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

FIFTH SECTION

DECISION

Application no. 31705/16
Yuriy Volodymyrovych GAYEVSKYY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 October 2024 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. 31705/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 May 2016 by a Ukrainian national, Mr Yuriy Volodymyrovych Gayevskyy ("the applicant"), who was born in 1979, lives in Velykyi Kobylyn and was represented by Mr S.S. Goropashyn, a lawyer practising in Zhytomyr;

the decision to give notice of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the alleged unfairness of a trial and interference with the applicant's peaceful enjoyment of possessions 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 observations submitted by the Government, while the applicant's observations were submitted outside the time-limit set and therefore not included in the case file;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns a reassessment of the cause of the applicant's disability, resulting in the increase in his disability pension being revoked. In arguing that the reassessment had also divested him of other welfare benefits

and that the ensuing judicial proceedings had been unfair, the applicant alleged a breach of Articles 6 and 13 of the Convention, as well as of Article 1 of Protocol No. 1 to the Convention.

2. Between 1997 and 1998 the applicant performed mandatory military service in the State Border Guard Service of Ukraine ("the SBGS"). It was during that time that he claimed to have started experiencing symptoms of Bekhterev's disease (or ankylosing spondylitis), with which he was formally diagnosed for the first time in 2004.

3. On 24 June 2005 the SBGS Central Military Medical Commission ("the Commission") established that the applicant's medical condition had been attributable to his previous military service.

4. In September 2005 the applicant was granted the highest degree of disability on account of his being diagnosed with Bekhterev's disease. From 1 January 2006 the applicant started receiving an increased pension under the Law on military personnel pensions (see paragraph 10 below)[1].

5. In 2008, claiming that his disability had occurred as a result of the illness linked to military service, the applicant applied for a lump-sum payment under the Law on social and legal protection of servicemen and members of their families of 20 December 1991 ("the 1991 Law" – see paragraph 11 below) and brought an administrative claim for damages[2].

6. Shortly thereafter, the Commission reassessed of its own motion the applicant's file and found that the onset of Bekhterev's disease was not linked to his military service. After the domestic court had reversed that decision on formal grounds, on 8 May 2015 the Commission again established that there was no connection between the applicant's military service and his medical condition. It referred, in particular, to the applicant's medical records, which indicated that he had developed the initial symptoms of Bekhterev's disease after his discharge from the army.

7. The applicant's increased pension was subsequently revoked, and he started receiving an ordinary first-degree disability pension. According to the applicant, this amounted to a loss of 16%, which corresponded at the time to 235 Ukrainian hryvnias (the equivalent of less than 10 euros) per month.

8. The applicant instituted administrative proceedings to seek the invalidation of the Commission's decision. He argued, *inter alia*, that in reassessing the cause of his medical condition, the Commission had retroactively applied SBGS Order no. 333 ("the Order" – see paragraph 12 below), which should not have been applicable as it had not been in force at the time of the 2005 decision and because it did not clearly indicate the conditions under which a Commission decision could be reviewed.

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[1] From 1 January 2006 to 31 August 2007 he received a medium-degree disability pension due to illness linked to military service, and from 1 September 2007 to 10 June 2015 the highest-degree disability pension due to illness linked to military service.

[2] On 20 January 2016 the applicant's claim was returned without consideration owing to the applicant's failure to appear at the hearing.

9. Although the first-instance court initially found, in part, in the applicant's favour, on 4 November 2015 the Zhytomyr Administrative Court of Appeal dismissed his claim. Referring to the discrepancies in his medical records, the appeal court agreed with the Commission's conclusions and noted that the Order had authorised it to review its own decisions. On 2 December 2015 the Higher Administrative Court refused to open cassation proceedings.

RELEVANT LEGAL FRAMEWORK

10. Under the Law on military personnel pensions of 9 April 1992, former servicemen whose disability resulted from an illness developed during military service are entitled to a disability pension.

11. Under section 16(6) of the 1991 Law (see paragraph 5 above), conscripts who have been granted disability status are entitled to a special lump-sum payment if the disability occurred either during military service or no later than three months after discharge from service, but as a result of an illness which occurred during the service period. They may also seek compensation for damage sustained (section 17).

12. The Order, which entered into force on 23 July 2009, listed various organisational forms of medical commissions within the structure of the SBGS, including the Commission at the top of the hierarchy. As had been the case with previous applicable legal provisions, the Commission was authorised, *inter alia*, to examine, review, approve or reject the decisions of any SBGS medical commission.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention

13. The applicant complained under Article 6 § 1 and Article 13 of the Convention that the judicial proceedings had been unfair, as the domestic courts had erred in law and had failed to address his arguments, in particular concerning the non-retroactivity of the Order. The Court considers that that 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, *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 85, 1 June 2023).

14. The Government asserted that the domestic courts had provided detailed and sufficient responses to all the applicant's arguments.

15. The general principles concerning the duty for a court to give reasons have been summarised in *García Ruiz v. Spain* ([GC], no. 30544/96, § 26, ECHR 1999-I). That duty cannot be understood as requiring a detailed answer to every argument. The Court also points out that it will not question under

Article 6 § 1 the judgments of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

16. The Court observes that the appeal court responded to all the applicant's pertinent arguments. Having examined the applicant's medical records, it found no grounds to question the Commission's conclusion that there was no connection between the applicant's disability and military service. It also held that the Order had authorised the Commission to review its own decision. While it is regrettable that the domestic court did not provide a detailed answer to the applicant's argument that the Order should not have been applied retroactively (see paragraph 8 above), that failure to comment was not decisive, given that the applicant's key argument – the lack of the Commission's authority to review its own decisions – had been properly addressed. Indeed, there was no indication that the Commission had lacked competence to review its decisions even prior to the adoption of the Order in 2009. In other words, the domestic court's conclusions and interpretation of the relevant law cannot be regarded as manifestly arbitrary or unreasonable.

17. It follows that the applicant's complaint under Article 6 § 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1

18. The applicant complained under Article 1 of Protocol No. 1 that, owing to the retroactive reassessment of the cause of his disability, he had lost his entitlement to the increased pension, special lump-sum payment and compensation for damage sustained.

19. The Government argued that the applicant's complaints were incompatible *ratione materiae* with the provisions of the Convention, as he did not have a legitimate expectation in relation to any of the claims he had submitted.

1. Entitlement to the lump-sum payment and compensation under the 1991 Law

20. The Court reiterates that Article 1 of Protocol No. 1 covers only those claims in respect of which the applicant can argue that he or she has a legitimate expectation of obtaining effective enjoyment of a property right. It must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 75, 13 December 2016). Accordingly, anyone who complains of an interference with one of his or her property rights must show that such a right existed (see *Pištorová v. the Czech Republic*, no. 73578/01, § 38, 26 October 2004).

21. In the present case, the Commission and the domestic courts established that the applicant's disability had not resulted from his military service, which was one of the conditions for the entitlements under the 1991 Law. Referring to its findings under Article 6 § 1 of the Convention (see paragraph 17 above), the Court sees no indication that the conclusion of the national authorities was arbitrary or unreasonable. Moreover, the 1991 Law explicitly provided for the right to a lump-sum payment to former conscripts whose disability had occurred either during or no later than three months after discharge from service (see paragraph 11 above). Since the applicant was discharged in 1998 and was granted disability status in 2005, in the Court's view he has not made out a case that he had a "legitimate expectation" to these entitlements under domestic law. In these circumstances, the Court concludes that the applicant's claims regarding his entitlements under the 1991 Law fall outside the scope of Article 1 of Protocol No. 1.

2. Pension entitlement under the Law on military personnel pensions

22. Regard being had to its case-law (see *Moskal v. Poland*, no. 10373/05, §§ 44-45, 15 September 2009, and *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06 and 3 others, § 64, 13 December 2011), the Court is ready to accept that the applicant's pension entitlement under the Law on military personnel pensions constituted a possession within the meaning of Article 1 of Protocol No. 1 and that the revocation of this pension amounted to an interference.

23. The interference in question was provided for by law, as the impugned Commission's decision had a legal basis and was sufficiently reasoned. Having regard to the wide margin of appreciation available to the legislature in implementing social and economic policies (see *Béláné Nagy*, cited above, §§ 113-14), the Court also has no doubt that the impugned interference pursued the legitimate aim of protecting the public purse (see *Lakićević and Others*, cited above, § 68).

24. As to whether the interference struck a fair balance between the demands of the general interest of the community and the rights of the individual, the Court notes that the applicant was divested of an increased pension after the national authorities had reassessed the cause of his disability. The Court has consistently held in similar cases that it would upset any fair balance and be contrary to the doctrine of unjust enrichment if, having discovered their mistake, the authorities were precluded from ever redressing its effects and were required to perpetuate the error by continuing to pay a pension which had been granted on erroneous grounds (see *Čakarević v. Croatia*, no. 48921/13, § 79, 26 April 2018). The applicant did not claim that the measure had brought him into danger of falling below the subsistence threshold, left him devoid of any means of subsistence, or otherwise constituted an excessive burden (see *Fábián v. Hungary* [GC], no. 78117/13, §§ 78-80, 5 September 2017; and compare and contrast

Moskal, cited above, § 74, and *Grobelny v. Poland*, no. 60477/12, § 67, 5 March 2020). It appears that the impact of the interference was limited to a mere 16% of the applicant's disability pension, which he retained despite the Commission's decision. Furthermore, the applicant has not been requested to pay any amounts back (compare *Čakarević*, cited above, § 86, and *Romeva v. North Macedonia*, no. 32141/10, § 76, 12 December 2019).

25. In view of the foregoing and bearing in mind the State's wide margin of appreciation in matters of economic and social policy, the Court finds that in the particular circumstances of the present case a fair balance was struck between the general interest of the community and the applicant's property rights (compare *Džabirov v. "the former Yugoslav Republic of Macedonia"* (dec.) [Committee], no. 75328/12, § 21, 18 December 2018). It follows that this part of the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 October 2024.

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President