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

FIFTH SECTION

DECISION

Application no. 13809/20
Oleksiy Valeriyovych KHARCHUK
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 28 November 2024 as a Committee composed of:

Armen Harutyunyan*, President*,
Andreas Zünd,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 March 2020,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Oleksiy Valeriyovych Kharchuk, is a Ukrainian national, who was born in 1982 and lives in Trytuzne. He was represented before the Court by Ms O.I. Alistratova, a lawyer practising in Dnipro.

In 2016 the applicant's driving licence was stolen. In March 2017 he discovered that proceedings had been initiated against him for the administrative offence of driving while displaying signs of intoxication. At the applicant's request, the police conducted an internal investigation which established that the administrative offence in question had been committed by another person using the applicant's driving licence. On 18 April 2017 the police informed the applicant that his case had to be closed and that a copy of the relevant report had been sent to the Amur-Nyzhnyodniprovskyi District Court of Dnipro for a decision. It appears, however, that the report was not sent to the court. Following a hearing on 26 April 2017 the District Court delivered a judgment convicting the applicant of the administrative offence of driving while displaying signs of intoxication, fining him and suspending his driving licence for one year. It appears from that judgment that the applicant was notified of the hearing of the same day by SMS and post. The

applicant, however, did not take part in that hearing. On 31 May 2017 the judgment was published in the State Register of Court Decisions.

On 28 August 2019 the applicant lodged an appeal with the Dnipro Court of Appeal against the judgment of 26 April 2017, requesting an extension of the applicable ten-day time-limit for lodging an appeal. He argued that (i) since he had not been notified of the hearing of 26 April 2017 and had not received a copy of the contested judgment, he had believed that the proceedings against him had been closed; and (ii) he had learned about the contested judgment only in July 2019. On 13 September 2019 the Dnipro Court of Appeal rejected the applicant's extension request and refused to open appeal proceedings, reasoning that (i) the applicant had been aware since March 2017 that proceedings had been opened against him; (ii) accordingly, he and his lawyer had had ample opportunity prior to July 2019 to ascertain whether there had been any developments in those proceedings and what their outcome had been, including by consulting the publicly available State Register of Court Decisions.

COMPLAINTS

The applicant complained under Article 6 of the Convention about the Dnipro Court of Appeal's refusal to examine his appeal on the merits.

He further complained under the same provision and under Article 1 of Protocol No. 1 about the unfavourable outcome of the proceedings.

THE LAW

The Court notes that the applicant has been aware of the proceedings against him since March 2017 and that he was informed in April 2017 that the police report had been sent to the District Court. Furthermore, it appears from the judgment of 26 April of the District Court that the applicant was notified of the hearing of the same day by SMS and post. However, prior to July 2019 he made no attempt to apprise himself of any further developments in those proceedings or of their outcome. Yet nothing prevented the applicant from obtaining a copy of the judgment delivered by the Amur-Nyzhnyodniprovskyi District Court of Dnipro on 26 April 2017, which was published in the State Register of Court Decisions on 31 May 2017. It follows that the applicant failed to display the necessary diligence in following the developments in the proceedings and did not take any reasonable steps to inquire about their outcome for over two years (see *Karakutsya v. Ukraine*, no. 18986/06, §§ 53-60, 16 February 2017). In those circumstances, the Dnipro Court of Appeal's decision of 13 September 2019 dismissing the applicant's appeal as lodged out of time does not appear to be arbitrary or manifestly unreasonable. Accordingly, his complaint of the lack of access to

that court should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

The applicant's complaints under Article 6 and Article 1 of Protocol No. 1 about the outcome of the proceedings must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention, on account of his failure to exhaust domestic remedies, since he failed to comply with the relevant procedural requirements in lodging his appeal with the Dnipro Court of Appeal.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 December 2024.

Martina Keller Deputy Registrar	Armen Harutyunyan President