



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

SECOND SECTION

CASE OF ZHERDIN v. UKRAINE

(Application no. 53500/99)

JUDGMENT

STRASBOURG

21 February 2006

FINAL

21/05/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zherdin v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 1 February 2005 and 31 January 2006,

Delivers the following judgment, which was adopted on that last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 53500/99) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Viktor Yuriyovych Zherdin (“the applicant”), on 17 March 1999.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Ms Zoryana Bortnovska, succeeded by Ms Valeria Lutkovska.

3. The applicant complained under Article 6 § 1 of the Convention about the unfairness of the proceedings in so far as the final judgment of the Kramatorsk City Court of 13 April 2000 was quashed, in the course of supervisory review proceedings, by the Presidium of the Donetsk Regional Court.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. On 23 April 2002 certain aspects of the application were communicated to the respondent Government for observations. This was followed by the Court’s decision of 1 February 2005 in which it declared the application partially admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1961 and lives in Kramatorsk, Ukraine.

I. THE CIRCUMSTANCES OF THE CASE

9. On 13 April 2000 the Kramatorsk City Court (the “Kramatorsk Court”) ordered the OJSC “Teploenergmontazh” (the “TEM”) to pay the applicant UAH 5,949.11¹ in compensation for salary arrears.

10. On 27 July 2000 the Donetsk Regional Court (the “DRC”) upheld this judgment.

11. According to the documents submitted by the Government, the judgment of 13 April 2000 was enforced in full on 30 November 2000. The enforcement proceedings were terminated on the same date.

12. On 13 December 2000 the Presidium of the DRC allowed the *protest* filed by its President, following the defendant company’s request for a supervisory review, quashed the judgment of 13 April 2000 and the ruling of 27 July 2000, and remitted the case to the Kramatorsk Court for a fresh consideration.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice in relation to supervisory review proceedings is summarised in the case-law of the Court (see *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 65, 9 November 2004; *Tregubenko v. Ukraine*, no. 61333/00, §§ 29-30, 2 November 2004; *Poltorachenko v. Ukraine*, no. 77317/01, § 21, 18 January 2005).

THE LAW

I. SCOPE OF THE CASE

14. The Court notes that, after the case was declared admissible, the applicant renewed the complaints which the Court had declared inadmissible (see *Zherdin v. Ukraine* (dec.), no. 53500/99, 1 February 2005). The applicant also lodged new complaints under Article 6 § 1 of the Convention in respect of an allegedly unfair assessment of the amount of compensation awarded to him by the domestic courts against the TEM and the refusal of the domestic courts to reinstate him. Under Article 8 and

1. 1,122.97 euros.

Article 5 of Protocol No. 7 to the Convention, the applicant added complaints about an allegedly unfair judgment of the Kramatorsk City Court on 8 April 2003, ordering him to pay alimony to his former wife for the maintenance of their son, and, under Article 6 § 1 of the Convention, complaints about the length and fairness of the proceedings instituted by the applicant against the local housing department.

15. The Court recalls that, in its admissibility decision of 1 February 2005 in the present case, it declared admissible the applicant's complaint under Article 6 § 1 of the Convention about the quashing, on 13 December 2000, of the final judgment of 13 April 2000 given in the applicant's favour. The remainder of the applicant's complaints were declared inadmissible (see *Zherdin v. Ukraine* (dec.), cited above).

16. The Court notes that the scope of the present case before the Court is limited to that admissible complaint. As the Court is bound by its admissibility decision, no other complaints may now be examined on their merits within this application (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, § 35). It therefore decides to disjoin the new complaints and to consider them separately as a new application (no. 14683/05).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The Government observed that the supervisory review of the judgments in the applicant's favour did not offend the principles of the rule of law and legal certainty. They maintained that the *protest* could not be exploited in an arbitrary manner as this procedure was transparent, foreseeable and used by citizens as an effective mechanism for appealing against judicial decisions.

18. The applicant disagreed.

19. The Court observes that the judgment of 13 April 2000 and the ruling of 27 July 2000 were quashed by the resolution of 13 December 2000 of the Presidium of the Donetsk Regional Court and that they were quashed following the defendant's, and not the applicant's, complaint lodged with the Donetsk Regional Court.

20. Taking into account that the judgment of 13 April 2000 was final and binding and was, moreover, enforced on 30 November 2000 by the State Bailiffs' Service, the Court is of the opinion that the quashing of this final judgment infringed the principles of the rule of law and legal certainty (see *Svetlana Naumenko v. Ukraine*, no. 41984/98, §§ 91-92, 9 November 2004).

21. It considers therefore that there was a violation of Article 6 § 1 of the Convention in that respect.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage, costs and expenses

23. The applicant claimed EUR 50,000 in compensation for non-pecuniary damage and UAH 577.90¹ in compensation for costs and expenses.

24. The Government contested these claims as being unsubstantiated.

25. The Court, making its assessment on equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 2,000 in compensation for non-pecuniary damage. The Court also awards the applicant EUR 90 in compensation for his costs and expenses in the proceedings before it.

B. Default interest

26. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to disjoin the applicant’s new complaints from the present case and to consider them as a separate application;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 90 (ninety euros) in costs and expenses, plus any tax that may be chargeable, which sums are to be

1. EUR 90.

converted into the currency of the respondent State at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President