CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 8599/02
by Mariya Mykhaylivna GRABCHUK
against Ukraine

The European Court of Human Rights (Second Section), sitting on 5 July 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 October 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Mariya Mykhaylivna Grabchuk, is a Ukrainian national, who was born in 1949 and resides in the village of Liski, Volyn region, Ukraine.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

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

1. Criminal proceedings against the applicant

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

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.

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

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

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

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 noted in his decision that it was not proved that the applicant was involved in plundering, but that her actions could be classified as negligence, which was an offence under Article 167 of the Criminal Code. However, given that the statutory time-limits for prosecuting the applicant for negligence had passed, the criminal case in respect of that charge had to be discontinued as time-barred.

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.

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. The applicant had never agreed to the termination of the case on this ground, so that the investigation should be continued.

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 applicant's actions could be qualified as a crime of negligence but, given the time-bar on prosecution, the investigator refused to institute criminal proceedings against the applicant in that respect.

The applicant challenged the decree of 4 December 2000, requesting that her guilt be proved in the judicial proceedings in accordance with Article 62 of the Constitution. She further maintained that the non-exonerative grounds

for closing the criminal case against her deprived her of a possibility to receive compensation for the unlawful actions taken against her.

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 decree 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* foreseen by Article 167 of the CCU (the Criminal Code of Ukraine) and that she had acknowledged her guilt in committing this offence.
>
> According to the sanction of 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 of the criminal offence punishable under the law by imprisonment for a period of up to two years.
>
> Under Article 6 § I (3) the criminal proceedings could not be initiated and any proceedings which had been started should be terminated as time-barred.
>
> Therefore, in the above circumstances, the criminal case charging M.M. Grabchuk with an offence under Article 167 of the CCU could not be instituted because the criminal prosecution against her was time-barred."

2. Civil proceedings for compensation

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

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.

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, stating 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.

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.

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 i.e. the time-bar for a prosecution. 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 actions disclosed signs of the *corpus delicti* foreseen by Article 167 of the CCU (negligence), in 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 interrogation of the accused of 6 June 1995 showed that Grabchuk M.M. acknowledged her guilt of an offence 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".

The applicant did not appeal against that decision.

B. Relevant domestic law

1. *Constitution of Ukraine*

Article 62

"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."

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

Article 48. The statute of time-bar for instituting criminal proceedings

I. 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 and therefore a person could be charged with committing this offence only within three years of its alleged commitment.

3. Code of Criminal Procedure

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.

4. 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

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."

COMPLAINTS

The applicant complains under Article 5 § 1 (c) of the Convention about her unlawful arrest during the investigation in the criminal case against her. She further complains under Article 6 § 1 of the Convention about the failure of the courts to examine the criminal charges against her dropped by the investigation on non-exonerative grounds. The applicant further complains that she was declared guilty without being proved so according to law in violation of Article 6 § 2 of the Convention. She finally complains that she had no effective remedy to her complaints, as required by Article 13 of the Convention.

THE LAW

1. The applicant complains about unlawfulness of her arrest and detention in June 1995. She invokes Article 5 § 1 (c), which provides as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

<...>

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;..."

The Court notes that the applicant's complaint under this Convention provision relates to events that took place prior to 11 September 1997, the date on which the Convention entered into force in respect of Ukraine. However, the Convention only governs facts subsequent to its entry into force in respect of each Contracting Party.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The applicant further complains that the domestic courts failed to examine the criminal charges against her dropped by the investigation on

non-exonerative grounds. She invokes Article 6 § 1 of the Convention, which provides as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Court reiterates that there is no right under Article 6 of the Convention to a particular outcome of criminal proceedings or, therefore, to a formal conviction or acquittal following the laying of criminal charges (see, for example, *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

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

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

4. The applicant finally complains that she had no effective remedies for her Convention complaints. She invokes Article 13 of the Convention, which reads:

> "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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Articles 6 § 2 and 13 of the Convention concerning a presumption of the applicant's innocence and availability of effective domestic remedies;

Declares the remainder of the application inadmissible.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President