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

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CHAMBER JUDGMENT
DANILENKOV AND OTHERS v. RUSSIA

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Danilenkov and Others v. Russia*** (application no. 67336/01). The case concerned the discriminatory treatment of members of the Kaliningrad branch of the Dockers' Union of Russia (DUR) by their employer, a private company.

The Court held unanimously that there had been **a violation of Article 14 (prohibition of discrimination)** taken together with **Article 11 (freedom of assembly and association)** of the European Convention on Human Rights, on account of the authorities' failure to provide effective and clear judicial protection against discrimination on the grounds of trade union membership.

Under Article 41 (just satisfaction) of the Convention, the Court awarded each applicant 2,500 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The applicants are Russian nationals and members of the Kaliningrad branch of the Dockers' Union of Russia (DUR).

On 14 October 1997, the DUR began a two-week strike over pay, better working conditions, and health and life insurance. The strike failed to achieve its goals and was discontinued on 28 October 1997. In the period following, DUR members found themselves reassigned to special work teams, transferred to part-time positions, and ultimately declared redundant and dismissed as a result of a structural reorganization of the seaport company.

The applicants responded to these and other actions by bringing a number of cases to the local courts in which they complained of being the object of unlawful and discriminatory treatment based on their union membership. In each instance, the civil courts ruled in favour

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

of the applicants, reversing the seaport's decisions and ordering payment of compensation for lost wages. The charges of discrimination were repeatedly dismissed, however, on the grounds that the existence of discrimination could only be established in the framework of criminal proceedings. The civil courts, therefore, lacked the jurisdiction to examine the discrimination complaint. The applicants were unable to launch a criminal case, because legal entities such as the seaport company could not be held liable and the prosecutor's office declined to open a criminal investigation against the managing director of the seaport company, as a preliminary inquiry failed to establish direct intent by the director to discriminate against the applicants.

In addition to going to the courts, the DUR complained to the International Transport Workers' Federation (ITF) and the Kaliningrad Regional Duma. Both the ITF and the Duma recognized the existence of discrimination based on trade union membership and called for the DUR members' rights to be respected. Despite these warnings and the courts' repeated rulings overturning the seaport's anti-DUR policies, DUR membership decreased from 290 in 1999 to only 24 in 2001.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 February 2001 and declared admissible on 19 October 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Rait **Maruste** (Estonia), ***President***,
Renate **Jaeger** (Germany),
Karel **Jungwiert** (the Czech Republic),
Anatoly **Kovler** (Russia),
Mark **Villiger** (Switzerland),
Isabelle **Berro-Lefèvre** (Monaco),
Zdravka **Kalaydjieva** (Bulgaria), ***judges***,

and also Stephen **Phillips**, ***Deputy Section Registrar***.

3. Summary of the judgment[2]

Complaint

Relying on Articles 11 and 14, the applicants complained in particular of the Government having tolerated the discriminatory policies of their employer and having refused to examine their discrimination complaint.

Decision of the Court

The Court first recalled the scope of the State's obligations to provide protection against discrimination related to freedom of association; it stressed in particular that any employee or worker should be free to join, or not, a trade union without being sanctioned. It then found crucially important that individuals affected by discriminatory treatment should be provided

[2] This summary by the Registry does not bind the Court.

with an opportunity to challenge it and to have the right to take legal action capable of ensuring real and effective relief.

The Court observed that the Kaliningrad seaport company had used various techniques to encourage employees to relinquish their union membership, including their re-assignment to special work teams with limited opportunities, dismissals subsequently found unlawful by the courts, decrease of earnings, disciplinary sanctions, etc. In addition, despite the existence in domestic civil law at the time of a blanket prohibition against discrimination on the ground of trade-union membership or non-membership, the judicial authorities had refused to examine the applicants' discrimination complaints having held that discrimination could only be established in criminal proceedings.

As regards the criminal remedy, the Court found that its main deficiency was that, being based on the principle of personal liability, it required proof "beyond reasonable doubt" of direct intent by the company's key managers to discriminate against the trade-union members; failure to establish such intent led to decisions not to institute criminal proceedings. The Court therefore was not persuaded that a criminal prosecution could have provided adequate and practicable redress in respect of the alleged anti-union discrimination.

Accordingly, the Court held that the State had failed to provide effective and clear judicial protection against discrimination on the grounds of trade union membership, in violation of Article 14 of the Convention taken together with Article 11.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*