



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

THIRD SECTION

CASE OF PRENČA v. SERBIA

(Application no. 48725/12)

JUDGMENT

Art 1 P1 • Control of the use of property • Fine and confiscation of undeclared cash that the applicant attempted to carry across the State border in excess of the statutory export limit applicable to Serbian residents • Imprecise legal framework, coupled with insufficient review carried out by domestic courts • Lack of requisite procedural guarantees • Proportionality assessment not adequately performed • Fair balance between competing interests not ensured

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 October 2025

FINAL

07/01/2026

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

In the case of Prenča v. Serbia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović,

Canòlic Mingorance Cairat, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 48725/12) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 26 July 2012 by a Serbian national, Mr Rifat Prenča (“the applicant”);

the decision to give notice to the Serbian Government (“the Government”) of the complaint concerning the applicant’s right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 and to declare the remainder of the application inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention and Rule 54 § 3 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 24 June and 16 September 2025,

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

INTRODUCTION

1. The case concerns the confiscation of an amount of cash (39,500 euros (EUR)) that the applicant attempted to carry across the State border in breach of the relevant regulations. The applicant complains that it had constituted an unlawful and disproportionate measure that had been in breach of Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1953 and lives in Novi Pazar (Serbia). He was represented by Ms Refija Garibović, a lawyer practising in the same town.

3. The Government were represented by their Agents, Ms V. Rodić and subsequently Ms N. Plavšić.

4. The facts of the case may be summarised as follows.

A. Misdemeanour proceedings

5. On 18 May 2004 the applicant, the owner of a small private transport business, was travelling by lorry along his usual route between the State Union of Serbia and Montenegro (as existed at the time in question) and Hungary when he was approached by customs officers of the respondent State at the Kelebija border crossing, and was asked whether he had anything to declare. According to the applicant, he was approached by the customs officers while his son-in-law, who was travelling with him, was not present. According to the seizure report (*zapisnik o privremeno oduzetim sredstvima plaćanja*), which was signed by the applicant, he stated that he was carrying between EUR 500 and EUR 600, while a subsequent personal search of the applicant undertaken by a customs officer revealed the sum of EUR 49,500, which was well hidden under the applicant's clothes. The authorities permitted the applicant to keep the amount of money that could legally be carried across the border undeclared – at the time EUR 2,000 – and temporarily seized the remaining amount of EUR 47,500, which he was carrying without any certificate of its origin. The applicant was asked if he had anything to add, but he did not.

6. On the same date, the Customs Administration initiated misdemeanor proceedings (*prekršajni postupak*) against the applicant before the Misdemeanours Commission of the Foreign Currency Inspectorate of the Ministry of Finance (*Devizni inspektorat – Komisija za prekršaje Odeljenja u Nišu, Ministarstvo finansija*; hereafter “the Commission”) for attempting to carry cash exceeding the statutory threshold out of the country, which was defined as a foreign currency-related misdemeanour (*devizni prekršaj*) under the legislation regulating foreign currency transactions (see paragraph 33 below).

7. The misdemeanour proceedings were commenced on 29 June 2004. According to the record of the hearing held on 30 July 2004 before the Commission, the applicant had never been convicted of any crime, and neither had any criminal or other misdemeanour-related proceedings ever been pending against him. Being informed of his right to legal assistance, the applicant decided to conduct his own defence, and pleaded guilty. He stated that he had been involved in the professional transport of goods since 2000 and that he regularly crossed the State border for that purpose. On the day of the incident in question, he had been travelling to Budapest, with a professional co-driver. He acknowledged that when questioned by customs officials, he had stated that he was carrying only EUR 500-600; however, a further EUR 47,500 had been found hidden in a folded piece of paper tucked into the waistband of the jogging trousers that he had been wearing. His motive for hiding it in that “safe place” had been his fear that it might otherwise be stolen by thieves during his journey. He had had no intention of evading customs regulations or smuggling money out of the country; rather,

he had not declared the cash primarily because he had not known how much money could be carried across the border and had been afraid that the money would have been confiscated by the customs authorities.

8. As regards the origin of the money, the applicant explained that he had mostly earned it with his wife while working abroad in 1992 and that he had also inherited a small amount of money from his father. He submitted that the money had been held in his bank account until May “2003”, [likely meaning 2004], when he had withdrawn EUR 50,000, for which he intended to provide a certificate as evidence of the money’s lawful origin (see paragraph 9 below). He had withdrawn the money because several banks had closed down in 2002 and 2003 and it had not been safe anymore to keep the money in a bank. He carried it regularly with him while travelling abroad for security reasons, as he was anxious about frequent thefts in his town Novi Pazar. Lastly, he argued that the confiscation of the money would seriously affect his material existence, it being his life savings.

9. The applicant also submitted a bank statement, allegedly issued by a branch of the Commercial Bank in Novi Pazar (“the bank”), indicating that he had withdrawn EUR 50,000 on 12 May 2004.

10. In his testimony, the applicant’s son-in-law, N.K., confirmed that he had accompanied the applicant but had not been present during the check. He had learned from the applicant of the seizure of the cash. He stated that he could not recall, but believed that he (that is, N.K.) had been carrying with him around EUR 200.

11. On 28 November 2006 the Commission found the applicant guilty as charged (see paragraph 6 above), fined him and imposed a protective measure of confiscation of the entire amount of cash in excess of the statutory threshold.

12. On appeals, on 26 September 2007 the Appellate Misdemeanour Chamber of the Ministry of Finance (*Veće za drugostepeni prekršajni postupak*; hereafter “the Chamber”) declared null and void the decision of the Commission and remitted it for fresh consideration. It found that the Commission had failed to adequately establish the facts, that its reasoning had been unclear and had contradicted the evidence in the case-file. In particular, it accepted the argument made by the applicant in his appeal (assisted by a lawyer of his choice) that the Commission, while imposing confiscation, had failed to provide any reasoning by only noting, but not taking into account as evidence the bank’s statement of 12 May 2004 on the withdrawal of the cash by the applicant. While the bank’s statement could not have excluded the applicant’s liability for the misdemeanours with which he had been charged, it should have been – contrary to the Commission’s finding – a relevant factor in determining the protective measure. It instructed the Commission to carefully assess each item of evidence, and in particular, to establish whether the applicant had been accompanied and, if so (given that

a companion would also have been entitled to carry cash across the border), to explain, rather than merely note it, whether this fact had any relevance.

13. Following the remittal of the case, on 20 November 2007 the bank allegedly informed the Commission that no cash had been withdrawn by the applicant on 12 May 2004 (see paragraph 9 above). The letter of the bank sent to that extent was not provided to the Court; nor, apparently, was it sent to the applicant.

14. On 14 January 2008 the Commission gave a fresh first-instance decision as follows:

(i) noting that the applicant had already been allowed to keep EUR 2,000 (see paragraph 5 above), it discontinued the proceedings in respect of a further EUR 3,000 as a result of changes in the amount that could be carried across the border, to EUR 5,000 (see paragraph 30 below). The Commission ordered that this sum was to be paid into the applicant's account once the decision became final and enforceable, requesting him to specify the bank account, and to issue a power of attorney authorising his lawyer to withdraw the money;

(ii) it found the applicant guilty of having attempted to carry out of the country the sum of EUR 44,500 in breach of the relevant law and thereby of having committed the misdemeanor (as defined, at the time, in Article 62 § 1 (12) of the 2006 Foreign Currency Transactions Act in conjunction with the 2006 Bank Decision) (see paragraphs 28, 30 and 33 below);

(iii) it fined him 18,000 dinars ("RSD"; see paragraph 33 below), to be paid within fifteen days, failing which the fine would be replaced by a term of imprisonment by means of a decision (*rešenje*). The Commission took into account all the circumstances that could influence the amount of the fine – such as the gravity and consequences of the offence, the circumstances under which the offence had been committed, the amount at issue, and the perpetrator's conduct and degree of guilt;

(iv) it ordered the applicant to pay RSD 600 in respect of the costs of the proceedings within the same time-limit as the imposed fine;

(v) lastly, it imposed confiscation of the object of the offence (*zaštitna mera oduzimanja predmeta prekršaja*), in accordance with Article 64 § 1 of the 2006 Foreign Currency Transactions Act, that is, the entire amount that he had been carrying in excess of EUR 5,000.

15. In confiscating the cash, the Commission essentially referred to the fact that that measure was mandatory under Article 64 § 1 of the 2006 Foreign Currency Transactions Act (see paragraph 34 below). It had found no grounds which would warrant only partial confiscation on the basis of Article 64 § 2 of the same Act (see paragraph 35 below), given that the applicant had deliberately and unlawfully tried to carry cash out of the country, hidden and undeclared, and also that the bank statement submitted by him (see paragraph 9 above) could not be considered to constitute reliable evidence of

the lawful origin of the money in issue, having regard to the latter letter from the bank (paragraph 13 above).

16. The applicant appealed, arguing that the facts had been incorrectly established, that there had been breaches of substantive and procedural rules and that the sanctions imposed had been excessive. He complained, *inter alia*, that the Commission had confiscated the entire amount of undeclared cash, without considering whether a further EUR 5,000 should have been returned to him on account of his travelling companion's entitlement to carry such amount of cash across the State border. Furthermore, he complained that the Commission had not "accepted" the cash withdrawal statement which he had received from the bank and which he had provided as evidence, but had "accepted "the bank's subsequent letter", to which he had had no access to nor the opportunity to comment on. Lastly, he mentioned that the customs authorities had not allowed him to keep the sum of EUR 2,000 on 18 May 2004 (see paragraph 5 above) and had still not returned it to him.

17. On 25 August 2008, the Chamber upheld the impugned decision in the part concerning the elements of the offence and the applicant's liability. The Chamber further found that, having been a frequent traveller owing to his business, the applicant must have been aware of the relevant regulations and that he was carrying an amount of cash exceeding the statutory limit. In addition, the location of the hidden cash had indicated a deliberate attempt to carry the cash across the border without declaring it and therefore to circumvent the customs inspection. It reversed the first-instance decision, and:

(i) discontinued the proceedings in respect of EUR 8,000 following further increase of the statutory threshold of cash allowed to be carried by a resident across the border to EUR 10,000 (see paragraph 30 below);

(ii) confiscated the sum of EUR 39,500, referring to the mandatory nature of the protective measure;

(iii) decreased the fine to RSD 10,000 (approximately EUR 130 at the relevant time), considering that amount to be sufficient in terms of having a deterrent effect and preventing the recurrence of the offence; and

(iv) ordered the applicant to pay RSD 1,000 in respect of costs.

18. The Chamber rejected the applicant's arguments that the origin of the money had been lawful, referring to the bank's letter of 2007 (see paragraph 13 above), and concluded that none of the conditions for the application of Article 64 § 2 of the Foreign Currency Transactions Act had been fulfilled. It also refused the applicant's request that the sum falling within the statutory limit be returned to his son-in-law, given that (i) the latter had not been present in the lorry during the customs check, (ii) no sum of money had been confiscated from him, even though the evidence showed that he had been present during the journey, and (iii) the latter had stated, when questioned by the Commission, that he had only been carrying EUR 200 (see

paragraph 10 above). The decision contained no further order in respect of the applicant.

19. On 4 March 2009 the Supreme Court (*Vrhovni sud Srbije*) dismissed on the merits a further appeal on points of law (*zahtev za vanredno preispitivanje pravosnažnog rešenja*, a remedy available at the relevant time) lodged by the applicant, finding that the competent authorities had applied the law correctly. Briefly, it held that the applicant had committed the offence in question, and that while mitigating circumstances justified a lesser fine, no such circumstances warranted only partial confiscation.

20. On 19 August 2009 the applicant lodged a constitutional complaint, claiming a breach of his right to peaceful enjoyment of property and of his right to a fair trial. Referring to *Gabrić v. Croatia* (no. 9702/04, 5 February 2009) and his earlier arguments, he complained that the confiscation of the entire amount exceeding the statutory threshold was unnecessary and disproportionate. As a resident, he had been allowed to take more than EUR 10,000 out the country, if the origin of that money could be verified. He complained of various procedural irregularities during the misdemeanour proceedings, including the disregard shown by the authorities to the evidence submitted by him, and his lack of access to and opportunity to comment on the bank's letter of 2007 (see paragraph 13 above). Customs officers had put him under pressure to sign the on-site seizure report, and, as he had been afraid of being ill-treated, he had signed it. The amount of EUR 2,000 which had been reported as not having been seized (see paragraph 5 above) had not been returned to him. He also stated that a further EUR 10,000 should not have been confiscated, given that he had been accompanied by his son-in-law and that between them they had been entitled to carry a total of EUR 20,000. Lastly, the confiscation of his life savings had led to the termination of his private transport business and had badly affected his family, including his wife and their two children.

21. On 30 January 2012 the Constitutional Court (*Ustavni sud Srbije*) dismissed the applicant's complaint (*odbacio rešenjem ustavnu žalbu kao očigledno neosnovanu*), stating that he had failed to invoke any constitutionally-related grounds under Articles 32 and 58 of the Constitution, and, therefore, the criteria for the opening of the proceedings had not been met. The court found that the applicant had failed to provide any evidence that he had been forced to sign the seizure report, and that it was irrelevant whether EUR 47,500 or EUR 50,000 had been seized, as in any event the amount allowed to be carried across the border had been returned to him, while the remaining amount had been confiscated. It dismissed the applicant's argument about the lack of adversarial proceedings in respect of the bank's letter of 20 November 2007 and considered that the evidence had been assessed in a constitutionally acceptable manner, the fine and the confiscation had been imposed following a fair trial conducted in accordance with the law.

B. Relevant domestic developments after notice of the application was given to the Government

22. On 15 September 2017 the Ministry of Finance informed the applicant, in a letter, that it could not return the amount of EUR 8,000 to him as he had failed to comply with the instructions rendered by the Chamber decision of 25 August 2008 (see paragraph 17 above) for two reasons: (i) he had not yet paid the fine and the costs of the proceedings, and (ii) he had failed to provide the Ministry with details of his foreign-currency account and/or to submit the authority form authorising his lawyer to receive the amount of EUR 8,000 on his behalf.

23. On 26 September 2017 the applicant paid the above-mentioned debts and informed the Court of the Ministry's letter and his payments.

24. On 1 March 2018 the applicant's lawyer informed the Court that she had contacted the applicant the previous day and that he had informed her that the Ministry had reimbursed him EUR 8,000 on 12 October 2017.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution of the Republic of Serbia

25. Article 58 guarantees peaceful enjoyment of possessions and other property rights lawfully acquired. The "right of property" may be revoked or restricted only in the public interest (as established by law) and in return for compensation, which cannot amount to less than the market value of the property. The law may restrict the manner in which property is used.

B. The legal framework governing cross-border transfers of cash and other means of payment

26. The provisions applicable at the time of the offence were set out in the following legal instruments, which have been amended or repealed over the years:

(i) the 2002 Foreign Currency Transactions Act (*Zakon o deviznom poslovanju*, Official Gazette of the Federal Republic of Yugoslavia ("OG FRY"), nos. 23/02 and 34/02, before the amendments introduced in 2005);

(ii) the Prevention of Money Laundering Act (*Zakon o sprečavanju pranja novca*, OG FRY, no. 53/2001; hereinafter "the 2001 Money Laundering Act"); and

(iii) the Decision of the National Bank of Yugoslavia of 2002 on the conditions for the personal and physical transfer of means of payment (cash, cheques and securities) to and from abroad (*Odluka o uslovima i načinu ličnih*

i fizičkih prenosa sredstava plaćanja u inostranstvo i iz inostranstva, OG FRY, nos. 25/2002 and 33/2002 – “the 2002 Bank Decision”).

27. The authorities relied on the following legal instruments, which came into force while the misdemeanour proceedings against the applicant were ongoing, and which were considered more lenient for the applicant:

(i) the 2006 Foreign Currency Transactions Act (*Zakon o deviznom poslovanju*, OG RS, no. 62/06);

(ii) the Law on the prevention of money laundering of 2005 (*Zakon o sprečavanju pranja novca*, OG RS, nos. 107/05 and 117/05, hereinafter “the 2005 Money Laundering Act”); and

(iii) the corresponding decisions of the National Bank of Serbia regarding the conditions for effecting personal and physical transfer of means of payment (cash, cheques and securities) across the border, adopted in 2006, as amended in 2008 (*Odluka o uslovima za lične i fizičke prenose sredstava plaćanja u inostranstvo i iz inostranstva*, OG RS, nos. 67/2006 and 52/2008 – “the 2006 Bank Decision”).

1. The requirements for the cross-border transportation of cash, as set out by the Foreign Currency Transactions Act and its subsidiary regulations

28. In implementing the consecutive Foreign Currency Transactions Acts, the National Banks of Yugoslavia and Serbia adopted the above-mentioned 2002 and 2006 Decisions (which prescribed the conditions under which residents or non-residents, when physically crossing the State border, could bring into or take out of the country cash and other payment methods, in any currency, that they had acquired in a manner in compliance with the law).

29. Serbian residents may take cash or cheques abroad if the total sum does not exceed a set amount, except if they are emigrating (points 10 and 11 of the 2006 Bank Decision).

30. The equivalent threshold has been set successively at:

(i) EUR 2,000, in accordance with the 2002 Bank Decision;

(ii) EUR 5,000, in accordance with the 2006 Bank Decision; and

(iii) EUR 10,000, where it also stands nowadays.

31. Non-residents can export cash in domestic or foreign currency exceeding EUR 10,000 (or its equivalent), in the following instances:

(a) on the basis of a declaration on bringing cash into Serbia that has been stamped by a customs officer;

(b) upon submission of a bank slip recording the withdrawal of cash from a foreign-currency account while in Serbia;

(c) upon submission of a receipt recording exchanges into euros from national currency previously acquired while using their credit card.

Such declarations shall be annulled by the customs while exiting the country for the first time (*pri prvom izlasku iz zemlje*; point 12 § 2 of the 2006 Bank Decision, as amended in 2008).

32. Customs officers may temporarily seize from residents and non-residents currency in cash and cheques carried into or out of the country exceeding the threshold and which has been unlawfully acquired (*стечене су супротно прописима*); in such case, those customs officers shall issue declarations of seizure (point 8 of the 2002 Bank Decision and point 14 of the 2006 Bank Decision).

33. The failure of a natural person resident in Serbia to comply with the regulations issued by the National Bank (see paragraphs 28 and 30 above) amounts to a misdemeanour subject to a fine ranging from (i) RSD 200 to RSD 21,000, under the 2002 Foreign Currency Transactions Act (Article 51 § 1(5) and Article 54 § 1(3)), or (ii) RSD 5,000 to RSD 150,000 (approximately EUR 60 and 1,850 in 2006), pursuant to the 2006 Foreign Currency Transactions Act (Article 62 § 1(12) at the material time and Article 63 subsequently).

34. Pursuant to Article 64 § 1 of the 2006 Foreign Currency Transactions Act, in addition to a fine, the relevant authorities shall impose the protective measure of confiscation of any assets that were intended or used for the commission of a misdemeanour under Articles 59-63. They may be confiscated irrespective of the offender's lack of ownership or the right of the offender to use them.

35. Article 64 § 2 provides that, by a way of an exception to paragraph 1 (*izuzetno*), if the offender's motive or other circumstances imply that it is not justified to confiscate the entire amount, the assets which are the object of the misdemeanour, are to be confiscated only in part.

36. Foreign currency that constitutes the object of the criminal offence or misdemeanour is to be sold to the National Bank and its equivalent in national currency is to be transferred into the State budget (Article 66).

2. *Relevant provisions of the Money Laundering Acts*

37. A declaration system under the Money Laundering Acts entered into force and effect in 2009.

38. However, under both the 2001 Money Laundering Act (Article 13) and 2005 Money Laundering Act (Article 9), the customs authorities were required to inform, within three days, the authority responsible for the prevention of money laundering (the Administration for the Prevention of Money Laundering (APML), established as a unit of the Ministry of Finance) of any declared or undeclared transfer across the State border of means of payment exceeding the statutory threshold; as well as of any pending misdemeanour proceedings concerning money laundering (Article 19 of the 2001 Act and Article 23 of the 2005 Act).

C. Misdemeanours Acts

39. The relevant provisions concerning misdemeanour proceedings and related sanctions were set out in the Misdemeanours Act of 1989 (*Zakon o prekršajima* – OG SRS, nos. 44/89 and OG RS 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 65/01 and 55/04) and Misdemeanours Act of 2005 (*Zakon o prekršajima*, first published in OG FRY, nos. 101/2005, and then OG RS, nos. 116/2008 and 111/2009, applicable since 1 January 2010).

40. Misdemeanours should be defined, *inter alia*, by means of issuing laws and decrees. As regards lawfulness, no one may be convicted for a misdemeanour if it (and the type and severity of any ensuing sanctions) has not been defined by a law or a regulation based on law, before it was committed.

41. Sanctions for misdemeanours are: penalties, reprimands, protective measures and educational measures. The aim of sanctions is that citizens respect the legal system and that they do not commit a misdemeanour in the future. In determining the type and severity of a penalty, a court shall take into account all circumstances that may render that penalty (in terms of its type and severity) heavier or lighter, in particular the gravity and consequences of the offence, the circumstances under which the offence was committed, the degree of guilt and the personal status of the perpetrators, and their conduct after the commission of the offence. When imposing a fine on the perpetrator, the court shall also take into account his financial situation. Lastly, the purpose of protective measures (including confiscation) is to remove the conditions that enable or facilitate the commission of a new misdemeanour.

42. As regards the lodging of an application for the reopening of misdemeanour proceedings, the latest relevant rules are set out in the Misdemeanour Act of 2013 (*Zakon o prekršajima* – OG RS, nos. 65/13, 13/16, 98/16, 91/19 and 112/22 (IUz-25/2018 of the Constitutional Court)). Under Articles 280 and 281 thereof, misdemeanour proceedings may be reopened if an application for reopening was lodged¹ on the basis of a final judgment of the European Court of Human Rights whereby a violation of the rights and freedoms under the Conventions was found, if that finding might have a favourable impact for the applicant.

43. Although a general statute of limitations for prosecuting certain misdemeanours – including foreign-currency related misdemeanours – may

¹ Such an application can be submitted within sixty days from the date the applicant had learned about the judgment of the Court. In its decision (IUz-25/2018, published in OG RS, no. 112/2022), the Constitutional Court found that the absolute two-year bar running from the termination of the impugned misdemeanour proceedings provided for in Article 281 § 3 had not been in compliance with the Constitution of Serbia and the ratified international treaties, and, accordingly, it annulled this provision.

be prolonged by a specific law, the maximum limitation period cannot exceed five years. Prosecution becomes statute-barred, in any event, after the limitation period has elapsed twice (Article 84).

II. RELEVANT INTERNATIONAL AND EUROPEAN MATERIAL

A. Council of Europe

44. The relevant part of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (which was signed in Warsaw on 16 May 2005 and which entered into force in respect of Serbia on 1 February 2009) – as well as the relevant part of the Explanatory report to that Convention – are cited in the case of *Boljević v. Croatia* (no. 43492/11, §§ 18-19, 31 January 2017, and *Aksüngür and Others v. Serbia*, nos. 69080/13 and 4 others, §§ 66-67, 24 June 2025).

B. European Union law and practice

45. Serbia is not a member State of the European Union. It was granted candidate country status in March 2012 and started accession negotiations in January 2014. The essence of this process implies, *inter alia*, the need to identify existing differences between two legal systems in each of the negotiating chapters, and to work on the full alignment of the State's national legislation with the EU *acquis* and its implementation on the national level, pending full membership.

46. The relevant provisions 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 cited in the case of *Boljević v. Croatia*, cited above, §§ 20 and 21, 31 January 2017).

47. The relevant provisions of Regulation (EU) No. 2018/1672 (which entered into force on 3 June 2021, and which superseded the Regulation mentioned in the preceding paragraph) – as well as the relevant case-law of the Court of Justice of the European Union concerning requests for a preliminary ruling lodged by national courts in respect of the interpretation and application of the 2005 Cash Control Regulation – are reproduced in the case of *Imeri v. Croatia* (no. 77668/14, §§ 42, 44-47, 24 June 2021).

48. In sum, given the fact that the free movement of capital and payments between EU member States, and between member States and third countries (being among the “four fundamental freedoms” enjoyed within the EU single market guaranteed by membership of the EU), only limited restrictions may be allowed. Therefore, in principle, EU citizens and other nationals are entitled to carry any amount of cash when crossing the EU's outer borders,

subject to the obligation to declare, in writing or orally, any cash or means of payment deemed equivalent to cash in a total amount of EUR 10,000 or more (see, for further details, *Aksüngür and Others*, cited above, § 71).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS REGARDS THE ALLEGED ABUSE OF THE RIGHT OF PETITION

A. The parties' submissions

49. In the additional observations, the Government invited the Court to reject the application, arguing that the applicant had abused his right of petition since his lawyer had misled the Court by submitting untrue and unverified facts that she had later tried to hide or present differently in the application form and in the observations. The lawyer had submitted that the Ministry of Finance was responsible for failing to fulfil its obligation to pay back to the applicant EUR 8,000, in accordance with the second-instance decision of August 2008 (see paragraph 17 above), but she had not informed the Court that it was so since the applicant had not paid the fines and the costs of the misdemeanour proceedings nine years after the relevant second-instance decision had become enforceable or provided the Ministry with the requested information (see paragraphs 22-24 above).

50. They further called into question the applicant's account of facts concerning the following issues: (i) where exactly the money had been hidden in his clothes, (ii) the inconsistency between the testimony of the applicant's travelling companion about the money he had been carrying (namely, EUR 200; see paragraph 10 above) and the applicant's argument that an additional EUR 10,000 should be returned to him in view of the fact that he had been travelling with a companion (see paragraph 20 above), (iii) whether the 2004 bank's statement regarding the applicant's withdrawal of cash (see paragraph 9 above) had been genuine, (iv) the applicant's statement that, although a frequent traveller engaged in transport business (see paragraph 7 above), he had not been aware of the regulations, or (v) that he had not been reimbursed EUR 2,000 as stated in the seizure report of May 2004 (see paragraphs 5, 16 and 20 above).

51. The applicant's lawyer explained that despite asking the applicant to inform her once he had received the amount of EUR 8,000 from the Ministry, she had only learned of it almost five months later, following the request that she had sent to him in February 2017. She had provided this information to the Court on the following day (see paragraph 24 above).

B. The Court's assessment

52. The Court reiterates that an application may be rejected as constituting an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on untrue facts either where they were known to the applicant from the outset or where the Court was not informed of new important developments that have occurred during the proceedings. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application – especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, and *Zličić v. Serbia*, nos. 73313/17 and 20143/19, §§ 55-57, 26 January 2021, with further references).

53. As regards the Government's arguments concerning the applicant's account of the events presented before the Court, or domestically, they appear to be part of the dispute between the parties about certain facts or elements relevant for the Court's examination of the case (see paragraphs 87-88 and 96 below).

54. The Court firstly notes that some of the issues referred to by the Government are not of central importance, such as where exactly in the applicant's clothes was the cash hidden. Secondly, as regards the presence of his travelling companion and the amount of cash he had carried, the Court notes that the domestic authorities established those facts on the basis of evidence presented (see paragraph 17 above). The applicant's companion had confirmed that he had been carrying EUR 200 with him (*ibid.*; see, also, paragraph 10 above), whereas the applicant argued, before the Chamber and the Constitutional Court (see paragraphs 16 and 20 above), as well as in his application form lodged with the Court, that the Ministry should have returned to him a further EUR 10,000 on account of his companion's similar entitlement. Only in his observations of August 2017 the applicant stated, for the first time, that his son-in-law had given him EUR 10,000 to carry together with the applicant's cash (see paragraph 61 below). In this connection, it is reiterated that the applicant can submit arguments and counter-arguments related to his case, which the Court may accept or reject, without such contentious submissions being necessarily regarded as an abuse of the right of individual application (see *Hoti v. Croatia*, no. 63311/14, § 92, 26 April 2018). Moreover, the domestic authorities never examined or determined whether the initial EUR 2,000 had been seized or returned to the applicant.

55. As regards the return of EUR 8,000 to the applicant, this amount was indeed paid to the applicant on 12 October 2017 (see paragraphs 17 and 22- 24 above). The applicant provided that information – regrettably with a

short delay – of his own motion (see paragraph 51 above). Even assuming that it concerned the very core of the case, there is no evidence that the applicant intended to “mislead the Court” in that connection (see *Zličić*, cited above, § 56) or to prevent it from ruling on the case in full knowledge of the facts (see, conversely, *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, §§ 42-47, 7 July 2020). Accordingly, the Court does not find anything in the applicant’s account capable of impeding its proper functioning or the proper conduct of the proceedings before it (contrast with *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013). It should be lastly emphasised that rejection of an application on grounds of abuse of the right of application is an exceptional measure (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009).

56. In view of the above, the Court considers that no conduct on the part of the applicant or his lawyer amounts to an abuse of the right of application in the circumstances of the present case. The Government’s objection in this regard must therefore be dismissed.

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

57. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the imposition of a fine and the confiscation of the cash in excess of the allowed amount that he had attempted to carry across the border had constituted an unlawful and a grossly disproportionate measure. He relied on Article 1 of Protocol No. 1, 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

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

B. Merits

1. The parties' submissions

(a) The applicant

59. The applicant disputed the lawfulness and necessity of the confiscation measure, reiterating in principle his complaints raised before the domestic authorities (see paragraphs 16 and 20 above).

60. In the applicant's view, the misdemeanor in question has not been defined by statutory law, but rather by the decisions of the National Bank (see paragraphs 26-31 above) – a domestic body with no authority to define a misdemeanor (see paragraph 40 above). He also argued that the provisions applied in his case did not comply with the requirements of quality of law.

61. The applicant further argued that he had been pressured to sign the seizure report (see paragraph 5 above) and that he had signed it for fear of his being ill-treated or his truck being confiscated. He submitted that the money had been “lawfully acquired” and withdrawn from the bank and belonged to him, except for the sum of EUR 10,000, which his son-in-law had given him on that occasion to carry with his own cash. He contested the bank's statement of 20 November 2007 (see paragraph 13 above), which had not been communicated to him nor had he had the opportunity to comment on. It was not unlawful to export cash and he had been found guilty only for his failure to declare the sum carried.

62. While the fine imposed had been quite small, the motives and the circumstances of the case had been such that the confiscation of the entire amount of undeclared cash – his life savings - had not been warranted. Moreover, it had put him and his family in a very difficult financial situation. The confiscation of the entire seized cash had therefore constituted a disproportionate measure.

63. Lastly, the applicant stated that the complaints that he submitted to the Constitutional Court had been considered to constitute his subjective impression, and that court had failed to adequately examine the complaint.

(b) The Government

64. The Government acknowledged that there had been an interference with the applicant's right of property when the domestic authorities had confiscated his money, even though its lawful origin had not been demonstrated. However, the interference had been lawful, had pursued a legitimate aim and had been proportionate.

65. The authorities had applied the relevant provisions on the transfer of cash across borders, which had been sufficiently clear, accessible and foreseeable as to their application. Moreover, those provisions had been harmonised with international standards while the misdemeanour proceedings had been ongoing (including the EU Regulation 1889/2005; see

paragraph 46 above) and had then been applied to the applicant's case; the part of the confiscated amount that had been within the statutory limit had accordingly been returned to him. The confiscation had been imposed in the public interest with a view to preventing the unlawful export of means of payment and to combating money laundering. Given that the subject matter was uniformly regulated in European States, the applicant's alleged lack of knowledge could not be an excuse for committing an offence.

66. The applicant had been found guilty in misdemeanour proceedings of a deliberate failure to declare a large sum of money, which had been several times higher than the sum of EUR 10,000 which could be freely carried out of the country. He had not proved the legitimate source of the money or its intended purpose. Action had to be taken where there was a suspicion of unlawful activity, among which the most obvious example was the applicant's deliberate failure to declare a large sum of cash, for which he had submitted false evidence of its origin. The applicant's attitude showed an intent to hide the cash and commit an offence, while his readiness to provide false evidence might also imply a readiness to perform other impermissible activities.

67. Further, the measure of confiscation, in addition to a fine, had been imposed as a mandatory sanction, which was not subject to discretionary assessment by the courts. However, the nature of the offence and the above-mentioned circumstances of the case had been taken into account when imposing the sanctions. There had been no mitigating circumstances which would have justified applying Article 64 § 2 of the Foreign Currency Transactions Act and confiscating only part of the amount. Therefore, in no way had an excessive burden been placed on the applicant.

68. Accordingly, the interference in question had been proportionate as the domestic authorities had struck the requisite fair balance between the demands of the general interest and the requirements of the protection of the applicant's right of property.

69. Lastly, the Constitutional Court had rejected the applicant's constitutional appeal (see paragraph 21 above), concluding that no link between the applicant's allegations and the right guaranteed by Article 58 of the Constitution could be established, given the applicant's failure to prove the lawful origin of the carried cash (see paragraph 25 above).

2. *The Court's assessment*

(a) **General principles**

70. The general principles relevant for the present case have been summarised in *G.I.E.M. S.r.l. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 289, 292-93, 300 and 302, 28 June 2018) and *Grifhorst v. France* (no. 28336/02, §§ 81-83, 26 February 2009).

(b) Whether there was an interference with the applicant's right of property

71. It is not in dispute between the parties that the confiscated money constituted the applicant's possession and likewise that the decisions ordering the confiscation of the cash in excess of the allowed amounted to an interference with his right to the peaceful enjoyment of his possession guaranteed by Article 1 of Protocol No. 1.

72. As to the amount concerned, the Court observes that in his observations before it the applicant submitted, for the first time, that EUR 10,000 had belonged to his son-in-law (see paragraphs 54 and 61 above). Such statement was inconsistent with his account presented in the domestic proceedings, where the applicant had only referred to his son-in-law's entitlement to transport the threshold amount so that it be returned to him, and also the facts established by the relevant domestic authorities (see *Imeri v. Croatia*, no. 77668/14, § 63, 24 June 2021, and *Yaylali v. Serbia*, no. 15887/15, §§ 30-31, 17 September 2024; compare and contrast *Karapetyan v. Georgia*, no. 61233/12, §§ 31 and 38, 15 October 2020). The applicant carried the cash himself and was considered to be the perpetrator of the misdemeanour in issue in respect of the entire amount, and no proof to the contrary was adduced (see *Ziaunys v. the Republic of Moldova*, no. 42416/06, §§ 30-31, 11 February 2014); moreover, the applicant's allegation has been refuted by the Government in the context of their objection of abuse (see paragraph 50 above).

73. Having regard to its limited power to review the facts established by the domestic authorities (see *Savran v. Denmark* [GC], no. 57467/15, § 189, 7 December 2021), the Court is not in a position to call into question the findings of ownership reached by the domestic courts. It considers that the entire amount confiscated from the applicant, that is, EUR 39,500, following the return of the amount he was allowed to carry undeclared (see paragraph 24 above), is to be regarded as his "possessions" within the meaning of Article 1 of Protocol No.1 to the Convention.

(c) Applicable rule

74. The Court observes that the customs authorities initially temporarily seized all the undeclared cash (see paragraphs 5 and 32 above) and that the administrative authorities subsequently imposed, as a sanction, the permanent confiscation of the cash in excess of the prescribed amount (see paragraphs 17, 34 and 36 above).

75. 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 in this type of cases, 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 *Grifhorst*, cited above, §§ 83-85).

However, this provision must be construed in the light of the general principle set out in the first sentence of the first paragraph (see *Boljević*, cited above, § 38, *Yaremychuk and Others v. Ukraine*, nos. 2720/13 and 6 others, § 22, 9 December 2021, and the cases cited therein).

(d) Whether the interference was justified

(i) Whether the interference was provided for by law

76. 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 (see, among other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I).

77. The Court will examine the present case within the context of the 2006 Foreign Currency Transactions Act and the 2006 Bank Decision, which were the *lex specialis* acts applied by acting domestic authorities while convicting the applicant and confiscating the cash in issue.

78. Contrary to the applicant's allegations (see paragraph 60 above), the export restriction for residents on cash in foreign currency which could be taken out of the country across the border was set out in the relevant regulations issued by the National Bank of Serbia, adopted in the implementation of consecutive Foreign Currency Transactions Acts (see paragraphs 28 and 30 above; see, also, on the relevance of the subsidiary law, *Bittó and Others v. Slovakia*, no. 30255/09, § 102, 28 January 2014, and *Sadocha v. Ukraine*, no. 77508/11, § 25, 11 July 2019). The misdemeanour in issue was defined at the time in question by Article 62 of the 2006 Foreign Currency Transactions Act, which also provided for a fine to be imposed on any resident who attempted to take cash across the State border in contravention of the relevant regulations (see paragraph 33 above). Likewise, a protective measure of confiscation – either of the entire amount of undeclared cash carried by a perpetrator in breach of the relevant regulations, as a rule, or a part thereof, as an exception, as the object of the misdemeanour in question – had a legal basis in Article 64 §§ 1 and 2 of the same Act, respectively (see paragraphs 34-35 above). The Court is thus satisfied that both the offence and the confiscation measure of which the applicant complains had a legal basis in the domestic law – although it reiterates that the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness.

79. At the same time, when speaking of “law”, Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term – a concept that comprises both statutory law and case-law and implies qualitative requirements in that respect, notably those of accessibility and foreseeability (see, for example, *Bežanić and Baškarad v. Croatia*, nos. 16140/15 and 13322/16, § 62, 19 May 2022, with further reference). These qualitative requirements must be satisfied as regards

both the definition of an offence and the penalty it carries which, *inter alia*, means that offences and the relevant penalties must be clearly defined by law. 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 of a given action 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 *Imeri*, §§ 69-70, and *Yaylali*, § 43, both cited above, with further references).

80. In the present case, the wording of Article 64 of the 2006 Foreign Currency Transactions Act appears to have left no discretion to the domestic authorities as to whether to impose only a fine, given that some kind of confiscation order appears mandatory; this is also the interpretation of the domestic authorities. The sanction of full confiscation applied under Article 64 § 1 was made relative by its paragraph 2 which specifically allowed for partial confiscation in exceptional circumstances, with regard to the motives of the misdemeanour or any other circumstances that could justify such decision. The authorities concluded that although mitigating circumstances justified a more lenient fine in the applicant’s case, none of the conditions for partial confiscation under Article 64 § 2 have been fulfilled (see paragraphs 18 and 19 above). The Court notes that paragraph 2 of the said Article gives no definition or any further indication of the criteria that would characterise the “motives” for the misdemeanour or such “other circumstances”; neither does it set any criteria in respect of how the authorities should exercise their discretion, specify with whom the burden of proof in respect of such “motives” and “circumstances” shall lie, nor indicate the maximum and minimum of the amounts that could be subject to confiscation. Thus, the law allowed a broad discretion to the domestic authorities in respect of the choice between full or partial confiscation measure, giving particular weight to the motive of the offence and leaving other mitigating circumstances to the evaluation of the relevant authorities (compare *Imeri*, § 73, and *Yaremiychuk and Others*, § 24, both cited above; and contrast with *Ismayilov v. Russia*, no. 30352/03, § 32, 6 November 2008).

81. The Court further recalls that many laws are more or less vague, and their interpretation and application are a question of practice. 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. 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, among many other authorities, *Imeri*, cited above, §§ 75-76).

82. In the Court’s opinion, when the criteria used by authorities when imposing a confiscation are unforeseeable or inconsistent with the essence of

the offence, the interference with the applicant's right of property might be seen as failing to meet the qualitative requirement of foreseeability (see, *mutatis mutandis*, *Imeri*, cited above, § 81). However, the Court considers that it is justified to leave open the issue of lawfulness of the criteria for the imposition of a measure of full or partial confiscation in the present case, and instead take them into account, as well as the consequences that they entail from the point of view of compliance with Article 1 of Protocol No. 1, as material considerations in determining whether the national authorities, when applying the contested measure, struck a fair balance between the interests involved (see *Beyeler*, § 110, and *Imeri*, § 81, both cited above).

(ii) *Pursuit of a legitimate aim*

83. The Court takes note of the Government's argument that the general declaration requirement and the interference in the present case were aimed at combating money laundering and other financial crimes, and, moreover, of controlling the cross-border foreign currency cash flows (see paragraphs 65- 66 above).

84. The Court reiterates 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 (see *Sadocha*, § 26, and *Karapetyan*, § 34, both cited above). Money laundering directly threatens the rule of law, as is also evident by the action of the Council of Europe and other international bodies in this field. In particular, the Council of Europe Conventions concerning the matter have bound States to criminalise the laundering of the proceeds of crime and to provide for other measures aimed at putting in place a strong criminal policy to combat this growing national and international phenomenon the complexities of which are unprecedented (see *Podeschi v. San Marino*, no. 66357/14, § 181, 13 April 2017). Indeed, depriving a person of the product and the profits of money laundering or other crimes is in line with the powers conferred on courts as a weapon in the fight against money laundering (see *Sofia v. San Marino*, (dec.) no. 38977/15, §§ 70-72, 2 May 2017). Moreover, confiscating laundered money is also intended to prevent reoffending and to eliminate such funds from circulating further into the economy (see *Zaghini v. San Marino*, no. 3405/21, § 60, 11 May 2023).

85. Therefore, the Court accepts that the interference complained of pursued the aims put forward by the Government (see paragraph 83 above), it remains to be determined whether it was also proportionate to such aims.

(iii) Proportionality of the interference

86. The remaining question for the Court to determine is whether the national authorities, when applying the impugned measure, struck the requisite fair balance between the protection of the applicant's right of property and the requirements of the general interest, taking into account the wide margin of appreciation left to the respondent State in that area. In assessing this issue, the Court takes into account the nature and seriousness of the offence of which the applicant was accused, his conduct, and the nature and severity of the penalties imposed (see *Grifhorst*, cited above, §§ 94-105, and *Gabrić v. Croatia*, no. 9702/04, §§ 36-39, 5 February 2009). The requisite balance will not be achieved if the property owner concerned has had to bear "an individual and excessive burden" (see, among many authorities, *Gyrlyan v. Russia*, no. 35943/15, §§ 24-25, 9 October 2018; and *Yaylali*, cited above, § 47). Moreover, the importance of the procedural obligations under Article 1 of Protocol No. 1 must not be overlooked. Thus, the Court has, on many occasions, noted that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must also afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see, among other authorities, *G.I.E.M. S.r.l. and Others*, § 302, and *Boljević*, § 41, both cited above, with further references therein). In order to ensure that this condition is satisfied, the applicable procedures should be considered from a general standpoint.

87. The Court recalls that a sum of cash in foreign currency may be physically carried and imported freely into Serbian territory by both residents and non-residents, subject to the obligation to declare an amount that is equivalent or exceeds the threshold stipulated by the relevant regulations (see paragraphs 29 and 31 above). On the other hand, as to the export of foreign currency, the amounts which can be legally carried across the border are subject to more specific restrictions. In particular, Serbian residents are not permitted to export the amount exceeding a certain threshold, which stood at EUR 2,000 at the time of the events and at EUR 10,000 at the time of the final decision on confiscation, except if they emigrate from the country (see paragraphs 30 and 31 above; compare the relevant EU law cited in paragraphs 45-48 above).

88. The foreign currency-related misdemeanour of which the applicant, a resident of the respondent State, was ultimately found guilty consisted of his attempt to take cash across the State border in excess of the permitted limit. Hence, the situation did not amount to a mere failure to declare that sum to the customs authorities (compare and contrast, for example, the above-cited cases of *Gabrić*; *Sadocha*; *Imeri*, and *Gyrlyan*), as seemingly argued by the applicant (see paragraph 61 above) and the Government (see paragraph 66

above). In any event, the Court stresses that the application concerns the issue of the compatibility with the Convention of permanent confiscation as a sanction for the misdemeanour committed, not the statutory restriction on carrying cash outside the borders. Therefore, in this context, it remains crucial for the domestic authorities to perform an adequate assessment of the proportionality (see the case-law principles summarised in paragraph 86 above), which has to be observed not only as regards the determination of the rules concerning the severity of sanctions, but also the assessment of those factors that may be taken into account in the fixing it (see *Imeri*, cited above, § 84; also compare paragraph 40 of the judgment of the CJEU in respect of the *Lu Zheng* case, as cited in § 46 of the Court's judgment of *Imeri*).

89. The Court acknowledges certain difficulties associated with the examination of the case, due to insufficient analysis carried out by the domestic authorities and the somewhat contradictory information submitted by the parties.

90. The Court observes, firstly, that the cash was temporarily seized by the customs authorities from the applicant on the day of the border-crossing (see paragraph 5 above). The applicable regulations permit such seizure in respect of sums which exceed the statutory threshold and which have been unlawfully acquired (see paragraph 32 above). The seizure in the instant case, which was carried out as a provisional measure, appears to have constituted a legitimate operative measure, given that the customs authorities faced an attempt to undertake an undeclared transfer of excess cash in breach of the relevant regulation by the applicant, who was not carrying any certificate regarding its origin. Hence, the temporary seizure enabled the domestic authorities to retain the cash of unknown origin and to enquire about the circumstances of the attempt to transfer the cash in question – including its provenance and intended destination. In particular, the purpose of the provisional measure was to (i) enable the authorities to determine, *inter alia*, whether the applicant had committed a misdemeanour only, or whether the applicant or the impugned cash may have been linked to a more serious criminal offence, such as smuggling, tax evasion, money laundering or drug trafficking (see, *Imeri*, cited above, § 91), and, moreover, (ii) secure the imposition of the penalty of confiscation, which could be imposed as an outcome of the domestic proceedings (see, for example, *Piras v. San Marino* (dec.), no. 27803/16, § 49, 27 June 2017), if justified.

91. The Court cannot overlook the fact that, although the relevant legislation provides for such a possibility (see paragraph 37 above), it does not appear that the customs authorities informed the Office for the Prevention of Money Laundering about the undeclared cash seized from the applicant and that any investigation had been carried out by them in that respect.

92. Moreover, it has not been argued, and nor are there any indications, that prior to the incident in question, during the time the cash had been temporarily seized or subsequently to the events, the applicant was charged

with, or investigated for, any criminal activity, or that money in issue had been criminally acquired (see *Sadocha*, § 28, *Moon*, § 49, and *Gyrlyan*, § 27, all cited above; and compare and contrast *Amerisoc Center S.R.L. v. Luxembourg*, no. 50527/20, § 41, 17 October 2024). On that basis, the Court distinguishes the present case from cases in which the confiscation measure covered assets and goods which had been the instruments or proceeds of a criminal offence (see, for example, *Phillips v. the United Kingdom*, no. 41087/98, ECHR 2001-VII; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, §§ 73, 89 and 91, 8 October 2019, and *Melandri v. San Marino*, no. 25189/21, §§ 70-72, 12 September 2024), or intended for use in illegal activities, or the activities of organised crime (see *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001 VII; *Morabito and Others v. Italy* (dec.), no. 58572/00, 7 June 2005; *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002; and *Ulemek v. Serbia* (dec.), no. 41680/13, § 65, 2 February 2021).

93. To sum up, the domestic authorities did not take any investigating or operative measures suggestive of any suspicions that by physically transporting currency across the border the applicant had been implicated, for example, in smuggling or laundering the proceeds of any other crime. Accordingly, there is nothing to suggest that by confiscating the seized amounts the authorities were seeking to forestall any such illegal activities (see, *mutatis mutandis*, *Yaylali*, cited above, § 51).

94. The domestic authorities examined the applicant's misconduct only in the context of the misdemeanour proceedings. In those proceedings the applicant explained that the carried cash had mainly represented his family earnings and that he had withdrawn the money from a bank (in respect of which he had produced the cash withdrawal statement – see paragraphs 9 and 61 above). The domestic authorities did not give weight to that statement; instead, they relied on another statement made by the same bank allegedly denying that any cash withdrawal had been made by the applicant in 2004 (see paragraph 13 above). That latter statement has not been furnished to the Court, and nor, apparently, was it disclosed to the applicant during the domestic proceedings. The applicant consistently claimed that he had not been given access to it and not been able to challenge and comment on it. In such circumstances, the Court finds that the misdemeanour proceedings were completed without conclusive factual findings on the provenance of the impugned cash; that failure is attributable to the domestic authorities.

95. The Court reiterates that, in order to be proportionate, an interference should correspond to the severity of the infringement, and the sanction to the gravity of the offence it is designed to punish rather than to the gravity of any presumed infringement which has not actually been established or even argued, such as an offence of money laundering or other financial offences

(see *Ismayilov*, § 38; *Gabrić*, cited above, § 39, *Grifhorst*, § 102; and *Boljević*, § 44, all cited above).

96. As to the sanction imposed for the committed misdemeanour, the domestic authorities decided that while some circumstances justified the reduction of the fine, the confiscation of the entire amount exceeding the statutory limit was mandatory and necessary, in the application of Article 64 § 1 of the 2006 Foreign Currency Transactions Act (see paragraphs 17-21 above). The reasoning in respect of the imposition of the full confiscation suggests that the authorities were particularly concerned with the applicant's intent to commit the offence and the lack of proof of the lawful origin of the cash.

97. Regarding the question of intent, the Court notes the Government's argument that the applicant's alleged lack of knowledge does not justify his conduct. As a professional transporter crossing the State border frequently, he could be expected to have made some enquiries into the legal limit for carrying cash across the border before travelling abroad, even more so as the regulations were those of his own State (see, *mutatis mutandis*, *Karapetyan*, cited above, §§ 6, 14 and 38). In any event, the applicant did not contest that he had committed the misdemeanour in issue. The domestic authorities have also established, and the applicant has not presented any convincing argument to the contrary, that the confiscated cash had been concealed in a manner which appeared to be intended to deceive customs officers and circumvent customs regulations. The applicant's own account that he had hidden the money for fear of it being stolen was not upheld by the domestic authorities and contradicted his declaration of carrying about EUR 600, thus indicating his intention not to disclose the remaining amount (see, *mutatis mutandis*, *Moon v. France*, no. 39973/03, § 8, 9 July 2009; and *Grifhorst*, cited above, §§ 8 and 95).

98. In addition, in so far as the domestic authorities placed important weight on the origin of the money, the Court has already noted the domestic courts' inadequate procedural response to the difficulties that the applicant had faced in attempting to prove the origin of the confiscated cash (see paragraph 94 above). Moreover, the Constitutional Court did not engage with the alleged arbitrariness of administrative proceedings and failed to remedy the matter (see paragraph 21 above). The Government did not provide any explanation for this failure in their arguments. Accordingly, even assuming that the origin of the seized cash could be a relevant factor in this context (compare and contrast *Melandri*, § 72, and *Zaghini*, § 62, both cited above, in relation to confiscation of property linked to serious offences), the Court finds that the impugned interference was marked by the absence of the requisite procedural guarantees that would have afforded the applicant a reasonable opportunity of putting his case to the responsible authorities with a view to enabling them to establish a fair balance between the conflicting

interests at stake (see *Gyrlyan*, cited above, § 24, and *AGOSI v. the United Kingdom*, 24 October 1986, § 55, Series A no. 108, with further references).

99. The confiscated amount was undoubtedly substantial for the applicant, who has indicated that the money had come from his life savings and significantly affected the well-being of his family (see paragraph 62 above). It does not appear that the considerations of the applicant's financial situation has played any role in the proportionality analysis, although provided for by the Misdemeanour Acts (see paragraph 41 above). At the same time, the harm that the applicant might have caused to the respondent State was considered as minor. When balancing the various criteria to be taken into account when imposing a fine, the domestic authorities acknowledged that no serious harm had been caused, and opted for a fine of RSD 10,000, from the range of between RSD 5,000 to RSD 150,000, finding it sufficient to achieve the desired deterrent and punitive effect and to prevent future recurrence of the offence (see paragraphs 17 and 33 above). Thus, it cannot be said that the confiscation measure was implemented in order to secure pecuniary compensation for damage caused to the State or was intended as a non-conviction-based measure in respect of money generated *via* the predicate offences in order to eliminate such funds from circulating further into the economy; it was rather deterrent and punitive in its purposes (see *Gyrlyan*, § 29; *Ismayilov*, § 38, and *Gabrić*, § 39, all cited above; compare and contrast *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284, and *Balsamo*, cited above, §§ 73 and 91-93).

100. Lastly, the authorities failed to convincingly show why the full confiscation imposed was necessary to achieve the desired effect in the circumstances of this case. In particular, it does not appear that the misdemeanour courts analysed the necessity for the sanction (in view of the relevant factors); nor do they appear to have weighed the confiscation against the low (or relatively low) degree of gravity of the misdemeanour and the moderate fine imposed, in order to demonstrate that it did not go beyond what was necessary to attain the objectives pursued by the regulations at stake (see, for example, the above-cited cases of *Gabrić*, § 39, and *Boljević*, § 45). In sum, it does not appear that any proportionality assessment was adequately performed.

101. The Court has found confiscation measures in similar circumstances to be disproportionate (see, for example, the above-cited cases of *Gabrić*; *Grifhorst*; *Boljević*; and *Sadocha*). While deeming that the measure of full or partial confiscation imposed an excessive individual burden on the applicants, the Court has on many occasions emphasised, among other factors, the lawful origin of the confiscated sums and the lack of any intent to deceive the authorities (see, among other authorities, *Togrul v. Bulgaria*, no. 20611/10, § 44, 15 November 2018; as well as above-cited cases of *Ismayilov*, § 36; *Sadocha*, §§ 29-33; *Gabrić*, § 37, and *Gyrlyan*, § 27). In other cases the Court came to the same conclusion while affording less importance to the

applicant's failure to prove that the source and intended use of the cash had been legitimate or the lack of intent (see the above-cited cases of *Boljević*, §§ 41-46; and *Imeri*, § 80, on whether these criteria were consistent with the essence of the misdemeanour in question). In any event, as mentioned above, it is crucial for the domestic authorities to perform an adequate assessment of the proportionality and convincingly show why the sanction imposed was necessary to achieve the desired effect in the circumstances of each particular case.

102. Having examined all the submitted material, the Court considers that the Government have not put forward sufficient arguments capable of persuading it to reach a different conclusion in respect of the present case.

103. Moreover, the decisions to confiscate the entire amounts of undeclared cash also appear to be at odds with the requirement, existing in many Contracting States and EU law, that the severity of a penalty, even in order to be lawful, must not be disproportionate to the offence in question (see paragraphs 45-48 above, and see, *Imeri*, cited above, §§ 71-72, for further reference to the EU law, in the context of the declaration obligation).

(iv) Conclusion

104. The Court finds that the legal framework (which remained imprecise in its key elements in relation to the leeway allowed for imposition of full or partial confiscation), coupled with the insufficient review carried out by the domestic courts and the lack of procedural guarantees inherent in Article 1 of Protocol No. 1 to the Convention, could not ensure the requisite fair balance between the requirements of the general interest and the protection of the applicant's right to the peaceful enjoyment of his property under that Article.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. The applicant claimed 47,500 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

108. The Government contested the claims in their entirety, considering them unjustified in view of the lawful nature of the confiscation and also of

the applicant's own negligence in respect of the delayed reimbursement of EUR 8,000.

109. The ground for finding a violation of Article 1 of Protocol No. 1 in the present case was the disproportionate nature of the sanction imposed on the applicant, in conjunction with a lack of procedural guarantees (see paragraphs 76-104 above).

110. In view of the nature of the violations found, it cannot be disregarded that the applicant has suffered pecuniary damage. At the same time, the Court's finding under Article 1 of Protocol No. 1 does not imply that the applicant did not have to bear any responsibility for the breach of domestic law he had committed by attempting to circumvent the statutory limitation on physical transfer of cash (see *Sadocha*, cited above, § 43). Notably, while the authorities imposed the modest fine, considering it sufficient to achieve the desired deterrent and punitive effect, they failed to carry out an adequate proportionality test to persuade the Court that the fine was not sufficient and that the confiscation order for the entire amount of the excess cash, an additional sanction equally deterrent and punitive in its purpose, was necessary in the circumstances of this particular case (see paragraphs 99-100 and 102-104 above).

111. Against this background, the Court cannot speculate as to whether the confiscation of only part of the sum in question would have been justified and, if so, in what amount. Moreover, the Court cannot be certain whether the possibility of reopening of the domestic proceedings, another way of redressing the violations found (see *Imeri*, cited above, §§ 98 and 99), would be available under the relevant domestic rules, in particular in view of the statute of limitations in respect of the misdemeanour (see paragraph 43 above).

112. In these specific circumstances, and having regard to the available information about the seizure and partial return of the confiscated sums (see, in particular, the Appellate Misdemeanour Chamber decision in paragraph 17 above), the Court cannot but award the applicant EUR 39,500, plus any tax that may be chargeable (see the above-cited cases of *Yaremychuk and Others*, § 46, *Gabrić*, § 48; *Boljević*, § 53 and *Gyrlyan*, § 36, in which the Court, in view of the disproportionate nature of the sanction, awarded the pecuniary damage corresponding to the full confiscated amounts).

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

B. Costs and expenses

114. The applicant also claimed RSD 136,000 for the costs and postal expenses incurred before the domestic authorities, and further RSD 92,000 incurred in the proceedings before the Court.

115. The Government contested the claim, asserting that the applicant's lawyer had not represented him in a professional manner.

116. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021, and *Lakatoš and Others v. Serbia*, no. 3363/08, § 126, 7 January 2014). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,930, covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 concerning the confiscation 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, the following amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 39,500 (thirty nine thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damages; and
 - (ii) EUR 1,930 (one thousand nine hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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.

Done in English, and notified in writing on 7 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President