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

FIFTH SECTION

DECISION

Application no. 57116/10
Ganna Kostyantynivna KOLESNYK v. Ukraine
and 2 other applications
(see annex for other applications)

The European Court of Human Rights (Fifth Section), sitting on 3 June 2014 as a Chamber composed of:

Mark Villiger, *President,*
Ann Power-Forde,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above applications lodged on 22 September 2010, 3 December 2010 and 7 February 2011, respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applications were lodged by three Ukrainian nationals, Mrs Ganna Kostyantynivna Kolesnyk ("the first applicant"), Mrs Larysa Oleksandrivna Navrotska ("the second applicant") and Mrs Svetlana Vyacheslavovna Fil ("the third applicant", collectively "the applicants"). The applicants were born in 1978, 1977 and 1982, respectively, and live in Simeyiz, Vinnytsya and Donetsk, Ukraine.

2. The applicants, who had been granted legal aid, were represented by Mr E. Leontyev, a lawyer practising in the town of Gorlivka, Ukraine. The Ukrainian Government ("the Government") were represented by their

Agent, most recently, Ms Nataly Sevostianova of the Ministry of Justice of Ukraine.

A. The circumstances of the case

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

1. The first applicant

4. On 5 April 2007 the first applicant gave birth to a child. She took three years of maternity leave, ending on 5 April 2010.

5. On 10 July 2007 the first applicant applied to the relevant State authorities for a monthly allowance, to be paid to her in accordance with section 42 of the Law of Ukraine on Compulsory State Social Insurance in Case of Temporary Loss of Ability to Work and Childbirth and Funeral Expenses (Закон України "Про загальнообов'язкове державне соціальне страхування у зв'язку з тимчасовою втратою працездатності та витратами, зумовленими народженням та похованням" – hereafter "the Compulsory State Social Insurance Act" - see paragraph 30 below). The allowance was awarded to her with effect from 21 June 2007 (the first day after the end of the initial period of maternity leave). Between June and November 2007 the first applicant received the following amounts: 43.01 Ukrainian hryvnias (UAH) in June 2007; UAH 129.03 in July 2007; UAH 132.64 in August 2007; UAH 134.45 in September 2007; UAH 136.13 in October 2007; and UAH 140.05 in November 2007. Between December 2007 and April 2010 the first applicant was receiving UAH 144.10 (around 16-18 euros (EUR)) per month.

6. In 2007-2009 the laws which set the amount of the allowance in question were modified by the State Budget Acts. On 9 July 2007 and 22 May 2008 the Constitutional Court of Ukraine found that the State Budget Acts for the years 2007 - 2008 could not validly amend the scope of rights and obligations set up in other legislation (see paragraph 46 below).

7. In December 2008 the first applicant asked for her allowance to be recalculated in the light of the Constitutional Court decisions of 9 July 2007 and 22 May 2008. In reply the Yalta Town Council informed the first applicant that since "the Cabinet of Ministers of Ukraine had not adopted a mechanism for recalculation of the child allowance, to make it compatible with the decision of the Constitutional Court of Ukraine", the recalculation could not be carried out. At the same time it noted that, according to the decision no. 1751 of the Cabinet of Ministers of Ukraine (see paragraph 34 below), the monthly child allowance was UAH 425 for the period between 1 May 2007 and 30 April 2008.

8. On 12 February 2009 the Labour and Social Policy Ministry of the Autonomous Republic of Crimea informed the first applicant that she was

entitled to a child allowance in accordance with the State Assistance (Families with Children) Act (*Закон України «Про державну допомогу сім'ям з дітьми»*) (see paragraph 32 below) to be paid between 21 June 2007 and 5 April 2010. The Ministry noted that as of 1 January 2009 the amount of allowance was UAH 144.10 whilst, "pursuant to the decision of the Constitutional Court of 9 July 2007 the applicant would have received monthly payments of UAH 463 in July-September 2007 and UAH 470 in October-December 2007 which corresponds to the amount of the minimum subsistence level (*прожитковий мінімум*) for a child aged six". However, for the years 2007-09 the necessary financial provisions for these payments had not been not made, with the result that the applicant would continue to receive the sums provided by the State Assistance (Families with Children) act, as amended by the respective State Budget Acts.

9. In April 2009 the first applicant instituted proceedings in the Yaltynsky Town Court against the Labour and Social Protection Department of the Yalta Town Council claiming, inter alia, UAH 10,878.99 in allegedly unpaid child allowance due to her for the period between 21 June 2007 and 30 April 2009 and requesting that an allowance in an amount not lower than the minimum subsistence level established by law for an able-bodied person (see paragraph 36 below) be paid to her until 5 April 2010. The first applicant indicated that she was insured under the obligatory social insurance scheme and was entitled to child allowance under sections 42 and 43 of the Compulsory State Social Insurance Act. However, decision no. 1751 of the Cabinet of Ministers of Ukraine which had been applied in her case, contradicted the above Act, even though the latter had higher legal force. The first applicant further noted that she had learned about the allegedly erroneous calculation of the amount of her child allowance from the media only in September 2008.

10. On 9 June 2009 the court found that the first applicant was insured under the Compulsory State Social Insurance Act. Under section 43 of the Act the amount of child allowance paid could not be less than the amount of the minimum subsistence level established by law. The changes introduced by the State Budget Acts in 2007 and 2008, which provided for a reduction in the amount of the benefit, had been declared unconstitutional by the Constitutional Court of Ukraine on 9 July 2007 and 22 May 2008. Therefore, these changes were not applicable in the first applicant's case.

11. The court further held that the first applicant had lodged before the court her claim for payment of the child allowance due to her in 2007 only in 2009, while the decision of the Constitutional Court of Ukraine of 9 July 2007 had been published on 27 July 2007. The first applicant should have learned about the breach of her rights on the latter date. As the first applicant requested recalculation of her child allowance in May 2009 only, she had missed the one-year time-limit provided for by the Code of Administrative Justice Procedure. The court allowed the first applicant's

claims related to the period between May 2008 and May 2009 and awarded her UAH 5,278.70.

12. On 24 March 2010 the Sevastopol Administrative Court of Appeal amended the decision of 9 June 2009. It found that the first applicant had had good reasons for missing the time-limit for lodging her claim. In particular, she had correctly tried to settle the dispute out of court by lodging her request for recalculation directly with the defendant first.

13. The court held that the relevant provisions of the State Budget Acts for 2007 and 2008, which suspended (for 2007) and then revoked (with effect from 2008) section 43 of the Compulsory State Social Insurance Act, had been found to be unconstitutional on 9 July 2007 and 22 May 2008. The first applicant was insured and thus was entitled to a monthly child allowance in accordance with section 43 of the Compulsory State Social Insurance Act, which provided that the amount of the child allowance should not be lowers than the minimum subsistence level. The court found that the State Budget Act for 2007 set the minimum subsistence level for children aged up to six years as UAH 463 (between April 2007 and September 2007) and UAH 470 (between October and December 2007). In June-December 2007 the first applicant was paid UAH 859.41. Consequently, the first applicant was to be paid "the remaining UAH 2,714.59" in child allowance for the period between 21 June 2007 and 31 December 2007.

14. As for 2008 the court found that the first applicant's claims for the period between May and December 2008 (i.e. after the Constitutional Court decision of 22 May 2008) should be also granted. The State Budget Act for 2008 set for the minimum subsistence level for children aged up to six years as UAH 538 (between April and June 2008), UAH 540 (between July and September 2008) and UAH 557 (between October and December 2008). The first applicant received UAH 1,152 – UAH 144,10 x 8 months. The court awarded her the remaining UAH 3,215 for the period between 22 May and 31 December 2008 (538 x 2 + 540 x 3 + 557 x 3 – 1,152).

15. As for the first applicant's claims related to the 2009 payments, the court held that section 46 of the State Budget Act 2009 provided that the amount of child allowance provided for by the Compulsory State Social Insurance Act and by the State Assistance (Families with Children) Act had to be fixed by the Cabinet of Ministers of Ukraine. As the relevant provisions of the State Budget Act 2009 had not been declared unconstitutional and the allowance in question had paid to the first applicant in the amount determined by the Cabinet of Ministers' decision no. 57 (see paragraph 41 below), the court dismissed the first applicant's claim relating to the 2009 payments. The court held that the first applicant's claim for payment of an allowance up to 5 April 2010 could not be allowed, since it concerned future payments.

16. The first applicant appealed in cassation, stating that she was insured and thus entitled to child allowance in an amount no lower than the minimum subsistence level for an able-bodied person as of 21 June 2007. She also noted that the Constitutional Court of Ukraine had already declared on numerous occasions that the State Budget Act could not introduce changes to other legal acts.

17. On 19 July 2010 the Supreme Court of Ukraine found that there were no grounds to grant the first applicant leave to appeal on points of law.

2. The second applicant

18. On 7 February 2008 the second applicant gave birth to a child. From 8 April 2008 she received UAH 130 a month in child allowance.

19. On 3 March 2009 the second applicant lodged a claim before the Zamostyansky District Court. Relying on section 15 of the State Assistance (Families with Children) Act, the second applicant claimed that child allowance in an amount not less than the minimum subsistence level established by law was due to her for the period between 8 April 2008 and 7 February 2011. The second applicant also referred to Article 22 of the Constitution of Ukraine and the Constitutional Court decisions of 9 September 2007 and 22 May 2008, and argued that it was unconstitutional to amend an existing provision of the State Assistance (Families with Children) Act by virtue of the State Budget Act.

20. On 13 April 2009 the Zamostyansky District Court found that the second applicant was insured, and therefore the Compulsory State Social Insurance Act was applicable to her. Despite this conclusion, the court relied on section 15 of the State Assistance (Families with Children) Act, which was modified by the State Budget Act 2008, and also, referring to the State Budget Act 2007, held that resources for financing child allowance payments had to be allocated by the State Budget. On these grounds, it dismissed the applicant's claims.

21. On 17 June 2010 the Vinnyatsya Regional Court of Appeal upheld that decision. It held, however, that in the second applicant's case it was not the Compulsory State Social Insurance Act, which applied "to temporarily disabled persons or in cases of birth or death", but the State Assistance (Families with Children) Act which was applicable, and that therefore the amount of child allowance had been calculated correctly.

22. On 16 August 2010 the second applicant appealed in cassation.

23. By letter of 19 November 2010 the Supreme Court informed the second applicant that since 9 September 2010 it had had no jurisdiction to examine administrative cases and that her appeal would be considered after the introduction of the necessary changes to the law.

24. By letter of 6 March 2012 the Higher Administrative Court of Ukraine informed the second applicant that her case (no. K/9991/75865/11) was pending before that court.

25. The second applicant's lawyer informed the Court that the Higher Administrative Court of Ukraine had rejected the second applicant's appeal in cassation on 31 May 2012. He submitted a copy of the decision, which was published in the General State Court Decisions Registry of Ukraine (*Єдиний державний реєстр судових рішень України*). The copy contains no mention of the second applicant's name (all personal information was replaced by the reference "Person 4") but makes reference to her case number (no. K/9991/75865/11).

26. The Higher Administrative Court of Ukraine found, without any particular specification, that the second applicant was entitled to a child allowance under the State Assistance (Families with Children) Act and had been paid it in accordance with decision no. 1751 of the Cabinet of Ministers of Ukraine.

3. The third applicant

27. On 9 May 2009 the third applicant gave birth to a child. From 29 June 2009 she received UAH 130 a month in child allowance, payable until the child reached the age of three.

28. On 11 June 2010 the Kirovsky District Court of Donetsk rejected the third applicant's claim against the Labour and Social Protection Department of the Kirovskiy District Council of Donetsk for payment of child allowance in an amount equal to the minimum subsistence level. It held that the amount of the allowance paid to her had been calculated correctly in accordance with the State Assistance (Families with Children) Act.

29. On 13 August 2010 the Donetsk Regional Court of Appeal upheld that decision. It held that although section 43 of the Compulsory State Social Insurance Act was in force and applicable in the present case, the State Budget Acts of 2009 and 2010 provided that the amount of the allowance in question had to be agreed by the Cabinet of Ministers of Ukraine. The amount of the child allowance due to the third applicant had been calculated correctly, in accordance with the relevant decision of the Cabinet of Ministers. This court decision was not subject to appeal.

B. Relevant domestic law

1. Legal acts on child allowance payments

(a) Initial texts

(i) Compulsory State Social Insurance Act 2001

30. The relevant provisions of the Act read as follows:

Section 42. Right to a child allowance payable until the child attains the age of three

"An insured person (a parent, an adoptive parent, a grandmother, a grandfather, another relative or a guardian) who has a child under his or her care has the right to child allowance payable until the child attains the age of three.

Child allowance payable until the child attains the age of three is provided to an insured person in the form of an allowance during their three-year period of maternity leave and partially compensates the loss of salary (income) during this time."

Section 43. Amount of allowance payable until the child attains the age of three

"Child allowance shall be paid to an insured person in the amount set by the board of the [Social Insurance] Fund but it shall be not lower than the amount of the minimum subsistence level established by law."

31. The Transitional Provisions of this Act, adopted in 2001, stipulated that until the economic situation had stabilised the amount of the allowance would be determined every year by the Verkhovna Rada of Ukraine until it gradually reached the minimum subsistence level.

(ii) State Assistance (Families with Children) Act 1992

32. The relevant provisions of the Act read as follows:

Section 13. Right [to receive] child allowance until the child attains the age of three

"A person who is not insured under the obligatory State social insurance scheme, who has a child under his or her care has the right [to receive] child allowance until the child attains the age of three."

Section 15. Amount of allowance payable until the child attains the age of three

"Child allowance shall be paid in an amount which shall be equal to the minimum subsistence level for a child aged up to six years."

33. The Transitional Provisions of this Act, amended in 2005, provided that the allowance in question should amount to 50% (from 1 January 2008), 75% (from 1 January 2009) and 100% (from 1 January 2010) of the difference between the minimum subsistence level for an able-bodied person and the average monthly family income for one person for the previous six months.

(iii) Decision no. 1751 of the Cabinet of Ministers of Ukraine of 27 December 2001

34. This decision established the amounts and methods of payments under the State Assistance (Families with Children) Act and, in particular, of child allowance payable to children under the age of three.

(iv) Amount of minimum subsistence level

35. The monthly subsistence level for children aged up to six years was gradually increased by the relevant laws from UAH 463 (around EUR 67) in June 2007 to UAH 911 (around EUR 89.51) in June 2012.

36. The monthly minimum subsistence level for an able-bodied person changed from UAH 561 (around EUR 81.21) in June 2007 to UAH 1,094 (around EUR 107.49) in June 2012.

(b) Amendments to the statutory provisions

(i) Between 21 June 2007 and 9 July 2007

37. By the State Budget Act 2007 section 43 of the Compulsory State Social Insurance Act and section 15 of the State Assistance (Families with Children) Act were suspended. Part 2 of section 56 of the State Budget Act 2007 provided that the allowance in question should not be less than UAH 90 for non-insured persons and not less than 23% of the minimum subsistence level for insured persons.

(ii) Between 9 July 2007 and 31 December 2007

38. On 9 July 2007 the Constitutional Court of Ukraine declared that part 2 of section 56 of the State Budget Act and the suspension of section 43 of the Compulsory State Social Insurance Act and of section 15 of the State Assistance (Families with Children) Act were unconstitutional.

(iii) Between 1 January 2008 and 22 May 2008

39. By the Law "On the State Budget 2008 and on the Introduction of Changes to Certain Laws" ("the State Budget Act 2008") sections 42 and 43 of the Compulsory State Social Insurance Act were revoked. The Act also introduced changes to the State Assistance (Families with Children) Act. These changes provided that a person raising a child had the right to child allowance until the child attained the age of three. This allowance was paid in an amount equal to the difference between the minimum subsistence level and the average family income for the previous six months, but not less than UAH 130.

40. At the same time the State Budget Act 2008 also provided that child allowance should amount to 50% (from 1 January 2008), 75% (from 1 January 2009) and 100% (from 1 January 2010) of the difference between the minimum subsistence level and the monthly average family income for one person for the previous six months, but should not be less than UAH 130.

41. On 22 February 2008 decision no. 1751 of the Cabinet of Ministers of Ukraine was amended by decision no. 57. The latter decision provided that the allowance in question had to amount to the difference between 75% (from 1 January 2009) and 100% (from 1 January 2010) of the minimum subsistence level and the monthly average family income for one person for the previous six months, but should not be less than UAH 130.

(iv) Between 22 May 2008 and 31 December 2008

42. On 22 May 2008 the revocation of sections 42 and 43 of the Compulsory State Social Insurance Act was found unconstitutional by the Constitutional Court of Ukraine. The question of the constitutionality of amendments to the State Assistance (Families with Children) Act made by the State Budget Act 2008 was not raised before the Constitutional Court.

(v) Legal acts in force after 1 January 2009

43. The State Budget Acts 2009 and 2010 provided that the amount of the allowance in question should be established by the Cabinet of Ministers of Ukraine.

2. Decisions of the Constitutional Court of Ukraine

44. The decision of 20 March 2002 concerned limitations on some social security payments introduced by the State Budget Act 2001. The Constitutional Court held that:

> "... since for a considerable number of citizens of Ukraine privileges, compensation and safeguards, the right to which is provided by laws in force, are an addition to their main sources of support and a necessary component of the constitutional right to maintain a standard of living (Article 48 of the Constitution of Ukraine) no lower than the minimum subsistence level established by law (part 3 of Article 46 of the Constitution of Ukraine), any limitation of the content and ambit of this right by adoption of new laws or amendment of current laws is forbidden by Article 22 of the Constitution of Ukraine."

45. The Constitutional Court of Ukraine reiterated this position in its decision of 1 December 2004 "On discontinuing or limiting privileges, compensation and guarantees".

46. By its decisions of 9 July 2007 and 22 May 2008 the Constitutional Court stated as follows:

Decision of 9 July 2007 (citizens' social protection case)

> "...
>
> The analysis of the legislative activity of the Verkhovna Rada of Ukraine confirms that laws of Ukraine on granting privileges, compensation and guarantees, which form part of the constitutional right of citizens to social protection and to maintain a sufficient standard of living (Article 46 of the Constitution of Ukraine), are systematically suspended following the adoption of State Budget Acts.
>
> The suspension of laws [...] is to be done in accordance with the Constitution of Ukraine. [...] Therefore, the State Budget Act suspends, for a certain period of time, the functioning of the mechanism for implementing constitutional socio-economic rights, which leads to a limitation of the right to social protection. Systematic suspension by the State Budget Acts of the laws of Ukraine on granting privileges, compensations and guarantees in practice invalidates them.

Suspension of laws which establish the rights and freedoms of citizens [...] is a limitation of those rights and freedoms and can take place only in cases provided for by the Constitution of Ukraine. [...]

As a result of the temporary suspension of the valid laws of Ukraine on granting privileges, compensation and other forms of social guarantee, citizens' income, which should not be lower than the minimum subsistence level established by law (part 3 of Article 46 of the Constitution of Ukraine), falls and thus the right of everybody to a decent standard of living under Article 48 of the Constitution of Ukraine is breached.

Therefore, in accordance with part 3 of Article 22 and Article 64 of the Constitution of Ukraine, the right of citizens to social protection and other socio-economic rights can be limited, including by way of suspension of laws or their parts, only in a military state or state of emergency for a limited period of time.

This legal position has already been expressed by the Constitutional Court of Ukraine in its decision of 20 March 2002.

3.2 [...]Failure of the State to comply with its social obligations with respect to certain persons puts those citizens in an unequal position and undermines the principle of an individual's trust in the State, which leads to a violation of the principles of the Welfare State and the rule of law ... .

[...]

The Constitutional Court of Ukraine has on numerous occasions [...] found that certain provisions of the State Budget Acts which suspend or limit privileges, compensation and guarantees contradicted the Constitution of Ukraine (decision of 20 March 2002 (case about privileges, compensation and guarantees); decision of 17 March 2004 (case about social protection of military personnel and employees of law enforcement bodies); decision of 1 December 2004 (case about suspension or limitation of privileges, compensation and guarantees); decision of 11 October 2005 (case about amount of pension and monthly living allowance). However, despite the above-mentioned decisions of the Constitutional Court of Ukraine, the revision of privileges, compensation and guarantees by the State Budget Acts, which started in 1995, has become systematic.

[...]

It follows from the above-mentioned provisions of the Constitution of Ukraine and the [Budget] Code of Ukraine that the State Budget Act [...] has a specific subject matter – the determination of the State revenues and expenditure for society-wide needs, in particular, expenditure for social protection and social security – therefore, this Act cannot introduce changes to or suspend the laws of Ukraine, or set up different (additional) statutory regulation of areas which are subject to regulation by other laws. This is also confirmed by part 3 of section 27 of the [Budget] Code.

[...]

Since the subject-matter of the State Budget Act is clearly determined by the Constitution of Ukraine, and in the [Budget] Code, this Act cannot repeal or change the scope of rights and obligations, privileges, compensation and guarantees provided for by other laws of Ukraine."

Decision of 22 May 2008 (case on subject-matter and content of the State Budget Act)

"The Constitution of Ukraine does not give the State Budget Act higher legal force in comparison to other laws.

For this reason, the Constitutional Court of Ukraine has concluded that the State Budget Act cannot introduce changes to other laws, suspend their effect or revoke them, since for objective reasons it creates contradictions in legislation, and as a result, abrogation and limitation of human and citizens' rights and freedoms.

In the event that operation of laws is to be ceased, it is for separate laws to introduce changes or amend them, or declare them void."

47. Following a request by the Cabinet of Ministers for the interpretation of part 2 of Article 95 of the Constitution of Ukraine, which provides that any State expenditure must be determined exclusively by the State Budget Act, in its decision of 27 November 2008 no. 1-37/2008 "On budget balancing" the Constitutional Court referred to its previous decisions of 9 July 2007 and 22 May 2008 and decided that there was "no practical necessity" for such an interpretation since the above-mentioned decisions had already addressed the issue.

48. The Constitutional Court was not seized of a complaint in respect of the State Budget Act 2009.

49. In its decision of 30 November 2010 no. 1-47/2010 "On the constitutionality of certain provisions of the State Budget Act 2010" the Court held:

"2.2 The Constitutional Court of Ukraine has on many occasions [...] examined cases and taken decisions on the compliance of the State Budget Acts or specific provisions thereof with the Constitution of Ukraine (constitutionality).

In particular, in decision no. 6-рп/2007 of 9 July 2007 (citizens' social protection case) the Constitutional Court of Ukraine established that the subject matter of the State Budget Act was foreseen in part 2 of Article 95 of the Constitution of Ukraine [...], the list of legal matters which formed the subject matter of the State Budget Act was exhaustive; according to the Constitution of Ukraine [...] it follows that the State Budget Act, as a legal act, was to be interpreted through the notion of a budget as a plan for the gathering and distribution of financial resources; it had a special subject matter, different from other laws of Ukraine – it concerned exclusively the determination of the income and expenditure of the State, and therefore this Act could not introduce changes, suspend the effect of other laws, or set up a different (additional) legal regulation of areas covered by other laws of Ukraine [...].

By declaring certain provisions of the State Budget Act 2007 unconstitutional, the Constitutional Court of Ukraine drew the attention of the Verhovna Rada, the President of Ukraine and the Cabinet of Ministers of Ukraine to the necessity to comply with provisions [...], 22, 95 [...] of the Constitution of Ukraine [...] in the preparation, adoption and implementation of the State Budget Act.

The same provisions of the Constitution of Ukraine [...] and the above-mentioned legal position served as the basis for the decision of the Constitutional Court of Ukraine of 22 May 2008 in the case on the subject matter and content of the State Budget Act [...].

2.3 Despite the constitutional requirements as to the subject matter of the State Budget Act and the legal positions expressed by the Constitutional Court of Ukraine in the decisions of 9 July 2007 and 22 May 2008, the State Budget Act 2010 introduced changes and amendments to a number of laws [...].

50. In its decision of 26 December 2011 no. 1-42/2011 "On the constitutionality of certain provisions of the State Budget Act 2011" the Court stated:

> "...
>
> The amounts of social payments depend on the social situation and financial capacity of the State, but they should secure the constitutional right of every person to a decent standard of living for himself and for his family, granted by Article 48 of the Constitution of Ukraine.
>
> ...
>
> In addition, in its decision of 8 October 2008 on insurance payments the Constitutional Court of Ukraine pointed out that the mechanisms and amounts of social services and payments to victims [...] were set by the State according to its financial capacity.
>
> When examining this issue the Constitutional Court of Ukraine also took into account the provisions of international law. Thus, according to Article 22 of the Universal Declaration of Human Rights, the amounts of social payments and assistance are determined in accordance with the financial capacity of the State. The European Court of Human Rights in its decision of 9 October 1979 in *Airey v. Ireland* considered that social and economic rights are largely dependent on the situation - notably financial - reigning in the State. This conclusion also concerns the reduction of social payments, which is noted in the decision of 12 October 2004 in the case of *Kjartans Ásmundssonar v. Iceland*.
>
> Therefore, one of the main elements in the regulation of relations in the social sphere is the principle of proportionality between the social protection of citizens and the financial capacity of the State, as well as guaranteeing the right of everybody to a sufficient standard of living.
>
> ...
>
> ... the social and economic rights provided for by laws are not absolute. The mechanism of implementation of these rights can be changed by the State, in particular, in the event that they cannot be guaranteed financially, by way of redistribution of costs with the aim of protecting the interests of society in whole. Moreover, these [changes] can be made in response to the need to prevent or remove a real threat to the economic security of Ukraine, which, according to Article 17 of the Constitution of Ukraine, is the most important function of the State. [...] It is unacceptable to establish a legal mechanism which would lead to the amount of a person's pension, other social payments or allowance falling below the amount indicated in part 3 of Article 46 of the Constitution of Ukraine and [thus failing to] guarantee an appropriate standard of living and preserve his or her human dignity, which would be contrary to Article 21 of the Constitution of Ukraine.
>
> Therefore, a change to the method of calculation of certain types of social payment will be compatible with the Constitution until it reaches a point at which the very essence of the right to social protection is compromised."

COMPLAINTS

51. The applicants complained, citing Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, about the failure of the State to pay them child allowance in an amount not lower than the official minimum subsistence level, as provided by law. They further complained that it was unlawful to reduce the amount of child allowance by amendments introduced by the State Budget Acts, as such practice had been previously found to be unconstitutional by the Constitutional Court of Ukraine.

52. The first and third applicants complained under Articles 6 § 1 and 13 of the Convention that the courts in their cases had not been impartial and independent and that they had ignored the applicants' reference to the Constitution of Ukraine and to the decision of the Constitutional Court of 27 November 2008 as well as their argument that the allowance in question should not be lower than the minimum subsistence level. They also complained that the court decisions had not been duly reasoned.

53. The first applicant also complained that it was impossible to claim from the State damage inflicted by a law which had been declared unconstitutional.

54. The first applicant also complained under Article 6 of the Convention that it was impossible to enforce the court decision in her case.

55. The first applicant lastly referred to Articles 8 and 14 of the Convention. She complained that one of the Court's letters to her had arrived in an opened envelope.

56. The second applicant complained under Article 6 § 1 of the Convention about the length of proceedings in her case. She also referred to Article 17 of the Convention.

57. The first and third applicants also complained under Articles 6 and 13 of the Convention that frequent changes to the law (in 2010 the jurisdiction of this category of cases was changed from the administrative courts to the courts of general jurisdiction and back again) had deprived them of an effective remedy in respect of their claims.

THE LAW

A. Joinder of the applications

58. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

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

59. The applicants complained, citing Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, about the failure of the State to pay them child allowance in an amount not lower than the official minimum subsistence level, as provided by law. They further complained that it was unlawful to reduce the amount of child allowance by amendments introduced by the State Budget Acts, as such practice had been previously found to be unconstitutional by the Constitutional Court of Ukraine.

60. The Court, which is master of the characterisation to be given in law to the facts of the case, finds that the above complaints fall to be examined solely under Article 1 of Protocol No. 1, which reads as follows:

> "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. The parties' submissions

(a) The Government

61. The Government noted at the outset that the second applicant's appeal in cassation was pending before the Higher Administrative Court of Ukraine. Therefore, application no. 74847/10 was inadmissible because of the second applicant's failure to exhaust effective domestic remedies.

62. The Government further submitted that section 43 of the Compulsory State Insurance Act provided that the amount of child allowance should not be less than the minimum subsistence level established by law and that section 15 of the State Assistance (Families with Children) Act provided that child allowance was payable in an amount equal to the minimum subsistence level for a child aged up to six years. The first and third applicants believed that they had a legitimate expectation (and, therefore, a "possession" under Article 1 of Protocol No. 1) to receive child allowance in the amount provided for by the first Act, while the second applicant claimed a legitimate expectation to receive this allowance in the amount provided for by the second Act.

63. The Government pointed out that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning, which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests, for instance debts constituting assets, can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that

needed to be examined was whether the circumstances of the case, considered as a whole, conferred on the applicants' title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Broniowski v. Poland* (dec.), no. 31443/96, 19 December 2002).

64. They therefore considered that it should be first determined whether the applicants in the present case had a "legitimate expectation".

65. According to the Government, such an expectation could stem from the plurality of legal norms in force at the material time.

66. In this respect the Government referred to the Court's case-law, according to which "it is within the State's discretion to determine what benefits are to be paid to its employees out of the State budget. The State can introduce, suspend or terminate the payment of such benefits by making the appropriate legislative changes. However, once a legal provision is in force which provides for the payment of certain benefits and the conditions stipulated have been met, the authorities cannot deliberately refuse their payment while the legal provisions remain in force" (see Kechko v. Ukraine, no. 63134/00, § 23, 8 November 2005).

67. In view of the above, the Government submitted that in 2008 section 43 of the Compulsory State Insurance Act was revoked by the State Budget Act 2008. The relevant payments were calculated in accordance with decision no. 1751 (amended by decision no. 57) of the Cabinet of Ministers of Ukraine. Both legal acts were public and foreseeable, and therefore the first applicant was able to regulate her conduct.

68. Therefore, in 2008 the first applicant had a legitimate expectation to receive the allowance in question in the amount set by the decision of the Cabinet of Ministers and not under any other act, since the decision of the Constitutional Court of Ukraine of 22 May 2008 could not be applied retrospectively.

69. In respect of the second applicant, the Government noted that in 2008 two legal acts were in force - the State Assistance (Families with Children) Act and the State Budget Act 2008, which also introduced changes to other laws. Therefore, in 2008 the second applicant had a legitimate expectation to receive child allowance in the amount determined by the State Budget Act 2008.

70. Consequently, during the period referred to by the first and second applicants the law in force did not contain any provision which could have entitled them to receive child allowance in the amounts they claimed in the domestic courts.

71. In respect of the applicants' claims related to 2009, the Government noted that at that time the State Budget Act 2009 provided that the amount of the allowance in question had to be established by the Cabinet of Ministers of Ukraine. Therefore, there were no legal acts which provided that the allowance in question had to be paid in the amount claimed by the applicants.

72. According to the Government, a similar situation existed in 2010.

(b) The applicants

73. The applicants submitted that the Government's reference to the State Budget Acts was irrelevant since the Constitutional Court of Ukraine had decided on numerous occasions that the practice of amending social security legal acts via the State Budget Act was unconstitutional.

74. The applicants also maintained that the courts had applied a subordinate legal act which had lower legal force (the decision of the Cabinet of Ministers) despite the fact that Article 9 of the Code of Administrative Justice provided that a legal act with higher legal force had to be applied.

75. The applicants claimed that they had a legitimate expectation to receive child allowance in an amount not lower than the minimum subsistence level in accordance with Article 46 of the Constitution of Ukraine and section 43 of the Compulsory State Social Insurance Act (the first and third applicants). The second applicant made reference both to section 43 of the Compulsory State Social Insurance Act and to section 15 of the State Assistance (Families with Children) Act.

76. The applicants submitted that the practice of reducing child allowance payments had already existed for a long time. The State Budget Acts suspended and revoked for 2007 and 2008 the relevant provisions; however, the Constitutional Court declared those parts of the State Budget Acts to be unconstitutional. In 2009 and 2010 the Verkhovna Rada of Ukraine empowered the Cabinet of Ministers to determine the amount of the allowance in question, whereas such a transfer of power was not provided for by the laws in force. According to the applicants, this limitation of their rights was not balanced, since while the amount of child allowance was reduced threefold, during the same period the salaries of civil servants and judges were increased.

77. The applicants lastly pointed out that the wide scale of the problem in question was reflected in numerous publications in the media.

2. The Court's assessment

78. In respect of the Government's contention that the second applicant failed to exhaust domestic remedies, the Court notes that at the time of the lodging of her application the Supreme Court of Ukraine had informed the second applicant that her appeal would be considered after the introduction of necessary changes in the law (see paragraph 23 above). It appears from the information submitted by the applicant's lawyer that such decision was finally taken on 31 May 2012. The application has therefore not been introduced prematurely.

79. Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature

and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, for instance, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 78, ECHR 2005-VI).

80. Where there is an interference by a public authority with the peaceful enjoyment of possessions, it should be lawful and it should pursue a legitimate aim "in the public interest". Any interference must also be reasonably proportionate to the aim sought to be achieved. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see, amongst many other authorities, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII).

81. With specific reference to social security payments, Article 1 of Protocol No. 1, places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. However, if a Contracting State has in force legislation providing for the payment as of right of a welfare benefit ‑ whether conditional or not on the prior payment of contributions ‑ that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 54, ECHR 2005-X); the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable (see *Moskal v. Poland*, no. 10373/05, § 39, 15 September 2009).

82. In the present cases the applicants gave birth to children and were entitled to a monthly child allowance until their children reached the age of three. The very fact that they were entitled to child allowance is not contested by the parties, and the Court considers that the applicants' entitlement to child allowance as such is sufficiently clear as to bring the cases within the scope of Article 1 of Protocol No. 1 and, indeed, to find that the applicants' entitlement the child allowance provided by domestic law formed a possession within the meaning of that provision.

83. The parties disagree, however, as to the amount to which the applicants were entitled: the applicants claim that they were entitled to amounts calculated on the basis of the minimum subsistence level, while the Government claim that the law in force did not contain any provision which entitled the applicants to receive child allowance in the amounts they claimed in the domestic courts, and that the applicants received their domestic entitlement.

84. The Court notes that the domestic courts awarded the first applicant's claims in part (for the period between 21 June and 31 December 2007, and between 22 May and 31 December 2008). She still claimed that the courts had erroneously taken the minimum subsistence level for children aged up to six years instead of the minimum subsistence level for an able-bodied person as the basis of their calculations and had failed to grant her claims for the period between January and May 2008 as well as for the period after January 2009. The courts, without giving detailed reasons, established that it was the minimum subsistence level for children aged up to six years which should be taken as a basis for recalculation. As for the periods for which the first applicant's claims were not granted the domestic courts established that she was not entitled to, for the period between January and May 2008 and, as of January 2009 (as a result of the changes brought about by the State Budget Act for 2009, which was not challenged before the Constitutional Court), the increased amount to which the applicant claimed an entitlement.

85. The second applicant, whose claims covered the three years from April 2008 to February 2011, claimed under the State Assistance (Families with Children) Act an amount calculated by reference to the minimum subsistence level. The courts ultimately agreed that the second applicant was entitled to the child allowance under the State Assistance (Families with Children) Act. Accordingly, the increased amounts which the applicant claimed by reference to the minimum subsistence level did not form part of her entitlement, which was limited to the amount provided for by decision no. 1751 of the Cabinet of Ministers as amended by decision no. 57, that is, UAH 130 per month.

86. The third applicant's child was born in 2009, and her claim to child allowance ran from June 2009 to May 2012. In her case, the domestic courts found that as a result of the State Budget Acts of 2009 and 2010, payments of amounts equal to the minimum subsistence level could not be made and the third applicant received the amount of UAH 130 per month, as provided for by the earlier decision of the Cabinet of Ministers.

87. The Court has found that the applicants' – undisputed – claim to child allowance as such falls within the scope of Article 1 of Protocol No. 1, and that it can be considered a "possession" within the meaning of that provision. The question is whether the applicants' claims that they were entitled to higher amounts can constitute a possession within the meaning of

the provision, and, if so, whether the failure to make such payments interfered with the possession.

88. The Court recalls that, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50; *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I).

89. It should be noted at the outset that the essence of the applicants' right to child allowance has not been impaired in the present cases. As for the particular amount of such allowance, the Court does not accept that the applicants' claims to child allowance based on the minimum subsistence levels amounted to a "legitimate expectation" within the meaning of the case-law on that term. In particular, such claims did not have sufficient basis in national law. Neither there is any evidence of a solid body of domestic jurisprudence to support the applicants' assertions. Whilst the state of domestic legislation in this area was unsatisfactory as underlined by the Constitutional Court decisions of 2007 and 2008, the domestic courts dealt with the contentions of each applicant and gave reasons for the decisions which cannot be considered arbitrary or unreasonable (see, *a contrario*, *Shchokin v. Ukraine*, nos. 23759/03 and 37943/06, 14 October 2010).

90. It is true, as the applicants point out, that in 2007 and 2008 the Constitutional Court concluded that amendments to substantive legislation could not be made by way of the respective State Budget Acts as those Acts dealt with funding rather than substantive entitlement. The Court does not share the applicants' allegation that according to the Constitutional Courts' decisions the Compulsory State Social Insurance and State Assistance (Families with Children) Acts had to remain untouched. The Constitutional Court had criticized the legal technic used by the Parliament for these particular amendments; however the democratically elected Parliament remains free in exercising its legislative function in compliance with the Constitution and redefining the amounts of benefits to be paid for a certain period of time. The applicants further have not established that as a result of the Constitutional Court's decisions the domestic court decisions were tainted by unlawfulness. In particular, the first and second applicant were affected by the 2007 or 2008 State Budget Acts during the relevant periods

but the national courts found expressly that the applicant had received the benefit to which they were entitled in accordance with the national law.

91. The applicants have therefore not made out that they had a "legitimate expectation" to the increased levels of child allowance.

92. The Court also notes that the first applicant received the higher sums of the allowance for the years 2007 and part of 2008, and that the amount she received for 2009 was less than for the previous years. The domestic courts explained the reduction on the ground that the Constitutional Court's decisions of 2007 and 2008, which had stymied the legislator's intention to reduce payments for those years, had not been repeated for 2009. The result was that, on an ordinary construction, the applicant's entitlement fell from some 400-500 UAH per month (which she was receiving for the final eight months of 2008) to, apparently, 144 UAH per month. Given that this reduction did not deprive the applicant of the whole of the child allowance she had been receiving, that it is for the State to determine the type and amounts of social welfare benefits it pays, and that the Court has not received any argument that the first applicant was wholly dependent on the allowance in question, any interference with the first applicant's entitlement to child allowance did not place an individual and excessive burden on her.

93. The position of the second and third applicants is not the same as that of the first applicant, as they received the lower amount of child allowance throughout their period of entitlement.

94. The Court therefore concludes that second and third applicants have not established any interference with their possessions within the meaning of Article 1 of Protocol No. 1, and that any interference with the first applicant's possessions was compatible with that provision.

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

C. Other alleged violations of the Convention

96. The first and third applicants complained under Articles 6 § 1 and 13 of the Convention that the courts in their cases had not been impartial and independent and that they had ignored the applicants' reference to the Constitution of Ukraine and to the decision of the Constitutional Court of 27 November 2008 as well as their argument that the allowance in question should not be lower than the minimum subsistence level. They also complained that the court decisions had not been duly reasoned.

97. The first applicant also complained that it was impossible to claim from the State damage inflicted by a law which had been declared unconstitutional.

98. The first applicant also complained under Article 6 of the Convention that it was impossible to enforce the court decision in her case.

99. The first applicant lastly referred to Articles 8 and 14 of the Convention. She complained that one of the Court's letters to her had arrived in an opened envelope.

100. The second applicant complained under Article 6 § 1 of the Convention about the length of proceedings in her case. She also referred to Article 17 of the Convention.

101. The first and third applicants also complained under Articles 6 and 13 of the Convention that frequent changes to the law (in 2010 the jurisdiction of this category of cases was changed from the administrative courts to the courts of general jurisdiction and back again) had deprived them of an effective remedy in respect of their claims.

102. The Court, having carefully considered the remainder of the applicants' submissions in the light of all the material in its possession, finds that, 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.

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

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President

ANNEX

1. 74847/10 Navrotska v. Ukraine
2. 10642/11 Fil v. Ukraine