after his emigration. This judgment was upheld by the higher courts and became final, but remained unenforced.

11. On 8 September 2008 the Zaporizhzhya Leninskiy District Police Department refused to institute criminal proceedings against the applicant for allegedly unlawful receipt of pension between 2001 and 2005 for lack of *corpus delicti* in his actions.

12. On 7 October 2009 the Constitutional Court declared unconstitutional the provisions on the basis of which the applicant's pension payments had been terminated (see Relevant domestic law below).

13. On 12 October 2009, following the above decision of the Constitutional Court, the applicant requested the Pension Fund Department to restore his pension payments. By a letter of 10 February 2010 the Pension Fund Department, referring to the Pension Fund letter of 28 December 2009 concerning the procedure for application of the decision of the Constitutional Court of Ukraine, informed the applicant that the above decision of the Constitutional Court applied only to those who had left for abroad after 7 October 2009 and that therefore there were no legal grounds for the restoration of his pension payments. On 3 September 2010 the applicant challenged the above interpretation of the Constitutional Court decision by the Pension Fund before the Kyiv Administrative Court, which rejected his complaint as submitted too late.

14. On 20 October 2009 the applicant applied to the District Court for revision of its judgment of 6 April 2006 on the grounds of newly discovered circumstances, referring to the decision of the Constitutional Court of 7 October 2009. On 2 December 2009 the Zaporizhzhya Regional Prosecutor's Office (the ZRPO) made a similar application to the same court, acting in the applicant's interests. On 29 June 2010 the court rejected the applications, on the ground that the decision of the Constitutional Court had no retroactive effect and could not qualify as a newly discovered circumstance. On 14 October and 22 November 2010 the Zaporizhzhya Regional Court of Appeal and the Higher Administrative Court upheld the decision of the first-instance court.

15. On 12 February 2010 the Zaporizhzhya Leninskiy District Prosecutor instituted proceedings in the interests of the applicant in the District Court against the Pension Fund Department, seeking resumption of pension payments to the applicant.

16. On 15 April 2011 the District Court found for the applicant and ordered the Pension Fund Department to resume payment of pension to the applicant with effect from 7 October 2009, the date of the Constitutional Court decision.

17. On 26 April 2011 the Pension Fund Department appealed against the judgment of 15 April 2011.

18. On 21 June 2011 the Dnipropetrovsk Administrative Court of Appeal upheld the decision of 15 April 2011.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Legislation of the USSR on pensions

19. Since 1956 the pension payments had been regulated by the State Pension Act of 14 July 1956. Section 6 of the Act provided that the pensions were to be paid from the funds allocated in the State budget, including the funds of State social security, which were formed from the contributions of enterprises, institutions and organisations without any deductions from the salaries. As a general rule, under Section 7 of the Act, the men were entitled to old age pension when they attained the age of 60 and had been working for at least 25 years. For women the retirement age was 55 and the work record was at least 20 years.

20. In May 1990 the new pension act – the Pension Benefits Act was enacted. It introduced the Pension Fund of the USSR which was separated from the State Budget and was formed from the different types of contributions, including obligatory social security contributions of enterprises and individuals alike (Article 8 the Act). After dissolution of the

Soviet Union, a similar provision was introduced in the Ukrainian Pensions Act of 1991 (see below).

B. Domestic law

1. Constitution of Ukraine of 1996

21. Relevant provisions of the Constitution read as follows:

Article 9

"International treaties that are in force and are agreed to be binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine..."

Article 24

"Citizens have equal constitutional rights and freedoms and are equal before the law.

There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics..."

Article 46

"Citizens have the right to social protection that includes the right to subsistence ... in old age..."

2. Pensions Act of 5 November 1991

22. Relevant sections of the Act provides:

Section 8. Funds for pension payment. Exemption of pensions from taxation

"...The Pension Fund of Ukraine is an independent financial and banking system, is not part of the State budget of Ukraine, is formed from funds that are paid by enterprises and organizations ... from insurance payments of citizens engaged in entrepreneurial activity, from obligatory insurance contributions of citizens, as well as from the funds of the State budget of Ukraine..."

Section 92. Payment of pensions to citizens who have left for abroad.

"Pensions shall not be granted to citizens who have left for permanent residence abroad.

Pensions granted in Ukraine before the recipient leaves for permanent residence abroad shall be paid for six months in advance, before the recipient departs for abroad.

While a citizen is abroad only pensions granted for occupational disability or illness shall be payable.

The procedure of transferring pensions granted for professional disability or illness to other countries shall be established by the Cabinet of Ministers of Ukraine."

3. General State Pension (Obligatory Insurance) Act of 9 July 2003 (in force at the material time)

23. Sections 49 and 51 of the Act provided, in so far as relevant, as follows:

Section 49. Termination and resumption of pension payments

"1. The payment of pension shall be terminated by a decision of the territorial bodies of the Pension Fund or by a court:

...

2) for the duration of residence of the retired person abroad, unless otherwise stipulated by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine....."

Section 51. Payment of pension in the event of emigration

"In the event of departure of a retired person for permanent residence abroad, a pension granted in Ukraine shall be paid for six months in advance before departure, from the month following the month when the person registered as leaving their place of residence. While he is abroad the pension shall be paid if there is provision to do so in an international treaty of Ukraine ratified by the Verkhovna Rada of Ukraine."

There is no treaty on social security between Ukraine and Germany.

The subparagraph (2) of paragraph 1 of Section 49 and the second sentence of Section 51 were found unconstitutional in October 2009 (see below).

4. Decision of the Constitutional Court of Ukraine of 7 October 2009 in the case on the constitutional appeal of the Supreme Court of Ukraine concerning compliance with the Constitution of Ukraine (constitutionality) of the provisions of the second subparagraph of the first paragraph of section 49 and the second sentence of section 51 of the Law of Ukraine on the General Obligatory State Pension Insurance.

24. By this decision the Constitutional Court found the provision concerning termination of pension payments to Ukrainian citizens residing abroad unconstitutional and repealed the relevant provision of section 51 of the General State Pension (Obligatory Insurance) Act. The court noted in particular that:

> "The disputed provisions of the Act made the constitutional right to social security dependent on the signing of an international treaty on pensions between Ukraine and the country concerned. Thus the State, despite constitutional guarantees of social security for all who are entitled to a retirement pension, deprived retired people of their rights by law, if they choose as their place of permanent residence a country with which no such treaty has been signed. Given the legal and social nature of pensions, the citizen's right to receive a pension cannot be associated with such a condition as permanent residence in Ukraine; according to constitutional principles the State is required to ensure this right [to a pension] regardless of where a person who has been awarded a pension, lives, in Ukraine or abroad."

25. The Constitutional Court further invited Parliament to review all other relevant legal acts containing similar provisions.

C. Relevant international law

26. Article 69 of the 1952 International Labour Organisation's Social Security (Minimum Standards) Convention ("the 1952 ILO Convention") provides that a benefit to which a protected person would otherwise be entitled in compliance with the 1952 ILO Convention (including old age benefit) may be suspended, in whole or in part, by national law as long as the person concerned is absent from the territory of the State concerned. The above provision is echoed in Article 68 of the 1964 European Code of Social Security and Article 74(1)(f) of the 1990 European Code of Social Security (Revised).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

27. The applicant complained that he had been deprived of his retirement pension on the ground of his place of residence, in violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol no. 1, which read as follows:

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1

"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."

A. Admissibility

28. The Government maintained that in the present case there are two distinct periods. The first period lasted from the applicant's departure for abroad on 29 August 2000 until the decision of the Constitutional Court of Ukraine on 7 October 2009. The second period started after the above decision and continues. The Court will examine the admissibility issues relating to each of these periods, starting with the last one.

1. Period from 7 October 2009

29. According to the Government, following the Constitutional Court decision the applicant was entitled to request the domestic authorities to resume his pension payments. The applicant did so and the relevant proceedings were at the time of submission of the Government's observations pending before the domestic courts. The Government considered this period inadmissible as the applicant had not exhausted existing domestic remedies.

30. The applicant noted that he had instituted a number of proceedings at the domestic level, but at the time of submission of his observations to no avail. He considered that he had exhausted domestic remedies.

31. The Court notes that from the circumstances of the case, it appears that the interpretation of the Constitutional Court decision by the Pension Fund seems to suggest a new distinction between retired persons who have left for abroad prior or after the decision of the Constitutional Court of 7 October 2009. This interpretation, however, was disputed at the domestic level. In particular, the Court notes that on 15 April 2011 the Leninskiy District Court found for the applicant and ordered the District Department of the Pension Fund to resume payment of pension to the applicant with effect from 7 October 2009, the date of the Constitutional Court decision. This decision was upheld on appeal, but the applicant did not inform the Court whether it was further appealed in cassation by the Pension Fund Department. In absence of any information to the contrary, the Court will assume that the proceedings had terminated with the decision of the court of

appeal in the applicant's favour and he can no longer claim to be a victim of the violation alleged for the period after 7 October 2009. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Period between 29 August 2000 and 7 October 2009

(a) Observation of the six-month rule

32. The Government considered that in accordance with the law then in force the applicant was no longer entitled to a pension from the moment of his departure for permanent residence abroad in August 2000. He must have been aware of that fact and if he had acted in good faith his pension payments would have stopped at that point. They concluded that the six-month period for this complaint had started running on 29 August 2000, when the disputed law had had to be applied to him.

33. The Government argued that the payments received by the applicant between February 2001 (excluding the six months' payment on his departure in August 2000) and September 2005 could not be considered pension payments, given that he had not been entitled to a pension under the law.

34. The applicant disagreed. He maintained that under the law only the local departments of the Pension Fund had the authority to terminate and resume the payment of pensions. In his case, the final decision on termination of pension payments had been given by the Pension Fund Department on 23 September 2005. He further maintained that the law-enforcement authorities had checked the allegations that he had acted unlawfully in not informing the Pension Fund about his departure abroad and had found no *corpus delicti* in his actions.

35. The Court reiterates that it is not for it to rule *in abstracto* on the compatibility of the Ukrainian pension system with the Convention, but to ascertain *in concreto* what effect the application in this case of the provisions of the Pension Act had on the applicant's rights guaranteed by Article 14, taken in conjunction with Article 1 of Protocol no. 1. In previous similar cases against Ukraine the Court has taken as a starting point the moment when pensioners became aware that the further payment of their pensions had been terminated under Article 92 of the Pensions Act, that is when the disputed provisions began to apply to them personally (see *Dudnik and Others v. Ukraine* (dec.), nos. 9408/05, 10642/05 and 26842/05, 20 November 2007, and *Sheidl v. Ukraine*, (dec.), no. 3460/03, 25 March 2008).

36. In the present case, the decision on termination of the pension payments to the applicant was made on 23 September 2005. It was from that moment that the relevant provisions of the domestic law affected him

personally, and it was from then that he could claim to be a victim of a violation of his rights guaranteed by the Convention. Given that the Ukrainian legal system did not provide an individual with an effective remedy to invalidate or override a statutory provision, and the alleged violation clearly derived from a statutory provision (see *Myroshnychenko v. Ukraine* (dec.), no. 10205/04, 3 April 2007), it was then that the applicant could arguably claim that the relevant legal provision had been applied to his detriment. Taking into account the fact that the present application was lodged on 21 November 2005, less than two months after the decision of the Pension Fund on termination of his pension payment had been taken, the Court finds that the applicant complied with the six-month rule and the Government's objections to this end shall be dismissed.

(b) Applicability of Article 14 taken in conjunction with Article 1 of Protocol No. 1 to the period in question

37. The Government, as mentioned above, considered that under the law in force at the material time the applicant had neither entitlement to nor legitimate expectations of a pension in Ukraine between the dates of his departure for abroad and the decision of the Constitutional Court.

38. The applicant considered that the termination of his pension payments had led to discrimination against him in respect of his right to enjoy his property regardless of his place of residence.

39. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence, since it has effect solely with regard to "the enjoyment of the rights and freedoms" safeguarded by those provisions (see, among many other authorities, *Şahin v. Germany* [GC], no. 30943/96, § 85, ECHR 2003-VIII). The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see, among other authorities, *Gaygusuz v. Austria*, § 36, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, and *E.B. v. France* [GC], no. 43546/02, § 47, ECHR 2008-... and references therein).

40. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention article, for which the State has voluntarily decided to provide (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 40, ECHR 2005-X).

41. If a Contracting State has legislation in force providing for the payment of a welfare benefit as of right, whether conditional or not on the prior payment of contributions, that legislation must be regarded as

generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for those satisfying its requirements (ibid., § 54).

42. In cases, such as the present one, concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1, that the applicant has been denied all or part of a particular benefit on a discriminatory ground covered by Article 14, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question. Although Protocol No. 1 does not include the right to receive a social-security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14. (ibid., § 55).

43. It is not disputed between the parties that, had the applicant continued to reside in Ukraine, he would have continued to receive a pension. It follows that the applicant's interests fall within the scope of Article 1 of Protocol No. 1 and of the right to property which it guarantees. This is sufficient to render Article 14 applicable in this case.

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

B. Merits

45. The applicant considered that discrimination in his situation had been established by the decision of the Constitutional Court of Ukraine of 7 October 2009. Despite the fact that the decision of the Constitutional Court had no retroactive effect, the provisions of the Convention, including Article 14 which prohibits discrimination, had been in force for Ukraine since 11 September 1997. Therefore, since that date the State had had to act in compliance with its obligations and was not allowed to discriminate against retired people.

46. The Government made no observations on the merits.

47. The Court notes that the applicant complained of a difference in treatment on the basis of his place of residence, which constitutes an aspect of personal status for the purposes of Article 14 (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 70 and 71, ECHR 2010-....).

48. The Court's case-law establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV).

49. A difference in treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting

State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see *Van Raalte v. the Netherlands*, 21 February 1997, § 39, *Reports* 1997-I).

50. The Court reiterates its reasoning in the *Carson* judgment, that the payment of social welfare contribution in itself could not place persons living in different countries in a relevantly similar position, as any social welfare system, including pension schemes, is primarily designed to ensure certain minimum standards of living for residents of the country concerned and to serve their needs. Moreover, it is difficult to draw any genuine comparison between the pensioners within the country and those living elsewhere, because of the range of economic and social variables which apply from country to country (see *Carson and Others v. the United Kingdom* [GC], cited above, §§ 85 and 86). Furthermore, the Court established that the States had the right to enter into reciprocal agreement in social security sphere and the fact that a State entered in such agreement with one country could not create an obligation for that State to confer the same social security advantages to persons living in other countries (ibid, §§ 88 and 89)

51. The Court considers that the present case has to be distinguished from the above *Carson* judgment, in which the difference in treatment complained of concerned the lack of indexation of existing pensions for those residing in some foreign States, while nobody questioned the applicants' entitlement to the pension as such. In the present case, however, the entitlement to the pension itself had been made dependent on the applicant's place of residence, resulting in a situation in which the applicant, having worked for many years in his country and having contributed to the pension scheme, had been deprived of it altogether, on the sole ground that he no longer lived in Ukraine. Indeed, the applicant, who had been economically active in Ukraine from 1956 to 1996, had a right to a pension after he retired and, as the domestic law provided at the material time, he would again receive his pension upon his return to Ukraine. The Court therefore concludes that, with respect to the entitlement to the pension itself, the applicant was in a relevantly similar situation as the pensioners who resided in Ukraine.

52. It remains to be seen whether the difference in treatment complained of can be justified. In this respect, the Court notes that no justification had ever been advanced by the authorities for depriving the applicant of his pension solely because he was living abroad. Indeed, the decision of the Constitutional Court of 7 October 2009 does not indicate that the domestic authorities advanced relevant reasons to justify the difference in treatment complained of, nor was any such justification given by the Government in the proceedings before this Court.

53. In this context the Court notes that the Government has not relied on considerations of international cooperation to justify treating pensioners living in Ukraine differently from those living abroad. In any event, the Court is not prevented from defining higher standards on the basis of the Convention than those contained in other international legal instruments. The Court has frequently reiterated that the Convention is a living instrument which must be interpreted "in the light of present-day conditions" (see *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26). The rise of population mobility, the higher levels of international cooperation and integration, as well as developments in the area of banking services and information technologies no longer justify largely technically motivated restrictions in respect of beneficiaries of social security payments living abroad, which may have been considered reasonable in the early 1950s when the 1952 ILO Convention, mentioned in paragraph 26, was drafted.

54. The foregoing considerations are sufficient to enable the Court to conclude that the difference in treatment complained of was in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage. He complained that the Pension Fund Department had refused to provide him with an exact calculation of the pension he would have received if payments had not been terminated in September 2005. This sum in his opinion roughly corresponded to the amount of pension which he had not received between September 2005 and April 2011 plus an increase to this pension due to his status as a child of war. He also claimed EUR 10,000 in respect of non-pecuniary damage.

57. The Government disagreed with the applicant's calculations, considering his claims unsubstantiated and groundless.

58. The Court notes that the violation found in the present case concerns only the period prior to October 2009 and that the applicant would not be able to claim the pension not paid to him between September 2005 and

October 2009 at the domestic level. Although, as the Government noted, the applicant did not present any calculations supported by documents, he could not do so without information solicited from a relevant State authority. As the applicant noted, he had been denied that information. The Court notes that in this situation pecuniary damage does not lend itself to a precise calculation, and therefore it is appropriate to make a global assessment of his pecuniary and non-pecuniary damage (*B. v. the United Kingdom* (Article 50), 9 June 1988, §§ 10-12, Series A no. 136-D, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 40, Series A no. 274, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV). The Court considers that in the circumstances of the present case it would be appropriate to award to the applicant EUR 5,000.

B. Costs and expenses

59. The applicant also claimed EUR 3,500 for costs and expenses incurred before the domestic courts, namely lodging numerous claims and complaints with the judicial authorities, participation in five hearings, travels to Kyiv and Zaporizhzhya to attend those hearings, purchase of a copying machine and making copies, costs of correspondence and telephone calls. He noted, however, that he was not in a position at this time to provide supporting documents for his claims.

60. The Government noted that the costs and expenses claimed were not supported by any documents and were not relevant to the proceedings before the Court.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

62. 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 complaint concerning the period between 29 August 2000 and 7 October 2009 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage and non-pecuniary damage, at the rate applicable on the date of settlement;
   (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 7 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President