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

FIFTH SECTION

# CASE OF BATKIVSKA TURBOTA FOUNDATION v. UKRAINE

*(Application no. 5876/15)*

JUDGMENT
*(Just satisfaction)*

Art 41 • Just satisfaction • Withdrawal of applicant´s claims for pecuniary and non-pecuniary damage further to review of his case at domestic level • Costs and expenses before the Court • Award

STRASBOURG

3 September 2020

**FINAL**

03/12/2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Batkivska Turbota Foundation v. Ukraine,**

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

Síofra O'Leary, *President,*
Ganna Yudkivska,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Anja Seibert-Fohr,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having deliberated in private on 30 June 2020,

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

# PROCEDURE

1. The case originated in an application (no. 5876/15) against Ukraine lodged with the Court on 23 January 2015 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Ukraine-wide Civic Charity Foundation Batkivska Turbota ("the applicant"), a charity foundation registered in Ukraine in 1999.

2. In a judgment delivered on 9 October 2018 ("the principal judgment") the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention on account of the annulment of the applicant's title to a property in the court proceedings instituted against it by the prosecutor (see *Batkivska Turbota Foundation v. Ukraine*, no. 5876/15, § 64 and point 2 of the operative provisions, 9 October 2018).

3. Under Article 41 of the Convention the applicant initially claimed pecuniary and non-pecuniary damage, costs and expenses incurred in the domestic proceedings and the cost of an expert report it had provided to the Court in support of its claim for pecuniary damage. It also claimed 7,850 euros (EUR) for legal costs incurred before the Court, stating that its representative, Mr Kulchytskyy, and his assistant had spent fifty-six hours and forty-five minutes on the case (as reflected in the relevant timesheet) at hourly rates of EUR 150 and EUR 40, respectively. Under the contract of legal assistance concluded between the applicant and its representative, payment was due after the completion of the proceedings before the Court and within the limits of the sum awarded by the Court. The applicant further submitted that there was a systemic problem in Ukraine concerning the issue examined in the present case and asked the Court to indicate, under Article 46 of the Convention, "urgent measures" to be adopted by Ukraine. Lastly, it stated that it would be possible to reach an agreement in the case if

its title to property was recognised by the State and if its legal costs were paid.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the parties to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 72, and point 3(b) of the operative provisions).

5. The parties then provided information about new developments in the case and updated their observations on Article 41.

# THE LAW

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

6. 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. New developments and the parties' updated observations

7. On 17 October 2018 the applicant informed the Government that if the Supreme Court of Ukraine were to allow its application for a review of the case at the domestic level following the Court's principal judgment and adopt a new judgment rejecting the prosecutor's claim against it, it would withdraw its initial claims for pecuniary and non-pecuniary damage and would only maintain its claim for costs and expenses.

8. On 26 March 2019 the applicant informed the Court that it had applied to the Supreme Court for a review of its case in the light of the Court's findings made in the principal judgment. It stated that the possibility of reaching an agreement on Article 41 depended on the outcome of the review of its case by the Supreme Court.

9. On 19 July 2019 the Government informed the Court that on 2 July 2019 the Supreme Court had allowed the application for a review of the case and had adopted a new judgment, quashing the earlier court decisions against the applicant and rejecting the prosecutor's claim against it. The Government thus submitted that the issue of pecuniary and non-pecuniary damage had been settled. They asked the Court to reject, as unsubstantiated or irrelevant, the applicant's initial claim in the parts concerning recovery of the domestic court fees and expenses, and of the cost of the expert report.

As to the applicant's claim for legal costs incurred before the Court, the Government left that issue for the Court's discretion.

10. In reply, on 4 September 2019 the applicant stated that since its property rights had been restored at the domestic level, it would not seek compensation for pecuniary and non-pecuniary damage. It also withdrew its claims for the recovery of the domestic costs and expenses, but maintained its claim for the recovery of legal costs incurred before the Court, to be paid into its representative's bank account.

## B. The Court's assessment

### *1. Damage*

11. The Court notes that following the review of its case at the domestic level, the applicant withdrew its initial claims in respect of pecuniary and non-pecuniary damage and for recovery of the domestic costs and expenses, and did not maintain its initial claim for recovery of the cost of the expert report. Accordingly, the Court considers that there is no call for an award in this respect.

### *2. Costs and expenses*

12. As to the applicant's claim for the recovery of legal costs incurred before the Court – the only claim which the applicant has maintained under Article 41 of the Convention – the Court notes that, according to its 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 considers it reasonable to award the applicant the sum of EUR 3,500 for the cost of legal assistance incurred before the Court. The award is to be paid into the bank account of the applicant's representative (see, for instance, *Belousov v. Ukraine*, no. 4494/07, §§ 116-17, 7 November 2013).

### *3. Other measures*

13. The Court also notes that, following the review of its case at domestic level, the applicant did not maintain its initial submission that that Court should indicate, under Article 46 of the Convention, "urgent measures" to be adopted by Ukraine. Accordingly, it considers that the applicant has implicitly renounced that submission and that it is not therefore necessary to take any decision in this respect.

### 4. *Default interest*

14. 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, UNANIMOUSLY,

1. *Holds*
   (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 3,500 (three thousand five hundred euros) in respect of the legal costs incurred before the Court, payable to the bank account of its representative, Mr Kulchytskyy, plus any tax that may be chargeable to the applicant, 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.

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

Done in English, and notified in writing on 3 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Victor Soloveytchik<br>Deputy Registrar | Síofra O'Leary<br>President |
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