CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43788/05
by Aleksandr Dmitriyevich KARUNA
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 April 2007 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,

and Mrs C. Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 22 November 2005,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the cases together,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Aleksandr Dmitriyevich Karuna, is a Ukrainian national who was born in 1953 and lives in Vinnytsia. He is represented by

Mr Paliy, a lawyer practicing in Vinnytsia region. The respondent Government are represented by Mr Yuri Zaytsev, its Agent.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant was discharged from the Military Forces on 14 September 1998 due to his bad state of health. The amount of his pension was determined on 25 December 1998.

In October 2004 the applicant instituted proceedings in the Leninsky District Court of Vinnytsia (the "Leninsky Court") against the Vinnytsia Military Commissariat, seeking recalculation of his pension in view of the changes introduced to the legislation after his discharge.

On 12 May 2005 the Leninsky Court, in the absence of the respondent, dismissed the applicant's claims as being unsubstantiated. In particular, it found that the applicant was not entitled to such an increase and that the amended legislation did not apply retroactively to the determination of the amount of his pension.

On 14 May 2005 the Commissariat informed the President of the Leninsky Court that it no longer intended to participate in civil proceedings concerning recalculation of pensions. It asked the President of that court to consider these cases in the absence of the Commissariat's representative. It also filed written objections.

On 2 August 2005 the Vinnytsia Regional Court of Appeal upheld the judgment of 12 May 2005.

The applicant lodged an appeal in cassation with the Supreme Court.

On 27 October 2005 the Supreme Court, acting under paragraph 10 of Chapter 10 of the Transitional Provisions of the Code of Administrative Justice, transmitted the case-file to the Higher Administrative Court for examination. It adopted no formal procedural decision on the transfer, or lack of, jurisdiction to hear cassation appeals in administrative cases.

On 18 January 2006 the Higher Administrative Court rejected the applicant's appeal in cassation as unsubstantiated. In particular, it upheld the reasoning of the Leninsky Court and the Vinnytsia Regional Court of Appeal. The Higher Administrative Court ruled that the previous court decisions were correct as they were based on the Resolution of the Plenary Supreme Court no. 4 of 15 April 2004.

On 1 June 2006, following communication of the case to the respondent Government, the Supreme Court gave a formal ruling by which it referred the applicant's cassation appeal lodged with the Supreme Court to the Higher Administrative Court.

The applicant lodged no appeal in cassation with the Supreme Court against this decision.

B. Relevant domestic law and practice

1. Constitution of Ukraine, 28 June 1996

Article 125

"In Ukraine the system of courts of general jurisdiction is formed in accordance with the territorial principle and the principle of specialisation.

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

The respective high courts are the highest judicial bodies of specialised courts.

Courts of appeal and local courts shall operate in accordance with the law.

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

2. Law of Ukraine on the Judicial System of 21 June 2001

Section 47

The Supreme Court of Ukraine - the highest judicial body

"1. The Supreme Court of Ukraine is the highest judicial body within the system of courts of general jurisdiction ...

2. The Supreme Court of Ukraine:

1) examines in cassation proceedings the decisions of courts of general jurisdiction in cases which, in accordance with procedural law, fall within its jurisdiction and / or re-examines all cases considered by courts of general jurisdiction..."

3. Code of Administrative Justice of 6 July 2005 (entered into force on 1 September 2005)

In accordance with Article 210 of the Code the court of cassation in administrative cases is the Higher Administrative Court of Ukraine.

Under Article 211 of the Code the parties to administrative proceedings may lodge cassation appeals with the Higher Administrative Court against the judgments or rulings of the first instance court and the court of appeal. The grounds for appeal in cassation are an erroneous application of the procedural or substantive law.

In accordance with Article 223 of the Code, the Higher Administrative Court can quash or amend judgments and rulings of the first instance courts and the courts of appeal or adopt a new judgment upon appeal in cassation.

In accordance with Article 235 of the Code, the Supreme Court reviews the decisions of the Higher Administrative Court in the course of extraordinary review proceedings (*в порядку виключного провадження*). In accordance with Article 235 § 2 such a review is a type of cassation review of the case. Under Article 237 of the Code, one of the two grounds for review is the lack of coherence in judicial practice and the difference in application of the same legal provision by different higher courts that

examine appeals in cassation (Higher Administrative Court and Higher Commercial Court). The Supreme Court may also re-examine the case if there was a finding of an international judicial body that a judicial decision in an administrative case infringed Ukraine's international obligations.

In accordance with paragraph 10 of Chapter VII of the Transitional Provisions of the Code, appeals in cassation which concern decisions of the courts of general jurisdiction (civil and commercial proceedings) given in administrative cases and which have not been examined by the Supreme Court by 1 September 2005 shall be transferred for examination to the Higher Administrative Court.

4. The Law no. 2263-II on "Pensions of Military Servicemen and Officers and Privates of the Law Enforcement Bodies and Certain Other Persons" of 9 December 1992 ("Military Pensions Act")

Article 43 of the Law states that the pensions shall be calculated on the basis of the salary paid to them, military rank, post occupied, time-in-service, etc. and other conditions determined by the Cabinet of Ministers.

On 25 March 2005 the Law was amended and the amounts of pensions were increased by 100%.

5. Resolution of the Plenary Supreme Court no. 4 of 15 April 2005

Paragraph 8 of the Resolution of the Plenary Supreme Court stated that, in accordance with Article 63 of Law no. 2262-XII and paragraph 8 of Resolution no. 393 of the Cabinet of Ministers of Ukraine of 17 July 1992, recalculation of previously determined amounts of pensions should be effected with due regard to the base salary. Other relevant factors should be taken into account (payment for rank, position, time-in-service, conditions of military service, secrecy, etc.).

More specifically, the Plenary Court drew the courts' attention to the fact that the pension legislation which was in force before 1 January 2005 did not provide for recalculation of pension on the basis of new changes introduced into legislation after the persons concerned had been discharged from the military. In particular, the Plenary Court considered that the Law no. 1769-IV, which entered into force on 1 January 2005, did not have retroactive effect and therefore claims for recalculation of pension based on the changes to the base military salary or additional payments that were introduced after a person's discharge from the military (i.e. before 1 January 2005) should not be allowed. Persons discharged from the military, who were given higher ranks after their retirement or discharge, had no right to recalculation of previously determined pension amounts.

In paragraph 9 of its Resolution, the Plenary Supreme Court informed the courts that a new law no. 2255-IV governing the issues of recalculation of pensions for former military servicemen would become effective as of 1 January 2006. Under the new law, all military pensions should be

subjected to recalculation in the event of any changes introduced to constituent parts of the payments for acting military servicemen (payment for rank, time-in-service, post occupied, etc.). Recalculation of pensions shall be effected from the date of recognition of this right and within the time-limits established by Article 51 § 2 of Law no. 2262-XII. The Resolution also stated that under the new law military pensions should be recalculated, but without retroactive effect.

In accordance with paragraph 10 of the Resolution, recalculation of pensions under Article 51 of the Law no. 2262-XII should be effected from the first day of every month following the month in which recalculation of pension was authorised by law. The Plenary Court informed the courts that where, in accordance with the legislative changes, a pensioner had obtained a right to an increase in his the pension, the difference should be paid for a period not exceeding twelve months.

The Plenary Court Resolution also recommended that in examining the instant category of cases the courts should take into account the categories of military servicemen discharged from the military due to its reform (Law of 15 June 2004 no. 1763-IV that entered into force on 8 July 2004). The law covered all military servicemen discharged from the military as of 1 January 2004 (Article 3 § 2 of the Law no. 1763-IV). In accordance with paragraph 11 of Article 1 of the Law no. 1763-IV, former military servicemen, who had attained the age of 45 and had served in the military for at least 15 years could receive an increase in the amount of pension of no more than 50 % of the base salary. The amounts of pensions were to be determined in accordance with the Law no. 2262-XII.

In accordance with paragraph 14 of the Resolution, the courts in examining military pension cases had to take into account that under Article 55 of the Law no. 2262-XII the amounts of pensions already determined for their recipients under the law were to be paid for the previous period of no more than three years before the pensioner requested recalculation. Also, the sums of pension not received by the pensioner due to the fault of the body determining the amount of pension were to be paid for the previous period without any time limitation.

Under paragraph 15 of the Resolution of the Plenary Court, pensioners had the right to receive compensation for pecuniary and non-pecuniary damage, in accordance with the procedure established by law (Article 17 of the Law no. 2011-XII "On Social and Legal Protection of the Military Servicemen and Members of their Families" of 20 December 1991).

6. Judicial practice of the Supreme Court in dealing with administrative cases in the course of exclusionary (extraordinary) review proceedings

The Government provided the following resolution of the Administrative division of the Supreme Court:

- Resolution of 14 February 2006 (case no. 21-321 во 05);
- Resolution of 18 April 2006 (case no. 21-138 сво 05);
- Resolution of 23 May 2006 (case no. 21-238 во 05);
- Resolution of 4 July 2006 (case no. 21-60 во 06).

7. Judicial practice referred to by the parties

The applicant referred to the following judgments given by the Leninsky District Court of Vinnytsia, in which the claimants' requests for recalculation of their pensions were allowed:

- judgment of 6 October 2004 (case no. 2-8/85/04p.);
- judgment of 21 January 2005 in the case of B.V.V. against the Military Enlistment Office;
- judgment of 24 February 2005 (case no. 2-814/05p.);
- judgment of 24 February 2005 (case no. 2-741/05p.);
- judgment of 19 April 2005 (case no. 2-2061/05p.);
- judgment of 13 May 2005 (case no. 2-2889/05p.).

The Government referred to the following judgments given by the domestic courts, in which the claims for recalculation of pensions were rejected:

- rulings and judgments of the L'viv Regional Court of Appeal of 28 February (two rulings) and 28 March (four judgments) 2005.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that the proceedings had been unfair and not adversarial. In particular, he stated that the decisions of the domestic courts had contravened domestic legislation. He further alleged that the Supreme Court unlawfully refused to hear his appeal in cassation and, instead of examining it, transferred it for examination to the Higher Administrative Court.

The applicant also maintained that the failure of the State to recalculate his pension constituted an infringement of Article 1 of Protocol No. 1 to the Convention.

THE LAW

A. Article 6 § 1 of the Convention

The applicant complained under Article 6 § 1 of the Convention about the unfairness of the proceedings in his case. In particular, he alleges that the domestic authorities misapplied domestic law and acted contrary to the

provisions of the law entitling him to an increased pension. He further maintains that the judgments in his case were arbitrary and lacked relevant substantiation. In his original submissions the applicant stated that the failure of the Supreme Court to examine his appeal in cassation breached Article 6 § 1 of the Convention, which reads insofar as relevant as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

1. Exhaustion of domestic remedies

The Government noted that the proceedings in the applicant's case involved three levels of jurisdiction in administrative cases: the Leninsky District Court of Vinnytsia (first instance court), the Vinnytsia Regional Court of Appeal (the court of appeal) and the Higher Administrative Court (the court of cassation). The applicant thus exhausted all available remedies in administrative proceedings.

The Government further noted that lodging an application for exclusionary review of the case with the Supreme Court (*скарга про перегляд рішення за винятковими обставинами*), after the case had been examined by the Higher Administrative Court, was an effective remedy of an extraordinary nature. Thus, in their view, a complaint for exclusionary review with the Supreme Court was not obligatory for the purposes of "exhaustion".

The applicant stated that he had exhausted all the remedies available to him under the Ukrainian law.

The Court considers that it unnecessary to review the issue of exhaustion of domestic remedies as this matter was not disputed by the Government in their observations (see *Çiçek v. Turkey*, no. 25704/94, Commission decision on admissibility of 26 February 1996).

It follows that the application cannot be rejected on the ground that the domestic remedies have not been exhausted.

Moreover, taking into account submissions of the parties and its own assessment of the circumstances of the case, the Court concludes that by lodging an appeal in cassation with the Higher Administrative Court, which examined and rendered its decision on appeal in cassation, the applicant has complied with the requirements of Article 35 § 1 of the Convention as to exhaustion of the domestic remedies.

2. Applicability of Article 6 § 1 of the Convention

The parties did not contest the applicability of Article 6 § 1 of the Convention to the proceedings in the instant case.

The Court notes that the applicant is a retired military officer. The Court recalls that disputes concerning pensions of former civil servants fall within the ambit of Article 6 § 1 of the Convention (see *Pellegrin v. France* [GC],

no. 28541/95, § 67, ECHR 1999-VIII). In the present case, the proceedings complained of concerned the issue of whether the applicant was eligible for recalculation of pension and were thereby decisive for his pecuniary rights. The Court therefore considers that the proceedings involved a "dispute" over the applicant's "civil rights" and that, consequently, Article 6 § 1 of the Convention applies in the present case.

3. Complaints under Article 6 § 1 of the Convention

(a) Access to a court

(i) Parties' submissions

The Government submitted that the applicant had not been deprived of the right to apply to court and accordingly there was no interference with his right of access to a court guaranteed by Article 6 § 1 of the Convention. The Supreme Court of Ukraine only transferred the applicant's case to the relevant court according to the legislation and the Transitional Provisions of the CAJ. The Government concluded therefore that the applicant had enjoyed the right to lodge a claim with the court and the right to file an appeal and cassation appeal. They further observed that Supreme Court was acting in accordance with the Ukrainian legislation, as well as the relevant practice of the Court (see *Gayevsky v.Ukraine* (dec.), no. 60725/00, 11 January 2005).

The applicant did not comment on these submissions.

(ii) Preliminary considerations

The Court observes that the applicant's cassation appeal had been transferred by the Supreme Court to the Higher Administrative Court on 27 October 2005, in accordance with the legislation in force (paragraph 10 of Chapter 10 of the Transitional Provisions of the Code of Administrative Justice). On 18 January 2006 the cassation appeal had then been examined and rejected by the Higher Administrative Court, which upheld the decisions of the lower courts. On 1 June 2006, following communication of the case to the respondent Government, the Supreme Court adopted a formal ruling ordering to transfer the case to the Higher Administrative Court.

The Court considers that there are two elements in the applicant's complaints as to lack of access to a court that need to be examined separately:

- firstly, as to whether the applicant's appeal in cassation had been duly examined by the domestic courts and the domestic authorities guaranteed the applicant's genuine and effective access to the court of cassation;

- secondly, as to whether the Supreme Court's decision to transfer the applicant's appeal in cassation complied with the requirements of Article 6 § 1 of the Convention.

(iii) Court's assessment

a. Access to the court of cassation

The Court recalls that Article 6 § 1 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation, but where such courts are established, the State is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6 § 1 (see *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, § 25; *Sokurenko and Strygun v. Ukraine*, nos. 29458/04 and 29465/04, § 22, 20 July 2006). In discharging that obligation, the State must secure the genuine and effective enjoyment of the rights guaranteed under Article 6 (see *R.D. v. Poland*, nos. 29692/96 and 34612/97, § 44, 18 December 2001). Furthermore, it is for the Contracting States to decide how they should comply with their obligations arising under the Convention. The Court's task is only to review the method chosen by the domestic authorities and its compatibility with the Convention (see *Tabor v. Poland*, no. 12825/02, § 40, 27 June 2006).

Turning to the facts of the present case, the Court considers that the applicant had access to the Higher Administrative Court, as a highest cassation review body in the administrative proceedings, in accordance with the legislation then in force, and was not deprived of a right to review of his case before this highest cassation instance. The Court does not consider that the unfavourable decision of the Higher Administrative Court had in itself any bearing on the applicant's right to a fair trial and in particular on the applicant's right of access to a court. It thus concludes that the State has ensured that the applicant "genuinely" and "effectively" enjoyed his right of access to the court of cassation, in compliance with Article 6 § 1.

It follows that this part of the applicant's complaints is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

b. Access to the Supreme Court

In so far as the applicant alleged that his appeal in cassation was not examined by the Supreme Court itself and was remitted to the Higher Administrative Court, contrary to Article 6 § 1 of the Convention, the Court notes that Article 6 § 1 does not guarantee a particular outcome of examination of the case nor a choice of a particular court that from the applicant's point of view has to examine his appeal. Neither does it provide an assurance that a result of the proceedings would always be favourable to the applicant or would be such as to comply with the applicant's aspirations. "Right to a court" is not absolute, but is subject to limitations, particularly where the conditions of admissibility of an appeal are concerned (see *MPP Golub v. Ukraine* (dec.), no. 6778/05, ECHR 2005-...). Among these limitations is the scope of particular judicial instance's jurisdiction, which is

to be "established by law", relating not only the legal basis for the very existence of a "tribunal", but also compliance by the tribunal with the particular rules that govern its functioning (see *Sokurenko and Strygun v. Ukraine*, cited above, § 24).

In this respect, the Court considers that the Higher Administrative Court acted as a "tribunal established by law" in examining the applicant's appeal in cassation and the Supreme Court no longer had jurisdiction over the matter. The Supreme Court thus acted in compliance with Article 6 § 1 in remitting the case for examination to a court that was authorised to examine it in accordance with paragraph 10 of Chapter VII of the Transitional Provisions of the Code of Administrative Justice.

It further notes that the Supreme Court, after the Code of Administrative Justice entered into force on 1 September 2005, became an extraordinary review instance in administrative proceedings. Thus, requests to re-hear cases lodged with it are akin to requests for re-opening of the proceedings (see *Kozak v. Ukraine* (dec.), no. 21291/02, ECHR 2002-X). However, admissibility of such requests and access to extraordinary review instances are not as such covered by guarantees of Article 6 § 1 of the Convention.

It follows that this part of the applicant's complaints is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

(b) Alleged unfairness of the decisions of the domestic courts

(i) Parties' submissions

The Government submitted that the applicant had a fair hearing of his claims. However, they were rejected as he had no right secured in legislation for a recalculation of pension.

The applicant disagreed. In particular, he contended that domestic law provided for the recalculation of his pension, but that it was refused unlawfully. He further mentioned that the domestic courts infringed his rights under Article 6 § 1 of the Convention in that they did not take into account his written submissions, other judgments of the domestic courts submitted by him in analogous situations and that he had no opportunity to examine in court a representative of the Military Enlistment Office, as its representative failed to appear before the first instance court. He further considers that there had been a breach of the principle of adversary proceedings.

(ii) The Court's assessment

The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing by the domestic authorities, and that his complaints essentially constitute an objection to the outcome of the proceedings and are based on alleged errors of fact and law. In this respect

the Court recalls that, according to Article 19 of the Convention, its duty is to ensure the honouring of the commitments undertaken by the States Parties to the Convention. In particular, it is not the function of the Court to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain*, [GC], no. 30544/96, § 28, ECHR 1999-I). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are primarily matters for regulation by national law and the national courts. Finally, the Court recalls that, although Article 6 § 1 of the Convention obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every single argument raised by a party to the proceedings.

The Court notes that in the instant case the applicant was able to put forward his arguments fully and adequate reasons for refusing his claims were provided. There is nothing in the case-file that might disclose any arbitrariness in the handling of the applicant's claims by the domestic courts.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Article 1 of Protocol No. 1 to the Convention

The applicant stated that the failure of the State to recalculate his pension constituted an infringement of Article 1 of Protocol No. 1 to the Convention, which reads insofar as relevant:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. Parties' submissions

The Government noted that the applicant had no "legitimate expectation" for recalculation of his pension. In particular, the Government noted that the applicant's complaints with regard to recalculation of pension related to the manner in which domestic courts applied legislation in the case and found that the pension bonus, mentioned in the President's Decree no. 923, was not provided for by the legislation in force at the time when the pension had

been granted to the applicant. Furthermore, the Government noted that on 18 January 2006 the Higher Administrative Court ruled that the applicant's claims for recalculation of his pension had been correctly dismissed as Presidential Decrees nos. 173 and 389 had no retroactive effect.

The Government further maintained that the Amendments Act to Article 43 of the Military Pensions' Act that had entered into force on 1 January 2005 provided for recalculation of pension including new additional monthly payments and bonuses without retroactive effect. They referred in this respect to the practice recommendation no. 4 of the Plenary Supreme Court of 15 April 2005. Accordingly, the applicant could not expect any recalculation of his pension based on provisions of the national law and the domestic courts had rightly found that the applicant was not entitled to have his pension recalculated. The Government concluded that the applicant's complaints under Article 1 of Protocol No. 1 should be declared incompatible *ratione materiae* or inadmissible as manifestly ill-founded according to Article 35 § 3 of the Convention.

The applicant disagreed. He maintained that he had acquired a right under the previous legislation to have his pension recalculated. He alleged that he had not received a recalculation of his pension in due time and, therefore, had suffered a financial loss. The provisions of the domestic law, in his view, clearly established not only the grounds for recalculation of his pension, but also the procedure for such a recalculation. He further stated that under the Articles 51 § 2, 55 § 2 and 63 § 3 and of the Military Pensions' Act he had a right to have his pension recalculated. However, the domestic courts refused to apply these obligatory provisions of the Military Pensions' Act and instead applied its Article 43 § 3, which related to the initial calculation of pensions. In his submissions the applicant referred to decisions of the domestic courts, in which other persons, in a similar situation, had their pensions recalculated.

The applicant further alleged that introduction of the following Presidential Decrees led to increases in and recalculation of pensions of former military servicemen:

- no. 847 of 14 July 1999 (40% increase in the base salary amount for military servicemen);
- no. 173 of 23 February 2002 (100% increase in the base salary amount for military servicemen);
- no. 847 of 16 May 2000 and 389 of 5 May 2003 (90% increase in special military payments).

Moreover, the applicant stated that the Resolution of the Cabinet of Ministers of 22 May 2003 also introduced a 33.3% increase to the base salary of military servicemen.

2. The Court's assessment

The Court recalls that "possessions" within the meaning of Article 1 of Protocol No. 1 may be either "existing possessions" (see *Van der Mussele v. Belgium,* judgment of 23 November 1983, Series A no. 70, p. 23, § 48), or claims in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining the effective enjoyment of a property right (see *Pine Valley Developments and Others v. Ireland,* judgment of 29 November 1991, Series A no. 222, p. 23, § 51; *Pressos Compania Naviera S.A. and Others v. Belgium,* judgment of 20 November 1995, Series A no. 332, p. 21, § 31).

The Court also recalls that States enjoy a wide margin of appreciation in regulating its social policy, including their right to independently regulate their pension system (see *Janković v. Croatia* (dec.), no 43440/98, ECHR 2000-X).

In the instant case the applicant's claim for a recalculated pension did not concern "existing possessions". The question remains, however, whether the applicant had a "legitimate expectation" regarding the recalculation of his pension, based on the provisions of the domestic law and the judgments given by the domestic courts.

The applicant's unsuccessful complaints lodged with the domestic courts related to the failure of the domestic authorities to recalculate his pension, retroactively, before the provisions of the Amendment Act of 1 January 2005 and the relevant Presidential Decrees entered into force. It further notes that the domestic law, as interpreted and applied by the domestic courts in the instant case, show that the applicant did not have a right to a recalculation of his pension before the legislation, i.e. the Military Pensions' Act, was amended by the Amendment Act on 1 January 2005. The applicant did not complain about the failure of the domestic authorities to recalculate his pension after that date. The Court finds no element of arbitrariness in these decisions, which were substantiated and based on the relevant law. Moreover, it notes that the applicant had a full opportunity to defend his interests and put forward all necessary evidence and arguments (see *Masa Invest Group v. Ukraine* (dec.), no. 3540/03, 11 October 2005). In these circumstances, the Court concludes that, at the material time prior to this reform, the applicant did not have a legitimate expectation which could give rise to an issue under Article 1 of Protocol No. 1 to the Convention (see *Berezovskiy v. Ukraine* (dec.), no. 70908/01, 15 June 2004).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and

Declares the application inadmissible.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President