



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

FIFTH SECTION

CASE OF KHARCHENKO v. UKRAINE

(Application no. 37666/13)

JUDGMENT

STRASBOURG

3 October 2019

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

In the case of Kharchenko v. Ukraine,

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

André Potocki, *President*,

Ganna Yudkivska,

Yonko Grozev, *judges*,

and Liv Tigerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 12 September 2019,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 30 May 2013.

2. Notice of the application was given to the Ukrainian Government (“the Government”).

THE FACTS

3. The applicant’s details and information relevant to the application are set out in the appended table.

4. The applicant complained that he was deprived of an opportunity to comment on the appeal lodged by the defendant in his case.

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION**

5. The applicant complained that the principle of equality of arms had been breached on account of the domestic court’s failure to serve an appeal on him or otherwise inform him of the appeal lodged in his case. He 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 ...”

6. 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).

7. 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).

8. 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.

9. Having examined all the material submitted to it and lacking any evidence of proper notification of the applicant, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of this complaint. Having regard to its case-law on the subject, the Court finds that by proceeding to consider the appeal lodged in the applicant's case without attempting to ascertain whether it was served on the applicant or whether the applicant was informed of the appeal by any other means, the domestic court deprived the applicant of the opportunity to comment on the appeal lodged in his case and fell short of its obligation to respect the principle of equality of arms enshrined in Article 6 of the Convention.

10. This complaint is therefore admissible and discloses a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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.”

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

13. 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 application admissible;
2. *Holds* that this application discloses a breach of Article 6 § 1 of the Convention concerning the fairness of the civil proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the amount 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 amount at a rate equal to the 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 3 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

André Potocki
President

APPENDIX

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

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	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
37666/13 30/05/2013	Anatoliy Stepanovych Kharchenko 16/10/1948	03/06/2011 Zhovtnevy District Court of Kryvyi Rig	04/12/2012 Dnipropetrovsk Administrative Court of Appeal	500

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