

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

FIFTH SECTION

CASE OF MYSHCHYSHYN v. UKRAINE

(Application no. 41557/13)

JUDGMENT

STRASBOURG

6 October 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Myshchyshyn v. Ukraine,

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

Stéphanie Mourou-Vikström*, President,*
Ivana Jelić*,*
Kateřina Šimáčková*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 25 August 2022,

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 14 June 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.

4. The applicant complained of the denial of access to higher courts.

THE LAW

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

5. The applicant complained of the denial of access to higher courts. She 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 fair ... hearing ... by [a] ... tribunal ..."

6. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights or obligations brought before a court or tribunal. That right of access is not absolute and it is subject to limitations, which, however, must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their civil rights and obligations. Furthermore, it is not for

this Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. On the other hand, the risk of any mistake made by a State authority must be borne by the State, and errors must not be remedied at the expense of the individual concerned (see, among other authorities, *Gavrilov v. Ukraine,* no. 11691/06, §§ 23-25, 16 February 2017, with further references).

7. In the leading case of *Mushta v. Ukraine* (no. 8863/06, §§ 40-47, 18 November 2010), the Court already found a violation of Article 6 § 1 of the Convention in respect of an issue similar to that in the present case.

8. 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 application of the relevant procedural rules leading to the denial of the applicant's access to a higher court could be regarded as excessively formalistic.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. 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."

11. Regard being had to the documents in its possession and to its case-law (see, in particular, *Gavrilov,* cited above, § 36), the Court considers it reasonable to award the sum indicated in the appended table.

12. The Court further 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 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.

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (denial of access to higher courts)

Application no. Date of introduction	Applicant's name Year of birth	Specific irregularity complained of	Case-law	Facts and relevant information	Amount awarded for non-pecuniary damage per applicant (in euros)[1]
41557/13 14/06/2013	**Oksana Vasylivna MYSHCHYSHYN** 1979	unforeseeable and/or excessively formalistic application of the relevant procedural regulations	Mushta v. Ukraine, no. 8863/06, 18 November 2010	By a judgment of 10/06/2010, the Frankivskyy District Court of Lviv partly allowed the applicant's administrative claim for social payments. The applicant submitted that no full text of that judgment had been provided to her during the twenty-day period for lodging an appeal. Nonetheless, she lodged an appeal with the Lviv Regional Court of Appeal and asked the court to allow her to modify it and to pay the relevant fees later, when she could receive the full text of the judgment. Subsequently, the applicant received a copy of the appellate court's ruling of 25/08/2010 leaving her opponent's (a State body) appeal without examination and instructing the latter to pay court fees. Then, she received a copy of the appellate court's decision of 10/09/2010 dismissing her appeal for her failure to comply with the instructions contained in the ruling of 25/08/2010 (that is, to pay the court fees). The applicant appealed in cassation, in which she, *inter alia*, denied having received any ruling instructing her to pay the court fees and joined a copy of the ruling of 25/08/2010, which she had received. By decision of 14/02/2013, the Higher Administrative Court rejected her cassation appeal, finding that there had been evidence that "correspondence from the appellate court" had been delivered to the applicant and that consequently she had been "duly informed that her appeal had been left without examination".	1,500

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