



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

FIFTH SECTION

CASE OF KARAPETYAN v. GEORGIA

(Application no. 61233/12)

JUDGMENT

Art 1 P1 • Control of the use of property • Confiscation of undeclared money • Confiscation prescribed by law and following legitimate interest of detecting and monitoring movement of cash across State' s borders • Applicant' s partial ownership of the sum in question addressed by domestic courts • Applicant aware of regulations, having regularly travelled through checkpoint • No additional sanction imposed • Burden imposed not excessive

STRASBOURG

15 October 2020

FINAL

15/01/2021

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

In the case of Karapetyan v. Georgia,

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

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Latif Hüseyinov,
Lado Chanturia,
Anja Seibert-Fohr, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Armenian national, Ms Hasmik Karapetyan (“the applicant”), on 7 September 2012;

the decision of 13 June 2017 to give notice to the Georgian Government (“the Government”) of the complaint under Article 1 of Protocol No. 1 and to declare the remainder of the application inadmissible pursuant to Rule 54 § 3 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 22 September 2020,

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

INTRODUCTION

1. The present case concerns the applicant’s complaint that the sanction of confiscation applied in respect of all the money which she had been transporting through Georgia in violation of her duty to declare it to the customs authorities had constituted a disproportionate interference with her right of property, in violation of Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1953 and lives in the Lori Region of Armenia. She was represented by Mr S. Grigoryan and Ms T. Barbakadze, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. Having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44), the Armenian Government did not avail themselves of that right.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 20 May 2010 the applicant arrived, together with two travelling companions, at the Sarpi Border Checkpoint on the land border between Georgia and Turkey to cross into Georgia. As it appears from the case-file material, the applicant had travelled through that route twenty-six times in the period between 21 May 2009 and 20 May 2010. After going through the passport control at the checkpoint she passed the desk designated for customs declarations without making such a declaration. Subsequently the applicant was approached by customs officers and asked whether she had anything to declare. The applicant responded in the negative. She was nevertheless required to go through a search procedure which revealed that she had 40,000 United States dollars (USD) hidden on her person which she had failed to declare. The money was hidden underneath the applicant's clothes, placed in a stocking tied around her waist. The customs officers drew up a report on the discovery of an undeclared sum of money on the applicant's person and its seizure, which was signed by the customs officers, the applicant, and an interpreter. No objections were recorded on that document. The officers also drew up an official report concerning the violation of customs rules, which was also signed by the applicant, without objections having been recorded on that document.

7. As it appears from the case-file material, on 9 June 2010 the applicant applied to the Batumi Regional Office of the Revenue Service of the Ministry of Finance ("the Revenue Service"). She noted, among other arguments, that while she had carried the entire sum seized by the customs officers, only USD 9,000 (approximately 16,000 Georgian laris (GEL)) had belonged to her while the remaining sums of USD 13,000 and USD 18,000 had belonged to her travelling companions who had entrusted her with their money for security purposes, not to have it stolen from them during their travels. This amount had not, the applicant argued, exceeded the limit of GEL 30,000 set by Georgian law; and in accordance with the law, only sums exceeding that limit had to be declared at a customs inspection.

8. On 14 June 2010 the Revenue Service informed the applicant that "the undeclared goods should be forfeited, in accordance with Article 242 § 1 of the Customs Code" (see paragraph 17 below).

9. On 3 August 2010 the applicant appealed, reiterating her arguments (see paragraph 7 above).

10. On 12 August 2010 the applicant's complaint was dismissed by the Revenue Service. It reasoned that Article 242 § 1 of the Customs Code had provided for a fine of 100% of the customs value of goods transported by avoiding the customs inspection, or the forfeiture of such goods. As the applicant had signed the report concerning the violation of customs rules, the factual circumstances underlying the forfeiture order had been proved, justifying its imposition.

11. On 23 August 2010 the applicant lodged a complaint with the Council of Tax Appeals reiterating her arguments (see paragraph 7 above) and noting that at least the sum of GEL 30,000 (the legally allowed amount not subject to the declaration requirement) should have been returned to her.

12. On 13 September 2010 the Council of Tax Appeals dismissed her application. It reasoned that the obligation to declare any sum exceeding GEL 30,000 during a customs inspection had been provided for by law, and the applicant had deliberately avoided complying with that obligation, which had warranted the application of measures under Article 242 § 1 of the Customs Code. For the purposes of that provision, it did not matter whether the entire sum or part of that sum had been the applicant's property, as at the time of the discovery of the violation of the declaration obligation, it was the applicant who had held the whole sum in question, and the sanction had been applicable to the totality of the sum concerned.

13. On 30 September 2010 the applicant instituted judicial proceedings before the Batumi City Court requesting that the customs inspection and seizure orders were declared null and void. She reiterated her earlier arguments (see paragraphs 7 and 11 above), and complained of the manner in which the customs inspection procedure had been implemented in her respect, stating that she had signed a document the content of which she had not understood.

14. By a decision of 26 November 2010 the Batumi City Court dismissed the applicant's submissions. It found that she had been duly assisted by an interpreter. As regards the confiscation measure, the court established that the applicant had deliberately avoided making the customs declaration by failing to stop at the desk designated for such declarations, and had concealed the money underneath her clothes, placed in a stocking tied around her waist. The court also noted that the applicant had failed to substantiate her submission concerning the shared ownership of the money confiscated from her given that she had deliberately avoided making the appropriate declaration and this argument had not been raised at the time the violation of the customs regulations had been discovered. The court considered that the applicant's behaviour had indicated that the subsequently raised argument concerning the shared ownership of the confiscated sum had been aimed at avoiding the imposition of the relevant sanction. It further noted that given the "dubious circumstances" of the case, the verbal explanations given by the applicant and her travelling companions as to the shared ownership had been insufficient to substantiate her assertions. The court continued to note that, in any event, the relevant regulation had been concerned with the transportation of money, not its ownership, and it had been the applicant who was found to have transported the whole amount on her person. Therefore, the declaration obligation had rested with her. The undeclared money having been found through the personal search, it had been, in the court's conclusion, rightfully forfeited,

in accordance with Article 242 § 1 of the Customs Code. The applicant lodged an appeal on an unspecified date, reiterating her complaints (see paragraphs 7 and 11 above).

15. On 26 April 2011 the Kutaisi Court of Appeal upheld the lower court's findings. The appellate court agreed with the Batumi City Court that the applicant had been duly assisted by an interpreter at the time the violation of the customs regulations had been discovered. It further endorsed the finding that the applicant's argument regarding shared ownership of the confiscated money had been unsubstantiated, as she had failed to put that argument forward at the time the violation of the customs rule had been found, and had signed the relevant reports on the violation of the customs regulations. The appellate court continued to note that regardless of the question of ownership, as the person transporting the full amount, it had been the applicant's obligation to have it declared in accordance with the relevant regulations. The appellate court also noted that the declaration obligation and the relevant sanction had applied to the totality of the sum exceeding GEL 30,000, and not the part in excess, as argued by the applicant. Therefore the applicant had been under the obligation to declare the transportation of USD 40,000 which she had instead chosen to conceal. The Kutaisi Court of Appeal stated that while no taxes had been applicable to any sum transported through Georgia, a failure to declare a sum of money exceeding GEL 30,000, as in the applicant's case, had constituted a violation of customs rules, warranting the application of the sanction provided for in Article 242 § 1 of the Customs Code.

16. By a final decision of 16 November 2011 the Supreme Court rejected an appeal by the applicant on points of law. According to the case file material, the decision of 16 November 2011 was served on the applicant's lawyer on 17 April 2012.

RELEVANT LEGAL FRAMEWORK

17. Article 242 § 1 of the Customs Code, as in force at the material time, read as follows:

“Carrying goods across the customs border of Georgia by means of bypassing the customs inspection or hiding [the goods from the inspection] shall entail a fine for the person [carrying those goods] in the amount of 100% of the customs value of the goods, but not less than GEL 1000, or the confiscation of such goods and/or the transport vehicle.”

18. Section 5(3) of the 2003 Act on Facilitating the Prevention of Legalisation of Illicit Income (“the Money Laundering Act”), as in force at the material time, provided that the transfer into and out of Georgia of cash or cheques whose value exceeded GEL 30,000 (approximately USD 15,700 at the material time) or the equivalent of that amount in another currency was subject to monitoring by the Revenue Service. Additionally, under

Section 3(3.1) of Appendix no. 6 of Decree no. 1232 of the Minister of Finance, dated 22 November 2007, as in force at the material time, any amount of currency could be freely imported into or exported from Georgia without any charges. However, a person carrying an amount of cash equal to or exceeding GEL 30,000, or the equivalent in another currency, was required to declare it.

THE LAW

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

19. Relying on Article 1 of Protocol No. 1 to the Convention the applicant complained that the sanction of confiscation applied in respect of all the money which she had been transporting through Georgia in violation of her duty to declare it to the customs authorities had constituted a disproportionate interference with her right of property. She also stated that she had not been assisted by an interpreter during the customs inspection. The provision in question reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

20. The Government submitted that the applicant’s account of the factual circumstances of the case relating to the manner in which the customs inspection procedure had been implemented in her respect (such as the alleged lack of access to an interpreter) was inconsistent and not supported by the evidence available in the case file. Therefore, in the Government’s submission, the application was inadmissible on account of the applicant’s abuse of the right of application.

21. The Court reiterates that an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information. However, any deliberate attempt to mislead the Court must be established with sufficient certainty (*ibid*).

22. Turning to the circumstances of the present case, the Court observes that the applicant's account of the manner in which the customs inspection procedure was implemented and her access to an interpreter does not go to the core of her complaint – the imposition and proportionality of the confiscation measure – and is irrelevant as regards her complaint under Article 1 of Protocol No. 1. Therefore the allegedly inconsistent manner in which the applicant described the customs inspection procedure, such as the fact that, contrary to her claims, she was assisted by an interpreter (see paragraph 14 above), even if as such clearly unsubstantiated, does not, in the Court's opinion, amount to an abuse of the right of application in the circumstances of the present case.

23. Furthermore, the Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

24. The applicant submitted, without providing any evidence other than copies of her submissions before the domestic authorities and the latter's decisions, that she had owned only a part (USD 9,000) of the confiscated sum (USD 40,000), while the remainder had been owned by her travelling companions who had been her friends and had entrusted her with their money for safekeeping during their travel, all three of them having been involved in the trade of clothes in Turkey, passing through Georgia for that purpose. In her submissions concerning the application of Article 41 of the Convention the applicant requested that she be granted compensation for the full amount of USD 40,000 stating, without providing any evidence, that she had owed money to the above-noted individuals.

25. The applicant also submitted that the legal requirement to declare any amount equal to or exceeding GEL 30,000 had not been sufficiently accessible. Furthermore, at no point in the domestic proceedings or in the proceedings before the Court had the lawful origin of the money been questioned. Therefore, in the applicant's submission, the confiscation measure could not have been aimed at forestalling any illegal activities. As the applicant had merely failed to declare the sum and had not avoided paying customs duties or any other levies, no pecuniary damage had been inflicted upon the State to warrant the confiscation measure.

26. The applicant further relied on the Court's findings in the case of *Ismayilov v. Russia* (no. 30352/03, § 38, 6 November 2008) and submitted that the confiscation of the entire sum which she had been transporting had been disproportionate. She also emphasized that Article 242 of the Customs

Code had not allowed for any discretionary power of the administrative and judicial authorities in relation to imposing a sanction for failing to declare a sum of money being transported, and had therefore failed to meet the requirements of proportionality under Article 1 of Protocol No. 1 of the Convention.

(b) The Government

27. The Government submitted, among other arguments, that the confiscation measure had been based on the law, which had been both foreseeable and accessible, and was aimed at preventing money laundering and other financial crimes.

28. Furthermore, the Government emphasized that applicant's claim that she had owned only a part of the confiscated sum had been inconsistent as she had failed to mention that argument at the time the violation of the customs regulation was discovered, and her ownership of only part of the money was not supported by any evidence other than her own account. It was therefore unsubstantiated and made it impossible to determine which part of the confiscated sum had been owned by her. In any event, the question of shared ownership of the sum discovered on the applicant's person had been irrelevant for the application of the relevant sanction, which was aimed at controlling the cash flow into and out of Georgia, without regard to ownership.

29. The Government further submitted that the applicant's case was different from *Ismayilov* (cited above, § 38) as the confiscation measure in the present case had been the sole punishment for an obvious violation of customs regulations, rather than an additional sanction. It had therefore been proportionate. As regards the question of whether the applicant had had to bear an excessive individual burden, the Government emphasised that she had crossed the Georgian State border twenty-seven times before the incident in question had taken place. Therefore, she must have been well aware of the requirement to declare any sum of money exceeding GEL 30,000. Yet she had not declared it at the appropriate stage and, when asked by the customs officers whether she was carrying any cash, she had responded in the negative, with the aim of circumventing the declaration obligation. By deliberately avoiding declaring the amount of cash she had been carrying, it had been the applicant's own actions that had resulted in the application of the confiscation measure – the penalty for the violation of customs rules – against her. In any event, in the Government's submission, the applicant had been afforded a reasonable opportunity to argue her case before the domestic judicial authorities.

2. *The Court's assessment*

30. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of possessions. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, among other authorities, *Draon v. France* [GC], no. 1513/03, § 69, 6 October 2005).

31. The Court takes note of the principle that a person in possession of an item must be presumed to have a property right over it until proof to the contrary is adduced (see *Ziaunys v. the Republic of Moldova*, no. 42416/06, §§ 30-31, 11 February 2014). However, given the applicant's submission, which has not been refuted by the Government, that she had only owned a part of the confiscated sum (see paragraph 24 above; see also *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 82, ECHR 2001 VIII), the alleged "possession" at issue in the present case is the money the applicant claims as her own, namely USD 9,000.

32. As regards the issue of which rule of Article 1 of Protocol No. 1 applies in the instant case, the Court reiterates its consistent approach that a confiscation measure, even though it does involve deprivation of possessions, nevertheless constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see *Boljević v. Croatia*, no. 43492/11, § 38, 31 January 2017, with further references).

33. The Court notes that the sanction for the offence of bypassing the customs authorities was set out in the Customs Code (see paragraph 17 above), while the obligation to declare cash exceeding GEL 30,000 was provided for in the Money Laundering Act as well as the Decree no. 1232 of the Minister of Finance (see paragraph 18 above). The Court considers that the rules in question, which were officially published and available to the public, were formulated with sufficient precision and thus met the requirements of foreseeability and accessibility (see *Sadocha v. Ukraine*, no. 77508/11, § 25, 11 July 2019). The interference with the applicant's property right was therefore prescribed by law, as required by Article 1 of Protocol No. 1 to the Convention.

34. The Court further notes that States have a legitimate interest and also a duty by virtue of various international treaties to implement measures to detect and monitor the movement of cash across their borders, since large

amounts of cash may be used for money laundering, drug trafficking, financing terrorism or organised crime, tax evasion or the commission of other serious financial offences. The general declaration requirement applicable to any individual crossing the State border prevents cash from entering or leaving the country undetected and the confiscation measure which the failure to declare cash to the customs authorities results in is part of the general regulatory scheme designed to combat those offences (see, among other authorities, *Gyrlyan v. Russia*, no. 35943/15, § 23, 9 October 2018, with further references). In this regard, the Court takes note of the fact that the interference was aimed at preventing money laundering and other financial crimes (see paragraphs 18 and 27 above) and considers that the confiscation measure conformed to the general interest of the community.

35. The remaining question to determine is whether the interference struck the requisite fair balance between the protection of the right of property and the requirements of the general interest, taking into account the margin of appreciation left to the respondent State in that area. The requisite balance will not be achieved if the property owner concerned has had to bear “an individual and excessive burden”. Moreover, although the second paragraph of Article 1 of Protocol No. 1 contains no explicit procedural requirements, the Court must consider whether the proceedings as a whole afforded the applicant a reasonable opportunity to put his or her case to the competent authorities with a view to enabling them to establish a fair balance between the conflicting interests at stake (see, among other authorities, *Boljević*, cited above, § 41).

36. Against this background, the Court notes the wording of Article 242 § 1 of the Customs Code which apparently left no discretion to the domestic courts as to the amount of the sum that was to be forfeited to the State either as a fine or under a confiscation order (see paragraph 17 above; see also *Gyrlyan*, cited above, § 31). However, the Court’s task is not to review domestic law *in abstracto*, but to determine whether the manner in which it was applied to, or affected, the applicant gave rise to a violation of the Convention (see *Garib v. the Netherlands* [GC], no. 43494/09, § 136, 6 November 2017, with further references).

37. In this context, the Court recalls that in some cases concerning other Contracting States it has found confiscation measures of a similar type as that at issue in the present case to be disproportionate, and considered that they imposed an excessive individual burden on the applicant, taking into consideration, among other factors, the lawful origin of the confiscated sum, as demonstrated by appropriate evidence, and the fact that the intent to deceive the authorities had been lacking (see among other authorities, *Sadocha*, cited above, §§ 29-33; *Togrul v. Bulgaria*, no. 20611/10, § 44, 15 November 2018; *Gyrlyan*, cited above, § 27; and *Ismayilov*, cited above, § 36). In several other cases the intent to deceive was afforded less importance (see, for instance, *Gabrić v. Croatia*, no. 9702/04, §§ 38-39,

5 February 2009, and *Ismayilov*, cited above, § 38). Another factor in some cases has been whether the confiscation measure had been an additional sanction (see *Ismayilov*, § 38, and *Togrul*, § 45, both cited above). The Court has found that rigid domestic laws which made full confiscation an automatic sanction would often lead to domestic court decisions that fail to strike a fair balance between the requirements of the general interest and the protection of an individual's right to property (see, among other authorities, *Gyrlyan*, cited above, §§ 30 and 31).

38. In the circumstances of the present case, however, the applicant's behaviour and submissions, considered as a whole, make it particularly difficult for the Court to carry out the proportionality analysis. While the Court has found that the applicant can be presumed to have owned at least part of the sum confiscated from her, namely the amount she claims as her own (USD 9,000, see paragraphs 7 and 31 above), it cannot overlook, in the assessment of the proportionality of the interference, that the sanction complained of was applied to the whole transported sum for the reason that the applicant had decided to carry it on her person. The measure was the only sanction imposed on the applicant (compare and contrast, *Ismayilov*, § 38, and *Togrul*, § 45, both cited above). Having gone through the relevant checkpoint twenty-six times prior to the impugned events (see paragraph 6 above), the applicant must have been well aware of the fact that any sum exceeding the legal limit provided for by the relevant regulations (see paragraphs 17-18 above) must be declared to the customs authorities. In this context, while the amount claimed as the applicant's own fell well within the legal limit, the applicant chose, according to her own account, to carry additional sums and took the risk of having it confiscated by deliberately circumventing the customs inspection (see paragraphs 6 and 14-15 above).

39. Furthermore, while the shared ownership of the confiscated sum may have been irrelevant for the application of the relevant sanction as the domestic law applied to the transportation of undeclared amounts regardless of ownership, the Court notes that the domestic courts did nevertheless address the applicant's argument concerning the shared ownership. They established that the argument had not been raised when the relevant sum had been discovered on her person, and it had not been supported by appropriate evidence, concluding that the argument concerning the shared ownership had been put forward with the aim of evading the relevant sanction (see paragraphs 14-15 above). In this regard, the Court further observes that the case file material available before it does not contain any documents relating to the confiscated sum, be it regarding its lawful origin, the applicant's assertion of shared ownership, or her alleged debt towards her travelling companions (see paragraphs 24 and 37 above).

40. In the light of the foregoing, and considering the particular circumstances of the present case, the Court is not in a position to rule that the loss of USD 9,000 out of the total of USD 40,000 was *a priori*

disproportionate or that the applicant had, in the circumstances, suffered an excessive individual burden as a result of the confiscation measure, such impossibility being entirely attributable to the applicant and her failure to provide the Court with reliable factual elements necessary for carrying out the proportionality analysis under Article 1 of Protocol No. 1.

41. In the light of the foregoing, the Court concludes that there has been no violation of Article 1 of Protocol No. 1 to the Convention in the circumstances of the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 15 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Síofra O’Leary
President