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Communication from Ukraine concerning the case of Stativka v. Ukraine (Application No. 64305/12)

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Réunion : 1514e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (21/10/2024)

Communication de l'Ukraine concernant l'affaire Stativka c. Ukraine (requête n° 64305/12) ***(anglais uniquement)***

Execution of Judgment of the European Court of Human Rights

Action Report

on measures to comply with the European Court of Human Rights' judgment in the *case of Stativka v. Ukraine*

(Application no. 64305/12, final on 07/09/2023)

CASE SUMMARY

The case concerns inconsistent and unpredictable manner in which the domestic courts interpreted domestic legislation on statutory limitation periods which ultimately led in 2012 to refusal to entertain the applicant's claims for a recalculation of salary-related payments.

INDIVIDUAL MEASURES

Just satisfaction

The Court awarded the applicant sum in the amount of EUR 1,500 in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

The awarded sums in the amount of UAH 77,302.20 (EUR 2,000) were transferred to the applicant's bank account under payment order No. 350 of 20 October 2023.

Restitutio in integrum

By the letters of 18 September 2023 the Government informed the applicant and his representative (Mr Veklenko) about the possibility provided by the legislation in force to apply for the review of the impugned proceedings in the light of the Court's finding in the applicant's case.

On 28 September 2023 the Grand Chamber within the Supreme Court ("the Grand Chamber") received the applicant's request for review of the decision of the Donetsk Administrative Court of Appeal dated 15 February 2012 in the exceptional circumstances.

The Grand Chamber by its decision of 04 October 2023 opened the proceedings in the applicant's case in the exceptional circumstances[1] and by the decision of 20 October 2023 sent the copies of the case files to the Luhansk District Administrative Court to restore lost court proceedings[2].

The Luhansk District Administrative Court by the decision of 08 January 2024 restored lost court proceedings in the administrative case in the part of the case files, specified in this decision[3].

The Grand Chamber by its decision of 13 February 2024 scheduled a hearing in the applicant's case for 14 March 2024[4].

On 25 April 2024, the Grand Chamber quashed the decision of the Donetsk Administrative Court of Appeal dated 15 February 2012 as well as decision of the Higher Administrative Court of Ukraine dated 19 March 2012 and transferred the case to the First Administrative Court of Appeal for a review[5].

[1] https://reyestr.court.gov.ua/Review/113967581
[2] https://reyestr.court.gov.ua/Review/114357510
[3] https://reyestr.court.gov.ua/Review/116154110
[4] https://reyestr.court.gov.ua/Review/117044826
[5] https://reyestr.court.gov.ua/Review/118689107#

On 13 June 2024, the First Administrative Court of Appeal dismissed the appeal of the local Military Enlistment Office and upheld the decision of the Luhansk District Administrative Court dated 13 December 2011[6].

This decision is final.

Thus, the Government consider that all possible individual measures were taken in respect of the applicant.

GENERAL MEASURES

The Government would like to emphasise, that the violation of the applicant's rights in this case were exceptional cases arising from the inconsistence practice of the domestic courts. At the same time the Government would like to inform about the amendments in the national legislation as well as to provide the national court practice regarding the determination of the term for applying to the court with a claim about the employer's violation of the labour legislation.

Legislation

The Court found a violation of the provisions of the Convention in this case due to the different application by the courts of Article 233 of the Labour Code of Ukraine.

In particular, the same court within the same proceedings took the opposite stance as to the statutory time-limits which would be applicable to the applicant's case. Furthermore, the inconsistency of the domestic courts on this matter was confirmed by the fact that it served as a ground for constitutional proceedings as to the interpretation of Article 233 § 2 of the Labour Code of Ukraine.

On 15 October 2013 the Constitutional Court of Ukraine provided an official interpretation of Article 233 § 2 of the Labour Code of Ukraine on account of the inconsistency in its application by the courts, and found that it applied both to existing and to disputed salary-related payments.

Article 233 § 2 of the Labour Code of Ukraine was substantially amended in July 2022 and no longer provides for the possibility of seeking recalculation of salary-related payments without any time-limits (The Law of Ukraine "On Amending Certain Legal Acts of Ukraine with a view to Optimise Labour Relations" of 01 July 2022 № 2352-IX[7]).

The relevant provisions of the Labour Code of Ukraine contain the following.

Article 233 § 2 Terms of appeal to the domestic court to resolve labour disputes.

The employee has the right to apply to the court for the resolution of a labour dispute in dismissal cases within one month from the date of delivery of a copy of the order (resolution) on dismissal, and in cases regarding the payment of all amounts due to the employee's dismissal – within three months from the date his receipt of a written notification of the amounts calculated and paid to him upon dismissal (Article 116).

The Government believe that such legislative amendments and establishment of clear time-limits for applying to the court for the resolution of a labour dispute will prevent further inconsistent application by the courts of Article 233 of the Labour Code of Ukraine.

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[6] https://reyestr.court.gov.ua/Review/119719969
[7] https://zakon.rada.gov.ua/laws/show/2352-20#Text

The conclusions of the Supreme Court and examples of the domestic court practice

Analysing the judicial practice regarding the determination of the term for applying to the court with a claim about the employer's violation of the labour legislation, the Government would like to draw attention to the following practice of the Supreme Court as to the application of Article 233 § 2 of the Labour Code of Ukraine, taking into account the Decision of the Constitutional Court of Ukraine No. 8-рп /2013 of 15 October 2013 in case No. 1-13/2013[8].

1. In case No. 380/15245/22 PERSON_1 lodged a claim against the military unit to declare its inactivity as unlawful and to order it to calculate and pay monetary compensation for unused leave. The plaintiff demanded calculation and payment of monetary compensation for unused additional leave, which is a component of monetary support until dismissal from military service (compensation for unused leave for the period from 2013 to 2022).

The court of the first instance returned the claim due to the fact that the plaintiff appealed to the court outside the one-month time-limit, provided for by Article 122 § 5 of the Code of Administrative Justice of Ukraine ("the Code"), and the court did not establish convincing factual circumstances, indicating real, significant obstacles or difficulties for the plaintiff to apply to the court in time to protect her rights. The appellate administrative court upheld the decision of the court of the first instance.

The Supreme Court quashed the impugned decisions of the courts of the first and appellate instances and remitted the case to the Lviv Circuit Administrative Court for further consideration in view of the following.

The dispute regarding the calculation and non-payment of monetary compensation to the plaintiff for unused additional leave is a dispute related to non-compliance with the legislation on remuneration.

The Supreme Court drew attention to the provisions of Article 122 § 3 and § 5 of the Code, which provide that there is a one-month time-limit for appeals to the court in cases concerning the acceptance of citizens for public service, its record, dismissal from public service. In accordance with Article 233 § 2 of the Labour Code of Ukraine (as in force at the date of amendments made in accordance with the Law of Ukraine of 01 July of 2022 No. 2352-IX), in the case of violation of the legislation on remuneration, the employee has the right to apply to the court with a claim for the collection of the appropriate wages without any time-limit.

The Supreme Court, taking into account the guarantee of the constitutional right to receive remuneration for work in a timely manner and the equality of all employees in this regard, emphasised that the provisions of Article 233 of the Labour Code of Ukraine concerning the term of appeal to the court in cases concerning non-compliance with remuneration legislation, take priority over Article 122 § 5 of the Code.

The Supreme Court concluded that until 19 July 2022 the Labour Code of Ukraine did not restrict the employee's right to apply to the court with a claim for the collection of appropriate wages. After this date (Article 233 § 1 and § 2 of the Labour Code of Ukraine is set out in a new version due to the Law of Ukraine No. 2352-IX) the time-limit for applying to the court with a labour dispute, including the claim for appropriate wages by the employee, is three months from the day the employee found out or should have found out about the violation of his right.

A similar legal opinion is set out in the judgments of the Supreme Court of 19 January 2023 in

[8] https://zakon.rada.gov.ua/laws/show/v008p710-13#Text

case No. № 460/17052/21[9] and of 06 April 2023 in exemplary case No. 260/3564/22[10].

Additionally, in this case, the Supreme Court emphasised that in accordance with paragraph 1 of Chapter XIX "Final Provisions" of the Labour Code of Ukraine during the quarantine, established by the Cabinet of Ministers of Ukraine to prevent the spread of the coronavirus disease (COVID-19), the time-limits specified in Article 233 of this Code are extended for the duration of such quarantine. By the Resolution of the Cabinet of Ministers of Ukraine of 23 December 2022 No. 1423 the quarantine due to COVID-19 was extended till 30 of April 2023.

The Supreme Court considered that the implementation of quarantine on the territory of Ukraine is an unconditional basis for extending the time-limits defined by Article 233 of the Labour Code of Ukraine for the duration of such quarantine.

Thus, the Supreme Court recognised the conclusions of the courts of previous instances regarding the application of Article 122 § 5 of the Code to impugned relations and the plaintiff's failure to apply to the administrative court as erroneous, since his right to apply to the court with this claim in accordance with the provisions of Article 233 § 2 of the Labour Code of Ukraine (as worded prior to 19 July 2022) was not limited to any time-limit. Furthermore, taking into account that at the time of the plaintiff's application to the court, the quarantine established by the Cabinet of Ministers of Ukraine was in effect, the period determined by Article 233 § 2 of the Labour Code of Ukraine as in force from 19 July 2022, was not applicable, since it was extended for the duration of the quarantine (the judgment of 25 April 2023 is available at the link https://reyestr.court.gov.ua/Review/110485706).

A similar legal conclusion is set out in the decision of the Supreme Court of 19 January 2023 in case No. 460/17052/21.

2. In case No. 560/7496/20 PERSON_1 lodged a claim against the Department of the State Labour Service in the Khmelnytskyi Region and against the State Labour Service of Ukraine for the collection of funds.

The Khmelnytskyi Circuit Administrative Court by its decision of 17 May 2021 partially satisfied the applicant's claims, collected from the State Labour Service of Ukraine in favor of PERSON_1 the average salary for the delayed enforcement of the decision of the Khmelnytskyi Circuit Administrative Court of 10 June 2020 in case No. 822/6297/15, and refused to satisfy the rest of the claims.

On 22 September 2021 the appellate administrative court quashed the decision of the court of first instance due to the fact that the plaintiff applied to the court for compensation for lost wages (for the time of delayed enforcement of the court's decision) in violation of one month time-limit, prescribed by Article 122 § 5 of the Code, and left the claim without consideration.

Having reviewed this case in cassation, the Supreme Court quashed the decision of the appellate administrative court and sent the case to the same court for further consideration in view of the following.

The key issue in these cassation proceedings was the correct application by the appellate court of the rules of procedural law regarding the time-limit for applying to the court with claims concerning the collection of average salary during the delayed enforcement of the court's decision on reinstatement. The Supreme Court highlighted that the Constitutional Court of Ukraine has repeatedly given an official interpretation to Article 233 § 2 of the Labour Code of Ukraine.

[9] https://reyestr.court.gov.ua/Review/108515811
[10] https://reyestr.court.gov.ua/Review/110064913

In particular, in Decision of 15 October 2013 No. 8-рп/213 the Constitutional Court of Ukraine concluded that according to the definition used in Article 233 § 2 of the Labour Code of Ukraine, the employee's appropriate salary should include all payments according to the terms of employment contract and in accordance with the state guarantees, established by law for persons who are in labour relations with the employer, regardless of whether such payments have been calculated. The Constitutional Court of Ukraine recognised payment for downtime by no fault of the employee as one of these guarantees. The employer's delay in enforcing the decision on reinstatement is equated to forced absence (Article 236 of the Labour Code of Ukraine).

In this case, the Supreme Court came to the conclusion that the special term for applying to the court in cases concerning the acceptance of citizens for public service, its record, dismissal from public service is a one-month time-limit established by Article 122 § 5 of the Code. At the same time, the specified provisions of the Code do not contain norms that would regulate the procedure for applying to the administrative court of persons who are (have been) in public service in cases of collection of appropriate salary in case of violation of labour legislation.

Thus, since the right to salary was not limited by any term regarding legal protection and such a conclusion directly followed from the above-mentioned norm, the claims of PERSON_1 concerned the collection of appropriate salary, which, in accordance with Article 233 of the Labour Code of Ukraine (as worded at the time of impugned relationship), were not limited to any term of appeal to the court.

A similar legal position is set out in the Supreme Court judgments of 30 January 2019 in case No. 808/1271/18[11]; of 22 April 2021 in case No. 826/8789/18[12]: of 04 August 2022 in case No. 380/6129/20[13]; of 26 May 2022 in case No. 420/10861/21[14]; of 11 July 2023 in case No. 440/5726/22[15].

The Supreme Court came to the conclusion that the appellate court, deciding PERSON_1's claim for the collecting of average salary during the delayed enforcement of the court's decision on reinstatement, incorrectly applied Article 233 of the Labour Code of Ukraine, which led to an incorrect conclusion that PERSON_1 had violated the time-limit for applying to the court with a lawsuit in this case (the judgment of 18 August 2022 is available at the link https://reyestr.court.gov.ua/Review/105808801).

The conclusions of this case are similar to the conclusions in the case described above (Supreme Court's judgment of 25 April 2023 in case No. 380/15245/22).

3. The case No. 640/8348/21 concerned the claim of PERSON_1 – a former assistant-consultant of MPs to the Parliament Secretariat for the recognition of illegal inaction and the obligation to take action.

The plaintiff stated that he was dismissed from the position of assistant-consultant of MPs on 25 May 2006, on 23 November 2007, on 07 April 2012 and on 30 November 2015, and that the appropriate amounts of compensation for unused annual leave during each of these redundancies were not paid. In this regard, the plaintiff believed that, in addition to monetary compensation for all unused days of annual basic and additional leave for the period from 15 May 2002 to 30 November 2015, he

[11] https://reyestr.court.gov.ua/Review/79557913
[12] https://reyestr.court.gov.ua/Review/96463613
[13] https://reyestr.court.gov.ua/Review/105577860
[14] https://reyestr.court.gov.ua/Review/104487758
[15] https://reyestr.court.gov.ua/Review/112126463

should have been paid the average salary for the delay in the payment of compensation for unused annual leave.

By the decision of the court of first instance, which was upheld by the decision of the appellate administrative court, the request of the Parliament Secretariat was granted, as a result the specified administrative claim was left without consideration on the basis of Article 240 § 1.8 of the Code due to the plaintiff's failure to apply to the administrative court in time without any valid reason.

Among other things, the courts indicated that the one-month time-limit for applying to the court for the resolution of this dispute began from the date of the violation regarding non-payment of compensation in full on the day of dismissal, in particular, concerning the last period of work – from 30 November 2015. Taking into account the fact that the claim was submitted to the court on 26 March 2021, that is, 6 years after the impugned relationship arose, in the absence of explanations of the reasons for the plaintiff's failure to apply to the court, there were no grounds for recognising them as valid.

The Supreme Court quashed the decisions of the courts of previous instances, and sent the case to the Kyiv Circuit Administrative Court for further consideration, deciding that the concepts of "salary" and "wages" used in the legislation regulating labour relations are equivalent, and therefore the dispute in this case in terms of claims related not to calculation and payment of monetary compensation to the plaintiff for all unused days of annual basic and additional leave, to which the employee was entitled according to the terms of the employment contract and in accordance with the state guarantees established by law (is an appropriate salary of the employee), but was covered by the definition of "legislation on labour remuneration" applied in the second part of Article 233 § 2 of the Labour Code of Ukraine, and as a result was not limited by any time-limit for applying to the court with a claim for its calculation and collection.

Therefore, the courts of the first and appellate instances came to the erroneous conclusion that the provisions of Article 233 § 2 of the Labour Code of Ukraine did not apply to the impugned relationship in terms of non-calculating and non-payment of monetary compensation to the claimant for all unused days of annual basic and additional leave, and that there were grounds for applying the provisions of Article 122 § 5 of the Code (judgment of 04 April 2023 is available at the link https://reyestr.court.gov.ua/Review/110008911).

Thus, the interpretation of Article 233 § 2 of the Labour Code of Ukraine provided by the Constitutional Court of Ukraine in 2013, resolved the issue of unequal interpretation and inconsistency among courts in its application.

In particular, it is worth noting that the legislative change of this provision in part of the term (in July 2022) also enhances the proper administration of justice and ensures legal certainty regarding procedural limitations for applying to court.

Publication and dissemination

The Ukrainian translation of the judgment was published in the official government's print outlet – Official Herald of Ukraine [*Ofitsiinyi Visnyk Ukrainy*], No. 94 in November 2023.

The summary of the Court's judgment in Ukrainian language was published in the Government's Currier [*Uriadovyi Kurier*], No. 193 of 26 September 2023.

The translation is also available on the Ministry of Justice official web-site[16], as well as on the Verkhovna Rada of Ukraine official web-site [17] and HUDOC database[18].

By the letters of 18 September 2023 explanatory notes on the conclusions of the Court in the abovementioned judgment together with its summary were sent to the Supreme Court, the First Appellate Administrative Court, the Luhansk District Administrative Court and the National School of Judges.

In order to ensure correct and uniform application by the domestic courts the provisions of the Convention and the Court's case-law the Supreme Court disseminated the Court's conclusions in the *Stativka* case among the appellate courts.

CONCLUSIONS OF THE RESPONDENT STATE

Despite Russia's aggression, Ukraine continues to provide stability of institutions guaranteeing, in particular, the rule of law and human rights.

The Government would like to emphasise that current legislation together with the consistence court practice will prevent the similar violations as in this case in the future.

The Government also consider that the individual measures adopted have fully remedied the consequences for the applicant of the violations of the Convention found by the Court in this case and that Ukraine has thus complied with its obligations under Article 46 § 1 of the Convention.

Therefore, the Government respectively ask the Committee of Ministers to close the supervision of execution of the judgment in the case of *Stativka v. Ukraine*.

[16] https://minjust.gov.ua/m/rishennya-schodo-suti-za-alfavitom
[17] https://zakon.rada.gov.ua/laws/show/974_i86#Text
[18] https://hudoc.echr.coe.int/rus?i=001-228098