

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

FIFTH SECTION

CASE OF GUSELNYKOV v. UKRAINE

(Application no. 32526/13)

JUDGMENT

STRASBOURG

11 April 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Guselnykov v. Ukraine,

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

Mārtiņš Mits*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 21 March 2024,

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 13 May 2013.

2. The Ukrainian Government ("the Government") were given notice of the application.

THE FACTS

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

THE LAW

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

4. The applicant complained of the denial of access to a court. He relied on Article 6 § 1 of the Convention.

5. The Court reiterates that the right of access to a court – that is, the right to institute proceedings before the courts in civil matters – constitutes an element which is inherent in the right set out in Article 6 § 1 of the Convention. However, the right of access to a court is not absolute and may be subject to limitations that do not restrict or reduce the access left to an individual in such a way or to such an extent that the very essence of the right is impaired (see *Golder v. the United Kingdom,* 21 February 1975, § 36, Series A no. 18; *Ponomarenko v. Ukraine,* no. 13156/02, § 36, 14 June 2007; *Matsyuk v. Ukraine,* no. 1751/03, § 28, 10 December 2009; and *Kuzmenko v. Ukraine,* no. 49526/07, § 25, 9 March 2017).

6. In the leading case of *Tserkva Sela Sosulivka v. Ukraine* (no. 37878/02, §§ 51-53, 28 February 2008), the Court already found a violation in respect of the issue similar to that in the present case.

7. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different

conclusion on the admissibility and merits of the applicant's complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the very essence of the applicant's right of access to a court was impaired.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

9. Regard being had to the documents in its possession and to its case-law (see, in particular, *Kuzmenko,* cited above, § 41), the Court considers it reasonable to award the sum indicated in the appended table and rejects any additional claims for just satisfaction raised by the applicant.

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 denial of access to a court;

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 marginal lending rate of the European Central Bank during the default period plus three percentage points.
   Dismisses the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 11 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Mārtiņš Mits
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (limitations on access to a court)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Key issue impairing access to a court	Facts and relevant information	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
32526/13 13/05/2013	**Artem Valeriyovych GUSELNYKOV** 1992	Guselnykov Valeriy Ivanovych, Tarasivka, Kyiv region	disagreement between different courts regarding jurisdiction (*Tserkva Sela Sosulivka v. Ukraine*, no. 37878/02, §§ 51-53, 28 February 2008)	In October 2010 the applicant's father, acting on behalf of the applicant who was a minor at the material time, lodged with the Dnipro Administrative Court an administrative claim against the Customs Service Academy, seeking to be provided with the State-funded higher education, recovery of the tuition fees he had already paid and compensation. He was instructed, by the court's decision of 12/10/2010, to lodge the claim under the rules of civil procedure. Accordingly, in November 2010 the applicant's father lodged a similar claim under the Code of Civil Procedure of 2004 with the Zhovtnevyy District Court of Dnipro. However, the latter court examined the merits of the claim under the Code of Administrative Justice of 2005 and, by the judgement of 12/05/2011, rejected it as unfounded. By the decision of 26/01/2012, the Dnipro Administrative Court of Appeal quashed that judgement and terminated the proceedings, holding that the claim had to be examined in the framework of civil proceedings. On 13/03/2013 the Higher Administrative Court upheld that decision.	900

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