



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

FIRST SECTION

CASE OF IMERI v. CROATIA

(Application no. 77668/14)

JUDGMENT

Art 1 P1 • Control of the use of property • Confiscation at border-crossing of undeclared sum of foreign currency co-owned by applicant • Entire amount considered the “possession” in absence of specification by applicant and domestic courts of his exact share • Confiscated amount substantially disproportionate to offence
Art 41 • Just satisfaction • Reopening of domestic proceedings most appropriate form of redress for pecuniary damage

STRASBOURG

24 June 2021

FINAL

24/09/2021

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

In the case of Imeri v. Croatia,

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

Krzysztof Wojtyczek, *President*,

Ksenija Turković,

Tim Eicke,

Aleš Pejchal,

Pauliine Koskelo,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Norwegian national, Mr Ardian Imeri (“the applicant”), on 8 December 2014;

the decision to give notice to the Croatian Government (“the Government”) of the complaint concerning the applicant’s property rights and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 1 September 2020 and 25 May 2021,

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

INTRODUCTION

1. The case concerns confiscation of a sum of foreign currency which the applicant, a Norwegian national, did not declare when crossing the Croatian-Slovenian border.

THE FACTS

2. The applicant was born in 1980 and lives in Ski, Norway. The applicant was represented by Mr S. Martić, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The Government of Norway, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), did not avail themselves of this right.

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

I. ADMINISTRATIVE-OFFENCE PROCEEDINGS

6. On 13 March 2011, while crossing the border between Slovenia and Croatia, the applicant was stopped by the customs authorities who

established that he had been carrying cash in the amount of 43,500 euros (EUR) and 730,000 Norwegian kroner (NOK) which, contrary to the relevant law, he had failed to declare. The entire amount of money was temporarily seized in accordance with section 70 of the Foreign Currency Act and section 159 of the Administrative Offences Act (see paragraphs 29 and 34 below).

7. On the same occasion, a customs official who specialised in working with drug detection devices was called upon to detect the presence of drugs. The device showed presence of drugs on the applicant's hands, his mobile phone, on the banknotes he had been carrying and on the passenger seat. The applicant's vehicle was searched, but no drugs were found.

8. On the same day, the customs authorities instituted administrative-offence proceedings (*prekršajni postupak*) against the applicant for his failure to declare the above sums (see paragraph 6 above), an administrative offence as defined in sections 40(1) and 69(1) of the Foreign Currency Act and section 74 of the Prevention of Money Laundering and Financing of Terrorism Act (see paragraphs 34 and 38 below).

9. In his defence, the applicant explained that the money he had been carrying was his, his brother's and his brother's wife's common earnings and savings and was to be used to purchase a plot of land in Kosovo¹. He submitted business documentation (including tax declarations) of the companies in which he and his brother had shares and had been employed as well as their bank accounts transactions reports. He also submitted a preliminary agreement on the purchase of a piece of real estate to prove the legality of the intended use of the money in question.

10. On 26 May 2011 the Ministry of Finance (*Ministarstvo Financija, Financijski inspektorat* – hereinafter “the Ministry”) requested data concerning the applicant's involvement in criminal activities in Norway.

11. On 8 July 2011 the Interpol office in Oslo informed the Zagreb office that the applicant was a person well known to the Norwegian police in connection with property fraud.

12. On 30 September 2011 the Interpol office in Oslo informed the Zagreb office that the applicant and his brother had no criminal record in Norway. It further submitted that criminal proceedings had been instituted against both of them in 2008 and 2011 on charges of aggravated theft but those proceedings had eventually been discontinued for lack of evidence.

13. By a decision of 25 October 2011 the Ministry found the applicant guilty of the administrative offence in question (see paragraph 8 above) and fined him 5,000 Croatian kunas (HRK). At the same time, the Ministry imposed a protective measure (*zaštitna mjera*), confiscating EUR 43,500

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

and NOK 730,000 under section 69(2) of the Foreign Currency Act (see paragraph 34 below).

14. On 4 February 2012 the applicant lodged an appeal with the High Court for Administrative Offences (*Visoki prekršajni sud Republike Hrvatske*).

15. On 4 July 2012 that court quashed the first-instance decision and remitted the case to the Ministry.

16. On 5 September 2013 the Ministry again found the applicant guilty and fined him HRK 5,000. At the same time, the Ministry imposed a protective measure, confiscating only part of the undeclared amount – NOK 530,000. The Ministry returned to the applicant the remaining amount that he had been transferring across the border (EUR 43,500 and NOK 200,000), in accordance with section 69(4) of the Foreign Currency Act (see paragraph 34 below).

17. When determining the applicant's guilt the Ministry held that he should have been aware of the obligation to declare cash in an amount higher than EUR 10,000, since such an obligation was provided for by law in all member States of the European Union through which he had to travel on his journey from Norway to Kosovo.

18. When applying the confiscation measure, the Ministry held that the applicant had failed to prove that the source of the entire amount and its intended use had been legitimate. In particular, the Ministry found that although the applicant had indeed submitted a preliminary agreement on the purchase of a plot of land in Kosovo (see paragraph 9 above), the amount of money he had been transferring across the border would not have been sufficient to buy the real estate at issue, which, according to the agreement, had a sale price of EUR 150,000. The Ministry also found that the documents submitted by the applicant (see paragraph 9 above) showed that, although he would have been able to accumulate some savings in Norway because he, his brother and his brother's wife had been working there for thirteen years, he would not have been able to save the entire amount he had been carrying with him, especially bearing in mind the high cost of living in Norway. However, the Ministry held that it would not be justified to confiscate the entire amount in question from the applicant given that he had submitted documents proving that at least part of the money could have been legally earned (see paragraph 9 above). The Ministry also took into account the fact that his child died in the course of the proceedings.

19. By a decision of 4 December 2013 the High Court for Administrative Offences dismissed an appeal by the applicant and upheld the Ministry's decision, endorsing the reasons given therein.

20. The applicant then lodged a constitutional complaint, alleging, *inter alia*, a violation of his constitutionally protected right of ownership. He referred to the Court's case-law, in particular to the case of *Gabrić v. Croatia* (no. 9702/04, 5 February 2009).

21. By a decision of 17 June 2014 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint, because it found that, unlike in the *Gabrić* case, cited above, the applicant had not proved the lawful origin of the money.

II. OTHER FACTS RELIED ON BY THE GOVERNMENT

22. On 12 January 2015 the Norwegian authorities informed the Croatian authorities that they had been conducting an investigation against the applicant on suspicion of money laundering.

23. On 5 March 2015 the Oslo State Attorney's Office submitted to the Croatian authorities a request for assistance under the provisions of the European Convention on Mutual Assistance in Criminal Matters.

24. In its request the Oslo State Attorney's Office stated that the applicant was suspected of money laundering and tax evasion in connection with certain money transfers effected in the period between 14 and 22 August 2013 and between 10 July and 11 November 2014. In particular, the Oslo State Attorney's Office explained that there had been indications that the applicant's company had made payments to two other companies in exchange for painting jobs which had actually never been carried out. In connection with these transactions, the company might also have benefited from an unwarranted tax return.

25. In addition, the Oslo State Attorney's Office requested information from the Croatian authorities concerning the outcome of the administrative-offence proceedings which the latter had instituted against the applicant in 2011 for his failure to declare cash to the customs authorities (see paragraph 8 above).

26. On 11 April 2017 the Government informed the Court that on 12 October 2016 the regional prosecutor in Oslo had charged the applicant with aggravated money laundering.

27. On 3 January 2018 the Government informed the Court that the applicant had been sentenced to imprisonment for money laundering in a final judgment in Norway in September 2017. Also, in addition to the prison sentence, approximately EUR 64,500, some mobile phones and a computer had been confiscated from him.

28. The Government further stated that they were not in possession of a copy of the above judgment (see paragraph 27 above) since it had been rendered by the courts of a foreign country. The Government thus suggested that, if necessary, the Court could itself obtain the judgment at issue by requesting it either from the applicant or from the Norwegian Government.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Administrative Offences Act

29. The relevant provisions of the Administrative Offences Act (*Prekršajni zakon*, Official Gazette no. 107/07 with subsequent amendments), which has been in force since 1 January 2008, at the material time read as follows:

Types of sanctions for administrative offences Section 5

“(1) Sanctions for administrative offences which may be prescribed by [any] legislation defining an administrative offence, and which may be imposed on or applied to a perpetrator of an administrative offence are:

1. penalties (fine and imprisonment),
2. protective measures, in accordance with section 50 paragraph 2 of this Act.

(2) Sanctions for administrative offences prescribed by this Act are:

1. admonitory measures (reprimand and suspended sentence),
2. protective measures (section 50 paragraph 1),
3. educational measures.

(3) ...

(4) Unless this Act provides otherwise, the amount and duration of each type of sanction for administrative offences shall be prescribed by law and no [such] sanction may be prescribed, imposed or applied in an indefinite amount or for an indefinite period of time.”

General rule on choosing the type and severity of penalty Section 36

“(1) Type and severity of penalty to be imposed on a perpetrator of an administrative offence shall be determined by a court within the limits provided for by law in respect of the administrative offence committed, and on the basis of a degree of guilt, seriousness of the offence and the purpose of the penalty.

(2) When determining the type and severity of penalty to be applied, the court shall take into account all the circumstances which may render the penalty, in terms of its type and severity, heavier or lighter for the perpetrator (mitigating and aggravating circumstances), and in particular the following: degree of guilt, motives for the commission of the administrative offence, the perpetrator’s previous conduct, his conduct after the commission of the offence and the totality of social and personal causes which contributed to the commission of the offence. When imposing a fine on the perpetrator, the court shall also take into account his financial situation.”

Types of protective measures
Section 50

“(1) The protective measures prescribed by this Act and which the court may apply (one or more) to the perpetrator of an administrative offence are:

1. compulsory psychiatric treatment,

...

6. confiscation of items,

...

(2) Save for the protective measures prescribed by this Act (paragraph 1 of this section), other types of protective measures may be prescribed by law. Their duration and purpose must be in accordance with the provisions of this Act. These protective measures shall be applied under the same conditions prescribed for the application of the protective measures referred to in paragraph 1 of this section.

(3) Protective measures provided by this Act and by separate legislation may be applied for a period that is not shorter than one month or longer than two years. The protective measure of confiscation of items shall be applied permanently.

(4) ...”

Purpose of protective measures
Section 51

“The purpose of protective measures is to remove the conditions which enable or facilitate the commission of a new administrative offence.”

Confiscation of items
Section 57

“(1) The protective measure of confiscation of items may be applied in respect of items which were intended or used for the commission of an administrative offence or were proceeds of [such] offence when there is a risk that the items at issue will again be used for the commission of an administrative offence or when their confiscation appears necessary for the protection of general safety, health or morals.

(2) In certain cases, the law may prescribe the compulsory confiscation of items.

(3) The application of this protective measure shall not affect the right of third parties to seek compensation from the perpetrator of the administrative offence for the damage sustained by the confiscation of items.

...”

Urgent taking of evidence
Section 159

“(1) If there are grounds for suspicion that an administrative offence has been committed, [administrative] officials may, before instituting administrative offence proceedings ... ask the court to order:

(1) the search of a flat and other premises, ...

(2) the temporary seizure of items,

...

(2) If there is a risk of delay the relevant ... authorities may themselves order the urgent taking of the measures referred to in paragraph 1 of this section ...”

30. Under the 2007 Administrative Offences Act the confiscation of items was classified as a protective measure. On 1 June 2013 the Amendments to the Administrative Offences Act (*Zakon o izmjenama i dopunama Prekršajnog zakona*, Official Gazette, no. 39/2013, 27 March 2013) entered into force. According to these amendments, the confiscation of items ceased to be a protective measure and became a sanction *sui generis*. That change was linked with a similar change brought with the adoption of the new Criminal Code in 2011, which also reclassified the sanction of confiscation of items from a security measure to a sanction *sui generis*. That was done because it was considered that the dominant purpose of that sanction was not the one stated as the general purpose of protective measures (see section 51 in paragraph 29 above): confiscation was not imposed because of the risk posed by the perpetrator, and often not because of the risk posed by the confiscated item. Therefore, it had to be seen as a sanction akin to the sanction of confiscation of the proceeds of crime.

31. Section 82(3) provides that if the Administrative Offences Act does not contain specific provisions on the procedure in administrative offence proceedings, the provisions of the Criminal Procedure Act (see paragraph 39 below) should apply *mutatis mutandis*.

32. Sections 214-216 provide for the remedy of reopening of administrative offence proceedings, and regulate the procedure following a request for reopening.

33. Section 220 reads as follows:

“(1) The Principal State Attorney may lodge a request for the protection of legality against final judicial decisions ... if the law has been breached.

(2) The provisions of the Criminal Procedure Act concerning the lodging of and deciding on a request for the protection of legality shall be applied *mutatis mutandis* in administrative offence proceedings.

(3) The State Attorney does not have to lodge a request for the protection of legality if he or she considers that [even though] the law was breached, that breach did not affect the correctness of the decision and [the case] does not concern a legal issue important for the consistency of the case-law or for the protection of human rights.”

B. Foreign Currency Act

34. The relevant part of the Foreign Currency Act (*Zakon o deviznom poslovanju*, Official Gazette no. 96/03 with subsequent amendments), as in force at the material time, read:

Movement of foreign or domestic currency in cash and cheques

Section 36(1)

“Foreign currency in cash and cheques may be freely brought into the Republic of Croatia, subject to a reporting obligation pursuant to section 40 of this Act.”

Prevention of money laundering and counterfeiting of foreign currency

Section 40(1)

“Residents and non-residents crossing the State border are required to declare to a customs official ... foreign or domestic currency in cash or cheques of the value prescribed by the legislation regulating the prevention of money laundering.”

Section 69

“(1) A fine of HRK 5,000 to HRK 50,000 for an administrative offence shall be imposed on a domestic or foreign natural person ... who attempts to take or takes across the State border cash or cheques of the value prescribed by the legislation regulating the prevention of money laundering without declaring them to a customs official.

(2) Cash and cheques which are the objects of the offence referred to in paragraph 1 of this section shall be confiscated for the benefit of the State budget.

(3) Cash and cheques which are the instruments of the offence may be confiscated even if they are not owned by the perpetrator.

(4) Exceptionally, in particularly justified situations where special mitigating circumstances exist, the authority adjudicating on the administrative offence may decide that the cash and cheques which are the objects of the administrative offence referred to in paragraph 1 of this section shall not be confiscated or shall be confiscated only in part.”

Section 70

“In accordance with the legislation governing administrative offence proceedings, the Financial Inspectorate or the customs authority shall, in exercising control over foreign exchange operations, temporarily seize foreign or domestic currency in cash as well as documents and other objects which are instruments or proceeds of the administrative offence, or which may serve as evidence in administrative offence proceedings, and shall issue a certificate confirming the seizure. Foreign or domestic currency in cash shall be paid without delay into special accounts of the Financial Inspectorate of the Ministry of Finance.”

35. The explanatory report to the Final Draft of the Foreign Currency Act, which the Government of Croatia presented to the Croatian Parliament for the second reading before its adoption in 2003, in the part concerning section 69 reads:

“The purpose of this administrative offence is to prevent the transfer of illegally acquired money across the State border. Cash and checks which were the objects of the offence shall be confiscated, but in justified cases this protective measure does not have to be imposed.”

36. In 2018 and 2019 the Constitutional Court adopted three decisions (nos. U-III-5208/2013 of 23 April 2018, U-III-6763/2014 of 10 July 2018

and U-III-7203/2014 of 9 April 2019) in which it examined constitutional complaints raising a similar issue as the present application. In those cases, the complainants received the lowest fine prescribed by law for their failure to declare cash at customs. In addition to the fine, the domestic authorities confiscated from them the entire amount of undeclared money that they had been carrying across the border. The confiscation measure was imposed on the sole ground that they had failed to prove the lawful origin and intended use of the cash at issue. The Constitutional Court allowed the complainants' constitutional complaints finding that their property rights had been violated. It held that the domestic authorities failed to give relevant and sufficient reasons as to whether the confiscation measure, in addition to the fine, had corresponded to the gravity of the offence. Consequently, the Constitutional Court concluded that the domestic authorities failed to strike a fair balance between the general interest of the community and the complainants' property rights. In deciding so, the Constitutional Court relied on the Court's judgments in the cases of *Gabrić*, cited above, *Boljević v. Croatia*, no. 43492/11, § 20, 31 January 2017, and *Tilocca v. Croatia* [Committee], no. 40559/12, 5 April 2018.

C. The 2021 Amendments to the Foreign Currency Act

37. On 7 May 2021 the Croatian Parliament adopted Amendments to the Foreign Currency Act (*Zakon o izmjenama i dopunama Zakona o deviznom poslovanju*, Official Gazette no. 52/21) with a view to implementing the 2018 Cash Control Regulation (see paragraph 42 below). The Amendments abolished confiscation as a sanction for the administrative offence of failing to declare cash exceeding EUR 10,000 when entering or leaving the European Union through Croatia. The maximum amount of fine for that offence was increased to HRK 100,000, and to HRK 1,000,000 for aggravated forms of the offence. The Amendments however provide that the fine must be lower than 60% of undeclared cash.

D. Prevention of Money Laundering and Financing of Terrorism Act

38. Section 74(1) of the Prevention of Money Laundering and Financing of Terrorism Act (*Zakon o sprječavanju pranja novca i financiranja terorizma*, Official Gazette no. 87/08 with subsequent amendments), reads:

“Customs [authorities]... shall immediately, or within three days of the transfer at the latest, inform the Office [for the Prevention of Money Laundering] of any declared transfer across the State border of cash or cheques in domestic or foreign currency of a value, in HRK equivalent, of EUR 10,000 or more ...”

E. The Criminal Procedure Act

39. The relevant provisions of the Criminal Procedure Act (*Zakon o kaznenom postupku*, Official Gazette no. 152/08 with subsequent amendments), which has been in force since 1 September 2011, read as follows:

Section 502(2)

“Criminal proceedings shall also be reopened if a request for reopening was submitted on the basis of a final judgment of the European Court of Human Rights whereby a violation of the rights and freedoms under the Convention for the Protection of Human Rights and Fundamental Freedoms had been found, if that violation of the Convention had affected the outcome of the proceedings, and the violation or its consequences can be remedied in the reopened proceedings. In a decision allowing the reopening of the criminal proceedings the court shall order that the proceedings be returned to the stage of proceedings before the indictment panel or to the trial stage, the appellate stage, or the stage upon extraordinary legal remedies.”

Section 509

“(1) The Principal State Attorney may lodge a request for the protection of legality against final judicial decisions if the law has been breached.

(2) The Principal State Attorney shall lodge a request for the protection of legality against a judicial decision adopted in [criminal] proceedings in a manner which constitutes a violation of fundamental human rights and freedoms guaranteed by the Constitution, international law or [primary] legislation.

(3) ...”

II. RELEVANT EUROPEAN UNION LAW AND PRACTICE

A. Charter of Fundamental Rights of the European Union

40. The relevant provision of the Charter of Fundamental Rights of the European Union provide as follows.

Article 49

Principles of legality and proportionality of criminal offences and penalties

“...

3. The severity of penalties must not be disproportionate to the criminal offence.”

B. Relevant regulations

41. The relevant Articles of Regulation (EC) No. 1889/2005 of the European Parliament and of the Council [of the European Union] of 26 October 2005 on controls of cash entering or leaving the Community (hereafter “the 2005 Cash Control Regulation”) are reproduced in the *Boljević* case (cited above, § 20).

42. That Regulation was superseded by Regulation (EU) No. 2018/1672 of the European Parliament and of the Council [of the European Union] of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (hereafter “the 2018 Cash Control Regulation”). This new Regulation should apply from 3 June 2021. The relevant part of the preamble of that Regulation reads as follows:

“(35) In order to encourage compliance and deter circumvention, Member States should introduce penalties for non-compliance with the obligations to declare or disclose cash. Those penalties should apply only to the failure to declare or disclose cash under this Regulation and should not take into account the potential criminal activity associated with the cash, which may be the object of further investigation and measures that fall outside the scope of this Regulation. Those penalties should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance. Penalties introduced by Member States should have an equivalent deterrent effect across the Union on the infringement of this Regulation.”

The relevant provisions of that Regulation read:

Article 3

Obligation to disclose accompanied cash

“1. Carriers who carry cash of a value of EUR 10 000 or more shall declare that cash to the competent authorities of the Member State through which they are entering or leaving the Union and make it available to them for control. The obligation to declare cash shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or if the cash is not made available for control.

2. ...”

Article 7

Temporary detention of cash by competent authorities

“1. The competent authorities may temporarily detain cash by means of an administrative decision in accordance with the conditions laid down in national law where:

(a) the obligation to declare accompanied cash under Article 3 or the obligation to disclose unaccompanied cash under Article 4 has not been fulfilled; or

(b) there are indications that the cash, irrespective of the amount, is related to criminal activity.

2. The administrative decision referred to in paragraph 1 shall be subject to an effective remedy in accordance with procedures provided for in national law. ...

3. The period of temporary detention shall be strictly limited under national law to the time required for competent authorities to determine whether the circumstances of the case warrant further detention. The period of temporary detention shall not exceed 30 days. After the competent authorities carry out a thorough assessment of the necessity and proportionality of a further temporary detention, they may decide to extend the period of temporary detention to a maximum of 90 days.

Where no determination is made regarding further detention of the cash within that period or if a determination is made that the circumstances of the case do not warrant

further detention, the cash shall be immediately released to ... the person from whom the cash was temporarily detained ...”

Article 14 Penalties

“Each Member State shall introduce penalties which shall apply in the event of failure to comply with the obligation to declare accompanied cash laid down in Article 3 or the obligation to disclose unaccompanied cash laid down in Article 4. Such penalties shall be effective, proportionate and dissuasive.”

C. Relevant case-law of the Court of Justice of the European Union

43. Upon requests for preliminary ruling by national courts, the Court of Justice of the European Union (CJEU) dealt with several cases which concerned interpretation and application of the 2005 Cash Control Regulation (see paragraph 41 above).

44. In *Chmielewski* (C-255/14, 16 July 2015, EU:C:2015:475) the CJEU held that in the light of the nature of the infringement concerned, namely a breach of the obligation to declare laid down in Article 3 of the 2005 Cash Control Regulation, a fine equivalent to 60% of the amount of undeclared cash, where that amount is more than EUR 50,000, did not seem to be proportionate (§ 30). In that regard, it noted that the penalty provided for in Article 9 of Regulation No. 1889/2005 did not seek to penalise possible fraudulent or unlawful activities, but solely a breach of the obligation to declare laid down in Article 3 of the Regulation (§ 31). The CJEU also noted that Article 4 § 2 of the Regulation provided for the possibility to detain, by administrative decision, cash which had not been declared, in order, among other things, to allow the competent authorities to carry out the necessary checks relating to the provenance of that cash and its intended use and destination (§ 33).

45. After the *Chmielewski* judgment (see paragraph 44 above) the CJEU had to rule in five other cases on the proportionality of a penalty imposed for the failure to declare cash to customs. In *Lu Zheng* (C-190/17, 31 May 2018, EU:C:2018:357) the CJEU found that a fine which may be imposed in up to double the amount of the undeclared amount could not be considered proportionate. In *Pinzaru and Cirstinoiu* (C-707/17, 12 July 2018, EU:C:2018:574) and in *AK and EP* (C-335/18 and C-336/18, 30 January 2019, EU:C:2019:92) it found disproportionate the confiscation of the entire undeclared amount, in addition to a prison sentence of up to six or five years imprisonment respectively and a fine which may be up to respectively the double or the fifth of the undeclared amount. In *Mitnitsa Burgas* (C-652/18, 3 October 2019, EU:C:2019:818) it found disproportionate the confiscation of the entire undeclared amount in addition to a fine of about EUR 500. In *Direcția Generală Regională a Finanțelor Publice București* (C-679/19, 19 December 2019, EU:C:2019:1109) the CJEU found disproportionate the

confiscation of the undeclared amount exceeding EUR 10,000 in addition to a fine of about EUR 630.

46. The relevant part of the CJEU's judgment in the *Lu Zheng* case reads as follows:

“18 ... the Tribunal Superior de Justicia de Madrid (Madrid High Court of Justice) decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

‘(1) Must Article 9(1) of Regulation [No 1889/2005] be interpreted as precluding national legislation, such as that at issue in the main proceedings, which in order to penalise failure to comply with the obligation to declare under Article 3 of that regulation permits a fine to be imposed of up to double the value of the means of payment used?

(2) Must Article 9(1) of Regulation [No 1889/2005] be interpreted as precluding national legislation, such as that at issue in the main proceedings, which lays down as aggravating circumstances, in the case of failure to comply with the obligation to declare, lack of proof of the lawful origin of the means of payment and inconsistency between the activity carried on by the person concerned [and the amount of the movement]?

(3) ...

...

40 ...the principle of proportionality has to be observed, not only as regards the determination of factors constituting an infringement, but also the determination of the rules concerning the severity of fines and the assessment of the factors which may be taken into account in the fixing of those fines ...

41 In particular, the administrative or punitive measures permitted under national legislation must not go beyond what is necessary in order to attain the objectives legitimately pursued by that legislation (see, by analogy, judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 22).

42 In that context, the severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed (see, by analogy, judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 23).

43 In that regard, it must be recalled that the Court held that, even though under Article 9(1) of Regulation No 1889/2005 Member States enjoy a margin of discretion concerning the choice of penalties which they adopt in order to ensure compliance with the obligation to declare laid down in Article 3 of that regulation, a fine corresponding to 60% of the undeclared cash sum, where that sum is greater than EUR 50 000, incurred for breach of that obligation, does not appear to be proportionate having regard to the nature of the infringement concerned. The Court held that such a fine goes beyond what is necessary in order to ensure compliance with that obligation and the fulfilment of the objectives pursued by that regulation, given that the penalty provided for in Article 9 does not seek to penalise possible fraudulent or unlawful activities, but solely a breach of that obligation (judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraphs 29-31).

44 In the present case, it must be held that Article 57(3) of Law 10/2010, like Article 9 of Regulation No 1889/2005, does not seek to penalise possible fraudulent or unlawful activities, but merely the infringement of the obligation to declare.

45 In addition, even if such a fine is calculated by taking into account certain aggravating circumstances, provided they comply with the principle of proportionality, the fact that the amount of the fine may be up to double the undeclared cash sum and that, in any event, as in the present case, the fine may be set at an amount corresponding to nearly 100% of that sum goes beyond what is necessary in order to ensure compliance with the obligation to declare.

46 In the light of all of the foregoing considerations, the answer to the first and second questions is that Articles 63 and 65 TFEU must be interpreted to the effect that they preclude legislation of a Member State, such as that at issue in the main proceedings, which provides that the failure to comply with an obligation to declare significant sums of cash entering or leaving the territory of that State is punishable with a fine which may be up to double the undeclared amount.”

47. The relevant part of the CJEU’s judgment in the *AK and EP* case reads as follows:

“38 ... even if the breach of the obligation to declare is punished only by confiscation for the benefit of the State of the totality of the undeclared sum, in the absence of any custodial sentence or fine, such a measure would, in itself, go beyond the limits of what is necessary to ensure compliance with the reporting obligation. Having regard to the fact that the Court has already held that a fine the amount of which corresponds to 60% of the sum of undeclared cash imposed in the event of a breach of said obligation does not appear to be proportionate, taking into account the nature of the offence concerned, a more onerous measure, such as the confiscation for the benefit of the State of the entire undeclared sum, cannot *a fortiori* be regarded as being proportionate.

39 Finally, the confiscation of the undeclared sum for the benefit of the State, as provided for by the legislation at issue in the main proceedings, cannot be regarded as a detention measure within the meaning of Article 4, paragraph 2 of Regulation No 1889/2005. Indeed, it follows from points 27 and 29 of this ordinance that the retention measures referred to in that provision are mainly means making it possible to gather information on movements of cash, in order to verify that these are not carried out for unlawful purposes. However, according to the explanations provided by the referring courts, the confiscation order at issue in the main proceedings is compulsory and covers any unreported sum of money, regardless of its origin. As such, it is not a means of gathering information on the movement of cash, but a sanction, within the meaning of Article 9 of that Regulation.”

III. RELEVANT COUNCIL OF EUROPE INSTRUMENTS

48. The relevant provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, as well as the relevant part of the Explanatory report to that Convention, are reproduced in the *Boljević* case (cited above, §§ 18-19).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

49. The applicant complained that the decision of the domestic authorities in the administrative-offence proceedings to confiscate NOK 530,000 from him for having failed to declare that sum to customs had been excessive and thus in violation of his right of property. He relied on Article 1 of Protocol No. 1 to the Convention, which 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

1. *The parties’ arguments*

(a) The Government

50. The Government first noted that the applicant himself claimed that the money he had been carrying across the border had been his, his brother’s and his brother’s wife’s common earnings and savings. The Government also noted that he had not specified what part of the money at issue had belonged to him (see paragraph 9 above).

51. The Government argued therefore that the applicant could not be considered a victim of the violation complained of in respect of the part of money which had not been his. They also considered that, in a situation where it was not possible to determine what share of a sum in dispute belonged to each owner, victim status could not be granted to a single co-owner, but only to all of them together.

(b) The applicant

52. The applicant maintained that according to family tradition the money that had been earned and saved by its members belonged to all of them in unspecified shares (see paragraph 9 above). Notwithstanding that, the Government’s arguments were unfounded because the decisive fact was that the money had been confiscated from him (see paragraph 16 above).

2. *The Court's assessment*

53. The Court reiterates 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, and *Karapetyan v. Georgia*, no. 61233/12, § 31, 15 October 2020). It is true that the applicant in the present case claimed that the confiscated money had not belonged only to him. However, it is not in dispute between the parties that at least some part of that money belonged to the applicant (see paragraphs 9, 18, 51 and 52 above). Therefore, it cannot be said that he was not a victim of the violation complained of (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)), and contrast with *Telbis and Viziteu v. Romania*, no. 47911/15, §§ 62-64, 26 June 2018; and *Eliseev and Ruski Elitni Klub v. Serbia* (dec.), no. 8144/07, §§ 33-34, ECHR 10 July 2018).

54. The Court further 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**

55. The applicant argued that there had been no valid reason to confiscate from him the amount of NOK 530,000. He stated that he had not committed the administrative offence in question wilfully but only through negligence and that at the critical moment, at the police officer's request, he had taken out and showed all the money that he had been carrying with him. He further claimed that he had proved the lawful origin and intended use of the money in question by submitting evidence in this connection, that is to say business documentation of the companies in which he and his brother had shares and had been employed, bank statements and a preliminary agreement on the purchase of a plot of land in Kosovo.

56. As regards the criminal proceedings for money laundering instituted against him in Norway, the applicant pointed to the fact that the money transfers in the case had concerned periods between 14 and 22 August 2013 and between 10 July and 11 November 2014. Therefore, there was no temporal link between those transactions and the money he had been carrying with him across the Croatian border in March 2011 (see paragraph 6 above). For that reason, there were no indications that the confiscated money had been acquired illegally or that the money at issue had been intended for illegal purposes.

(b) The Government

57. The Government admitted that there had been an interference with the applicant's right of property when the domestic authorities had confiscated NOK 530,000 from him (see paragraph 16 above). However, the interference had been lawful and had pursued a legitimate aim.

58. As to the proportionality, the Government first pointed out that, when applying the confiscation measure, the domestic authorities had found that the applicant should have been aware of his obligation to declare cash when crossing State borders with such a large amount of money (see paragraph 17 above). In line with that assumption, the Government emphasised that the applicant's conduct, in particular his failure to get acquainted with the relevant customs regulations, had contributed to the alleged violation.

59. Secondly, the Government maintained that, in general, the key element in deciding whether to confiscate a sum of money in full or in part was whether statements by the accused concerning the legitimate source, destination and actual owner of the money were supported by relevant documents. Where the legitimate origin, intention and actual owner of the cash had not been determined, it could not be deemed that there were circumstances justifying the return of the money.

60. In the applicant's case the domestic authorities found that he had not proved that the source and destination of the money in question had been legitimate. Therefore, there had been no mitigating circumstances which would have justified the return of the entire undeclared amount of foreign currency (see paragraph 34 above). In particular, after having examined the documentation and financial transactions linked to the applicant's and his brother's bank accounts, the domestic authorities found that he and his family members could not have saved the entire amount he had been carrying with him. Also, the amount at issue would not have been sufficient to buy the property for which the money had been intended to be used.

61. Thirdly, in the Government's view, the fact that a considerable part of the confiscated money had actually been returned to the applicant suggested that the measure applied had been proportional (see paragraph 16 above).

62. Lastly, the Government distinguished the present case from the case of *Gabrić* where the lawful origin of the money had not been in dispute (see *Gabrić*, cited above, § 37). In the instant case, not only had the applicant been unable to prove the lawful source of the money, but also traces of drugs had been found on him, on his items and in his vehicle (see paragraph 7 above). Besides, the Croatian authorities had been informed of his alleged criminal activities for which he was known to the Norwegian police (see paragraphs 11 and 12 above). Moreover, after the events of 13 March 2011 the applicant had been convicted in Norway of money laundering and sentenced to imprisonment.

2. *The Court's assessment*

(a) As to whether there was an interference with the applicant's right to property

63. The Court reiterates 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 paragraph 53 above and the cases cited therein). Since the applicant claimed joint ownership of the amount he had been carrying across the border without specifying his exact share (see paragraph 52 above), and given that the domestic authorities did not elucidate which part of that money belonged to him, the Court considers that the "possession" in the present case is the entire sum confiscated from the applicant (see, *mutatis mutandis*, *Koval and Others v. Ukraine*, no. 22429/05, §§ 121 and 126-127, 15 November 2012, and contrast with *Karapetyan*, cited above, § 31, where the applicant claimed that she was the owner of a specific part of the confiscated sum, and where the Court therefore held that the alleged "possession" was only the amount she had claimed as her own).

64. The Court notes that it has already dealt with cases raising similar issues under Article 1 of Protocol No. 1 to the Convention (see, for example, *Ismayilov v. Russia*, no. 30352/03, 6 November 2008; *Gabrić*, cited above; *Grifhorst v. France*, no. 28336/02, 26 February 2009; *Moon v. France*, no. 39973/03, 9 July 2009; *Boljević*, cited above; and *Sadocha v. Ukraine*, no. 77508/11, 11 July 2019).

65. The Court further notes that it is not in dispute between the parties that the confiscation in question constituted an interference with the applicant's right of property (see paragraphs 55 and 57 above). It sees no reason to hold otherwise.

66. As regards the issue as to which of the rules of Article 1 of Protocol No. 1 applies, the Court reiterates its consistent approach that a confiscation measure, even though it does involve a 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*, cited above, § 38 and the cases cited therein).

(b) As to whether the interference was justified

(i) Lawfulness of the interference

67. As to the lawfulness of the interference, the Court notes that the confiscation measure in the present case had a legal basis in domestic law, specifically in the relevant provisions of the Administrative Offences Act, the Foreign Currency Act and the Prevention of Money Laundering Act (see paragraphs 8, 29, 34 and 38 above).

68. In that regard, the Court observes that protective measures, which are applicable to perpetrators of administrative offences and prescribed by the Administrative Offences Act or by other legislation, are regarded as

sanctions under domestic law (see section 5 of the Administrative Offences Act cited in paragraph 29 above, as well as paragraph 30 above). One of those sanctions – the confiscation of objects of an administrative offence – may, in certain cases defined by law, be prescribed as compulsory (see section 57(2) of the Administrative Offences Act cited in paragraph 29 above). Accordingly, the Foreign Currency Act prescribes two types of sanctions for the administrative offence of failure to declare cash to the customs authorities: a fine and compulsory confiscation of the entire amount of cash which should have been declared. It is only in particularly justified situations where there are special mitigating circumstances that the domestic authorities can decide that the cash which was the object of the administrative offence shall not be confiscated or shall be confiscated only in part (see paragraph 34 above).

69. The Court further reiterates that the existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness. When speaking of “law”, Article 1 of Protocol No. 1 alludes to a concept which comprises statutory law as well as case-law and implies qualitative requirements, notably those of accessibility and foreseeability (see, for example, *Brezovec v. Croatia*, no. 13488/07, § 60, 29 March 2011, with further references to *Mullai and Others v. Albania*, no. 9074/07, § 113, 23 March 2010; *Špaček, s.r.o. v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999; and *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI). These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence carries (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 91, ECHR 2013) which, *inter alia*, means that offences and the relevant penalties must be clearly defined by law (see *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 145, ECHR 2000-VII).

70. In particular, the law is “foreseeable” when an individual is able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and when it indicates the scope of discretion conferred on competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interferences (see, for example, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020; *Ljaskaj v. Croatia*, no. 58630/11, § 65, 20 December 2016, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 141 and 143, ECHR 2012).

71. Turning to the present case the Court notes that paragraph 1 of section 69 of the Foreign Currency Act provides for compulsory confiscation of the entire sum which the perpetrator failed to declare when crossing the border (see paragraph 34 above). That sanction – for a mere failure to declare – is at odds with the requirement existing in many Contracting States that penalties in order to be lawful must not be

disproportionate to the offence (see paragraph 40 above). The Court reiterates that, in order to be proportionate, the severity of sanction should correspond to the gravity of the offence it is designed to punish – in the instant case, the failure to comply with the declaration requirement – rather than to the gravity of any presumed infringement which has not actually been established, such as an offence of drug trafficking, money laundering or tax evasion (see *Gabrić*, cited above, § 39, and *Boljević*, cited above, § 44 and the cases cited therein; see also the case-law of the Croatian Constitutional Court cited in paragraph 36 above).

72. In this connection, the Court also takes note of the relevant European Union law, namely of:

- the case-law of the Court of Justice of the European Union, according to which the 2005 Cash Control Regulation does not seek to penalise possible fraudulent or unlawful activities, but solely a breach of the obligation to declare (see paragraphs 41, 44 and 46-47 above), and
- the preamble of the 2018 Cash Control Regulation, which explicitly states that penalties for non-compliance with the obligations to declare or disclose cash should not take into account the potential criminal activity associated with the cash (see paragraph 42 above).

73. However, a seemingly absolute and severe character of the confiscation sanction prescribed in paragraph 1 of section 69 of the Foreign Currency Act is made relative by paragraph 4 of the same section. That provision states that in particularly justified situations where special mitigating circumstances exist, the relevant authority may decide not to order confiscation at all or order only a partial confiscation (see paragraph 34 above). The Court cannot but note that paragraph 4 does not provide any indication as to what kind of situations could be considered justified, or which circumstances could be regarded as specially mitigating. In that way the provision in question leaves a broad discretion to the relevant authorities, without setting out any criteria for its exercise.

74. Since the provision in question does not indicate the manner of exercise of discretion conferred on competent authorities, it may be argued that it does not provide adequate protection against arbitrary interferences (see paragraph 70 above). This would make confiscations based on section 69 of the Foreign Currency Act unforeseeable given that foreseeability of the law also requires that a rule must provide protection against arbitrary interferences by public authorities (see paragraph 70 above).

75. However, many laws are more or less vague, and their interpretation and application are a question of practice (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 141 with further references). No matter how clearly drafted a legal provision may be there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. It is also to be noted that, in

the context of Article 7 of the Convention, the Court has held that even the strict requirements of that Article cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see, among many other authorities, *Del Río Prada*, cited above, § 93).

76. Moreover, 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, for example, *Karapetyan*, cited above, § 36).

77. In the present case the relevant Ministry applied the confiscation measure because the applicant had failed to prove that the source of the entire amount and its intended use had been legitimate (see paragraph 18 above). The Constitutional Court also based its decision to dismiss the applicant's constitutional complaint on the fact that he had not proved the lawful origin of the cash (see paragraph 21 above).

78. These reasons for applying the confiscation measure seem to suggest that the domestic authorities were concerned with the question whether the applicant lawfully possessed the money or, at least could prove its lawful origin. It would therefore appear that for those authorities this sanction was dependent on the failure to provide proof of those matters, even though the administrative offence for which the applicant was convicted and for which the said sanction was imposed consisted of a mere failure to declare the cash at the border (see section 40(1) of the Foreign Currency Act cited in paragraph 34 above).

79. Having regard to the reasons given in other similar cases (see *Boljević*, cited above, §§ 11, 13 and 15, and *Tilocca*, cited above, §§ 12-14, 16 and 18), the reasoning of the domestic authorities in the present case reflects the approach which seems to have been widely accepted by those authorities at that time, namely, that the origin of the money and its intended use were relevant, if not the main, criteria for deciding whether or not to order confiscation and, if so, to what extent, although the law itself has not laid down these as relevant criteria. In particular, in the *Tilocca* case, the domestic authorities held that the origin of the money which the applicant had failed to declare was irrelevant in relation to the commission of the offence or for the imposition of the fine but was relevant in relation to the confiscation (see *Tilocca*, cited above, § 12).

80. In the Court's view, using those criteria for imposing confiscation is inconsistent with the essence of the offence (see paragraph 75 above).

81. In these circumstances the Court finds that in the situation such as the one in the present case where the relevant legislation failed to prescribe upper limits on the amount subject to confiscation and conferred wide discretion to the relevant authorities without setting out any criteria for its exercise, and where the criteria used by those authorities when imposing the

confiscation measure where inconsistent with the essence of the offence, the interference with the applicant's right of property can be seen as failing to meet the qualitative requirement of foreseeability. However, in the Court's opinion, those elements and the consequences that they entail from the point of view of compliance with Article 1 of Protocol No. 1 are material considerations to be taken into account in the assessment of whether the national authorities, when applying the contested measure, struck a fair balance between the interests involved. Accordingly, the Court considers that it may leave open the issue of foreseeability and, consequently, the lawfulness of the impugned interference. Moreover, in the present case the Court finds it appropriate to do so because the confiscation measure was in the meantime abolished by the recent legislative changes (see paragraph 37 above).

(ii) Aim in the general interest

82. The Court observes 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 in which the failure to declare cash to the customs authorities results is part of the general regulatory scheme designed to combat those offences. The Court therefore considers that the confiscation measure conformed to the general interest of the community (see *Sadocha*, cited above, § 26, and *Karapetyan*, cited above, § 34).

83. Accordingly, the remaining question for the Court to determine is whether there was a reasonable relationship of proportionality between the means employed by the authorities to achieve that aim and the protection of the applicant's right to the peaceful enjoyment of his possessions.

(iii) Proportionality of the interference

84. As already stated above (see paragraph 71 above), in order to be proportionate, the severity of sanctions must be commensurate to the seriousness of the breaches for which they are imposed (see *Gabrić*, cited above, § 39, and *Boljević*, cited above, § 44 and the cases cited therein). The principle of proportionality has to be observed not only as regards the determination of the rules concerning the severity of sanctions but also the assessment of the factors which may be taken into account in the fixing of the sanction (compare with paragraph 40 of the judgment of the CJEU in the *Lu Zheng* case, cited in paragraph 46 above).

85. In this connection, the Court first reiterates that in *Gabrić* and *Boljević* cases it found that the decision to confiscate the entire undeclared amounts, that is to say 20,000 German marks and EUR 180,000, respectively, from the applicants had been disproportionate. In the *Boljević* case the Court did so even though the applicant had failed to prove the lawful source and destination of the money he had been carrying across the border (see *Gabrić*, cited above, §§ 35-40, and *Boljević*, cited above, §§ 41-46).

86. In both cases, the Court attached weight to the fact that the act of bringing foreign currency in cash into Croatia was not illegal under Croatian law. On the contrary, it was expressly allowed under the provisions of the Foreign Currency Act. In addition, the sum which could be legally transferred, or physically carried across the Croatian border, was not in principle restricted (see paragraph 34 above; see also *Gabrić*, cited above, § 36, and *Boljević*, cited above, § 42). For these reasons, the Court distinguished these cases from certain other cases in which the confiscation measure applied either to goods whose importation had been prohibited or to vehicles used for transporting prohibited substances or trafficking in human beings (see the cases referred to in *Ismayilov*, cited above, § 35; *Gabrić*, cited above, § 36, and *Grifhorst*, cited above, § 99).

87. The Court also took into account the fact that the applicants did not have a criminal record and that they had not been suspected of, or charged with, any criminal offence before (see *Gabrić*, cited above, § 38) or after the incident at issue (see *Boljević*, cited above, § 43). More importantly, the applicants were not criminally convicted or even prosecuted for failing to declare the money in question, as doing so did not amount to a criminal offence but only to an administrative offence, which is considered to be considerably less serious (see *Gabrić*, cited above, § 38, and *Boljević*, cited above, § 43).

88. Turning to the present case, the Court notes that even though the Norwegian authorities stated that the applicant was known to them for some alleged criminal activities, they also confirmed that he had not had a criminal record prior to the events of 13 March 2011 and that the criminal proceedings which had been instituted against him had been discontinued for lack of evidence (see paragraphs 11 and 12 above, and, *mutatis mutandis*, *Gabrić*, cited above, § 38).

89. The Court also notes that the Government did not submit any judgments of the Norwegian courts to support their claim that the applicant had been convicted of money laundering after he had failed to declare cash to the Croatian authorities (see paragraph 28 above). However, even assuming that that was true, it is evident from the Oslo State Attorney's request of 5 March 2015 that the charges of money laundering and tax evasion against the applicant concerned financial transactions which occurred some two years after the events at the Croatian border (see

paragraph 24 above). Therefore, the Court accepts the applicant's argument that there were no indications that the money which had been partly confiscated from him by the Croatian authorities had been obtained through criminal activities for which he had allegedly been convicted in Norway (see paragraphs 27 and 56 above).

90. In addition, when applying the confiscation measure, the domestic authorities did not take into consideration the applicant's alleged involvement in criminal activities in Norway. Nor did they rely on the fact that traces of drugs had been detected on him and his possessions on the critical date (see paragraphs 16 and 18 above).

91. In this connection, the Court observes that the domestic authorities first temporarily seized the entire undeclared sum of money (see paragraphs 6 and 29 above), the purpose of which was to enable them to determine whether the applicant committed only the administrative offence of failure to declare cash, or also a criminal offence such as money laundering. Even though they established in the administrative offence proceedings that the applicant failed to prove that the source of the entire amount and its intended use had been legitimate, no criminal proceedings had been instituted against him for money laundering. It thus follows that the confiscation sanction (in addition to the fine) had been imposed on the applicant solely for his failure to declare the money to customs, which is considered a less serious offence (see, *mutatis mutandis*, *Gabrić*, cited above, § 38, and *Boljević*, cited above, § 43).

92. In addition, the harm that the applicant might have caused to the authorities was minor: he had not avoided customs duties or any other levies or caused any other pecuniary damage to the State. Had the amount gone undetected, the Croatian authorities would have only been deprived of the information that the money had passed through Croatia (see *Ismayilov*, cited above, § 38).

93. Furthermore, the Court notes that the maximum fine for the administrative offence in question was HRK 50,000 (which was approximately EUR 6,600 at the time) and that the applicant was fined with HRK 5,000 (which was approximately EUR 660 at the time), that is, the minimum fine (see paragraphs 16 and 34 above). Comparing the gravity of the defendant's offence to the confiscation of NOK 530,000 (approximately EUR 66,200 at the time) the Court finds that confiscated amount was substantially disproportionate to the offence. The fact that around 50% of the money initially seized from the applicant was returned to him (see paragraphs 6 and 16 above) cannot alter this conclusion.

94. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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. Damage

96. The applicant claimed NOK 530,000 in respect of pecuniary damage and EUR 1,000 in respect of non-pecuniary damage.

97. The Government contested these claims.

98. The Court first notes that, having regard to section 82(3) of the Administrative Offences Act (see paragraph 31 above), the applicant can now, relying on sections 214-216 of the same Act (see paragraph 32 above) in conjunction with section 502(1) of the Criminal Procedure Act (see paragraph 39 above), file a request for reopening of the administrative offence proceedings in respect of which the Court has found a violation of Article 1 of Protocol No. 1 to the Convention (see *Žaja v. Croatia*, no. 37462/09, § 114, 4 October 2016). The Court also notes that under section 220 of the Administrative Offences Act (see paragraph 33 above), in conjunction with section 509 of the Criminal Procedure Act (see paragraph 39 above), the State Attorney must lodge a request for the protection of legality if a judicial decision adopted in administrative offence proceedings has entailed a violation of human rights (*ibid.*).

99. The applicant claimed that the money confiscated from him was his, his brother's and his brother's wife's common earnings and savings without specifying what part of the confiscated money had actually belonged to him (see paragraph 52 above). For that reason, the Court considers that in the present case the most appropriate way of redressing the violation found would be to reopen the proceedings complained of.

100. In the light of the foregoing considerations, the Court rejects the applicant's claim for pecuniary damage.

101. As regards non-pecuniary damage, the Court considers that in the circumstances of the present case the finding of a violation of Article 1 of Protocol No. 1 to the Convention constitutes in itself sufficient just satisfaction (see in that sense *Gabrić*, cited above, § 49, and *Boljević*, cited above, § 54).

B. Costs and expenses

102. The applicant also claimed EUR 11,900 for the costs and expenses incurred before the domestic courts and EUR 5,100 for those incurred before the Court.

103. The Government contested these claims.

104. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 3,000 for the costs of the proceedings before the Court.

105. As regards the claim for costs and expenses in the domestic proceedings, the Court is of the opinion that it must be rejected, given that the applicant will be able to have those costs reimbursed should the proceedings complained of be reopened (see, for example, *Stojanović v. Croatia*, no. 23160/09, § 84, 19 September 2013).

C. Default interest

106. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *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 3,000 (three thousand euros) in respect of costs and expenses, to be converted into Croatian kunas at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

IMERI v. CROATIA JUDGMENT

Done in English, and notified in writing on 24 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Krzysztof Wojtyczek
President