

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

FIFTH SECTION

DECISION

Application no. 34787/13
Roman Volodymyrovych PRYYMAKOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 13 April 2023 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 34787/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 May 2013 by a Ukrainian national, Mr Roman Volodymyrovych Pryymakov ("the applicant"), who was born in 1994 and lives in Romny, and was represented by Mr D.D. Menko, a lawyer practising in Romny;

the decision to give notice to the Ukrainian Government ("the Government"), represented by their Agent, most recently Ms Marharyta Sokorenko, of the complaints concerning the length of criminal proceedings and the right to a fair hearing, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the length and alleged unfairness of criminal proceedings instituted against the applicant in 2010, which ended with his conviction in 2020. It raises issues under Article 6 § 1 of the Convention.

2. On 31 August 2010 the applicant, aged sixteen, shot his friend D. in the head while he was showing his father's rifle to D. and another friend, V., at his home. On the same day the applicant was arrested and criminal

proceedings were instituted against him under Article 115 (premeditated murder) of the Criminal Code of Ukraine ("the CCU").

3. On 1 July 2011 the Romny Court remitted the case for further investigation. The prosecutor and the victims appealed. On 13 September 2011 the Sumy Regional Court of Appeal ("the Court of Appeal") upheld the above-mentioned decision.

4. On 15 November 2011 the Romny Court re-examined the case, terminated the proceedings and amnestied the applicant. The victims and prosecutor appealed. On 17 January 2012 the Court of Appeal quashed that decision and remitted the case to the Romny Court for re-examination.

5. During the re-examination of the case by the Romny Court, the victims filed numerous applications asking the court, among other things, to remit the case for additional investigation. On 27 December 2012 the Romny Court remitted the case for further investigation. The applicant appealed. On 21 February 2013 the Court of Appeal upheld the above-mentioned decision.

6. On 28 February 2014, following a fresh examination, the Romny Court found the applicant guilty under Article 119 (unintentional homicide) of the CCU, sentenced him to three years and six months' imprisonment, then amnestied him. The applicant, victims and prosecutor appealed. On 24 June 2014 the Court of Appeal quashed that decision and remitted the case to the Romny Court for re-examination. On 22 July 2014 the case was remitted to the Konotop Court after the judges at the Romny Court had withdrawn of their own motion.

7. On 9 December 2014 the Konotop Court convicted the applicant of premeditated murder under Article 115 of the CCU and sentenced him to seven years' imprisonment. The applicant and his guardian appealed.

8. On 4 March 2015 the Court of Appeal reclassified the charges against the applicant as falling under Article 119 rather than Article 115 of the CCU, convicted him of unintentional homicide, sentenced him to three years and six months' imprisonment, then amnestied him. The applicant and the victims appealed on points of law. On 22 October 2015 the Higher Specialised Civil and Criminal Court ("the HSC") quashed the latter decision and remitted the case to the Court of Appeal for re-examination.

9. On 6 April 2016 the Court of Appeal again reclassified the charges against the applicant as falling under Article 119 rather than Article 115 of the CCU, convicted him of unintentional homicide, sentenced him to three years and six months' imprisonment, then amnestied him. The applicant, the victims and the prosecutor appealed on points of law. On 23 May 2017 the HSC remitted the case to the Court of Appeal for re-examination, pointing to defects in the decision of 6 April 2016 and stating that the Court of Appeal had not fully taken into account the HSC's previous decision, in which the same defects had been indicated.

10. On 23 January 2019 the Court of Appeal upheld the verdict of 9 December 2014, convicting the applicant of premeditated murder and

sentencing him to seven years' imprisonment. The applicant appealed on points of law.

11. On 3 April 2019 the applicant's representative applied to the Konotop Court asking it to interpret the verdict of 9 December 2014. The case file was sent from the Supreme Court to the Konotop Court, where it was kept until 15 November 2019, when the applicant's representative withdrew his application for interpretation.

12. On 23 April 2020 the Supreme Court upheld the verdict of 9 December 2014 and the decision of 23 January 2019.

13. The hearings in the case were adjourned eleven times owing to the applications filed by the applicant's representative and the victims' representative, and their failure to appear at certain hearings. The adjournments caused a delay of nine months and six days (see Appendix).

14. The applicant complained under Article 6 § 1 of the Convention of the length and unfairness of the proceedings.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. Length of criminal proceedings

15. The applicant complained that the length of the criminal proceedings had been excessive. The Government disagreed.

16. The general principles concerning the length of criminal proceedings may be found in, for instance, *Pélissier and Sassi v. France* ([GC], no. 25444/94, § 67, ECHR 1999-II) and *Pedersen and Baadsgaard v. Denmark* ([GC], no. 49017/99, § 45, ECHR 2004-XI).

17. In the present case, the period to be taken into consideration started on 31 August 2010, when the criminal case was opened, and ended on 23 April 2020, when the Supreme Court rendered its final decision. It therefore lasted nine years, seven months and twenty-five days before the courts at three levels of jurisdiction.

18. The Court notes that the criminal case was remitted several times for additional investigation and then re-examination to the courts of first and second instance. The remittals caused certain delays in the proceedings. However, the authorities were not the only ones responsible for the length of the proceedings. The victims' and the applicant's applications and appeals against the verdicts and the decisions added to the length of the proceedings. Moreover, the hearings were adjourned eleven times on account of applications from the applicant's or victims' representatives or their failure to appear at hearings. These adjournments caused a delay of nine months and six days (see Appendix). A further delay of seven months and thirteen days

was caused by the applicant's application for interpretation, which he subsequently withdrew (see paragraph 11 above).

19. In view of the above circumstances of the case and the conduct of the applicant and the victims, together with the complexity of the issues to be resolved by the national authorities, the length of the proceedings cannot be considered unreasonable.

20. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Fair hearing

21. The applicant complained that the repeated adoptions of contradictory decisions in his case had made the proceedings unfair. The Government disagreed.

22. The relevant principles addressing the issue of conflicting domestic decisions can be found in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58, 20 October 2011), being equally pertinent as regards criminal cases.

23. The Court observes that the national courts of first and second instance reached different conclusions in relation to the legal classification of the applicant's actions. However, the highest court, the HSC, delivered concordant decisions, giving clear and specific reasoning as to why the appellate court's decisions had to be quashed, and gave further instructions for the re-examination of the case. In these circumstances, the Court is not convinced that there were contradictory decisions capable of making the proceedings unfair.

24. Accordingly, this complaint 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 11 May 2023.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President

Appendix

Delays in court proceedings not attributable to the State

No.	Dates	Reason	Delay
1.	Between 16 March and 31 March 2011	Application from the victim's representative to adjourn the hearing	15 days
2.	Between 31 March and 20 April 2011	Application from the applicant's representative to adjourn the hearing	20 days
3.	Between 20 April and 6 May 2011	Application from the applicant's guardian to adjourn the hearing	16 days
4.	Between 30 August and 13 September 2011	Application from the victims and their representative to adjourn the hearing	14 days
5.	Between 22 and 29 February 2012	Application from the victims and their representative to adjourn the hearing	7 days
6.	Between 27 April and 15 May 2012	Application from the applicant's representative to adjourn the hearing	18 days
7.	Between 27 September and 21 October 2013	Application from the victims asking for experts to be summoned to attend the court hearing	24 days
8.	Between 13 August and 29 September 2014	Failure of the applicant, his representative and the prosecutor to appear at the hearing	1 month and 16 days
9.	Between 19 February and 4 March 2015	Application from the applicant's representative to adjourn the hearing	13 days
10.	Between 22 December 2015 and 14 January 2016	Application from the victim's representative to adjourn the hearing	23 days
11.	Between 7 March and 23 May 2017	Failure of the applicant's representative to appear at the hearing	2 months and 16 days
Total delay:			**272 days (9 months and six days)**