

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

FIFTH SECTION

CASE OF KURIPKA v. UKRAINE

(Application no. 7918/07)

JUDGMENT

STRASBOURG

10 November 2016

This judgment is final but it may be subject to editorial revision.



In the case of Kuripka v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:
André Potocki, *President,*
Ganna Yudkivska,
Síofra O'Leary, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 18 October 2016,

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

PROCEDURE

1. The case originated in an application (no. 7918/07) 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 Igor Vladimirovich Kuripka ("the applicant"), on 29 January 2007.

2. The Ukrainian Government ("the Government") were represented by their Agent, most recently, Mr I. Lishchyna.

3. On 14 February 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1964. He is currently serving a prison sentence.

5. At the time of the events the applicant had previous convictions from 1983 and 1989. He was released from prison in October 2002.

A. Criminal proceedings against the applicant

6. Following his release from prison the applicant cohabited with T.B. in the village of Blahovishchenka, in the Zaporizhzhya Region. T.B.'s sister cohabited with Sh. in the same village.

7. On the evening of 24 April 2006 Sh. visited T.B. and the applicant. A conflict arose between him and the applicant, developing into a fight which T.B. attempted to settle down. At a certain point the applicant seized a knife

and stabbed Sh. in the chest. The latter was taken to hospital, but he died shortly afterwards.

8. Later that evening the applicant was taken to the police station, where he was questioned in relation to the incident. He stated that he did not know who might have stabbed the victim. The applicant was not released and remained at the police station.

9. At 2.00 a.m. on 25 April 2006 the applicant confessed that he had had a fight with Sh., and that during the fight he had grabbed a knife and stabbed Sh. twice in the chest and abdominal area.

10. At 8.00 p.m. on 25 April 2006 the investigator drew up an arrest report in respect of the applicant. According to the report, the applicant was suspected of murder.

11. On 26 April 2006 the applicant was allowed to consult a lawyer for the first time. On that day he was questioned again. He explained that he had stabbed Sh. when falling down from the blows he had received from him. The stab had been unintentional. Later on the same day, in the course of a reconstruction of the events, the applicant showed how he had been beaten by Sh. and how he had fatally stabbed him.

12. On 27 April 2006 a court ordered the applicant's pre-trial detention.

13. On 28 April 2006 the applicant was questioned again. Before the questioning, the applicant signed a waiver of his right to a lawyer. He then made statements about the incident which were similar to those which he had made earlier.

14. On 15 June 2006 the applicant was charged with aggravated murder and questioned again in the presence of his lawyer. That day, he stated that he had acted in self-defence, as Sh. had approached him with a glass bottle.

15. On 2 August 2006 the Zaporizhzhya Regional Court of Appeal ("the Court of Appeal") commenced the trial of the applicant. During the trial, he stated that he had fatally stabbed Sh., who had approached him with a glass bottle, while trying to defend himself.

16. On 8 August 2006 the court found the applicant guilty of aggravated murder and sentenced him to life imprisonment. The court relied on the material, oral, expert and documentary evidence examined during the hearings. It referred in particular to the applicant's self-incriminating statements made on 25 April 2006 and later. His allegation that he had acted in self-defence was rejected as unsubstantiated.

17. The applicant and his lawyer appealed, claiming that the conviction was unfounded and that his right to a lawyer had not been properly ensured.

18. On 21 December 2006 the Supreme Court considered the applicant's case and upheld the conviction. However, having regard to his behaviour immediately after the incident, namely the efforts he had made to provide the victim with medical assistance, it reduced the sentence to fifteen years' imprisonment.

B. The applicant's correspondence during his time in custody

19. On three occasions between August and October 2006 the Court of Appeal allowed the applicant to have family visits.

20. On 16 August 2006 the applicant lodged an application with the Court of Appeal, asking for permission to correspond with his relatives. His application was registered by the SIZO mailing service under number 2/k-517. No reply followed.

21. On 2 October 2006 the applicant made the same application, which was registered by the SIZO mailing service under number 2/k-579. No reply followed.

22. On 12 October 2006 the applicant complained to a prosecutor in that regard, but received no response.

II. RELEVANT DOMESTIC LAW

The Pre-Trial Detention Act of 30 June 1993

23. Section 13 of the Act provides, *inter alia*, that a person held in custody may correspond with his or her relatives, other individuals and legal entities upon obtaining written permission from the authority dealing with the criminal case against him or her.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (c) OF THE CONVENTION

24. The applicant complained that that he had not had access to a lawyer at the initial stage of the proceedings.

25. The Court decided to examine the complaint under Article 6 §§ 1 and 3 (c) of the Convention, the relevant parts of which provide:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 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;
>
> ..."

A. Admissibility

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

B. Merits

27. The applicant maintained his complaint.

28. The Government submitted that the applicant's right to legal assistance had not been violated, because he had incriminated himself both in the absence and in the presence of a lawyer. As regards the interview of 28 April 2008, the applicant had voluntarily waived his right to a lawyer on that day. In the Government's opinion, the proceedings had been fair, and there had been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

29. The Court reiterates that access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it is demonstrated, in the light of the particular circumstances of each case, that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such a restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will, in principle, be irretrievably prejudiced when incriminating statements made during questioning by police without access to a lawyer are used for a conviction. Accordingly, the test for assessing whether a restriction on access to a lawyer is compatible with the right to a fair trial is composed of two stages. In the first stage the Court must assess whether there were compelling reasons for the restriction. In the second stage, it must evaluate the prejudice caused to the rights of the defence by the restriction in the case in question. (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, §§ 256 and 257, 13 September 2016). Where there are no compelling reasons for restricting access to legal advice, the Court must apply a very strict scrutiny to its fairness assessment. The onus will be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice (ibid., § 265).

30. In the present case, the applicant was taken to the police station on 24 April 2006. After the initial interview, where he did not admit his guilt, the police did not let him go, and held him overnight at the police station. It is true that the arrest report was drawn up much later, at 8 p.m. on 25 April 2006. However, looking beyond appearances, the Court considers that, other than suspecting the applicant of having killed Sh., there was no other reason

to hold him at the police station overnight. At the relevant time, in particular at the time of the second police interview at 2 a.m. on 25 April 2006, which resulted in a confession, the applicant had *de facto* already been treated as a suspect (see *Sergey Afanasyev v. Ukraine,* no. 48057/06, § 58, 15 November 2012; *Yevgeniy Petrenko v. Ukraine*, no. 55749/08, § 90, 29 January 2015; and, by contrast, *Smolik v. Ukraine*, no. 11778/05, § 54, 19 January 2012).

31. Accordingly, by virtue of the above-mentioned principles of the Court's case-law, the applicant was entitled to have access to a lawyer at the interview resulting in his confession to the crime.

32. The question is therefore whether the absence of a lawyer was justified. On the facts, the Court does not discern any compelling reason for restricting the applicant's right to a lawyer during that time.

33. Furthermore, the absence of legal assistance at the initial stage of the investigation prejudiced the applicant's defence rights. In substantiating the applicant's guilt, the first-instance court expressly referred to his initial confession of 25 April 2006. The Supreme Court maintained the reasoning of the first-instance court in that regard, and did not see any shortcomings as to the applicant's rights of defence at the initial stage of the proceedings.

34. The above considerations are sufficient for the Court to conclude that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that he could not correspond with his relatives during his time in custody, as the relevant permission could not be obtained from the authorities. He relied on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

B. Merits

37. The applicant maintained his complaint.

38. The Government submitted that the restriction of the applicant's right to correspondence had been based on section 13 of the Pre-Trial Detention Act, and had been compatible with Article 8 of the Convention. In the context of the proportionality test, they emphasised that, even though the applicant had not been granted permission to correspond with his relatives, he had benefitted from three family visits during the relevant time.

39. The Court notes that, in the present case, the applicant could not correspond with his relatives by post because, despite his applications, the authorities did not give him the relevant permission under section 13 of the Pre-Trial Detention Act. There has therefore been an interference with the applicant's right to respect for correspondence.

40. The Court previously examined a similar complaint and found that the applicable domestic law did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in relation to granting detainees permission to correspond. It concluded that the interference had not been "in accordance with the law", and had been in breach of Article 8 of the Convention (see *Dovzhenko v. Ukraine,* no. 36650/03, §§ 77-79, 12 January 2012). The Court does not find any reason to depart from that conclusion in the present case.

41. There has therefore been a violation of Article 8 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicant further complained of other violations of his rights under the Convention.

43. The Court has examined these complaints and 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. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government submitted that the claim was unfounded.

47. The Court has found a violation of Article 6 §§ 1 and 3 (c) of the Convention in the present case. It cannot however speculate as to the outcome of the proceedings against the applicant (see *Ibrahim*, cited above, § 315). It notes that domestic law allows for the possibility of a reopening of proceedings (see *Zakshevskiy v. Ukraine,* no. 7193/04, §§ 50 and 51, 17 March 2016). The Court further considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of violations in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant did not submit any claims under this head. The Court therefore makes no award.

C. Default interest

49. 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 complaints concerning the applicant's right of access to a lawyer and his right to respect for correspondence admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	André Potocki
Deputy Registrar	President