



## Ukrainian authorities imposed excessive individual burden in confiscating entire sum of undeclared cash at border

In today's **Chamber** judgment<sup>1</sup> in the case of [Sadocha v. Ukraine](#) (application no. 77508/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights.

The case concerned the applicant's complaint about Ukrainian customs officials seizing 31,000 euros in cash from him at Kyiv Zhuliany Airport.

The Court found in particular that the confiscation of the entire undeclared amount of the money, ordered by the domestic courts, had imposed an individual and excessive burden on the applicant and was disproportionate to the offence committed.

### Principal facts

The applicant, Vasil Sadocha, is a Czech national who was born in 1972 and lives in Olomouc (the Czech Republic).

In July 2011 Mr Sadocha was travelling from Ukraine to Poland carrying 41,000 euros (EUR). His hand luggage was X-rayed and he was asked if he was carrying any cash, after which he showed the money to the customs officer. He was charged with breaches of the customs code for failing to declare the full amount of the cash and EUR 31,000 was seized on the spot.

A court heard the case in August of the same year. The applicant's lawyer accepted that he had not declared the money, however, he had not known that he had to declare it. He also submitted that the 31,000 euros had come from a private loan and provided the loan agreement. The court nevertheless issued a confiscation order, holding that the origin of the money had no relevance for the scope of the applicant's liability.

On appeal, the applicant's lawyer argued that the lower court had imposed an unfair and disproportionate punishment and had failed to properly examine grounds for a less severe punishment, such as the lawful origin of the money and the lack of an intention to commit an offence. The appeal court upheld the first-instance judgment.

### Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant complained that the authorities' decision to seize his money had been unlawful, excessive and disproportionate. He also raised a complaint under Article 6 § 1 (right to a fair hearing) about being absent from the administrative offences proceedings.

The application was lodged with the European Court of Human Rights on 6 December 2011.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,  
Yonko **Grozev** (Bulgaria),  
Ganna **Yudkivska** (Ukraine),  
Síofra **O’Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

### Article 1 of Protocol No. 1

The Court first held that the confiscation of the money had been based on law, particularly the Customs Code and a National Bank Regulation on declaring sums above EUR 10,000. States also had a legitimate interest in implementing measures to control flows of cash across borders in order to combat money laundering, drug trafficking, the financing of terrorism and other crimes.

The question in Mr Sadocha’s case was whether the authorities had struck the requisite fair balance between protecting property rights and the general interest, taking into account the State’s discretion (“margin of appreciation”) in that area. In particular, the owner of the property could not be made to bear “an individual and excessive burden”.

The Court noted that it was not illegal in Ukraine to take cash out of the country. At the time of the events, there was no restriction on sums which could be legally transferred or physically carried across the customs border, if declared.

The applicant had stated that he had obtained the cash through a private loan, but the courts had not looked into whether the money had been obtained lawfully. The Government itself had not raised any doubts about the validity of the loan agreement and the Court was thus not in a position to call into question the lawful origin of the confiscated cash.

Nor was there any indication that he had deliberately sought to circumvent the customs regulations, indeed, the authorities had not begun criminal proceedings, which showed that they did not see intent on his part to deceive. The only illegal conduct therefore which was attributed to him, albeit not criminal, was his failure to make a written declaration to the customs authorities about the cash.

An interference with property rights was proportionate if it corresponded to the severity of the infringement and the penalty to the gravity of the offence it was designed to punish. For the applicant, the amount was substantial, whereas for the State it was not. The Court thus held that the confiscation was not intended as pecuniary compensation for damage, rather it had been deterrent and punitive in its purpose.

The Court was not convinced by the Government’s argument that an assessment of proportionality had been incorporated in the domestic decisions, such as considerations on the lawful origin of the money, the lack of intention or the absence of a record of other customs offences. Overall, the scope of the courts’ review had been too narrow to satisfy the requirement of seeking a “fair balance”.

It had also been possible for the courts to fine the applicant and the Government had not shown why such a measure could not have achieved the desired deterrent and punitive effect.

For the Court, the confiscation of the entire undeclared sum had imposed an individual and excessive burden on the applicant and had been disproportionate to the offence committed. There had therefore been a violation of Article 1 of Protocol No. 1.

### Other articles

Having regard to its finding under Article 1 of Protocol No. 1, the Court did not find it necessary to give a separate ruling on the admissibility and merits of the allegation of a breach of Article 6.

### Just satisfaction (Article 41)

The Court observed that the grounds for finding a violation of Article 1 of Protocol No. 1 was the disproportionate nature of the sanction imposed on the applicant, which did not imply that he did not have to bear any responsibility for the breach of the domestic law he had committed. It noted, however, that it was not the Court's task to speculate on the amount of the fine which would have been imposed in lieu of the confiscation of the entire undeclared sum of money, which was found to be in breach of the Convention, and to substitute itself for the national authorities on that matter. The Court therefore held that the question in respect of pecuniary damage was not yet ready for decision and it reserved it to enable the parties to provide written observations and inform it of any agreement. It held that the finding of a violation was in itself sufficient just satisfaction in respect of non-pecuniary damage.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Patrick Lannin (tel: + 33 3 90 21 44 18)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Somi Nikol (tel: + 33 3 90 21 64 25)

**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.