



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

FIFTH SECTION

CASE OF LUCHANINOVA v. UKRAINE

(Application no. 16347/02)

JUDGMENT

STRASBOURG

9 June 2011

FINAL

09/09/2011

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

In the case of Luchaninova v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Isabelle Berro-Lefèvre,

Ann Power,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 16347/02) 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, Ms Olga Mykolayivna Luchaninova (“the applicant”), on 19 September 2000.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev, of the Ministry of Justice.

3. On 27 March 2007 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints under Article 6 § 1 of the Convention, separately and in conjunction with Article 6 § 3 (b) and (c), concerning the alleged unfairness of the proceedings against the applicant and her complaints about the lack of an appeal under Article 2 of Protocol No. 7, which had been lodged on 15 February 2001. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in the town of Trostyanets.

A. Proceedings against the applicant

5. On 8 September 2000 a security officer of the applicant's former employer, a private company, drew up a report in which he stated that in the course of the applicant's work on 7 September 2000 she had stolen thirty-five labels, the total value of which was 0.42 Ukrainian hryvnias (UAH)¹. These labels were found in the applicant's possession when she was leaving the company's premises. The applicant acquainted herself with the report and explained to the company administration that she had not had any intention of using the labels, but had been going to throw them away.

6. On the same day the report was submitted to the Trostyanets Court with a request that the applicant be found guilty of having committed an administrative offence within the meaning of Article 51 § 1 of the Code on Administrative Offences.

7. On an unspecified date the applicant requested the court to provide her with free legal assistance.

8. Between 10 September and 1 November 2000 the applicant could not appear before the court as she was undergoing inpatient examinations and treatment in several medical institutions; she informed the court of this.

9. Between 3 and 22 November 2000 the applicant's six-year-old grandson was undergoing specialised treatment in the Okhtyrka Town Clinic for Skin and Venereal Diseases, to which there was restricted public access. The applicant was staying with him in the clinic in view of his young age.

10. On 6 November 2000 the judge of the Trostyanets Court who was dealing with the applicant's case came to the clinic and informed the applicant that he was going to hold a hearing in the room where she was staying with her grandson. All other patients were asked to leave the room. The applicant objected to the holding of the hearing in the room at the clinic. She also requested the judge to withdraw from the case. Her objection and request were dismissed and she refused to participate in the hearing, but remained in the room. The hearing was held in the presence of a lawyer appointed by the judge to defend the applicant. There were also four witnesses heard in person, all of whom were employees of the company. No other persons were allowed to enter the room.

11. On the same day the court found the applicant guilty of petty theft and imposed a fine amounting to UAH 51². In its resolution the court explained that the hearing had been held in the clinic because of the applicant's repeated failure to appear before it.

12. The applicant lodged requests for supervisory proceedings with various authorities, including prosecutors and courts, claiming, *inter alia*,

1. About 0.09 euros (EUR).

2. About EUR 10.

that the proceedings before the Trostyanets Court had not been public and that she had not been able to exercise her rights to defence, or to present evidence, and other procedural rights. According to the applicant, she was not informed about the hearing in advance and she did not consent to be represented by the court-appointed lawyer, as the latter had allegedly represented the company in other proceedings to which she had been a party.

13. On 3 April 2001 the Deputy Prosecutor of the Sumy Region lodged a request with the Sumy Court for supervisory review (*protest*) of the applicant's case. The prosecutor submitted that the Trostyanets Court had wrongly assessed the evidence in the case and had misapplied domestic law. The prosecutor also alleged that because the hearing had been held in the clinic the applicant had not been able to exercise her procedural rights.

14. On 9 April 2001 the President of the Sumy Court rejected the *protest*. As to the fact that the Trostyanets Court had held a hearing in the clinic, the President of the Regional Court found that the applicant's procedural rights had not been violated, since during that hearing she had been represented by a lawyer and she had not informed the court of any intention to submit evidence or to question witnesses.

15. On 18 June 2001 the President of the Supreme Court reviewed the case and, relying on Articles 293 and 294 of the Code on Administrative Offences of 1984, partially changed the resolution of 6 November 2000. While upholding the first-instance court's finding that the applicant was guilty of the offence with which she had been charged, the President found that:

“... the first-instance court had not taken into due account the requirements of Articles 33 and 34 [of the Code on Administrative Offences of 1984], in particular [it had failed to take into due account] the small value of the stolen objects ... the offender's age, the actual absence of harm to the company, and that Ms Luchaninova was being brought to criminal liability for the first time.

In these circumstances, and because the offence was not a serious one, Ms Luchaninova should not be fined, but verbally reprimanded [for the offence]...”

16. No hearing was held either before the Sumy Court or the Supreme Court. Their decisions were based on an examination of the material from the case file and contained no reference to the applicant's submissions in her appeals.

B. The applicant's dismissal and the ensuing court proceedings

17. On 11 January 2001 the applicant was dismissed from her position of packer on the ground that she had stolen the company's property.

18. The applicant instituted court proceedings challenging her dismissal and seeking compensation. The civil courts, relying on the resolution of

6 November 2000 by which the applicant had been found guilty of theft of the company's property, rejected her claims as unsubstantiated. The final decision in these proceedings was taken by the Supreme Court on 25 February 2003.

II. RELEVANT DOMESTIC LAW

A. Relevant provisions of the Code on Administrative Offences of 1984, as worded at the material time

19. According to Article 9 of the Code on Administrative Offences, illegal and culpable action or inactivity infringing public order, citizens' property, rights or freedoms, or administrative procedures, for which administrative liability was envisaged, constituted an administrative offence. An offender would be held administratively liable for the offences set out in the Code, provided they did not lead to criminal liability.

20. Article 17 provided that a person acting in circumstances of extreme necessity or for reasons of necessary defence, or who was not aware of or able to control his or her actions, would not be liable for administrative offences.

21. Pursuant to Article 22, where the administrative offence was not a serious one, an offender could be discharged from administrative liability and verbally reprimanded. A resolution terminating the proceedings should be issued in that case (Article 284).

22. Article 23 defined an administrative sanction as a measure of administrative liability the aim of which was to compel a person who had committed an administrative offence to obey laws, respect the social order and refrain from reoffending, and to prevent the commission of offences by other persons.

23. Pursuant to Article 24, administrative sanctions included, *inter alia*, a note of warning (in writing), a fine, public or correctional work, or administrative arrest.

24. Article 33 provided that when deciding to impose an administrative sanction the nature of the offence, the personality of the offender, his or her material condition, and any circumstances mitigating or aggravating the offender's liability had to be taken into account.

25. Article 34 listed a number of mitigating circumstances, which included sincere repentance on the part of the guilty person, voluntary compensation for any losses caused by the offence, and cases where the offender was a minor. The list was not exhaustive and the authority deciding on the case was free to recognise other circumstances as mitigating administrative liability.

26. Article 38 § 1 provided that an administrative sanction could be imposed within two months of the day on which an offence had been committed, or following the discovery that the offence was of a continuous nature.

27. Article 51 §1 of the Code envisaged the following sanctions for petty (in the amount of up to 51 UAH¹) theft of collective property, including property of private companies, or State-owned property: a fine in the amount of three to ten times the statutory non-taxable monthly income, or corrective work for a period of one to two months with a 20% salary deduction.

28. Pursuant to Article 249, cases concerning administrative offences were to be considered at a public hearing. For educational and preventive purposes, such cases could be considered at an offender's place of work, study or residence.

29. Under Article 268 § 2, the presence of a defendant at hearings concerning certain administrative offences, including the one envisaged by Article 51, was obligatory. Should the defendant fail to appear before the court, he or she could be brought before it by the police.

30. According to Article 276 § 1, cases concerning administrative offences were generally to be considered at the location in which the offence had been committed.

31. Pursuant to Article 287 of the Code, the first-instance court's resolution imposing an administrative sanction was final and could not be appealed against save in cases provided for by law.

32. According to Article 294, a court resolution concerning an administrative offence could be reviewed by the judge who had adopted it, upon an extraordinary appeal lodged by a prosecutor, or by the president of a higher court of his or her own motion. The powers of the judge (or president of a court) reviewing the case were determined by Article 293 § 1 and included the power (1) to approve the resolution without changes; (2) to quash the resolution and to remit the case for new examination; (3) to quash the resolution and close the case; and (4) to change the sanction within the limits envisaged by law. In the latter case a heavier penalty could not be imposed.

B. Amendments to the Code on Administrative Offences of 1984, introduced on 24 September 2008

33. On 24 September 2008 the Parliament of Ukraine made changes to the Code whereby it introduced an appeal procedure in administrative-offence cases. In particular, under the amended Articles 287 and 294 of the Code, the parties to the administrative-offence proceedings

1. About EUR 10.

have the right to appeal against court resolutions in their cases within ten days of their delivery. Such an appeal is to be submitted through the court of first instance that adopted the contested resolution. That court must refer, within three days, the appeal or appeals together with the case file to the appeal court, which, in its turn, has twenty days to consider the case. Cases are dealt with by a judge of the appeal court in an open hearing. The judge has powers to reject the appeal, to quash the resolution and discontinue the proceedings or adopt a new resolution, or to change the resolution. The judge's decision is final and not subject to any further appeal.

THE LAW

I. ALLEGATIONS OF UNFAIR TRIAL AND LACK OF AN APPEAL

34. The applicant complained about the outcome of the proceedings against her, stating that they had been unfair. In particular, she submitted that the proceedings had not been public, that she had not been provided with adequate time and facilities to prepare her defence, and that she had not been able to obtain the attendance and examination of witnesses on her behalf, since she had not been informed in advance of the hearing of 6 November 2000 and had not been able to consult a lawyer. She argued that the court-appointed lawyer was not her lawyer of choice. The applicant invoked Article 6 §§ 1 and 3 (b), (c), and (d) of the Convention in this regard.

35. Relying on Article 13 of the Convention, the applicant further complained of a lack of effective domestic remedies for her complaints of unfairness in the trial. In particular, she claimed that her submissions concerning unfairness in the proceedings before the Trostyanets Town Court and the alleged unlawfulness of its resolution of 6 November 2000 had not been considered by the higher courts.

36. Article 6 §§ 1 and 3 (b), (c), and (d) and Article 13 of the Convention provide, in so far as relevant, as follows:

Article 6

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

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

...

(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;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

37. Before turning to the examination of the applicant’s complaints, the Court notes that Article 13 of the Convention does not, as such, guarantee a right of appeal or a right to a second level of jurisdiction (see, *mutatis mutandis*, *Nurhan Yilmaz v. Turkey* (no. 2), no. 16741/04, § 21, 8 April 2008, and *Gurepka v. Ukraine*, no. 61406/00, § 51, 6 September 2005). Nevertheless, should the impugned proceedings be characterised as “criminal” for Convention purposes, the applicant’s complaint concerning the lack of an appeal may fall to be examined under Article 2 of Protocol No. 7, which reads as follows:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

A. Admissibility

1. The Government’s objection as to applicability *ratione materiae*

38. The Government stated that the proceedings in the applicant’s case were administrative and that the domestic law made a clear distinction between a criminal and an administrative offence. They submitted that Article 6 of the Convention was not applicable in the present case, as the

proceedings against the applicant did not relate to the determination of a “criminal charge” against her.

39. The Court observes that the applicant was convicted for petty theft. Pursuant to Article 51 § 1 of the Code on Administrative Offences, it was punishable by a fine or corrective work. Having regard to the general character of the legal provision infringed by the applicant and the deterrent and punitive purpose of the penalties envisaged by that provision, the Court considers that the proceedings at issue were criminal for the purposes of the Convention (see *Öztürk v. Germany*, 21 February 1984, §§ 52-54, Series A no. 73; *Lauko v. Slovakia*, 2 September 1998, §§ 56-59, *Reports of Judgments and Decisions* 1998-VI; and *Rybka v. Ukraine* (dec.), no. 10544/03, 17 November 2009). The fact that the applicant’s punishment imposed by the Trostyanets Court – the fine – was eventually replaced by a reprimand cannot deprive the offence at issue of its inherently criminal character.

40. Accordingly, the Court concludes that Article 6 of the Convention is applicable in the present case and rejects the Government’s objection in that regard.

2. The Government’s objection as to the applicant’s victim status

41. The Government submitted that the applicant could no longer claim to be the victim of a violation of the Convention with regard to the proceedings against her, as, by the final decision of 18 June 2001 in the case, the President of the Supreme Court had released her from administrative liability for the offence with which she had been charged.

42. The Court reiterates that, as a rule, a person may not claim to be the victim of a violation of his or her right to a fair trial under Article 6 of the Convention which, according to him or her, took place in the course of proceedings in which that person was acquitted, or which were discontinued (see, for example, *Osmanov and Husseinov v. Bulgaria* (dec), nos. 54178/00 and 59901/00, 4 September 2003).

43. In the present case, however, the applicant was not acquitted, nor were the proceedings against her formally discontinued (compare and contrast *Rybka*, cited above). In particular, the court’s resolution of 6 November 2000 finding the applicant guilty of the administrative offence was not quashed. It was changed only in the part concerning the imposition of the sanction, the applicant’s conviction having been upheld. Although the President of the Supreme Court eventually ordered a reprimand – the measure envisaged by Article 22 of the Code of Administrative Offences where an administrative offence is not of a serious nature – his decision of 18 June 2001 was based on the provisions of Article 34 of the Code and concerned circumstances mitigating administrative liability but not discharging the offender from it. It transpires that in the applicant’s case the President of the Supreme Court used his power to mitigate a sanction,

within the meaning of sub-paragraph 4 of Article 293 § 1 of the Code, and not his power to set aside a conviction under sub-paragraph 3 of that provision. Therefore, the Court finds it difficult to agree with the Government that the applicant was discharged from administrative liability.

44. In any event, the Court notes that the decision of the President of the Supreme Court was adopted in the course of an extraordinary review of the case initiated by a prosecutor and it contained no assessment of the conduct of the proceedings before the Trostyanets Court or of the applicant's complaints in that regard. Therefore, the decision of 18 June 2001 could not be seen as an acknowledgment, either explicit or in substance, of the alleged breach of the Convention (see, *mutatis mutandis*, *Constantinescu v. Romania*, no. 28871/95, § 38-43, ECHR 2000-VIII).

45. Accordingly, the Court rejects the Government's objection as to the applicant's victim status.

3. *Whether the applicant has suffered a significant disadvantage*

46. In view of the circumstances of the present case, the Court finds it appropriate to examine whether the applicant's complaints comply with the new admissibility requirement added by Protocol No. 14 to Article 35 of the Convention. In particular, Article 35 § 3 (b) of the Convention reads as follows:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.”

Accordingly, the Court must examine first whether the applicant has suffered a “significant disadvantage” warranting the consideration of her complaints on the merits.

47. In this context, the Court reiterates that the new admissibility requirement hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of an alleged violation should be assessed, taking account of both an applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010-...).

48. The Court observes that the formal outcome of the proceedings in the present case was that the applicant was found guilty of petty theft and

reprimanded. The Court does not doubt that the applicant's conviction of the offence, even though it was not accompanied by a penalty, did have a negative effect on her personal situation. However, it must also assess any other, mainly objective consequences of the conviction for the applicant in order to determine the significance of its impact for the purposes of Article 35 § 3 (b) of the Convention.

49. In this connection, the Court observes that the outcome of the proceedings, which the applicant claimed had been unlawful and conducted in an unfair manner, had a particularly negative effect on her professional life. In particular, the applicant's conviction was taken as a basis for her dismissal from work. The civil courts dealing with her eventual claim for reinstatement rejected it, relying on the findings made in the context of the proceedings against the applicant.

50. Therefore, the Court concludes that in the circumstances the applicant has suffered a significant disadvantage as a result of the alleged violations of the Convention.

4. Conclusion as to the admissibility of the applicant's complaints

51. The Court finds that the applicant's complaints under Article 6 § 1 of the Convention, separately and in conjunction with Article 6 § 3 (b) and (c), concerning the alleged unfairness of the proceedings against the applicant and her complaint under Article 2 of Protocol No. 7 about the lack of an appeal are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

52. However, the Court notes that the applicant have failed to substantiate her complaint under Article 6 § 3 (d) of the Convention. In particular, the applicant has not demonstrated that in the course of the proceedings she requested the domestic court to call any witness on her behalf. Furthermore, there is no indication in the case-file that the applicant, having been present at the hearing of 6 November 2000, was prevented from questioning the witnesses against her. Therefore, the Court rejects this complaint as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. Alleged unfairness of the proceedings

53. Turning to the applicant's complaints of unfairness of the proceedings declared admissible, the Court notes that they concern several principle issues, namely that the hearing in her case was not public, and that

specific guarantees of Article 6 § 3 (b) and (c) of the Convention were not respected.

54. The Court further notes that the Government did not comment on the merits of this part of the case.

a. Public hearing

55. As regards the applicant's complaint that the hearing in her case was not public, the Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1 of the Convention (see *Riepan v. Austria*, no. 35115/97, § 27, ECHR 2000-XII). The right to a public hearing is, however, subject to the restrictions set out in the second sentence of Article 6 § 1 of the Convention.

56. The Court observes that, although public access to the hearing at issue was not formally excluded, the circumstances in which the hearing was held constituted a clear obstacle to its public character. First, the hearing was held in a clinic with restricted access. Secondly, the trial court did not allow persons other than those participating in the proceedings to remain in or enter the room in which it was held. Thirdly, it does not appear that there was any public information about the date and place of the hearing.

57. Having regard to the explanation given by the Trostyanets Court in its resolution of 6 November 2000, it would appear that the hearing was held in the clinic in order to ensure that the applicant, whose presence was obligatory under Ukrainian law, was tried within the two-month time-limit set by the Code on Administrative Offences (see paragraph 26 above). However, the Court notes that the domestic law provided that a defendant, whose presence was obligatory, could be brought before a trial court with the assistance of the police (see paragraph 29 above).

58. Although it is for domestic courts to choose the most appropriate way to deal with situations when a defendant fails to appear before them, the Court considers that the measures applied by the court in the present case, which restricted the applicant's right to a public hearing, were not "strictly necessary" in the sense of Article 6 § 1 of the Convention.

59. Accordingly, there has been a violation of that provision on account of the lack of a public hearing in the applicant's case.

b. Article 6 § 3 (b) and (c)

60. In so far as the applicant complained about a violation of Article 6 § 3 (b) and (c) of the Convention, the Court notes that the requirements of these provisions are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention. The Court will therefore examine the applicant's complaints under these provisions taken together (see, among many other authorities, *Kornev and Karpenko v. Ukraine*, no. 17444/04, § 63, 21 October 2010).

61. In this context, the Court reiterates that Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial (see *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II).

62. In particular, the accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the opportunity to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings. The facilities available to everyone charged with a criminal offence should include the opportunity to acquaint himself with the material on which the charges are based (see, for instance, *Kornev and Karpenko*, cited above, § 66).

63. In order to exercise his right of defence, the accused should normally be allowed to benefit effectively from the assistance of a lawyer right from the initial stages of the proceedings (see *Salduz v. Turkey* [GC], no. 36391/02, § 52, 27 November 2008, and *Yaremenko v. Ukraine*, no. 32092/02, §§ 90-91, 12 June 2008). If need be, a lawyer should be assigned officially. The mere nomination of a lawyer by the authorities does not ensure effective assistance (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168).

64. Turning to the circumstances of the applicant's case, the Court notes that it was neither legally nor factually complex. It concerned the theft of a small number of labels which belonged to the applicant's employer. The charges against the applicant were based on the report of a security officer and on the testimony of the applicant's colleagues. The applicant did not deny that she had intended to take the labels out of her place of work.

65. The Court further observes that the applicant became aware of the charges against her when her employer's report was filed with the trial court, approximately two months before the hearing at issue took place.

66. Nonetheless, even assuming that the applicant was aware of the two-month statutory limit and could have prepared counter-arguments, the Court observes that she was not informed about that hearing in time to prepare to participate in it. Moreover, she requested free legal assistance and the domestic court granted it and appointed a lawyer to defend her. However, she was not informed about that decision before the hearing of 6 November 2000 and, thus, could not use the lawyer's assistance to prepare her defence.

67. Therefore, the Court finds that there has been a violation of Article 6 § 1 of the Convention taken together with Article 6 § 3 (b) and (c) of the Convention in that the applicant was not given the opportunity to organise her defence and effectively benefit from the assistance of a lawyer.

2. *Alleged lack of appeal against the applicant's conviction*

68. The applicant complained that there was no opportunity to appeal against the resolution of 6 November 2000 by which she had been found guilty of the administrative offence.

69. The Government submitted that the applicant had been discharged from administrative liability and therefore there was no issue under Article 2 of Protocol No. 7.

70. The Court notes that Ukrainian law did not provide the applicant with a possibility to appeal against her conviction (see *Gurepka*, cited above, §§ 60-62). Although her case was eventually reviewed by the President of the Supreme Court, the Court notes that the applicant was formally and actually excluded from that procedure (see paragraphs 16 and 44 above). Therefore, she may not be considered to have enjoyed the right of appeal against her conviction, as guaranteed by Article 2 of Protocol No. 7.

71. Nevertheless, the Court notes that this right is not absolute; it may be subject to exceptions, particularly in regard to offences of a minor nature.

72. Although the Government did not comment on that aspect of the case, the Court cannot disregard that the offence of which the applicant was convicted concerned a petty theft and was not punishable by imprisonment. The Court therefore concludes that it was of a minor nature, falling within the exceptions permitted by the second paragraph of Article 2 of Protocol No. 7 (compare and contrast *Zaicevs v. Latvia*, no. 65022/01, §§ 55 and 56, ECHR 2007-IX (extracts), and *Gurepka v. Ukraine* (no. 2), no. 38789/04, § 33, 8 April 2010).

73. Accordingly, there has been no violation of Article 2 of Protocol No. 7.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government submitted that there were no grounds for awarding the applicant just satisfaction.

77. The Court considers that the applicant has suffered some distress and anxiety on account of the violations of her right to a fair trial. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards her the requested amount of EUR 3,000 in this connection.

B. Costs and expenses

78. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

79. The Court considers it appropriate that the default interest 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 Article 6 § 1 of the Convention, separately and in conjunction with Article 6 § 3 (b) and (c), concerning the alleged unfairness of the proceedings against the applicant and her complaint under Article 2 of Protocol No. 7 about the lack of an appeal admissible and the complaint under Article 6 § 3 (d) of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing in the applicant's case;
3. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) and (c) of the Convention in that the applicant was not given the opportunity to organise her defence and effectively benefit from the assistance of a lawyer;
4. *Holds* that there has been no violation of Article 2 of Protocol No. 7;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 national currency of the respondent State at the rate applicable on 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.

Done in English, and notified in writing on 9 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President