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

FOURTH SECTION

DECISION

Application no. 33766/18
Iulia CIOROIANU
against Romania

The European Court of Human Rights (Fourth Section), sitting on 1 April 2025 as a Committee composed of:

Anne Louise Bormann*, President*,
Sebastian Răduleţu,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 33766/18) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 July 2018 by a Romanian national, Ms Iulia Cioroianu ("the applicant"), who was born in 1985, lives in Drobeta-Turnu-Severin and was represented by Mr S. Crudiu, a lawyer practising in Drobeta-Turnu Severin;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer of the Ministry of Foreign Affairs;

the observations submitted by the respondent Government;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns an alleged breach of the double jeopardy principle because of administrative and criminal proceedings brought against the applicant in relation to goods she had brought into the country without declaring them to the customs authorities. It mainly concerns Article 4 of Protocol No. 7 to the Convention.

2. On 12 October 2014 the applicant was fined 3,000 Romanian *lei* (RON) (approximately 600 euros (EUR)) by the Customs Office of the Henri Coandă International Airport of Bucharest for the minor administrative offence

(*contravenție*) of failure to declare goods she had brought into the country in her luggage, namely around 160 smartphones and tablets which had been purchased in Dubai, to customs officers. The fine was calculated according to Section 653 (1) (a) of Government Decision No. 707/2006 on the application of the Customs Code. The applicant paid the fine and subsequently contested it, but her challenge was struck out for failure to comply with the procedural requirements.

3. On the same date, the Prosecutor's Office of Buftea initiated a criminal investigation (*începerea urmăririi penale*) against the applicant, who was accused of smuggling (*contrabandă*) a large quantity of smartphones and tablets, with a customs valuation of RON 294,806.54 (around EUR 60,000).

4. Having considered the evidence, on 11 April 2017 the Prosecutor's Office indicted the applicant under Section 270 (2) (a) of Law No. 86/2006 on the Customs Code for importing specified goods or merchandise subject to customs or excise duties without having paid the requisite duties, when the customs valuation of the goods or merchandise exceeded either, for certain goods, RON 20,000 (around EUR 1,800) or, for other kinds of goods or merchandise, RON 40,000 (around EUR 3,600).

5. A simplified procedure was available under Article 375 (1) of the Code of Criminal Procedure, given the applicant's admission of guilt. There was also a change in the legal classification of the disputed charge. By a judgment of 23 January 2018, the Buftea First Instance Court convicted the applicant of the offence of small-scale smuggling under Section 274 of Law No. 86/2006 read in conjunction with its Section 270 (2) (a) thereof. It sentenced her to a suspended term of three years' imprisonment.

6. The court based its assessment of the double jeopardy principle on the criteria developed in the case-law of the European Court of Human Rights. It held that the administrative and criminal proceedings brought against the applicant pursued complementary aims. On the one hand, the administrative offence punished the omission to declare goods to customs officers, regardless of whether those goods were taxable (*regim taxabil*) or not. On the other hand, the criminal offence was designed to prevent fraud against the State, mainly by criminalising the importing of goods above a certain value by improperly avoiding customs procedures.

7. The court further said that, when sentencing the applicant to a suspended prison sentence, it had taken into account the fine of RON 3,000 she had already paid and had decided not to fine her further in addition to giving her the suspended prison sentence (*înlătură ... aplicarea pedepsei amenzii pe lângă pedeapsa închisorii*). The court also held that the two procedures had foreseeable consequences both in law and in practice. Lastly, it ordered the applicant and her co-defendant to pay RON 63,754 to the tax authorities, as main tax for the imported goods.

8. On appeal by the applicant, on 8 May 2018 the Bucharest Court of Appeal upheld the judgment of the first-instance court. The appeal court

ordered the applicant and her co-defendant to pay an additional sum (*obligaţii fiscale accesorii*) starting from 12 October 2014 until the original tax debt was paid (*până la achitarea completă a debitului*).

9. The applicant complained under Article 6 of the Convention and under Article 4 of Protocol No. 7 to the Convention that she had been punished in criminal proceedings for an offence of which she had already been finally punished in the administrative proceedings.

THE COURT'S ASSESSMENT

10. The Court considers that the case falls to be examined under Article 4 of Protocol No. 7 alone.

11. The relevant principles concerning the protection against the duplication of criminal proceedings are summarised in *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, §§ 79-84, ECHR 2009), *A and B v. Norway* ([GC], nos. 24130/11 and 29758/11, §§ 105-34, 15 November 2016) and *Mihalache v. Romania* ([GC], no. 54012/10, §§ 47-49, 53-54, 67 and 88-116, 8 July 2019). They have most recently been reiterated in *C.Y. v. Belgium* (no. 19961/17, §§ 35-37, 52-55 and 57-59, 14 November 2023).

12. In a comparable case against Romania involving minor offences, the Court held, on the basis of the "*Engel* criteria" (see *Engel and Others v. the Netherlands*, § 82, 8 June 1976, Series A no. 22), that proceedings for minor offences were "criminal" in nature for the purposes of Article 4 of Protocol No. 7 (see *Vasile Sorin Marin v. Romania*, no. 17412/16, §§ 40-45, 3 October 2023).

13. Taking into consideration the nature of the offence in question, together with the severity of the penalty, the Court sees no reason to depart from the conclusion reached in those previous cases. It considers that both sets of proceedings in the present case concerned a "criminal" matter within the meaning of Article 4 of Protocol No. 7 to the Convention.

14. The Court further reiterates that the idea in Article 4 of Protocol No. 7 of an offence of which one has already been finally acquitted or convicted is to be understood as a second "offence" arising from identical facts or facts which are substantially the same as those of a previous offence (see *Sergey Zolotukhin*, cited above, §§ 78-84).

15. In the present case, the applicant was first fined for the minor administrative offence of failure to declare to customs officers goods liable to customs duty that she had brought into the country in her luggage. Subsequently, in the proceedings on indictment, the applicant was charged with, and on 23 January 2018 found guilty of, an offence under Section 270 (2) (a) of Law No. 86/2006 on the Customs Code, which prohibited the importing of specified goods or merchandise liable to customs or excise duties without having paid the requisite duties, when the custom value of those goods or merchandise exceeded either, for certain goods, RON 20,000

(around EUR 1,800) or, for other kinds of goods or merchandise, RON 40,000 (around EUR 3,600) (see paragraphs 2, 3 and 5 above).

16. Even assuming that the facts constituting the two offences were to be regarded as substantially the same for the purposes of Article 4 of Protocol No. 7, the Court considers that the aims of the punishments for the two offences, which addressed different aspects of the same conduct, ought to be considered as a whole. In the present case, there were two foreseeable and complementary types of proceedings, which were sufficiently connected in substance and in time, as required by the Court's case-law, to form part of an integral scheme of sanctions under Romanian law for offences in the area of customs fraud. There was an adequate level of interaction between those two sets of proceedings, and the punishments imposed, taken together, did not make the applicant bear an excessive burden, but were proportionate to the seriousness of the offence (*Galović v. Croatia*, no. 45512/11, § 123, 31 August 2021).

17. In particular, the Court notes that the criminal court took into account the previous minor offence proceedings and that the two penalties imposed on the applicant were combined and integrated, in that the domestic courts decided not to impose a fine in addition to the suspended prison sentence because an administrative fine had already been paid by the applicant (see paragraph 7 above) (contrast *Vasile Sorin Marin,* cited above, § 61).

18. Moreover, there is nothing in the file that would suggest that the law and practice were not foreseeable. The evidence given in the administrative proceedings was included in the criminal proceedings, which avoided duplication in the gathering and assessment of evidence (*C.Y. v. Belgium,* cited above, §§ 65 and 67). The administrative fine was imposed in parallel with the start of the criminal proceedings (see paragraphs 2 and 3 above). The criminal proceedings were concluded less than four years after the applicant was fined in the first, administrative proceedings (see paragraph 8 above). The Court considers that the two sets of proceedings were sufficiently connected in time within the meaning of its case-law (see *A and B v. Norway*, cited above, § 134, and *Vasile Sorin Marin,* cited above, §§ 55-56).

19. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 April 2025.

Simeon Petrovski Deputy Registrar	Anne Louise Bormann President