

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

SECOND SECTION

CASE OF STOJEVIĆ v. CROATIA

(Application no. 39852/20)

JUDGMENT

STRASBOURG

4 March 2025

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



In the case of Stojević v. Croatia,

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

Anja Seibert-Fohr*, President*,
Davor Derenčinović,
Gediminas Sagatys*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 39852/20) 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 31 August 2020 by a Croatian national, Mr Zvonko Stojević ("the applicant"), who was born in 1952, lives in Vienna and was represented by Ms V. Drenški Lasan, a lawyer practising in Zagreb;

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

the parties' observations;

Having deliberated in private on 4 February 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the confiscation of 100,000 euros (EUR) in cash which the applicant failed to declare to the Croatian customs authorities when exiting Croatia.

2. On 7 December 2011 the applicant attempted to cross the Croatian border carrying EUR 100,000 in cash, which he failed to declare to the customs authorities. The money was temporarily seized.

3. Administrative-offence proceedings were initiated against him as the failure to declare cash exceeding EUR 10,000 was an administrative offence under the domestic legislation regulating foreign currency operations and prevention of money laundering.

4. In his defence, the applicant argued, *inter alia*, that he had borrowed the money in question from a certain Mr A.P. for the purposes of obtaining a loan in the United Kingdom, where he had been travelling to on the day in question. The applicant submitted a certificate co-signed by A.P. confirming that the latter had borrowed him the money, and that the applicant was to repay it with (unspecified) interest. A.P. testified in the proceedings, confirming he had lent the money to the applicant.

5. By a decision of 21 February 2014, the Ministry of Finance found the applicant guilty of the administrative offence in question, fined him 5,000 Croatian kunas (approximately EUR 665), and confiscated the entire

amount of EUR 100,000 in cash. In particular, it found the applicant's defence unconvincing and held that he had failed to demonstrate both the legitimate origin of the money – i.e., that it was lent to him by A.P. – as well as its purpose.

6. The applicant's appeal, in which he challenged the confiscation measure, was dismissed on 16 December 2015 by the judgment of the High Court for Administrative Offences, upholding the Ministry's decision.

7. The applicant's constitutional complaint, in which he alleged, *inter alia*, a violation of his right to property, was dismissed by the Constitutional Court's decision of 15 April 2020, notified to the applicant's representative on 20 April 2020.

8. Before the Court the applicant complained, under Article 1 of Protocol No. 1 to the Convention, that the confiscation measure had been disproportionate, in that it imposed an excessive burden on him, thus violating his property rights.

THE COURT'S ASSESSMENT

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

A. Admissibility

9. The Government raised an inadmissibility objection, arguing that the applicant could not be considered a victim of a violation of Article 1 of Protocol No. 1. They submitted that, as in the cases of *Dagostin v. Croatia* (dec.) [Committee], no. 67644/12, 23 May 2017, and *Dolić and Hasani v. Croatia* (dec.) [Committee], nos. 10647/17 and 39650/17, 14 June 2022, the applicant had based his entire defence before the domestic authorities on the argument that the confiscated cash had not been his, but the property of A.P. from whom he had borrowed it.

10. The Court firstly notes that the applicant indeed, seeking to prove the lawful origin of the money, argued that he had borrowed it from A.P. However, that argument could not be equated with him having denied the ownership of the cash in question. It notes in that context that under section 499(2) of the Croatian Obligations Act, which governs loan agreements, the borrower becomes the owner of the money received and is to return to the lender, after the period agreed upon, the same amount.

11. The present case is thus to be distinguished from the cases of *Dagostin*, cited above, § 25, where the applicant claimed that a part of the confiscated money belonged to his mother, and *Dolić and Hasani*, cited above, §§ 4 and 14, where the applicants submitted that the confiscated money belonged to third parties.

12. More importantly, the Court notes that the domestic courts were not convinced by the applicant's argument and held that he had not succeeded in proving that he had received the money as a loan from A.P. In those circumstances, what is of importance is the fact that it was the applicant who was in possession of the confiscated cash, and that nobody other than the applicant claimed its ownership – including A.P., who confirmed that he had lent the money to the applicant (see paragraph 4 above).

13. In view of the foregoing and having regard to the Court's case-law on the matter (see *Ziaunys v. the Republic of Moldova*, no. 42416/06, §§ 30-32, 11 February 2014), it follows that the applicant, having been in possession of the cash in question, must be presumed to have a property right over it. As neither in the domestic proceedings nor in the proceedings before the Court a proof to the contrary has been adduced, the Government's objection must be rejected (contrast with *Eliseev and Ruski Elitni Klub v. Serbia* (dec.), no. 8144/07, § 34, 10 July 2018).

14. The Court notes that this complaint 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

15. The Court has already found a violation of Article 1 of Protocol No. 1 to the Convention in cases raising similar issues to the present one (see *Boljević v. Croatia*, no. 43492/11, 31 January 2017; and *Imeri v. Croatia*, no. 77668/14, 24 June 2021). It considered in these cases that the confiscation of the entire or large parts of the cash which the applicants failed to declare when crossing the border constituted an interference with their right to property, namely a control of the use of that property for the purposes of the second paragraph of Article 1 of Protocol No. 1 (see *Boljević*, §§ 37-38, and *Imeri*, §§ 65-66, both cited above). The Court further reiterated that in order to be proportionate, the severity of the sanctions had to be commensurate to the seriousness of the breaches for which they were imposed, that is, the failure to comply with the declaration requirement, rather than any presumed offence which had not actually been established (see *Boljević*, § 44, and *Imeri*, §§ 84 and 87). As in the cases at issue, the confiscation sanctions had been imposed (in addition to a fine) solely for the applicants' failure to declare the money in question to customs, without them being charged with any criminal offences related to that money such as money laundering, and without the applicants having avoided any customs duties, the Court considered that the confiscation of the large amounts of cash in question as an additional sanction to the fine was disproportionate in that it imposed an excessive burden on the applicants (see *Boljević*, §§ 41-46, and *Imeri*, §§ 84-94).

16. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the present application.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed EUR 100,000 in respect of pecuniary damage. He also claimed default (simple) interest accrued on that amount from 8 December 2011 until the date of payment, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points. Lastly, the applicant sought EUR 4,120 in respect of costs and expenses incurred before the domestic courts and EUR 1,629.75 in total for those incurred before the Court.

19. The Government contested these claims.

20. The Court has found that an amount of EUR 100,000 was confiscated from the applicant in breach of Article 1 of Protocol No. 1. It therefore accepts the applicant's claim in respect of pecuniary damage and awards him EUR 100,000 under this head, plus any tax that may be chargeable on that amount. As regards the default interest, the Court notes that the applicant did not specify the amount of that interest. It therefore does not award him any sum on that account (compare *Boljević*, cited above, § 53).

21. 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 have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,120 for costs and expenses incurred in the domestic proceedings and EUR 1,629.75 for the proceedings 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 is to pay the applicant, within three months, the following amounts:
      (i) EUR 100,000 (one hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,749.75 (five thousand seven hundred and forty-nine euros and seventy-five cents), 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;

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

Done in English, and notified in writing on 4 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Anja Seibert-Fohr President