

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

FIFTH SECTION

CASE OF POZHARSKA v. UKRAINE

(Application no. 48433/15)

JUDGMENT

STRASBOURG

15 May 2025

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



In the case of Pozharska v. Ukraine,

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

Stéphanie Mourou-Vikström*, President*,
María Elósegui,
Diana Sârcu*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 48433/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 September 2015 by a Ukrainian national, Ms Tetyana Ivanivna Pozharska ("the applicant"), who was born in 1951, lives in Kyiv and was represented by Mr O.A. Gnatenko, a lawyer practising in Kyiv;

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 24 April 2025,

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

SUBJECT MATTER OF THE CASE

1. Relying on Article 6 § 1 of the Convention, the applicant complained that the quashing of a final judgment in her favour had been unjustified and was contrary to the principle of legal certainty.

2. On 22 June 2011 the Desnyanskyi District Court of Kyiv examined the applicant's request that her pension be recalculated at a public hearing in which the applicant participated, and delivered a judgment ordering the State Pension Fund ("the Fund") to pay her a higher pension. The ten-day time-limit within which to lodge an appeal expired, and the judgment became final.

3. In February 2012 the Fund recalculated the applicant's pension.

4. On 6 March 2014 the Fund lodged an appeal and a request for leave to appeal out of time on the grounds that "the first-instance court had not complied with the legislation concerning the notification of the court decision".

5. On 25 March 2014 the Kyiv Administrative Court of Appeal decided to open appeal proceedings. It found that the appeal had been lodged "within the time-limit provided by law".

6. On 27 March 2014 the Court of Appeal allowed the appeal and quashed the first-instance judgment. It stated that its decision was final and no further appeal lay against it.

7. The applicant appealed in cassation mainly arguing that (i) she had not been informed of the appeal or of the appeal hearing until after the Court of Appeal's decision; and (ii) the Court of Appeal had disregarded the fact that the appeal had been introduced belatedly without any acceptable justification and had failed to apply Article 189 § 4 of the Code of Administrative Justice (introduced on 15 January 2012), which provided that any appeal lodged by a State authority more than a year after the delivery of the judgment had to be rejected, irrespective of any justification given for the delay.

8. On 31 March 2015 the Higher Administrative Court dismissed as unsubstantiated the applicant's appeal, finding that she had provided no reasons demonstrating that the appeal court had wrongfully applied the law. It considered that the Court of Appeal's decision had complied with its established case-law for this category of cases.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

9. The applicant complained that the decision to accept the appeal against the final judgment in her favour had been in breach of the principle of legal certainty. She relied on Article 6 § 1 of the Convention.

10. The Government contested that argument. They also argued that the application had been lodged outside the six-month time-limit, which ought to be counted from 27 March 2014 (see paragraph 6 above).

11. The Court has already observed that an appeal in cassation is an effective remedy available in this category of cases (see *Neyman v. Ukraine* (dec.), no. 68470/12, 12 January 2021). For unclear reasons, the Court of Appeal indicated that its decision was final. At the relevant time, the domestic law provided that no appeal in cassation lay in cases examined, at first instance, under an abridged procedure (meaning that the first-instance court examined cases *in camera* without the parties being summoned, see *Lazarenko and Others v. Ukraine*, nos. 70329/12 and 5 others, § 16, 27 June 2017). However, the first-instance court examined the applicant's case under the standard, and not abridged, procedure, at a public hearing (see paragraph 2 above), which would mean that a cassation appeal was available. The Higher Administrative Court did not question the availability of a cassation appeal in the case and examined the applicant's appeal (see paragraph 8 above).

12. It follows that the objection concerning non-compliance with the six-month period should be rejected.

13. The Court notes that the application 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.

14. The Court reiterates that the right to a fair hearing as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999). A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as the correction of fundamental defects or a miscarriage of justice (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 238, 1 December 2020).

15. The Court has found a violation in respect of issues similar to those in the present case in *Ponomaryov v. Ukraine* (no. 3236/03, §§ 40-42, 3 April 2008), and *Ustimenko v. Ukraine* (no. 32053/13, §§ 47-54, 29 October 2015).[1]

16. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case.

17. In particular, the reason relied on by the Fund in its request for an extension of the time-limit for lodging an appeal, was the late service of the first-instance judgment. There is no indication that any proof confirming those allegations was submitted. The Fund did not even indicate any precise date on which it had supposedly been informed of the judgment. In any event, it is evident that it was aware of the decision by February 2012, at the latest, because the judgment was complied with (see paragraph 3 above). The domestic courts, nevertheless, extended the time-limit without explaining their reasons for doing so and without commenting on how they considered this to be open to them, despite the provision in the domestic law which appeared to prohibit such an extension in cases of delay of more than one year.

18. Having regard to its case-law on the subject, the Court considers that in the instant case the decision to reopen the proceedings and quash the judgment in the applicant's favour infringed the principle of legal certainty.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

[1] See also, for examples of a similar approach, *Osovska and Others v. Ukraine*, [Committee] nos. 2075/13 and 4 others, §§ 27-33, 28 June 2018; *Sabadash v. Ukraine* [Committee], no. 28052/13, 23 July 2019; *Tryapyshko v. Ukraine* [Committee], no. 59577/12, §§ 23-27, 17 June 2021; and *Skvyrasilrybgosp, VAT v. Ukraine* [Committee], no. 27128/11, 30 November 2023.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 euros in respect of costs and expenses, representing legal fees incurred "throughout the entire period of the proceedings."

21. The Government contested those claims. They considered the claim for non-pecuniary damage to be exorbitant and unsubstantiated. They also pointed out that the applicant had not provided any documents in support of her claim for costs.

22. The Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

23. The Court rejects the applicant's claim for costs and expenses, given that it is not supported by any documentation.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros), to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 15 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President