



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

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FIFTH SECTION

Application no. 28341/20
Iryna Viktorivna IVASHCHENKO
against Ukraine
lodged on 16 March 2020
communicated on 6 July 2026

SUBJECT MATTER OF THE CASE

The case concerns the applicant's complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 that, because of a delay in domestic proceedings and decisions taken in them, she has been unable to obtain deposit insurance compensation after her bank had become insolvent even though the domestic courts acknowledged that she was entitled to it.

On 6 June 2014 the applicant, under two bank deposit agreements, deposited a total of 190 thousand Ukrainian hryvnias (UAH, about 12 thousand euros at the time) into accounts at S., a private bank.¹ On 17 June 2014 the NBU declared the bank to be insolvent and the Deposit Guarantee Fund ("the Fund") introduced its temporary administration. On 11 September 2014 the police, at the request of the Fund's administrator, initiated criminal proceedings against former bank managers on suspicion of embezzlement and abuse of office. There is no indication that the applicant was ever targeted by or otherwise involved in that or any other criminal investigation.

The Fund did not include the applicant on the list of depositors eligible for deposit guarantee compensation. After the applicant (acting together with two other depositors), asked the Fund for the reasons, the Fund replied that it had

¹ At the time, the bank had been, since May 2014, on the National Bank of Ukraine's (NBU) insolvency watchlist but the courts found no evidence that the applicant had been aware of that.

assessed that the applicant's bank deposit agreements were null and void (*нікчемні*). The Fund stated that it had determined, based on the pattern of operations on the relevant day, that the applicant and other depositors were engaged in fictitious transactions to present a deposit of one big depositor (about UAH 579 thousand) as three separate deposits from three individuals (including the applicant) of about UAH 190, 195 and 194 thousand, in order to benefit from the Fund's guarantee (which at the time was capped by law at UAH 200 thousand per person). According to the Fund, on the relevant day the owner of the large deposit supposedly withdrew all money held by the bank in cash (even though, according to the Fund, the bank was already insolvent and had no cash to pay out) and the applicant and two other individuals deposited, at the same branch, exactly the same amount in total as the large depositor supposedly withdrew.

The applicant challenged the Fund's refusal in administrative courts.

The Kyiv Circuit Administrative Court allowed her claim and ordered that the Fund: (i) add the applicant to the list of depositors eligible for compensation; and (ii) pay out deposit insurance compensation (UAH 190 thousand) to her.

On 30 April 2015 the Kyiv Administrative Court of Appeal modified the first-instance judgment. The Court of Appeal held that under the Deposit Guarantees Act², the Fund could only unilaterally declare null and void those transactions which contributed to the bank's insolvency. The court considered that the applicant's agreements, since they provided for depositing of funds with the bank, could not contribute to its insolvency. The court assessed that the Fund was in fact alleging that the agreements were not null and void but rather that they were fictitious (non-existent). However, the Act did not empower the Fund to make the latter determination unilaterally, but that could only be done by a court decision (and had to be done in civil court, not in administrative court proceedings).

The Court of Appeal removed from the first-instance judgment the order to pay compensation, considering that any such judicial order to pay was premature since the Fund was required to pay compensation only to individuals who were on the list of recognised depositors. Since the applicant was not yet on the list, it could not be said that the obligation to pay was breached.

On 19 August 2015 the State Bailiffs instituted proceedings for the enforcement of the judgment. On 28 August 2015 the High Administrative Court ordered suspension of enforcement proceedings, pending the examination of the appeal in cassation lodged by the Fund. On 21 December 2018 the Supreme Court upheld the Court of Appeal's decision.

On 13 February 2019 the Fund informed the applicant that she had been included in the list of the depositors but that the funds in her accounts had

² Deposit Guarantees Act of Ukraine (2012, as worded at the relevant time).

been frozen within the framework of the above-mentioned criminal proceedings against former bank managers, and, therefore, pursuant to domestic law, the Fund could not pay her compensation.³

According to the applicant, on 25 March 2019 she lodged a request with a court within the framework of the above-mentioned criminal proceedings against former bank managers, asking to lift the accounts freeze. According to her, at the time the present application was lodged with the Court, the request was still pending before the competent domestic court.

On 17 September 2019 the winding up of the bank was completed and the bank was struck off the Register of Legal Entities. On 23 September 2019 the Fund informed the applicant that, in view of the bank's definitive winding up, the compensation could no longer be paid.⁴

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust effective domestic remedies in respect of her complaints? In particular:

(i) was it open to the applicant to lodge a separate claim against the Deposits Guarantee Fund, seeking the payment of deposit insurance compensation?

(ii) did the applicant duly apply for and pursued, within the framework of criminal proceedings, the lifting of the freeze on her accounts?

2. Was the length of the civil proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention?

3. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so, did the respondent State comply with the requirements of that provision? Did the respondent State comply with any positive obligations under Article 1 of Protocol No. 1?

³ Subsection 11 of section 26 § 4 of the Act provides that the Fund cannot pay compensation in respect of accounts frozen under a court decision. This prohibition was added to the Act by law no. 629-VIII of 16 July 2015.

⁴ Section 26 § 7 of the Act provides that the Fund stops paying out deposit insurance compensation on the day the Fund transmits to the Register of Legal Entities documents for the definitive winding up of the bank as a legal entity.

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4. Did the applicant have at her disposal an effective domestic remedy for her complaint under Article 1 of Protocol No. 1, as required by Article 13 of the Convention?