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

THIRD SECTION

DECISION

Application no. 15629/04
Iosif Liviu MATACHE-GONU
against Romania

The European Court of Human Rights (Third Section), sitting on 22 October 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 1 March 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Iosif Liviu Matache-Gonu, is a Romanian national, who was born in 1964 and lives in Bucharest.

2. The Romanian Government ("the Government") were represented by their Agent, Mr R.-H. Radu, from the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 16 May 2003 the applicant took to Romania a car he had bought in Germany and for which he had paid 9,650 euros (EUR). An initial customs declaration was filled in on that date at the Romanian border.

5. Subsequently, at his place of residence the applicant started the process of registering the car. On 20 May 2003 the registration office informed him that the car could be registered only if it passed a technical roadworthiness test.

6. On 22 May 2003 the Bucharest Customs Office issued a primary customs declaration attesting that until it had been further clarified whether the car could be registered in Romania or not, it would have the status of goods in transit.

7. Both customs declarations were filled in on behalf of the applicant by companies specialised in providing customs services. The companies' names were recorded as the person declaring the goods, while the applicant's name was recorded under the section "recipient of the goods".

8. On 23 May 2003, while the car was still in customs transit, the applicant sold it to D.D. He alleged that the car could not be registered in Romania as it was not environmentally friendly and did not fulfil certain technical criteria required by law. On the same day D.D. tried to take the car to the Republic of Moldova, but was prevented from doing so by Romanian border guards on the grounds that the car was still "in transit" and had not been cleared for export.

9. On 26 May 2003, in the presence of the applicant, a customs officer drew up a report for the offence of selling goods while in customs transit. The applicant was fined 25,000,000 lei (ROL) and the car was confiscated in accordance with Article 386 (f) of the Instructions for the Application of the Romanian Customs Code (IARCC). The applicant signed the offence report without written comments.

10. On 18 June 2003 the Râmnicu-Vâlcea District Court allowed an action lodged by the applicant and annulled the car sale contract concluded between him and D.D. on the grounds that D.D. had not paid the full price agreed. The court also mentioned that the advance of ROL 10,000,000 had been returned to D.D.

11. The applicant contested the offence report before the courts, seeking annulment of the fine and the return of the car. He claimed that only D.D. should have been fined, since he had been the owner of the car when the report had been drawn up. On 14 July 2003 the Târgu Bujor District Court rejected the applicant's action on the grounds that he had committed the offence of selling a car in customs transit, in contravention of Article 386 (f) of the IARCC. The court held that both the fine and the confiscation of the car were prescribed by law in order to prevent fiscal fraud.

12. The applicant appealed against the decision, claiming that, since the sale contract had been annulled by a final judgment, the offence no longer existed.

13. On 12 January 2004 the Galaţi County Court analysed the applicant's allegations and concluded that the annulment of the sale contract subsequent to the discovery of the offence by the customs authorities did not infer that the offence no longer existed or had not been committed. The court further examined whether the offence report fulfilled the formal requirements and finally decided to uphold the first-instance court's decision.

14. On 19 February 2004 the National Customs Agency informed the applicant that following the final court judgment of 12 January 2004, he had no further legal grounds for requesting the return of his car.

B. Relevant domestic law

15. The relevant parts of the Customs Code in force at the material time read as follows:

Article 184

"The procedure for recording and penalising an act which is an offence under the customs regulations is established by the Instructions for the Application of the Romanian Customs Code approved by Governmental Decision."

Article 185

"1. Customs authorities shall record and penalise customs offences which are committed within the area of surveillance of customs operations ....

3. After verifying the existence of an offence under the customs regulations, the customs authorities shall apply fines and confiscate goods, where applicable."

16. The relevant part of the Instructions for the Application of the Romanian Customs Code, approved by Governmental Decision No. 1114 of 2001, reads as follows:

Article 386

"The following acts are customs offences and are punishable by fines of between 25,000,000 lei and 75,000,000 lei:

...

(f) the alienation under any circumstances of goods during customs transit. The alienated goods will be confiscated".

COMPLAINTS

17. The applicant complained that the fine imposed by the authorities and the confiscation of his car breached his rights under Article 1 of Protocol No. 1 to the Convention. He also complained under Article 6 § 1 of the Convention about the unfairness of the proceedings he brought before the domestic courts.

THE LAW

A. On the complaint raised under Article 1 of Protocol No. 1 to the Convention

18. The applicant complained that the authorities had unlawfully fined him and confiscated his car in breach of 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."

19. The applicant alleged before the Court that the fine and confiscation imposed on him had been unlawful because he had not owed customs duties and had not been under any obligation to the customs authorities since, in accordance with the customs declarations, his status had been that of recipient of the car, not the person who had declared it for customs purposes.

20. The Government submitted that both measures imposed on the applicant had indeed constituted an interference with his right to property, but they were provided for by law, namely Governmental Decision No. 1114 of 2001, and their purpose was to secure the payment of customs duties. Therefore, they constituted control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention.

21. The Court observes that the "possessions" which form the object of this complaint are the sum of money imposed as a fine, namely ROL 25,000,000, and the applicant's confiscated car. It considers that the two measures amount to an interference with the applicant's right to

peaceful enjoyment of his possessions and that Article 1 of Protocol No. 1 is therefore applicable.

22. The fine as well as the confiscation order constitute "penalties" within the meaning of the Convention and, therefore, they fall within the scope of the second paragraph of Article 1 of Protocol No. 1, which, inter alia, allows the Contracting States to control the use of property to secure the payment of taxes, or other contributions or penalties. However, this provision must be construed in the light of the general principle set out in the first sentence of the first paragraph and there must, therefore, exist a reasonable relationship of proportionality between the means employed and the aim sought to be realized (see, among many examples, *Phillips v. the United Kingdom*, no. 41087/98, § 51, ECHR 2001-VII).

23. Consequently, a financial liability arising out of a fine may undermine the guarantee afforded by that provision if it places an excessive burden on the person or entity concerned or fundamentally interferes with his or its financial position (see, mutatis mutandis, *Buffalo S.R.L. in liquidation v. Italy*, no. 38746/97, § 32, 3 July 2003). It is in the first place for the national authorities to decide what kind of taxes or contributions are to be collected. The decisions in this area will commonly involve the appreciation of political, economic and social questions which the Convention leaves within the competence of the Contracting States. The margin of appreciation of the Contracting States is therefore a wide one (see *Valico S.R.L. v. Italy* (dec.), no. 70074/01, ECHR 2006-III).

24. The Court notes that in the instant case the two penalties were imposed on the applicant under Article 386 (f) of Governmental Decision No. 1114 of 2001. Under the terms of this provision, anyone alienating under any circumstances goods in customs transit was liable to a fine of ROL 25,000,000 and confiscation of the alienated goods. The wording of the provision is clear and gives no choice between the penalties; both must be applied together. The applicant's allegations that the two measures were unlawful because he had been under no obligation to the custom authorities – in accordance with the custom declarations, he had the status of recipient of the car and not the person who had declared it for customs purposes – are not relevant for the establishment of the above-mentioned offence. The relevant elements as required by the domestic law were that the applicant was the owner of the car and was also the person who sold the car at a time when that operation was prohibited by law. The Court therefore finds that the interference was prescribed by law.

25. As to the aim pursued by the two penalties, the Court observes that their purpose was to secure the payment of customs duties.

26. It remains to be determined whether a fair balance was struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights.

27. In this connection, the Court observes that the two penalties were imposed on the applicant by the customs authorities following the commission of an offence and through the means of an offence report signed by the applicant without objections. This element distinguishes the instant case from cases in which the confiscation measure was applied for acts which were not illegal under the respective domestic legislations (see *Ismayilov v. Russia*, no. 30352/03, 6 November 2008) or where the confiscation itself was unlawful (see *Viktor Konovalov v. Russia*, no. 43626/02, 24 May 2007).

28. The Court further notes, as regards the balance between the aim pursued and the applicant's fundamental rights, that where possessions that have been used unlawfully are confiscated, such a balance depends on many factors, including whether the procedure in the domestic legal system afforded the applicant, in the light of the severity of the measure to which he was liable, an adequate opportunity to put his case to the responsible authorities, pleading, as the case might be, illegality or arbitrary and unreasonable conduct (see *Yildirim v. Italy* (dec.), no. 38602/02, § 1, ECHR 2003-IV).

In the present case, the applicant had the opportunity to challenge the offence report before the domestic courts. In this respect it must be noted that the applicant's complaints were extensively examined by the domestic courts in adversarial proceedings fulfilling all the fair-trial guarantees, and were considered to be ill-founded, while the offence report was found to be in conformity with the requirements of the domestic law (see paragraphs 11-13 above). In view of the above, the Court sees no reason to depart from the findings of the domestic courts in the present case.

29. Against this background, and given the importance of the aim pursued, the Court does not consider that the interference suffered by the applicant with the peaceful enjoyment of his possessions was disproportionate.

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

B. On the complaint raised under Article 6 § 1 of the Convention

30. Invoking Article 6 § 1 of the Convention, the applicant also complained of the wrong assessment of evidence and interpretation of the law, and the lack of independence and impartiality of the domestic courts which decided on his case.

31. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application

must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President