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

FIFTH SECTION

DECISION

Application no. 80524/12
Mykola Oleksiyovych SOBKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 2 February 2023 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. 80524/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 December 2012 by a Ukrainian national, Mr Mykola Oleksiyovych Sobko ("the applicant"), who was born in 1970 and lives in Iziaslav, and who, having been granted legal aid, was represented by Mr M. Tarakhkalo, Ms O. Chilutyan, and Ms V. Lebid, lawyers practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented, most recently, by their Agent, Ms M. Sokorenko;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints that the search, seizure and retention of his property were arbitrary, that the outcome of the domestic compensation proceedings in which the relevant complaints were lodged was unfair, and that there was a lack of domestic remedies. The applicant relied on Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

2. On 9 June 2010 the Iziaslav police searched a house owned by the applicant pursuant to a warrant issued by the Iziaslav District Court within the framework of criminal proceedings concerning the theft of property belonging to a certain V. A number of items were seized and listed in the search report. The applicant, who was present during the search, signed the search report, indicating that he had no comments or objections as to its content.

3. On 5 August 2010 the applicant lodged a criminal complaint alleging that the search and seizure had been arbitrary and that the police had seized 141 items not mentioned in the search report. That complaint was rejected by the prosecutor's office in Iziaslav as unmeritorious on 21 August 2010, and the applicant did not lodge an appeal. On various occasions in 2010 and 2011 he made fresh unsuccessful attempts to institute criminal proceedings, on several occasions modifying the list of the items that had purportedly been seized without being recorded in the search report.

4. On 11 January 2011 the applicant gave an affidavit to investigator D. indicating that all of his seized belongings had been restored to him and that he had no further complaints.

5. Later in 2011 he instituted civil proceedings seeking a declaration that the search and seizure had been unlawful and demanding the payment of damages. He submitted a list of forty-three items purportedly seized during the search without having been included in the report.

6. On 4 April and 3 June 2011 the Iziaslav District Court and the Khmelnytskyi Regional Court of Appeal respectively decided that the question of the lawfulness of the police's conduct fell outside their jurisdiction and that the question had to be determined under the rules established by the Code of Criminal Procedure. The applicant submitted to the Court a copy of his subsequent appeal on points of law against those decisions, signed by him on 20 June 2011. He provided no information concerning its outcome.

7. On 16 November 2011 and 15 March 2012 the Iziaslav District Court, which proceeded with the examination of the applicant's claims for compensation of damage, dismissed them. It noted, in particular, that the applicant had failed to substantiate his allegation that any of his personal belongings had been seized without being recorded, and added that he had failed to obtain any decision by a competent authority indicating to the civil courts that the police had engaged in any unlawful acts. There was therefore no legal basis to award any damages in civil proceedings. Appeals by the applicant against that judgment were rejected by the Khmelnytskyi Regional Court of Appeal and the Higher Specialised Court on 15 March and 5 July 2012 respectively.

THE COURT'S ASSESSMENT

A. Complaints under Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1

8. The applicant maintained his complaints raised under the aforementioned provisions (see paragraph 1 above).

9. The Court considers that the applicant's complaint under Article 6 falls to be examined, in essence, under Article 13 of the Convention only (compare *Ratushna v. Ukraine*, no. 17318/06, § 86, 2 December 2010).

10. The Government argued that the applicant should have challenged the decision of 21 August 2010 rejecting his criminal complaint as unmeritorious by exhausting the appropriate remedies or, alternatively, that he should have submitted the present application within six months of that decision. They further submitted that the present complaints were, in any event, manifestly ill-founded.

11. The applicant disagreed. Having stated in his application form that the search had been conducted in his own dwelling, in his observations he submitted that it had in fact been conducted at his mother's place of residence.

12. The relevant general principles have been summarised in a number of the Court's judgments (see, in particular, *Vladimir Polishchuk and Svetlana Polishchuk v. Ukraine*, no. 12451/04, §§ 34-36 and 54-57, 30 September 2010; *Ratushna*, cited above, §§ 69-77 and 87-88; and *Zosymov v. Ukraine*, no. 4322/06, §§ 52-55 and 94-96, 7 July 2016).

13. Turning to the facts of the present case, the Court notes, firstly, that in view of the unexplained discrepancy between the applicant's submissions in his application form and in his observations (see paragraph 11 above), it is not clear whether the house in which the disputed search was conducted was his actual "home". It further notes that the applicant has not substantiated, by any evidence, his allegation that some of his belongings, the list of which he had amended on several occasions, had been seized without being recorded. Nor did he provide any explanation to the Court as to why he changed several times his submissions concerning the list of seized items at the domestic level (see paragraphs 2-5 above).

14. Finally, the Court notes that the file is missing an important piece of information relevant to the exhaustion of domestic remedies and the observance of the six-month rule. In particular, and even assuming that the applicant could, in principle, be justified in pursuing the compensation proceedings as a potentially effective remedy (compare *Vladimir Polishchuk and Svetlana Polishchuk*, cited above, §§ 34-36; *Ratushna*, cited above, §§ 64-65; and *Zosymov*, cited above, §§ 52-55; and contrast *Ulyanov v. Ukraine* (dec.), no. 16472/04, 5 October 2010), it appears that in his case the courts at two levels expressly declined jurisdiction to determine the lawfulness or otherwise of the police's conduct (see paragraph 6 above). They

referred the applicant to the procedure under criminal law in that regard. The applicant has submitted a copy of his subsequent appeal on points of law against those decisions. However, he remained silent as to the outcome of its examination. The Court considers that providing that information and a copy of the relevant decision (if any existed) would have been of essential significance for it to decide whether the applicant had exhausted domestic remedies and complied with the six-month rule in awaiting the outcome of the compensation proceedings before lodging the present application.

15. The Court notes that under Rule 44C § 1 of the Rules of Court, where a party fails to adduce evidence or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate (see *Ponomaryov and Others v. Bulgaria* (dec.), no. 5335/05, § 1.1, 10 February 2009, and *Lisnyy and Others v. Ukraine and Russia* (dec.), nos. 5355/15 and two others, § 30, 5 July 2016).

16. In the present case, the Court considers that the applicant failed to submit sufficient material for it to be able to establish the facts relevant to his complaints.

17. In these circumstances, and applying Rule 44C § 1, the Court concludes that the applicant's complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 have not been sufficiently substantiated.

18. In view of those findings, no issue arises under Article 13 of the Convention either (see *Ulyanov*, cited above, § 3).

19. The aforementioned complaints must therefore be rejected as manifestly ill-founded in their entirety in accordance with Article 35 § 3(a) and 4 of the Convention.

B. Complaints under Articles 34 and 38 of the Convention

20. In his observations in response to those of the Government, the applicant additionally complained, relying on Articles 34 and 38 of the Convention, that the Government had provided insufficient material on his case. In particular, they had not submitted a video-recording of the disputed search operation or any material concerning the internal police investigations.

21. Reviewing these complaints in the light of the principles established in its case-law (see, as a recent authority, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 224, 26 May 2020), the Court concludes that there has been no failure by the respondent Government to comply with Articles 34 or 38 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 March 2023.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President