FIFTH SECTION

**CASE OF KOROSTYLYOV v. UKRAINE**

*(Application no. 33643/03)*

JUDGMENT

STRASBOURG

13 June 2013

FINAL

13/09/2013

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Korostylyov v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting 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 deliberated in private on 21 May 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1.  The case originated in an application (no. 33643/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Nikolay Aleksandrovich Korostylyov (“the applicant”), on 24 September 2003.

2.  The applicant, who had been granted legal aid, was represented by Mr A. Kristenko, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr N. Kulchytskyy, of the Ministry of Justice.

3.  The applicant complained, in particular, that he had been ill-treated by the police, that the conditions of his detention had been inhuman, that his pre-trial detention had been unlawful and that his trial had been unfair. He also alleged that he had not been able to obtain copies of documents to substantiate his application.

4.  On 11 January 2011 notice of the application was given to the Government. On 22 June 2011 the Court invited the Government to submit observations on the admissibility and merits of the application.

5.  Having examined the applicant’s request for a hearing, the Chamber decided, under Rule 54 § 3 of the Rules of Court, that no hearing was required in the case.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The applicant was born in 1956 and is currently serving a prison sentence in Dnipropetrovsk Correctional Colony (“the prison”).

A.  The applicant’s criminal prosecution

7.  On 21 January 2000 the applicant was arrested by the police on suspicion of the premeditated murder of two people in October 1999. According to the applicant, in the course of his arrest he was severely beaten by unspecified police officers. The applicant was not examined by a doctor.

8.  The applicant also submitted that during his questioning at the police station he had been subjected to psychological pressure, which had included threats to his close family members’ life and health. As a result of the ill‑treatment he allegedly confessed to having committed the murders. The applicant stated that he had not had access to legal assistance during his police questioning. The applicant also stated that he had been drunk during that questioning.

9.  The Government contested the applicant’s allegations, stating that he had not been subjected to the alleged ill-treatment and that he had been questioned by the police in the presence of a lawyer, Ms P., who had been called by the police to assist the applicant at his own request. The Government submitted a copy of the verbatim record of the applicant’s questioning on 21 January 2000, in which it was stated that Ms P. had taken part in the questioning and that the applicant had confessed to having murdered two people and robbed a third one, Ms T.

10.  On 22 January 2000 the applicant was taken to Odessa Police Temporary Detention Centre (“the ITT”), where, according to him, the conditions of his detention had been inhuman and degrading. The applicant also alleged, in general terms, that he had been beaten up during his detention in the ITT.

11.  On 9 February 2000 the applicant was transferred to Odessa Pre‑Trial Detention Centre (“the SIZO”), where he allegedly continued to be subjected to inhuman conditions of detention.

12.  The Government contested the trustworthiness of the applicant’s allegations of ill-treatment in detention and noted that they were not supported by any evidence.

13.  In February 2000 the applicant was also charged with the murder of Ms T.

14.  During his subsequent pre-trial questioning, the applicant made conflicting statements concerning his involvement in the crimes of which he was accused, in some cases retracting his earlier statements. The applicant was legally represented during the questioning.

15.  The investigation was completed in June 2000, with the applicant and several other persons being charged with a number of counts of aggravated murder, robbery, banditry and unlawful possession of arms.

16.  In the course of the investigation, the applicant changed his lawyer several times. During the trial the applicant was represented by Mr K., a lawyer who, according to the Government, was hired by the applicant’s wife. The applicant did not give details of how that lawyer had been appointed to represent him.

17.  Although the applicant sought to have his wife defend him in the proceedings, she was not allowed to do so, as she had been questioned as a witness in the case.

18.  During the trial the applicant partly admitted his responsibility for some of the crimes, excluding the murders. The applicant also raised complaints that his self-incriminating statements had been obtained under duress.

19.  On 27 June 2002 the Odessa Regional Court of Appeal (“the Odessa Court”) found the applicant and three other persons guilty of banditry, illegal possession of firearms, and several counts of robbery and murder committed in 1999, and sentenced the applicant to life imprisonment and ordered the confiscation of all his property. The Odessa Court based its judgment on the testimony of a number of witnesses and victims of the crimes, partly on some of the statements made by the applicant and his co‑defendants in the course of the investigation and during the trial, and also on the conclusions of several forensic, ballistic and other expert examinations. The court further noted that the applicant’s allegation that he had been drunk during his questioning on 21 January 2000 was unsubstantiated.

20.  In July 2002 the applicant lodged an appeal in cassation with the Supreme Court, in which he mainly complained that his and his co‑defendants’ self-incriminating statements, on which the first-instance court had relied, had been obtained under torture. Subsequently, the applicant amended his appeal in cassation, alleging that the Odessa Court had incorrectly established the facts and had unlawfully sentenced him to life imprisonment. According to the applicant, such a punishment could not have been applied for crimes committed before 1 September 2001. The applicant also complained that the first-instance court had prevented his wife from defending him at trial and that there had been no video recording of the hearings.

21.  On 13 February 2003 the applicant asked the Odessa Court to replace Mr K. with another lawyer, Mr M. The applicant stated that he had had no contact with Mr K., “who had been appointed to [represent him] by [the Odessa Court]” and that Mr K. had had to be disciplined for “a violation of his duty to provide legal assistance”. The applicant did not give any details of the alleged violation.

22.  On the same date Mr K. submitted a statement to the Odessa Court informing it that he had met with the applicant several hours earlier at the SIZO in order to provide him with legal assistance. According to the lawyer, during that meeting the applicant had refused to cooperate and had made insulting statements. The lawyer also stated that he had previously helped the applicant to prepare his appeal in cassation. The lawyer’s statement contained two signatures which he claimed belonged to the SIZO guards in whose presence he prepared that document.

23.  On 17 March 2003 the Odessa Court refused the applicant’s request, noting that during the trial the applicant had not raised any complaints concerning his representation by Mr K. The court held that Mr M. could not be appointed to represent the applicant, as M. had represented one of the applicant’s co-defendants in the same case and the applicant and that co‑defendant had made conflicting statements concerning the circumstances of the case. The court also noted that the applicant had completed familiarising himself with the case materials.

24.  On 14 April 2003 the applicant lodged a request with the Supreme Court asking it to ensure that he was assisted by a lawyer pursuant to the legal aid scheme in force. The same request was raised in the amended appeal which the applicant submitted to the Supreme Court on that date.

25.  By letter of 17 April 2003 the Supreme Court informed the applicant that his request for a lawyer had been refused, as he was already represented by Mr K., who had been duly informed of the hearing before that court scheduled for 15 May 2003. The Supreme Court also noted that if the applicant wished to hire another lawyer, he could do so pursuant to Article 47 of the Code of Criminal Procedure of 1960, and that that court did not, in general, deal with the issue of ensuring that prisoners had legal representation. It is unclear if the hearing scheduled for 15 May 2003 actually took place.

26.  On 10 July 2003 the Supreme Court heard the case on the merits in the applicant’s presence. The Supreme Court partly changed the qualification of the applicant’s criminal actions, having upheld the majority of the findings of the first-instance court and the applicant’s sentence. It also rejected the applicant’s complaint that his penalty had not been based on the law in force at the material time, finding that the applicant had been convicted of crimes for which at the time of their commission the maximum penalty had been death. After the Constitutional Court had declared the provisions concerning the death penalty unconstitutional on 29 December 1999, Parliament had replaced that sanction with life imprisonment by the Act of 22 February 2000.

27.  The Supreme Court also noted that the hearings before the first‑instance court had been audio recorded and that the applicant’s wife could not have been allowed to defend the applicant as she had been questioned as a witness.

28.  In 2004 the applicant was transferred to prison to serve his sentence.

29.  In 2005 the applicant lodged civil claims with several courts against the police, prosecutors and the Odessa Court, seeking compensation for his allegedly unfair conviction. The claims were dismissed for the applicant’s failure to comply with procedural formalities.

B.  The application to the Court

30.  After the applicant lodged his application with the Court, he was invited to submit copies of various documents pertinent to his complaints, including a full copy of the judgment of 27 June 2002 and a copy of his appeal in cassation. The applicant was not able to provide such copies before November 2011, stating that the authorities had denied him the opportunity to obtain them. According to the Government, the applicant made no written request for copies of the judgment or of his appeal in cassation. Eventually, copies of the judgment of 27 June 2002 and of the applicant’s appeal in cassation were submitted by the parties.

31.  On 25 October 2004 the applicant lodged a written request with the Odessa Court for copies of the transcripts of the court hearings in his criminal case, which he intended to submit to the Court in support of his application. By letter of 12 November 2004 the Odessa Court refused the request, noting that domestic law did not provide for copies of such documents to be furnished and that the applicant had previously been given the opportunity to study the transcripts of the court hearings.

32.  On 12 June 2006 the Odessa Court issued a copy of the judgment of 27 June 2002 to the applicant’s wife upon her written request.

II.  RELEVANT DOMESTIC LAW

33.  Domestic law pertinent to the applicant’s complaint of the unlawful imposition of life imprisonment was summarised in *Naydyon v. Ukraine* (no. 16474/03, §§ 33-34, 14 October 2010). The provisions of the Code of Criminal Procedure of 1960 relating to compulsory legal representation were set out in *Dovzhenko v. Ukraine* (no. 36650/03, § 31, 12 January 2012).

THE LAW

I.  SCOPE OF THE CASE

34.  The Court notes that, after the communication of the case to the respondent Government, the applicant lodged a new complaint under Article 34 of the Convention. In particular, in his submissions dated 27 February 2012 the applicant complained that while in prison he had received a damaged envelope, which had included a letter from the Court inviting the applicant to comment on the Government’s observations and a copy of those observations together with annexed documents. The applicant believed that the envelope had been opened by the prison authorities. He also alleged that a copy of a document to which reference had been made in the Government’s observations was missing.

35.  In the Court’s view, the applicant’s new complaint is not an elaboration of his original complaints to the Court on which the parties have commented. The Court considers, therefore, that it is not appropriate to take these matters up in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

36.  The applicant complained that the criminal proceedings against him had been unfair. In particular, he alleged that the Odessa Court had not had jurisdiction to try him, that the courts had incorrectly applied the law and assessed the evidence in his case, that they had unlawfully used self‑incriminating statements obtained from him under torture, and that his right to be assisted by a lawyer had been violated.

37.  The applicant relied on Article 6 §§ 1 and 3 (c) of the Convention which read, in so far as relevant, as follows:

“1.  In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law ...

...

3.  Everyone charged with a criminal offence has the following minimum rights:

...

(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;

...”

38.  The Government submitted that the applicant had not raised the complaints of a violation of his right to be assisted by a lawyer and of the Odessa Court’s non-compliance with the requirement of a “tribunal established by law” before the Supreme Court and had therefore not exhausted domestic remedies in that respect. According to the Government, the remainder of the applicant’s complaints under Article 6 of the Convention were unsubstantiated.

39.  The applicant did not contest the Government’s submissions, except in so far as they concerned the alleged violation of his right to be assisted by a lawyer during the proceedings before the Supreme Court. In that regard, he stated that he had exhausted the domestic remedies available to him. In particular, the applicant had asked the Supreme Court to appoint him a lawyer to represent him in the proceedings before that court (see paragraph 24 above). However, his request had not been allowed.

40.  The applicant further argued that given his lack of funds, the seriousness of the matters at stake and the nature of the cassation appeal proceedings the authorities had been under a duty to provide him with free legal aid at that stage. However, the Supreme Court had denied being under such a duty. The applicant also argued that domestic law had not provided for a procedure whereby a legal aid lawyer could have been appointed at that stage of the proceedings.

41.  The Court notes that the applicant failed to raise some of his complaints under Article 6 of the Convention before the Supreme Court, namely the complaint concerning the power of the Odessa Court to try him and the complaint of a violation of his right to be assisted by a lawyer, in so far as the latter complaint concerns the proceedings before the applicant’s conviction on 27 June 2002. Thus those complaints must be rejected for non-exhaustion of domestic remedies.

42.  Even assuming that the applicant complied with the requirement of exhaustion of domestic remedies as regards the complaint of a violation of his right to be assisted by a lawyer in the proceedings before the Supreme Court, the Court considers that this complaint is unsubstantiated. In particular, the Court notes that Mr K., the lawyer who had represented the applicant at trial, was apparently prepared to continue defending the applicant in the subsequent proceedings. However, the applicant turned down his assistance without providing an acceptable explanation and sought to have him replaced by a lawyer who had previously represented one of the applicant’s co-defendants. Both the Odessa Court and the Supreme Court examined the applicant’s pleas in this regard and found that there were no grounds for replacing Mr K. or for allowing the applicant’s wife to take part in the proceedings as the applicant’s defence counsel. The Court does not discern any reason to disagree with those findings (see, for instance, *Vasiliy Ivashchenko v. Ukraine*, no. 760/03, § 91, 26 July 2012). Although the applicant argued before this Court that he had not had sufficient means to engage Mr K. for the proceedings on appeal in cassation, the Court notes that the applicant did not make such a statement before the domestic authorities (compare and contrast with *Maksimenko v. Ukraine,* no. 39488/07, § 26, 20 December 2011). The applicant did not give any details of the arrangements on the basis of which Mr K. had represented him, including the cost of the lawyer’s services. The fact that Mr K. did not attend the hearing on 10 July 2003 before the Supreme Court might have been linked to the applicant’s failure to cooperate with him and cannot be imputable to the State. In any event, the Court notes that the applicant was not precluded from obtaining legal advice prior to that hearing from Mr K., who was familiar with the case and who had had sufficient access to the case file. Although the Court has previously found that the Code of Criminal Procedure of 1960 did not provide for a procedure by which a lawyer providing free legal representation in proceedings before the Supreme Court might be appointed (see *Maksimenko,* cited above, § 31), in the present case it has not been demonstrated that this shortcoming led to any disadvantage for the applicant’s defence.

43.  The Court further notes that the applicant’s other complaints are unsubstantiated. In particular, there is no evidence that the applicant’s self‑incriminating statements were obtained under duress or in violation of the applicant’s right to be assisted by a lawyer. The courts’ findings of fact and law were based on a substantial amount of evidence and do not appear to be arbitrary or manifestly unreasonable.

44.  In the light of the foregoing, the Court finds that this part of the application must be declared inadmissible pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

III.  ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

45.  The applicant complained that the authorities had denied him of the opportunity to obtain copies of documents from his case file which he had wished to submit to the Court in substantiation of his application. He relied on Article 34 of the Convention, which provides as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

46.  The Government contended that Ukraine had complied with Article 34 of the Convention. They argued that while a copy of the judgment convicting the applicant had been issued to the applicant’s wife upon her request (see paragraph 32 above), neither the applicant nor his relatives had lodged a written request with the courts for a copy of his appeal in cassation. The Government further stated that during the criminal proceedings against him, the applicant had been assisted by several lawyers who had been given the opportunity to make copies of all documents included in the case file. The Government also noted that a copy of the applicant’s appeal in cassation had been joined to their observations on the case.

47.  The applicant contested the Government’s submissions. In particular, he stated that his wife had only been provided with a copy of the judgment convicting him, while other documents he had needed for the application had not been made available to her, and that he had not had the money to hire a lawyer to help him obtain copies of other documents from his case file.

48.  The Court notes that it has already dealt with similar allegations of hindrance of the right of individual petition in a number of cases concerning Ukraine. In particular, in *Vasiliy Ivashchenko* (cited above, § 123) the Court found that the Ukrainian legal system did not provide prisoners with a clear and specific procedure enabling them to obtain copies of case documents after the completion of criminal proceedings, either by making such copies themselves, by hand or using appropriate equipment, or by having the authorities make copies for them.

49.  In the present case the applicant lodged the application after the domestic proceedings against him had been completed. Although it remains unclear whether he actually asked the authorities to give him a copy of his appeal in cassation, it is common ground between the parties that his request for copies of other documents needed to substantiate his application was refused as having no legal basis. Thus, the Court finds no reason to depart, in the present case, from its findings under Article 34 of the Convention in *Vasiliy Ivashchenko* (cited above). The Government’s argument concerning the possibility of making copies of case documents during the criminal proceedings cannot be accepted (see *Vasiliy Ivashchenko*, cited above, § 108).

50.  Accordingly, the Court concludes that the respondent State has failed to comply with its obligation under Article 34 of the Convention to furnish all necessary facilities to the applicant in order to make possible a proper and effective examination of his application by the Court.

IV.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51.  The applicant also complained under Article 3 of the Convention of his ill-treatment by unspecified police officers with the aim of extracting a confession from him and that the conditions of his detention in the ITT had been inhuman. Relying on Article 5 § 1 (c) of the Convention, the applicant complained that he had been unlawfully detained between 21 January and 9 February 2000. The applicant stated that he had been unlawfully sentenced to life imprisonment, as in 1999, when he had committed the crimes, such a punishment had not existed. The applicant cited Article 7 of the Convention in that regard.

52.  In his submissions made in 2006, the applicant further complained that the conditions of his detention in the SIZO had been inhuman.

53.  The Court, having examined the remainder of the applicant’s complaints, considers that, in the light of all the material 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. It follows that the remainder of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

V.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

54.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A.  Damage

55.  The applicant claimed 50,000 euros (EUR) in respect of non‑pecuniary damage.

56.  The Government did not comment.

57.  The Court, ruling on an equitable basis, awards the applicant EUR 3,000 under this head.

B.  Costs and expenses

58.  The applicant also claimed 26,426.40 Ukrainian hryvnias (UAH)[[1]](#footnote-1) for legal costs incurred before the Court. The applicant asked for this sum to be paid directly into the bank account of his representative. The requested sum was based on a rate of UAH 1,540[[2]](#footnote-2) per hour, though it was not specified whether it included taxes. According to the applicant, his representative had had to spend over seventeen hours studying the case materials and preparing observations and just satisfaction claims.

59.  The Government did not comment.

60.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the only arguable complaint concerned a straightforward matter, which did not require extensive legal research or reasoning (see paragraphs 48-50 above). The Court further notes that the applicant’s representative has already been paid EUR 850 under the Court’s legal aid scheme. Regard being had to the nature of the factual and legal issues examined and the representative’s involvement in the case, the Court considers that it is not necessary to award any additional sum under this head.

C.  Default interest

61.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1.  *Declares* the applicant’s complaints under Articles 3, 5, 6 and 7 of the Convention inadmissible;

2.  *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention with respect to the refusal of the authorities to provide the applicant with copies of documents for his application to the Court;

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 13 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Mark Villiger  
 Registrar President

1. About EUR 2,400 [↑](#footnote-ref-1)
2. About EUR 142 [↑](#footnote-ref-2)