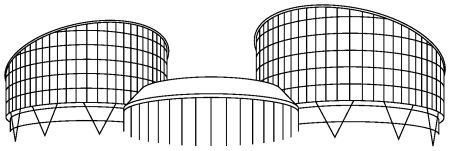

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF YAYLALI v. SERBIA

(Application no. 15887/15)

JUDGMENT

Art 34 • Victim • Confiscation of lawfully acquired jewellery belonging to the applicant's wife and imposition of a fine following his failure to declare it to customs authorities while transiting through Serbia • Victim status in case-specific circumstances • Applicant personally affected by harm sustained by confiscation measure • Constitutional Court's explicit acknowledgment that jewellery was applicant's "possession"
Art 1 P1 • Peaceful enjoyment of possessions • Mandatory nature of confiscation left no discretion to the domestic authorities to assess its proportionality and deprived the applicant of any reasonable opportunity to effectively challenge the measures • Individual and excessive burden imposed on applicant

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 September 2024

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 Yaylalı v. Serbia,

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

Gabriele Kucsko-Stadlmayer, *President*,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu, *judges*,
and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 15887/15) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Mehmet Alı Yaylalı ("the applicant"), on 25 March 2015;

the decision to give notice of the application to the Serbian Government ("the Government");

the decision to invite the Turkish Government to inform the Court if they wished to exercise their right to intervene (Article 36 § 1 of the Convention) and their decision not to avail themselves of that right;

the parties' observations;

Having deliberated in private on 21 May and 25 June 2024,

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

INTRODUCTION

1. The case concerns the confiscation of personal and lawfully acquired jewellery, following the applicant's failure to declare it to Serbian customs authorities while transiting though Serbia, in addition to the imposition of a fine, allegedly in breach of his rights under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1964 and lives in Ede (the Netherlands). He was represented before the Court by Mr S. Mutić, a lawyer practising in Belgrade.

3. The Government were represented by their Agents, Ms V. Rodić and subsequently Ms N. Plavšić.

4. The facts of the case may be summarised as follows.

5. On 19 June 2013, following passport control by border police, the applicant was stopped by customs and police officers of the respondent State

while entering Serbia at the Batrovci border crossing with Croatia, on a journey from the Netherlands to Türkiye. When asked whether he had anything to declare, the applicant responded that he was carrying 1,500 euros (EUR) and personal belongings. After customs officers searched the car and the luggage, they moved on to a personal search, in the presence of two police officers, during which one of them noticed in the applicant's belt bag a small white bag containing eight second-hand gold bracelets.

6. On the same day, the customs authorities temporarily seized the bracelets and instituted misdemeanour proceedings (*prekršajni postupak*) against the applicant for failing to declare the jewellery, referring to a customs misdemeanour defined in Article 292 § 1(2) of the Customs Act (see paragraph 20 below). According to the report on the seizure and the value assessment by the customs authorities (*potvrda o zadržavanju robe i zapisnik o carinskom utvrđivanju vrednosti robe*), the bracelets weighed 254 grams and the assessing officer declared the total value of the bracelets to be EUR 7,620 (EUR 30 per gram).

7. At a hearing held that day before the Sremska Mitrovica Misdemeanour Court (*Šid Unit*), the applicant, in the presence of an interpreter and without legal representation, argued that the gold bracelets belonged to his wife and that he had been carrying them to Türkiye, where they intended to buy a family home in Antalya. He would sell the bracelets if they needed extra money for the purchase. He stated that the customs officers had spoken to him in poor Turkish and that he had not been aware that it was necessary to declare gold items to customs when entering Serbia.

8. By a decision of the same day, the misdemeanour court found the applicant guilty of deliberately failing to declare goods which he had brought into the customs territory of the Republic of Serbia – in particular, "eight second-hand bracelets", made of a yellow metal which appeared to be gold, with an overall weight of 254 grams – and which had been found in a little pouch in a belt bag around the applicant's waist, in the course of a personal search. The applicant had therefore committed a customs misdemeanour prescribed by Article 292 § 1(3) of the Customs Act and not sub-section 2 as indicated in the misdemeanour complaint (see paragraphs 6 above and 20 below). According to the court, an individual deliberately committed that offence if she or he did not comply with Article 63 of the Customs Act (see paragraph 18 below), which required any individual who entered the customs territory to declare imported goods.

9. The applicant was fined 55,000 Serbian dinars (RSD; approximately EUR 665 at the time) and charged costs in the amount of RSD 1,000 (approximately EUR 12). When imposing the fine, the court took into account (i) the gravity of the offence; (ii) the applicant's intent; (iii) the fact that there were no aggravating circumstances; and (iv) the fact that there were several mitigating circumstances, such as the applicant's conduct in the proceedings and his personal circumstances, as well as a lack of any previous record of

misdemeanour. The court, relying on Article 40 of the Misdemeanours Act (see paragraph 24 below), considered it appropriate, in view of the overall circumstances of the case, to impose a fine in an amount below the statutory threshold (one to four times the value of the objects of the offence), while acknowledging that no serious damage had been caused by the offender to the State and that the significantly reduced fine would still correspond to the desired deterrent and punitive effect and prevent future similar breaches.

10. Lastly, the court imposed a protective measure (*zaštitna mera oduzimanja robe kao predmeta prekršaja*), confiscating all eight bracelets as the object of the offence (*predmet prekšaja*). When applying the confiscation measure, the court noted the mandatory nature of the sanction prescribed by Article 298 of the Customs Act (see paragraph 21 below), which would be enforced once the decision had become final. The bracelets were temporarily seized pending the misdemeanour proceedings.

11. On 26 June 2013 the applicant, represented by a Serbian lawyer of his own choosing, challenged the confiscation measure. He argued that, despite having a legal basis in Article 298 of the Customs Act, it was unconstitutional, in breach of Article 58 of the Constitution (see paragraph 17 below), as well as of Article 1 of Protocol No. 1 to the Convention, the latter being directly applicable in the domestic legal order. As regards the lawful origin of the bracelets, the applicant repeated his arguments submitted before the first-instance court (see paragraph 7 above) that the jewellery had been lawfully acquired by his wife, Z.E., and submitted, as evidence, certificates of purchase dated 3 January 2013 from a jewellery shop in Amsterdam concerning gold jewellery (22 carats) bought between 2 December 2011 and 3 January 2013 for the price of EUR 12,825, together with the corresponding certificates of authenticity in her name. He reiterated that he had been carrying them to Türkiye, where he intended to buy a family house, and to sell them if he needed extra funds. He further argued that the measure of confiscation of the bracelets, which were valued at EUR 12,825 (and not EUR 7,620 – see paragraph 6 above), was "drastically" disproportionate to the misdemeanour committed and did not correspond to the intended purpose of protective measures or the purpose of misdemeanour sanctions in general. Accordingly, it was unjustified and unlawful.

12. On 2 July 2013 the Novi Sad High Misdemeanour Court dismissed the appeal and upheld the first-instance decision, endorsing the reasons given therein (see paragraphs 8-10 above). It confirmed that the confiscation was mandatory, and that its imposition was not left to the discretion of the court in cases of a failure to declare goods at the border, regardless of whether or not those goods had been acquired lawfully. The confiscation had been imposed in the public interest and in accordance with the law.

13. On 31 July 2013 the applicant, through his representative, lodged a constitutional appeal, referring to his earlier arguments and the relevant law (see paragraph 11 above). He further questioned the constitutionality of

Article 298 of the Customs Act (see paragraph 21 below), which in his case had resulted in an excessive burden being imposed on him, owing to the mandatory confiscation of his lawfully acquired goods. The applicant accepted that confiscation might be justified in cases where the object of an offence had been acquired unlawfully or was prohibited, such as weapons, drugs or endangered species. However, he had caused no damage to the respondent State, given that it was not prohibited to transfer gold jewellery, and the fine would have had sufficient deterrent effect to protect the public interest. The confiscation of his lawfully acquired jewellery had therefore been unlawful, unnecessary and disproportionate and had been imposed in breach of his constitutionally protected right of property.

14. On 25 September 2014 the Constitutional Court dismissed the applicant's constitutional appeal as being manifestly-ill founded, by a decision (Už-6226/2013) which, in so far as relevant, found as follows.

15. In its examination of the existence of a "possession" within the meaning of Article 58 of the Constitution (see paragraph 17 below), the court determined (*ocenio*) that, in the applicant's case, the matter concerned his property (*reč je o imovini aplikanta*), in particular eight gold bracelets, with an overall value of EUR 12,825, which his wife had acquired by purchase, in a lawful manner, as certified by the purchase certificate that he had submitted to the court. Therefore, in this specific case, the property had been acquired by law and therefore attracted protection by virtue of Article 58 § 1 of the Constitution. The Constitutional Court further acknowledged that the permanent confiscation of the previously seized bracelets amounted to "an interference with the applicant's property rights".

16. In the court's view, the interference had been lawful and properly reasoned, as it had been "imposed as a mandatory measure pursuant to Articles 292 and 298 of the Customs Act" given the applicant's non-compliance with Article 63 of that same Act (see paragraphs 18, 20 and 21 below) and, as such, it was unnecessary to examine the applicant's arguments about a lack of proportionality.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION OF THE REPUBLIC OF SERBIA (*USTAV REPUBLIKE SRBIJE*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA ("OG RS"), No. 98⁄06)

17. Article 58 of the Constitution guarantees the peaceful enjoyment of possessions and other property rights acquired by law. The "right to property" (*pravo na imovinu*) may be revoked or restricted only in the public interest (as established by the law) and in return for compensation, which cannot amount to less than the market value. The law may restrict the manner in which property is used.

II. THE CUSTOMS ACT (*CARINSKI ZAKON*, PUBLISHED IN OG RS, Nos. 18/10 AND 111/11, BEFORE FURTHER AMENDMENTS PUBLISHED IN OG RS, Nos. 29/2015, 108/2016 AND 113/2017)

18. Article 63 of the Customs Act, entitled "Transport of goods from the customs line to the place of delivery", provides, in the relevant parts, that a person bringing goods into the customs territory must declare those goods and must, without delay, convey them by the route specified by the customs authority and in accordance with its instructions, to the customs office or to any other place approved by the customs authority, or to a free zone. Any person who assumes responsibility for the carriage of goods brought into the customs territory becomes responsible for compliance with the obligation to declare those goods.

19. Article 65 provides that goods brought into the customs territory of the Republic of Serbia are to be presented to the customs office by the person who brought them into that territory or by the person who assumes responsibility for the carriage of those goods following such entry, and that person must also provide information about the summary declaration or the declaration previously filed for such goods. According to Article 66, this provision does not preclude the application of the rules in force relating to goods (i) carried by travellers or (ii) coming under a customs procedure where the presentation of goods to the customs authority is not mandatory.

20. The relevant part of Article 292 provides:

> "Any legal person, sole proprietor or natural person shall be fined an amount equal to one to four times the value of the goods that are the object of the offence, if that person:
>
> (1) takes goods through the border crossing at a time when the border crossing is not open to traffic or takes concealed goods through the border crossing (Article 58);
>
> (2) removes goods under customs supervision, thus circumventing customs control (Articles 62, 72, 108, 123, 131);
>
> (3) does not declare goods being brought, through the border crossing, into the customs territory of the Republic of Serbia or does not present the goods to the customs authority (Articles 63 and 65)."

21. Article 298 requires confiscation (*oduzimanje robe*), as a protective measure (*zaštitna mera*), of goods that are the object of the offences referred to, *inter alia*, in Article 292. In addition to the object of the offence, the means of carrying goods that are the object of the offence (such as the container, packaging and other items) are also to be confiscated. Goods are to be confiscated even if the perpetrator is not the owner of them. Goods that are the object of the offence, where confiscation is prescribed as a protective measure, are to be seized and placed under customs supervision until the end of the misdemeanour proceedings.

22. Lastly, Articles 288 and 290 provides that all permanently confiscated goods may be sold publicly, and the income derived from that sale should be transferred to the budget of the Republic of Serbia.

23. The provisions of the Misdemeanours Act are applicable to customs offence proceedings, pursuant to Article 306.

III. MISDEMEANOURS ACT (*ZAKON O PREKRŠAJIMA*, FIRST PUBLISHED IN OG FRY, Nos. 101/2005 AND 111/2005, THEN IN OG RS, Nos. 116/2008 AND 111/2009)

24. Article 40, on mitigation of a penalty, states as follows:

> "If during the determination of the penalty, it is assessed that the offence did not cause very serious consequences, and that there are mitigating circumstances that indicate that the purpose of imposing a sanction may be achieved by [imposing] a more lenient penalty, then the provided penalty may exceptionally be reduced by imposing a penalty below the provided minimum for that misdemeanour, but not lower that the general minimum penalty provided by ... law."

IV. GUIDANCE ON THE SERBIAN CUSTOMS WEBSITE

25. According to guidance provided on the Serbian Customs website in English[1],

> "Personal jewel[le]ry is considered to be [jewellery] that you wear, however if you [wear] a lot of jewel[le]ry on ... or [have a lot] in your luggage - you are obliged to declare it.
>
> It is very important that you do this, because the customs officers will treat [a] larger amount of jewellery as undeclared valuables, and you may easily find yourself in violation [of customs regulations].
>
> It is ... safest to declare all valuables that you carry with you and save yourself from the embarrassment and risk of them being temporarily or permanently seized. This applies to personal jewel[le]ry that you wear or carry in your luggage, as well as to ... investment gold in the form of plates, bars and coins. Find out more on this subject before [your] journey on the CAS website in the Q&A section."

[1] Website Customs Administration: Useful information for passengers (carina.rs), last accessed on 5 June 2024.
At least until 5 October 2023, the relevant information on the same website provided in English read as follows:
"On arrival, travellers are required to declare valuables (such as laptop computers, cameras and jewellery) of a value exceeding 10,000 euros and obtain a declaration from customs officials. This declaration form is required on departure from the country. Failure to comply may result in the confiscation of valuables."

THE LAW

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

26. The applicant complained that the confiscation of lawfully acquired jewellery, following his failure to declare it to the Serbian customs authorities while transiting through Serbia, had been a grossly disproportionate and unjustified measure 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."

A. Admissibility

27. The Government did not raise any objection as regards the admissibility of the applicant's complaint.

28. However, the fact that the applicant complained about the confiscation of bracelets that, by his own admission, belonged to his wife calls for the Court to address the issue of his victim status of its own motion, as a matter that goes to its own jurisdiction, notwithstanding the absence of any objection by the Government under this head (see, for example, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 89 and 93, 27 June 2017; and *Jakovljević v. Serbia* (dec.), no. 5158/12, § 29, 13 October 2020).

29. The Court reiterates that, in order to be able to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall into one of the categories of petitioners listed in that Article and must be able to make out a case that he or she is the victim of a violation of the Convention (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)). There must, however, be a sufficiently direct link between the applicant and the harm that he considers he has sustained on account of the alleged violation (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). Furthermore, an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions concerned his or her "possessions" within the meaning of this provision (see, as regards compatibility *ratione materiae*, *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01 and two others, § 74(c),

ECHR 2005-V). In a number of cases, the Court has already declared property-related complaints inadmissible for lack of victim status, where the applicants did not claim or provide evidence that the confiscated assets belong to them (see, for example, for application of the relevant principles to confiscation of cash belonging to a company or family members, *Eliseev and Ruski Elitni Klub v. Serbia* (dec.), no. 8144/07, §§ 32-36, 10 July 2018, and *Dagostin v. Croatia* (dec.) [Committee], no. 67644/12, §§ 23-26, 23 May 2017).

30. However, the Court must take into consideration the specific circumstances of the present case, which distinguish it from the above-mentioned case-law. It appears from the case file and the decision of the Constitutional Court that the applicant referred to the bracelets as belonging to his wife in the context of explaining the lawful origin of the jewellery and not in order to deny his ownership. As to their purported destination, the applicant stated that he had been carrying them through Serbia on his way from the Netherlands to Türkiye, where he intended to sell them if additional funds were required for the purchase of a family home in Antalya (see paragraphs 7, 11 and 15 above). In those circumstances, the Constitutional Court explicitly acknowledged that the bracelets were the applicant's property, which had been lawfully acquired by his wife, and that he had a "possession" entitling him to protection under Article 58 of the Constitution (see paragraph 15 above as regards the Constitutional Court's explicit position in that respect).

31. Having regard to its limited power to review the facts established by the domestic authorities (see *Savran v. Denmark* [GC], no. 57467/15, § 189, 7 December 2021, and the authorities cited therein), the Court is not in a position to call into question the Constitutional Court's findings of facts as to the issue of ownership, and thus to determine the matter differently. Moreover, the Constitutional Court's finding that the bracelets were the applicant's "possession" has not been refuted or even challenged by the Government (contrast, for example, *Imeri v. Croatia*, no. 77668/14, §§ 50-51, 24 June 2021), who have, on the contrary, endorsed that finding (see paragraph 36 below).

32. In addition, the Court observes that undeclared goods are to be confiscated as the object of a misdemeanour, by virtue of the Customs Act, from the perpetrator of that misdemeanour, regardless of their lawful origin or whether or not the perpetrator was the owner of the undeclared goods (see paragraphs 12 and 21 above). Moreover, the confiscation in the present case entailed the conclusive transfer of ownership of the bracelets, seized from the applicant, to the State in misdemeanour proceedings to which the applicant's wife was not a party. The Constitutional Court accepted that that confiscation had been lawful in the circumstances of the present case (see paragraph 16 above). In those circumstances, the Government did not suggest, let alone demonstrate, that the applicant's wife could have availed herself of any legal

avenue, including a separate constitutional appeal, or would have had any prospect of success in pursuing any such avenue in order to challenge in her own capacity the confiscation of her bracelets in the proceedings under review in the present case. The Court cannot disregard that fact when interpreting the criterion of "victim", as otherwise an excessively formalistic, mechanical and inflexible interpretation of that autonomous concept would make the protection of the rights guaranteed by the Convention ineffectual and illusory (see, in general, *Micallef v. Malta* [GC], no. 17056/06, § 45, ECHR 2009; *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX; and *Gorraiz Lizarraga and Others*, cited above, § 38).

33. The Court is satisfied that the above-mentioned specific circumstances of the present case (see paragraphs 31-32 above) warrant the conclusion that the applicant has been personally affected by the harm sustained by the confiscation measures taken in respect of his wife's jewellery, particularly on account of the unrebutted argument that the jewellery was being carried with a view to its potential sale to finance the purchase of a joint family house. Accordingly, the applicant can be regarded as a "victim", within the meaning of Article 34 of the Convention, of the confiscation of the eight gold bracelets, those bracelets being the "possession" in the present case (see, *mutatis mutandis*, *Imeri*, §§ 53 and 63, cited above).

34. Lastly, the Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

35. The applicant reiterated his complaint and the arguments raised in the domestic proceedings (see paragraphs 11 and 13 above).

36. The Government acknowledged that there had been an interference with the applicant's rights under this head regarding the bracelets which had been lawfully acquired. The confiscation was a mandatory measure for the misdemeanour in question, with reference to Articles 292 §§ 1 and 3 and 298 of the Customs Act (see paragraphs 20-21 above). The interference had been therefore in accordance with the law, as the authorities had applied the relevant provisions which had been sufficiently accessible, clear and foreseeable as to their application. Furthermore, the confiscation of undeclared goods had pursued a legitimate aim of crime prevention and had been proportionate in the circumstances.

37. According to the Government, the failure of the applicant, a resident of the European Union, to acquaint himself with the obligation to declare the goods could not constitute an excuse for committing the offence in question or escaping liability (*ignorantia iuris nocet*). The "scope" of the

offence in question and the circumstances of the case had been taken into account when imposing the ensuing measures. In particular, the applicant, as an individual who had been found to act deliberately, had been subjected to a fine (see paragraph 9 above) and the full confiscation, which was a mandatory measure according to the law.

38. Lastly, the Government referred to the Constitutional Court's decision (see paragraphs 14-16 above), finding that the interference had been based on law and had not warranted a proportionality assessment of the measures imposed owing to their mandatory nature.

2. The Court's assessment

(a) General principles

39. The general principles relevant for the present case have been summarised in *G.I.E.M. S.r.l. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 289, 292 and 293, 28 June 2018) as follows:

> "289. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest and to secure the payment of penalties. The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.
>
> ...
>
> 292. The Court reiterates that Article 1 of Protocol No. 1 above all requires that any interference by a public authority with the enjoyment of possessions be in accordance with the law: under the second sentence of the first paragraph of this Article, any deprivation of possessions must be 'subject to the conditions provided for by law'; the second paragraph entitles the States to control the use of property by enforcing 'laws'. Moreover, the rule of law, which is one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention.
>
> 293. Moreover, since the second paragraph of Article 1 of Protocol No. 1 is to be construed in the light of the general principle enunciated in the opening sentence of that Article, there must exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised: the Court must determine whether a fair balance has been struck between the demands of the general interest in this respect and the interest of the individual company concerned. In so determining, the Court recognises that the State enjoys a wide margin of appreciation with regard to the means to be employed and to the question of whether the consequences are justified in the general interest for the purpose of achieving the objective pursued."

(b) Application of the above-mentioned principles to the present case

(i) As to whether there was an interference with the applicant's right of property and the applicable rule

40. The Court observes that it is not in dispute between the parties that the domestic authorities' decisions ordering confiscation of the undeclared jewellery amounted to an interference with the applicant's right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.

41. As regards the issue as to which of the rules contained in Article 1 of Protocol No. 1 applies, the Court observes that the customs authorities initially temporary seized all the undeclared bracelets and that the misdemeanour courts subsequently imposed, as a sanction, the permanent confiscation of the bracelets seized from the applicant, which entailed their conclusive transfer to the State. The Court considers that there is no need to take a clear stance on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined – that is, whether it should be examined in the context of deprivation of property or control of its use – because the principles governing the question of justification in both contexts are substantially the same, involving, as they do, the legitimacy of the aim of any interference, as well as its proportionality and the preservation of a fair balance (see, *mutatis mutandis*, *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010, and *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, §§ 68-71, 21 July 2020).

(ii) As to whether the interference was provided for by law

42. The Court notes that the customs misdemeanour of which the applicant – a transit passenger through Serbia on his way from the Netherlands to Türkiye – was found guilty consisted of his failure to declare eight second-hand gold bracelets to the customs authorities. The domestic misdemeanour courts relied on Article 63 of the Customs Act, which requires goods imported into the Serbian customs territory to be declared to the customs authorities. They also relied on Article 292 § 1(3) of the same Act, which prescribes a misdemeanour and a fine for non-compliance with that duty, as well as with the general duty to present goods brought into the Serbian customs territory specified in Article 65 of that Act (see paragraphs 18, 19 and 20 above). Likewise, the confiscation of goods which were not declared or presented to customs control, as a protective measure applicable to perpetrators of the misdemeanours defined by, *inter alia*, Article 292, had a legal basis in Article 298 of the same Act (see paragraph 21 above). Therefore, both the misdemeanour of failing to declare or present goods and the ensuing sanctions were prescribed by law.

43. The Court reiterates that the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness, which in

addition presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, among other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 109, ECHR 2000-I; *Baklanov v. Russia*, no. 68443/01, § 41, 9 June 2005; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012). These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence carries (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 91, ECHR 2013), which, *inter alia*, means that offences and the relevant penalties must be clearly defined by law (see *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 145, ECHR 2000-VII).

44. The Court observes that none of the competent domestic authorities involved in the present case, or the Government, have identified any regulations setting out to what extent an individual traveller is allowed to carry personal gold while transiting through the Serbian customs territory, without being required to declare or present it to the national customs authorities. It has not been argued that the guidance available on the Serbian Customs website (see paragraph 25 above and the related footnote) existed at the relevant time. However, the domestic courts cannot be blamed for failing to rule on the above-mentioned issues, which the applicant, although legally represented, did not raise before them (see, *mutatis mutandis*, *Fu Quan, S.R.O. v. the Czech Republic* [GC], no. 24827/14, § 123, 1 June 2023). Indeed, in his appeal to the Constitutional Court, which is, in principle, considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009), the applicant's arguments were limited to the mandatory nature of the confiscation and its proportionality *vis-à-vis* the (lawful) origin of the jewellery (alleging that it had not corresponded to the essence of the misdemeanour and the purpose of the sanctions in question – see paragraphs 11 and 13 above). In the proceedings before the Court, the applicant made a passing reference to the issue of lawfulness (see paragraph 35 above), without providing any arguments as to the precision or foreseeability of the statutory provisions applied in his case.

45. In such circumstances, and having regard to the Court's limited jurisdiction to interpret and apply the domestic law (see *Fu Quan*, cited above, § 120), it considers it appropriate not to address the issue of the lawfulness of the impugned measure, and instead to examine whether the interference in question pursued a legitimate aim and whether it was proportionate (see, *mutatis mutandis*, *Imeri*, § 81, cited above).

(iii) Legitimate aim

46. The Court accepts that the confiscation measure pursued the legitimate aim of preventing crime (see paragraph 36 above).

(iv) Proportionality of the interference

47. The remaining question for the Court to determine is whether the national authorities, when applying the impugned measure, struck the requisite fair balance between the applicant's right of property and the requirements of the general interest, taking into account the margin of appreciation left to the respondent State in that area. The requisite balance will not be achieved if the property owner concerned has had to bear "an individual and excessive burden" (see, among many authorities, *Gyrlyan v. Russia*, no. 35943/15, § 24, 9 October 2018).

48. In the present case, the Constitutional Court did not assess whether the confiscation order was proportionate, but it was satisfied that it was lawful (see paragraph 16 above).

49. It does not appear from the available material and the Government's submissions that it was illegal to carry gold or personal gold jewellery across the Serbian customs border or that there was any particular prohibition regarding the quantity or the value of gold jewellery that could be carried, in general or while in transit (contrast *AGOSI v. the United Kingdom*, 24 October 1986, § 55, Series A no. 108, concerning a ban on importing gold coins). The confiscated gold had neither been smuggled, nor was it the instrument of or proceeds from any criminal activity (see *Phillips v. the United Kingdom*, no. 41087/98, §§ 9-18, ECHR 2001-VII, and *Ulemek v. Croatia*, no. 21613/16, § 65, 31 October 2019).

50. As to the applicant's conduct, the Court notes that he declared EUR 1,500 and personal belongings to the customs authorities after he had been asked whether he had any goods to declare, but failed to declare the gold bracelets, which were discovered during the customs search. The applicant's misconduct was classified as deliberate on the basis that he must have been aware of the declaration duty and had therefore wilfully accepted the consequences of his failure to comply with it (see paragraph 8 above; with regard to the presence or absence of intent to deceive the authorities, compare and contrast *Sadocha v. Ukraine*, no. 77508/11, §§ 29-33, 11 July 2019; *Togrul v. Bulgaria*, no. 20611/10, § 44, 15 November 2018; *Gyrlyan*, cited above, § 27; *Ismayilov v. Russia*, no. 30352/03, §§ 36-38, 6 November 2008; and *Gabrić v. Croatia*, no. 9702/04, §§ 38-39, 5 February 2009).

51. There are no indications that the applicant had any criminal record, nor did the national authorities hold any information about him being engaged in or investigated for any criminal activity before the incident at issue. The goods were lawfully acquired (see paragraphs 12, 14 and 36 above) and there were no indications of any intended illegal use (see, for example, *Gabrić*, cited above, §§ 36-37, with further references). Accordingly, there is nothing to suggest that by confiscating the gold bracelets from the applicant, the authorities were seeking to forestall any illegal activities, such as money laundering, drug trafficking or tax evasion (see, for example, *Gabrić*, § 38, cited above, and *Boljević v. Croatia*, no. 43492/11, § 43, 31 January 2017).

52. It follows that the only misconduct of the applicant was his failure to declare the gold bracelets to the customs authorities (compare *Ismayilov*, cited above, § 37).

53. The Court reiterates that in order to be proportionate, an 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 declare the goods to the customs authorities – rather than to the gravity of any presumed infringement which has not actually been established, such as an offence of money laundering or evasion of customs duties, no such infringement having even been referred to in the present case (see *Ismayilov*, § 38, cited above; *Grifhorst v. France*, no. 28336/02, § 102, 26 February 2009; and *Boljević*, § 44, cited above).

54. Instead of the prescribed fine for the offence in question, the misdemeanour courts considered, while balancing the various elements, that the overall circumstances had warranted imposing a fine below the prescribed statutory threshold. In doing so, the domestic authorities acknowledged that no serious damage had been caused by the offender to the State and concluded that the significantly reduced fine would correspond to the desired deterrent and punitive effect and prevent future breaches of the regulations in the applicant's case (see paragraph 9 above).

55. Notwithstanding the above, the domestic courts made the confiscation order for the undeclared jewellery in its entirety, as the object of the offence (*oduzimanje robe*), a measure which was apparently deterrent and punitive in its purpose (see *Ismayilov*, § 38, and *Gabrić*, § 39, both cited above; compare and contrast *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284).

56. The Court observes that, as established by the domestic courts, the confiscation of the entirety of undeclared goods was a mandatory measure, imposed in addition to a fine for a customs misdemeanour (see, *mutatis mutandis*, *Karapetyan v. Georgia*, no. 61233/12, § 36, 15 October 2020). No discretion was left to the domestic authorities, by virtue of the Customs Act (see paragraph 21 above), to assess the proportionality of the measure and in this context to take into account that the applicant had proven the lawful purchase of the personal jewellery. The Court has previously taken the view that, in so far as offences of undeclared cash are concerned, a too rigid legislative approach could often lead to a failure of the domestic authorities to strike the requisite fair balance between the requirements of the general interest and the protection of an individual's right of property (see, *mutatis mutandis*, *Gyrlyan*, cited above, §§ 30-31, and *Yaremiychuk and Others v. Ukraine*, nos. 2720/13 and 6 others, § 31, 9 December 2021). Indeed, the mandatory nature of the confiscation, in addition to the fine, might have precluded the domestic authorities from assessing the individual circumstances and the proportionality of the confiscation in the present case (see paragraph 16 above).

57. Similarly, the automatic nature of the confiscation deprived the applicant of any reasonable opportunity to put his case to the relevant authorities for the purpose of effectively challenging the measures interfering with his property rights and of having any prospect of success in that connection (see, among other authorities, *Yaremiychuk*, cited above; *Gyrlyan*, cited above, § 24; *Boljević*, cited above, § 41; *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 38, 17 September 2015; and *Rummi v. Estonia*, no. 63362/09, § 104, 15 January 2015 with further reference therein).

58. The foregoing considerations are sufficient to enable the Court to conclude that the mandatory confiscation of the gold jewellery in question placed an individual and excessive burden on the applicant.

59. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Damage

61. The applicant claimed 7,620 euros (EUR), with accrued interest as of 19 June 2013 until the date of payment, in respect of pecuniary damage. He made no claim in respect of non-pecuniary damage.

62. The Government contested this claim.

63. Having regard to its finding above that the mandatory confiscation was disproportionate, the Court considers that it should award the applicant only the amount claimed by the applicant (see paragraph 61 above), seemingly corresponding to the value of the jewellery established in the misdemeanour proceedings (see paragraph 6 above; see also paragraph 15 above for the Constitutional Court's position on the value in issue), plus any tax that may be chargeable (see, *mutatis mutandis*, *Yaremiychuk and Others*, cited above, § 46); it dismisses his claim concerning the accrued interest as unsubstantiated.

B. Costs and expenses

64. The applicant also claimed EUR 1,000 for the costs and expenses incurred both before the domestic courts and the Court.

65. The Government contested this claim.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021, and *Lakatoš and Others v. Serbia*, no. 3363/08, § 126, 7 January 2014). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum requested, plus any tax that may be chargeable to the applicant.

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;

3. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,620 (seven thousand six hundred and twenty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 17 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Gabriele Kucsko-Stadlmayer
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Seibert-Fohr is annexed to this judgment.

CONCURRING OPINION OF JUDGE SEIBERT-FOHR

1. I agree with the majority's finding of a violation of Article 1 of Protocol No. 1 to the Convention. I am writing separately out of a concern for spousal equality to explain that the applicant can only claim to be an indirect victim in the present case. While he was entitled to lodge the application on behalf of his wife, the applicant's wife as the owner of the confiscated goods and, as a result of the permanent confiscation, the direct victim of the violation is entitled to receive pecuniary damages corresponding to the estimated value of the jewellery (see paragraph 63 of the judgment).

2. According to the applicant's uncontested submissions, it was his wife who had acquired the confiscated jewellery (see paragraphs 7 and 11 of the judgment). The applicant was carrying it with him in order to sell it if necessary to buy a family home in Türkiye. In other words, his wife had entrusted him with her jewellery for this purpose. However, this did not make him the owner of his wife's property. The Constitutional Court, too, recognised in its decision of 25 September 2014 that the bracelets belonged to the applicant's wife. Therefore, when the applicant brought proceedings to challenge the permanent confiscation, he acted in his wife's interest.

3. Admittedly, the Constitutional Court held that the confiscation amounted to an interference with the applicant's property rights protected by virtue of Article 58, paragraph 1, of the Serbian Constitution (see paragraph 15 of the judgment). However, according to the Court's established case-law, the concept of "possessions" has an autonomous meaning which is independent from the formal classification in domestic law and the respondent State's submissions. Therefore, the issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004-XII; *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], no. 38433/09, § 171, ECHR 2012; *Fabris v. France* [GC], no. 16574/08, §§ 49 and 51, ECHR 2013; *Parrillo v. Italy* [GC], no. 46470/11, § 211, ECHR 2015; *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 76, 13 December 2016; and *Elif Kızıl v. Turkey*, no. 4601/06, § 61, 24 March 2020). In this context, the Court may also have regard to the domestic law in force at the time of the alleged interference provided that there is nothing to suggest that that law runs counter to the object and purpose of Article 1 of Protocol No. 1 (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 31, Series A no. 332). Regard is also to be had to the Convention system as a whole, including, most notably, gender equality. It would be irreconcilable with

spousal equality if a husband automatically acquired property rights over his wife's assets.

4. Given the fact that the applicant's wife's ownership is undisputed and taking into account the imperative nature of spousal equality, I cannot agree with the majority's reliance on the Constitutional Court's findings regarding the issue of ownership (see paragraph 31 of the judgment). Moreover, there is no other reason to regard the applicant as the direct victim or to assume that he had proprietary interests of his own in the present case (compare *Molla Sali v. Greece* [GC], no. 20452/14, §§ 128-32, 19 December 2018). The confiscation did not concern his "possession" within the meaning of Article 1 of Protocol No. 1 and the harm suffered on account of the violation is not sufficiently directly linked to the applicant (for this requirement see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). In other words, he was not directly affected in his proprietary interests by the harm sustained as a result of the confiscation measures taken in respect of his wife's jewellery.

5. Rather, the applicant qualifies as an indirect victim entitled to lodge the application with the Court on behalf of his wife because of the following exceptional circumstances of the present case (for the relevance of "exceptional circumstances" for standing in respect of Article 1 of Protocol No. 1 see, for example, *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 124 and 135-45, 7 July 2020). They demonstrate that he has a legal interest of his own in lodging the application, thus allowing the Court to grant standing to him.

The bracelets were seized from the applicant while he was on his way to purchase a family home with the aim of selling them if the funds were required. There is therefore no risk of differences of opinion among the applicant and his wife in this case (see, *mutatis mutandis*, *Kips DOO and Drekalović v. Montenegro*, no. 28766/06, § 86, 26 June 2018). Moreover, the bracelets were permanently confiscated in misdemeanour proceedings to which he was the sole party and he was entitled to challenge the confiscation before the Constitutional Court.

6. The Court has recognised that in its assessment of whether close relatives have standing to submit an application, the applicant's participation in the domestic proceedings can be a relevant criterion among several others (see *Nölkenbockhoff v. Germany*, 25 August 1987, § 33, Series A no. 123; *Micallef v. Malta* [GC], no. 17056/06, §§ 48-49, ECHR 2009; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 31, 21 September 2010; and *Grădinar v. Moldova*, no. 7170/02, §§ 98-99, 8 April 2008). Furthermore, there is no indication in the present case that the applicant's wife could have availed herself of any legal avenue to challenge the confiscation of her (*sic!*) bracelets (see paragraph 32 of the judgment) in her own capacity.

7. Therefore, I agree with the majority that it would be excessively formalistic and would have rendered the protection of the rights guaranteed

by the Convention ineffective and illusory if the application had been declared inadmissible (see in this respect *Micallef*, cited above, § 45; *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX; and *Gorraiz Lizarraga and Others*, cited above, § 38). However, it would have been more apt and in line with the Convention system to describe the applicant explicitly as an indirect victim.

8. At any rate, and for the reasons outlined above, the decision to make an award in respect of pecuniary damage should be read as being based on the expectation that the applicant is bound to transfer the sum obtained in that respect to his wife. Alternatively, the jewellery should be returned to her if it is still held by the respondent State.