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

Press Release
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ECHR 199 (2012)
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The applicants' rights under the Convention were not violated by having been charged a pollution tax subsequently held to be in breach of European Union law

In its decision in the case of **Ioviţoni and others v. Romania** (applications nos. 57583/10, 1245/11 and 4189/11) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

Principal facts

The applicants, Coriolan Gabriel Ioviţoni and Paraschiva Anghel, are Romanian nationals who were born in 1975 and 1959 respectively and live in Lugoj and Arad (Romania). A limited liability company, a legal entity incorporated on 4 March 2005 and having its registered office in Baia Mare, is also an applicant.

The applicants had wished to register in Romania vehicles purchased in other member States of the European Union. Under Government Emergency Order ("GEO") no. 50/2008, and prior to the legislative reform of 15 December 2008, they had been charged pollution tax of between 400 and 2,000 euros. Having paid that tax to register the vehicles, they had later taken action to recover it, arguing in particular that it had been in breach of European law on the free movement of goods, which was directly applicable in Romanian law, in so far as it had been charged exclusively on imported cars.

Their action for the return of that tax had been rejected by the domestic courts.

Complaints, procedure and composition of the Court

In view of the similarity between the applications as regards the complaints and the substantive questions that they raised, the Court considered it appropriate to join them. Relying on Articles 6, 14 and Article 1 of Protocol No. 1 (protection of property), taken alone and together with Article 14 (prohibition of discrimination), the applicants complained, primarily, that they had had to pay a pollution tax which was discriminatory from the point of view of European Union law, when registering vehicles in Romania purchased in other member States of the European Union.

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Alvina **Gyulumyan** (Armenia),
Ján **Šikuta** (Slovakia),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain),
Nona **Tsotsoria** (Georgia),
Mihai **Poalelungi** (Moldova), *Judges*,

and also Marialena **Tsirli**, *Deputy Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1 taken alone and together with Article 14

The Court had to ascertain whether, when they had taken action before the domestic courts, the applicants had had a "debt in their favour that was sufficiently established to be enforceable" for the purposes of Article 1 of Protocol No. 1, by way of the tax they had had to pay under an order (GEO no. 50/2008) which had been held to be in breach of European Union law by the Court of Justice of the European Union in its "Tatu" judgment of 7 April 2011. The domestic courts, consulted prior to the Tatu judgment, had responded negatively.

The Court noted that the applicable provision of European Union law is Article 110 of the Treaty on the Functioning of the European Union ("TFEU"), the "aim [of which] is to ensure the free movement of goods between the Member States in normal conditions of competition by eliminating all forms of protection which may result from the application of internal taxation that discriminates against products from other Member States". The Court observed that that was a general rule, namely the application of the principle of the free movement of goods.

Prior to the Tatu judgment, the domestic courts had been indecisive as to whether or not GEO no. 50/2008 was in compliance with the principle of the free movement of goods. Since the response to that legal question was not clear, the intervention of the Court of Justice of the European Union had been necessary.

As a consequence, prior to 7 April 2011, the date on which the Court of Justice of the European Union had, in the Tatu judgment, ruled that UGO no. 50/2008 was in breach of the provision of European Union law, the Court could not consider that the applicants' claim was based on a Community norm that was perfectly clear, precise and directly applicable.

The Court pointed out that, except in the event of manifest arbitrariness, it was unable to deal with errors of law made by the domestic courts, which are primarily responsible for interpreting and applying domestic law. There was nothing to suggest that the decision taken in the instant case by the domestic courts and criticised by the applicants had been manifestly unreasonable or arbitrary. The Court concluded that Article 1 of Protocol No. 1 of the Convention was not applicable in the instant case.

As regards the allegations of discrimination, the Court reiterated that Article 14 of the Convention had no independent existence and that it complemented the other provisions of the Convention and the Protocols thereto. There could be no room for its application unless the facts at issue fell within the ambit of one or more of the latter. Given that the applicants could not be considered to be the owners of property or a "debt in their favour that was sufficiently established to be enforceable" for the purposes of its case-law, the Court concluded that that aspect of the applications did not fall within the scope of Article 14 and Article 1 of Protocol No. 1 taken together.

Lastly, the Court reiterated that Article 6 of the Convention was not applicable to tax disputes involving taxation which was non-punitive. That last part of the applicants' complaint was not therefore admissible.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.