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

FIFTH SECTION

DECISION

Application no. 71542/12
B&H PJSC
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 23 March 2023 as a Committee composed of:

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 71542/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 October 2012 by a Ukrainian company, B&H PJSC ("the applicant company"), which was established in 1993 and is based in Kyiv, and which was represented before the Court by Mr O. A. Peremezhko, a lawyer practising in Kyiv;

the decision to give notice of the complaint concerning the applicant company's entitlement to a tax refund, raised under Article 1 of Protocol No. 1 to the Convention, to the Ukrainian Government ("the Government"), represented by their Agent, most recently, Ms Marharyta Sokorenko, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant company's entitlement to a reimbursement of tax overpaid on the importation of goods into the territory of Ukraine. The applicant company raised its complaint under Article 1 of Protocol No 1 to the Convention.

2. On 30 June 2011 the local tax office issued two decisions, nos. 0004152312/0 and 0004162312/0 ("decision no. 1" and "decision no. 2"

respectively), ordering the applicant company to pay a corporate income tax surcharge plus a penalty and to pay VAT which had been deducted unlawfully plus a penalty.

3. On 6 September 2011 the Kyiv Circuit Administrative Court allowed a claim by the applicant company and cancelled the above-mentioned decisions nos. 1 and 2.

4. On 15 February 2012 the Kyiv Administrative Court of Appeal quashed the above-mentioned decision of 6 September 2011 and rejected the applicant's company's original claim.

5. On 3 May 2012 the Higher Administrative Court dismissed an appeal on points of law by the applicant company, finding that the decision of the appellate court had been lawful and substantiated.

6. According to the information submitted by the Government in their observations and confirmed by the applicant company in its observations in reply, on 5 February 2015 the Kyiv Administrative Court of Appeal, having allowed an application by the applicant company for reopening of the proceedings, quashed its decision of 15 February 2012 and upheld the first-instance court's decision of 6 September 2011, cancelling the tax office's decisions nos. 1 and 2.

7. On 24 April 2017 the sum of 730,993.00 Ukrainian hryvnias (UAH) (approximately 25,568 Euros) for overpaid corporate tax was returned to the applicant company.

8. On 17 April 2018 the sum of UAH 23,557,318.00 (approximately 730,006 Euros) for overpaid VAT was returned to the applicant company.

THE COURT'S ASSESSMENT

9. The Government submitted that the applicant company had not informed the Court about the decision of the Kyiv Administrative Court of Appeal dated 5 February 2015, which had quashed decisions nos. 1 and 2, and of the fact that the overpaid VAT and corporate tax had been returned to the applicant company. The Government asserted that the applicant company had abused its right of individual application and asked the Court to reject the present application in accordance with Article 35 § 3 (a) of the Convention.

10. The applicant company submitted that it had never had any intention to mislead the Court nor to claim sums it had received, and it had "thereby" provided the Court with all necessary information and details. It further submitted that its reputation had been damaged and that its intention had been to receive the entire amount it had lost, including losses due to inflation and other losses, and costs and compensation for damage sustained because of the authorities' unlawful actions. Moreover, the tax authorities had failed to pay the full amount of the VAT on 17 April 2018 and the sum of UAH 3,613.00 (approximately 112 Euros) had still been outstanding. Lastly, it submitted that its rights under Article 1 of Protocol No. 1 had still been breached as it had

not received compensation for the pecuniary and non-pecuniary damage sustained together with the costs and expenses it had incurred in connection with the violations of its Convention rights.

11. The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted, either where they were known about from the outset or where new significant developments occurred during the proceedings. Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014 (extracts); and *Čaluk and Others v. Bosnia and Herzegovina* (dec.) [Committee], nos. 3927/15 and 63 others, §§ 18-19, 25 September 2018).

12. Turning to the present case, the Court observes that the applicant company failed to inform the Court about important developments in its case at the national level which concerned the very core of its application to the Court. In particular, the applicant company did not indicate that in 2015 the Kyiv Administrative Court of Appeal allowed its application for reopening of the proceedings and cancelled decisions nos. 1 and 2 and that in 2017 and 2018 it received the reimbursement of overpaid corporate tax and VAT. It further notes that the applicant company has not provided any plausible explanation as to why it did not inform the Court about those developments.

13. In this connection the Court reiterates that lawyers must understand that, having due regard to the Court's duty to examine allegations of human rights violations, they must show a high level of professional prudence and meaningful cooperation with the Court by sparing it the lodging of unmeritorious complaints and, both before proceedings have been instituted and thereafter, they must inquire diligently into all the details of the case, meticulously abide by all the relevant rules of procedure and urge their clients to do the same. Otherwise, the wilful or negligent misuse of the Court's resources may undermine the credibility of lawyers' work in the eyes of the Court and may even, if it occurs systematically, result in particular individual lawyers being banned from representing applicants under Rule 36 § 4 (b) of the Rules of Court (see *Stevančević v. Bosnia and Herzegovina* (dec.), no. 67618/09, § 29, 10 January 2017).

14. The Court dismisses the arguments of the applicant company that it wished to receive full compensation, including losses due to inflation, other losses, costs and compensation due to authorities' unlawful actions and that, in any case, the paid amount was short of UAH 3,613.00 (see paragraph 10 above). The applicant company obtained the enforceable court decision, cancelling the tax office's decisions nos. 1 and 2 and received the sums for

the overpaid taxes (see paragraphs 7 and 8 above). The Court considers that this information was indispensable for the determination of the complaints submitted by the applicant company and that its conduct, accordingly, was contrary to the purpose of the right of individual petition under Article 34 of the Convention (compare *Turceac, and Cerchez v. the Republic of Moldova* (dec.) [Committee], no. 11972/16, §§ 3, 7-8, 13 September 2022).

15. In the light of the foregoing, the Court considers that the Government's objection is well-founded and the present application constitutes an abuse of the right of individual application within the meaning of Article 35 § 3 (a) *in fine* of the Convention. It must therefore be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 April 2023.

Martina Keller Deputy Registrar	Mārtiņš Mits President