

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

FIFTH SECTION

CASE OF SHEMET v. UKRAINE

(Application no. 17019/15)

JUDGMENT

STRASBOURG

24 October 2024

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



In the case of Shemet v. Ukraine,

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

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

Having regard to:

the application (no. 17019/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 March 2015 by a Ukrainian national, Ms Lyudmyla Dmytrivna Shemet ("the applicant"), who was born in 1955, lives in Mizhhirya and was represented by Mr R.A. Olenych, a lawyer practising in Repynne;

the decision to give notice of the complaint under Article 6 § 1 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 3 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns an alleged failure by the domestic courts to address the applicant's compensation claim in a pension dispute. The applicant relied on Article 6 § 1 and Article 13 of the Convention.

2. In 2014 the applicant instituted judicial proceedings against the State Pension Fund, seeking the recalculation of her old-age pension with effect from 2010. She also claimed compensation in that regard under Governmental Decree no. 159 of 21 February 2001, under which, as worded at the material time, individuals were entitled to compensation when the payment of accrued (*нарахованих*) income, including pensions and social payments, had been delayed by more than one month.

3. On 11 June 2014 the Mizhhirya Town Court allowed the applicant's claim in part. It ordered the State Pension Fund to recalculate her pension (with a view to increasing it) with effect for the future and for the six months immediately preceding the initiation of the judicial proceedings. The part of her claim concerning the period before the preceding six months was dismissed as having been lodged outside the legally established six-month time-limit. The applicant's compensation claim was left unaddressed.

4. The applicant made a request for an additional decision to determine, *inter alia*, her compensation claim. On various dates in 2014 the domestic

courts at three levels of jurisdiction gave an additional decision in that regard and made certain amendments to the operative part of the 11 June 2014 decision; however, the applicant's compensation claim was not mentioned.

5. At the same time, the applicant appealed against the 11 June 2014 decision in so far as it concerned the partial dismissal of her claim as having been lodged out of time. In a decision given by the Lviv Administrative Court of Appeal on 2 September 2014, which was upheld on 26 September 2014 by the Higher Administrative Court, her appeal was dismissed as unsubstantiated.

THE COURT'S ASSESSMENT

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

6. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant complained that she had been denied access to a court on account of the domestic courts' failure to address and rule on her compensation claim, leaving a critical component of her pension dispute unresolved. The Court considers that this complaint falls to be examined solely under Article 6 § 1 of the Convention, which in the present case should be viewed as *lex specialis* in relation to Article 13 (see, for example, *Kristiana Ltd. v. Lithuania*, no. 36184/13, § 114, 6 February 2018, and *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 85, 1 June 2023).

A. Admissibility

7. The Government submitted that Article 6 was not applicable in the present case as the dispute in question did not concern the applicant's "civil rights". Referring to the 3 July 2019 ruling of the Grand Chamber of the Supreme Court in an unrelated case, in which the claimant's right to compensation for unpaid pensions had been recognised after the domestic courts had ordered the State Pension Fund to recalculate his pension, they argued that the applicant could not have claimed any compensation in the absence of a previous judicial decision ordering the State Pension Fund to recalculate her pension.

8. The applicant disagreed, arguing that there had clearly been a dispute over her civil rights.

9. The general principles concerning the applicability of the civil limb of Article 6 § 1 have been summarised by the Court in, for example, *Gumenyuk and Others v. Ukraine* (no. 11423/19, §§ 44-48, 22 July 2021). Furthermore, the Court has already held that the pension and the related benefits, which are purely economic in nature, are "civil" rights within the meaning of Article 6 § 1, despite their origin in the public law (see, for example, *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 46, Series A no. 263, and

Massa v. Italy, 24 August 1993, § 26, Series A no. 265-B). The applicability of Article 6 of the Convention to the pensions disputes was assumed in many Ukrainian cases (see, for example, *Pronina v. Ukraine*, no. 63566/00, 18 July 2006; *Lesina v. Ukraine*, no. 9510/03, 19 June 2008; *Lazarenko and Others v. Ukraine*, nos. 70329/12 and 5 others, 27 June 2017; *Leonidov v. Ukraine* [Committee], no. 2064/12, 22 September 2022).

10. In the present case the applicant sought compensation in respect of the incorrect calculation of her pension. Having regard to the domestic legal provisions providing for entitlement to compensation in cases of delayed payment, in particular of pensions (see paragraph 2 above), the Court cannot find that the applicant's compensation-related claim was devoid of any legal basis to the extent that the courts could decide not to consider it at all. In that regard, the Court notes that it is not apparent from the domestic legal provisions that the decision of the domestic courts on the applicant's claim for compensation was conditional on a previous decision ordering the State Pension Fund to recalculate her pension, as suggested by the Government. The Court is therefore satisfied that the applicant's claim was sufficiently tenable for the civil limb of Article 6 § 1 of the Convention to come into play. Consequently, the Government's objection must be dismissed.

11. The Court further considers 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.

B. Merits

12. The general principles concerning the right of access to a court have been summarised in *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, §§ 84-90, 29 November 2016, with further references). The Court has held, in particular, that this right includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court.

13. Turning to the present case, the Court notes that, although the applicant had consistently raised a claim for compensation in addition to seeking the recalculation of her pension (see paragraphs 2 and 4 above), the domestic courts did not address the former issue in any of their decisions without giving reasons for their procedural approach (see paragraphs 3 and 4 above).

14. In the Court's view, that situation amounted to a denial of justice impairing the very essence of the applicant's right of access to a court, as secured by Article 6 § 1 of the Convention (compare *Shkirya v. Ukraine* [Committee], no. 30850/11, §§ 33-35, 24 June 2021). It follows that there has been a violation of that provision.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed 1,542.77 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses incurred before the Court.

16. The Government contested those claims.

17. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

18. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000, covering costs for the proceedings before it, plus any tax that may be chargeable to the applicant.

19. 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 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 24 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President