

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

FIFTH SECTION

DECISION

Application no. 49275/08
Anatoliy Oleksandrovych BAZELYUK
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 27 March 2012 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Ann Power-Forde,
Angelika Nußberger,
André Potocki, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 16 September 2008,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Anatoliy Oleksandrovych Bazelyuk, is a Ukrainian national who was born in 1949 and lives in Odessa, Ukraine.

The circumstances of the case

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

On 30 October 2006 the local electricity supply company, O., cut off the electricity in the applicant's house, allegedly because the electricity counter

in his house was not properly sealed so the electricity used by him was not being properly metered. In November 2006 the applicant lodged a civil claim before the Kominternivskyy District Court of the Odessa Region against O., requesting that his house be re-connected to the electricity network, and claiming 3,000 Ukrainian hryvnas (UAH) (at the material time around 445 euros (EUR)) in compensation for non-pecuniary damage. The applicant alleged that without electricity he had not been able to properly store food, to cook and to relax in the evening. He also claimed costs and expenses.

On 16 April 2007 the court found in part for the applicant. The court ordered O. to re-connect the applicant's house to the electricity network, and awarded him UAH 1,500 in compensation for non-pecuniary damage (at the material time around EUR 212) and UAH 39.50 (at the material time around EUR 6) in costs and expenses.

On 21 August 2007 the Odessa Regional Court of Appeal upheld this decision. O. appealed in cassation. The applicant stated that he had not been informed about it and had had no opportunity to comment on the defendant's appeal in cassation.

On 30 July 2008 the Supreme Court of Ukraine, in the absence of the parties, quashed the above decisions in so far as they had awarded the applicant compensation for non-pecuniary damage, and rejected his claim for damages.

COMPLAINTS

The applicant complained under Articles 6 § 1, 13 and 17 of the Convention and Article 1 of Protocol No. 1 of the outcome of the proceedings and, in particular, about the alleged failure of the Supreme Court of Ukraine to inform him about the cassation proceedings and to give him an opportunity to comment on the defendant's appeal in cassation.

THE LAW

1. The applicant complained about the alleged failure of the Supreme Court of Ukraine to inform him about the opening of the cassation proceedings and contended that he had had no opportunity to comment on the other party's cassation appeal. He relied on Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

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

The Court must first determine of its own motion whether this complaint is admissible under Article 35 of the Convention, as amended by Protocol No. 14, which entered into force on 1 June 2010.

The Protocol added a new admissibility requirement to Article 35 which, in so far as relevant, provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
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> ...
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> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

The first question arising is whether the applicant has suffered a "significant disadvantage". The Court has previously held that this criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see *Adrian Mihai Ionescu v. Romania* (dec), no. 36659/04, 1 June 2010; *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010; and *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011). The level of severity shall be assessed in the light of the financial impact of the matter in dispute and the importance of the case for the applicant (see *Burov v. Moldova* (dec.), no. 38875/03, § 25, 14 June 2011).

The Court notes that in the present case the lower courts found in part for the applicant and ordered that his house be re-connected to the electricity network and awarded him compensation for non-pecuniary damage. The Supreme Court of Ukraine, however, quashed the lower courts decisions as regards the award of compensation and rejected the applicant's claims in this part.

The Court is conscious that the impact of pecuniary loss must not be measured in abstract terms: even modest pecuniary damage may be significant in the light of the person's individual circumstances and the economic situation of the country or region in which he or she lives.

In the present case, however, the applicant claimed EUR 445 and was awarded EUR 212 by the domestic courts in compensation for non-pecuniary damage. This award was later quashed by the Supreme Court. The Court notes that it cannot speculate on the outcome of the domestic proceedings, but, even assuming that the applicant is entitled to full satisfaction of his claims for compensation for non-pecuniary damage, in the Court's view, the refusal to award the applicant the amount claimed did not impose a significant financial burden on him. In particular, the applicant did not claim reimbursement of any amounts already spent by him and did not provide any evidence that his financial circumstances were such that the

outcome of the case would have had a significant effect on him, the more that he succeeded in his main claim to obtain re-connection of his house to the electricity network.

The Court is also mindful that the pecuniary sum involved is not the only element that determines whether the applicant has suffered a significant disadvantage. Indeed, a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting a pecuniary interest.

The Court observes that it has already ruled in a number of cases that each party must be given the opportunity to have knowledge of and to comment on the observations filed or evidence adduced by the other party (see, for example, *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262; *Wynen v. Belgium*, no. 32576/96, § 32, ECHR 2002-VIII and, *mutatis mutandis*, *Nadtochiy v. Ukraine*, no. 7460/03, §§ 26-29, 15 May 2008). Therefore, the Court does not see any compelling reasons to examine the merits of the present application.

The Court therefore finds that respect for human rights as defined in the Convention and its Protocols does not require an examination of the application on the merits.

Finally, Article 35 § 3 (b) does not allow the rejection of an application on the grounds of the new admissibility requirement if the case has not been duly considered by a domestic tribunal. The purpose of this second safeguard clause is to avoid any denial of justice (see *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010; *Korolev*, cited above).

In the Court's view, the facts of the present case taken as a whole disclose no denial of justice at the domestic level. The applicant's initial complaints against the defendant were considered at three levels of jurisdiction and his claims were granted in the part concerning the reconnection of his house to the electricity network.

The Court considers that the applicant's case was duly examined by a domestic tribunal within the meaning of Article 35 § 3 (b).

The three conditions of the new inadmissibility criterion having therefore been satisfied, the Court finds that this complaint must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

2. The applicant further complained about the outcome of the proceedings and relied on Articles 6 § 1, 13 and 17 and Article 1 of Protocol No. 1.

In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President