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

FIFTH SECTION

DECISION

Application no. 33137/16
Lyudmyla Mykolayivna KANDYBA and Others
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 13 October 2020 as a Chamber composed of:
Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to the above application lodged on 1 June 2016,

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. A list of the applicants is set out in the appendix. All of them except for Mr Chaykin were represented by Ms S. Novytska, a lawyer practising in Kyiv.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna from the Ministry of Justice.

A. The circumstances of the case

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

4. The applicants reside in the city of Luhansk in the east of Ukraine. All of them had been receiving different kinds of social-security payments (for example pensions or children's allowance).

5. From the beginning of April 2014 armed groups started to seize official buildings in the Donetsk and Luhansk regions and announced the creation of self-proclaimed entities known as "the Donetsk People's Republic" and "the Luhansk People's Republic" (hereinafter "the DPR" and "the LPR"). In response, on 14 April 2014 the Government, who consider the armed groups

to be terrorist organisations, authorised the use of force against them in the form of an “anti-terrorist operation”. In June 2014 the armed groups started to seize offices of the National Bank of Ukraine and other regional financial institutions in the Donetsk and Luhansk regions.

6. On 6 August 2014 the National Bank of Ukraine suspended all financial transactions in Ukrainian territory outside of Government control. According to some of the applicants, their social-security payments were suspended even earlier, in July 2014.

7. The Government forces recaptured some territory in the Donetsk and Luhansk regions, but certain parts of the regions have remained outside of the Government’s control since that time. The part of Luhansk Region not under the Government’s control includes the city of Luhansk, where the applicants still live with the exception of Mr Chaykin who had apparently moved.

8. On 7 November 2014 the Cabinet of Ministers of Ukraine adopted Resolution no. 595 on some issues concerning the financing of publicly funded institutions, social-security payments and provision of financial support to certain companies and organisations in the Donetsk and Luhansk regions. This Resolution approved an Interim Order with the same name. Section 2 of that Interim Order provided that all social-security payments to the population residing in the territories outside of Government control would only be continued after the State authorities regained control over those territories. At the same time, section 8 of the above Interim Order established the possibility of payment of social-security payments if a person moved to the territory controlled by the Government and underwent certain formalities (see paragraph 34 below).

9. On 11 November 2014 the above Resolution and the Interim Order came into force.

10. In late 2014 the applicants lodged a claim against the Cabinet of Ministers of Ukraine, seeking: i) invalidation of Resolution no. 595 of 7 November 2014 and the Interim Order and ii) acknowledgement as unlawful of the inactivity of the Cabinet of Ministers in securing their social-security payments and pensions in July-December 2014 and obliging it to ensure the back payment to the claimants of pension and social-security payments debts for the same period. They stated that since July 2014 the State had stopped their pension payments without any legal grounds while those pensions and other social payments had been the applicants’ property and sole source of income.

11. On 19 January 2015 the Kyiv Circuit Administrative Court ordered the Ministry of Finance, the Ministry of Social Policy and the Pension Fund to participate as third parties to the proceedings.

12. On 11 February 2015 the Kyiv Circuit Administrative Court found in part for the applicants. In particular, the court struck down section 2 of the Interim Order from the date of its adoption, having established that when adopting it the Cabinet of Ministers had acted *ultra vires* because only the Parliament of Ukraine, by means of legislation, had been authorised to limit the content and scope of existing social rights and freedoms. Moreover, the court noted that the invalidation of section 2 was the only admissible way of protection of the claimants’ rights, unlike the other possibilities indicated by them. The court did not invalidate the remainder of Resolution no. 595 since it did not concern the applicants directly.

13. The court further rejected the claim to recognise as unlawful the alleged inactivity of the Cabinet of Ministers regarding the suspension of payments in July-December 2014 since the applicants had failed to sue the proper respondents, that is to say the local pension and social-security authorities. Moreover, as during the period in question Resolution no. 595 had been in force, there had been no unlawful inactivity on the part of the respondent. The court also noted that it could not allow the applicants' claim in respect of payments after the court decision had come into effect since the court could not rule upon future claims. Moreover, as mentioned above, those claims had been introduced against the wrong respondent.

14. On 2 April 2015 the Kyiv Administrative Court of Appeal, acting upon appeals from both the applicants and the respondent, upheld the above judgment. The judgment thus came into effect.

15. The above court judgments were appealed to the High Administrative Court of Ukraine by the Ministry of Finance and the Cabinet of Ministers. The latter also requested the suspension of enforcement of the judgment of 11 February 2015 arguing, *inter alia*, that the enforcement of this judgment, which had invalidated section 2 of the Interim Order for the period as of November 2014 until then, would require additional budgetary expenditure in the approximate amount of 7 billion Ukrainian hryvnias (UAH). On the other hand, if those amounts were paid and later the above judgments were quashed on points of law, this would require the repayment to the State Budget, an extremely burdensome procedure.

16. On 22 May 2015 the operative part of the judgment of 11 February 2015 was published in *Ofitsiynyy Visnyk Ukrayiny*, the Official Gazette.

17. On 8 June 2015 the High Administrative Court of Ukraine opened the proceedings following the appeal lodged by the Cabinet of Ministers, and joined those proceedings to those instituted following the appeal lodged earlier by the Ministry of Finance. In the same ruling the court noted the following:

> "Having examined the arguments provided by the Cabinet of Ministers in its application [for suspension of enforcement], it considered that the enforcement of the court judgments in question should be suspended."

18. On 16 October 2015 the High Administrative Court of Ukraine upheld the judgments of the lower courts, fully endorsing their findings.

19. The applicants lodged a number of claims with the domestic authorities seeking the enforcement of the judgment of 11 February 2015, which according to them entailed the payment of their social-security payments.

20. On 16 November 2015 the Department of the State Bailiffs Service of the Ministry of Justice of Ukraine informed the applicants that court judgments could be enforced only pursuant to a writ of enforcement. However, the writ of enforcement concerning the judgment of 11 February 2015 had not yet been issued. It also assured the applicants that, should it be issued, all measures aimed at the enforcement of the judgment would be undertaken.

21. On 30 November 2015 the Ministry of Social Policy of Ukraine informed the applicants that the enforcement of the judgment of 11 February 2015 was not within its competence.

22. On 1 December 2015 and on 20 April 2016 the Pension Fund of Ukraine informed the applicants that the reply concerning their claims for the

enforcement of the judgment of 11 February 2015 had already been provided (the applicants did not provide the Court with the mentioned initial reply). Additionally, the Pension Fund of Ukraine noted that the judgment of 11 February 2015 had not imposed any particular obligation on it.

23. On 30 April and 1 December 2015 the Ministry of Finance of Ukraine informed the applicants that the enforcement of the above judgment would be organised within its competence in accordance with the law but emphasised that it was not the key State authority responsible for the enforcement, referring in this context to the Pension Fund and the Ministry of Social Policy. In another letter of 4 January 2016 it informed the applicants that social-security payments were not within its competence.

24. On 8 April 2016 the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) informed the applicants that following their applications to the State executive bodies, in particular, to the Ministry of Social Policy, the latter body had forwarded the court decision in question to the Pension Fund and to regional State authorities "for relevant processing". The Ombudsman submitted requests to the Ministry of Social Policy of Ukraine and the Pension Fund of Ukraine concerning the actions taken by these institutions following the invalidation of section 2 of the Interim Order by the judgment of 11 February 2015. It was stated that the applicants would be informed of the received replies.

25. On 28 July 2016 three of the applicants, namely Ms Kandyba, Ms Baklytska and Mr Chaykin, lodged a claim with the Kyiv Circuit Administrative Court against the Cabinet of Ministers of Ukraine seeking the issuing of a judgment that the latter's inactivity as regards the non-enforcement of the judgment of 11 February 2015 was unlawful. They claimed, in particular, that the enforcement of the above judgment should be carried out not only by way of official publication of its operative part but also by the payment of their social-security payments.

26. On 7 October 2016 (in other documents this decision is referred to as the one of 27 October 2016) the Kyiv Circuit Administrative Court dismissed the above claim. The court found that the operative part of the judgment at issue had already been officially published (see paragraph 15 above). Referring to Article 171 of the Code of Administrative Justice, which provided that in the event of the invalidation of a legal act or a provision therein, the operative part of the respective judgment should be immediately published in the official gazette, it concluded that no other additional actions were required in respect of the judgment at issue and that therefore it had been enforced in full.

27. On an unspecified date Ms Kandyba and Ms Baklytska appealed against the above decision of the Kyiv Circuit Administrative Court to the Sixth Administrative Court of Appeal. They claimed that as they had still not received their social-security payments the judgement of 11 February 2015 remained unenforced.

28. On 19 December 2018 the Court of Appeal dismissed this appeal and upheld the above decision. It reasoned that the applicants' initial claim had been allowed by the judgment of the Kyiv Circuit Administrative Court of 11 February 2015 only in part and that their initial claim for renewal of social-security payments had been rejected. Thus, the courts had not imposed any obligation on the State authorities to pay any social-security payments to the applicants

as well as to any other individuals who had resided in the territories outside of the Government's control. It appears that the above decision was not challenged before the third-instance court.

29. The applicants also submitted that in late November 2019 a new draft Law had been proposed in the Parliament of Ukraine which would provide that the payment of pensions to individuals residing in the territories outside Government control would be conducted by the local departments of the Pension Fund following applications by such individuals and conditional upon those individuals presenting themselves once per six months.

B. Additional facts as regards the applicant Mr Chaykin

30. The Court notes that Mr Chaykin did not reply to the Court's request of 22 October 2019 to designate a representative in accordance with paragraph 4 (a) of Rule 36 of the Rules of Court.

31. From the parties' submissions it appears that Mr Chaykin had moved to Government-controlled territory on an unknown date. Also, according to the information submitted by the Government, after his move to Government-controlled territory the applicant's pension was renewed and he also received the amounts due to him for the period from August 2014.

C. Relevant domestic law and practice

1. Code of Administrative Justice of Ukraine of 2005

32. The relevant provisions of the Code as in force at the time the judgment of 11 February 2015 became final read as follows:

Article 171. Specificities of the proceedings on challenging legal acts of the executive authorities, the Supreme Council of the Autonomous Republic of Crimea, local self-government authorities and other bodies of State power

"1. The rules of this Article shall apply to the examination of the following administrative cases:

as to the lawfulness (except for the constitutionality) of the resolutions and orders of the Cabinet of Ministers of Ukraine and resolutions of the Supreme Council of the Autonomous Republic of Crimea; ...

...

11. The operative part of the court judgment acknowledging a legal act unlawful or in breach of any higher law and on declaring it invalid shall be immediately published in the outlet in which it had been officially published, after the court judgment comes into effect. ..."

Article 255. Consequences of a court judgment coming into effect

"1. A judgment or a court ruling which has come into effect is binding on the parties to the proceedings, on their successors and on all authorities, enterprises, institutions and organisations, officials or other persons and is to be enforced in the territory of Ukraine ..."

Article 257. Order of enforcement of court judgments in administrative cases

"1. If necessary, the means, terms and method of enforcement can be specified in the judgment. [The court] also can impose certain obligations on the authorities in order to ensure enforcement of the judgment.

"2. A judgment which has come into effect ... is the basis for its execution.

...

4. Forced enforcement of court judgments in administrative cases is carried out in accordance with the procedure established by the Enforcement Proceedings Act. ..."

Article 258. Forced enforcement of court judgments in administrative cases

"1. For each court judgment which became enforceable ... one writ of enforcement shall be issued upon the request of the persons in whose favour it was adopted ..."

Article 259. Drawing-up of the writ of enforcement, correction of mistakes and acknowledgement of the writ of enforcement as not subject to enforcement

"4. The court shall by its ruling amend the writ of enforcement or, if the writ of enforcement was issued mistakenly or if the debtor's obligations are absent due to their full or partial discharging by the debtor or other party or are absent for other reason, the court shall acknowledge it as not subject to enforcement fully or in part."

2. Enforcement Proceedings Act 2006

33. Subsection 5 of section 4 of the Act provided that a writ of enforcement shall contain the operative part of the judgment which provides coercive measures for its enforcement.

3. Interim Order on the financing of publicly funded institutions, social-security payments and provision of financial support to certain companies and organisations in the Donetsk and Luhansk regions, approved by Resolution no. 595 of the Cabinet of Ministers of Ukraine of 7 November 2014 on some issues of financing of publicly funded institutions, social-security payments and provision of financial support to certain enterprises and organisations in the Donetsk and Luhansk regions.

34. The relevant provisions of the Interim Order read as follows:

Section 2

"In the settlements of the Donetsk and Luhansk regions, where the State authorities do not exercise their powers in full, payments from the State Budget, the Pension Fund of Ukraine and other compulsory State social-insurance funds shall be conducted after the State authorities regain control over those territories."

Section 8

"Individuals who moved to State-controlled territory and who registered themselves in accordance with the Order on the drawing-up and issuance of certificates for individuals displaced from the temporarily occupied territory of Ukraine or the territory of the anti-terrorist operation, adopted by Resolution of the Cabinet of Ministers of Ukraine of 1 October 2014 no. 509 (...), shall receive their pensions and other social-security payments from the budgets of all levels and the compulsory State social-insurance funds following applications to the authorities (bodies) in charge of such payments."

35. Other relevant domestic law as summarised in the case of *Tsezar and Others v. Ukraine* (nos. 73590/14 and 6 others, §§ 20-25, 13 February 2018) includes the following legal acts: Resolution no. 466 of the Board of the National Bank of Ukraine of 6 August 2014 on the suspension of financial transactions; the Law of Ukraine of 20 October 2014 on ensuring the rights and freedoms of internally displaced persons; Resolution no. 637 of the Cabinet of Ministers of Ukraine of 5 November 2014 on welfare payments to persons displaced from the temporarily occupied territory of Ukraine and anti-terrorist operation area (after relevant amendments - on welfare payments to internally displaced persons).

4. Relevant domestic case-law

36. On 20 September 2018 the Grand Chamber of the Supreme Court adopted a decision in case no. 243/3505/16-ц upholding the decisions of the lower courts, by which a claimant was awarded a lump sum social payment and further insurance payments to which he was entitled following a job-related accident in June 2014. The defendant in the case, a local department of the Social Insurance Fund, had refused him those payments referring to Resolution of the Cabinet of Ministers of Ukraine no. 509 on the registration of persons displaced from the temporarily occupied territory of Ukraine and anti-terrorist operation area (after relevant amendments - on the registration of internally displaced persons) and arguing that the claimant was not an internally displaced person. The Fund had also invoked lack of financing.

The Grand Chamber of the Supreme Court, having analysed the facts of the case and, in particular, the claimant's eligibility to the payments claimed, and having referred to an extensive body of social-security legislation and numerous legal acts on the status of internally displaced persons, concluded that those legal acts did not provide for termination of social payments in case of a failure to register as an internally displaced person. It also noted that the legal acts on internally displaced persons were not applicable to persons who had not moved from the territory outside of Government control.

The Grand Chamber further examined a decision adopted by the Supreme Court on 12 April 2017 (case no. 6-51цс17), by which it had concluded that those persons, who resided in the territory outside of Government control, were eligible to receive social-security payments only after they moved to the territories on which State bodies fully functioned and registered there as internally displaced persons. The Supreme Court had referred to Section 2 of the Interim Order (see paragraph 34 above). However, the Grand Chamber noted that Section 2 of the Interim Order had been found void by court decisions which, by the time of adoption of the decision of 12 April 2017, had been already final and binding.

The Grand Chamber thus decided to deviate from the earlier practice, in particular, the decision of 12 April 2017, and to uphold the conclusions of the lower courts that the absence of registration as an internally displaced person could not be a ground for non-payment of insurance payments.

37. On 17 March 2020 the Supreme Court examined an appeal on points of law by a claimant who was not an internally displaced person, apparently resided in the territory not controlled by the Government and sought pension payments as of 1 August 2014 to be made by a local department of the Pension Fund (case no. 227/2158/17). Those claims were allowed by a first instance court but refused on appeal with reference to the Supreme Court's decision of 12 April 2017.

The Supreme Court allowed the claimant's appeal and upheld the first instance court decision in her favour. Referring to the Grand Chamber decision of 20 September 2018, it reiterated that the absence of IDP status cannot affect the enjoyment of pension rights. The Supreme Court also addressed its divergent practice and noted that the decision of 12 April 2017 referred to Section 2 of the Interim Order, already invalidated at the material time. The Supreme Court also took note of its decision of 6 August 2019 (case no.

433/172/16-a) which deviated from the Grand Chamber decision of 20 September 2018, however, without any particular substantiation.

38. The Government also provided an example from the case-law of the domestic courts concerning the renewal of social-security payments. In particular, on 7 October 2019 the Kharkiv Administrative Court (case no. 520/8484/19) allowed a claim for renewal of pension payments lodged by an internally displaced person. In this case the court found that the suspension of the claimant's pension had occurred owing to the invalidation of his certificate of internal displacement. The court established that as the relevant legislation did not provide the invalidation of a certificate of internally displaced person as grounds for suspension of pension, the actions of the Pension Fund suspending the pension had been unlawful. The court thus ordered the renewal of the claimant's pension payments.

COMPLAINTS

39. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the non-enforcement of the judgment of the Kyiv Circuit Administrative Court of 11 February 2015. In particular, they asserted that the invalidation of section 2 of the Interim Order had entailed automatic renewal of their social-security payments by transferring the money to their bank accounts. They also complained, under Article 13 of the Convention, that their right to an effective remedy had been breached on account of the above failure.

THE LAW

A. As to the complaints submitted by Mr Vitaliy Tymofiyovych Chaykin

40. The Court observes that the applicant Mr Chaykin did not designate a representative in accordance with paragraph 4 (a) of Rule 36 of the Rules of Court as requested by the Court. Neither did he inform the Court of his change of place of residence (a fact which became known to the Court from the parties' submissions), or whether he maintained his application. The Court is also mindful of the information provided by the Government that after the move to Government-controlled territory, the applicant's pension payments had been renewed and that he had also received the back payments due to him for the period from August 2014 (see paragraph 31 above).

41. Based on the above, the Court concludes that the applicant Mr Vitaliy Tymofiyovych Chaykin may be regarded as no longer wishing to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

42. In these circumstances, it is appropriate to strike this part of the application out of the list of cases.

B. As to the complaints submitted by the remaining applicants

43. The applicants complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 as to the alleged non-enforcement of the judgment of 11 February 2015 invalidating certain provisions of the resolution of the Cabinet of Ministers of Ukraine which provided for the suspension of social-security payments to the residents of the parts of the Donetsk and Luhansk regions which were outside of the Ukrainian Government control, and about the lack of effective domestic remedies in respect of these complaints. The relevant Convention provisions read as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No.1

"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's submissions

44. In their observations the Government submitted that the applicants had failed to inform the Court of the proceedings instituted before the Kyiv Circuit Administrative Court by Ms Kandyba, Ms Baklytska and Mr Chaykin, in which it had been established that the judgment of the Kyiv Circuit Administrative Court of 11 February 2015 had been enforced in full (see paragraphs 25-28 above). Given that the above development was of crucial importance for the examination of the present case before the Court, the Government considered that the failure to notify the Court of these proceedings constituted an abuse of the right to application and asked the Court to declare the application inadmissible on those grounds. Referring to the same proceedings the Government claimed that as long as the domestic courts had pronounced on the matter of enforcement of the judgment of 11 February 2015, finding it fully enforced, it was not for the Court to question their interpretation and application of domestic law.

45. The Government further submitted that in the judgment of 11 February 2015 the court had explicitly rejected the claims for payment of the applicants' social-security payments owing to their failure to sue the proper respondents (see paragraphs 12-13 above). The Government therefore argued that it would not have been reasonable to require the State to enforce a judgment by way of taking actions clearly rejected by the courts during the adoption of this judgment.

46. Additionally, the Government stated that the applicants had failed to sue the pension or social-security authorities for renewal of their social-security payments. Referring to the domestic judicial practice (see paragraph 38 above), the Government submitted that such a claim would have had a reasonable chance of success for the applicants. In the light of the above, the Government asked the Court to reject the application as manifestly ill-founded.

(b) The applicants' submissions

47. The applicants asserted that the argument that the enforcement of the judgment of 11 February 2015 had entailed only the publication of its operative part in the Official Gazette was unacceptable because the courts, when invalidating section 2 of the Interim Order, had clearly acknowledged that it had violated the applicants' rights to social-security payments. They further stated that after the above publication the State authorities had confirmed to the applicants that they would enforce the judgment, in particular when the writ of enforcement had been issued (see paragraphs 20-24 above). The applicants also pointed to the Cabinet of Minister's application for suspension of enforcement of the judgment submitted to the High Administrative Court in which it had been noted that if not suspended the judgment would have required the payment of more than UAH 7 billion to people residing in territories outside of Government control (see paragraph 15 above). In the applicants' opinion this proved that – contrary to what was claimed by the Government – the authorities had considered that the enforcement of the judgment of 11 February 2015 should have actually entailed the payment of social-security payments. In support of this position they also provided several extracts from articles published in the media citing the UN Assistant Secretary-General for Human Rights, Ivan Simonović, who, referring to the judgment of 11 February 2015, had called upon the Ukrainian Government to renew the social-security payments to people residing in the territories outside of the Government's control. In the applicants' view all of the above refuted the Government's position as to the inadmissibility of the application.

2. The Court's assessment

48. The Court has already held on numerous occasions that the right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The effective access to court includes the right to have a court decision enforced without undue delay (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 66, ECHR 1999-V). In the same context, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, 15 October 2009). The Court further reiterates that it is the State's obligation to ensure that final decisions against its organs, or entities or companies owned or controlled by the State,

are enforced in compliance with the above-mentioned Convention requirements (see *Burdov* and *Yuriy Nikolayevich Ivanov,* both cited above).

49. In the present case the applicants sued the Cabinet of Ministers of Ukraine, seeking the invalidation of its Resolution no. 595 of 7 November 2014 adopting an Interim Order which provided, *inter alia*, that in the settlements of the Donetsk and Luhansk regions, where the State authorities could not exercise their powers in full, social-security payments should only be continued after the State authorities had regained control over those territories. They also claimed back payments for the period of July-December 2014, that is to say before the adoption of the Resolution. By decision of 11 February 2015, upheld by the higher courts, the Kyiv Circuit Administrative Court found that section 2 of the Interim Order approved by the above Resolution had been adopted *ultra vires*, and was therefore invalid (see paragraphs 12-14 and 18 above). The courts, however, rejected the claim for back payments since the applicants had failed to sue the appropriate respondents, that is to say the local pension and social-security authorities. With this, the key issue in the present case is different from those already examined by the Court as it concerns not the prolonged failure by the State debtors to pay the monetary awards or to perform a particular action clearly identified by the domestic court, but the scope of the State's obligations in the event of adoption of a judgment invalidating a legal provision of a by-law the way it was done in the present case. The Court also notes that, unlike in the present case, the failure to resume payments of pensions and social-security allocations following a direct award by the domestic courts in favour of claimants who currently reside in the territories outside of Government control is raised in a number of other applications currently pending before the Court.

50. According to the applicants, the invalidation of section 2 of the Interim Order implied that their social-security payments should have been renewed automatically and the authorities should have transferred their social-security payments to their bank accounts and that would have constituted enforcement of the judgement of 11 February 2015. The Government disagreed, stating that the invalidation of the provision at issue had not in itself been enough for the automatic renewal of payments and that the applicants should have submitted separate claims against the respective authorities.

51. In this context it should be noted at the outset that depending on the legal system in place, various scenarios are possible following an invalidation of a legal act in administrative proceedings. In this vein the Court notes that the court judgment of 11 February 2015 concludes with the annulment of a particular provision of a legal act. That was the applicants' only claim which was granted by the court and all the other ones, which could have clearly required particular actions on behalf of the authorities, were dismissed.

52. The Court observes that in the separate proceedings initiated by three of the applicants, the domestic courts found that the judgment of 11 February 2015 did not impose an obligation on the authorities to resume the payments of the applicants' social-security payments. In addition, in the initial proceedings the domestic courts specifically rejected the applicants' relevant claims because of their failure to sue the appropriate defendants thus essentially directing the applicants to initiate new sets of proceeding against the relevant authorities (see paragraph 13 above).

53. In the latter context the Court notes that the Government provided information about court proceedings in which an internally displaced person's claims for renewal of pension payments had been granted by the court. In their view, similar claims, if submitted by the applicants, would have had a reasonable chance of success (see paragraphs 36 and 44 above). The Court however notes that the case referred to by the Government related to a situation different from that of the applicants' as the claimant in those proceeding had the status of an internally displaced person (that is to say he had moved to the Government-controlled territory) and had been receiving his pension up until the invalidation of his certificate of internal displacement. The applicants in the present case were never registered as internally displaced persons and are still resident in the territory outside of Government control.

54. Nevertheless, the Court has already found that the Government took the steps that could have been reasonably expected of them to ensure the proper functioning of the judicial system, making it accessible to the residents of territories outside of its control (see *Tsezar and Others*, cited above, §§ 53-55). The applicants in the present case, residing in the territories outside Government control, successfully availed themselves of this possibility.

The initial proceedings, in which the applicants were partially successful, were limited exclusively to determination of the scope of authority of the Cabinet of Ministers of Ukraine in respect of adoption of its Resolution no. 595. As for their claims for payment of their social-security payments, it does not escape the Court's attention, that these payments were regulated not exclusively by the legal provision that had been struck down. In the complex situation in certain regions in the east of Ukraine and, in particular, given ongoing military activities, the social-policy sphere there has been regulated by an extensive number of other legal provisions such as section 8 of the Interim Order (see paragraph 34 above) or the legislation cited in the case of *Tsezar and Others* (see paragraph 35 above), or other legislation on the matter which was referred to by the Supreme Court of Ukraine in its decisions (see paragraphs 36 and 37 above).

The Court takes particular note of the case-law of the Supreme Court of Ukraine. In streamlining and reconciling its practice the Supreme Court analysed an extensive number of various legal provisions both relevant to a particular case (eligibility to a particular payment) and to the situation of those persons who stayed in the territories outside Government control in general. In the present case, since the procedure for the application of relevant legal acts to the applicants' situation was never examined by the domestic courts, it would be unreasonable to conclude that the relevant payments should have been automatically made to the applicants following the Kyiv Circuit Administrative Court decision in question.

55. In view of the above, the Court accepts the Government's arguments that the State could not be reasonably required to enforce a judgment by way of taking actions clearly not envisaged by the court during the adoption of that judgment, and that the applicants could and should, following the *ultra vires* ruling, have initiated separate proceedings against the appropriate defendants to assert their rights. Moreover, it does not appear from the circumstances of the case, nor is it argued by the applicants that institution of the separate

proceedings would constitute additional burden on them, in particular, in view of the complexity of the situation.

56. The Court nevertheless takes note of the applicants' reference to the Cabinet of Minister's application for the suspension of execution of the judgment of 11 February 2015 submitted to the High Administrative Court as a fact that proves the authorities' acknowledgement that the invalidation of section 2 of the Interim Order might lead to further social-security payments and requiring funding (see paragraphs 15 and 47 above). The Court notes in this regard that from the wording of the application in question it is not clear how the Cabinet of Ministers envisaged a possible payment of these amounts. In particular, as noted above, such payments could have been ordered by subsequent court decisions in cases instituted following the invalidation of section 2 of the Interim Order.

In any case, however, it is not the Court's task to speculate on this matter, seeing, in particular, that it was for the domestic courts to assess the applicable procedure for the enforcement of the judgment at issue in the light of the circumstances of the case and the applicable law. In the Court's view their assessment cannot be said to have been arbitrary or manifestly unreasonable (see, *mutatis mutandis, Gayevskaya v. Ukraine*, no. 9165/05, § 15, 24 July 2008).

57. With the above in mind, it could be concluded that the judgment of the Kyiv Circuit Administrative Court of 11 February 2015 in its current wording is not enforceable in the particular way claimed by the applicants. In particular, it does not follow from the above judgment that any pecuniary awards were to be paid to the applicants. If their complaints under Article 1 of Protocol No. 1 could be understood as complaints about the failure to resume their pensions and other social-security payments, the applicants should have lodged separate claims in this respect as advised by the domestic authorities.

58. It follows that these applicants' complaint as to the alleged non-enforcement of the judgment of 11 February 2015 must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention as manifestly ill-founded. The Court thus does not need to rule separately on the alleged abuse of the right to application raised by the Government.

For these reasons, the Court, by a majority,

Decides to strike the complaints submitted by the applicant Mr Chaykin out of its list of cases.

Declares the complaints submitted by the remaining applicants inadmissible.

Done in English and notified in writing on 19 November 2020.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

APPENDIX

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Lyudmyla Mykolayivna KANDYBA	25/09/1953	Ukrainian	Luhansk
2	Oksana Anatoliyivna BAKLYTSKA	29/08/1979	Ukrainian	Luhansk
3	Vitaliy Tymofiyovych CHAYKIN	20/12/1926	Ukrainian	Luhansk
4	Olga Grygoriyivna DEMCHENKO	12/05/1987	Ukrainian	Luhansk
5	Nataliya Arkadiyivna OSYPCHUK	25/11/1981	Ukrainian	Luhansk
6	Olga Volodymyrivna PLUZHNIKOVA	23/05/1983	Ukrainian	Luhansk
7	Iryna Yevgenivna SHELESTUNOVA	25/08/1983	Ukrainian	Luhansk