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

FIFTH SECTION

DECISION

Application no. 49207/10
Gennadiy Vadimovich KHARITONOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 1 September 2022 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. 49207/10) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 August 2010 by a Ukrainian national, Mr Gennadiy Vadimovich Kharitonov, who was born in 1970 and lives in Kherson ("the applicant") who was represented by Ms N.V. Panchuk, a lawyer practising in Kherson;

the decision to give notice of the complaint concerning the restrictions on the applicant's freedom to leave his country to the Ukrainian Government ("the Government"), represented by their Agent, Mr I. Lishchina, 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. The case concerns restrictions on the applicant's right to be issued with a new passport for travelling abroad, allegedly entailing a violation of Article 2 of Protocol No. 4 to the Convention.

2. On 26 May 2006 the applicant was arrested in Moldova, where he was residing at the time. He was charged with identity document forgery and human trafficking. After being released from pre-trial detention on

21 February 2007, he fled Moldova and travelled to Ukraine. On 15 June 2007 he was sentenced in Moldova, on those charges, to seventeen years' imprisonment. The judgment was not appealed against and became final (for more details, see *Haritonov v. Moldova*, no. 15868/07, §§ 6-13, 5 July 2011).

3. As the applicant's passport for travelling abroad (namely, his external passport) was due to expire in May 2010, in October 2009 he applied at the Kherson Komsomol District Police Department ("the Police Department") for a new. He then left for Vietnam, to work for a company there.

4. In November 2009 he found out that he had been refused a new passport as he was on a list of persons wanted in relation to criminal investigations/proceedings. However, he did not receive any formal notification regarding his application for an external passport.

5. On 15 January 2010 he signed a five-year contract of employment with a Vietnamese company.

6. In March 2010 the applicant returned to Ukraine and made a formal request to find out why he had been refused a passport.

7. On 2 April 2010 he was informed that he could not receive a new external passport as his right to leave the country was restricted pursuant to part 3 of section 6 of the Law on the procedure applicable to Ukrainian citizens for leaving and entering Ukraine ("the Exit and Entry Act"), which at the material time prohibited a person against whom criminal proceedings had been brought, and until the conclusion of such proceedings, from exiting the country.

8. The applicant lodged an administrative complaint against the Police Department, claiming that its refusal to issue him with a new external passport and the restriction on his right to leave the country were unlawful as no criminal proceedings were pending against him in Ukraine.

9. On 29 September 2010 the Kherson Court dismissed the applicant's complaint. In its decision the court noted that the applicant had rightly been refused a new external passport, since there were criminal proceedings against him in Moldova and the relevant provision of the Exit and Entry Act had to be read in the light of Ukraine's international obligations, namely the bilateral and multilateral treaties between Moldova and Ukraine on international legal assistance. Under those treaties a State was bound to accept a criminal case concerning its permanent residents upon a request by another State. Given that the law-enforcement authorities of Moldova had added the applicant to the database of wanted persons of the Commonwealth of Independent States, Ukraine had an international obligation to prosecute him, as one of its own nationals, who could not be extradited, if Moldova so requested. The Kherson Court concluded that the Police Department and the Migration Service had acted within their competence and had lawfully limited the applicant's rights.

10. On 1 October 2010 a new external passport was issued; however, it was not given to the applicant and was later destroyed.

11. On 8 November 2010 the applicant, who meanwhile had changed his surname to Yakovyshyn, received a new external passport under his new surname. He used it thereafter for multiple trips abroad.

12. On 1 February 2012 the Odessa Administrative Court of Appeal upheld the decision of the Kherson Court.

13. On 27 January 2016 the Higher Administrative Court quashed the decisions of the lower courts upon the applicant's appeal and remitted the case to the Kherson Court, as the first-instance court, for fresh examination. The Higher Administrative Court found that the applicant had filled in a special form when he had applied for a new external passport in October 2010. The relevant authorities had had an obligation to examine that form within three months and formally notify him of any refusal to issue the passport and on what grounds. Although the applicant had not complained about that particular shortcoming, the court concluded that, as that procedure had not been followed, the authorities had acted unlawfully. As to the applicant's complaints, the court dismissed them.

14. On 24 May 2016 the Kherson Court found for the applicant in respect of the defect that the remitting court had examined of its own motion. It thus declared unlawful the failure of the Police Department to examine the applicant's application for a new external passport in due time and to provide him with a reasoned decision for any refusal. However, the court dismissed the applicant's complaints and claims for compensation as unfounded.

15. On 13 June 2017 the Odessa Administrative Court of Appeal upheld the decision of the first-instance court.

THE COURT'S ASSESSMENT

16. The Government submitted that the applicant had not suffered any significant disadvantage, as his external passport had expired in May 2010 and the new one had been issued in October 2010, thus his right to leave the country had been restored. They also argued that the applicant's failure to inform the Court about the new external passport issued to him constituted an abuse of the right of individual application.

17. The applicant disagreed. He challenged the Government's assertion that his right to leave the country had been restored in October 2010 as he had never received the passport issued on 1 October 2010, which in any case had subsequently been destroyed. As to his other passport, which he had received on 8 November 2010 under another surname, it had been the result of an oversight on the part of the authorities rather than constituting a restoration of his right to travel abroad. He also pointed out that because of those restrictions, he could no longer honour his obligations under the contract with his employer in Vietnam (see paragraph 5 above).

18. The general principles concerning restrictions on freedom of movement have been summarised in *Napijalo v. Croatia* (no. 66485/01, §§ 68-69, 13 November 2003).

19. The Court notes that the duration of the actual restriction on the applicant's right to travel abroad lasted for approximately six months (May to November 2010) and was based on the fact that the applicant was a fugitive from criminal proceedings on serious charges, as confirmed by the sentence handed down by the Moldovan court (see paragraph 2 above). The domestic authorities explained the restriction on the applicant's right to leave the country by the fact that he was on the list of wanted persons and the international legal assistance instruments provided for the transfer of the criminal case against the applicant to Ukraine (see paragraphs 7 and 9 above). The Ukrainian authorities could legitimately have believed that, in accordance with their international obligations, the Moldovan authorities would soon ask them to prosecute the applicant. In the light of such an interpretation, which does not appear to be either arbitrary or manifestly unreasonable, the relatively short period of actual restriction on the applicant's right to travel abroad appears to be both lawful and reasonable within the meaning of Article 2 § 3 of Protocol No. 4 to the Convention.

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

For these reasons, the Court, unanimously,

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 22 September 2022.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President