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

FIFTH SECTION

DECISION

Application no. 21725/15
Y.D.
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 16 January 2025 as a Committee composed of:

Gilberto Felici*, President*,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 21725/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 May 2015 by a Ukrainian national, Mr Y.D. ("the applicant"), who was born in 1969, lives in Sevastopol and was represented by Ms O. Sapozhnikova, a lawyer practising in Kyiv;

the decision to give notice of the complaint under Article 1 of Protocol No. 1 to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, and to declare the remainder of the application inadmissible;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an alleged violation of Article 1 of Protocol No. 1 on account of the impossibility for the applicant to obtain compensation from the State budget for various expenses related to the rehabilitation of his disabled child.

2. In 2007 the applicant's nine-year-old son was seriously injured in a road traffic accident, as a result of which he became fully paralysed, lost the

ability to speak, developed partial vision loss and required rehabilitation under an individual programme. Whereas some of the measures, including rehabilitation courses in the Sevastopol rehabilitation centre, were provided by the State free of charge, a considerable part of the expenses was borne by the applicant's family. In particular, the applicant and his wife installed various pieces of equipment in their home and put in place their own extensive rehabilitation programme for their son, involving long hours of exercise on a daily basis.

3. In early 2011 the applicant applied to the local State administration for compensation for some of the expenses related to the rehabilitation of his son. The case file before the Court does not contain a copy of that application.

4. On 13 April 2011 the local State administration replied to the applicant, stating that he had received a lump-sum payment in respect of his son's sanatorium treatment on one occasion and that he had refused an offer of similar treatment free of charge on another occasion. It further noted that the Cabinet of Ministers had not yet approved the procedures for compensatory mechanisms under sections 27 and 29 of the Law on the rehabilitation of persons with disabilities in Ukraine (see paragraphs 10-12 below).

5. It is not known whether the applicant submitted any further claims for compensation to the State authorities.

6. On 7 May 2013 the applicant lodged an administrative claim against the Cabinet of Ministers, seeking to oblige it to adopt the relevant compensation mechanisms. He argued that the individual rehabilitation programme which had been approved for his son was manifestly insufficient, that the Sevastopol rehabilitation centre was insufficiently equipped and understaffed, and that he had been obliged to put in place various additional rehabilitation arrangements at his own expense. According to the applicant's rough estimation, his family had spent 255,000 Ukrainian hryvnias (UAH)[1] in total by that time, and he submitted that they would not be able to sustain such a financial burden any longer. That said, the applicant pointed out that he was not claiming any compensation in respect of pecuniary damage at that stage but only seeking to have the relevant "procedures" put in place. The applicant also claimed compensation in respect of non-pecuniary damage, to be paid from the State budget.

7. The courts at three levels of jurisdiction – the Kyiv Circuit Administrative Court on 22 August 2013, the Kyiv Administrative Court of Appeal on 9 October 2014 and the Higher Administrative Court of Ukraine on 31 October 2014 – found against the applicant. They held that the Cabinet of Ministers had acted within its powers and its discretion, and noted that some regulations of relevance had been adopted in 2007 and 2012 (see paragraphs 13-14 below).

[1] Equivalent to about 23,000 euros (EUR) at the material time.

8. Following the occupation of Crimea, where the applicant's family lived, by the Russian Federation in spring 2014, the applicant was no longer able to seek any financial or other kind of assistance from the Ukrainian authorities.

9. On 27 May 2022 the applicant's son died.

RELEVANT DOMESTIC LAW

A. Law on the rehabilitation of persons with disabilities in Ukraine (2005)

10. Section 27 of this Law provided for the award of monetary compensation to people with disabilities undergoing rehabilitation under an individual programme if devices or services envisaged by that programme, to which the person in question was entitled free of charge, could not be provided or if the person or his or her legal representative had acquired the respective device or had paid for the respective service at his or her own expense (§ 1). Local State administrations were to determine and pay the above-mentioned compensation taking into account the disabled person's compliance with the individual rehabilitation programme (§ 2). The compensation amounts were to be determined on the basis of the prices of the technical and other rehabilitation and medical devices and/or services, to which the person was entitled free of charge or on favourable terms under the State standard programme of rehabilitation of persons with disabilities (§ 3). The Cabinet of Ministers was to determine the payment procedures and the amounts of compensation "for reconstruction surgery and prosthetic services, technical and other rehabilitation devices, medical devices, rehabilitation services, and vocational training during the implementation of individual programmes for the rehabilitation of persons with disabilities" (§ 4).

11. Section 29 provided for monetary compensation in respect of costs related to sanatorium treatment if the person was entitled to have it free of charge and if it was based on medical recommendations. Two types of compensation were envisaged: either instead of a sanatorium treatment voucher or in reimbursement for sanatorium treatment financed by the person himself/herself (§ 1). It was for the Cabinet of Ministers to determine the payment procedures and the compensation amounts (§ 3).

12. Pursuant to the "Final provisions", within six months of the Law's effective date[2], the Cabinet of Ministers had to adopt the relevant legal mechanisms with a view to implementing the Laws' provisions and to ensure implementation of, in particular, Articles 27 and 29 "by securing, gradually, financing of respective expenditures".

[2] 1 January 2006.

B. Relevant Cabinet of Ministers' regulations

13. On 7 February 2007 the Cabinet of Ministers approved the "Procedures for the payment to certain categories of persons with disabilities of monetary compensation in lieu of a sanatorium treatment voucher or reimbursement for such treatment" (Regulations no. 150).

14. On 5 April 2012 the Cabinet of Ministers approved the "Procedures for the provision of technical and other rehabilitation support to adults and children with disabilities and to certain other specific population groups" (Regulations no. 321). The regulations specified the technical rehabilitation devices and means of support to which the categories concerned were entitled free of charge, and provided for the possibility of monetary compensation to partially reimburse the cost of such equipment under certain conditions.

THE COURT'S ASSESSMENT

15. The applicant alleged a violation of Article 1 of Protocol No. 1 on the following grounds. In his view, the applicable provisions of the Law on the rehabilitation of persons with disabilities in Ukraine explicitly and unambiguously recognised his pecuniary interest in compensation for the costs he had incurred for the rehabilitation of his son, which, according to the applicant's calculation, amounted to approximately EUR 53,000.

16. The Government submitted that the applicant had not complied with the six-month time-limit, which, in their opinion, was to be calculated as running from 13 April 2011 (see paragraph 4 above). In the alternative, the Government argued that the applicant had not had any "legitimate expectation", which was required for Article 1 of Protocol No. 1 to come into play.

17. The Court does not need to rule separately on all of the Government's objections, as the present application is in any event inadmissible for the reasons set out below.

18. The Court has considered that in a situation where the lack of a procedure governing the payment of compensation was the only obstacle to a person's otherwise clear entitlement to a particular type of compensation under the law, that person could be said to have a legitimate expectation under Article 1 of Protocol No. 1, since his or her claim was sufficiently established to be enforceable and its recovery could be validly claimed against the State (see *Budchenko v. Ukraine,* no. 38677/06, §§ 37-46, 24 April 2014, and *Sukhanov and Ilchenko v. Ukraine*, nos. 68385/10 and 71378/10, § 40, 26 June 2014). However, no legitimate expectation under Article 1 of Protocol No. 1 was considered to arise from a legal provision taken alone, if the right to compensation was subject to further conditions (see *Petlyovanyy v.Ukraine* (dec.), no. 54904/08, 30 September 2014).

19. Turning to the present case, the Court notes that the legal provisions relied on by the applicant provided for, subject to certain conditions, compensation in respect of specific devices or services envisaged by the individual rehabilitation programme for people with disabilities (see paragraphs 10-11 above). In no way were those provisions intended to ensure full or even partial compensation for each and every rehabilitation measure considered necessary by the person concerned. While understanding the applicant's distress and his resolve to do everything possible to give his child a better chance of recovery, the Court cannot but observe that the subject matter of the present case is limited to the issue of the State's non-compliance with the financial obligations which it has never undertaken.

20. That being so, the applicant could not have had, under the national law, a legitimate expectation of being compensated for the costs he had incurred for the rehabilitation of his son. His claim for compensation thus cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 February 2025.

Martina Keller Deputy Registrar	Gilberto Felici President