

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

FIFTH SECTION

CASE OF SIVKA v. UKRAINE

(Application no. 46247/15)

JUDGMENT

STRASBOURG

13 November 2025

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



In the case of Sivka v. Ukraine,

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

María Elósegui*, President*,
Diana Sârcu,
Sébastien Biancheri*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 46247/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 September 2015 by a Ukrainian national, Ms Olena Vasylivna Sivka ("the applicant"), who was born in 1957 and lives in Khmelnytskyi;

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 16 October 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns a decision by the State Pension Fund ("the Fund") to recover pension amounts paid to the applicant under an early-retirement scheme, to which she was allegedly not entitled.

2. From 2005 the applicant was registered as an entrepreneur (*фізична особа – підприємець*) authorised to sell goods at street markets. On 25 June 2008 a commercial court ordered the termination of the applicant's entrepreneurial activity, owing to her failure to comply with mandatory fiscal reporting obligations. Information about both the applicant's registration as an entrepreneur and the 2008 judicial order was duly recorded in the relevant State register.

3. In July 2012, after reaching the age of 55, the applicant applied to the State for an old age pension under an early-retirement scheme[1]. This scheme was open to women who had reached the age of 55, completed at least thirty years of service and were unemployed. In her pension application, in response to the question "Currently: working/ not working" the applicant indicated "not working". On an unspecified date her application was approved.

[1] Provided by section 7-2 of the Final Provisions of the Compulsory State Pension Insurance Act. The statutory retirement age for the applicant at the relevant time was 56.

4. The applicant received an early-retirement monthly pension until July 2013, when, upon reaching the statutory retirement age, that pension was automatically converted into a standard old age pension.

5. In April 2014, on reviewing the applicant's dossier, the Fund discovered the applicant's registration as an entrepreneur, which in its view rendered the applicant ineligible for an early-retirement pension. In this connection, on 13 May 2014 the Fund ordered the recovery of 10,511.35 Ukrainian hryvnias (UAH; approximately 655 euros (EUR) at the relevant time), the total amount of all the payments made under the early-retirement scheme to the applicant, by deducting 20% of her monthly old age pension until the full amount was repaid. The deductions began in July 2014.

6. In November 2014 the applicant instituted administrative proceedings against the Fund. Relying on the 2008 judicial order, the applicant argued that her entrepreneurial activity had been terminated long ago, that from July 2006 she had received no income from it, she was unemployed, and that the State authorities ought to have been aware of these facts. She also contended that the pension application form had only asked if she was working or not, and that she was not required to inform the Fund of her registration as an entrepreneur. In her view, she was therefore entitled to an early-retirement pension.

7. Although the first-instance court found in the applicant's favour, stating that there were no signs of abuse on the part of the applicant, on 18 February 2015 the Vinnytsia Administrative Court of Appeal, upheld by the Higher Administrative Court on 11 March 2015, overturned the first-instance ruling and rejected the applicant's claim. Citing domestic provisions authorising the Fund to recover pension payments in the event that they had been made on the basis of false information, the appeal court found that, when applying for the early-retirement pension, the applicant had informed the Fund that she was not registered as an entrepreneur, which contradicted the official records. The court further held that the applicant still had to complete the prescribed administrative steps before her entrepreneurial status could be removed from the State register.

8. As of 1 July 2018, the deductions from the applicant's pension were terminated in view of the full recovery of the outstanding amount.

THE COURT'S ASSESSMENT

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

9. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the decision to deduct the impugned amounts from her pension had violated her right to the peaceful enjoyment of her

possessions and that the domestic courts had failed to assess her case properly.

10. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant's complaints fall to be examined under Article 1 of Protocol No. 1 only.

A. The parties' submissions

11. The Government argued that the applicant's complaints were incompatible *ratione materiae* with the provisions of the Convention, as she had not had a "legitimate expectation" to receive the funds obtained under the early-retirement pension scheme. They also submitted that by failing to inform the Fund that she had been a registered entrepreneur, the applicant had contributed to the situation in question and her complaints were therefore manifestly ill-founded. As to the merits, the Government contended that the interference in question had complied with the Convention requirements.

12. The applicant contended that the Fund's decision had constituted a deprivation of her possessions, which was disproportionate, and that the domestic courts' decisions had been unreasonable.

B. The Court's assessment

1. Admissibility

13. The Court reiterates that a favourable evaluation by the authorities of a pension request that was lodged by an applicant in good faith generated a property right (see, for example, *Moskal v. Poland*, no. 10373/05, § 45, 15 September 2009, and *Płaczkowska v. Poland*, no. 15435/04, § 63, 2 October 2012).

14. In the present case, the applicant received the early-retirement pension on the basis of a favourable evaluation by the Fund of her pension application, which established that the applicant met the necessary requirements for a pension and recognised her right to it.

15. As to the Government's argument that by failing to disclose her entrepreneurial status the applicant had contributed to the situation in question, the Court notes the following. While the applicant argued before the domestic courts that she had not been required to inform the Fund of her registration as an entrepreneur, the authorities never asserted – let alone established – that by not providing this information the applicant had intended to mislead the Fund or that she had otherwise acted in bad faith (see *Moskal*, cited above, §§ 44-45, and *Romeva v. North Macedonia*, no. 32141/10, §§ 43-44, 12 December 2019; contrast *Kusina v. Poland* (dec.), no. 28589/05, § 35, 9 April 2013). This is especially so considering that the information

about the applicant's registration as an entrepreneur and the 2008 judicial order was recorded in the State register and was therefore accessible to the Fund (see paragraph 2 above).

16. Accordingly, the Court finds that Article 1 of Protocol No. 1 is applicable and that the Fund's decision to deduct the amounts in question constituted an interference with the applicant's property rights (see *Čakarević v. Croatia*, no. 48921/13, § 71, 26 April 2018). The Government's objection in this regard is therefore dismissed.

17. The Court further 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.

2. Merits

18. The general principles regarding interference with the peaceful enjoyment of possessions in the process of recovery of allegedly overpaid social benefits were set out in *Čakarević* (cited above, §§ 73-81) and *Romeva* (cited above, §§ 49-52). In such cases, the Court must assess whether that interference was prescribed by law, whether it pursued a legitimate aim, and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued.

19. The Court does not consider it necessary to rule on the questions of lawfulness and the existence of a legitimate aim, as the interference in question did not, in any case, comply with the requirement of proportionality.

20. In this connection, the Court reiterates that judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must afford an individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 302, 28 June 2018, with further references).

21. In the present case, the applicant argued before the domestic courts that she was entitled to an early-retirement pension, as she was unemployed, carried out no commercial activities and earned no income, and that the Fund had never asked her about her entrepreneurial status.

22. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to establish facts and interpret domestic law (see, for example, *Alperin v. Ukraine*, no. 41028/20, § 84, 10 October 2024). It is thus not for the Court to determine whether the applicant was required to disclose her dormant entrepreneurial status to the Fund and whether the failure to do so disqualified her from an early-retirement pension. Questions of that nature lie within the exclusive competence of the domestic courts.

23. Nevertheless, the Court notes that the applicant's arguments might have been decisive for the outcome of the case and therefore required a

detailed reply from the domestic courts. However, the appeal court did not address them. Instead, it referred to the applicant's failure to comply with the formal requirements for deregistration from the State register, without explaining why, despite not carrying out any commercial activities and not making any profits, the mere registration as an entrepreneur prevented the applicant from being considered "unemployed" for the purposes of determining her eligibility to an early-retirement pension.

24. The Court, furthermore, doubts that the domestic courts adequately addressed the applicant's argument that the pension application form had contained no questions regarding her entrepreneurial status and that she had been under no obligation to disclose it. In particular, while the applicant had merely indicated on the form that she was "not working" (see paragraph 3 above), the appeal court interpreted this as a declaration that she was "not registered as an entrepreneur" (see paragraph 7 above) and blamed her for providing the Fund with incorrect information. In the Court's view, whether this conclusion stemmed from an error of assessment or from an unduly expansive reading of the facts, it had the effect of defeating the applicant's attempt to have her claim properly examined (see, *mutatis mutandis*, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 63-64, ECHR 2015).

25. The Higher Administrative Court also did not remedy any of these shortcomings.

26. The circumstances above indicate that the judicial review of the dispute did not constitute a meaningful procedural guarantee for the purposes of Article 1 of Protocol No. 1.

27. The Court thus concludes that the interference with the applicant's right was disproportionate and that she had to bear an individual and excessive burden (see *Amerisoc Center S.R.L. v. Luxembourg*, no. 50527/20, §§ 61-63, 17 October 2024). There has accordingly been a violation of Article 1 of Protocol No. 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 656 euros (EUR) in respect of pecuniary damage, corresponding to the amount which had been withheld from her monthly pension, and EUR 3,000 in respect of non-pecuniary damage. She also sought EUR 450 in respect of costs and expenses incurred before the domestic courts and before the Court.

29. The Government contested those claims, arguing that there had been no violation of the applicant's rights.

30. It is not contested that the sums in issue were withheld from the applicant's old age pension (see paragraph 8 above). Having regard to the Court's conclusions under Article 1 of Protocol No. 1 (see paragraph 27 above), the Court finds it appropriate in the particular circumstances of the present case to award the applicant the amounts withheld, that is EUR 656 in

respect of pecuniary damage (see, *mutatis mutandis*, *Skučai v. Lithuania*, no. 60969/21, § 146, 4 February 2025). Furthermore, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

31. Lastly, since the applicant failed to provide any evidence in respect of the costs and expenses incurred before the domestic courts and before the Court, her claim under this head must be dismissed.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to 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 the settlement:
      (i) EUR 656 (six hundred and fifty-six euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), 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 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 13 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President