

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

SECOND SECTION

CASE OF BIAGINI v. CROATIA

(Application no. 25308/18)

JUDGMENT

STRASBOURG

11 June 2024

This judgment is final but it may be subject to editorial revision.



In the case of Biagini v. Croatia,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 25308/18) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 May 2018 by a Croatian national, Mr Aleksandar Biagini ("the applicant"), who was born in 1976, lives in Rijeka and was represented by Mr R. Bilobrk, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the protection of property to the Croatian Government ("the Government"), represented by their Agent, Ms. Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 21 May 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the customs authorities' decision ordering the applicant to pay a customs debt for the importation of a yacht.

2. The yacht was registered in Italy and owned by the Italian company CLS whose only shareholders were Mr G.M. and Ms I.G., husband and wife.

3. On 12 April 2013 the company brought the yacht to Croatia. The Croatian customs authorities found that the conditions for temporary and conditional relief from import duties and taxes (hereafter "temporary admission") provided in Article 5 of Annex C to the Istanbul Convention on Temporary Admission were satisfied.

4. The yacht was docked in a marina in Opatija and, on 17 April 2013, was taken to a boat service and repair shop in Bakar, some 14 nautical miles away, for regular maintenance and repair. It remained there until 20 April 2013 when the repair shop informed G.M. that the boat was ready and that it had been taken from the dry dock back into the sea. At that time G.M. was on a business trip in Switzerland whereas his wife had to attend a parent-teacher meeting in Italy. They considered that the yacht had to be taken back urgently to the marina because it risked damage. G.M. therefore phoned the applicant, a professional skipper, and asked him to do so.

5. While taking the yacht to the marina the applicant was stopped by the Croatian maritime police under suspicion of having committed a customs

offence. The police impounded the yacht but shortly afterwards returned it to its owner, the company CLS, which took it back to Italy.

6. Two sets of proceedings were instituted against the applicant: (i) minor offence proceedings in which, on 2 July 2014, he was fined 1,000 Croatian kunas (HRK), equivalent to 133 euros (EUR), and (ii) administrative proceedings for payment of the customs duties and taxes owed on the importation of a boat (hereafter "the customs debt"). The course of the second set of those proceedings is set out below.

7. By a decision of 1 October 2013, which was upheld on appeal by the Ministry of Finance on 29 September 2014, the customs authorities ordered the applicant to pay a customs debt in the amount of HRK 433,530.31, equivalent to EUR 57,539.

8. The applicant's action for judicial review was dismissed on 28 October 2016 by the Rijeka Administrative Court, and his subsequent appeal was dismissed on 13 April 2017 by the High Administrative Court. In the proceedings before those courts, the applicant was partially exempted (60%) from payment of court fees on account of his financial situation.

9. The domestic authorities relied on Article 5 § 1 (b) of Annex C to the Convention on Temporary Admission pursuant to which means of transport for private use in respect of which temporary admission was granted could not be used by persons resident in the territory of temporary admission. Since the applicant resided in Croatia, he was not allowed to use the yacht in question.

10. The applicant argued that he could not have been held liable for the customs debt because he had not imported the yacht to Croatia and was not its owner. He had merely taken the yacht from the repair shop to the marina at the owner's representative's request and as a matter of urgency. He further claimed that the customs authorities had failed to take into account the exception provided in Article 7 § 1 (b) of Annex C to the Convention on Temporary Admission, according to which means of transport for private use could be used by third persons who were duly authorised by the persons granted temporary admission. Lastly, given his low income and family situation, the payment of the customs debt in question constituted an excessive financial burden for him.

11. In reply, the authorities referred to the second sentence of Article 7 § 1 (b) of the Convention on Temporary Admission which left to each Contracting Party to set out the conditions under which persons resident in its territory were permitted to use the means of transport for private use which were granted temporary admission. Under Croatian law applicable at the time, namely section 267(1) of the Decree implementing the Customs Act, natural persons having residence in Croatia were permitted to use such means of transport if authorised by the person in whose name those means were registered but only if that person was at the time of their use present on Croatian territory. Since, when asking the applicant to take the yacht to the

marina, G.M. had not been in Croatia (see paragraph 4 above), the applicant had not been permitted to use the yacht.

12. The customs authorities' decision ordering the applicant to pay the customs debt was based on (i) paragraph 1 of section 207 of the Customs Act, which provided that a customs debt arose, *inter alia*, by non-fulfilment of the conditions for temporary admission, and (ii) paragraph 3 of that section, which defined "customs debtor" as a person who had to fulfil those conditions.

13. On 1 August 2017 the applicant lodged a constitutional complaint arguing, *inter alia*, that he had been ordered to pay the customs debt for the yacht which had never been in his ownership, and which had been returned to its owner and taken back to Italy (see paragraph 5 above). He further argued that the decision of the customs authorities was unlawful, and that the domestic law applied was unforeseeable. He relied on the Articles of the Croatian Constitution guaranteeing equality before the law, judicial review of decisions of public authorities and the right to fair proceedings.

14. The applicant also asked the Constitutional Court to issue an interim measure that would postpone the enforcement of the contested decision until that court had decided on his constitutional complaint. He submitted that his income was below average, and that the enforcement of the customs debt would cause him irreparable harm as it would jeopardise his living.

15. On 25 January 2018 the Constitutional Court dismissed the applicant's constitutional complaint, and on 6 February 2018 notified his representative of its decision.

16. Before the Court the applicant complained, under Article 1 of Protocol No. 1 to the Convention, that in the given circumstances the domestic authorities' decision ordering him, instead of the owner of the yacht, to pay the customs debt had imposed an excessive financial burden on him. He also complained that the domestic law applied was unforeseeable.

THE COURT'S ASSESSMENT

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

A. Admissibility

17. The Government submitted that the applicant had not exhausted domestic remedies, because in his constitutional complaint he had not relied on Article 1 of Protocol No. 1 to the Convention or the corresponding provision of the Croatian Constitution (see paragraph 13 above).

18. The Court has already dismissed similar objections as to the admissibility (see, for example, *Mesić v. Croatia (no. 2)*, no. 45066/17, §§ 44-47 and 49, 30 May 2023 and the cases cited therein), and sees no reason

to hold otherwise in the present case. In particular, while the applicant in his constitutional complaint indeed did not rely on Article 1 of Protocol No. 1 or the relevant provision of the Constitution, he did complain of the same facts and relied on the same legal arguments as in his subsequent application to the Court (see paragraphs 13 and 16 above). The way in which he expressed his grievances before the Constitutional Court leaves no doubt that the same complaint was subsequently submitted to the Court. Therefore, by raising the same issue in substance at domestic level, he had complied with the requirement to exhaust domestic remedies.

19. The Government's objection must therefore be rejected.

20. The Court further notes that the present application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Court reiterates that customs duties or charges for imported goods must be regarded as falling within the realm of taxation (see *Krayeva v. Ukraine*, no. 72858/13, § 28, 13 January 2022). The general principles emerging from the Court's case-law under Article 1 of Protocol No. 1 as regards taxation have been summarised in *Arnaud and Others v. France*, nos. 36918/11 and 5 others, §§ 23-25, 15 January 2015.

22. Having regard to that case-law, the Court finds that the decision ordering the applicant to pay the customs debt constituted an interference with his right to the peaceful enjoyment of his possessions.

23. That decision was based on the relevant provisions of the Convention on Temporary Admission, the Croatian Customs Act and related subordinate legislation (see paragraphs 9, 11 and 12 above). Contrary to the applicant's argument (see paragraphs 10, 13 and 16 above), the applied provisions of domestic law were clear and foreseeable. The interference in question was therefore provided for by law and aimed to secure the payment of taxes.

24. As regards the proportionality, the question to be answered is whether, in the given circumstances, the application of the tax law imposed an unreasonable burden on the applicant or fundamentally undermined his financial situation and thereby failed to strike a fair balance between the need to secure the payment of taxes and the protection of the applicant's property rights (see, for example, *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013).

25. In the present case the applicant was ordered to pay the customs debt as if the yacht in question had been imported, despite the fact that he had not brought it to Croatia, and even though the yacht had shortly afterwards been returned to Italy (see paragraph 5 above). There is no evidence that the applicant used the yacht for commercial purposes or for his own needs, or otherwise sought to abuse the procedure of temporary admission. Rather, on

the instructions of the yacht's owner, he took it from the repair shop to the marina in good faith, believing that it otherwise risked being damaged.

26. There is nothing to suggest that the customs authorities could not have collected the customs debt directly from the owner of the yacht (on whose instructions the applicant acted) or from the proceeds of its sale. Instead, even though the police initially impounded it, the yacht was returned to its owner and allowed to leave Croatia (see paragraph 5 above) whereas the obligation to pay the debt was imposed on the applicant alone.

27. The domestic authorities did not take into account these elements (see paragraphs 25-26 above), the applicant's financial situation or the fact that on account of the same events he was also fined for a customs-related minor offence (see paragraph 6 above). Instead, those authorities focused exclusively on the lawfulness of his conduct. Accordingly, the scope of their review was too narrow to satisfy the requirement of seeking the "fair balance" (see, for example, *Krayeva*, cited above, § 30).

28. As regards his financial situation, the applicant submitted that, being a person of modest means and given the substantial amount of the customs debt, he had not paid it off yet. This was not contested by the Government.

29. The foregoing considerations are sufficient to enable the Court to conclude that in the given circumstances ordering the applicant to pay the customs debt for the importation of the yacht imposed an unreasonable burden on him and fundamentally undermined his financial situation. The domestic authorities have thereby exceeded their wide margin of appreciation in tax matters and failed to strike a fair balance between the competing interests.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed, in respect of pecuniary damage, the sums that had thus far been collected from him on the basis of the impugned decision (see paragraph 7 above), as well the statutory default interest accrued on those sums. He provided relevant evidence that until 28 July 2017 the authorities collected HRK 57,716.95 (EUR 7,660) from his bank account. A similar document from the customs authorities submitted by the Government suggests that until 19 August 2019 a further HRK 16,984.90 (EUR 2,254) were collected from him.

32. The applicant also claimed HRK 1000,000 (EUR 13,272) in respect of non-pecuniary damage and HRK 54,359.10 (EUR 7,215) in respect of costs and expenses incurred before the domestic authorities and before the Court.

33. The Government contested these claims.

34. Having regard to the documents in its possession, the Court awards the applicant EUR 9,914 on account of pecuniary damage sustained until 19 August 2019, plus any tax that may be chargeable. As regards the remainder of his claim for pecuniary damage, namely the statutory default interest accrued on that amount and the pecuniary damage sustained in the subsequent period together with such interest, the Court, relying on its case-law (see *Agapov v. Russia*, no. 52464/15, § 67, 6 October 2020), notes that the applicant, based on the finding of a violation in the present case, may seek reopening of the proceedings before the administrative courts (see paragraph 8 above) and/or bring a civil action for unjust enrichment (see *Mindek v. Croatia*, no. 6169/13, § 92, 30 August 2016). The respondent State should also ensure that the applicant's property is not subject to further enforcement of the customs debt arising from the customs authorities' decision of 1 October 2013 (see paragraph 7 above).

35. As regards non-pecuniary damage, the Court awards the applicant EUR 5,000, plus any tax that may be chargeable.

36. Lastly, the Court considers it reasonable to award EUR 7,215 for costs and expenses incurred before the domestic authorities and before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State must ensure that the applicant's property is not subject to further enforcement of the customs debt arising from the customs authorities' decision of 1 October 2013 which did not comply with Article 1 of Protocol No. 1 to the Convention;
   (b) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 9,914 (nine thousand nine hundred and fourteen euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 7,215 (seven thousand two hundred and fifteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (c) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President