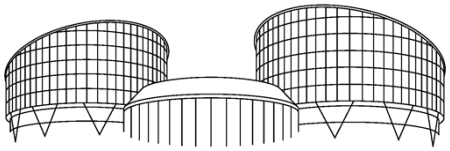

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SADOCHA v. UKRAINE

(Application no. 77508/11)

JUDGMENT
(Just satisfaction)

Art 41 • Just satisfaction • Violation of Art 1 P1 due to disproportionate confiscation of entire undeclared amount of money at border-crossing • Pecuniary damage award • Applicant not required to request reopening of domestic proceedings, not indicated by the Court in its principal judgment, as a pre-condition for pecuniary damage award • Restitution of confiscated sum minus the maximum fine alternatively provided for by law for the offence committed deemed reasonable

STRASBOURG

7 May 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sadocha v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Ganna Yudkivska,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having deliberated in private on 24 March 2020,

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

PROCEDURE

1. The case originated in an application (no. 77508/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Mr Vasil Sadocha ("the applicant"), on 6 December 2011.

2. In a judgment delivered on 11 July 2019 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 on account of the confiscation of cash which the applicant had failed to declare when crossing the Ukrainian border (see *Sadocha v. Ukraine*, no. 77508/11, § 37 and point 2 of the operative provisions, 11 July 2019).

3. Under Article 41 of the Convention the applicant initially claimed 34,100 euros (EUR) in respect of pecuniary damage. This included the confiscated amount, EUR 31,000. Given that, according to the applicant, the confiscated money had been borrowed, he also claimed, as part of the pecuniary damage sustained, EUR 3,100 representing the penalty that he had had to pay for late repayment of the loan. Lastly, he claimed EUR 2,000 in respect of non-pecuniary damage.

4. The Court considered that the finding of a violation constituted in itself sufficient just satisfaction in respect of non-pecuniary damage. Since, as regards pecuniary damage, the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., §§ 43 and 44, and point 4 of the operative provisions).

5. The applicant and the Government each submitted observations.

RELEVANT DOMESTIC LAW

6. Article 361 § 5 (3) of the Code of Administrative Justice of 2005, in its 2017 restatement, provides that finding of a violation of Ukraine's international obligations by an international judicial institution is grounds for requesting a reopening of proceedings in an administrative case. Under Article 363 of the Code such applications can be lodged within thirty days of the day on which the party learns that the international judicial decision has become final. Article 365 of the Code designates the Grand Chamber of the Supreme Court as the body competent to examine such applications.

7. Article 340 of the Customs Code made failure to declare goods subject to mandatory declaration punishable by a fine of between 1,700 and 17,000 Ukrainian hryvnias (UAH) or by confiscation of the goods in question.

THE LAW

APPLICATION OF ARTICLE 41 OF THE CONVENTION

8. 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."

A. Pecuniary damage

1. The parties' submissions

(a) The applicant

9. In the new set of observations the applicant submitted that it would be appropriate to calculate the amount of pecuniary damage to be awarded by subtracting from the sum confiscated from him (EUR 31,000) the maximum fine, UAH 17,000, which could be imposed on him for failure to declare goods subject to mandatory declaration, an offence under Article 340 of the Customs Code (see paragraph 7 above and § 14 of the principal judgment).

10. On 12 September 2011, the date on which the confiscation order had been upheld by the Kyiv Court of Appeal and the domestic proceedings had been completed (see § 12 of the principal judgment), that amount in UAH had been the equivalent of EUR 1,543.30. The applicant, accordingly, claimed EUR 29,456.70 in respect of pecuniary damage.

(b) The Government

11. The Government submitted that despite the disproportionate nature of the sanction imposed on the applicant, he still had to bear responsibility for the breach of domestic law he had committed. The Government also submitted a letter from the Supreme Court indicating that the court was working on disseminating the information about the principal judgment among the lower courts. The Supreme Court indicated that the lower courts were increasingly taking the principle of proportionality into account in imposing sanctions in this category of cases. The court stated that it was not competent to examine applications for reopening in this category of cases.

12. The Government submitted that the applicant had an opportunity to apply for reopening of proceedings in his case under Article 361 of the Code of Administrative Justice (see paragraph 6 above) but had failed to use it. In the absence of review of the applicant's case at the domestic level, it was up to the Court to assess the amount to be awarded.

2. The Court's assessment

13. The Court reiterates its finding on the relevant point in the principal judgment:

> "43. The Court observes that the ground for finding a violation of Article 1 of Protocol No. 1 in the present case was the disproportionate nature of the sanction imposed on the applicant, which does not imply that the applicant did not have to bear any responsibility for the breach of the domestic law he had committed. However, it is not the Court's task to speculate on the amount of the fine which would have been imposed on the applicant in lieu of the confiscation of the entire undeclared sum of money which has been found to be in breach of the Convention and to substitute itself for the national authorities on this matter. In these circumstances, the Court considers that the question of pecuniary damage is not yet ready for decision. It should therefore be reserved to enable the parties to provide their written observations on this question and inform the Court of any agreement reached between them in this respect (Rule 75 §§ 1 and 4 of the Rules of Court)."

14. The applicant submitted that it would be appropriate to subtract the maximum fine which could be imposed on him, in lieu of confiscation, under domestic law (see the principal judgment, § 14) for failure to declare cash at the border.

15. The Government did not put forward any alternative basis for calculation.

16. As to the possibility, suggested by the Government, to request reopening of domestic proceedings, the Court notes that the Government's submissions on that point are contradictory. On the one hand, they alleged that such a reopening was a possibility not used by the applicant (see paragraph 12 above). On the other hand, they submitted a letter from the Supreme Court, the authority which under domestic law cited by the Government would be competent to examine such requests (see paragraph 6

above), in which the Supreme Court declared that it lacked competence to examine such applications in the category of cases in question, without indicating any alternative forum (see paragraph 11 above).

17. In any event, the Court considers that, in the circumstances of the present case, where the Court adjourned the examination of the question of just satisfaction and did not indicate that reopening of the domestic proceedings was expected or would be appropriate before its ruling on the question of just satisfaction, it would not be appropriate to require the applicant to request reopening as a pre-condition for the Court making a pecuniary damage award.

18. In such circumstances, the Court considers the principle of the calculation proposed by the applicant and his claim to be reasonable.

19. The Court, therefore, awards the applicant the amount claimed, EUR 29,456.70, in respect of pecuniary damage.

B. Default interest

20. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 29,456.70 (twenty nine thousand four hundred and fifty-six euros and seventy cents) in respect of pecuniary damage, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 7 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Deputy Registrar

Síofra O'Leary
President