

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

FOURTH SECTION

CASE OF TANASOV v. ROMANIA

(Application no. 65910/09)

JUDGMENT

STRASBOURG

31 October 2017

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



In the case of Tanasov v. Romania,

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

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 65910/09) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Octavian Tanasov ("the applicant"), on 2 December 2009. The applicant was represented by Mr I. Aramă, a lawyer practising in Bucharest.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar of the Ministry of Foreign Affairs.

3. On 20 April 2016 the complaint concerning the right to the peaceful enjoyment of possessions was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government of the Republic of Moldova were informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 2 (a) of the Rules of Court) but did not avail themselves of it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Dublin, Ireland.

6. On 28 October 2008 the applicant was travelling on a passenger bus from Moldova to Romania, with Ireland as his final destination.

7. At 12.30 a.m. his bus arrived at the Albiţa border crossing between Moldova and Romania. Romanian custom officers stopped the bus, got on and started searching the passengers. Two silver ingots were found in the applicant's pockets.

8. A customs officer decided that the applicant had failed to declare the ingots and confiscated them. An offence report drafted by the officer stated that the applicant had failed to declare two silver ingots of 1 kg each and had thereby breached the provisions of Article 653 (a) of the Customs Regulations (see paragraph 12 below). In addition to the confiscation the applicant was fined 3,000 Romanian lei (approximately 750 euros (EUR)). The report also stated that according to documents produced by the applicant he had bought the two ingots from a bank.

9. The applicant lodged an administrative complaint with the Albiţa Customs Office, asking for the annulment of the offence report of 28 October 2008 and the restitution of the confiscated goods. He explained that he had legally acquired the two ingots, which had a value of EUR 500. He had kept them on him in order to prevent them being stolen during the bus trip and not to elude customs. He also stated that it had not been possible to declare goods to customs in a discrete manner or in writing. The passengers had not been allowed to get off the bus before the customs officers had got on and he had wished to avoid saying what he was carrying in front of the other passengers.

10. On 26 January 2009 the Huşi District Court dismissed the applicant's complaint as ill-founded. Based on the elements in the case file, the court observed that the customs officer had asked the applicant whether he had anything to declare and the applicant had said no. Under those circumstances the court held that the applicant had been correctly sanctioned by the customs officer.

11. An appeal on points of law by the applicant (*recurs*) was dismissed with final effect on 3 June 2009 by the Vaslui County Court. The court held that the applicant, who had signed the offence report, had failed to produce any evidence to challenge the customer officer's findings in that document.

II. RELEVANT DOMESTIC AND EUROPEAN UNION LAW

12. The relevant provisions of the Romanian Customs Regulations, as approved by Government Decision No. 707/2006, are as follows:

Article 156

"(1) A written customs declaration shall be submitted for the following goods:

....

c) objects made of precious metals, with or without precious stones, which exceed the purposes of personal use as set forth in legal provisions;

(2) For the goods listed in paragraph (1) travellers shall submit the written customs declaration on standard forms which are made available free of charge, upon request, by customs offices."

Article 653

"The following is considered an offence and shall be sanctioned with a fine between 3,000 and 8,000 lei:

a) concealing from customs any goods or merchandise which should be placed under a customs regime. In such situations the goods shall be confiscated; ..."

Article 657

"The offences set forth in the present chapter are subject to the regulations provided for by Government Ordinance No. 2/2001 on the legal system concerning offences ..."

13. According to the Romanian Integrated Customs Tariff in force at the relevant time silver imported from the Republic of Moldova was not subject to any duties.

14. The relevant provisions of Government Ordinance No. 2/2001 on the legal system concerning offences in force at the relevant time are as follows:

Article 5

"(1) Offences may be punished with principal and complementary sanctions.

(2) The principal sanctions are:

...

b) a fine

...

(3) The complementary sanctions are:

a) the confiscation of goods destined, used or derived from offences; ...

(4) Special laws may provide for additional principal or complementary sanctions.

(5) The sanction must be proportionate to the degree of social danger of the offence committed.

(6) Complementary sanctions are applied in line with the nature and gravity of the offence.

(7) Only one principal sanction can be applied for the same offence and one or more complementary sanctions."

15. The Commission Regulation (EC) No. 1214/2007 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff entered into force on 1 January 2008 and from that date was directly applicable in all Member States. In Section XIV, Chapter 71 the regulation does not provide for any customs duties for silver in unwrought or semi-manufactured forms or in powder.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

16. The applicant complained that the confiscation of his goods had been a disproportionate measure, bearing in mind that the ingots had been lawfully acquired and that he had also been fined for the same offence. He also alleged that the proceedings which he had initiated afterwards had failed to establish a fair balance between the general interest and his right to the peaceful enjoyment of his possessions.

He relied on Article 1 of Protocol No.1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

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

B. Merits

18. The Government admitted that the confiscation of the two ingots had amounted to an interference with the applicant's right of property. However, that interference had been lawful and had pursued a legitimate aim. In particular, the Government argued that the confiscation, as a sanction for the administrative offence in question, had been prescribed by Romanian Customs Regulations, which had been sufficiently clear, accessible and foreseeable. The Government further submitted that the confiscation had had a legitimate aim, namely the protection of the general interest of checking certain goods prior to their entry into commercial circulation and ensuring a functioning customs regime, which entailed the adequate collection of taxes and other contributions. As to proportionality, the Government stated that Romania's geographical position at the border of the European Union called for strong enforcement of border crossing legislation

as an obligation flowing from its status as a Member State. Referring to the legal framework applicable in the case (see paragraphs 12 above), the Government contended that once the commission of an offence had been uncovered, the authorities had no other choice but to apply a fine and to confiscate undeclared goods. Nevertheless, the authorities had applied the minimum fine provided for by law in the current case.

19. The applicant did not submit any observations within the time-limit set by the Court.

20. The Court observes that it was not disputed between the parties that the decision to confiscate the ingots from the applicant constituted an interference with his right of property (see paragraph 18 above), and that Article 1 of Protocol No. 1 was therefore applicable. Having regard to its case-law on the matter (see, for example, *Ismayilov v. Russia*, no. 30352/03, § 29, 6 November 2008, and *Boljević v. Croatia*, no. 43492/11, § 37, 31 January 2017), the Court sees no reason to hold otherwise.

21. As regards the issue of which of the rules of Article 1 of Protocol No. 1 applies, the Court reiterates its consistent approach that a confiscation measure, even though it does involve a deprivation of possessions, nevertheless constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see *Ismayilov*, cited above, § 30, and *Grifhorst v. France*, no. 28336/02, §§ 85-86, 26 February 2009).

22. As to the lawfulness of the interference, the Court notes that the obligation to declare the silver to customs was provided for by domestic law, namely Article 156 of the Customs Regulations. The sanctions for non-compliance with that obligation, namely a fine and confiscation, were provided for under Article 653 (a) of the same regulations (see paragraph 12 above). The Court is therefore satisfied that the interference with the applicant's property right was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

23. The Court agrees with the Government that the interference pursued a legitimate aim in the general interest, namely, ensuring a functioning customs regime.

24. Accordingly, the remaining question for the Court to determine is whether there was a reasonable relationship of proportionality between the means employed by the authorities to achieve that aim and the protection of the applicant's right to the peaceful enjoyment of his possessions. The Court must examine in particular whether the interference struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the applicant's right of property, having regard to the margin of appreciation left to the respondent State in that area. The requisite balance will not be achieved if the applicant has had to bear an individual and excessive burden (see *Grifhorst*, cited above, § 94, and *Boljević*, cited above, § 41).

25. The administrative offence of which the applicant was found guilty consisted of his failure to present the two ingots of silver he was carrying to customs. It is important to note that the act of bringing silver into Romania was not illegal under Romanian law as it was expressly allowed by Article 156 § 1 (c) of the Customs Regulations (see paragraph 12 above). Moreover, according to the Romanian Integrated Customs Tariff and the EU Common Customs Tariff, silver in the form carried by the applicant was free from duties (see paragraphs 13 and 15 above). Those elements distinguish this case from certain others, in which the confiscation measure applied either to goods whose import was prohibited or to vehicles used for transporting prohibited substances or trafficking human beings (see the cases referred to in *Ismayilov*, cited above, § 35, and *Grifhorst*, cited above, § 99).

26. Furthermore, the lawful origin of the confiscated silver was not contested. The applicant possessed documentary evidence showing that he had bought the silver from a bank (see paragraph 8 above). There is nothing in the file to suggest that the applicant had a criminal record, that he had been suspected or charged with any criminal offences prior to the incident at issue and/or that by imposing the confiscation measure on the applicant the authorities sought to forestall any other illegal activities, such as money-laundering, drug trafficking, financing of terrorism or tax evasion. The silver he transported had been lawfully acquired and he was allowed to take it into Romania as long as he declared it to the customs authorities. It follows that the only criminal conduct which could be attributed to him was the failure to make a declaration to that effect to the customs authorities.

27. The Court reiterates that in order to be proportionate the interference should correspond to the severity of the infringement, and the sanction to the gravity of the offence it is designed to punish – in the instant case, the failure to comply with the declaration requirement – rather than to the gravity of any presumed infringement which has not actually been established, such as an offence of money-laundering or tax evasion (see *Grifhorst*, cited above, § 102, and *Boljević*, cited above, § 44).

28. The confiscation measure in question in this case was not intended to be pecuniary compensation for damage – as the State had not suffered any loss as a result of the applicant's failure to declare the silver – but was deterrent and punitive in its purpose. It has not been convincingly shown or indeed argued by the Government that the fine alone, equivalent to EUR 750, was not sufficient to achieve the desired deterrent and punitive effect and prevent future breaches of the declaration requirement. In those circumstances, the Court concludes that the confiscation of the two silver ingots that should have been declared, as an additional sanction to the fine, was disproportionate in that it imposed an excessive burden on the applicant (see, *mutatis mutandis*, *Ismayilov*, cited above, § 38, and *Boljević*, cited above, § 45).

29. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

31. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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.

Done in English, and notified in writing on 31 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Deputy Registrar	Paulo Pinto de Albuquerque President