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

FIFTH SECTION

DECISION

Application no. 43331/12
Valentina Nikanorovna VELIKODA
against Ukraine

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 application lodged on 3 July 2012,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Valentina Nikanorovna Velikoda, is a Ukrainian national, who was born in 1955 and lives in Yenakiyevo, Ukraine.

A. The circumstances of the case

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

3. The applicant participated in the clean-up operations following the Chernobyl disaster and has special status as "1st category liquidator" (*ліквідатор першої категорії*). She also has a third-degree disability (*третя група інвалідності*).

1. First set of proceedings

4. The applicant instituted court proceedings to claim pension payments as from 1 December 2008 in the amount of six times the minimum old-age pension and an additional health-damage pension of 50% of the minimum old-age pension, under sections 50 and 54 of the Chernobyl Victims (Status) Act ("*Про статус і соціальний захист громадян, які постраждали внаслідок Чорнобильської катастрофи*").

5. On 19 May 2009 the Yenakiyivskyy Town Court found that the applicant, in accordance with section 49 of the Chernobyl Victims (Status) Act, was entitled to a State pension and to an additional health-damage pension. In accordance with sections 50 and 54 of the Act, from 22 May 2008 the applicant was entitled to a pension of six times the minimum old-age pension and should also receive an additional health-damage pension of 50% of the minimum old-age pension. The applicant had requested the recalculation of her pension on 26 November 2008, so her claims in this respect should have been granted for the period between 1 December 2008 and 1 January 2009. On 1 January 2009 the relevant provisions were changed, so the applicant's claims were rejected.

6. On 19 January 2010 the Donetsk Administrative Court of Appeal amended the decision of 19 May 2009 and granted the applicant's claims in full as of 1 December 2008.

7. On 14 June 2011 amendments were introduced to the State Budget Act 2011, in accordance with which the amount of the pension under sections 50 and 54 of the Chernobyl Victims (Status) Act was to be determined by the Cabinet of Ministers. The Chernobyl Victims (Status) Act itself was not amended.

8. Pursuant to the amendments in the State Budget Act 2011, on 6 July 2011 the Cabinet of Ministers adopted decision no. 745, which entered into force on 23 July 2011.

2. Second set of proceedings

9. By letter of 25 January 2012 the Pension Fund of Ukraine informed the applicant that as of 1 January 2012 the amount of her pension would be 1,849.50 Ukrainian hryvnas (UAH) (around 176 euros (EUR)). This amount comprised a minimum pension (UAH 822) and various additional payments. The applicant instituted court proceedings, complaining that as of 1 November 2011 her pension had been reduced despite the court decision of 19 January 2010.

10. On 20 February 2012 the Yenakiyivskyy Town Court rejected the applicant's claim. It held that as of 22 July 2011 the amounts of the payments under sections 50 and 54 of the Chernobyl Victims (Status) Act were to be established by the Cabinet of Ministers of Ukraine. On 26 December 2011 the Constitutional Court of Ukraine had found these

changes to be constitutional. The Cabinet of Ministers had adopted the relevant decision no. 745 on 6 July 2011 and it had entered into force on 23 July 2011. Therefore, from 23 July 2011 the applicant's pension had to be calculated in accordance with decision no. 745.

11. On 4 April and 3 May 2012 the Donetsk Administrative Court of Appeal and the Higher Administrative Court of Ukraine, respectively, upheld that decision.

B. Relevant domestic law

1. Main legal acts

12. By the Law of 14 June 2011 the following changes were introduced to the State Budget Act, 2011:

> "To establish that in 2011 the provisions of sections ...50, 54... of the Chernobyl Victims Act, Children of War Social Protection Act and Military Personnel Pensions Act ... are implemented in the amounts established by the Cabinet of Ministers of Ukraine in accordance with available financial resources in the Pension Fund Budget for 2011."

13. The State Budget Act for 2012 has similar provisions.

14. On 6 July 2011, in its decision no. 745, the Cabinet of Ministers fixed the amounts concerned. This decision was in force between 23 July 2011 and 1 January 2012. On 23 November 2011 the Cabinet of Ministers adopted further decision no. 1210 on the same matter.

15. The amount of the minimum pension between 1 December 2008 and 1 November 2011 was raised from UAH 498 to UAH 784 (from around EUR 51 to EUR 80).

2. Decision no. 1-42/2011 of the Constitutional Court of Ukraine of 26 December 2011 on the constitutionality of certain provisions of the State Budget Act, 2011

16. The relevant extracts from this decision read as follows:

> "1. ... members of Parliament addressed the Constitutional Court of Ukraine with a request to declare unconstitutional ... provisions of the State Budget Act, 2011.
>
> According to point 4 of Chapter VII "Closing Provisions" of the 2011 Act, the norms and provisions of sections 39, 50, 51, 52 and 54 of the Chernobyl Victims (Status) Act, section 6 of the Children of War Social Protection Act, and sections 14, 22, 37 and part 3 of section 43 of the Military Personnel Pensions Act are implemented under the conditions and in the amounts determined by the Cabinet of Ministers of Ukraine, in accordance with the available financial resources in the budget of the Pension Fund of Ukraine for 2011.
>
> The Members of Parliament consider that by adopting this Act the Verhovna Rada of Ukraine has given the Cabinet of Ministers of Ukraine the right to establish the modalities and amounts of the social payments provided for by the above laws ..., thereby limiting the citizens' constitutional right to social protection.

The authors of the request state that the subject matter of the State Budget Act is an exhaustive list of legal matters, provided for by the Constitution of Ukraine and the Budget Code of Ukraine, which excludes the issue or implementation of other legal acts.

...

2.1 In accordance with part 1 of section 46 of the Constitution of Ukraine citizens have a right to social protection, which includes the right to welfare in the event of total, partial or temporary loss of fitness for work ..., in old age and under other circumstances provided for by law. It is the duty of the State to ensure this constitutional right.

...

The size of welfare benefits depends on the State's social and economic possibilities, but they must secure the constitutional right of every person to a decent standard of living for himself and for his family as enshrined in section 48 of the Constitution of Ukraine.

In its decision of 19 June 2001 (case on service record in science) the Constitutional Court of Ukraine pointed out that the amounts of welfare benefits depended on economic factors. The right to a pension, its amount and the amount of separate payments could be related to the financial situation of the State, economic feasibility and social and economic circumstances during different periods of development, as well as to the time of adoption of the relevant legal acts.

Furthermore, in its decision of 8 October 2008 on insurance payments, the Constitutional Court of Ukraine pointed out that the modes and amounts of social services and payments to victims ... were determined by the State based on affordability.

The Constitutional Court of Ukraine, when examining this issue, also took into account international legal provisions. 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 State's resources. 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 reductions in welfare benefits, as is noted in the judgment of 12 October 2004 in the case of *Kjartan Ásmundsson 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 situation of the State, as well as guaranteeing the right of everybody to a sufficient standard of living.

...

Therefore, 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 because it is impossible to finance them – by way of a redistribution of costs, with the aim of securing the interests of society as a whole. Moreover, these measures can be brought about by 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 introduce legal measures under which the amount of pensions and other social benefits and allowances is lower than the amount indicated in part 3 of Article 46 of the Constitution of Ukraine and insufficient to guarantee a decent standard of living and

preserve the beneficiaries' human dignity, which would be contrary to Article 21 of the Constitution of Ukraine.

Thus, the change of method of calculation of certain types of welfare benefits is constitutionally possible until it reaches the limit when the very essence of the right to social protection is impaired."

COMPLAINTS

17. The applicant complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 about the outcome of her second set of proceedings and about the failure of the domestic authorities to continue her pension payments after 1 November 2011 in the amount fixed by the court decision of 19 January 2010.

THE LAW

18. The applicant alleges a violation of Articles 6 and 13 of the Convention and of Article 1 of Protocol No. 1 to the Convention in that, as a result of the legislative amendments in 2011, her pension was reduced and she no longer received the payments ordered on 19 January 2010.

19. The Court recalls that it has already dealt with a large number of cases concerning the State's responsibility for enforcement of final decisions against its organs or entities which are owned or controlled by the State (see, as one example, the pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 54, 15 October 2009). The present case is, however, different.

20. In the present case the applicant received her pension in the amount determined by the court decision of 19 January 2010 until the mechanism of calculation of her pension, established by the above court decision on the basis of the law in force at the material time, was changed and, as a result, the amount of her pension reduced.

21. The Court has already noted that statutory pension regulations are liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future (see *Arras and Others v. Italy*, no. 17972/07, § 42, 14 February 2012, and *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006). In the present case the national courts examined the applicant's complaint about the reduction of her pension entitlement and found that the amount of the payments had been reduced following changes in the relevant law. To the extent that the applicant challenges the non-enforcement of the judgment of 19 January 2010 after the changes to the legislation in 2011, the Court finds that the prospective

effect of that judgment inevitably ended when the underlying legislation which created the applicant's entitlement was amended. Accordingly, the Government's obligation to ensure enforcement of the judgment ended at the latest on 1 November 2011, when the amended legislation was applied to the applicant's pension. During that period, the applicant received her pension in accordance with the judgment of 19 January 2010, and there is no scope for complaint in that respect.

22. The sole remaining question is whether the reduction of the applicant's pension was compatible with the requirements of Article 1 of Protocol No. 1.

23. This provision further 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), as long as the legislative entitlement exists.

24. As the court decision of 19 January 2010 established, the applicant was entitled to a pension of a particular amount under the Chernobyl Victims (Status) Act as in force at the material time.

25. The Court recalls 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). Thus the reduction or discontinuation of a sufficiently established benefit may constitute an interference with possessions (see *Khoniakina v. Georgia*, no. 17767/08, § 72, 19 June 2012).

26. In the present case, given that the relevant legislation was amended, it cannot be said that the applicant's entitlement to the benefit in a particular amount had been sufficiently established. Moreover, even assuming that the amendment to the Chernobyl Victims (Status) Act constituted an interference with the applicant's possessions, within the meaning of Article 1 of Protocol No. 1, the Court recalls that the first and most important requirement of that provision is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful and that it should pursue a legitimate aim "in the public interest". Any interference must also be reasonably proportionate to the aim sought to be realised. 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, among many other authorities, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII).

27. In the present case there is no evidence that the relevant changes in the State Budget Act were not introduced under a lawful procedure, and in the absence of any evidence that they lacked accessibility and foreseeability the Court concludes that they satisfied the lawfulness requirement under Article 1 of Protocol No. 1. The Court also cannot conclude that by delegating to the Cabinet of Ministers the right to establish the amount of a social benefit, the Ukrainian Parliament acted in breach of any Convention provisions.

28. The Court further notes that the reduction of the applicant's pension was apparently made as a result of economic policy considerations and the financial difficulties faced by the State. In the absence of any evidence to the contrary and acknowledging that the respondent State possesses a wide margin of appreciation in balancing the rights at stake in relation to economic policies, the Court considers that such reduction could not be said to have been disproportionate to the legitimate aim pursued or that it put an excessive burden on the applicant (see *Da Conceição Mateus and Santos Januario v. Portugal* (dec.), nos. 62235/12 and 57725/12, 8 October 2013).

29. The Court considers that 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

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President