

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

FIFTH SECTION

CASE OF SVIRGUNETS v. UKRAINE

(Application no. 38262/10)

JUDGMENT
(Just satisfaction)

STRASBOURG

20 December 2022

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



In the case of Svirgunets v. Ukraine,

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

Lado Chanturia, *President,*
Ganna Yudkivska,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having deliberated in private on 12 May 2022,

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

PROCEDURE

1. The case originated in an application (no. 38262/10) 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 Antonina Anatoliyivna Svirgunets ("the applicant"), on 25 June 2010.

2. In a judgment delivered on 30 April 2020 ("the principal judgment"), the Court held that there had been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant and a violation of Article 1 of Protocol No. 1 on account of the forfeiture of her property, 28% of a shop, within those proceedings and her inability to get compensation for it after the charges against her had eventually been dropped for lack of evidence (see *Svirgunets v. Ukraine* [Committee], no. 38262/10, §§ 58-63 and 74-82, as well as points 1-2 of the operative provisions, 30 April 2020).

3. Under Article 41 of the Convention, the applicant made the following claims in respect of pecuniary damage. Firstly, she claimed 154,130 euros (EUR), with the reference to the expert report relied on by the Shepetivka Court in its judgment of 17 June 2013, according to which the market value of the part of the shop confiscated from the applicant, was 1,661,649 Ukrainian hryvnias (UAH) at the time. If converted into euros at the exchange rate established by the National Bank of Ukraine in June 2013, that sum corresponded to EUR 154,130 (ibid., §§ 24 and 84). Secondly, the applicant claimed under that head EUR 126,000 for the lost income that she would have obtained over the years if she had been able to lease the shop space (ibid., § 84). Furthermore, she claimed compensation in respect of non-pecuniary damage, as well as costs and expenses (ibid., §§ 85 and 89). Her claim was partially granted in so far as it concerned non-pecuniary damage and costs and expenses. The issue of pecuniary damage was not ready for decision and was reserved. The Court invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 87, and point 5 (b) of the operative provisions).

4. The applicant and the Government informed the Court of the relevant developments at the domestic level after the adoption of the principal judgment and filed observations, which they subsequently updated in the light of those developments.

THE LAW

5. 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."

I. FURTHER DEVELOPMENTS AFTER THE ADOPTION OF THE PRINCIPAL JUDGMENT

6. After the criminal proceedings against the applicant had been discontinued, she made numerous attempts to either recover her forfeited property or to get compensation for it (ibid., §§ 23-45). The latest development of relevance at the time of the delivery of the principal judgment was the remittal of the case to the first-instance court for fresh examination by the Civil Court of Cassation on 12 June 2019 (ibid., §§ 43-45).

7. On 10 September 2020 the Shepetivka Court delivered a new judgment, by which it allowed the applicant's claim in part and ruled to retrieve the property in question (28% of the shop) *in natura* from its latest owners. One of the owners concerned, Mr K. (who had purchased, in the meantime, a part of the shop from the Nadra Commercial Bank (ibid., §§ 13, 28 and 36)), lodged an appeal, which the Khmelnytskyy Court of Appeal rejected on 27 January 2021. The judgment of the Shepetivka Court became legally enforceable at that point, and on 26 February 2021 the State Bailiffs' Service started the enforcement. On 21 and 22 April 2021 it, however, found that the enforcement was impossible, given that the property in question was no longer registered as belonging to the persons indicated in the judgment.

II. PECUNIARY DAMAGE

A. The parties' submissions

8. The applicant reiterated her claims of EUR 154,130 as the market value of the property in question and EUR 126,000 for the lost income (see paragraph 3 above). She pointed out that the evaluation of the market value of 28% of the shop at EUR 154,130 in June 2013 has never been disputed. The applicant additionally observed that in April 2007 24% of that

shop had been sold[1] at even a higher price, EUR 203,764. The applicant therefore also claimed the difference between the aforementioned sums, equal to EUR 49,634.

9. The Government submitted that the applicant's last-mentioned claim was to be rejected as belated. In so far as the remaining parts of her claim were concerned, the Government argued that they were unsubstantiated and exorbitant. They drew the Court's attention to the fact that the domestic proceedings had eventually been completed at the applicant's favour and that there were therefore no grounds for awarding her any compensation in respect of pecuniary damage.

B. The Court's assessment

10. The Court notes that the outcome of the latest domestic proceedings, even though favourable for the applicant, cannot be considered as having resolved the matter. Thus, the courts' decision to retrieve the property from its latest owners with a view to its return to the applicant did not appear to take into account the finding of the Civil Court of Cassation in the remittal ruling of 12 June 2019 that "[the State had] neither guaranteed [...] a return [of the applicant's property] nor indicated any time-limits as to when this could happen [and] the only adequate legal remedy for the breach of the claimant's rights [was] compensation for the [...] property value from the State Treasury" (ibid., § 43). Moreover, the State Bailiffs' Service found it impossible to ensure the enforcement of that recent judgment (see paragraph 7 above).

11. In so far as the estimation of the pecuniary damage is concerned, the Court considers that the applicant's reference to the price indicated in the 2007 sales contract (see paragraph 8 above) is irrelevant and should not be taken into account, without it being necessary to assess the timing of her related claim. There are no reasons for the Court, however, to question the evaluation of the property market value at EUR 154,130 in June 2013, given that it was based on an expert report, the credibility of which was acknowledged by the domestic courts (see paragraph 3 above). While assuming that the market value of that property might have changed in the meantime, the Court observes that neither the applicant nor the Government submitted any up-to-date estimations. Lastly, the Court notes that the applicant did not provide sufficient documentary evidence in support of her estimation of the lost income at EUR 126,000.

12. In the light of the foregoing considerations, the Court considers it reasonable to award the applicant EUR 155,000 in respect of pecuniary damage (see, for the relevant case-law principles regarding the Court's

[1] From Mr S. to the Nadra Commercial Bank (ibid., § 13).

discretion on such matters, *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 82, ECHR 2014).

13. 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, EUR 155,000 (one hundred fifty-five thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable, 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 20 December 2022, pursuant to Rule 77 §§ 2and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President