



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

FIFTH SECTION

CASE OF PECHENIZKYY AND OTHERS v. UKRAINE

*(Applications nos. 63510/11 and 18 others -
see appended list)*

JUDGMENT

STRASBOURG

8 November 2018

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

In the case of Pechenizkyi and Others v. Ukraine,

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

Yonko Grozev, *President*,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseyinov, *judges*,

and Liv Tegerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 11 October 2018,

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

PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Ukrainian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained that they were deprived of an opportunity to comment on the appeals lodged by the defendants in their cases.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE LOCUS STANDI OF MS TAMARA PAVLIVNA KALASHNIKOVA

6. As concerns the complaints raised by the applicant in application no. 39965/13, the Court notes that the applicant died on 18 January 2018, while the case was pending before the Court. The applicant’s wife,

Ms Tamara Pavlivna Kalashnikova, has requested to pursue the application on her husband's behalf. As the request is in line with its case-law, the Court sees no reason to refuse it (see, among other authorities, *Benyaminson v. Ukraine*, no. 31585/02, § 83, 26 July 2007; *Petr Korolev v. Russia*, no. 38112/04, §§ 43-45, 21 October 2010; *Sergey Denisov and Others v. Russia*, nos. 1985/05 and 4 others, §§ 73-75, 19 April 2016; and *Horváthová v. Slovakia*, no. 74456/01, §§ 25-27, 17 May 2005). However, reference will still be made to the applicant throughout the present text.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

7. The applicants complained that the principle of equality of arms had been breached on account of the domestic courts' failure to serve appeals on them or otherwise inform them of the appeals lodged in their cases. They relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

8. The Court reiterates that the general concept of a fair trial, encompassing the fundamental principle that proceedings should be adversarial (see *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262), requires that the person against whom proceedings have been initiated should be informed of this fact (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 77, 4 March 2014). The principle of equality of arms requires that each party should be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 119, ECHR 2016, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). Each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party, including the other party's appeal. What is at stake is the litigants' confidence in the workings of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (see *Beer v. Austria*, no. 30428/96, §§ 17-18, 6 February 2001).

9. It may, therefore, be incumbent on the domestic courts to ascertain that their summonses or other documents have reached the parties sufficiently in advance and, where appropriate, record their findings in the text of the judgment (see *Gankin and Others v. Russia*, nos. 2430/06 et al, § 36, 31 May 2016). If court documents are not duly served on a litigant, then he or she might be prevented from defending him or herself in the

proceedings (see *Zavodnik v. Slovenia*, no. 53723/13, § 70, 21 May 2015, with further references).

10. In the leading case of *Lazarenko and Others v. Ukraine*, (nos. 70329/12 and 5 others, 27 June 2017), the Court already found a violation in respect of issues similar to those in the present case.

11. Having examined all the material submitted to it and lacking any evidence of proper notification of the applicants, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court finds that by proceeding to consider the appeals lodged in the applicants' cases without attempting to ascertain whether they were served on the applicants or whether the applicants were informed of the appeals by any other means, the domestic courts deprived the applicants of the opportunity to comment on the appeals lodged in their cases and fell short of their obligation to respect the principle of equality of arms enshrined in Article 6 of the Convention.

12. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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.”

14. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table.

15. 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. *Decides* to join the applications;
2. *Decides* that Ms Kalashnikova, the wife of the applicant in application no. 39965/13, has *locus standi* in the proceedings;
3. *Declares* the applications admissible;

4. *Holds* that these applications disclose a breach of Article 6 § 1 of the Convention concerning the unfairness of the civil proceedings;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 amounts 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 8 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Yonko Grozev
President

APPENDIX

List of applications raising complaints under Article 6 § 1 of the Convention
(lack of opportunity to comment on the appeal)

No.	Application no. Date of introduction	Applicant's name Date of birth	Date of the First instance court decision	Date of the Court of appeal decision	Date of the Higher Administrative Court ("HAC") ruling on appeal on points of law, if applicable	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	63510/11 30/09/2011	Sergiy Mykolayovych Pechenizkyy 06/04/1963	28/02/2011 Velykoburluk Local Court of Kharkiv Region	15/04/2011 Kharkiv Administrative Court of Appeal		500
2.	35026/12 24/05/2012	Fedir Ivanovych Kotlenko 13/06/1946	27/01/2011 Krasnogvardiyskyy Local Court of Dnipropetrovsk	16/01/2012 Dnipropetrovsk Administrative Court of Appeal		500
3.	48019/12 19/07/2012	Valentyna Ivanivna Gryb 08/07/1951	20/05/2011 Samarskyi Local Court of Dnipropetrovsk	28/05/2012 Dnipropetrovsk Administrative Court of Appeal		500
4.	65722/12 05/10/2012	Leonid Oleksiyovych Petrov 16/06/1951	26/05/2011 Amur-Nyzhniodniprovskyy Local Court of Dnipropetrovsk	27/02/2012 Dnipropetrovsk Administrative Court of Appeal		500
5.	71273/12 19/10/2012	Nataliya Oleksandrivna Kazakova 20/03/1954	20/07/2011 Leninskyy District Court of Dnipropetrovsk	24/05/2012 Dnipropetrovsk Administrative Court of Appeal		500
6.	74771/12 12/11/2012	Viktor Petrovych Levachov 26/07/1946	17/06/2011 Leninskyy Local Court of Dnipropetrovsk	14/06/2012 Dnipropetrovsk Administrative Court of Appeal		500

1. Plus any tax that may be chargeable to the applicants.

No.	Application no. Date of introduction	Applicant's name Date of birth	Date of the First instance court decision	Date of the Court of appeal decision	Date of the Higher Administrative Court ("HAC") ruling on appeal on points of law, if applicable	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
7.	21094/13 16/03/2013	Nina Leonidivna Malenko 24/07/1951	06/05/2011 Konotop Local Court of Sumy Region	28/09/2012 Kharkiv Administrative Court of Appeal	04/01/2013	500
8.	24346/13 29/03/2013	Galina Nikolayevna Noskova 15/08/1946	29/07/2011 Leninskyy Local Court of Sevastopol	16/02/2012 Sevastopol Administrative Court of Appeal		500
9.	29598/13 23/04/2013	Tetyana Valentynivna Glembotska 08/01/1949	22/02/2011 Babushkynskiy Local Court of Dnipropetrovsk	16/07/2012 Dnipropetrovsk Administrative Court of Appeal		500
10.	34757/13 22/05/2013	Lyubov Logvinivna Kermas 06/05/1947	15/08/2011 Kirovskyy Local Court of Dnipropetrovsk	27/06/2012 Dnipropetrovsk Administrative Court of Appeal		500
11.	37671/13 31/05/2013	Nina Afanasiyivna Khyzhnyak 23/08/1953	10/06/2011 Amur-Nyzhnyodniprovskyy Local Court of Dnipropetrovsk	24/01/2013 Dnipropetrovsk Administrative Court of Appeal		500
12.	39965/13 11/06/2013	Viktor Ivanovich Romadanovskiy 30/03/1939 The applicant died on 18/01/2018. His wife, Tamara Pavlivna Kalashnikova, has the quality of heir.	26/07/2011 Kyivskyy Local Court of Odesa	05/09/2012 Odesa Administrative Court of Appeal	18/12/2012	500
13.	47881/13 18/07/2013	Pavlo Semenovych Kavun 27/07/1953	17/06/2011 Leninskyy Local Court of Dnipropetrovsk	15/02/2013 Dnipropetrovsk Administrative Court of Appeal		500
14.	52206/13 08/08/2013	Viktor Volodymyrovych Tymofiyev 03/12/1949	03/10/2011 Zhovtnevyi Local Court of Kryvyi Rih	21/12/2012 Dnipropetrovsk Administrative Court of Appeal		500

No.	Application no. Date of introduction	Applicant's name Date of birth	Date of the First instance court decision Shevchenkivskyy Local Court of Kyiv	Date of the Court of appeal decision Kyiv Administrative Court of Appeal	Date of the Higher Administrative Court ("HAC") ruling on appeal on points of law, if applicable	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
15.	55129/13 17/08/2013	Sergiy Grygorovych Lobanov 18/08/1949	02/09/2011 Shevchenkivskyy Local Court of Kyiv	11/10/2012 Kyiv Administrative Court of Appeal		500
16.	63197/13 26/09/2013	Oleksandr Georgiyovych Masiyan 20/08/1948	26/05/2011 Shevchenkivskyy District Court of Chernivtsi	27/03/2013 Vinnytsya Administrative Court of Appeal		500
17.	66585/13 15/10/2013	Lyubov Mykhaylivna Savelyeva 10/08/1951	20/06/2011 Krasnogvardiysk Local Court of Dnipropetrovsk	29/10/2012 Dnipropetrovsk Administrative Court of Appeal		500
18.	70813/13 31/10/2013	Volodymyr Dmytriyovych Bogoslavskyy 13/09/1948	05/08/2011 Lenynskiy Local Court of Dnipropetrovsk	15/11/2012 Dnipropetrovsk Administrative Court of Appeal		500
19.	79383/13 27/11/2013	Volodymyr Ivanovych Dzyadukh 27/08/1939	29/04/2011 Khmelnyskiy Local Court	05/06/2013 Vinnytsya Administrative Court of Appeal	13/08/2013	500