

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

FIFTH SECTION

CASE OF BATUROV v. UKRAINE

(Application no. 6057/23)

JUDGMENT

STRASBOURG

14 November 2024

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



In the case of Baturov v. Ukraine,

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

Kateřina Šimáčková*, President*,
Mykola Gnatovskyy,
Artūrs Kučs*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 17 October 2024,

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 12 January 2023.

2. Notice of the application was given to the Ukrainian Government ("the Government").

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

THE LAW

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

4. The applicant complained that he had been deprived of an opportunity to comment on the appeal lodged by the defendants in his case. He relied on Article 6 § 1 of the Convention.

5. The Court reiterates that the general concept of a fair trial, encompassing the fundamental principle that proceedings should be adversarial (see *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262), requires that the person against whom proceedings have been initiated should be informed of this fact (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 77, 4 March 2014). The principle of equality of arms requires that each party should be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 119, ECHR 2016, and *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). Each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party, including the other party's appeal. What is at stake is the litigants' confidence in the workings of

justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (see *Beer v. Austria*, no. 30428/96, §§ 17-18, 6 February 2001).

6. It may, therefore, be incumbent on the domestic courts to ascertain that their summonses or other documents have reached the parties sufficiently in advance and, where appropriate, record their findings in the text of the judgment (see *Gankin and Others v. Russia*, nos. 2430/06 et al, § 36, 31 May 2016). If court documents are not duly served on a litigant, then he or she might be prevented from defending him or herself in the proceedings (see *Zavodnik v. Slovenia*, no. 53723/13, § 70, 21 May 2015, with further references).

7. In the leading cases of *Strizhak v. Ukraine* (no. 72269/01, 8 November 2005) and *Lazarenko and Others v. Ukraine* (nos. 70329/12 and 5 others, 27 June 2017), the Court already found a violation in respect of issues similar to those in the present case.

8. Having examined all the material submitted to it and lacking any evidence of proper notification of the applicant, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court finds that by proceeding to consider the appeal lodged in the applicant's case without attempting to ascertain whether it was served on the applicant or whether the applicant was informed of the appeal by any other means, the domestic courts deprived the applicant of the opportunity to comment on the appeal lodged in his case and fell short of their obligation to respect the principle of equality of arms enshrined in Article 6 of the Convention.

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. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum indicated in the appended table.

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 unfairness of the civil proceedings;

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 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 14 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Kateřina Šimáčková
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (failure to notify the applicant of the other party's submissions or of a hearing)

Application no. Date of introduction	Applicant's name Year of birth	Nature of the dispute	First-instance hearing/ decision date Court	Appeal hearing/ decision date Court	Date of the decision on cassation appeal, if applicable Court	Specific irregularity Case-law Other relevant information	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
6057/23 12/01/2023	**Sergiy Valeriyovych BATUROV** 1983	collection of pecuniary and non-pecuniary damage	01/06/2021 The Pecherskyy District Court of Kyiv	21/07/2022 Kyiv Court of Appeal	02/09/2022 Supreme Court (the decision was served on the applicant's representative on 19/09/2022)	Failure to notify of a hearing (*Strizhak v. Ukraine*, no. 72269/01, 8 November 2005), failure to notify of appeal or submissions (*Lazarenko and Others v. Ukraine*, nos. 70329/12 and 5 others, 27 June 2017)	500

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