



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

FIFTH SECTION

CASE OF KRAYEVA v. UKRAINE

(Application no. 72858/13)

JUDGMENT

Art 1 P1 • Control of the use of property • Imposition of disproportionate fine on customs clearance officer for incorrect customs declaration • Mandatory fine equivalent to the value of the imported goods precluding domestic courts from conducting any balancing exercise between interests at stake and assessing individual circumstances

Art 41 • Just satisfaction • Reopening of domestic proceedings most appropriate form of redress

STRASBOURG

13 January 2022

FINAL

13/04/2022

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

In the case of Krayeva v. Ukraine,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 72858/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Agnesa Eduardivna Krayeva (“the applicant”), on 5 November 2013;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaint concerning an alleged interference with her property rights;

the parties’ observations;

Having deliberated in private on 30 November 2021,

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

INTRODUCTION

1. The case concerns an alleged breach of customs regulations by the applicant while conducting the customs clearance of imported goods and the sanction imposed on her in that connection, namely a fine in an amount equal to the value of the imported goods. It raises an issue under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1986 and lives in Zaporizhzhya. She was granted legal aid and was represented before the Court by Mr S. Perminov, a lawyer practising in Zaporizhzhya.

3. The Government were represented by their Agent, Mr I. Lishchyna.

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

5. At the time of the events the applicant worked as a customs clearance officer at D. company. On 23 April 2013, on behalf of her employer, the applicant submitted to the customs office a customs clearance declaration, an invoice and other documents in respect of certain goods bought from a Swiss company (“the seller”). In the customs declaration the applicant indicated

46,298 United States dollars (USD) as the value of the goods. The same amount was indicated by the seller in the invoice. However, the contract for the sale of the goods set their value at 48,661.56 euros (EUR).

6. According to the applicant, she discovered the above-mentioned discrepancy in the documents on the following day. On that same day she received a letter from the seller in which it admitted having sent the wrong invoice to her and apologised for the error. She informed the customs office of the mistake and requested the opportunity to rectify it. However, the customs office refused to accept her written submission and drew up an administrative offence report instead. In her written explanation to the customs office, the applicant submitted, *inter alia*, that she had provided the wrong data to the customs office by negligence, having overlooked the mistake made by the seller in the invoice.

7. According to the Government, who relied on the facts as established by the customs authorities, it was the customs office which had revealed the discrepancy at issue after the applicant had provided, at their request, additional documents regarding the customs clearance, which had included the correct invoice. It was only after being contacted on the subject by the customs office that the applicant had confirmed, in her written explanations, that she had made a mistake in the declaration and provided the customs office with the explanatory note from the seller.

8. On 24 April 2013 the customs authority issued a decision finding the applicant liable under Article 483 § 1 of the Customs Code for having provided false data to the customs office which had resulted in underpaid import duties in the amount of 22,477.44 Ukrainian hryvnias (UAH – about EUR 2,000 at the time). The applicant challenged that decision before a court, arguing, *inter alia*, that she had not been deliberately seeking to circumvent the customs regulations, but that her actions had resulted from incorrect data in the invoice provided to her by the seller, which she had initially overlooked.

9. On 15 July 2013 the Leninskyy District Court of Zaporizhzhya discontinued the administrative offence proceedings against the applicant on account of the lack of constituent elements of an administrative offence in her actions. Relying in particular on the written explanation by the seller, the court found that the mistake in the invoice had been made by the seller and that at the time when the applicant had started the customs clearance procedure and had submitted the declaration and the invoice at issue to the customs office, she had been unaware of the mistake. There was also no evidence that the applicant herself had forged any document. The customs office appealed, arguing that the applicant had knowingly submitted incorrect data and an incorrect invoice to the customs office.

10. During the appeal proceedings the applicant admitted she had made an error and asked the court not to impose too severe a punishment on her.

The applicant's lawyer reiterated the arguments raised by her before the first-instance court.

11. By a final judgment of 23 August 2013, the Zaporizhzhya Regional Court of Appeal ("the Court of Appeal") quashed the decision of the first-instance court and upheld that of the customs office. In doing so, it mainly relied on the administrative offence report in respect of the applicant, her responsibility as the declarant, her acknowledgment that she had submitted incorrect data to the customs office, and the fact that the State had suffered pecuniary losses as a result of her actions.

The Court of Appeal went on to note, in a general way, that when deciding on the sanction, it had taken into account the nature of the offence, the degree of the applicant's guilt, information about her character and her property status, and other aggravating and mitigating factors. It ordered that the applicant pay a fine in the amount equal to the value of the imported goods (EUR 48,661.56) and that the goods be confiscated as prescribed by the relevant Article of the Customs Code.

12. It appears from the parties' submissions that the above-mentioned decision of 23 August 2013 has not yet been enforced, and that the enforcement proceedings have been opened and closed on a number of occasions. According to the latest information submitted by the Government, on 24 December 2020 the relevant writ of execution was again sent back by the bailiffs to the customs office on account of the applicant's lack of funds.

RELEVANT LEGAL FRAMEWORK

13. The Customs Code of Ukraine of 13 March 2012, as in force at the material time, provided as follows.

Pursuant to Article 266 § 5, a person authorised to declare goods on behalf of a declarant had the same responsibilities and rights and bore the same liability as the declarant.

Pursuant to Article 483 § 1, the transfer of goods, or actions aimed at transferring goods, across the customs border of Ukraine, while concealing them from customs control by means of, *inter alia*, submitting to the customs office forged documents or documents containing false data relevant for determining the customs value of the goods, was punishable by a fine in an amount equal to the value of the goods which were the objects of the customs offences, and by the confiscation of those goods and of any goods or means of transport containing a specific hiding place used in transferring such goods across the customs border of Ukraine.

14. Under Articles 361 and 362 of the Code of Administrative Justice, a party to the case can seek reopening of the proceedings in his or her case when an international judicial body, whose jurisdiction is accepted by Ukraine, has found a violation by Ukraine of its international obligations during the judicial examination of the case.

15. Section 17 of the Execution of Judgments of the European Court of Human Rights Act of 2006 provides that the courts, when deciding cases, are to apply the Convention and Protocols and the Court's case-law as a source of law.

16. Section 19 of the International Treaties Act of 2004 provides that international treaties are deemed to be a part of domestic law and prevail over conflicting provisions of domestic legislation.

THE LAW

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

17. The applicant complained in substance under Article 1 of Protocol No.1 to the Convention that the fine imposed on her in the administrative offence proceedings had been unlawful and disproportionate. Article 1 of Protocol No. 1 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

18. The Government did not submit any observations as regards the admissibility of the present complaint. The objection they raised concerned the confiscation of the goods as ordered by the court in addition to the fine, a measure which had not been complained of by the applicant, since she had not been the owner of those goods.

19. The Court has already found, although in a different context, that Article 1 of Protocol No. 1 was applicable to a situation where a fine had been imposed on the applicant (see *Phillips v. the United Kingdom*, no. 41087/98, § 50, ECHR 2001-VII; *Valico S.r.l. v. Italy* (dec.), no. 70074/01, 21 March 2006; and *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, § 125, 2 October 2014). It sees no reason to hold otherwise in the present case.

20. Accordingly, the Court notes that this complaint 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. *Submissions by the parties*

21. The applicant argued that the Court of Appeal had not had any grounds to find that she had wilfully provided the wrong data to the customs authorities, because the fact that her actions had stemmed from a mistake made by the seller in the invoice had been supported by evidence, including the seller's letter of 24 April 2013. However, her arguments on that issue had been disregarded by the court and an excessive fine had been imposed on her as a sanction. The severity of the fine had put her in financial difficulty, since her monthly salary amounted to UAH 3,300 (about EUR 96¹). She was obliged each month to give away part of her salary to honour her debt and her property was under the permanent threat of confiscation by the bailiffs.

22. The Government admitted that the sanction imposed on the applicant had amounted to an interference with her right of property. However, that interference had been lawful and proportionate. In particular, they submitted that the sanction at issue had been provided for by Article 483 § 1 of the Customs Code and had been mandatory; when imposing the sanction, the domestic court had taken into account the applicant's guilt in relation to her actions, information about her character and other relevant factors. The Government further suggested that the applicant should have tried to obtain redress for the damage she had sustained from the seller of the goods which had made the mistake in the invoice.

2. *The Court's assessment*

23. In the present case, the applicant was given a fine in the amount of EUR 48,661.56 as a sanction for the administrative offence of which she had been found guilty and in respect of which the relevant court's decision had taken effect. The Court reiterates in this connection that the imposition of a fine will in principle constitute interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1 to the Convention, as it deprives the person concerned of an item of property, namely the sum that has to be paid (see *Valico S.r.l.*, cited above). Even though it appears from the case file that to date the applicant has not paid the fine, she is under an obligation to pay it, so it cannot be disputed that she has incurred actual expenses and is facing future losses. Accordingly, there has been an interference with the applicant's property rights (see, *mutatis mutandis*, *Misiukonis and Others v. Lithuania*, no. 49426/09, § 54, 15 November 2016).

24. The Court notes at the outset that the impugned interference falls within the scope of the second paragraph of Article 1 of Protocol No. 1, which expressly allows the states to control the use of property to secure the payment

¹ The amount of her remuneration in Ukrainian hryvnias was converted into euros as of the date of submission of the applicant's observations.

of taxes or other contributions or penalties, however this provision must be construed in the light of the general rule set out in the first sentence of the first paragraph (see *Phillips v. the United Kingdom*, cited above, § 51, and, with respect to taxation, *Buffalo S.r.l. in liquidation v. Italy*, no. 38746/97, § 32, 3 July 2003). This does not mean that the Court's supervisory role on this issue is entirely ousted as it must verify whether Article 1 of Protocol No. 1 has been correctly applied (see *Orion-Břeclav, s.r.o., v. the Czech Republic* (dec.), no. 43783/98, 13 January 2004). To be compatible with Article 1 of Protocol No. 1 a measure must fulfil three conditions: it must be lawful, pursue a legitimate aim and must strike a fair balance between the general interest of the community and the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 108-114, ECHR 2000-I).

25. As regards the lawfulness of the interference, the Court notes that the Court of Appeal's order for the applicant to pay the fine was made pursuant to Article 483 § 1 of the Customs Code, which provided for the mandatory fine and the seizure of goods if it was established that a declarant had tried to conceal the goods from customs control, including by submitting incorrect data to the customs authorities for the calculation of the customs value of the imported goods (see paragraph 13 above).

26. On the basis of the facts, and regard being had to the arguments of the parties, it might be questioned whether the domestic courts sufficiently established that the applicant's actions had constituted the offence provided for by Article 483 § 1 of the Customs Code. In particular, the wording of the legislative provision at issue referred to the "illegal aim of concealing goods from customs control", which in the Court's view implies the deliberate provision of false data and documents to the customs authorities by a declarant. At the same time, throughout the proceedings the applicant consistently argued that she had provided the wrong data to the customs authorities by mistake, having overlooked the fact that the invoice sent to her by the seller had been incorrect. Her arguments were supported by, *inter alia*, the letter from the seller of the goods in which it had acknowledged that it had sent the wrong invoice to the applicant and had apologised (see paragraph 6 above). However, while the District Court examined whether or not the constituent elements of the offence were present, it does not appear from the wording of the Court of Appeal's decision that any particular consideration was given to the applicant's arguments on this point, a fact which raises doubts as to the lawfulness of the interference in question.

27. Nevertheless, bearing in mind its limited power to assess the facts and review compliance with domestic law (see *Beyeler v. Italy* [GC], § 108, cited above, and *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 31, 4 July 2017), the Court leaves this question open and will proceed with the assessment of the legitimate aim and the proportionality of the interference in

question, which is the central issue in the present case (see, *mutatis mutandis*, *Aktiva DOO v. Serbia*, no. 23079/11, § 81, 19 January 2021).

28. The Court considers that customs duties or charges for imported goods must be regarded as falling within the realm of taxation, a matter which forms part of the hard core of public-authority prerogatives (see *Polimerkonteyner, TOV v. Ukraine*, no. 23620/05, § 25, 24 November 2016. It therefore accepts that the measure imposed on the applicant had a compelling public interest to ensure payment of taxes.

29. 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 the stated legitimate aim and the protection of the applicant's right to the peaceful enjoyment of her possessions. The requisite balance will not be achieved if the applicant has had to bear an individual and excessive burden (see, in general, *Depalle v. France* [GC], no. 34044/02, § 83, ECHR 2010, and *Perdigão v. Portugal* [GC], no. 24768/06, § 67, 16 November 2010).

30. The Court is not convinced by the Government's argument that an assessment of proportionality was incorporated in the judgment of the Court of Appeal. That court merely referred in a general manner to the "nature of the offence and the way in which it had been committed", "information on the [applicant's] character", and "her financial situation", without giving further details. No assessment of the relevant circumstances, including the diligence and behaviour of the applicant, the relationship between her conduct and the offence or her financial situation, was incorporated in the text of the judgment. Accordingly, the Court finds that the scope of the review carried out by the domestic courts was too narrow to satisfy the requirement of seeking a "fair balance" inherent in the second paragraph of Article 1 of Protocol No. 1 (compare *Sadocha v. Ukraine*, no. 77508/11, § 33, 11 July 2019).

31. Moreover, by virtue of Article 483 § 1 of the Customs Code, under which the applicant was found guilty, the fine in an amount equal to the value of the goods – a very high amount in itself – and the confiscation of the goods were mandatory measures with no exceptions allowed. The lack of any discretion in this regard left no room to the Ukrainian courts for the assessment of individual situation, making any such assessment futile. The Court has already noted that such a rigid system is in itself incapable of ensuring the requisite fair balance between the requirements of the general interest and the protection of an individual's right to property (see, *mutatis mutandis*, *Gyrlyan v. Russia*, no. 35943/15, § 31, 9 October 2018, in which the domestic legislation prevented the courts from considering a more lenient sanction than a fine equivalent to at least the undeclared amount or confiscation of the undeclared cash). It has no reason to find otherwise in the present case.

32. The mandatory nature of the sanction, in the circumstances of the present case – the amount of the fine, – deprived the applicant of any possibility of arguing her case with any prospect of success in the proceedings against her.

33. The foregoing considerations are sufficient to enable the Court to conclude that, in the circumstances of the present case, the sanction imposed on the applicant, in particular the amount of the fine which she was ordered to pay as a result of the decision of the Court of Appeal applying Article 483 § 1 of the Customs Code, constituted a disproportionate interference with her property rights contrary to the requirements of Article 1 of Protocol No. 1 to the Convention.

34. In so far as the Government implied that the applicant could have claimed compensation for her pecuniary losses from the Swiss company (the seller of the goods), that argument has no bearing on the Court's conclusion in the circumstances of this case. Indeed, the Court has not ruled out possibility that such a remedy, when proved effective, might induce it to conclude that there was a fair balance between the means used by the authorities to safeguard the general interest and the protection of the person's right to the peaceful enjoyment of his property (see, e.g., *S.C. Service Benz Com S.R.L. v. Romania*, cited above, § 37). However, the Government raised such a possibility as a general remark and had not supported it by reference to any specific legal provision or relevant court practice that would demonstrate that such a remedy had been available to the applicant, let alone effective (compare *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 39, 17 September 2015).

35. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. On the basis of the same facts and arguments as set out above, the applicant complained that the administrative offence proceedings against her had been unfair. She relied on Article 6 § 1 of the Convention in that respect.

37. Having regard to its findings under Article 1 of Protocol No. 1 (see paragraph 35 above), the Court considers that it has already addressed the main issue at the heart of the applicant's complaint, specifically the disproportionate nature of the interference with her property rights following the sanction imposed on her in the administrative proceedings, and that it is not necessary to give a separate ruling on the admissibility and merits of the allegation of a breach of Article 6 of the Convention mentioned in the previous paragraph.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. In her application form, the applicant claimed a lump sum of 150,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, without providing any detail. In her observations in reply to the Government, the applicant did not claim any specific amount by way of just satisfaction, but only submitted that she had kept no evidence in respect of her pecuniary losses and that the moral suffering she had been subjected to in view of the violation of her rights had been of more importance to her.

40. The Government contested the claim as unsubstantiated.

41. Under Rule 60 § 2 of the Rules of Court, an applicant must submit itemised particulars of all claims, together with any relevant supporting documents. If the applicant fails to comply with these requirements, the Court may reject the claim in whole or in part (Rule 60 § 3).

42. As the parties have explained, the Court of Appeal’s decision has not been executed (see paragraph 12 above). Although the applicant referred to the payment of certain percentage of her earning (see paragraph 21 above), she did not provide sufficient details in that regard. In view of the above and the Court’s conclusions relating to the lawfulness and proportionality of the interference with the applicant’s property rights (see paragraphs 26 and 33 above), the Court considers that reopening of the administrative proceedings would be the most appropriate way to redress any consequences of the violation of Article 1 of Protocol No. 1 established by the Court.

43. The Court observes in this respect that the domestic law allows the applicant to seek the reopening of proceedings and entitles the domestic courts in the reopened proceedings to directly apply the Convention and the Court’s case-law in case of a conflict with domestic legal provisions (see paragraphs 14 to 16 above).

B. Costs and expenses

44. The applicant did not submit any claim in respect of costs and expenses.

45. The Court considers that it is therefore not appropriate to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the applicant's complaint under Article 6 of the Convention;
4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges O'Leary and Mourou-Vikström is annexed to this judgment.

S.O.L
V.S.

CONCURRING OPINION OF JUDGES O’LEARY AND MOUROU-VIKSTRÖM

1. We join our colleagues in finding a violation of Article 1 of Protocol No. 1 of the Convention in relation to a fine for breach of customs regulations imposed on the applicant in her capacity as a customs clearance office employee by a company whose goods were confiscated for the same reason.

However, we have concerns about the legal basis chosen for this finding. Our concerns relate principally to the lawfulness of the impugned fine in the circumstances of this case and to the broader consequences of the proportionality assessment as undertaken by the Chamber in relation to a statutory fine of this nature.

2. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The second sentence of the first paragraph authorises a deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that the States have the right to control the use of property by enforcing “laws”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the articles of the Convention (see, for example, *Lekić v. Slovenia* [GC], no. 36480/07, 11 December 2018, § 94; *Broniowski v. Poland* [GC], no. 31443/96, 22 June 2004, § 147, or *Kurban v. Turkey*, no. 75414/10, 24 November 2020, § 76). The existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. One of the requirements flowing from the expression “provided for by law” is foreseeability, which is often intertwined with the requirement that there be an absence of arbitrariness and procedural safeguards. The individual concerned must be afforded a reasonable opportunity to present their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by that provision (see, amongst many other authorities, *Lekić*, cited above, § 95).

The question whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of an individual’s fundamental rights becomes relevant only once it has been established that the impugned interference satisfies the requirement of lawfulness and was not arbitrary (*Iatridis v. Greece*, no. 31107/96, 25 March 1999, § 58).

3. The legislative provision at issue in the present case - Article 483 § 1 of the Customs Code - refers to the “illegal aim of concealing goods from customs control” (see § 26 of the judgment). As per the judgment, the aim or intent of the declarant to provide false data and documents is thus one of the constituent elements of the administrative offence which needed to be established before a fine could be imposed. The applicant consistently and

coherently argued at domestic level that she had provided the wrong data to the customs authorities by mistake, following an incorrect invoice that had been sent to her by her employer. Her employer confirmed this fact in a subsequent letter. Consequently, the District Court discontinued the administrative offence proceedings because the crucial element of deliberate concealment had not been established, finding that the applicant had been unaware of the mistake. On appeal, the Regional Court of Appeal overturned this decision in a judgment which contained “no assessment of the relevant circumstances, including the diligence and behaviour of the applicant” (see § 30 of the judgment).

4. This lack of assessment points not to the disproportionality of the fine but rather to a lawfulness problem. While the Court has limited power to assess the facts and review compliance with domestic law, the Court of Appeal in the present case not only did not prove the applicant’s intent to conceal goods, it failed to engage with or address the applicant’s arguments and evidence in this regard altogether. As a result, a fine formally provided by law was applied to a person for whom the constituent elements of the offence had not been made out. Questioned by the Court about the general interpretation and application of Article 483 § 1 of the Customs Code, the respondent State failed to provide details of relevant domestic case-law. Based on the information available to the Court, the impugned interference cannot be regarded as having been lawfully imposed. This central aspect of the applicant’s case could, alternatively, and perhaps even more convincingly, have been examined under Article 6 § 1 of the Convention, had the Ukrainian Government also been given notice of the applicant’s complaint thereunder and not only as concerns the alleged interference with her property rights.

5. Regarding the proportionality of the fine, the judgment suggests that the lack of discretion following from the fine mandatorily being equal to the value of the goods “left no room to the Ukrainian courts for the assessment of the individual situation” (see § 31 of the judgment), thereby leaving the applicant devoid “of any possibility of arguing her case with any prospect of success in the proceedings against her” (ibid, § 32). However, had the domestic courts engaged with the applicant’s arguments and the evidence she presented, success was clearly not excluded, her employer having admitted its fault.

6. The judgment further finds that a rigid system in which a fine is necessarily equal to the value of the goods the subject of an intentionally erroneous declaration, with no exceptions based on individual circumstances being provided, is incapable of ensuring the requisite fair balance between the requirements of the general interest and the protection of an individual’s property (ibid, § 31). Yet, it is the very nature of fines that they are often imposed by general and mandatory legislation where the balancing exercise has to some extent been undertaken by the legislature itself. We do not

exclude that the Ukrainian Customs Code may be lacking, but there are gaps too in the Chamber’s assessment of the proportionality of a statutory fine. While recognising that Article 1 of Protocol No. 1 can apply to fines, the Court has often found even very large fines not to be disproportionate (see *Phillips v. the United Kingdom*, no. 41087/98, 5 July 2001; *Valico S.r.l. v. Italy* (dec.), no. 70074/01, 21 March 2006 ; *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, 2 October 2014). It has held that even fines that “might, at first sight, appear exorbitant” (see *Valico S.r.l.*, cited above), can strike a fair balance between the general interest and the applicants’ property rights. These findings have been based on the fact that the public interest weighs very heavily in these cases; a fine being the result of an established breach of the law – the very thing lacking in the applicant’s case - and its purpose being punitive and acting as a deterrent (see *Phillips*, cited above, § 52). The Court’s previous case law therefore does not support the majority’s overbroad suggestion that large and mandatory fines are necessarily incapable of guaranteeing a fair balance. Furthermore, the Chamber judgment relies on judgments like *Gyrlyan v. Russia* (no. 35943/15, 9 October 2018) which on the facts are very different; the relevant authorities having accepted the applicant’s lack of intent to deceive in that case. Finally, in the instant case, a fine was imposed (unlawfully) on a person not the owner of the goods the subject of the erroneous declaration and several factors were left unclear not least the question of the remedies open to the applicant to recoup the fine from the owner of the goods, whether and if so how much of the fine she had actually paid, and the existence of a limitation period in regard to the administrative offence. This was not, therefore, a good case in which to tackle any systemic problem in Ukraine as the Chamber simply lacked sufficient information to provide a well-formulated response.

7. Thus, while we agree with the finding of a violation in the present case, we do so for different reasons. In our view, the Chamber judgment highlights, moreover, the need for more consistency and refinement in cases under Article 1 of Protocol No. 1 of the Convention in relation to confiscation measures and fines for failure to comply with customs regulations. In too many cases the general interest behind such legislative choices is side-lined or downplayed, with the Court’s focus on whether an individual and excessive burden is borne following the application of sanctions whose very purpose is to act as a deterrent and be punitive.