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

FIFTH SECTION

DECISION

Application no. 463/06
Vasyl Volodymyrovych KRAVETS
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 26 April 2016 as a Committee composed of:

Khanlar Hajiyev, *President,*
André Potocki,
Síofra O'Leary, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 December 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vasyl Volodymyrovych Kravets, is a Ukrainian national who was born in 1963 and was, at the time of his most recent communication with the Court, detained in Kyiv.

2. The applicant was represented by Mr T.O. Kalmykov, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented, most recently, by their Acting Agent, Ms O. Davydchuk, of the Ministry of Justice.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 6 October 2003 the applicant was arrested.

5. On 8 October 2003 a police investigator, S., drew up an arrest report according to which the applicant was arrested on suspicion of stealing crude oil from a pipeline. A handwritten note purportedly signed by the applicant appearing on the report read, in so far as relevant "[I] fully plead guilty". On

the same day a record was drawn up indicating that the investigator had explained to the applicant his right to have a lawyer and that the latter had waived this right. When questioned, the applicant made incriminating statements.

6. According to a record dated 8 and 9 October 2003, the investigator conducted an onsite reconstruction of events in the course of which the applicant identified the places where the suspected theft had been committed. The record, countersigned by two witnesses, included photographs purportedly showing the applicant identifying the scenes of the theft.

7. According to records dated 9 and 14 October 2003 the applicant's rights were again explained to him, including the right to have a lawyer, which he again waived. On the latter date he was also questioned and made incriminating statements.

8. The applicant denies that his rights were explained to him, that he waived them and indeed that he signed the above documents.

9. On 10 October 2003 the Novi Sanzhary Court ordered the applicant's pre-trial detention. On 24 November 2003 it was extended for up to four months.

10. On 24 December 2003 the investigator admitted a lawyer, G., as the applicant's defence counsel.

11. On 16 February 2004 the applicant wrote to the Poltava prosecutor's office ("the prosecutor's office"), informing them that he was denying all charges against him and that he had "signed everything that had been given to me with the aim of self-defence against torture" by unspecified police officers.

12. On 16 March 2004 the pre-trial investigation was completed and he was allowed access to the case file.

13. On 21 April 2004 the prosecutor's office informed the applicant that the case file did not contain any material to support his allegation that he had been ill-treated or showing that he had sustained any injuries.

14. On 20 April 2006 the Poltava District Court convicted the applicant of theft and other related offences committed as part of an organised criminal group. It sentenced him to six years' imprisonment with confiscation of his property. The court relied on the evidence obtained from the applicant during his interviews as a suspect and subsequent interviews in the course of the pre-trial investigation, the accounts of six other defendants and thirty-nine witnesses, six cross-examinations, fifteen photographic identifications, thirteen expert opinions and various other pieces of evidence.

15. The applicant appealed, arguing that the documents which recorded his incriminating statements had been forged.

16. On 21 March 2007 the Poltava Regional Court of Appeal upheld the applicant's convictions on most charges, quashed his conviction on other

charges, and reduced his sentence to five years' imprisonment. The court found, *inter alia*, that the applicant's allegations of forgery contradicted the materials in the case file.

17. The applicant appealed against this ruling on points of law to the Supreme Court. He complained primarily about the assessment of evidence by the lower courts. He alleged that the records of his questioning and that of other defendants had been forged. He pointed out alleged contradictions in the statements of the witnesses who had countersigned some of those documents, which they had made while being cross-examined at his trial. He also pointed out alleged contradictions in various numbers in the documents, such as the volume and valuation of the stolen oil.

18. After conducting a pre-investigation inquiry, on 5 July 2007 the prosecutor's office rejected a criminal complaint by the applicant against the investigator and refused to institute criminal proceedings against her for forgery of documents in the applicant's criminal case. The prosecutor relied in particular on the statements of the witnesses who had countersigned the documents in question. The courts upheld the prosecutor's decision, with the Supreme Court making a final ruling on 9 June 2008.

19. On 20 January 2009 the Supreme Court dismissed the applicant's appeal and upheld the convictions and sentence, as modified by the Court of Appeal.

COMPLAINTS

20. The applicant complained under Article 6 §§ 1 and 3 (b) and (c) of the Convention that he had not been afforded adequate facilities to prepare his defence, that he had not been informed of his rights upon arrest and that his right to defend himself through a lawyer of his own choosing had been breached since his waivers of this right had been forged and he had not been provided with a lawyer upon arrest.

21. The applicant also raised a number of other complaints, without referring to any specific provisions of the Convention as well as relying on Articles 3, 5, 6, 13 and 17 of the Convention.

THE LAW

A. Alleged violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention

22. The applicant complained of breaches of Article 6 §§ 1 and 3 (b) and (c) of the Convention. The relevant parts provide as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
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> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

23. The Government submitted that the applicant had not raised his complaints in his appeal on points of law and therefore had not exhausted the available domestic remedies.

24. The applicant insisted that while he had not expressly raised his complaints relating to Article 6 §§ 1 and 3 (b) and (c) before the Supreme Court, he had raised them in substance by referring in general to breaches of his procedural rights.

25. The Court is not persuaded by the applicant's argument. In his appeal on points of law he did not allege that any of his rights had been breached in the course of the early investigative actions. Rather, he pointed out alleged contradictions in the documents recording them, implying that they did not take place at all and that the documents were forged. However, this allegation, which was exhaustively examined and rejected by the domestic authorities, is different from the complaints made by the applicant before this Court, namely that failure to explain his rights and to provide a lawyer to him after his arrest breached his rights under Articles 6 §§ 1 and 3 (b) and (c) (compare *Shalimov v. Ukraine*, no. 20808/02, § 65, 4 March 2010).

26. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Other complaints

27. The Court has examined the remainder of the applicant's complaints referred to in paragraph 21 above. However, in the light of all the material

in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with 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 19 May 2016.

Milan Blaško
Deputy Registrar

Khanlar Hajiyev
President