



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

FIFTH SECTION

**CASE OF PERETYAKA AND SHEREMETYEV v. UKRAINE**

*(Applications nos. 17160/06 and 35548/06)*

JUDGMENT

STRASBOURG

21 December 2010

**FINAL**

*20/06/2011*

*This judgment has become final under Article 44 § 2 (c) of the Convention.  
It may be subject to editorial revision.*



**In the case of** Peretyaka and Sheremetyev v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 30 November 2010,

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

## PROCEDURE

1. The case originated in two applications (nos. 17160/06 and 35548/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Mr Oleg Pavlovich Peretyaka (“the first applicant”) and Mr Vladimir Andreyevich Sheremetyev (“the second applicant”), on 11 April and 9 August 2006 respectively.

2. The first applicant was represented by Ms N. Tselovalnichenko, a lawyer practising in Lugansk. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice.

3. On 1 October 2009 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 1).

4. The second applicant requested that the Chamber hold a hearing in the case. The Chamber decided, pursuant to Rule 54 § 3 of the Rules of Court, that no hearing was required.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1958 and lives in Lugansk. The second applicant was born in 1954 and lives in Slatino.

### **A. The proceedings instituted by the first applicant**

6. In April 2005 the first applicant instituted proceedings in the Leninskyi District Court of Lugansk against the Lugansk Regional Enlistment Office, seeking recalculation of his pension.

7. On 12 July 2005 the court rejected the applicant's claim as not based on the law. On 13 October 2005 the Lugansk Regional Court of Appeal considered the case under the rules of civil procedure and upheld the lower court's judgment. In the operative part of its decision, the Court of Appeal stated that the applicant had the right to challenge the decision before the Supreme Court within two months.

8. On 1 December 2005 the applicant submitted an appeal in cassation to the Supreme Court, to which he annexed copies of the lower courts' decisions.

9. On 26 December 2005 a judge of the Supreme Court, relying on paragraphs 7 and 10 of the Final and Transitional Provisions of the Code of Administrative Justice, ruled that the applicant's appeal in cassation should be remitted to the Higher Administrative Court.

10. By a ruling of 24 March 2006, a judge of the Higher Administrative Court, relying on Article 212 of the Code of Administrative Justice, dismissed the applicant's appeal in cassation as having been lodged out of time.

### **B. The proceedings instituted by the second applicant**

11. In October 2004 the second applicant instituted proceedings in the Leninskyi District Court of Kharkiv against the Kharkiv Regional Enlistment Office, seeking recalculation of his pension.

12. On 20 May 2005 the court rejected the applicant's claim as not based on the law. On 13 September 2005 the Kharkiv Regional Court of Appeal considered the case under the rules of civil procedure and upheld the lower court's judgment. In the operative part of its decision, the Court of Appeal stated that the applicant had the right to challenge the decision before the Supreme Court within two months.

13. On 11 November 2005 the applicant submitted an appeal in cassation to the Supreme Court, to which he annexed copies of the lower courts' decisions.

14. By letter dated 30 November 2005, the Supreme Court informed the applicant that his appeal in cassation had been remitted to the Higher Administrative Court.

15. By a ruling of 11 April 2006, a judge of the Higher Administrative Court, relying on Article 212 of the Code of Administrative Justice, dismissed the applicant's appeal in cassation as having been lodged out of time.

## II. RELEVANT DOMESTIC LAW

### A. Constitution of Ukraine of 1996

16. The relevant provisions of the Constitution read as follows:

#### Article 125

“In Ukraine the system of courts of general jurisdiction is formed in accordance with the principles of territoriality and specialisation.

The Supreme Court of Ukraine is the highest judicial body in the [hierarchy] of courts of general jurisdiction.

The respective higher courts are the higher judicial bodies of specialised courts.

Courts of appeal and local courts shall operate in accordance with the law.

The creation of extraordinary and special courts shall not be permitted.”

### B. Code of Civil Procedure of 1963 (repealed with effect from 1 September 2005)

17. The relevant provisions of the Code of Civil Procedure of 1963, as worded at the material time, read as follows:

#### Article 1. Legislation on civil court procedure

“... Legislation on civil court procedure shall establish procedures for the consideration of cases concerning disputes arising from legal relations in the civil, family, labour and collective farming spheres, in addition to cases concerning administrative legal relations...”

#### Article 319. The court of cassation instance

“The court of cassation instance is the Supreme Court of Ukraine.”

#### Article 320. The right to challenge judicial decisions in cassation

“The parties and other persons taking part in the case ... have the right to challenge in cassation judgments and rulings adopted by a first-instance court which have been considered by a court of appeal, as well as rulings and judgments of the court of appeal.

The grounds for [an appeal] in cassation are the wrongful application by the court of norms of substantive law or a violation of norms of procedural law.”

**Article 321. The term for lodging an appeal in cassation**

“An appeal in cassation ... shall be lodged within one month of the day of the pronouncement of the ruling or judgment of the court of appeal.

If the time-limit ... has been missed for reasons which the court recognises as justified, the court may, at the request of the person who lodged the appeal ... renew that time-limit for a period not exceeding one year from the day on which the right to an appeal in cassation arose...”

**C. Code of Civil Procedure of 2004 (in force as of 1 September 2005)**

18. The relevant provisions of the Code of Civil Procedure of 2004, as worded at the material time, read as follows:

**Article 15. Jurisdiction of the courts as regards civil cases**

“1. The courts shall consider, within the framework of civil court procedure, cases ...concerning legal relations in the civil, housing, land, family and labour spheres, as well as other legal relations, provided they do not fall to be considered under the rules of a different type of court procedure...”

**Article 67. Types of procedural terms**

“1. The terms during which procedural acts are to be performed shall be set by the law, and if they have not been set by the law [the terms shall be] set by the court.”

**Article 69. Start of the running of procedural terms**

“1. A procedural term shall start running on the day after the calendar date of the event [to which the term is linked]...”

**Article 70. Expiry of procedural terms**

“...

2. A term [expressed] in months shall expire on the same date of the last month of the term...

5. The last day of the term shall run until [midnight]...

6. The term shall not be considered to be missed if the claim, complaint, other documents or materials, or money have been submitted to the post office or transferred by other means of communication before its expiry.”

**Article 73. Renewal or extension of procedural terms**

“1. The court shall renew or extend the term ... at the request of a party ... if it has been missed for justifiable reasons.

2. The question concerning renewal or extension of the expired term shall be decided by the court ... to which a document or evidence was due to be submitted. The persons taking part in the proceedings shall be informed of the place and time of consideration of that question. The presence of those persons is not compulsory.

3. A document or evidence concerning which the request [for renewal or extension of the term] has been lodged may be submitted together with the request...”

**Article 323. The court of cassation instance**

“1. The court of cassation instance in civil cases is the court which is envisaged by the Judiciary Act as the court of cassation in such cases.”

**Article 324. The right to challenge [judicial decisions] in cassation**

“1. The parties and other persons taking part in the case ... have the right to challenge in cassation:

1) judgments of the court of first instance, after they have been reviewed on appeal, judgments and rulings of the appeal court adopted [in the course of] the consideration [of the case] on appeal...

2) rulings of the court of first instance ... after they have been reviewed on appeal and rulings of the appeal court if they preclude further proceedings in the case.

2. The grounds for [an appeal] in cassation are the wrongful application by the court of norms of substantive law or a violation of norms of procedural law.”

**Article 325. The term for lodging an appeal in cassation**

“1. An appeal in cassation ... may be lodged within two months of the day on which the judgment (ruling) of the appeal court becomes final.

2. If the term ... has been missed for the reasons which the court recognised to be justifiable, the court of cassation instance may, at the request of the person who lodged the appeal, renew that term for a period not exceeding one year from the day on which the right to an appeal in cassation arose.

3. An appeal in cassation lodged out of time ... shall be returned by the court of cassation to the person who lodged it, if that person does not raise a question of renewal of the term and also if the [request for] renewal is refused.

4. The question of renewal of the term ... shall be determined by a ruling of the court of cassation instance.”

## **Chapter XI. Final and transitional provisions**

“...

9. Claims and complaints in the cases concerning administrative [matters] ... lodged before the entry into force of this Code ... shall be considered pursuant to [the rules of] the Code of Administrative Justice...”

### **D. Code of Administrative Justice of 2005 (in force as of 1 September 2005)**

19. The relevant provisions of the Code of Administrative Justice of 2005, as worded at the material time, read as follows:

#### **Article 15. Jurisdiction of the administrative courts as regards administrative cases**

“1. The administrative courts shall enjoy jurisdiction over:

1) disputes between physical persons or legal entities and subjects vested with public powers concerning the latter's decisions ... actions or lack of action;

2) disputes relating to the recruitment, careers and termination of public service of citizens...”

#### **Article 20. Jurisdiction of the particular instances of administrative courts**

“...

3. The Higher Administrative Court of Ukraine shall review in cassation the judicial decisions of local administrative courts and administrative courts of appeal...”

#### **Article 102. Renewal and extension of procedural terms**

“1. A court may renew or extend a term missed for justifiable reasons ... at the request of the person taking part in the proceedings...”

#### **Article 103. Calculation of procedural terms**

“1. A procedural term shall start running on the day after the respective calendar date or the event [to which the term is linked]...

3. A term [expressed] in months shall expire on the same date of the last month of the term...

8. The last day of the term shall run until [midnight]...

9. The term shall not be considered to be missed if the claim, complaint, other documents or materials, or money have been submitted to the post office or transferred by other means of communication before its expiry...”

**Article 210. The court of cassation instance**

“1. The court of cassation instance in administrative cases is the Higher Administrative Court of Ukraine.”

**Article 211. The right to challenge [judicial decisions] in cassation**

“1. The parties and other persons taking part in the case ... have the right to challenge in cassation judicial decisions of the court of first instance after reviewing them on appeal, as well as judicial decisions of the court of appeal, in full or in part...

3. A violation by a court of norms of substantive or procedural law shall constitute a ground for [an appeal] in cassation.”

**Article 212. Order and terms for lodging an appeal in cassation**

“1. An appeal in cassation ... shall be submitted directly to the administrative court of cassation.

2. An appeal in cassation shall be lodged within one month of the day on which the judicial decision of the court of appeal becomes final...

3. An appeal in cassation submitted out of time... shall be left unconsidered if the court of cassation does not find reasons for its renewal at the request of the person who lodged the appeal in cassation...”

**Article 236. The right to appeal against court decisions in the light of exceptional circumstances**

“1. Parties ... may challenge in the light of exceptional circumstances court decisions in administrative cases after their review in cassation and decisions of the court of cassation before the Supreme Court of Ukraine.

2. Decisions of the Supreme Court of Ukraine in administrative cases may also be challenged in the light of exceptional circumstances [on the basis] set out in subparagraph 2 of Article 237 of this Code.

...”

**Article 237. Grounds for [an appeal] made in the light of exceptional circumstances**

“1. Court decisions in administrative cases may be reviewed in the light of exceptional circumstances by the Supreme Court of Ukraine, if they are challenged on the [following] grounds:

(1) dissimilar application of the same provision of law by courts of cassation;

(2) a finding by an international judicial body that the courts' decisions [in a case] are infringing Ukraine's international obligations.”

**Article 238. The term for lodging an appeal made in the light of exceptional circumstances**

“1. An appeal shall be lodged within a month of the discovery of the circumstances capable of serving as grounds for [appeal] in the light of exceptional circumstances.

2. An appeal lodged after the expiry of [that] term ... shall be left without consideration if, upon a request by the appellant, the Supreme Court of Ukraine finds no grounds to renew [the term]...”

**Article 239. Admissibility of an appeal made in the light of exceptional circumstances**

“1. A panel of at least five judges of the judicial chamber of the Supreme Court dealing with administrative cases ... shall decide on the admissibility of an appeal made in the light of exceptional circumstances within fifteen days of its receipt and without summoning the persons taking part in the case. At the same time [the panel] may decide on [the question of] the renewal of the term for lodging an appeal made in the light of exceptional circumstances.

2. An appeal shall be considered admissible ... if at least three judges have reached [such a conclusion].

...”

**Article 242. Powers of the Supreme Court in relation to an [appeal made] in the light of exceptional circumstances**

“1. ...[A] panel of judges ... shall adopt, by a majority vote, one of the following decisions...”

(1) allowing the appeal in full or in part;

(2) dismissing the appeal.

...

3. The decision of the Supreme Court of Ukraine [concerning an appeal made in the light of exceptional circumstances] is final and may not be appealed against, save for in the circumstances envisaged by Article 237 paragraph 2 of this Code.”

**Article 243. A decision of the Supreme Court allowing an appeal**

“1. The Supreme Court of Ukraine shall allow an appeal if it discovers a dissimilar application of the same provision of law by courts of cassation.

2. If the Supreme Court of Ukraine establishes that the contested court decision is unlawful, it shall quash it in full or in part and remit the case for fresh consideration to the court of first, appeal or cassation instance, as appropriate, depending on which court was the first to infringe a provision of substantive or procedural law resulting in the incorrect determination of the case. The Supreme Court of Ukraine may also

quash decisions of courts of appeal or cassation and leave wrongfully quashed decisions of courts of first or appeal instance in force.

...

4. The decision of the Supreme Court of Ukraine allowing an appeal shall be reasoned.”

### **Chapter VII. Final and transitional provisions**

“1. This Code shall enter into force as from 1 September 2005...

5. Before the district administrative courts and administrative courts of appeal start to operate, cases falling within their jurisdiction shall be decided by the respective local and appeal courts of general jurisdiction ... pursuant to the rules of the Code of Administrative Justice of Ukraine...

7. After the entry into force of this Code, claims and complaints in cases concerning administrative [matters] ... as well as appeals and appeals in cassation ... in such cases, which were lodged, but not determined, before the entry into force of the Code of Administrative Justice of Ukraine, shall be considered pursuant to [the rules of] this Code.

Such claims or complaints ... may not be left without further action or returned pursuant to this Code, if they were lodged in compliance with the relevant requirements and jurisdictional rules established by the Code of Civil Procedure of Ukraine of 1963...

10. Appeals in cassation against judgments of the courts of first instance in the situations envisaged in paragraph 7 of this Chapter which were lodged before the entry into force of this Code and which have not been considered by the Supreme Court of Ukraine shall be referred to the Higher Administrative Court of Ukraine...”

### **E. Judiciary Act of 21 June 2001 (repealed with effect from 30 July 2010)**

20. The relevant provisions of the Judiciary Act of 21 June 2001, as worded at the material time, read as follows:

#### **Section 47. The Supreme Court of Ukraine - the highest judicial body**

“1. The Supreme Court of Ukraine is the highest judicial body within the [hierarchy] of courts of general jurisdiction...

2. The Supreme Court of Ukraine:

1) ..shall consider cases in cassation in the situations envisaged by law...”

## Chapter VII. Final and transitional provisions

“...

9) ...The chamber of the Supreme Court of Ukraine which hears civil cases shall consider civil cases in cassation until such time as another court [vested with functions] of a court of cassation in civil cases is determined by legislation.”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

21. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common legal background.

### II. SCOPE OF THE CASE

22. The Court notes that, after the communication of the applications to the respondent Government, the second applicant introduced a complaint of infringement of the right to respect for correspondence, without providing further details.

23. In the Court's view, the new complaint is not an elaboration of the applicant's original complaint of lack of access to court, on which the parties have commented. The Court considers, therefore, that it is not now appropriate to take the matter up separately (see, *mutatis mutandis*, *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005). It will be dealt with in application no. 53744/10.

### III. THE COMPLAINTS OF LACK OF ACCESS TO A COURT

24. The applicants complained that they had been unlawfully denied access to a court of cassation in their cases. They relied on Articles 6 and 13 of the Convention.

25. The Court notes that the applicants' complaints fall to be examined solely under Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

### A. Admissibility

26. The Government submitted that the applicants had not exhausted the domestic remedies available to them, as they had not requested the renewal of the term provided for lodging an appeal in cassation with the Higher Administrative Court under Article 102 of the Code of Administrative Justice.

27. The Government also argued that the applicants had failed to lodge with the Supreme Court requests for review of the decisions of the Higher Administrative Court of 24 March (in the first applicant's case) and 11 April 2006 (in the second applicant's case) in the light of exceptional circumstances pursuant to Article 237 of the Code of Administrative Justice. According to the Government, the issue concerned the dissimilar application of procedural law by the Supreme Court and the Higher Administrative Court in the applicants' cases, falling within the ambit of the first sub-paragraph of that provision of domestic law.

28. The applicants disagreed.

29. The Court reiterates that the only remedies to be exhausted by an applicant are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in both theory and practice at the relevant time (see, for instance, *Miroshnik v. Ukraine*, no. 75804/01, § 53, 27 November 2008).

30. The Court considers that the Government's argument that it was incumbent upon the applicants to lodge a request for the renewal of the term for lodging an appeal in cassation is closely linked to the substance of the applicants' complaints and that it must therefore be joined to the Court's consideration of the merits of the application.

31. As regards the Government's second objection as to the exhaustion of domestic remedies, the Court recalls that it has already found in a case against Ukraine that requests for review of court decisions made in the light of exceptional circumstances, as envisaged by the Code of Administrative Justice, are akin to requests for the re-opening of the proceedings (see *Karuna v. Ukraine* (dec.), no. 43788/05, 3 April 2007). In this context, the Court reiterates that the Convention does not guarantee a right to have a case re-opened by means of an extraordinary remedy (see, *mutatis mutandis*, *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002). Having regard to the parties' submissions on this aspect of the case, and, in particular, given the Government's failure to submit any examples of cases in which the present issue of access to a court of cassation was resolved through the impugned procedure, the Court discerns no grounds to depart from the findings it reached in *Karuna* (cited above). Moreover, the Court notes that such findings are consistent with its practice concerning the extraordinary review procedure in the civil law matters in the Ukrainian legal system (see *Nesterova v. Ukraine*, no. 10792/04, § 36, 28 May 2009).

Therefore, the Court holds that the applicants were not required to pursue the procedure suggested by the Government, as it was not a remedy within the meaning of Article 35 § 1 of the Convention.

32. Accordingly, the Court dismisses the Government's objection in this latter regard. It finds that the applicants' complaints of lack of access to court are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further finds that they are not inadmissible on any other grounds and must therefore be declared admissible.

### **B. Merits**

33. The Court reiterates that the right to court, of which the right of access is one aspect, is not absolute: it may be subject to limitations permitted by implication, particularly as regards the conditions of admissibility of an appeal. However, these limitations must not restrict the exercise of the right in such a way or to such an extent that its very essence is impaired. They must pursue a legitimate aim and there must be a reasonable degree of proportionality between the means employed and the aim sought to be achieved.

34. The rules on time-limits for appeals are undoubtedly designed to ensure the proper administration of justice and legal certainty. Those concerned must expect such rules to be applied. However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy (see *Melnyk v. Ukraine*, no. 23436/03, §§ 22-23, 28 March 2006).

35. The Court notes that, according to its established case-law concerning Ukraine, the above guarantees enshrined in Article 6 are applicable to proceedings before courts of cassation in both civil and administrative matters, regardless of their Ukrainian classification (see *Melnyk*, § 25, cited above, and *Karuna*, cited above).

36. Turning to the circumstances of the present case, the Court observes that the applicants had access to a court of cassation, in that their appeals reached both the Supreme Court and the Higher Administrative Court. However, their appeals were not considered because the latter court found that they had been lodged out of time.

37. Although the applicants contended that the decisions of the Higher Administrative Court had not been in compliance with relevant procedural law, the Court does not find it necessary to examine whether the relevant rules were accurately construed by the domestic court. The latter was better placed to interpret the domestic rules of procedure, in particular those concerning procedural time-limits.

38. The Court also considers that it is not necessary to determine whether after the entry into force of the Code of Administrative Procedure

on 1 September 2005 the applicants should have been aware that their cases would be dealt with under the rules of administrative procedure.

39. What is important in the present circumstances is that the courts of appeal expressly dealt with the applicants' cases under the rules of civil procedure. Furthermore, their decisions clearly indicated that an appeal in cassation had to be lodged with the Supreme Court within two months, that is, the period for lodging appeals under the new rules of civil procedure. Thus, the courts of appeal explicitly guided the applicants to pursue their cases through the civil procedure route (see paragraphs 7, 12, and 22 above). Even if a statement in the operative part of a judgment cannot necessarily be regarded as binding on the subsequent jurisdiction, the statement of the courts of appeal that the applicants had two months in which to make their appeal was in the circumstances – in particular, the fact that the events took place shortly after substantial changes in the procedural legislation, and no other guidance appears to have been available – the only reliable guidance for the applicants.

40. In the light of the foregoing, the Court finds that the decision of the Higher Administrative Court to apply the one-month time-limit in each case, resulting in the refusal to consider the applicants' appeals in cassation on the merits, was not proportionate to the purpose of the impugned procedural limitation. To hold otherwise would be too formalistic and contrary to the principle of practical and effective application of the Convention (see, *mutatis mutandis*, *Christian Democratic People's Party v. Moldova* (no. 2), no. 25196/04, § 25, 2 February 2010).

41. The Court further finds that, in the circumstances, the applicants should not be reproached for not seeking the renewal of the term set for lodging appeals in cassation in administrative cases, as they acted in full conformity with the guidance of the courts of appeal, of which the Higher Administrative Court was or should have been aware when dealing with the applicants' appeals in cassation. The Court therefore dismisses the Government's objection as to the exhaustion of domestic remedies previously joined to the merits (see paragraphs 26 and 30 above).

42. There has accordingly been a breach of Article 6 § 1 of the Convention.

#### IV. THE REMAINING COMPLAINTS

43. The applicants complained under Articles 6 and 13 of the Convention of the outcome and unfairness of the proceedings, alleging that the courts had been biased and that they had assessed the evidence and applied the law wrongly in their cases. The first applicant also complained under the same provisions of the Convention about the length of the proceedings. The second applicant complained of a violation of Articles 14 and 17 of the Convention on account of the outcome of the proceedings.

44. Having carefully examined the applicants' remaining complaints under Articles 6, 13, 14 and 17 of the Convention in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The first applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed EUR 3,398,400 in respect of pecuniary damage and EUR 10,000,000 for non-pecuniary damage.

47. The Government contested the applicants' claims.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the second applicant; it therefore rejects the claim. On the other hand, ruling on an equitable basis, as required by Article 41 of the Convention, it awards each of the applicants EUR 2,000 in respect of non-pecuniary damage.

### B. Costs and expenses

49. The first applicant also claimed 2,450<sup>1</sup> Ukrainian hryvnias for legal costs incurred before the Court.

50. The Government submitted that the claimed amount had not been calculated in accordance with relevant domestic rules and that it was excessive, given the subject-matter of the case.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its

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1. About EUR 226.

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 226 claimed in respect of the first applicant's legal costs.

52. The second applicant made no claim as to costs and expenses. Therefore, the Court makes no award to him under this head.

### **C. Default interest**

53. The Court considers it appropriate that 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. *Decides* to join the applications;
2. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies, based on the argument that the applicants had failed to request the renewal of the term for lodging an appeal in cassation, and rejects it;
3. *Declares* the applicants' complaints under Article 6 § 1 of the Convention of lack of access to court admissible and the remainder of the applications inadmissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, each of the applicants EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, and the first applicant EUR 226 (two hundred and twenty-six euros) for costs and expenses, plus any tax that may be chargeable to the applicants on the above amounts;
  - (b) that the above amounts be converted into the national 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;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President