



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

FIFTH SECTION

CASE OF GRABCHUK v. UKRAINE

(Application no. 8599/02)

JUDGMENT

STRASBOURG

21 September 2006

FINAL

21/12/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Grabchuk v. Ukraine,

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 30 August 2006,

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

PROCEDURE

1. The case originated in an application (no. 8599/02) 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 Mariya Mykhaylivna Grabchuk (“the applicant”), on 23 October 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Mrs V. Lutkovska and Mr Y. Zaytsev.

3. On 5 July 2005 the Court declared the application partly inadmissible and decided to communicate the complaints under Articles 6 § 2 and 13 of the Convention concerning a presumption of the applicant’s innocence and availability of effective domestic remedies to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and resides in the village of Liski, Volyn region, Ukraine.

6. In 1993-1994 the applicant worked as a director of a café in the town of Volodymyr-Volynskyy, Volyn region, Ukraine.

A. Criminal proceedings against the applicant

7. On 14 February 1995 criminal proceedings were instituted against the applicant for plundering State property (Article 84 § 1 of the Criminal Code).

8. On 6 June 1995 the applicant was charged with plundering State property in particularly large quantities (Article 86 § 1 of the Criminal Code). The same day she was arrested.

9. On 9 June 1995 the applicant was released on bail subject to an undertaking not to abscond (*підписка про невиїзд*).

10. On 26 December 1997 the criminal case was terminated for want of proof of a crime.

11. On 13 July 1999 the Prosecutor of Volodymyr-Volynskyy District quashed the decision of 26 December 1997 and sent the case for further investigation.

12. By a decision of 5 October 1999, the criminal proceedings against the applicant were terminated partly for want of proof of a crime and partly on the ground that the further prosecution in her case was time-barred. The investigator did not find it proven that the applicant had been involved in plundering, but considered that her actions could be classified as negligence, which was an offence under Article 167 of the Criminal Code in the wording which was in force at the relevant time (see paragraph 27). However, given that the statutory time-limit for prosecuting the applicant for negligence had passed, the criminal case in respect of that charge had to be discontinued as time-barred.

13. On 22 October 1999 the applicant complained to the Prosecutor of Volodymyr-Volynskyy District about the decision of 5 October 1999. This complaint was rejected. The applicant appealed to the court.

14. On 22 December 1999 the Volodymyr-Volynskyy District Court allowed the applicant's appeal and quashed the decision of 5 October 1999. The court noted that a criminal case could be terminated on non-exonerative grounds, like a time-bar on further prosecution, only with the consent of the prosecuted person. As the applicant had never agreed to the termination of the case on this ground the investigation should be continued.

15. On 29 February 2000, the investigator terminated the criminal proceedings against the applicant on the same grounds as previously.

16. On 3 November 2000, the same court, upon the applicant's appeal, quashed this decision and remitted the case for a fresh consideration.

17. On 4 December 2000 the criminal case against the applicant was terminated for want of proof of a crime. At the same time, in his decree terminating the criminal proceedings against the applicant, the investigator mentioned that the courts had quashed the previous decisions on termination of the criminal case on non-exonerative grounds, because the applicant had not agreed. In the investigator's opinion the applicant's consent was not

necessary, because even though her conduct could be qualified as a crime of negligence, no criminal proceedings could be instituted, as prosecution was time-barred and she could not be considered as an accused in this respect. The investigator, therefore, decided that:

“In the actions of Ms Mariya Mykhaylivna Grabchuk there are *corpus delicti* (*є склад злочину*), provided for in Article 167 of the CCU [the Criminal Code of Ukraine], that is negligence, of which she herself confessed to be guilty. Nevertheless, taking into account that from the moment when she had committed that crime (*час скоєння нею даного злочину*) the time-limits had expired... the institution of a criminal case under Article 167 of the CCU should be rejected for being time-barred...”

18. The applicant challenged the decision of 4 December 2000, requesting that her guilt be proved in judicial proceedings in accordance with Article 62 of the Constitution. She further submitted that closing the criminal case against her on non-exonerative grounds deprived her of a possibility to receive compensation for the unlawful actions taken against her.

19. On 26 April 2001 the Volodymyr-Volynskyy Local Court rejected the applicant’s complaint about the decision of 4 December 2000. In its decision the court stated in particular:

“As it appears from the materials of the criminal case against M.M. Grabchuk and the decision of the head of the investigating unit of the Volodymyr-Volynsky Department of Interior of 4 December 2000, the actions of M.M. Grabchuk disclose signs of the *corpus delicti* (*ознаки складу злочину*) provided for in Article 167 of the CCU [the Criminal Code of Ukraine] and she had acknowledged her guilt of having committed this offence.

According to Article 167 of the CCU, in the wording of 1993-1994, ... this crime was punishable by imprisonment for a period of up to two years.

Under Article 48 § I (2) of the CCU, a person cannot be charged with an offence if three years have elapsed from the date when a criminal offence punishable under the law by imprisonment for a period of up to two years was committed.

Under Article 6 § I (3) [of the Code of Criminal Procedure] no criminal proceedings could be initiated and any proceedings which had been started should be terminated as time-barred.

Therefore, in the above circumstances, no criminal case charging M.M. Grabchuk with an offence under Article 167 of the CCU could be instituted because prosecution against her was time-barred.”

This decision was not subject to appeal.

B. Civil proceedings for compensation

20. On an unspecified date the applicant lodged a claim with the Volodymyr-Volynskyy Town Court, seeking compensation for damage caused by the allegedly unlawful criminal proceedings against her.

21. On 30 June 1999 the court found in part for the applicant and awarded her UAH 70,000 in compensation. The decision was not appealed against and became final.

22. By letter of 5 August 1999 the Volyn Regional Department of the State Treasury, responsible for the enforcement of the decision, requested the Regional Prosecutor to lodge a supervisory review appeal on the ground that the State Budget for 1999 did not foresee expenditure of this kind. Following this request, the Prosecutor sought supervisory review, arguing that the actions of the police were lawful and that the amount awarded to the applicant was too high, in particular given the difficult economic situation in the country.

23. On 20 September 1999 upon a supervisory review appeal of the prosecutor, the Presidium of the Volyn Regional Court quashed the decision of the Volodymyr-Volynskyy Town Court of 30 June 1999 and remitted the case for a fresh consideration.

24. On 6 July 2001 the Volodymyr-Volynskyy Local Court rejected the applicant's claim for compensation because the criminal proceedings against her had been terminated on a non-exonerative ground, namely that prosecution was time-barred. The court noted that it appeared from the decisions of 5 October 1999, 29 February and 4 December 2000 terminating the criminal case against the applicant, that her conduct disclosed signs of the *corpus delicti* provided for in Article 167 of the CCU (negligence), namely the inappropriate performance of professional duties by an official due to a negligent attitude, which had caused significant loss to the State's interests. The record of her interrogation of 6 June 1995 showed that the applicant acknowledged her guilt of negligence. The court further stated that, given that the criminal case was terminated on a non-exonerative ground, the applicant lost the right to compensation under the Law "on the procedure for compensation of damage caused to the citizen by the unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts".

25. The applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

26. Article 62 of the Constitution reads as follows:

“A person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his or her guilt is proved through legal procedure and established by a court verdict of guilty.

No one is obliged to prove his or her innocence of committing a crime.

An accusation shall not be based on illegally obtained evidence as well as on assumptions. All doubts in regard to the proof of guilt of a person are interpreted in his or her favour.

In the event that a court verdict is revoked as unjust, the State compensates the material and moral damages inflicted by the groundless conviction.”

B. Criminal Code of Ukraine of 28 December 1960 (repealed as of 1 September 2001)

27. The relevant provisions of the Code read as follows:

Article 48.

The statute of time-bar for instituting criminal proceedings

“1. A person cannot be charged with an offence, if the following periods have elapsed from the date of the criminal offence:

... 2. three years from the date of offence for committing a crime punishable under the law by imprisonment for the period of up to two years;...”

Article 84.

Plundering the State or collective property through misappropriation, embezzlement or malversation

“1. Misappropriation or embezzlement the State or collective property by a person to whom it was entrusted shall be punishable by imprisonment for a term of two to four years, or a fine in the amount of ten to fifteen non-taxable incomes, with or without deprivation of the right to occupy certain posts or to practice certain activities for the term of three years...

3. Any such actions as provided for by paragraph 1 or 2 of this Article, if repeated or committed by a group of person upon their prior conspiracy shall be punishable by imprisonment for a term of five to eight years with or without a confiscation of property, with deprivation of the right to occupy certain posts or to practice certain activities for the term of three years...”

Article 86-1.

Plundering State or collective property in particular large quantities

“Plundering State or collective property, performed in particularly large quantities, regardless of the manner of plundering (Articles 81-84, and 86) shall be punishable by imprisonment for a term of ten to fifteen years with the forfeiture of property.”

Article 167 of the Code prior to 11 July 1995 provided for a sanction of imprisonment of up to two years for negligence, that was “the failure to perform or improper performance, by an official, of his or her official duties due to careless or inaccurate attitude, which caused significant damage to the state or public interests or to the legally protected rights and interests of individual physical or legal persons”.

C. Code of Criminal Procedure

28. At the material time paragraph 3 of part I of Article 6 of the Code provided that criminal proceedings could not be initiated and started proceedings should be terminated if further prosecution was time-barred. This provision was repealed on 12 July 2001. At the same time the right to close the case as time-barred was given to the courts.

29. Article 99 of the Code laid down the conditions for refusing to institute criminal proceedings against a person and Article 214 the conditions for terminating the criminal proceedings.

30. The termination of criminal proceedings on the ground of paragraph 3 of part I of Article 6 of the Code required the applicant’s consent.

D. The Law of Ukraine “on the procedure for compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts” of 1 December 1994

31. The relevant provisions of the Law read as follows:

Article 2

“The right to compensation for damages in the amount and in accordance with the procedure established by this Law shall arise in the cases of:

acquittal by a court;

termination of a criminal case on grounds of absence of proof of commission of a crime, absence of *corpus delicti*, or lack of evidence of the accused’s participation in the commission of the crime;

refusal to initiate criminal proceedings or termination of criminal proceedings on the grounds stipulated in sub-paragraph 2 of paragraph 1 of this Article;

termination of proceedings for an administrative offence.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

32. The applicant complained that she was declared guilty without being proved so according to law in violation of Article 6 § 2 of the Convention, which reads as follows:

Article 6 § 2

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

The Government contested this argument

A. Admissibility

1. Preliminary objection of the Government

33. The Government maintained that having failed to appeal against the decision of the Volodymyr-Volynskyy Local Court of 6 July 2001 the applicant did not exhaust domestic remedies.

34. The applicant maintained that the outcome of civil proceedings depended on the grounds for termination of the criminal proceedings against her. The latter proceedings had been closed on non-exonerative grounds and therefore she was no longer entitled to compensation under the law. Accordingly, she considered this remedy futile for her present complaint.

35. The Court finds that the main issue before it is the alleged violation of the principle of presumption of innocence, as guaranteed by Article 6 § 2 of the Convention. The civil proceedings for compensation under the Law of Ukraine “on the procedure for compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts” had no bearing on this matter.

36. The Court, accordingly, dismisses this objection of the Government.

2. Conclusion

37. The Court notes that this complaint under Article 6 § 2 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Government maintained that the issue of the applicant's guilt had never been considered by the domestic courts, neither in the pre-trial investigation which had not resulted in a course of trial, nor in the proceedings leading to the decision of 26 April 2001.

39. The applicant disagreed.

40. The Court reiterates that the Convention must be interpreted in such a way as to guarantee rights that are practical and effective as opposed to theoretical and illusory (e.g., *Multiplex v. Croatia*, no. 58112/00, § 44, 10 July 2003); that also applies to the right enshrined in Article 6 § 2 (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 35).

41. The Court recalls that neither Article 6 § 2 nor any other provision of the Convention gives a person "charged with a criminal offence" a right to reimbursement of his costs or a right to compensation for lawful detention on remand where proceedings against him have been discontinued (see, among other authorities, *Capeau v. Belgium*, no. 42914/98, § 23, ECHR 2005-I).

42. The Court's case-law establishes that the presumption of innocence is infringed if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty unless he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards that person as guilty (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X; *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above, § 43). The scope of Article 6 § 2 is moreover not limited to pending criminal proceedings but extends to judicial decisions taken after a prosecution has been discontinued (see *Nölkenbockhoff*, cited above, § 37; and *Capeau*, cited above, § 25) or after an acquittal (see, in particular, *Sekanina v. Austria*, judgment of 25 August 1993, § 30, Series A no. 266-A; and *O. v. Norway*, no. 29327/98, ECHR 2003-II).

43. The Court is, therefore, required to determine whether in the present case the outcome of the criminal proceedings against the applicant allowed doubt to be cast on the applicant's innocence, although she had not been proved guilty.

44. The Court notes that the applicant's case was terminated at the pre-trial stage by the investigative authorities, partly for want of proof of a crime and partly on the ground that the prosecution for the offence of negligence was time-barred. The investigator's decision was confirmed by the Volodymyr-Volynskyy Local Court.

45. It is true that the voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation (see *Sekanina*, cited above, § 30). The Court notes that in the present case the decisions terminating the criminal proceedings against the applicant were couched in terms which left no doubt as to their view that the applicant had committed the offence. In particular, the investigator in his decision of 4 December 2000 (see paragraph 17 above) exploited the words "in the actions [of the applicant] there are *corpus delicti*" and "the moment when [the applicant] had committed the offence" and the Volodymyr-Volynskyy Court indicated that the applicant's actions "disclosed signs of the *corpus delicti* provided for in Article 167 of the Criminal Code of Ukraine". The proceedings before the Volodymyr-Volynskyy Court leading to the decision of 26 April 2001 (see paragraph 19 above) were not criminal in nature and they lacked a number of key elements normally pertaining to a criminal trial. In that respect, it cannot be concluded that the proceedings before that court resulted, or were intended to result in the applicant being "proved guilty according to law". In these circumstances, the Court considers that the reasons given by the investigator and by the Volodymyr-Volynskyy Court constituted an infringement of the presumption of innocence.

46. In conclusion, there has been a violation of Article 6 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant further complained that she had no effective remedies, as required by Article 13 of the Convention, to complain about the failure of the courts to examine the criminal charges against her, dropped by the investigation on non-exonerative grounds.

48. The Court has examined this complaint as it has been submitted and finds that it is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4. The Court recalls that Article 13 cannot be read as requiring the provision of an effective remedy that would enable the individual to complain about the absence in domestic law of access to a court as secured by Article 6 § 1 (*Kudła v. Poland* [GC], no. 30210/96, § 151, ECHR 2000-XI), which is the substance of the applicant's complaint under Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed UAH 102,000 (around 16,200 euros (EUR)) in respect of pecuniary and non-pecuniary damage. This amount consisted of the UAH 70,000, which the applicant was originally awarded in the compensation proceedings (see paragraph 21 above) and UAH 32,000 in compensation for worsening of her health.

51. The Government maintained that would the Court find a violation of Article 6 § 2 of the Convention in the instant case, the applicant would be able to initiate the domestic review proceedings and claim the amount originally awarded to her by the domestic courts. As to the rest of the applicant’s claim, the Government submitted that it was irrelevant to the circumstances of the present case and could be also claimed at the domestic level.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant did not make any claims under this head, the Court, therefore, makes no award.

C. Default interest

54. 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. *Dismisses* the Government’s preliminary objection;

2. *Declares* the applicant's complaint under Articles 6 § 2 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
4. *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 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (c) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President