

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

FIFTH SECTION

DECISION

Application no. 19157/04
Oleg Nikolayevich LIMAN
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 7 May 2013 as a Chamber composed of:

Mark Villiger, *President,*
Ann Power-Forde,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 4 March 2004,

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 Oleg Nikolayevich Liman, is a Ukrainian national, who was born in 1973. Before being imprisoned the applicant lived in Slovyansk, Donetsk Region.

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy.

A. The circumstances of the case

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

1. Criminal proceedings against the applicant

4. On 16 August 2002 the applicant and two accomplices attacked and robbed Mr K.S., Ms K.N. and Mr K.Yu. in their home.

5. On 27 August 2002 the applicant was arrested by police officers after being identified by Ms K.N.

6. On 30 May 2003 the Slovyansk Town Court ("the Town Court") found the applicant guilty of robbery and sentenced him to ten years and six months' imprisonment, with confiscation of his property. The applicant was represented by three lawyers in those proceedings.

7. On 26 August 2003 and 17 June 2004 the Donetsk Court of Appeal ("the Court of Appeal") and the Supreme Court, respectively, upheld the judgment of 30 May 2003.

2. Civil proceedings

8. On 2 July 2004 the Town Court, in the course of civil proceedings, ordered the applicant to pay 84,837.10 Ukrainian hryvnias (UAH) in respect of pecuniary damage and UAH 20,000 in respect of non-pecuniary damage in favour of Mr K.S. and Ms K.N in compensation for the crime he had committed against them.

9. On 21 July 2004 the applicant appealed against that judgment. The appeal was handwritten.

10. On 17 September 2004 the Court of Appeal remitted the appeal to the Town Court for a decision on whether it had been prepared in accordance with the procedural requirements.

11. On 29 September 2004 the Town Court found that the applicant's appeal had not been properly submitted. The court noted, in particular, that the appeal had not been typewritten; it did not contain the necessary information about the other parties to the proceedings; it was not sufficiently reasoned; no copies thereof had been enclosed for the other parties; and the court fee for lodging an appeal had not been paid. The court therefore invited the applicant to rectify those shortcomings by 18 October 2004.

12. On 18 October 2004 the Town Court found that the applicant had not rectified the shortcomings in his appeal and returned it to him unexamined.

13. On 17 November 2004 the applicant submitted a new appeal against the judgment of 2 July 2004. The appeal was again handwritten. No evidence was enclosed suggesting that the applicant had paid a court fee, and the applicant did not request exemption from payment of the court fee.

14. On 29 November 2004 the Court of Appeal returned the appeal to the Town Court and suggested that it consider whether any steps should be taken to provide the applicant with the requisite facilities to prepare his appeal in accordance with the procedural formalities.

15. On 20 March 2005 the applicant signed an agreement with lawyer G. according to which that lawyer was to assist him in his criminal case.

16. On 21 March 2005 the Town Court extended the time-limit for appealing against the judgment of 2 July 2004 and accepted the applicant's appeal. That hearing was attended by lawyer G.

17. On an unspecified date the case was sent to the Court of Appeal.

18. On 11 May 2005 the Court of Appeal found that the applicant's appeal was again not typewritten. It therefore refused to open appeal proceedings and returned the case file to the Town Court.

B. Relevant domestic law

19. The relevant provisions of the Code of Civil Procedure of 18 July 1963 (effective until 1 September 2005, the date when the Code of Civil Procedure of 18 March 2004 came into force) can be found in the judgment of *Volovik v. Ukraine* (no. 15123/03, §§ 24-31, 6 December 2007).

COMPLAINTS

20. The applicant complained under Article 6 § 1 of the Convention that his right of access to the Court of Appeal was violated.

21. The applicant further complained that on 27 August 2002 he was arrested unlawfully; that the criminal proceedings against him were unfair because the courts misinterpreted the facts and wrongly assessed evidence; that he was not provided with appropriate defence counsel and that he could not question witnesses.

THE LAW

A. Alleged violation of right of access to a court

22. The applicant complained that he had been denied access to a court of appeal to challenge the judgment of 2 July 2004 adopted in his civil case.

He referred to Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

1. The submissions by the parties

23. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaint. In particular, relying on Article 297 § 3 of the Code of Civil Procedure of 18 March 2004, the applicant could have lodged a cassation appeal against the decision of 11 May 2005. They further contended that the applicant had not explained to the domestic authorities the difficulties he had allegedly encountered in the preparation of his appeal. According to the Government, if the applicant considered that he was not able to comply with some procedural requirements, he should have raised those issues before the courts explicitly and provided the relevant explanation. However, there was no document in the file suggesting that the applicant had raised those issues. In particular, the applicant never contended that he could not prepare a typewritten appeal, or that he should be exempted from paying the court fee for lodging an appeal.

24. The Government next submitted that the complaint was manifestly ill-founded given that the applicant had been assisted by lawyer G., who could have resolved the issue of the necessity for a typewritten appeal.

25. The applicant disagreed and maintained that the complaint was admissible. As to the lawyer G., there had been no chance that that lawyer would assist him as they had had an unsettled issue regarding his fees.

2. The Court's assessment

26. It is not necessary to examine all the Government's objections as to the admissibility of the present complaint since it is in any event inadmissible for the following reasons.

27. The Court reiterates that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 33, *Reports of Judgments and Decisions* 1997-VIII,

and *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 34, *Reports* 1998-I).

28. In the present case the applicant complained that his appeal in the civil case was not considered on the merits. The Court has held that, in view of the nature of appeal proceedings under Ukrainian law, the right of access to a court of appeal should be protected by the fundamental guarantees contained in Article 6 (see *Volovik v. Ukraine*, cited above, § 54).

29. The Court takes into account the attention which was paid to the applicant's situation by the domestic courts as regards ensuring his right to appeal against the judgment of the Town Court. In particular, on 29 November 2004 the Court of Appeal, without any explicit requests on the part of the applicant, ordered the Town Court to consider the steps which could be taken to provide the applicant with the requisite facilities to prepare his appeal in accordance with the procedural rules. Subsequently, the applicant was represented by a lawyer in the hearing before the Town Court, with the result that the time-limit for lodging the appeal was extended. Although the agreement between the applicant and his lawyer indicated that the lawyer was supposed to provide assistance on the criminal case, his participation in the hearing in the civil case, which was linked to the criminal case, suggested that the applicant and the lawyer had also reached a representation agreement for the civil case.

30. The Court further notes that even though the Court of Appeal's decision of 11 May 2005 stated that the applicant's appeal could not be considered on the merits because it was not typewritten, it should not be overlooked that the applicant's appeal did not comply with all the other admissibility requirements. In particular, it appears that the applicant failed to pay a court fee or request exemption from paying it (see paragraph 13 above).

31. The Court considers that as long as the applicant was represented by a lawyer, there were no grounds for the domestic authorities to reasonably assume that the applicant would experience any further difficulties in complying with the procedural formalities. Nevertheless, it does not appear that at any point before the Court of Appeal's decision of 11 May 2005 the applicant or his lawyer took any steps in order to ensure the appeal's compatibility with the admissibility requirements. The applicant's contention that the lawyer subsequently refused to represent him should have been raised before the domestic courts in order to enable them to determine whether any other measures were required. However, the applicant did not inform the authorities of those alleged circumstances, without any valid reason. Moreover, it does not appear that the applicant took any steps in order to pursue the matter after the Court of Appeal refused to open appeal proceedings. Yet, it is incumbent on the interested party to display appropriate diligence in the defence of his interests (see,

mutatis mutandis, *Trukh v. Ukraine* (dec.), no. 50966/99, 14 October 2003, and *Gurzhiy v. Ukraine* (dec.), no. 326/03, 1 April 2008).

32. In the light of the above considerations, the Court holds that the present complaint does not disclose any issue of disproportionate restriction of the applicant's right of access to court attributable to the State authorities. It follows that the complaint should be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations of the Convention

33. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the materials in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

34. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President