

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

FIFTH SECTION

CASE OF KLOKOV v. UKRAINE

(Application no. 65513/14)

JUDGMENT

STRASBOURG

30 March 2023

This judgment is final but it may be subject to editorial revision.



In the case of Klokov v. Ukraine,

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

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 65513/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 September 2014 by a Ukrainian national, Mr Rostyslav Volodymyrovych Klokov ("the applicant"), who was born in 1976 and lives in Kropyvnytskyy and who was represented by Mr S.P. Rabinovych, a lawyer practising in Lviv;

the decision to give notice of the complaint under Article 6 § 3 (b) of the Convention to the Ukrainian Government ("the Government"), represented at the material time by their acting Agent, Ms O. Davydchuk, and to declare the remainder of the application inadmissible;

the Government's observations and the absence of any comments from the applicant in reply;

Having deliberated in private on 9 March 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 6 § 3 (b) of the Convention that he was not afforded adequate time and facilities to prepare his defence in criminal proceedings against him.

2. In September 2012 criminal proceedings were instituted against the applicant on suspicion of aggravated misappropriation of communal property, forgery of official documents and money laundering when occupying the post of director of a local communal utility company.

3. After the pre-trial investigation had been completed, on 6 November 2012 the applicant and his lawyer received access to the case file, consisting of twenty-eight volumes and 6,893 pages in total. They were informed that they could study the file every day for an unlimited period of time.

4. As confirmed by the records signed by the applicant and his lawyer, during the period from 6 November to 11 November 2012 they studied 3,477 pages of the case file.[1] Every day during that period the investigator wrote a report stating that the applicant and his lawyer had been deliberately protracting their familiarisation with the case file. It was noted that the lawyer

[1] In other words, about 580 pages per day.

had in fact studied more material than the applicant but had refused to confirm that; that the applicant had studied the same material many times; that both of them had declined the use of any technical assistance (for example, making photocopies) even though the investigator had explicitly informed them of such a possibility; and that the duration of their familiarisation with the file varied from four to six hours per day even though they had been informed that it could be unlimited.[2] The applicant and his lawyer were warned several times that if they did not change their approach to studying the case file the investigator would apply to the court to have the duration of that process limited.

5. On 12 November 2012 the Kirovograd Leninskyy District Court ("the Leninskyy Court"), at the investigator's request, set a time-limit for the applicant and his lawyer to finish studying the case file by 16 November 2012 at the latest.[3] It was noted in that ruling that it could be challenged on appeal within three days after its pronouncement.

6. On 15 November 2012 the applicant lodged such an appeal. He pointed out that he and his lawyer had already studied a considerable part of the case file and that there were no reasons for the restriction in question.

7. On 6 December 2012 the Kirovograd Regional Court of Appeal ("the Court of Appeal") dismissed the applicant's appeal without examination. It noted that on 17 November 2012 the case file had been sent to the Kirovograd Kirovskyy District Court ("the Kirovskyy Court") for trial and that it was for that court to examine, during a preliminary hearing, any allegations of irregularities.

8. On 10 December 2012 the Kirovskyy Court started the trial with a preliminary hearing, during which it dismissed the applicant's complaint as unsubstantiated. It held as follows:

> "The arguments of the defence about not having had sufficient time for studying the case file are refuted by the ruling of [the Leninskyy Court] of 12 November 2012, which has become final and which established the time-limit at 16 November 2012 as sufficient for [the applicant and his lawyer] to study the case file; after the expiry of that time-limit they are therefore considered to have studied the case file in compliance with [the law]."

9. Subsequently, however, the applicant's request for additional access to the case file was granted. As a result, he and his lawyer studied the file during the period from 12 December 2012 to 2 March 2013 almost every day for about two hours per day. The trial continued during that period.

10. On 3 June 2013 the Kirovskyy Court found the applicant guilty as charged and sentenced him to eight years' imprisonment, three years'

[2] Apparently implying a maximum duration of eight hours per day, corresponding to working hours.

[3] It appears that the volume of the case file remaining to be studied amounted to 3,416 pages. In other words, the applicant and his lawyer were expected to study 683 pages per day.

prohibition on holding administrative posts and confiscation of his personal property.

11. The applicant challenged the above-mentioned judgment on appeal. He complained, among other things, that he had not been afforded sufficient time to study the case file after the pre-trial investigation. He also complained that, even though he had been given additional access to the file during the proceedings before the first-instance court, his trial had continued before he had finished studying the file. Furthermore, the applicant alleged that at that stage he and his lawyer had been obliged to study the file in a small and poorly lit room without any table, occupied by five to twelve persons at all times.

12. The applicant and his lawyer were additionally given access to the case file, at their request, from 26 June to 17 July 2013, allegedly in the same poor conditions as before.

13. On 18 October 2013 the Court of Appeal upheld the applicant's conviction. It did not comment on his complaints as set out above (see paragraph 11 above).

14. The applicant reiterated his grievances in an appeal on points of law.

15. On 13 February 2014 the Higher Specialised Court for Civil and Criminal Matters found against him. Like the appellate court, it did not comment on the applicant's allegations of undue restrictions in respect of his familiarisation with the case file.

16. The applicant complained that there had been a violation of his rights under Article 6 § 3 (b) of the Convention, firstly because insufficient time had been allocated for him and his lawyer to familiarise themselves with the case file after the completion of the pre-trial investigation and secondly because of the allegedly poor conditions in which they had been obliged to study the file on later occasions.

THE COURT'S ASSESSMENT

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

18. The Government submitted that, as confirmed by the records on familiarisation with the case file that had been signed by the applicant, he and his lawyer had studied the file several times. The Government also noted that there was no evidence in support of the applicant's allegation of poor conditions for studying the file during the judicial proceedings.

19. While he confirmed his interest in pursuing his application, the applicant did not comment on the Government's observations and invited the Court to examine the case on the basis of his earlier submissions and the available material.

20. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine

the complaint under both provisions taken together (see, for example, *Rook v. Germany*, no. 1586/15, §§ 45 and 55, 25 July 2019).

21. The general principles concerning the right to have adequate time and facilities for the preparation of one's defence have been summarised in, for example, *Gregačević v. Croatia* (no. 58331/09, § 51, 10 July 2012). When assessing whether the accused had adequate time for the preparation of his defence, particular regard must be had to the nature of the proceedings, as well as the complexity of the case and the stage of the proceedings (ibid.).

22. Turning to the present case, the Court notes that the prosecution's case file was voluminous and its examination inevitably required a substantial period of time (see paragraph 3 above and compare *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 176, 26 July 2011), all the more so given that the charges against the applicant concerned complex financial issues (see paragraph 2 above).

23. Having regard to the fact that the applicant and his lawyer had been studying about 580 pages every day during the period from 6 November to 11 November 2012, the investigator's conclusion that they were attempting to protract the process appears to have been groundless (see paragraph 4 above). Nonetheless, on 12 November 2012 the Leninskyy Court granted the investigator's application to have the time for the applicant and his lawyer to study the case file limited to the period ending on 16 November 2012 (see paragraph 5 above). As a result, they had only five days to study the remaining 3,416 pages (or about 683 pages per day), which, in the Court's view, was insufficient.

24. The Court also takes note of the fact that there was no response to the applicant's complaint to that effect: while he had been entitled to lodge an appeal and did so, the appellate court dismissed it without examination on the grounds that the matter would be examined by the trial court, whereas the latter, in turn, referred to the fact that the restriction had been set by a ruling which had become final (see paragraphs 5-8 above).

25. It is true that the applicant and his lawyer were given additional access to the case file during the judicial proceedings (see paragraphs 9 and 12 above). The proceedings were not, however, adjourned during those periods. In other words, the applicant and his lawyer had to mount the defence before having had sufficient time to study all the material in the case file. Furthermore, the applicant's specific and pertinent allegations about the inadequate conditions in which he and his lawyer had been obliged to study the file at that stage remained unaddressed by the domestic courts (see paragraphs 11-15 above). It follows that the initial restriction on the time allowed for the applicant and his lawyer to study the case file prior to the trial was not rectified by their additional access to the file on later occasions.

26. Lastly, the Court does not accept the Government's argument that the applicant had sufficient time to study the case file on several occasions merely owing to the fact that he had signed records to that effect (see paragraph 18

above). In the absence of any indication to the contrary, signing a record on familiarisation with the material in the case file appeared to be a procedural formality aimed at documenting the fact that the person concerned was indeed given access to the case file, but it did not necessarily follow from this that the signing of such a record could somehow attest in any way whether the time and facilities for such access were sufficient (compare *Huseyn and Others*, cited above, § 176).

27. In the light of all the above considerations, the Court considers that the applicant did not have sufficient time and facilities for the preparation of his defence.

28. There has accordingly been a violation of Article 6 §§ 1 and 3 (b) of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (b) of the Convention.

Done in English, and notified in writing on 30 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President