



Confiscation of cash not declared at Serbian border was disproportionate

In today's **Chamber** judgment¹ in the case of [Aksüngür and Others v. Serbia](#) (applications nos. 69080/13 and four others) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights.

The case concerned the confiscation of sums of cash that the applicants had failed to declare when separately crossing Serbia's borders.

Overall the Court found that the broad and imprecise legislative framework, coupled with the narrow review carried out by the Serbian courts, had not been able to ensure the requisite fair balance between the requirements of the general interest and the protection of the applicants' right to the peaceful enjoyment of their property. The Serbian courts had failed to engage in a meaningful analysis as to what sanctions had been necessary in each case.

Principal facts

The applicants are Adem Aksüngür, Ensar Kaya, Zeki Dinlemez, Ahmet Karabulut and Abdullah Coşkun. They are German (Mr Aksüngür) or Turkish nationals, or hold both nationalities (Mr Coşkun). They live in Germany, France (Mr Dinlemez) and the Netherlands (Mr Karabulut).

Between 2012 and 2014 all the applicants were stopped separately at various border-crossing while travelling through Serbia on their way to or from Türkiye. Via questioning or searches, it became apparent that they had in their possession more cash than the limit set out in law for physically carrying cash, 10,000 euros (EUR). Some of the applicants had certificates or withdrawal receipts showing the origin of the money. The customs authorities permitted the applicants to keep EUR 10,000 and temporarily seized (*zaplenili su*) the amounts in excess of the above-mentioned threshold as "unlawfully acquired money".

The applicants were later found guilty of misdemeanours under Article 63 § 1 of the Foreign Currency Transactions Act (*Zakon o deviznom poslovanju*) for having failed to comply with the obligation to declare any cash in excess of EUR 10,000, on entry to or on the way out of the State, and with other certification requirements concerning personal and physical transfer of cash across the border. The misdemeanour courts at two instances accepted the applicants' assertions that they had been the owners of the money in question and/or that it had been lawfully acquired. However, in addition to a fine equivalent to between EUR 70 and EUR 550, the seized cash was ultimately confiscated on the basis of a protective measure (*zaštitna mera oduzimanja predmeta prekršaja*) either in the amount of 60 % of the seized sum (EUR 53,000) in the case of the first applicant, or in its entirety (in all other cases – sums ranging between EUR 14,425 and EUR 25,020). Lastly, the Constitutional Court rejected the applicants' constitutional complaints concerning unjustified sanctions being imposed, either by

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

finding no link with the right of property, or by being satisfied that the confiscation had had a legal basis, therefore not requiring an assessment of the proportionality.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that the confiscation of their money had been unlawful, not in the public interest and disproportionate.

The applications were lodged with the European Court of Human Rights between 17 June 2013 and 4 May 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Ioannis **Ktistakis** (Greece), *President*,
Lətif **Hüseynov** (Azerbaijan),
Darian **Pavli** (Albania),
Oddný Mjöll **Arnardóttir** (Iceland),
Diana **Kovatcheva** (Bulgaria),
Úna **Ní Raifeartaigh** (Ireland),
Mateja **Đurović** (Serbia),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

The parties agreed that the money had been the applicants' respective possessions, and that the Serbian courts' ordering the confiscation of the undeclared cash had interfered with those possessions.

The confiscation had had a basis in law – paragraph 1 or 2 of Article 64 of the Foreign Currency Transactions Act – which provide, respectively, full or partial confiscation of the objects of a misdemeanour. However, the Court found that not only the vague wording of that Article remained imprecise in its key elements regarding the characteristics of any situation that would lead to full or partial confiscation, but the practice of the relevant domestic courts, including the Constitutional Court, had been inconsistent and thus failed to elucidate the foreseeable consequences of a given action and to dispel clearly such interpretational doubts in respect of the discretion conferred on them.

The Court went on to note that the relevant law did not set out a sum of foreign currency that could be legally carried by a non-resident across the Serbian border, only that it was subject to declaration and certification requirements.

The Government argued that the interference with the applicants' rights had been aimed at combatting money laundering. The Court, noting the Serbian courts had not found any nefarious intention on the part of the applicants, doubted that the interference could be said to have served that aim. Moreover, it does not appear from the available information in the case-files that the customs authorities informed the Office for the Prevention of Money Laundering about the undeclared cash seized from any of the applicants.

Furthermore, there was no suggestion that the applicants had ever been suspected of any criminal activity (for example, smuggling), or that money in issue had been criminally acquired, calling into question whether the purpose of the confiscations had indeed been to frustrate illegal activity. In essence, following the proceedings and enquiries about the provenance and destination of the carried cash, the applicants had been found guilty of a misdemeanour only, on account of not having declared their cash.

The money seized – much of it savings or proceeds from sales of property – had been significant to the applicants. On the other hand, given they had neither avoided taxes and duties nor caused flight of capital from Serbia (as the money had come from elsewhere), the harm to the Serbian State had amounted to not making a declaration, and therefore had been negligible.

It seems that the national courts had considered that the offence at stake had automatically warranted mandatory and full confiscation, as the Government had failed to provide any separate examples, apart from the case of Mr Aksüngür, of partial confiscation. In these circumstances the Serbian courts had failed to conducting a meaningful examination of the proportionality of the respective fines and confiscation, which had both been punitive measures, and convincingly show why the sanctions imposed had been necessary to achieve the desired effect in the circumstances of each particular case. In particular, the Court reiterated that the desired deterrent and punitive effect should correspond to the severity of the infringement committed, rather than to the seriousness of any presumed infringement which has not actually been established, such as money laundering or evasion of customs duties.

Overall the Court found that the broad and imprecise legislative framework, coupled with the narrow review carried out by the Serbian courts, had not been able to ensure the requisite fair balance between the requirements of the general interest and the protection of the applicants' right to the peaceful enjoyment of their property. The Serbian courts had failed to engage in a meaningful analysis as to what sanctions had been necessary in each case.

There had therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

The just satisfaction ordered in this case is set out in the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.