

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

FIFTH SECTION

CASE OF NEKRASOVA v. UKRAINE

(Application no. 35931/19)

JUDGMENT

STRASBOURG

3 September 2026

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



In the case of Nekrasova v. Ukraine,

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

Andreas Zünd*, President*,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 35931/19) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") against Ukraine on 2 July 2019 by a Ukrainian national, Ms Tamara Oleksandrivna Nekrasova ("the applicant"), who was born in 1973 and lives in Chuguyiv Kharkiv region;

the decision to give notice of the complaints under Article 6 § 1 of the Convention to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 2 July 2026,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns an alleged violation of Article 6 § 1 of the Convention on account of the applicant's inability to take part in a hearing before the Chervonozavodskyi District Court in Kharkiv ("the first-instance court") regarding her civil claim and the Supreme Court's refusal to examine her cassation appeal on account of her failure to pay the court fee.

2. In January 2017, while serving a prison sentence, the applicant, represented by a lawyer, instituted civil proceedings against a private individual, mainly seeking to have her mortgage contract terminated and to have the individual's ownership over related property acknowledged. Although on 2 November 2017 the first-instance court had granted a request by the applicant to take part in the hearing via video conference, the case was heard and decided in her absence on 4 December 2017 owing to a failure to establish a connection with the detention facility for the video conference. The applicant's claims were dismissed as unfounded. The applicant appealed and participated in the appellate hearings, making oral submissions regarding her case. She was represented by her lawyer. On 30 July 2018 the Kharkiv Court of Appeal upheld the first-instance court's judgment without addressing the applicant's allegation that her absence from the first-instance court hearing had affected the outcome of the case, allegedly because she had

been unable to provide the first-instance court with certain documents in support of her claim.

3. On 8 January 2019 the Supreme Court refused to examine a cassation appeal lodged by the applicant because of her failure to pay a court fee of 2,560 Ukrainian hryvnias (equivalent to approximately 80 euros at the material time). The Supreme Court refused a request by the applicant to defer the payment of that fee on account of her lack of sufficient funds, in support of which she had submitted a certificate, issued by the Kyiv Pre-Trial Detention Facility on 18 October 2018, attesting that during the whole period of her detention in that facility – that is, between 8 February and 18 October 2018 – she had had no income and had been receiving the State's "full financial maintenance". The applicant also argued that she had had no income since being placed in detention in March 2012. In that regard, the Supreme Court held that the applicant had failed to present any acceptable reasons and evidence for her request, as required by section 8 of the Court Fee Act.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LACK OF ACCESS TO THE SUPREME COURT

4. The applicant complained under Article 6 § 1 of the Convention that the Supreme Court's refusal to examine her cassation appeal had been unjustified.

5. Referring to the amount of the court fee that the applicant was required to pay (see paragraph 3 above), the Government argued that the applicant had not suffered a significant disadvantage. In the alternative, they contended that the complaint was manifestly ill-founded. The Supreme Court had not exceeded its discretion by rejecting the applicant's request to defer the payment of the court fee, as this had resulted from her failure to substantiate the grounds required under section 8 of the Court Fee Act.

6. The applicant argued that the Supreme Court had failed to provide any clarification as to what additional documents or information she had been required to submit to properly substantiate her deferral request.

7. The Court considers that the question of whether the applicant suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention should be joined to the merits, since it is closely linked to the substance of the applicant's complaint. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

8. 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 (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). 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, in that, for example, 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 the 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).

9. The Court observes that, under section 8 of the Court Fee Act, a domestic court may grant an exemption from or deferral of the payment of the court fee if, *inter alia*, the fee exceeds 5% of the party's income during the previous year. It is true that the certificate submitted by the applicant in support of her deferral request attested that she had had no income during a slightly shorter period of eight months (see paragraph 3 above). However, in her submissions to the Supreme Court, the applicant explained that she had been detained since March 2012 and had received no income during the entire period of detention. In these circumstances, the Supreme Court's finding that the applicant had failed to present any acceptable reasons and evidence for her deferral request, as required by section 8 of the Court Fee Act, without any further details or explanation in this regard does not appear sufficiently persuasive. Furthermore, in the absence of any guidance as to what additional documents or information were required, the Supreme Court's decision of 8 January 2019 appears excessively formalistic. Overall, no information has been presented to the Court indicating that the applicant, who was serving a sentence during the proceedings concerned, had the means to pay the court fee in question, notwithstanding its relatively modest amount.

10. The foregoing considerations lead the Court to conclude that the Supreme Court, in effect, denied the applicant practical and effective access to that court without sufficient justification (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 96-99, 5 April 2018, with further references).

11. The Court therefore dismisses the Government's inadmissibility objection previously joined to the merits (see paragraph 7 above) and concludes that there has been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

12. The applicant further complained under Article 6 § 1 of the Convention that the examination of her civil claim by the first-instance court in her absence had resulted in a violation of her right to a fair hearing.

13. The Government contended that the applicant had not exhausted domestic remedies, as she had failed to pay the court fee and resubmit her cassation appeal. Furthermore, the applicant had not been deprived of the opportunity to present her case before the first-instance court, as her lawyer had been present during the hearing and had made submissions in support of her claim. In the Government's view, in contrast to *Zayidov v. Azerbaijan (no. 2)* (no. 5386/10, §§ 85-102, 24 March 2022), the outcome of the applicant's civil dispute had not depended on her personal presence in court, and she had been able to make the necessary submissions through her lawyer. In any event, she had personally participated in the appellate court hearings.

14. The applicant argued that it had been the first-instance court's error that the video connection with the detention facility had not been established. She also alleged that her lawyer had categorically objected to the hearing being held in her absence and that he had not been authorised to represent the applicant in her absence.

15. The Court finds it unnecessary to address all the parties' arguments, as the present complaint is in any event inadmissible.

16. The Court notes, in particular, that the applicant did not show that her personal testimony had been necessary for determining the merits of her claim or that she or her lawyer had been unable to obtain or submit supporting documents during the first-instance proceedings, which lasted for almost one year, between January and December 2017 (see paragraph 2 above). Moreover, the applicant participated in the appellate hearings via video conference and had the opportunity to make oral and written submissions on all the relevant facts and legal points, which the appellate court had power to review.

17. Even assuming that there was a certain accountability on the part of the authorities or the first-instance court regarding the establishment of a video connection with the applicant's detention facility during the court hearing of 4 December 2017, the Court finds that the applicant's non-participation in that hearing did not deprive her of the right to present her case effectively during the examination of the merits by the first-instance and appellate courts.

18. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 178,290.19 euros (EUR) in respect of non-pecuniary damage, EUR 500 in respect of costs and expenses incurred before the domestic courts (lawyer's fees) and EUR 82.60 in respect of those incurred before the Court (postal and translation services). The applicant submitted receipts to support her claims in respect of costs and expenses incurred before the Court which showed expenses for postal services in the amount of 435 Ukrainian hryvnias (UAH, equivalent to approximately EUR 10) and for translation services in the amount of UAH 2,105 (equivalent to approximately EUR 47).

20. The Government considered those claims unsubstantiated and excessive.

21. The Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

22. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the amount of EUR 57 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits of the complaint under Article 6 § 1 of the Convention concerning the lack of access to the Supreme Court the Government's objection concerning the alleged lack of a "significant disadvantage" and *dismisses* it;

2. *Declares* the complaint under Article 6 § 1 of the Convention concerning the lack of access to the Supreme Court admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 57 (fifty-seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 September 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President