

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

THIRD SECTION

CASE OF PEKSERT v. BULGARIA

(Application no. 42820/19)

JUDGMENT

STRASBOURG

29 April 2025

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



In the case of Peksert v. Bulgaria,

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

Peeter Roosma*, President*,
Diana Kovatcheva,
Mateja Đurović*, judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 42820/19) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 August 2019 by a German national, Mr İsmail Peksert ("the applicant"), who was born in 1955, lives in Wuppertal and was represented by Mr G. İşler, a lawyer practising in Bursa;

the decision to give notice of the complaint made under Article 1 of Protocol No. 1 to the Convention to the Bulgarian Government ("the Government"), represented by their Agent, Ms R. Nikolova, from the Ministry of Justice, and to declare inadmissible the remainder of the application;

noting that the Government of Germany did not make use of their right to intervene in the proceedings (under Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated in private on 25 March 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns a complaint under Article 1 of Protocol No. 1 to the Convention that the confiscation of the applicant's golden jewellery for failing to declare it when crossing the Bulgarian border from Türkiye, in addition to imposing a fine on him, was excessive.

2. On 10 May 2018 the applicant, a German national of Turkish origin, travelled with his wife by car from Türkiye to Germany, where they had been living for decades, passing through Bulgaria. They carried 1,350 grams of golden jewellery inherited from family, which was stored in a suitcase holding their personal belongings at the back of their car. The customs officers invited the applicant and his wife to declare any goods or objects they were transporting but they did not declare anything. The officers searched the car, discovered the jewellery and seized it. They informed the applicant that the permitted amount of gold to be transported across the border without a declaration was 60 grams. They also drew up and handed the applicant an administrative decision (*акт за установяване на административно нарушение*) establishing that, by not declaring the jewellery with an

estimated value of 66,156.11 Bulgarian levs (BGN), equivalent to 33,825 euros (EUR), the applicant had breached customs rules.

3. On 18 September 2018 the deputy head of the regional customs office issued the applicant with a penal order for having failed to declare the jewellery, in breach of section 14a(1) of the Currency Act ("the Act"). The order fined the applicant with BGN 1,000 , equivalent to approximately EUR 515, in accordance with section 18(1) of the Act, and ordered the confiscation of the seized golden jewellery with the above-mentioned value (see paragraph 2 above), in accordance with section 20(1) of the Act. The order also noted that, according to the applicant's written explanation, the jewellery belonged to him, was not intended for commerce, was used and old. A forensic expertise subsequently confirmed that the jewellery was made of old used yellow gold.

4. The applicant brought judicial review proceedings. He argued that he had not been hiding the jewellery, since it had been placed in his suitcase together with personal belongings. He claimed that he had neither been informed in the Turkish language, nor aware of any obligation to declare the gold. The absence of such knowledge excluded all guilty conduct on his part. Also, he had not been assisted by a certified translator when the customs breach had been established. The penal order had thus been unlawful, unreasonable and unproven.

5. On 5 November 2018 the Svilengrad District Court upheld the penal order. It found that the applicant had breached the Act by failing to declare the gold with the above-mentioned value (see paragraph 2 above) at the national border. He had acted with intent because, at the very least, he should have been aware of his obligation to declare it. In any event, the fact of not declaring was all that was required under the law for a breach to be established, which in turn attracted administrative-penal responsibility. Finally, a customs official had orally translated the contents of the administrative decision (see paragraph 2 above) ascertaining the applicant's infringement of the customs rules.

6. The applicant appealed, reiterating his arguments. In a final judgment of 15 February 2019, the Haskovo Administrative Court confirmed the lower court's findings.

THE COURT'S ASSESSMENT

7. The Government submitted that the application should be declared inadmissible for non-exhaustion of domestic remedies, on the following two counts.

8. Firstly, the applicant had failed to raise before the national courts the complaint he made before the Court. He had not argued, even in substance, a violation of his right under Article 1 of Protocol No. 1. He had not claimed in a sufficiently clear and comprehensive manner that, while fining him might

have been proportionate to his customs offence, confiscating in addition his golden jewellery had been excessive. Nor had he claimed that the confiscation should have concerned only jewellery exceeding the amount of 60 grams.

9. Secondly, he had failed to claim before the national courts that the sanctions imposed on him were contrary to European Union law. He had also failed to request suspension of the judicial proceedings, awaiting a preliminary ruling of the Court of Justice of the European Union (CJEU) in case C-652/18, which was delivered on 3 October 2019 and concerned the proportionality of confiscations of undeclared cash entering or leaving the European Union.

10. The Court observes, firstly, that the applicant contested the confiscation of his golden jewellery before the national courts (see paragraph 4 above) in proceedings in which the penal order could have been overturned and the jewellery returned to him (compare, *mutatis mutandis*, *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 137, 13 July 2021, and *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 23, 17 September 2015). While he did not explicitly claim that the confiscation had been disproportionate, he challenged it on the ground that he had been unaware of the obligation to declare it. Since under domestic law there was no limitation on the amount of precious metals one could transport across the border on condition that it be declared if above a certain amount (sections 14 and 14a of the Act as worded at the time; also compare on the facts with *Gabrić v. Croatia*, no. 9702/04, § 36, 5 February 2009), if he had declared the jewellery, he would have suffered no adverse consequences. This was so especially given that the authorities and courts accepted that the jewellery was old, used, belonged to him and was not intended for commerce, and at no point in time considered its origin criminal.

11. Therefore, the applicant's arguments can be read in essence to say that the sanctions imposed were disproportionate to his conduct (compare *Gabric*, cited above, § 39).

12. The applicant thus provided the national authorities with the opportunity, which is intended to be afforded to Contracting States by Article 35 § 1, of putting right the violations alleged against them (see, for general principles, *Vučković and others v. Serbia*, nos. 17153/11 and 29 others, §§ 69-75, 25 March 2014).

13. As to the second argument (see paragraph 9 above), it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, if necessary in conformity with EU law, the Court's role being confined to ascertaining whether the effects of such adjudication are compatible with the Convention (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 110, 3 October 2014). Furthermore, to the extent that the applicant had brought judicial review proceedings at the end of which the domestic courts, guided by the relevant Convention case-law developed by the Court, could have provided him with redress, the applicant was not required in addition to seek

suspension of those proceedings. The domestic court had discretion to suspend them of its own motion, if it considered that the preliminary ruling awaited in the other set of parallel pending proceedings could have a decisive effect on resolving the case, something it did not do (contrast *Laurus Invest Hungary KFT and Others v. Hungary* (dec.), nos. 23265/13 and 5 others, §§ 14, 16, 18 and 34-43, ECHR 2015 (extracts), where the domestic court had suspended the proceedings of its own motion and requested a preliminary ruling from the CJEU, and the proceedings were pending before it at the time the Court was called upon to decide).

14. This complaint is thus not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must be declared admissible.

15. The general principles concerning fines and confiscation of property undeclared at a national border have been summarised, among others, in *Ismayilov v. Russia* (no. 30352/03, § 38, 6 November 2008), *Gabrić*, cited above, and *Grifhorst v. France* (no. 28336/02, §§ 81-86, 26 February 2009).

16. A confiscation measure constitutes control on the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, among others, *Gabrić*, cited above, § 33). The interference with the applicant's right, namely the confiscation of his jewellery, was prescribed by law – sections 14a(1) and 20(1) of the Act – and pursued the legitimate aim of controlling the import and export of precious metals. However, it was not proportionate to the aim pursued for the following reasons.

17. There was no doubt or suspicion concerning the lawful origin of the jewellery: the applicant had given explanations which appear to have been accepted by the authorities and courts alike. The only offence for which he was sanctioned was his failure to declare the golden jewellery (see paragraphs 5 and 6 above; compare also with *Yaylalı v. Serbia*, no. 15887/15, § 52, 17 September 2024). At the time of the events it was not unlawful under Bulgarian law to transport such jewellery across the border as long as it was declared if above a certain amount (contrast *AGOSI v. the United Kingdom*, 24 October 1986, § 34, Series A no. 108, concerning a ban on importing gold coins, or *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV, concerning a vehicle used for trafficking in human beings). Sections 20 and 14a of the Act were subsequently repealed, respectively in 2020 and 2023, eliminating the requirement of declaration and the corresponding penalty of confiscation in cases of failure to declare (see also *Grifhorst*, cited above, § 103).

18. As to the applicant's conduct, while he did not declare the jewellery upfront, it was not concealed but transported with his other personal belongings and he had provided the explanations how he had obtained it. In similar cases the penalty ought to correspond to the gravity of the confirmed omission and not to the severity of a potential crime which had not been established, such as for example smuggling, money-laundering or tax evasion

(see *Gabrić*, cited above, § 39, *Stoyan Nikolov v. Bulgaria*, no. 68504/11, § 63, 20 July 2021, and *Yaylalı*, cited above, § 53).

19. Given that the authorities confiscated all of the applicant's jewellery, the confiscation clearly had a punitive purpose, since it was not aimed at compensating the State for a loss it had incurred (compare with *Yaylalı*, cited above, § 55). The Government had not demonstrated convincingly that it had been necessary to cumulate the fine with the confiscation in order to ensure the dissuasive effects of the administrative penalty and to prevent future breaches of the obligation to declare (see *Stoyan Nikolov*, cited above, § 63, and *Yaylalı*, cited above, § 58, and contrast *Karapetyan v. Georgia*, no. 61233/12, §§ 6, 38 and 40, 15 October 2020).

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant claimed the return of his golden jewellery. Failing this, he claimed EUR 300,000, with interest, without specifying further. He also claimed EUR 100,000 for pecuniary damage, EUR 100,000 for non-pecuniary damage, and costs and expenses both before the domestic courts and the Court without specifying an amount.

22. The Government submitted that the applicant's claims were excessive. If the Court were to find a violation, it had to award a lump sum in compensation for all damage.

23. The Court considers that the finding of a violation constitutes a sufficient just satisfaction in respect of non-pecuniary damage. In respect of pecuniary damage, it finds that the authorities should return the confiscated golden jewellery to the applicant, failing which they should pay him EUR 33,825 plus any tax that may be chargeable. This sum corresponds to the value that had been determined by the authorities and accepted by the national courts in the subsequent judicial review proceedings (see paragraphs 2, 3, 5 and 6 above).

24. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 40 for translation costs in the proceedings before it, 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* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State should return the confiscated golden jewellery to the applicant, within three months, failing which it is to pay the applicant, within the same three-month period, the amount of EUR 33,825 (thirty-three thousand eight hundred and twenty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
   (b) that the respondent State is to pay the applicant, within three months, EUR 40 (forty 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;

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

Done in English, and notified in writing on 29 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President