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

FIFTH SECTION

DECISION

Application no. 12486/12
Vladimir Anatolyevich DEGTYAR
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 13 July 2023 as a Committee composed of:

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 12486/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 December 2011 by a Ukrainian national, Mr Vladimir Anatolyevich Degtyar, who was born in 1983 and, according to the most recent information, lives in Dnipro ("the applicant"), and who was represented by Ms O. Yenakiyeva, a lawyer practising in Dnipro;

the decision to give notice of the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of a violation of the principles of legal certainty and *res judicata* to the Ukrainian Government ("the Government"), represented by their acting Agent, most recently Ms O. Davydchuk, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. Following his conviction for fraud by the Yalta Town Court on 13 May 2008, which was ultimately upheld by the Supreme Court on 30 July 2009, the applicant was ordered to pay compensation for non-pecuniary damage to the victim of that crime in separate civil proceedings. Relying on Article 6 § 1

of the Convention and on Article 1 of Protocol No. 1, the applicant complained that the courts examining the civil claim had disregarded the fact that the victim's similar claim had been already rejected as unsubstantiated in the criminal proceedings against him.

2. In particular, in its judgment of 13 May 2008 the Yalta Town Court held that the victim had failed to specify how much she was claiming in respect of non-pecuniary damage. On 13 July 2010, in the course of the ensuing civil proceedings against the applicant, the same court awarded the victim 100,000 Ukrainian hryvnias ((UAH), the equivalent of approximately 9,000 euros (EUR) at the material time) in compensation for non-pecuniary damage she had suffered, and continued to suffer, on account of the numerous legal actions she had had to bring, some of which were ongoing at the time of the adoption of that judgment, in order to ensure the return of her property that had been affected by the applicant's fraudulent actions. The judgment of 13 July 2010 was partly amended by the Crimea Court of Appeal on 19 January 2011, reducing the award to UAH 50,000 (the equivalent of approximately EUR 4,500 at the material time), and that judgment was ultimately upheld by the Higher Specialised Court for Civil and Criminal Matters in a final decision of 25 July 2011.

THE COURT'S ASSESSMENT

3. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the courts' decisions allowing the victim's claim in respect of non-pecuniary damage in the civil proceedings against him had been contrary to the principles of legal certainty and *res judicata*.

4. The Government contended that the applicant's complaints were unsubstantiated, since the victim's claim for non-pecuniary damage in the civil proceedings had differed from her claim that had been previously dismissed in the criminal proceedings.

5. The Court reiterates that the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law and legal certainty, encompasses the requirement that, where the courts have finally determined an issue, their ruling should not be called into question when this is not made necessary by circumstances of a substantial and compelling character (see, among other authorities, *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 61, 12 January 2006, and *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX). It has found a violation of that provision in a number of cases where facts that had already been determined by a final judgment were later overruled by the courts in a new case between the same parties (see, for instance, *Esertas v. Lithuania*, no. 50208/06, § 25, 31 May 2012, and *Gražulevičiūtė v. Lithuania*, no. 53176/17, §§ 80-83, 14 December 2021). In those cases, the Court has also held that the *res judicata* effect of final judgments has limitations

ad personam and *ad rem* in all legal systems (see *Kehaya and Others*, § 66; *Esertas*, § 22; and *Gražulevičiūtė*, § 74, all cited above).

6. Turning to the present case, the Court notes that Ukrainian law as worded at the material time, in particular Article 122 § 2(2) of the Code of Civil Procedure, provided for similar limitations on the *res judicata* effect of final judgments.

7. The Court further notes that the victim's claim in respect of non-pecuniary damage as considered in the civil proceedings against the applicant covered, at least partially, events and proceedings subsequent to his conviction on 13 May 2008 (see paragraph 2 above). Thus, the civil proceedings did not concern the same matter which had been decided in the criminal proceedings (see paragraph 1 above). Their material scope was clearly different (contrast *Kehaya and Others*, § 67; *Esertas*, § 23; and *Gražulevičiūtė*, § 78, all cited above).

8. Therefore, the applicant's complaint under Article 6 § 1 is unsubstantiated (compare *Ilieva and Others v. Bulgaria*, no. 17705/05, §§ 40-42, 3 February 2015, and, *mutatis mutandis*, *Tantilovi v. Bulgaria* (dec.), no. 39351/05, §§ 35-38, 13 January 2015).

9. His similar complaint under Article 1 of Protocol No. 1 does not disclose any appearance of a violation of the rights and freedoms enshrined in that provision.

10. The Court therefore dismisses the application as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 September 2023.

Martina Keller Deputy Registrar	Mārtiņš Mits President