CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF STRIZHAK v. UKRAINE

(Application no. 72269/01)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Strizhak v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE
Mrs A. MULARONI,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 72269/01) 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 Aleksandr Georgiyevich Strizhak ("the applicant"), on 10 February 2001.

2. The applicant, who had been granted legal aid, was represented by Mr Renat Mukhamedzhanov, a lawyer practising in Ukraine. The latter is also co-chairman of a non-governmental organisation, the Regional Human Rights Centre in Dnipropetrovs'k. The Ukrainian Government ("the Government") were represented by their Agents, Ms Zoryana Bortnovska and Ms Valeria Lutkovska.

3. The applicant complained, in particular, under Article 6 § 1 of the Convention, that no information was provided to him about the date and time of the hearing on 14 August 2000 in the Dnipropetrovs'k Regional Court and that no public hearing of his claims was held.

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. By a decision of 15 June 2004 the Court declared the application partly admissible.

6. 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).

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

THE FACTS

8. The applicant was born in 1938 and currently resides in Dnipropetrovs'k.

I. THE CIRCUMSTANCES OF THE CASE

A. The background to the application

9. On 5 September 1938 the Troika tribunal of the Department of the NKVD[1] of the Ukrainian Soviet Socialist Republic in the Dnipropetrovs'k Region (*Трійка Управління Народного Комісаріату Внутрішніх Справ УРСР по Дніпропетровській області*) resolved that the applicant's father was a "socially harmful element" after a purported robbery ("*соціально шкідливий елемент*"), and sentenced him to 5 years' imprisonment in a correctional labour camp.

10. The applicant's father died on 26 March 1976.

11. On 28 March 1980 the Dnipropetrovs'k Regional Court quashed the resolution of 5 September 1938 of the Troika tribunal upon the *protest* lodged by the prosecutor of the Dnipropetrovs'k Region. It also terminated the proceedings in the case. In particular it found that:

> "... there is no evidence of ... robbery...
>
> ... the investigation in the case was conducted in grave violation of the rules of procedural law.
>
> No criminal proceedings in the case were initiated; the [applicant's father] was not charged; there was no indictment in the case. In the course of the investigation of the case, the elementary rights of the accused were not respected (the right to defend oneself, etc.).
>
> In such circumstances the resolution of the Troika has to be annulled and the proceedings in the case shall be terminated on the basis of an absence of any *corpus juris* in his actions ..."

12. On 29 May 1980 the Dnipropetrovs'k Regional Court issued written notice to the applicant that the proceedings in his father's case had been terminated and that the Troika's resolution of 5 September 1938 had been annulled.

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1. National Commissariat of the Internal Affairs (the equivalent of the KGB and Ministry of the Interior at the material time) was created in 1934 as a part of the United General Political Department of the USSR (ОДПУ). The Decree of the Central Executive Committee (Указ ЦВК СРСР) of 10 July 1934 also created extraordinary courts within its structure that dealt with "antirevolutionary" and "socially harmful elements". Approximately two million persons were convicted and sentenced by these tribunals in the former USSR.

13. On 24 February 1997 the Commission on Rehabilitation of the Dnipropetrovs'k Municipal Council requested the President of the Dnipropetrovs'k Regional Court to provide information concerning the conviction of the applicant's father on 5 September 1938, as the notice of 29 May 1980 contained insufficient information about it. The Commission was also requested to state whether the father's conviction had been politically motivated.

B. Proceedings with regard to rectification of the notice

14. On 4 March 1997 the Deputy President of the Dnipropetrovs'k Regional Court issued written notice to the Commission on Rehabilitation of the Dnipropetrovs'k Municipal Council that:

> "... by a resolution of the Dnipropetrovs'k Regional Court of 28 March 1980, the resolution of the Troika has been annulled and the proceedings in the case terminated due to the lack of proof of guilt."

15. From March 1997 until May 2000, the applicant unsuccessfully appealed to the Deputy President of the Dnipropetrovs'k Regional Court and the President of that court, and wrote to the Supreme Court of Ukraine, claiming the untruthfulness of the notice and asking that it be reworded, since it did not correspond to the resolution of Dnipropetrovs'k Regional Court of 28 March 1980 and, accordingly, his father's memory had been defamed. He also sought initiation of criminal proceedings against the Deputy President of the Dnipropetrovs'k Regional Court.

16. On 8 August 1997 the Deputy President of the Criminal Division of the Supreme Court remitted the applicant's complaint about the notice of 4 March 1997 to the President of the Dnipropetrovs'k Regional Court for consideration on the merits. He also requested that the notice be rectified and that a public apology be presented to the applicant.

17. By letters sent to the applicant by the Supreme Court of Ukraine on 26 September and 24 December 1997, the applicant's claim was rejected as being unfounded. In particular, on 24 December 1997, the Deputy President of the Supreme Court of Ukraine recognised that the applicant's father had been rehabilitated; the former also confirmed that he had been convicted for political reasons. On 8 September, 10 September 1997 and 22 April 1998, the President of the Dnipropetrovs'k Regional Court refused to annul the written notice or to reword it.

18. On 1 April 2000 the applicant lodged complaints with the Zhovtnevy District Court of Dnipropetrovs'k to have the refusals of the Deputy President declared unlawful, and to rebut the information contained in the aforementioned notice of 4 March 1997. He also sought compensation for moral damage.

19. On 2 June 2000 the Zhovtnevy District Court of Dnipropetrovs'k refused to examine the applicant's claims on the ground that they fell outside the court's jurisdiction, as they concerned the actions of a judge in the course of the administration of justice.

20. On 20 July 2000 the Deputy President of the Dnipropetrovs'k Regional Court remitted the applicant's request to extend the time-limit for lodging his cassation appeal to the Zhovtnevy District Court of Dnipropetrovs'k.

21. On 27 July 2000 the Zhovtnevy District Court of Dnipropetrovs'k extended the term for lodging an appeal in cassation with the Dnipropetrovs'k Regional Court, as the applicant had not been informed until 7 July 2000 about the ruling of 2 June 2000, and would therefore have been unable to comply with the time limit for appeal in cassation.

22. The Government submitted that on 27 July 2000 the Zhovtnevy District Court notified the applicant that his case would be heard on 14 August 2000 in the Dnipropetrovs'k Regional Court. The applicant alleges that he did not receive this notification.

23. The case file arrived to the Dnipropetrovs'k Regional Court on 7 August 2000.

24. On 14 August 2000 the Dnipropetrovs'k Regional Court, in the absence of the applicant, upheld the decision of 2 June 2000.

25. The applicant's complaints, lodged with the President of the Dnipropetrovs'k Regional Court, for the initiation of a supervisory review of the decision of the Dnipropetrovs'k Regional Court, including a complaint about the lack of a public hearing in the consideration of his case before that court, were rejected on 24 October 2000 as being unsubstantiated. The President of the Dnipropetrovs'k Regional Court informed the applicant that the lack of a public hearing before the Regional Court had not been an obstacle to that court's examination of the matter, the applicant having been duly informed about the date and place of the hearing, of which he had been notified on 27 July 2000.

26. On 4 September 2003 the President of the Dnipropetrovs'k Regional Court of Appeal issued a written notice to the applicant informing him that, on 28 March 1980, the Presidium of the Dnipropetrovs'k Regional Court had quashed the resolution of the Troika of the Department of the NKVD of the Ukrainian Soviet Socialist Republic in the Dnipropetrovs'k Region of 5 September 1938 in respect of Mr G.I. Strizhak (the applicant's father), and that the proceedings in the case were terminated on the basis of an absence of any *corpus juris* in the actions of his father. It also stated that Mr G.I. Strizhak had been declared to have been sentenced unlawfully, and rehabilitated.

C. The proceedings against the rehabilitation commission

27. In January 2002 the Commission on Rehabilitation of the Zhovtnevy District Council in Dnipropetrovs'k refused to declare that the applicant was also "rehabilitated" (*реабілітованим*) in view of the quashing of the conviction of his father. They also rejected his request to issue a special identification card in that respect (*посвідчення реабілітованого*). In particular, they stated that the applicant had failed to provide information as to the place of his and his mother's residence after the conviction of his father in 1938.

28. In March 2002 the applicant instituted proceedings in the Zhovtnevy District Court of Dnipropetrovs'k against the Commission on Rehabilitation, seeking to declare their refusal to declare him rehabilitated unlawful.

29. On 20 November 2002 the Zhovtnevy District Court of Dnipropetrovs'k rejected these complaints as being unsubstantiated. This judgment was upheld on 10 February 2003 by the Dnipropetrovs'k Regional Court of Appeal, and on 1 April 2004 by the Supreme Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Civil Procedure

30. The provisions of the Code of Civil Procedure relevant to notification arrangements read as follows:

Article 90

Judicial summons

"Judicial summons and notifications shall be served by subpoenas that shall be mailed to persons who take part in the case proceedings, witnesses, experts, representatives of non-governmental organisations and labour groups, to the address mentioned by the party, persons themselves or other participants in the case.

Subpoenas shall be sent together with acknowledgement of receipt or through deliverymen.

Exceptionally, the notification may be given to the party in person or its representative on the basis of their consent to transfer it to other interested persons."

Article 93

Judicial notifications

"The judicial notifications shall be sent to persons who take part in the proceedings in the case, with regard to procedural actions that shall be undertaken, in which the participation of these persons is not deemed necessary.

The notification shall include the name and address of the court, the name of the case, reference to the procedural action to be undertaken, its place, date and time."

31. Other relevant provisions of the Code of Civil Procedure read as follows:

Article 297

Notification of the hearing of the case upon appeal in cassation, cassation petition

"Persons who introduce appeals in cassation directly with the court, shall be informed about the date of the hearing orally and, if their cases were sent by mail, by written notice.

... The list of cases, scheduled for a hearing in cassation shall be made public not later than a day before the hearing takes place."

Article 305

Consequences of the failure of participants to appear before the court at the hearing of the case

"... In the event of the failure of any of the participants to appear before the court because they have not been duly notified about the date and time of the hearing, the court shall adjourn the hearing in the case.

The participants' failure to appear before the court..., if they were duly informed about the date and time of the hearing, shall not be an obstacle for the examination of the case. However, should the court find that the reasons for the failure to appear are serious, it may decide to adjourn the hearing..."

B. Instruction on the logistics in the Supreme Court of the Autonomous Republic of the Crimea, the regional, interregional, Kyiv and Sevastopol city and district (city) courts, as approved by Order no. 22/5 of the Ministry of Justice on 13 March 1997

32. The relevant extracts from the instruction as approved by Order no. 22/5 read as follows:

"4.1. ... The notices and documents shall be issued by the registry of the court during the whole working day.

The court must have special rooms and adequate facilities for persons to examine the case files and prepare motions, appeals, etc.

6.12. The secretary of the hearing shall draw up the list of cases designated for examination on a particular date beforehand and record these cases in the register of the hearings. The list of cases is to be posted on a special board on the date of the hearing.

6.14. The secretary of the hearing concerned shall verify whether all the invited persons have appeared before the court, who is absent and what are the reasons for their absence before the hearing begins. The secretary shall report this to the court.

6.15. The participants in the hearing, which is heard by the court of cassation, and other interested persons shall be informed about the time and place of the hearing by the court of first instance.

The panel's secretary shall verify whether the interested persons were informed by the first instance court of the time and place of the hearing, and whether the copies of appeals or notifications were sent out."

THE LAW

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

33. The applicant complained, in particular, under Article 6 § 1 of the Convention, that no information was provided to him about the date and time of the hearing on 14 August 2000 in the Dnipropetrovs'k Regional Court and that there was no public hearing on that occasion. The applicant alleged various violations of Article 6 § 1 of the Convention, which in so far as relevant provides as follows:

"...In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

34. The Court recalls its finding that Article 6 § 1 of the Convention was applicable to the proceedings in present case, which involves the right to a good reputation following social rehabilitation (see the decision on admissibility of 15 June 2004).

A. Failure to inform the applicant about the date and time of a hearing

1. The parties' submissions

35. The Government submitted that the case file contained a copy of the notification about the date of the hearing before the court of cassation sent to the applicant on 27 July 2000. They also maintained that the register of court's correspondence, which is a part of the case file, contains a reference to the notification sent to the applicant and the relevant page. The Government concluded that the case file contained enough evidence to show that the applicant was duly informed about the date and time of the court's hearing of 14 August 2000.

36. The Government contended that, even assuming that the applicant did not receive a written notification about the date and time of the hearing, he and / or his representative could have obtained this information directly from the local court or the Dnipropetrovs'k Regional Court. They mentioned that the applicant resided near the court, frequently visited it on

various matters and had a possibility to consult the secretariat of the court and / or the judges about the date of the hearing. Moreover, under paragraph 6.12 of Instruction no. 22/5 (paragraph 32 above), the secretary of the hearing shall draw up a list of cases designated for examination on a particular date, and record these cases in a register not later than one day before the hearing takes place (Article 297 of the Civil Procedure Code, paragraph 31 above). This list shall be displayed in the court. Such lists are only archived for a year, before being destroyed. Accordingly the relevant list could not be presented to the Court.

37. The applicant disagreed. In particular, he mentioned that the notification was never sent to him and its original, not a copy, was included into the court's case file. Furthermore, the notice was never sent to the defendant in the case, there being also no proof of that in the case file. He contended that he only discovered on 21 August 2000, i.e. after his case had already been determined, about the date of the decisive hearing of 14 August 2000.

2. The Court's assessment

38. The Court notes that, in accordance with Article 90 of the Code of Civil Procedure, the notification about the date and time of a hearing had to be sent to the parties by registered letter. The acknowledgment of receipt would then be sent back to the court. In accordance with Article 93 of the Code of Civil Procedure, a court could also send a notification without an acknowledgment of receipt in cases where it considered that the absence of a party at the hearing would not be an obstacle for considering the case. However, if the court found that a person was not duly informed about the date and time of a hearing, it had power to adjourn its examination of the case (see paragraphs 30-32 above).

39. The Court considers it unlikely that on 27 July 2000 the applicant received the notification about the date and time of the hearing, as it was only on this date that the Zhovtnevy District Court of Dnipropetrovs'k gave leave for his cassation appeal (this ruling becoming final ten days later). Furthermore, the case was heard on 14 August 2000 by the Dnipropetrovs'k Regional Court on the assumption that the notification of 27 July 2000 had been duly communicated to the applicant. However, the Court observes that no copies of the relevant recorded delivery slips have been submitted to it, nor any note or decision dispensing with this postal method. In fact, the Government have not provided any evidence that the notification was ever sent out. Neither have the Government shown that it was received by the applicant on any particular date, allowing him / or his advocate to prepare for the hearing.

40. The Court concludes that the notification arrangements in the instant case were not sufficiently ensured and therefore the applicant was deprived of an opportunity to present his arguments in the course of a public hearing

before the Dnipropetrovs'k Regional Court. In the Court's view, this hearing was important given the fact that the defendant to the case was the Deputy President of that court.

41. The Court considers therefore that there was a violation of Article 6 § 1 of the Convention in respect of the failure of the domestic authorities to inform the applicant about the date and time of the hearing in the instant case.

D. Lack of a public hearing

42. The Government submitted that the case was heard in the course of a public hearing, since the public were not excluded from it and the participation of the applicant and / or his representative was not obligatory, pursuant to the legislation in force. The applicant was properly informed about the time and place of the hearing and his absence cannot be attributable to the State.

43. The applicant did not agree. He maintained that his presence at the hearing was important for the fair and objective consideration of his case.

44. The Court notes that the applicant's complaint concerns his own attendance at the hearing rather the wider question of the attendance of the general public. However, this complaint has been largely canvassed in the preceding considerations. Given its conclusion at paragraph 41 above that there has been a violation of Article 6 § 1 of the Convention, the Court finds that it is not necessary to make a separate examination of this aspect of the case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed USD 10,000 in compensation for non-pecuniary damage.

47. The Government maintained that this amount was exorbitant and not justified by any circumstances of the case.

48. 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.

B. Costs and expenses

49. The applicant submitted a claim relating mainly to the costs of the correspondence with the Court.

50. Regard being had to the information in its possession, the Court awards the applicant EUR 200 for costs and expenses.

C. Default interest

51. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *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, the following sums, to be converted into the currency of the respondent State at the rate applicable on the date of payment:
   (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and
   (ii) EUR 200 (two hundred euros) for costs and expenses, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President