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

FIFTH SECTION

DECISION

Application no. 78382/12
Volodymyr Yakovych GORBATKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 17 October 2024 as a Committee composed of:

María Elósegui*, President*,
Kateřina Šimáčková,
Stéphane Pisani*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 78382/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 4 December 2012 by a Ukrainian national, Mr Volodymyr Yakovych Gorbatko ("the applicant"), who was born in 1942 and lives in Zaporizhzhya;

the decision to give notice of the complaints concerning access to court, equality of arms, legal certainty and failure to examine an important argument under Article 6 of the Convention and concerning interference with property rights under Article 1 of Protocol No. 1 to the Convention to the Ukrainian Government ("the Government"), represented by their acting Agent, Ms O. Davydchuk, from the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns two sets of judicial proceedings brought by the applicant against the State Pension Fund in which he sought awards of various social benefits. He complained of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of both sets of proceedings.

A. The first set of proceedings

2. On 7 April 2008 the applicant brought proceedings in the Komunarskyy District Court of Zaporizhzhya ("the District Court"), claiming a number of social benefits. In addition, he argued that the State Pension Fund had unlawfully calculated his pension under the Law on Mandatory State Insurance instead of under the Law on Pensions.

3. On 15 July 2009 the court found in part for the applicant. In its decision it referred only to the Law on Mandatory State Insurance but not to the Law on Pensions.

4. On 9 December 2010 the Dnipropetrovsk Administrative Court of Appeal ("the Court of Appeal") changed the decision of 15 July 2009, allowing the majority of the applicant's claims. In its decision it referred to both the Law on Mandatory State Insurance and the Law on Pensions. The decision of 9 December 2010 was enforced in full.

5. On 6 March 2012 the Higher Administrative Court overruled the decision of the Court of Appeal and upheld the decision of the first-instance court. A copy of that decision was included in the case file. However, the parties received by post a copy of a decision with the opposite outcome, in which the Higher Administrative Court upheld the Court of Appeal's decision.

6. On 11 October 2012 the Deputy President of the Higher Administrative Court informed the applicant that following an internal investigation, it had been established that the decision of 6 March 2012 quashing the Court of Appeal's decision was the correct one and had been included in the case file. However, because of an administrative error, the decision upholding the Court of Appeal's decision had been sent to the parties by mistake and had been recorded in the State Register of Judicial Decisions. The mistake had been corrected and the court clerk responsible for it had been disciplined.

7. On 9 November 2022 the Zaporizhzhya Komunarskyy District Police Department refused to institute criminal proceedings in relation to the applicant's complaint concerning the two conflicting versions of the decision of 6 March 2012.

8. On 27 November 2012 the State Pension Fund applied to a court seeking the repayment of the amount awarded to the applicant in the judgment of 9 December 2010. The request was ultimately rejected by the Court of Appeal on 22 February 2013.

B. The second set of proceedings

9. On 2 June 2011 the applicant brought a second set of proceedings in the District Court against the State Pension Fund, making similar claims to those in the first set of proceedings but concerning a different period of time. The proceedings were conducted in writing under the abridged procedure.

10. On 1 August 2011 the District Court found in part for the applicant.

11. On 9 April 2012 the Court of Appeal upheld the decision of the first-instance court.

12. According to the applicant, on 23 October 2012 he obtained a copy of the decision of 9 April 2012 from the registry of the District Court.

THE COURT'S ASSESSMENT

13. In so far as the first set of proceedings is concerned, the applicant complained under Article 6 § 1 of the Convention that the Higher Administrative Court had given two contradictory decisions in his case and that the courts had not addressed his argument that the Law on Pensions had been applied instead of the Law on Mandatory State Insurance.

14. The Court notes that the existence of two conflicting versions of the same court decision constituted a serious error that could potentially have affected the principle of legal certainty in the proceedings in question. However, the domestic authorities reacted to the situation with due diligence in order to clarify which version of the decision of 6 March 2012 was the correct one and thus what the ultimate outcome of the proceedings had been. The period of uncertainty therefore lasted only a few months and the applicant was allowed to keep the amount he had been awarded by the judicial decision that had subsequently been quashed. Furthermore, the domestic authorities disciplined the clerk responsible for the error and the applicant's criminal complaint concerning the incident was examined by the police (see paragraphs 5-8 above). Therefore, this complaint is manifestly ill-founded.

15. As to the second complaint under this head, it is apparent that even though the first-instance court did not refer to the Law on Pensions in its decision, the higher court did (see paragraphs 3 and 4 above). Given that the proceedings should be assessed in their entirety, this complaint is without substance.

16. In addition, the applicant complained that his property rights had been violated because he had not been awarded the full amounts of social benefits that he had claimed. The Court reiterates that Article 1 of Protocol No. 1 does not guarantee, as such, the right to any social benefit in a particular amount (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001). A "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 only if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B). Therefore, this complaint is manifestly ill-founded.

17. As to the second set of proceedings, the applicant made several complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that must be declared inadmissible as the applicant has failed to demonstrate that he lodged those complaints within the relevant time-limit. The Court reiterates that the time-limit for lodging applications provided for

in Article 35 § 1 of the Convention – six months at the material time – is a public policy rule and that, consequently, it has jurisdiction to examine compliance with that rule of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012).

18. The second set of proceedings ended with the decision of the Court of Appeal on 9 April 2012 and the present application was lodged on 4 December 2012. According to the relevant domestic rules, the applicant was supposed to receive a copy of the decision of 9 April 2012 by post soon after the delivery, especially given that the proceedings had been conducted in writing. However he did not allege that he had not received a copy of the decision by post or that he had received a copy after a significant delay. He simply remained silent on the matter and referred only to a copy that he had obtained from the first-instance court's registry six and a half months later (see paragraph 12 above). Having regard to those considerations, the Court concludes that the applicant has failed to demonstrate that he has complied with the requirements of Article 35 § 1 of the Convention.

19. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

20. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 November 2024.

Martina Keller Deputy Registrar	María Elósegui President