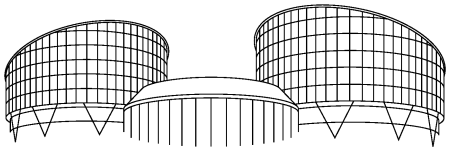

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MALA v. UKRAINE

(Application no. 4436/07)

JUDGMENT

STRASBOURG

3 July 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mala v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 3 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 4436/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Anzhela Volodymyrivna Mala ("the applicant"), on 4 January 2007.

2. The applicant was represented by Ms S. M. Kaplunova, a lawyer practising in Zaporizhzhya. The Ukrainian Government ("the Government") were represented by their then Agent, Mr N. Kulchytskyy.

3. The applicant complained that the domestic proceedings initiated by her against her former husband for recovery of child maintenance arrears and penalties had been unfair.

4. On 2 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Zaporizhzhya.

6. On 4 January 1994 the Leninskyy District Court of Zaporizhzhya ordered the applicant's former husband, S., to pay her child maintenance in respect of their daughter, who was living with the applicant.

A. Bailiff's reports on the child maintenance arrears

7. According to a bailiff's report of 24 January 2006, the outstanding arrears to the applicant at that date were 7,546 Ukrainian hryvnias ((UAH), at the time equivalent to about 1,200 euros (EUR)), of which UAH 2,052 (about EUR 330) was owed for 2005. The bailiff's calculations were based on the average salary indicators in the district where S. lived, since he had been unemployed at the time.

8. On 1 April 2006 the same bailiff issued a fresh report, assessing the total amount of the arrears at 31 March 2006 at UAH 667.50. The sum owed for 2005 was assessed at UAH 480. The bailiff recalculated the earlier established amount on the basis of a tax return submitted by the applicant's ex-husband for the last quarter of 2005, which showed that he had earned UAH 3,000 for that period. Viewed as his actual earnings for the whole year, that amount was lower than the average salary, which would have otherwise been taken as a basis for the arrears' calculation.

9. On 4 April 2006 the report of 1 April 2006 was served on the applicant, who had ten days to challenge it.

10. On 11 April 2006 the applicant sought to challenge the accuracy of the report before the Khortytskyy District Court of Zaporizhzhya ("the Khortytskyy Court").

11. On 24 May 2006 the Khortytskyy Court allowed her application and invalidated the impugned report as erroneous. It concluded that the bailiff had had no reasons to depart from the earlier calculation, since the tax return submitted by S. concerned only the last quarter of 2005. In the absence of any appeal, the ruling became final.

12. On 6 June 2006 the bailiff issued another report, according to which the outstanding child maintenance arrears owed to the applicant at that date were UAH 7,671 Ukrainian hryvnias, of which UAH 2,358 was owed for 2005.

13. On 29 June 2006 the bailiff reassessed the arrears owed by S. to the applicant, concluding that they were UAH 6,606 at 1 June 2006 (as S. had made some payments during that year), of which UAH 2,358 was owed for 2005.

14. On 19 October 2006 the Bailiffs' Service terminated the child maintenance enforcement proceedings because on 2 October of that year the applicant's daughter had reached the age of majority. The bailiff assessed the outstanding arrears at 2 October 2006 at UAH 8,637.32 (equivalent to about EUR 1,300 at that time); the sum owed for 2005 remained unchanged (UAH 2,358, equivalent to about EUR 330). Neither the applicant nor her former husband challenged this assessment.

B. Imposition of penalties (first set of proceedings)

15. On 26 January 2006 the applicant lodged a civil claim against S. for penalties to be imposed on him for late child maintenance payments. She relied on the bailiff's report of 24 January 2006 (see paragraph 7 above).

16. On 16 March 2006 the court adjourned its hearing on the applicant's request with a view to summoning the bailiff who had issued the aforementioned report. S. did not object to that, but submitted that he had requested recalculation of the arrears owed to the applicant.

17. On 3 April 2006 the Khortytskyy Court allowed the applicant's claim in part and awarded her UAH 141.58 (about EUR 22) in penalties to be paid by her former husband. It based its calculation, in so far as the arrears for 2005 were concerned, on the bailiff's report of 1 April 2006 (see paragraph 8 above), which had been presented by the bailiff at the hearing on 3 April 2006. Having regard to the bailiff's explanations as to the reasons for the recalculation, the court held that the aforementioned report took precedence over the report of 24 January 2006 relied on by the applicant. According to the minutes of the hearing, the applicant did not object to the completion of the examination of the case on the merits, but insisted that the court should rely on the report adduced by her.

18. On 12 April 2006 the applicant appealed, claiming that the court had wrongly relied on the report of 1 April 2006, which she had only become aware of on 3 April, the day the court had given judgment. She further pointed out that the report in question had not been formally served on her until the following day (4 April 2006) and that she had challenged it in accordance with the established procedure (see paragraphs 9 and 10 above).

19. On 23 May 2006 the Zaporizhzhya Regional Court of Appeal ("the Court of Appeal") upheld the Khortytskyy Court's decision of 3 April 2006. It held, without giving further details, that the first-instance court had rightly relied on the bailiff's report of 1 April 2006.

20. The applicant appealed in cassation for the decisions of 3 April and 23 May 2006 to be quashed and a fresh examination of the case to be carried out. She complained that the courts had disregarded, without any explanation, the key piece of evidence adduced by her – the bailiff's report of 24 January 2006. It had not been challenged by any of the parties and was final. She reiterated the arguments of her appeal as regards the bailiff's report of 1 April 2006 (see paragraph 18 above), pointing out that her complaint about that report had been successful and that it had been invalidated on 24 May 2006.

21. On 21 November 2006 the Supreme Court, sitting in a single-judge formation, rejected her request for leave to appeal in cassation. Its reasoning was limited to a statement that the cassation appeal was unfounded, and that its arguments did not warrant any verification of the case file materials in

accordance with Article 328 § 3 of the Code of Civil Procedure (see paragraph 29 below).

C. Recovery of arrears (second set of proceedings)

22. On 21 November 2006 the applicant lodged with the Khortytskyy Court a civil claim against her former husband, seeking recovery of the child maintenance arrears as assessed by the bailiff on 19 October 2006 (see paragraph 14 above), with an inflationary adjustment and additional penalties.

23. On 22 January 2007 the court found against the applicant. It held that the Bailiffs' Service had already determined the outstanding arrears S. had to pay (UAH 8,637.32 – see paragraph 14 above), and that the applicant was not entitled to any further indexation or penalties.

24. Following an appeal by the applicant, on 26 April 2007 the Court of Appeal quashed that decision and ordered the applicant's former husband to pay her UAH 4,964 in arrears (equivalent to about EUR 740). As regards the arrears owed for 2005, it relied on the Khortytskyy Court's decision of 3 April 2006 based on the bailiff's report of 1 April 2006 (see paragraphs 8 and 17 above).

25. The applicant appealed in cassation. She argued that the final amount of outstanding child maintenance arrears owed to her by S. at 2 October 2006 was UAH 8,637.32 (equivalent to about EUR 1,290). The applicant emphasised that none of the parties had ever challenged the accuracy of that calculation. The appellate court had nevertheless chosen to rely on the bailiff's earlier report of 1 April 2006, which had been invalidated by the Khortytskyy Court on 24 May 2006 after she complained.

26. On 19 July 2007 the Supreme Court, sitting in a single-judge formation, rejected her request for leave to appeal in cassation. Its reasoning was identical to that given in the ruling of 21 November 2006 (see paragraph 21 above).

D. Other proceedings

27. On 28 April 2006 the applicant lodged a civil claim with the Khortytskyy Court, seeking an increase of the child maintenance to be paid by her former husband from that date onwards.

28. On 20 June 2006 the court allowed her claim in part and assessed the amount of monthly child maintenance at UAH 165, to be paid from 3 May until 2 October of that year, the date their daughter reached the age of majority. No appeal was lodged and the decision became final.

II. RELEVANT DOMESTIC LAW AT THE MATERIAL TIME

A. Code of Civil Procedure (enacted on 1 January 2005)

29. The relevant provisions read as follows:

Article 213: Lawfulness and reasoning of judicial decisions

"1. A court decision must be lawful and reasoned.

2. A decision is lawful if the court, having complied with all the requirements of the civil procedure, has adjudicated the case in line with the law.

3. A decision is reasoned if it is based on a complete and thorough assessment of the circumstances, which the parties referred to in support of their claims or objections and which were corroborated by the evidence examined in the court hearings."

Article 328: Opening cassation proceedings

"...

3. The judge rapporteur shall reject a request for leave to appeal in cassation if:

... (5) the cassation appeal is unfounded and its arguments do not warrant any verification of the case file materials. ..."

Article 335: Scope of consideration of the case by the court of cassation

"1. When examining a case in cassation, the court shall verify, within the limits of the cassation appeal, whether the first-instance or appellate court applied the provisions of the substantive or procedural law correctly, [but] may not establish or hold proven facts which were not established or dismissed by the judgment, [or] decide on the reliability of evidence or the weight to be attached to certain evidence...

2. The court of cassation shall examine the lawfulness of judicial decisions only within the limits of the claims raised before the court of first instance.

3. The court shall not be limited by the arguments of the cassation appeal if, in the course of the consideration of the case, it discerns the wrongful application of substantive legal provisions or a breach of procedural rules, constituting grounds for the compulsory quashing of the decision."

Article 336: Powers of the court of cassation

"1. Upon its examination of a cassation appeal against a judicial decision, the court of cassation has the power to:

(1) adopt a ruling dismissing the cassation appeal and upholding the [contested] decision;

(2) adopt a ruling fully or partly quashing the decision and referring the case back to the first-instance or appellate court for fresh consideration;

(3) adopt a ruling quashing the decision of the appellate court and upholding that of the first-instance court, which was erroneously quashed by the appellate court;

(4) adopt a ruling quashing the decisions and terminating the proceedings in the case or leaving the claim without consideration; or

(5) quash the decisions and adopt a new decision or vary the existing decision, without referring the case back for fresh consideration...”

30. The Scientific and Practical Commentary on the Code of Civil Procedure (*Цивільний процесуальний кодекс України: Науково-практичний коментар. – У 2 т. / За заг. ред. С.Я. Фурси. – К.: Видавець Фурса С.Я: КНТ, 2007*) states, in respect of Article 335:

“... in verifying whether the [lower] courts have correctly applied the Code of Civil Procedure, the court of cassation is obliged to check whether [their] decisions are well-reasoned, because this is a requirement of the procedural law provided for in Article 213 of the Code.”

B. Family Code 2002

31. The relevant part of Article 194, which concerns the recovery of child maintenance arrears, reads as follows:

“4. Child maintenance arrears shall be recovered regardless of whether the child has reached the age of majority...”

C. Law on Judicial Enforcement 1999

32. The relevant provisions read as follows:

Article 37: Termination of judicial enforcement

“Enforcement proceedings shall be terminated:

... (6) [where] the statutory time-limit for a given type of recovery has expired; ...”

THE LAW

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

33. The applicant complained of unfairness in the first and second sets of proceedings. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

34. The Government submitted that the applicant had not exhausted domestic remedies as regards her complaint of unfairness in the first set of proceedings.

35. According to them, if she had not wanted the courts to rely on the bailiff's report of 1 April 2006, she could have requested that the proceedings be stayed pending the outcome of her complaint about that report.

36. The Government went on to state that, since the applicant had made no such request, nothing had prevented the first-instance and appellate courts from relying on the report, which had still been valid at the time they had given judgment.

37. The applicant disagreed with the Government's submissions in general terms.

38. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-66, *Reports of Judgments and Decisions* 1996-IV).

39. The Court has examined the issue of exhaustion of domestic remedies in the context of civil proceedings in Ukraine many times. It has held that, under the existing procedural legislation, recourse to an appellate court and the Supreme Court in its capacity as a court of cassation constituted effective remedies to be exhausted before the case is brought before the Court (see, for example, *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002; *Balyuk v. Ukraine* (dec.), no. 17696/02, 6 September 2005; *Golovko v. Ukraine*, no. 39161/02, § 43, 1 February 2007; and *Bashchenko v. Ukraine* (dec.), no. 61484/10, 3 April 2012).

40. The Court observes that the applicant in the present case raised her claim before the domestic courts at the three different levels of jurisdiction. It therefore considers her to have complied with the requirement of exhaustion of domestic remedies. Her failure to seek the interim procedural measure as indicated by the Government is irrelevant for this conclusion.

41. Accordingly, the Court dismisses the Government's objection.

42. It further notes that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant complained that the domestic courts' decisions in both sets of proceedings had been poorly reasoned. More specifically, she submitted that the courts had relied, in an arbitrary manner and with

complete disregard for her specific and pertinent arguments, on the bailiff's report of 1 April 2006 as the key piece of evidence, even though it had been invalidated by the time the first set of proceedings had been completed and the second set of proceedings had been initiated.

44. The Government maintained that the proceedings in the applicant's case had been fair.

45. As regards the first set of proceedings, the Government drew the Court's attention to the fact that at the time the first-instance and appellate courts had given judgment, the impugned bailiff's report had still been a valid document. In so far as the examination of the applicant's cassation appeal was concerned, the Government noted that the Supreme Court's competence was limited to points of law. In the absence of any violations by the lower courts of substantive or procedural law, the Supreme Court had correctly dismissed the applicant's cassation appeal as unfounded.

46. As regards the second set of proceedings, the Government contended that the applicant had failed to submit the bailiff's report of 24 May 2006 to the first-instance court in support of her claim. Accordingly, the Khortytskyy Court had simply been unaware that the report of 1 April 2006 had been invalidated. The Government further submitted that the applicant had attended only few hearings before the Court of Appeal, and had thus missed the opportunity to raise her arguments. They maintained that there had been nothing arbitrary about the appellate court's reliance on the judicial decisions of 3 April and 23 May 2006, which had been delivered in the first set of proceedings. Lastly, the Government reiterated their aforementioned arguments regarding the limited competence of the Supreme Court.

2. The Court's assessment

(a) General case-law principles

47. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Similarly, it is in the first place for the national authorities, in particular the courts, to interpret domestic law, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. That being said, the Court's task remains to ascertain whether the proceedings in their entirety, including the way in which evidence and procedural decisions were taken, were fair (see *Tamminen v. Finland*, no. 40847/98, § 38, 15 June 2004).

48. It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his case effectively before the court and that he is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II). The principle of equality of arms requires "a fair balance between the parties", and each party must be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Batsanina v. Russia*, no. 3932/02, § 22, 26 May 2009). Furthermore, the principle of fairness enshrined in Article 6 of the Convention is disturbed where domestic courts ignore a specific, pertinent and important point made by an applicant (see *Pronina v. Ukraine*, no. 63566/00, § 25, 18 July 2006, and *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011).

49. Lastly, according to the Court's case-law reflecting a principle related to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision, and must be determined in the light of the circumstances of the case (see *García Ruiz*, cited above, § 26, with further references).

(b) Application of the above general principles to the present case

50. Turning to the present case, the Court notes that the key issue in the sets of proceedings complained of was the amount of child maintenance arrears owed to the applicant by her former husband. The domestic courts had two conflicting pieces of evidence before them to that effect: the bailiff's report of 24 January 2006 assessing the sum owed for 2005 at UAH 2,052, and another bailiff's report of 1 April 2006 assessing the same sum at UAH 480 (see paragraphs 7 and 8 above). They based their decisions on the latter of the two reports.

51. As regards the first set of proceedings, the Court notes that the first of the two reports, which was adduced by the applicant, had the status of a final document unchallenged by any of the parties. As to the second report, it was not adduced as evidence until 3 April 2006, the day of the hearing, at the end of which the first-instance court gave judgment. The court chose, however, to rely on the second report (of 1 April 2006). Having regard to the fact that it heard the bailiff who had authored both reports, of 24 January and 1 April 2006, the Court does not discern any indication of bad faith as such in that decision of the Khortytskyy Court. Nor does it escape the Court's attention that, according to the minutes of the hearing, the applicant neither expressed any intention to challenge the mentioned report of 1 April 2006 nor sought that the proceedings be stayed till that report became final.

52. In the light of these considerations and given that it is primarily for the national courts to assess the evidence before them (see paragraph 47

above), the Court finds little reason to criticise the aforementioned evidentiary decision of the Khortytskyy Court.

53. At the same time, the Court does note the importance for the authorities to give detailed and convincing reasons for their refusal to take evidence proposed by an applicant, especially where that evidence has considerable importance for the outcome of the proceedings, like in the case at hand (see, for example, *Vitzthum v. Austria*, no. 8140/04, § 33, 26 July 2007).

54. While the applicant's argument in the present case regarding the admission of the unfavourable for her report as evidence and her intention to challenge it were apparently not clearly articulated before the first-instance court, she did insist on that pertinent and specific issue in her appeal (see paragraphs 17 and 18 above). The Court notes, however, that the appellate court left it without any assessment thus breaching the proper administration of justice principles as established in the Court's case-law (see paragraphs 19 and 48-49 above).

55. Nor was that issue addressed in the Supreme Court's ruling, which is by its nature more concise and formalistic given the third level of jurisdiction involved, even though the cassation court is in principle entitled to review the reasoning of the lower-level courts (see paragraphs 21 and 29-30 above).

56. The Court also observes that, as it follows from the applicant's cassation appeal, she did inform the courts of the decision of 24 May 2006 contrary to the Government's argument that the domestic courts had remained unaware of it.

57. Having regard to all the circumstances of the present case and, in particular, to the failure of the appellate court to give any assessment to the applicant's argument of key significance for the outcome of the proceedings, the Court considers that the first set of the proceedings did not comply with the fairness principle enshrined in Article 6 of the Convention.

58. Moreover, the problem with those proceedings also undermined the fairness of the second set of proceedings. Thus, given the prejudicial nature of the decisions taken within the first set of proceedings, the courts within the second set had to rely on the then invalid bailiff's report of 1 April 2006 instead of that of 19 October 2006 adduced by the applicant as the final document determining the amount of outstanding arrears.

59. In sum, the Court considers that there has been a violation of Article 6 § 1 of the Convention on account of the unfairness of both sets of proceedings in the applicant's case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed UAH 89,830 in respect of pecuniary damage and UAH 100,000 in respect of non-pecuniary damage.

62. The Government contested these claims as irrelevant, excessive and unsubstantiated.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and therefore rejects this claim; however, it awards the applicant EUR 900 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant did not submit any claims for costs and expenses. The Court therefore makes no award in this respect.

C. Default interest

65. 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

1. *Declares* by a majority the application admissible;

2. *Holds* by four votes to three that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*, by four votes to three
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction."

Done in English, and notified in writing on 3 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Yudkivska, Power-Forde and Jäderblom are annexed to this judgment.

M.V.
C.W.

JOINT DISSENTING OPINION OF JUDGES POWER-FORDE, YUDKIVSKA AND JÄDERBLOM

We are unable to share the majority's conclusion that Article 6 § 1 was violated in the present case.

The applicant lodged a claim against her ex-husband for penalties for late child maintenance payments. Her calculation was based on the bailiff's report valid at the relevant time (paragraph 7). During the court hearing the bailiff called by the applicant appeared with a new report, calculated on the basis of new information submitted by the defendant. There is nothing to suggest that in the course of the proceedings the applicant was unable to challenge the report or to submit any relevant data. The judge heard both parties and bailiff responsible for the calculation, assessed the information at hand and gave his judgment; and as with the majority, we see no reason to blame the first instance court. However, the majority criticised the Court of Appeal for a failure to address, specifically, the applicant's submission that the bailiff's report, which served as the basis for the first instance court's judgment, was challenged by the applicants in separate proceedings. According to the majority, this failure amounts to the breach of the proper administration of justice principles established in the Court's case-law (paragraph 54). We cannot subscribe to this conclusion. The role of the Court of Appeal is to correct errors that occurred at the first instance court, to check if the latter properly applied law to the facts before it. It can, of course, take into account new facts; but the decision on the applicant's complaint against the bailiff's report was taken on 24 May 2006, whereas the Court of Appeal delivered its judgment one day earlier, on 23 May 2006 (paragraphs 11 and 19). The Court of Appeal thus did not have sufficient grounds (a new fact) at the relevant time to quash the first instance judgment for being erroneous factually or procedurally flawed.

The majority's conclusion in paragraph 52 that it is up to the national courts to assess evidence before them is equally pertinent to the appeal court's decision, since the impugned bailiff's report was only one aspect of the evidence before it, together with the bailiff's explanations and the statements made by the parties. Criticising the Court of Appeal for a failure to address one of the applicant's argument, albeit an important one, may be interpreted as going beyond this Court's competence and acting as a "fourth instance" court, in circumstances where the decision does not appear to be arbitrary in the sense of having a complete lack of reasoning.

Further, the Supreme Court, although aware of the decision of 24 May 2006 could not, as it follows from Article 335 of the Code of Civil Procedure (see paragraph 29), establish facts which were not established in the lower courts' decisions and quash them based on new facts. Thus it remains unclear how the Supreme Court could be expected to address the

decision of 24 May 2006 (see paragraph 56). The role of the Supreme Court is very limited with respect to new facts.

Although the applicant is, understandably, unhappy about the outcome of the proceedings, we consider that even in this unfortunate sequence of events she was, nevertheless, in a position to protect her rights – she could, for instance, institute proceedings against the bailiff challenging termination of the enforcement proceedings (paragraph 14).

Finally, we would question whether the applicant has suffered any significant disadvantage with respect to the outcome of the first set of proceedings. We note that the courts imposed penalties of approximately 22 euros on the defendant for a debt of UAH 480 for 2005 calculated on the basis of the "wrong" bailiff's report (paragraphs 8 and 17). Had the court considered the debt for 2005, as the applicant insisted, to be UAH 2,052, a simple calculation shows that the sum of penalties would have been only 72 euros more.

In sum, we consider that given the understandable omission of the Court of Appeal and the amount of money which was at stake in the impugned proceedings, respect for human rights did not require the Court to examine this case on the merits and to find a violation of Article 6 § 1 of the Convention.