

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

FIFTH SECTION

CASE OF SHESTOPALOVA v. UKRAINE

(Application no. 55339/07)

JUDGMENT

STRASBOURG

21 December 2017

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



In the case of Shestopalova v. Ukraine,

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

Nona Tsotsoria, *President,*
Síofra O'Leary,
Lətif Hüseynov, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 55339/07) 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, Ms Danuta Zbignevna Shestopalova ("the applicant"), on 19 November 2007.

2. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna of the Ministry of Justice.

3. The applicant complained under Article 6 § 1 of the Convention that there had been a violation of her right of access to a court.

4. On 27 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Melitopol.

6. Between 2004 and 2006 the applicant was head of Melitopol City Council's Disadvantaged Persons' Welfare Centre (*Центр по обслуговуванню одиноких, непрацездатних та малозабезпечених громадян Управління праці, соціального захисту та житлових субсидій Мелітопольської міської Ради* – "the Centre"). On 21 April 2006 she was dismissed as part of a reorganisation of the Centre. Another person was subsequently appointed to a position similar to the one previously occupied by the applicant.

7. In May 2006 the applicant instituted civil proceedings in the Melitopolskyy Local Court ("the Melitopolskyy Court") seeking reinstatement, salary arrears and compensation for non-pecuniary damage. On 24 October 2006 the court rejected the applicant's claim. It found that

the Centre had offered the applicant another position but that she had rejected this proposal, and that a more experienced person had been appointed as the head of the Centre. Following an appeal by the applicant, on 7 December 2006 the Zaporizhzhya Regional Court of Appeal upheld the decision of 24 October 2006. The applicant lodged a further appeal, and on 22 August 2007 the Supreme Court of Ukraine quashed these decisions and remitted the case to the first-instance court for fresh consideration. It held that the case was to be considered under the administrative justice procedure since it concerned a public-service dispute.

8. Accordingly, the applicant instituted administrative proceedings before the Melitopolskyy Court, which, on 21 February 2008, again found against her for reasons similar to those listed in its decision of 24 October 2006. The applicant appealed, and on 16 July 2008 the Dnipropetrovsk Administrative Court of Appeal quashed this decision and terminated the proceedings on the grounds that it fell to be examined under the civil justice procedure as the applicant was not a public servant. On 2 March 2011 the Higher Administrative Court of Ukraine upheld this decision. On 14 April 2011 the same court rejected the applicant's request for leave to appeal to the Supreme Court of Ukraine against the decision of 2 March 2011.

9. On 28 March 2011 the applicant again lodged a civil claim seeking reinstatement, salary arrears and compensation for non-pecuniary damage. On 4 August 2011 the Melitopolskyy Court refused to examine the merits of the applicant's civil claim as the applicant had sought to have adjourned previous court hearings in respect of her case on numerous occasions without good reason. On 5 October 2011 the Zaporizhzhya Regional Court of Appeal upheld the decision of the first-instance court.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine of 28 June 1996

10. The relevant provisions of the Constitution of Ukraine read as follows:

Article 125

"In Ukraine the system of courts is constituted in accordance with the territorial principle and the principle of specialisation and is defined by law.

A court is formed, reorganised and liquidated by [the enactment of] a law, a draft of which is presented to the *Verkhovna Rada* of Ukraine by the President of Ukraine, after consultations with the Supreme Council of Justice.

The Supreme Court is the highest judicial body in the system of courts of Ukraine.

The higher specialised courts operate in accordance with the law.

Administrative courts function with the aim of protecting people's rights, freedoms and interests in the public sphere.

The creation of extraordinary and special courts shall not be permitted."

B. Code of Civil Procedure (the wording applicable at the time of the circumstances of the case)

Article 15. Competence of the courts in respect of the examination of civil cases

"1. The courts examine in civil proceedings cases concerning:

1) the protection of affected, unrecognised or disputed rights, and freedoms or interests arising from civil, housing, land, family, and labour relations;

2) other [types of] relations, in the event that the examination of such cases is not covered by the rules governing other [types of] proceedings."

C. Code of Administrative Procedure (the wording applicable at the time of the circumstances of the case)

Article 17. The jurisdiction of the administrative courts in respect of administrative cases

"1. The jurisdiction of the administrative courts extends to legal relations arising in connection with the implementation of authoritative powers by a public agency or officer, as well as in connection with the creation of such an agency or public [office] by means of elections or a referendum.

2. The jurisdiction of the administrative courts extends to public disputes, in particular:

1) disputes between individuals or legal entities and the public agency or officer concerning the challenging of their decisions (regulatory legal instruments or individual acts), actions or omissions;

2) disputes concerning the acceptance of citizens for public service posts, their duties in such posts, and their dismissal from the public service;

3) disputes between public agencies or officers concerning the implementation of their duties by their wielding their authority (including delegated authority);

4) disputes arising in connection with the conclusion, enforcement, termination, cancellation or acknowledgment of the invalidity of administrative contracts;

5) disputes initiated by a public agency or officer in cases stipulated by the Constitution and laws of Ukraine;

6) disputes concerning relations related to the electoral process or referendum process.

3. The jurisdiction of the administrative courts does not extend to cases of a public-law nature

1) that fall within the jurisdiction of the Constitutional Court of Ukraine;

2) that are to be examined under the rules of criminal procedure;

3) concerning the enforcement of administrative sanctions;

4) concerning relations which relate to the internal activities or exclusive authority of a public association under the law and the statute (that is to say the internal regulations) of a public association."

THE LAW

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

11. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had failed to examine the merits of her reinstatement claim and had deprived her of her right of access to a court. This provision provides, in so far as relevant:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribuna l..."

A. The parties' submissions

12. The Government maintained that the termination of the proceedings by the administrative courts in the applicant's case cannot be considered as constituting the final settlement of her case and can in no way be considered as having deprived the applicant of her right of access to a court. According to the Government, the applicant should have lodged a fresh civil claim. They noted that she did so on 28 March 2011 but that the domestic courts left her civil claim unexamined because of her attitude, given that she had sought to have adjourned court hearings in respect of her case on numerous occasions without good reason. They also noted that she had not appealed against the decisions of the Supreme Court and had shown no interest in any further examination of her case. They therefore considered that the applicant had not exhausted the domestic remedies that were available to her. They added that the complaint was in any case manifestly ill-founded, since the applicant had shown no interest in a fresh examination of her civil claim.

13. The applicant replied that her applications for the adjournment of court hearings had been reasonable, and that by leaving her civil claim unheard the domestic courts had failed to examine the merits of her reinstatement claim and had thus deprived her of the right of access to a court. She also stated that she had not appealed against the decision of 5 October 2011 because she had not been served with the respective decision.

B. The Court's assessment

1. Admissibility

14. The Court finds that the issue of the exhaustion of the domestic remedies in the applicant's case is closely linked to the substance of her complaint under Article 6 § 1 of the Convention. It should therefore be joined to the merits.

15. The Court considers that the applicant's complaint as to her alleged lack of access to a court is not manifestly ill-founded, within the meaning of Article 35 § 3 (a) of the Convention. It also finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

16. The Court reiterates that, according to its case-law, Article 6 § 1 embodies the "right to a court", of which the right of access (that is to say the right to institute proceedings before the domestic courts) constitutes only one aspect. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that constitutes an interference with his or her rights (see, notably, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B; *Tserkva Sela Sossoulivka v. Ukraine*, nº 37878/02, § 50, 28 February 2008, and the references noted therein).

17. The Court also maintains that its task is not to examine whether or not the domestic courts had jurisdiction to determine the merits of the case or to establish which of the courts had jurisdiction to hear the applicant's complaints on their merits (see *Tserkva Sela Sossoulivka*, cited above, § 51).

18. This being so, the Court notes that the applicant was able to institute proceedings before the domestic courts but that they finally failed to rule on the merits of her reinstatement claim, having found no jurisdiction in respect of the matter, notwithstanding the fact that the procedural admissibility requirements had been complied with.

19. The Court further considers that in the present case the domestic courts gave contradictory instructions regarding which court had jurisdiction to determine the merits of the applicant's claim.

20. The Court notes, in particular, that the Higher Administrative Court refused to follow the rulings of the Supreme Court determining administrative jurisdiction (*адміністративна юрисдикція*) over the applicant's case. Given that the Supreme Court is Ukraine's highest judicial body which interprets the law in an authoritative way, the applicant had a legitimate expectation that this ruling would not be challenged.

21. The Court reiterates in this context that Article 6 of the Convention requires the States to provide procedural means for the effective and expedient resolution of jurisdictional conflicts (see *Loyen v. France* (dec.), no. 46021/99, 6 April 2000).

22. In the light of the foregoing, the Court dismisses the Government's statement that the termination of the proceedings by the administrative courts in the applicant's case cannot be considered as constituting a final settlement. The Court observes that the applicant has already taken all necessary steps to have her claim examined by the domestic courts, either in civil or in administrative proceedings. At the point that she received the judgment of the Higher Administrative Court of 2 March 2011 refusing to examine the merits of her claim and switching jurisdiction to the civil courts again, the applicant had exhausted her options in her attempts to approach the domestic courts.

23. The Court refers to the case of *Tserkva Sela Sosulivka* (cited above), in which it found that a similar situation amounted to a denial of justice which had impaired the very essence of the applicant's right of access to a court, as secured by Article 6 § 1 of the Convention.

24. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was deprived of her right of access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention.

25. It follows that the Government's preliminary objection regarding the exhaustion of domestic remedies (see paragraph 12 above), as previously joined to the merits (see paragraph 14 above), must be dismissed.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the materials in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

27. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government argued that the sum claimed by the applicant was excessive.

31. The Court, ruling on an equitable basis, awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed UAH 467.85 (EUR 15) for the costs and expenses incurred before the Court.

33. The Government partially contested the amount claimed as being unsubstantiated. Specifically, they argued that the receipts submitted only accounted for a total of UAH 340 (EUR 10) in expenses and asked the Court to reject the applicant's claim for the remainder.

34. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 15 for the proceedings before it.

C. Default interest

35. 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. *Joins* to the merits the Government's preliminary objection;

2. *Declares* the application admissible in so far as it concerns the right of access to a court, and inadmissible in respect of the remainder;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court and, consequently, dismisses the Government's preliminary objection;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 15 (fifteen euros) in respect of costs and

expenses, to be converted into Ukrainian hryvnas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 21 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin Acting Deputy Registrar	Nona Tsotsoria President