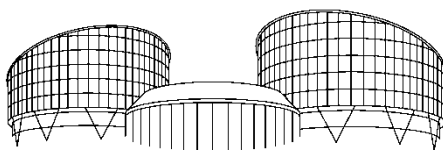


La CEDU sulla violazione dell'art. 1 del Protocollo n. 1 della Convenzione
(CEDU, sez. III, sent. 24 giugno 2025, ricc. nn. 69080/13, 67091/14, 3997/15, 20444/15 e 23307/15)

Nel caso in esame, la Corte di Strasburgo è stata chiamata a pronunciarsi sulla presunta violazione dell'art. 1 del Protocollo n. 1 alla Convenzione, sollevata da cittadini turchi e tedeschi che, durante l'ingresso e il transito in Serbia, trasportavano somme di denaro contante superiori a 10.000 euro senza dichiararle (in violazione, dunque, della normativa doganale interna finalizzata al contrasto del terrorismo e del riciclaggio). A seguito dei controlli doganali, le autorità serbe avevano accertato il superamento del limite e disposto la confisca delle somme eccedenti. A questo punto, i ricorrenti contestavano la legittimità della misura, rilevando l'assenza di intenti illeciti, la provenienza lecita del denaro e l'assenza di occultamento dello stesso.

La Corte EDU, dal canto suo, ha ritenuto che la misura costituisse un'interferenza nel diritto di proprietà e, pur riconoscendone la base legale, ha sollevato dubbi sulla prevedibilità e chiarezza della disciplina. L'articolo 64 della legge valutaria serba, infatti, ammetteva sia la confisca totale sia quella parziale, ma offriva criteri molto poco chiari per la determinazione dell'ammontare. In conclusione, la Corte ha ritenuto che l'ampio e impreciso quadro normativo, combinato con la limitata portata del controllo esercitato dai giudici nazionali, non abbia garantito il necessario giusto equilibrio tra le esigenze dell'interesse generale e la tutela del diritto dei ricorrenti al pacifico godimento dei loro beni, accertando quindi la violazione dell'articolo 1 del Protocollo n. 1 alla Convenzione, per mancanza di proporzionalità della misura.



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

CASE OF XXX AND OTHERS v. SERBIA

(Applications nos. 69080/13 and others)

JUDGMENT
STRASBOURG

24 June 2025

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 XXX and Others v. Serbia,

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

Ioannis Ktistakis, *President*,
Lətif Hüseynov,
Darian Pavli,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the five applications 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 the applicants listed in the appended table (“the applicants”), on the various dates indicated therein;

the decision to give notice of the applications to the Serbian Government (“the Government”);

the decisions of the German Government (applications nos. 69080/13 and 67091/14) and the Turkish Government (applications nos. 3997/15, 20444/15 and 23307/15) respectively not to avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44);

the parties’ observations;

Having deliberated in private on 20 May 2025,

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

INTRODUCTION

1. The present case concerns the confiscation of money belonging to the applicants, which they had been carrying while entering or passing through Serbia, in breach of the obligation to declare sums exceeding 10,000 euros (EUR). The applicants complain under Article 1 of Protocol No. 1 that the confiscation, in addition to the fine, constituted an unlawful and/or disproportionate interference with their right to the peaceful enjoyment of their property.

THE FACTS

2. The applicants are Turkish or German nationals. Further details, their representatives and information regarding the domestic proceedings are set out in the Appendix.

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.

I. MISDEMEANOUR PROCEEDINGS

A. Background to the case

5. Pursuant to the applicable legislation, all non-residents who cross the State border while carrying physically transportable means of payment in national or foreign currency must declare to the customs the amount of any such assets equivalent to or exceeding a value of EUR 10,000 (see paragraphs 29 and 40 below).

6. Non-residents were freely permitted to physically carry and import foreign currency into Serbian territory, subject to the requirement that they declare the above-mentioned amount to a customs officer, who would provide them with a written and stamped entry cash declaration receipt in that respect (“the declaration obligation” – see paragraph 31 below).

7. Non-residents were further allowed to take out cash in excess of EUR 10,000, subject to the obligation to declare any such amount and to hand over to the customs officer upon exiting Serbia corresponding proof of origin of the cash – including the cash declaration stamped at the border upon entry into Serbia, or other proof of how the cash in question had been acquired during their stay (“the certification obligation” – see paragraph 33 below).

B. Customs control and seizure of cash

8. Between 2012 and 2014, the applicants, non-residents, were separately transiting through Serbia on their way to or from Türkiye while carrying cash. At various border-crossings, after they had had their passports checked, the Serbian customs officers approached the applicants entering (in the case of the fourth applicant) or leaving Serbian territory (the remaining four applicants). They subjected the applicants to oral questioning and/or personal searches that revealed that they were carrying sums exceeding the statutory limit of EUR 10,000 (see the Appendix). Some applicants carried certificates and/or withdrawal receipts, originating from their states of residence or nationality, attesting to the allegedly lawful origin of the cash.

9. The customs authorities permitted the applicants to keep EUR 10,000; they temporarily seized (*zaplenili su*) the amounts in excess of the above-mentioned threshold, noting it in their customs records. The regulations concerning the temporary seizure of such cash by customs authorities referred to “unlawfully acquired” money (see paragraph 34 below).

C. Misdemeanour proceedings against the applicants

1. *The courts' decisions*

10. On the same respective days, the customs authorities instituted misdemeanour proceedings (*prekršajni postupak*) against the applicants for failing to comply with their obligations to declare cash transported across the Serbian border (*devizni prekršaj*) under the legislation regulating foreign-currency operations (see paragraphs 31, 33 and 36 below).

11. Following hearings before the competent first-instance misdemeanour courts on the same respective days, the applicants – some of whom were questioned in the presence of a lawyer or court interpreter – were found guilty of committing a misdemeanour under Article 63 § 1 of the Foreign Currency Transactions Act (see paragraph 36 below). Namely,

(i) the fourth applicant was found guilty of deliberately failing to comply with his obligation, when entering the State, to declare any cash in excess of EUR 10,000, as additional EUR 14,425 have been found in his wallet;

(ii) the remaining applicants were found guilty of failing to declare any cash they had been carrying when crossing the border on their way out and of failing to obtain upon entry into Serbia a written declaration of any excess cash. Those applicants broke the law through negligence (see the Appendix).

12. Fines of between 7,500 and 60,000 dinars (RSD – approximately EUR 70 and 550, respectively) were imposed on the applicants. The relevant courts took into account (i) the minimum and maximum possible fines of RSD 5,000 and 150,000 (see paragraph 36 below); and (ii) any mitigating and other circumstances (see paragraph 45 below, Article 39 of the Misdemeanours Act), such as the degree of guilt, the motives, the perpetrators' conduct before and after the commission of the offence and their respective personal or financial situation.

13. In addition to fines, the courts imposed confiscation of the objects of the offence (*zaštitna mera oduzimanja predmeta prekršaja*) – namely, all cash in excess of EUR 10,000, referring to paragraphs 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 (see paragraphs 37 and 38 below). In particular, the domestic courts ordered the confiscation of (i) in the first applicant's case, 60% of the amount exceeding EUR 10,000 (EUR 53,000), or (ii) in all other cases, the entire amount of cash exceeding EUR 10,000 (sums ranging between EUR 14,425 and EUR 25,020).

14. These decisions became immediately enforceable before they became final, because the perpetrators were not residents of Serbia. Furthermore, if an applicant failed to pay the imposed fine within a time-limit, pursuant to Article 37 § 1 of the Misdemeanours Act that fine would be converted to a term of imprisonment. All the applicants paid their respective fines.

15. Appellate misdemeanour courts subsequently either upheld the first-instance decisions in their entirety or altered them only in so far as they cited the relevant regulations, or increased the fines and costs (see the Appendix).

2. Additional facts concerning the origin of the confiscated cash

16. It appears from the relevant customs' reports, the records of the hearings and the appeals, that each applicant submitted various certificates to prove (i) the lawful provenance of the money, (ii) that the money belonged to them or had been entrusted to them, and/or (iii) the purpose of transferring the money to or from their country of origin/residence (see the Appendix).

17. The fifth applicant explained that a portion of the cash belonged to him, while another part had been transferred to his account by a German company, for which he worked as a representative in Istanbul, for his salary and expenses. He did not specify, either before the domestic authorities or the Court, what proportion of the cash had been intended for which purpose. He submitted, at the border crossing, the receipt of a bank in Istanbul, certifying the withdrawal, three days before, of Turkish liras (TRL) 80,759.88, and their conversion into EUR 34,380, as well as a request to close that bank account. The applicant explained that he had

carried the impugned cash to Germany with intention to buy a new car, and had not transferred money from his Turkish to his German bank account to avoid high transfer fees.

18. The first-instance and/or second-instance decisions indicate that the respective courts accepted the applicants' assertions that they had been the owners of the money in question and that it had been lawfully acquired.

3. *Reasoning of the misdemeanour courts in respect of the confiscation*

19. In the first applicant's case, in applying Article 64 § 2 of the Foreign Currency Transactions Act, the court confiscated EUR 53,000 (around 60% of the entire amount of cash), while EUR 40,000 was returned to him. In its brief reasoning, the court concluded that the motives did not warrant full confiscation. It had particular regard to (i) the first applicant's unawareness of the regulation, and (ii) the fact that the undeclared cash, which had been withdrawn from a bank account in Germany, had not been concealed but rather kept in a suitcase and declared immediately after the customs officer had asked if the first applicant had any cash in his possession. According to the higher misdemeanour court, the lower court had duly taken into account all the circumstances, including the negligence and lawful origin of money, as otherwise the sanctions would have been even more serious (see the Appendix). The court also imposed the fine of RSD 60,000 (approximately EUR 550).

20. In the other cases, the courts referred to mitigating circumstances, such as an applicant's honest conduct during the proceedings; the fact that the offence had been committed by negligence, owing to ignorance of the law; the financial situation, and the absence of aggravating factors. Fines imposed ranged from RSD 7,500 to 50,000, referring to the same or similar mitigating circumstances (see paragraph 12 above and the Appendix below). While imposing full confiscation, the relevant first-instance courts summarily concluded that no arguments or evidence had been advanced to warrant partial confiscation under Article 64 § 2 of the Foreign Currency Transactions Act (see the Appendix).

21. Appellate courts upheld the lower courts' decisions, referring to the relevant regulations, which provided the obligation to declare in writing the amount of carried cash, and what they found to be the mandatory nature of the confiscation measure regarding any undeclared excess (see paragraphs 31, 33 and 37 below). The applicants had failed to furnish any arguments or evidence to prove that it had not been warranted to confiscate the entire amount of cash in excess of EUR 10,000. The following arguments advanced by the applicants on appeals were disregarded or explicitly dismissed by the appeal courts as irrelevant to the application of Article 64 § 2 of the Foreign Currency Transactions Act: (i) their failure to declare the money had not been intentional, they being unaware of the regulations, (ii) they had had no opportunity to declare the cash before being approached by the customs officers, (iii) the money at issue had been lawfully acquired, (iv) the confiscated amounts were not insignificant to the applicants, or (v) the money was not being exported from Serbia, as the first applicant had only been passing through the respondent State.

II. constitutionNAL complaints

22. The first applicant lodged a constitutional complaint under Articles 32 and 36 of the Constitution (see paragraphs 24 and 25 below) alleging a violation of his right to a fair trial, in

the light of the courts' unlawful and arbitrary decisions ordering the confiscation, and sought compensation by way of damages. All other applicants lodged similar constitutional complaints, asserting a violation of their property right, referring to Article 58 of the Constitution (see paragraph 26 below) and Article 1 of Protocol No. 1.

23. The Constitutional Court (*Ustavni sud*) ruled as follows in its decisions rendered between May 2013 and October 2014 (see Appendix):

(i) it dismissed (*odbacio*) the first applicant's complaint, finding that the decisions have been rendered in a constitutionally acceptable manner and that the applicant had failed to show that they were arbitrary;

(ii) it summarily dismissed the second applicant's complaint, finding that it was lawful to confiscate the impugned cash for the purpose of collecting taxes or fines and thus there has been no violation of the right to property;

(iii) it dismissed, with more detailed reasoning, the complaints lodged by the remaining applicants, finding that the interference with their right to the peaceful enjoyment of property had been lawful (referring to the relevant law cited in paragraphs 37 and 38 below). It followed, therefore, that no assessment in respect of proportionality was necessary.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. **The Constitution of the Republic of Serbia**

24. Article 32 §§ 1 and 2 of the Constitution provides, *inter alia*, that everyone shall have the right to a fair hearing before a tribunal in the determination of their rights and obligations and shall be guaranteed the right to the free assistance of an interpreter if they do not speak or understand the language officially used in court.

25. Article 36 § 1 guarantees equal protection of rights before the courts.

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

B. **Obligation to declare cash, cheques and securities at customs**

27. The provisions regarding transfer of cash across the border are set out in the following legal instruments, some of which have been amended or repealed over the years:

(i) the 2006 Foreign Currency Transactions Act (*Zakon o deviznom poslovanju*, OG RS, nos. 62/2006, 31/2011, 119/2012 and 139/2014);

(ii) the Decision of the National Bank of Serbia regarding personal and physical transfers of means of payment (cash, cheques and securities) across the border, adopted in 2006, as amended in 2008 and 2009 (*Odluka o uslovima za lične i fizičke prenose sredstava plaćanja u inostranstvo i iz inostranstva*, OG RS, nos. 67/2006, 52/2008 and 18/2009);

(iii) the Law on the prevention of money laundering and the financing of terrorism (*Zakon o sprečavanju pranja novca i finansiranja terorizma*, OG RS, nos. 20/2009, 72/2009, 91/2010 and 139/2014 – “the Money Laundering Act”).

28. The relevant provisions, as worded at the material time, may be summarised as follows.

1. *Decision of the National Bank of Serbia no. 67/2006*

29. In implementation of Article 31 of the Foreign Currency Transactions Act, the National Bank of Serbia adopted decision (see paragraph 27 above; hereinafter “the 2006 Bank Decision”) which provided that every individual crossing the State border was free to carry cash in any currency, subject to the obligation to report an amount that is equivalent to or exceeds that determined by his or her residency status.

(a) When entering the country and importing means of payment (*unositi*)

30. All Serbian residents were permitted to bring into Serbia foreign currency and cheques, subject to the obligation to declare (*prijavi*) to the customs any amount of cash exceeding the threshold of EUR 10,000 (see paragraph 40 below; point 9 of the 2006 Bank Decision).

31. Non-residents were permitted to bring cash into Serbia in foreign currency, subject to the requirement that they report any amount exceeding EUR 10,000 (or its equivalent) to a customs officer, who would provide them with a written receipt in that respect (point 11a of the 2006 Bank Decision).

(b) When leaving Serbia and “exporting” (*iznositi*) means of payment

32. Serbian residents may take cash or cheques abroad if the total sum does not exceed EUR 10,000 (or equivalent), except if they are emigrating (points 10 and 11 of the 2006 Bank Decision, as amended in 2008).

33. Non-residents may export cash in domestic or foreign currency not exceeding EUR 10,000 (or equivalent; point 12 § 1 of the 2006 Bank Decision, as amended in 2008). They may export higher amounts in the following instances:

(a) on the basis of a declaration on bringing cash into Serbia that has been stamped by a customs officer (see paragraph 31 above);

(b) upon submission of a bank slip recording the withdrawal of cash from a foreign-currency account while in Serbia;

(c) upon submission of a receipt recording exchanges into euros from national currency previously acquired while using their credit card.

Such declarations shall be annulled by the customs while exiting the country for the first time (*pri prvom izlasku iz zemlje*; point 12 § 2 of the 2006 Bank Decision, as amended in 2008).

(c) Temporary confiscation of cash exceeding EUR 10,000

34. Customs officers may temporarily seize from residents and non-residents currency in cash and cheques being carried into or out of Serbia exceeding EUR 10,000 and which has been

unlawfully acquired (*стечене су супротно прописима*); in such case, those customs officers shall issue declarations of seizure (point 14 of the 2006 Bank Decision).

2. *The 2006 Foreign Currency Transactions Act*

35. Articles 59-63 of the Foreign Currency Transactions Act define various misdemeanours for residents and non-residents who do not comply with the duties and rules imposed by this Act.

36. Under Article 63 § 1 (including with changes in force since December 2012), the failure of a non-resident to comply with the regulations adopted by the National Bank of Serbia (see paragraph 29, 31 and 33 above) constitutes a misdemeanour, subject to a fine ranging from RSD 5,000 to 150,000.

37. Under Article 64 § 1, in addition to a fine, the relevant authorities shall impose the protective measure of confiscation of any assets that were intended or used for the commission of the misdemeanour in question.

38. Article 64 § 2 provides that, by way of an exception (*izuzetno*) to paragraph 1, if the offender's motive or other circumstances imply that it is not justified to confiscate the entire amount of the assets which are the object of the misdemeanour, they are to be confiscated only in part.

39. Foreign currency that constitutes the object of the criminal offence or misdemeanour shall be sold to the National Bank of Serbia and its equivalent in national currency is to be transferred into the State budget (Article 66).

3. *The 2009 Money Laundering Act*

40. Article 67 § 1 provides that every natural person who crosses the State border carrying means of payment equivalent to or exceeding EUR 10,000 in national or foreign currency is obliged to declare those assets to the customs.

41. Article 68 provides that the customs authority must ensure compliance with that obligation by carrying out a check, in accordance with the law.

42. Article 70 § 1 provides that the customs authorities must, within three days, inform the Office for the Prevention of Money Laundering of any transfer across the State border of means of payment, and to provide the grounds for suspicion (*osnovi sumnje*) of money laundering or the financing of terrorism.

43. Article 90 § 3 (which came into force on 3 December 2010) provides a fine of between RSD 5,000 and 50,000 for a failure to comply with Article 67 § 1 (see paragraph 40 above).

44. The Act does not provide by way of a sanction the confiscation of undeclared assets in this context.

C. **Misdemeanours Act of 2005**

45. The 2005 Misdemeanours Act (*Zakon o prekršajima*, first published in OG FRY, nos. 101/2005 and 111/2005, then OG RS, nos. 116/2008 and 111/2009), as worded at the time and in so far as relevant, read as follows:

Types and purpose of sanctions for misdemeanours

Article 5

“(1) Sanctions for misdemeanours are: penalties (a fine and imprisonment), admonitory measures (a reprimand and a suspended sentence), [and] protective and educational measures.

(2) The reason for providing, imposing and applying sanctions for misdemeanour is so that citizens respect the legal system and that [they do not] commit a misdemeanour in the future.”

Determining the penalty

Article 39

“(1) The type and severity of the penalty to be applied shall be determined within the margins [of discretion] provided by law in respect of the misdemeanour committed, taking into account all the circumstances that may render the penalty (in terms of its type and severity) heavier or lighter for the perpetrator ([presence of] mitigating and aggravating circumstances), and in particular, the following: the gravity and consequences of the offence, the circumstances under which the offence was committed, the degree of guilt [and] the personal status of the perpetrators of the offence, and [their] conduct after the commission of the offence. ...”

The purpose and imposition of protective measures

Article 45

“(1) Within the framework of general purpose of misdemeanour sanctions (Article 5 § 2), the purpose of applying protective measures is to remove the conditions that enable or incite the perpetrator to commit a new misdemeanour.

(2) The protective measures are set out by law or decrees.”

Types of protective measures

Article 46

“(1) The following protective measures may be imposed in respect of a misdemeanour:

1. confiscating items [*oduzimanje predmeta*], ...

(2) Protective measures specified under § 1 (points 1, 6, 7 and 9) may be imposed under the conditions provided by this Act, even if the measure [in question] has not been provided by the separate legislation setting out the misdemeanour in question.”

Confiscation of items

Article 48

“(1) The items that were intended or used for the commission of a misdemeanour or constitute the proceeds of the offence [in question] may be temporarily or permanently confiscated if they are owned by the perpetrator, or used by the legal entity that committed the misdemeanour.

(2) Items described under (1) may be confiscated even when they are not in the perpetrator’s ownership or not used [*ne raspolože*] by the legal entity [in question], if [confiscation] is

necessary for the protection of general safety, the protection of people's lives and health [or] the security of the traffic of goods, or for moral reasons, and in other situations provided for by this law.

...

(5) The regulation stipulating the misdemeanour may provide the mandatory imposition of the protective measure of confiscation of the object [in question].

(6) The application of this protective measure shall not affect the right of third parties to seek compensation from the perpetrator of the misdemeanour."

D. Practice of the Constitutional Court

1. Case-law before 2018

46. Before 2018, the Constitutional Court would summarily dismiss (*odbacivao*) constitutional appeals lodged by non-resident appellants, on the same grounds as those cited in the instant case (see paragraph 23 above), namely, that the appellants' allegations raised no issue under the protected right or that the correct application of the law could not amount to interference with the property right (see, for example, inadmissibility decisions UŽ-5608/2013 of 16 June 2014, UŽ-3861/2015 of 4 October 2016 and UŽ-1210/2016 of 20 September 2017).

2. Case-law between 2018 and 2020

47. Between 2018 and 2020, the Constitutional Court adopted several more expansively reasoned decisions in which it examined similar constitutional appeals on the merits. Several decisions were published in the Official Gazette as landmark decisions of jurisprudential value.

(a) Decisions in favour of the appellants

(i) Decision UŽ-367/2016 of 7 June 2018 (A.A.), published in OG RS, no. 99/2018

48. In this first decision on the merits, the Constitutional Court, referring to the Court's case-law, ruled that the appellant's constitutional rights to a fair trial and to the peaceful enjoyment of his property had been violated.

49. The misdemeanour courts convicted the appellant for his failure to declare cash in excess of EUR 10,000, fined him RSD 30,000 and confiscated the excess sum (namely, EUR 10,000) as a protective measure. The Niš High Misdemeanour Court ruled that "the application [by] the defendant's lawyer asking that the measure of partial confiscation be applied could not be accepted given that the first-instance court had correctly applied the law and found that there were no reasons for [allowing such an application]" (decision of 1 December 2015, Prž-21954/15).

50. The Constitutional Court found that the Niš High Misdemeanour Court, relying only on Article 64 § 1 of the Foreign Currency Transactions Act, had failed to render a reasoned decision. It had simply endorsed the first-instance decision, without assessing "motives and other circumstances" of the offence or explaining whether the partial confiscation could have fulfilled the purpose, given that the disproportionality of the sanction had constituted the crux of the appeal. In particular, it had not explained the weight of various elements, such as proof of

the origin of the cash, the means of transporting it, whether there had been an intent to deceive the authorities and/or knowledge of the regulations and the sanctions that could be imposed on a foreigner.

51. The Constitutional Court found that full confiscation and a fine had placed a disproportionate burden on the appellant. It quashed the appeal court's decision and ordered it to render a new decision.

(ii) Decision UŽ-1202/2016 of 8 November 2018 (with the dissenting opinion of Judge T.Š.), published in OG RS, no. 99/2018

52. The Constitutional Court arrived at the same conclusion as above and provided similar reasoning in this decision concerning the appellant's right to the peaceful enjoyment of property; however, it dismissed (*odbačena*) the complaint concerning an alleged breach of the right to a fair trial.

53. The misdemeanour courts fined the appellant and confiscated the entire excess sum of EUR 8,900. The courts accepted that the money had been lawfully acquired, but dismissed the argument that this had justified application of Article 64 § 2 of the Foreign Currency Transactions Act.

54. In respect of the right to property, the Constitutional Court considered that the misdemeanour courts should have provided more extensive reasons justifying full confiscation over partial.

(b) Decisions dismissing the constitutional appeals

(i) Decision UŽ-5214/2016 of 24 October 2019 (with two dissenting opinions of Judges T.Š. and T.K.), published in OG RS, no. 88/2019

55. In this decision, referred to in many later decisions, the Constitutional Court for the first time dismissed on the merits (*odbio kao neosnovanu*) a similar appeal. The appellant, a Turkish national in transit through Serbia, had been fined RSD 40,000 and had had confiscated in its entirety EUR 19,000 carried in excess of the EUR 10,000 limit, for failure to declare it to the customs. The appellant stated that he had been aware of the declaration obligation, but that he had been subjected to a customs check before he had been given an opportunity to declare the cash. He considered that full confiscation had been grossly disproportionate, as he had proved the lawful origin of money by submitting a recent bank withdrawal receipt; he had also proved that the money was intended for the purchase of a house in Türkiye.

56. The Constitutional Court explained the principles of application of Article 64 of the Foreign Currency Transactions Act. According to it, the option of partial confiscation presupposed that the perpetrator had at first instance advanced arguments during the misdemeanour proceedings and had furnished evidence to justify, as an exception, application of Article 64 § 2. Only under such circumstances would the authorities be obliged to assess the appellant's allegations, to determine whether the conditions for application of Article 64 § 2 had been fulfilled and to explain how the court had determined the proportion to be confiscated. In the case at hand, the appellant had not presented any such motives or circumstances to the first-instance court.

57. The court considered that the authorities had achieved the purpose of the sanctions provided in the Misdemeanours Act (see paragraph 45 above), and had duly balanced the public interest and the applicant's constitutional right. The Constitutional Court took into account the Court's case-law, but deemed that the confiscation of the entire amount was justified since: (i) the appellant had been aware of the declaration obligation; (ii) the cash had been hidden in several places in the appellant's car; (iii) the appellant had given different statements on how much cash he was carrying; (iv) he had failed to prove the origin of the money, as the bank statements could not constitute sufficient evidence in this respect; (v) while no actual damage had been caused, the purpose of the confiscation was to serve both as a deterrent and to protect society against recurrence of similar misdemeanours.

(ii) Decision UŽ-8449/2017 of 18 June 2020 (with a dissenting opinion of judge T.K.), published in OG RS, no. 105/2020

58. The appellant travelled with his wife through Serbia on his way to Türkiye. To a customs officer at the border crossing point, he stated that they were carrying EUR 1,000; however, a personal search revealed 73,100 Swiss Francs (CHF) and EUR 5,500 in several envelopes in the appellant's wife's handbag. They were allowed to keep the equivalent of EUR 20,000; the remaining amount of CHF 57,600 was seized. At a misdemeanour hearing conducted on the same day, the appellant, who had no legal representation, explained that he had not been aware of the obligation to declare money which belonged to his children and was intended for the purchase of a plot of land in Türkiye. The misdemeanour court found the applicant guilty of deliberate non-compliance with the obligation to declare cash, fined him and confiscated CHF 57,600. On appeal, the appellant sought application of Article 64 § 2 of the Foreign Currency Transactions Act, arguing that the offence had been committed by negligence and that the money had been lawfully acquired. He provided a declaration produced several days before the incident, stamped by a notary in Switzerland, showing that his three daughters had each entrusted him CHF 25,000.

59. The appellate court accepted this declaration as proof of the lawful origin of money, but upheld the first-instance decision. It found the appellant's arguments irrelevant for the application of Article 64 § 2.

60. The appellant complained under Article 58 of the Constitution and Article 1 of Protocol No. 1 to the Convention that the sanction imposed on him had been disproportionate. The Constitutional Court dismissed the complaint, referring to the above-mentioned decision UŽ-5214/2016; in particular, it noted that the appellant had failed to advance arguments and furnish evidence before the first-instance court that would justify the latter assessing whether the motives or other circumstances had warranted the application of Article 64 § 2 and the confiscation of excess assets only in part.

(iii) Other similar decisions of the Constitutional Court

61. The Constitutional Court reasoned similarly in two decisions concerning full confiscation of the excess sums, rendered on the same date: (i) decision UŽ-10438/2018, given the fact that, *inter alia*, the bank withdrawal receipts furnished by the appellant could not have constituted valid evidence of the lawful origin of the money; and (ii) decision UŽ-7327/2017, where the appellant's son had authorised her to carry the money for the purchase of a house in Bulgaria.

(iv) Additional common reasoning in the above-mentioned decisions (i-iii)

62. While referring to the Court's general assessment tests, the Constitutional Court found that the appellants had had possession of the sums in question, regardless of their ownership, for the purpose of the application of Article 58 of the Constitution, and that the confiscation of those sums had constituted an interference with their right to the peaceful enjoyment of their property. It further considered the interference to have been lawful and proportionate. In particular, the checking of cross-border cash transfer had been justified (i) by the possibility that the origin of such money was illegal or that its transfer could be connected with criminal activities, and/or (ii) to deter anyone who may threaten or seriously disturb the balance of payments (*platni bilans*) and monetary and foreign currency exchange rate policies (*devizni kurs*); (iii) by its aim to secure the financial stability of Serbia.

(c) Other relevant decisions

63. The Constitutional Court rendered a number of other decisions regarding alleged violations of the right to a fair trial in similar context. In decision UŽ-1932/2017 of 5 March 2020, the Constitutional Court dismissed the appellant's complaint (*odbijena kao neosnovana*) that the full confiscation, in addition to the imposition of a fine, had been disproportionate to his failure to declare the sum, as well as his complaints of an arbitrary application of law that had resulted in full confiscation and an alleged breach of his right to a fair trial. The Constitutional Court considered that, in any event, the return of EUR 10,000 to each co-traveller and the confiscation of only the excess sum meant that the courts had in practice imposed a measure of partial confiscation, even if they referred to Article 64 § 1 of the Foreign Currency Transactions Act.

64. In its decision UŽ-3875/2016 of 15 October 2020, the Constitutional Court upheld the appellant's complaint about a breach of his right to a fair trial and ruled that the appellate court's decision had been insufficiently reasoned regarding the question of whether only full confiscation could have corresponded to the gravity of the offence, or whether (as argued by the appellant) partial confiscation could have served the same purpose.

65. Lastly, in two cases concerning the confiscation of undeclared goods on the basis of the Customs Act, the Constitutional Court dismissed, *inter alia*, complaints lodged by foreign nationals who had been subjected to confiscation measures, considering that Article 58 of the Constitution did not protect property that was the object of an offence (decision UŽ-5386/2016 of 25 April 2019, and decision UŽ-8691/2017 of 3 March 2020).

II. Relevant international material

A. Council of Europe

66. The relevant part of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (which was signed in Warsaw on 16 May 2005 and which entered into force in respect of Serbia on 1 February 2009) – as well as the relevant part of the Explanatory report to that Convention – are cited in the case of *Boljević v. Croatia* (no. 43492/11, §§ 18-19, 31 January 2017).

67. As regards the mandatory confiscation, the Convention states that “[p]arties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime.

Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence” (paragraph 3 of Article 3). The relevant part of the Explanatory Report reads as follows:

“70. Paragraph 3 of Article 3 deals with the question of mandatory confiscation. It should be noted from the outset that this provision is not mandatory for Parties, which are therefore free to decide whether to implement it or not. The drafters of this Convention however intended to send a signal that mandatory confiscation for offences which are subject to the confiscation regime, may be advisable for particularly serious offences and for offences where there is no victim claiming to be compensated (such as drug trafficking), but also frauds with a large number of unknown victims.”

B. European Union law and practice

68. Serbia is not a member State of the European Union. It was granted candidate country status in March 2012 and started accession negotiations in January 2014. The essence of this process implies, *inter alia*, the need to identify existing differences between the two legal systems in each of the negotiating chapters, and to work on the full alignment of the State’s national legislation with the EU *acquis* and its implementation on the national level, pending full membership.

69. The relevant provisions of Regulation (EC) No. 1889/2005 of 26 October 2005 on controls of cash entering or leaving the Community (hereafter “the 2005 Cash Control Regulation”) are cited in *Boljević* (cited above, §§ 20 and 21).

70. The relevant provisions of Regulation (EU) No. 1018/1672 (which entered into force on 3 June 2021, and which superseded the Regulation mentioned in the preceding paragraph; hereafter “the 2018 Cash Control Regulation”) – as well as the relevant case-law of the Court of Justice of the European Union concerning requests for a preliminary ruling lodged by national courts in respect of the interpretation and application of the 2005 Cash Control Regulation – are reproduced in the case of *Imeri v. Croatia* (no. 77668/14, § 42, 44-47, 24 June 2021).

71. In sum, given the fact that the free movement of capital and payments between the EU member States, and between the member States and third countries are among the “four fundamental freedoms” enjoyed within the EU single market guaranteed by membership of the EU, only limited restrictions may be allowed. Therefore, pursuant to the 2018 Cash Control Regulation, EU citizens and other nationals are entitled to carry any amount of cash when crossing the EU’s outer borders, subject to the obligation to declare, in writing or orally, any cash or means of payment in a total amount of EUR 10,000 to the competent authorities and make it available to them for control (Article 3). The competent authorities may temporarily detain cash in case of non-compliance with the declaration obligation (Article 7 § 1(a)), or if there are indications that the cash, irrespective of the amount, is related to criminal activity (Article 7 § 1(b)), by means of an administrative decision, subject to an effective remedy (Article 7 § 2). The period of temporary detention shall be strictly limited under national law to the time required for competent authorities to determine whether the circumstances of the case warrant further detention; in particular, it should not exceed 30 days without an assessment of necessity and proportionality of further temporary detention, which may exceptionally justify extension to a maximum of 90 days (Article 7 § 3). Otherwise, the cash should be immediately released to

the person from whom the cash was temporarily detained. Further, in order to encourage compliance and deter circumvention, Member States should introduce penalties for non-compliance with the obligations to declare or disclose cash. Those penalties should apply only to the failure to declare or disclose cash under this Regulation and should not take into account the potential criminal activity associated with the cash, which may be the object of further investigation and measures that fall outside the scope of this Regulation (Preamble). Those penalties should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance (Preamble and Article 14).

Upon requests for preliminary ruling by national courts, the Court of Justice of the European Union (CJEU) dealt with several cases which concerned interpretation and application of the 2005 Cash Control Regulation (see paragraph 69 above).

In *Chmielewski* (C-255/14, 16 July 2015, EU:C:2015:475) the CJEU has stated that, in the absence of harmonisation of EU legislation in the field of penalties, Member States enjoy a margin of discretion concerning the choice of penalties which they adopt in order to ensure compliance with the obligation to declare laid down in Article 3 of that Regulation. It further stated that the administrative or punitive measures permitted under national legislation must not go beyond what is necessary in order to attain the objectives legitimately pursued by that legislation (§ 22) and that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality (§ 23). In the light of the nature of the infringement concerned, the Court held that a fine incurred for breach of that obligation equivalent to 60% of the amount of undeclared cash, where that amount is more than EUR 50,000, did not seem to be proportionate (§ 30). In that regard, such a fine goes beyond what is necessary in order to ensure compliance with that obligation and the fulfilment of the objectives pursued by that regulation (§ 30), given that the penalty provided for in the Regulation did not seek to penalise possible fraudulent or unlawful activities, but solely a breach of the obligation to declare laid down in Article 3 of the Regulation (§ 31).

In *Lu Zheng* (C-190/17, 31 May 2018, EU:C:2018:357) the CJEU, while reiterating the principles set out in *Chmielewski*, found that a fine which may be imposed in up to double the amount of the undeclared amount could not be considered proportionate. Even if such a fine is calculated by taking into account certain aggravating circumstances, provided they comply with the principle of proportionality, the fact that the amount of the fine may be up to double the undeclared cash sum and that, in any event, as in the present case, the fine may be set at an amount corresponding to nearly 100% of that sum goes beyond what is necessary in order to ensure compliance with the obligation to declare. In *Pinzaru and Cirstinoiu* (C-707/17, 12 July 2018, EU:C:2018:574) and in *AK and EP* (C-335/18 and C-336/18, 30 January 2019, EU:C:2019:92) it found disproportionate the confiscation of the entire undeclared amount, in addition to a prison sentence of up to six or five years imprisonment respectively and a fine which may be up to respectively the double or the fifth of the undeclared amount. In *Mitnitsa Burgas* (C-652/18, 3 October 2019, EU:C:2019:818) it found disproportionate the confiscation of the entire undeclared amount in addition to a fine of about EUR 500. In *Direcția Generală Regională a Finanțelor Publice București* (C-679/19, 19 December 2019, EU:C:2019:1109) the CJEU found disproportionate the

confiscation of the undeclared amount exceeding EUR 10,000 in addition to a fine of about EUR 630.

The relevant part of the CJEU's judgment in the *AK and EP* case reads:

"38 ... even if the breach of the obligation to declare is punished only by confiscation for the benefit of the State of the totality of the undeclared sum, in the absence of any custodial sentence or fine, such a measure would, in itself, go beyond the limits of what is necessary to ensure compliance with the reporting obligation. Having regard to the fact that the Court has already held that a fine the amount of which corresponds to 60% of the sum of undeclared cash imposed in the event of a breach of said obligation does not appear to be proportionate, taking into account the nature of the offence concerned, a more onerous measure, such as the confiscation for the benefit of the State of the entire undeclared sum, cannot a fortiori be regarded as being proportionate."

THE LAW

I. JOINDER OF THE APPLICATIONS

72. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 to THE CONVENTION

73. The applicants complained that the confiscation (in full or, in the case of the first applicant, of a significant part) of their lawfully acquired money, in addition to the imposed fines, following their failure to declare it had not been lawful and/or in the public interest and had been grossly disproportionate. They relied on Article 1 of Protocol No. 1, which reads:

"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

74. The Government did not raise any objections as regards the admissibility of the complaints. The Court notes that the complaints are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicants

75. The applicants, while acknowledging that every State had an undisputed right to control the flow of cash in order to prevent terrorism, money laundering or other criminal actions,

argued that it should have been evident they were not criminals. None of them had had a prior criminal record and there was nothing to warrant the conclusion that the State had been attempting to prevent any criminal activity. The applicants had been Turkish or German nationals working temporarily abroad, whose status in terms of money transactions had been regulated in their countries of residence. The confiscated sums had been significant for them, had been legally acquired and intended to be used in a legal manner, as was demonstrated by evidence. They had not tried to conceal that money, but had presented it to the authorities upon their request.

76. The measure of full confiscation, as provided by Article 64 § 1, had been applied almost automatically. Even when partial confiscation under Article 64 § 2 had been applied in the first applicant's case, it had not been based on any clear parameters or on a proportionality assessment; rather, those decisions had been rendered in an arbitrary manner.

77. The first applicant also argued that his failure to declare the money could not have affected the "foreign currency market of Serbia" (*devizno tržište Srbije*), as argued by the authorities (with reference to the Constitutional Court's decisions, see paragraph 62 above), given that the money had not originated in the respondent State and that he had not been exporting money from it. That was one of the reasons why he could not have foreseen his obligation to report that money to the authorities of the State that he had merely been crossing.

78. Therefore, the mandatory full confiscation of the cash, or the arbitrary partial confiscation thereof – in addition to the imposed fines – had been unnecessary; the respondent State had flagrantly disregarded the principle of proportionality as the applicants had caused no damage to the State.

(b) The Government

79. The Government acknowledged, echoing the findings of the Constitutional Court, that in confiscating the applicants' unreported cash, the domestic authorities had interfered with their (right of) property of lawful origin. This also concerned the second applicant, despite the fact that the lawful origin of his money had not been proved.

80. However, the customs-related legal proceedings had been conducted by independent courts that had correctly applied the relevant law, in particular, Articles 59-64 of the Foreign Currency Transactions Act (see paragraphs 35-38 above), which were "clear, accessible and foreseeable".

81. As regards the legitimate aim, the Government noted that the respondent State had harmonised its legislation with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and other relevant international materials (see paragraph 66 above), which entitled each member State to introduce penalties for non-compliance with the duty to declare cash. Confiscation was a measure aimed at protecting the public interest and at combating money laundering at the national and European levels. Given Serbia's geostrategic position and the fact that its border was vulnerable to various illegal activities – such as human trafficking, drugs and weapons smuggling, and the transfer of cash for the purpose of money laundering – the authorities were obliged to monitor and strictly control the passage of people, goods and money across its border in order to prevent such criminal activities. A lack of information on the applicants'

failure to acquaint themselves with the relevant customs regulations, which was uniformly regulated in the European States, could not constitute an excuse for committing an offence or a reason for a more lenient sanction than the confiscation of the entire amounts in question. The applicants could have reasonably been expected to enquire about the transfer of considerable sums of cash and the restrictions thereon, before crossing Serbia's borders.

82. The Government argued that in the event of possible illegal activity action had to be taken; the most obvious indication of such activity was the existence and transfer of large sums of cash. The applicants had been found guilty of failing to report cash in amounts considerably exceeding the threshold of EUR 10,000; they had tried to transfer such cash in different ways (see the Appendix). A balance between the interest of all European citizens in the free flow of capital and their security had been achieved by the application of an "effective, proportionate and appropriate" measure.

83. The domestic authorities' interpretation of the relevant provisions – namely, that the confiscation of cash constituted an appropriate sanction for breaches of the regulations – was restrictive, but consistent, and within the "margin of appreciation" accorded to them. In particular, the law itself could not stipulate all the circumstances for the imposition of protective measure. The broad margin of appreciation provided by the legislature – given that the *ratio legis* of those regulations was to prevent illegal activities – was therefore a necessity and did not amount to arbitrariness.

84. The nature and the circumstances of the offence had been taken into account; accordingly, those applicants who had been found to have acted negligently and in the absence of any aggravating circumstances, and who had had no previous convictions, had been subjected to lower fines. For example, the fifth applicant (who had been found to have acted through negligence) had been subjected to a fine of RSD 7,500, and the second applicant (who had deliberately hidden the cash) had been subjected to a fine of RSD 50,000. However, the amount confiscated need not to have been correlated with the amount of the fine. Under the law, full confiscation was in principle a compulsory sanction not subject to the courts' discretionary assessment ; only in justified circumstances could a court decide to impose a partial confiscation. The discretion to confiscate undeclared assets in part had been applied only in respect of the first applicant. After assessing the evidence, the competent court had established that a lower degree of guilt applied and had found that partial confiscation had been justified.

85. Lastly, the Government referred to the Constitutional Court's decisions dismissing the applicants' appeals (see paragraph 23 above). They highlighted the fact that, unlike the Convention, Article 58 of the Constitution only guaranteed the peaceful enjoyment of lawfully acquired property. Where the applicants had failed to prove the lawful origin of the confiscated property – as in the case of the second applicant – the courts had found no link between the appellants' complaints and the right guaranteed by Article 58.

86. In the cases of the third, fourth and fifth applicants, where the lawful origin of the property had not been disputed, the Constitutional Court had examined the applicants' complaints in the light of the Court's case-law. The Constitutional Court acknowledged that (i) the applicants' possessions had engaged the protection of Article 58, and (ii) given that the confiscation had

been based on law and in accordance with the rule of law, it was not necessary to assess the proportionality of the measures owing to their mandatory nature.

87. As to the first applicant, the Government asserted that he had only raised complaints regarding alleged violations of the right to a fair trial and the right to compensation for damage (see paragraph 22 above), and the Constitutional Court had found that he had given no “constitutionally legal reasons” to substantiate those complaints.

2. *The Court’s assessment*

(a) General principles

88. 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) and *Grifhorst v. France* (§§ 81-83, no. 28336/02, 26 February 2009).

(b) Whether there was an interference with the applicants’ right of property

89. It is not in dispute between the parties that the confiscated cash constituted the applicants’ respective possessions, and that the domestic courts’ decisions ordering the confiscation of the undeclared cash had amounted to an interference with the applicants’ right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

90. In respect of the first four applicants, it is obvious that the “possession” at issue was the entire amount of cash confiscated in the relevant misdemeanour proceedings, which these applicants claimed as their own.

91. As regards the fifth applicant, he stated, before the domestic authorities and the Court, that part of the confiscated cash had belonged to the company that he had represented, although the precise proportion has not been indicated (see paragraphs 17 above).

92. The Court considers that the “possession” in his case also concerns the entire amount, since his exact share had not been specified by him or by the domestic authorities. 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), the Court is not in a position to call into question the findings of ownership reached by the domestic courts – particularly the findings of the Constitutional Court, which deemed that the applicant had had “possession” of the entire amount – and thus to determine the matter differently (see *Imeri v. Croatia*, no. 77668/14, § 63, 24 June 2021, and contrast with *Karapetyan v. Georgia*, no. 61233/12, § 31, 15 October 2020). The Government endorsed the Constitutional Court’s finding (see paragraph 79 above). In these circumstances, and given that the company was not a party to these proceedings, the Court accepts that the entire amount confiscated from the fifth applicant is to be regarded as his “possessions” within the meaning of Article 1 of Protocol No.1 to the Convention (compare *Yaylali v. Serbia*, no. 15887/15, §§ 30-33, 17 September 2024, concerning jewellery belonging to the applicant’s wife).

(c) Applicable rule

93. The Court observes that the customs authorities initially temporarily seized the undeclared cash (see paragraphs 9 and 34 above) and that the misdemeanour courts then imposed, as a

sanction, the permanent confiscation of the cash seized from the applicants (see paragraphs 13 and 37 above).

94. As regards the issue as to which of the rules of Article 1 of Protocol No. 1 applies, the Court reiterates its consistent approach that a confiscation measure in this type of cases, even though it does involve a deprivation of possessions, nevertheless constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention. However, this provision must be construed in the light of the general principle set out in the first sentence of the first paragraph (see *Boljević v. Croatia*, no. 43492/11, § 38, 31 January 2017, *Yaremychuk and Others v. Ukraine*, nos. 2720/13 and 6 others, § 22, 9 December 2021).

(d) Whether the interference was justified

(i) Whether the interference was provided for by law

95. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see, among other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I).

96. In the present case, the legal framework governing the obligations of declaration and certification, the misdemeanour of non-compliance therewith and the range of fines are defined by two concurrent regimes: (i) the Foreign Currency Transactions Act in conjunction with the 2006 Bank Decision (see paragraphs 27, 31, 33, 36-38 above), and (ii) the Money Laundering Act (see paragraphs 40-43 above). Unlike the Money Laundering Act which prescribes only the imposition of a fine, the Foreign Currency Transactions Act provides for under Article 64, together with a fine, a protective measure of confiscation of the object of the misdemeanour (see paragraphs 36-38 above), which the domestic authorities found to be mandatory. Nevertheless, having regard to the Misdemeanours Act (see Article 46 § 2 cited in paragraph 45 above) and reiterating that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 33, *Reports of Judgments and Decisions 1998-I*, and *Casado Coca v. Spain*, 24 February 1994, § 43, Series A no. 285- A), the Court will continue to examine the case within the context of the Foreign Currency Transactions Act and the 2006 Bank Decision, which were the *lex specialis* acts applied by all acting domestic authorities while convicting the applicants and confiscating the cash in issue. The Court is thus satisfied that the confiscation measure complained of had a legal basis in the domestic law.

97. At the same time, when speaking of “law”, Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term – a concept that comprises both statutory law and case-law and implies qualitative requirements in that respect, notably those of accessibility and foreseeability (see, for example, *Bežanić and Baškarad v. Croatia*, nos. 16140/15 and 13322/16, § 62, 19 May 2022, with further reference). These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty it carries which, *inter alia*, means that offences and the relevant penalties must be clearly defined by law. In particular, the law is “foreseeable” when an individual is able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences of a given action and when it indicates the scope of discretion conferred on

competent authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interferences (see *Imeri*, §§ 69-70, and *Yaylali*, § 43, both cited above, with further references).

98. The parties agree that Article 64 of the Foreign Currency Transactions Act imposes confiscation as a protective measure (see paragraphs 37 and 38 above). The Government argued, with reference to the courts' decisions, that full confiscation was in principle a compulsory sanction not subject to the courts' discretionary assessment; only in justified circumstances could a court decide to impose a partial confiscation (see paragraph 84 above). At the same time, the Court cannot but notice that the seemingly absolute character of that sanction was made relative by its paragraph 2 which specifically allowed for partial confiscation in exceptional circumstances, with regard to the motives of the misdemeanour or any other circumstances that could justify such decision. Article 64 paragraph 2 gives no definition or any further indication of the criteria that would characterise the "motives" for the misdemeanour or such "other circumstances"; neither does it set any criteria in respect of how the authorities should exercise their discretion, specify with whom the burden of proof in respect of such "motives" and "circumstances" shall lie, nor indicate the maximum and minimum of the amounts that could be subject to confiscation. Thus, the law allowed a broad discretion to the domestic authorities in respect of the choice between full or partial confiscation measure, giving particular weight to the motive of the offence and leaving other mitigating circumstances to the evaluation of the relevant authorities, in particular the courts (compare *Imeri*, § 73, and *Yaremiychuk and Others*, § 24, both cited above; and contrast with *Ismayilov v. Russia*, no. 30352/03, § 32, 6 November 2008).

99. The Court further recalls that many laws are more or less vague, and their interpretation and application are a question of practice. No matter how clearly drafted a legal provision may be there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Moreover, the Court's task is not to review domestic law *in abstracto*, but to determine whether the manner in which it was applied to, or affected the applicant gave rise to a violation of the Convention (see, among many other authorities, *Imeri*, cited above, §§ 75-76).

100. Turning to the applicants' case, the Court is struck by lack of coherence in the application of this discretion, both as regards the motive of the offence – a criterion directly mentioned in the domestic law – and as regards other key and recurrent aspects of the misdemeanours of which the applicants have been found guilty. Thus, the domestic courts, including the Constitutional Court, concluded that the first applicant had committed the offence by negligence and not intentionally, implying that the motive of the offence had played a role in the choice of the sanction under Article 64 of the Foreign Currency Transactions Act. They also noted the lawful origin of the cash (contrast *Imeri*, § 77, cited above), his being unaware of the regulation, and the fact that the cash had not been hidden but had been presented for an inspection upon the customs officers' request (see paragraphs 11, 19, 21 and 23 above; as well as the Appendix). Comparing this set of circumstances to the remaining four applicants, it is difficult to perceive how these same factors (except the fourth applicant who had been found to have committed the offence deliberately, see paragraph 11 above) have led the courts to

conclude that none of the mitigating circumstances under Article 64 § 2 had applied and that full confiscation was the mandatory measure.

101. Moreover, the subsequent practice of the Constitutional Court indicates that the same questions of the intent and motives of the offence, the origin of the money, indications of any other criminal offence being committed, as well as the burden and method of proof of the lawful origin, have continued to play a key role in that court's examination (see paragraphs 47-65 above). Although these decisions post-dated the constitutional adjudication in respect of the applicants, they illustrate the difficulties faced by the relevant domestic authorities when interpreting the leeway accorded to them by the applicable legislative provisions, in particular the Foreign Currency Transactions Act.

102. Having regard to the above, the Court concludes that not only did legislation in question remain imprecise in its key elements; but also 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 for the individuals concerned, as well as limit the scope of discretion for the competent authorities and provide adequate protection against arbitrariness (see paragraph 97 above). It thus retains strong doubts that the interference with the applicants' right to peaceful enjoyment of their possessions has met the requirement of foreseeability.

103. However, the above elements, the manner in which they are applied to the applicants and the consequences that they entail from the point of view of compliance with Article 1 of Protocol No. 1 are material considerations that must be taken into account in determining whether the measure complained of struck a fair balance between the interests involved. Accordingly, the Court considers that it may leave open the issue of lawfulness (see *Beyeler*, § 110, and *Imeri*, § 81, both cited above).

(ii) Pursuit of a legitimate aim

104. The Court takes note of the Government's argument that the interference was aimed at combating money-laundering and other criminal activities (see paragraph 81 above), as well as that the control of cross-border cash transfer serves the aim of preventing an excessive flow of foreign currency capital and securing foreign currency market stability in Serbia, as held by the Constitutional Court (see paragraph 62 above). In the particular circumstances of the present case, where the national courts found no indications that the confiscated amounts had any illegal or suspicious origin, or that the cash was acquired or was intended to remain in Serbia, the Court doubts whether the interferences could be said to have served the aims put forward by the State authorities (see also paragraph 71 above). However, even assuming that the interferences pursued the aim of monitoring the cross-border flows of foreign currency as such, it remains to be determined whether they were also proportionate to such an aim.

(iii) Proportionality of the interference

105. The remaining question for the Court to determine is whether the national authorities, when applying the impugned measures, struck the requisite fair balance between the applicants' right of property and the general interest, taking into account the margin of appreciation left to the respondent State in that area. In assessing this issue, the Court will take

into account the nature and seriousness of the offence of which the applicants were accused, their conduct and the nature and severity of the penalties imposed (see *Grifhorst*, cited above, §§ 94-105, and *Gabrić v. Croatia*, no. 9702/04, §§ 36- 39, 5 February 2009). 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, *Yaylali*, cited above, § 47). Moreover, the importance of the procedural obligations under Article 1 of Protocol No. 1 must not be overlooked. Thus, the Court has, on many occasions, noted that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one’s possessions must also afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *G.I.E.M. S.r.l. and Others*, § 302, and *Boljević*, § 41, both cited above). In order that this condition is satisfied, the applicable procedures should be considered from a general standpoint.

(α) Proportionality assessment in the misdemeanour proceedings

106. The Court notes at the outset that under the relevant legal framework (see paragraphs 5-7, 31 and 33 above), the sum of cash in foreign currency that could be legally carried by a non-resident across the Serbian border is not in principle restricted, but it is subject to declaration and certification requirements (compare *Yaylali*, § 49, and contrast *AGOSI v. the United Kingdom*, 24 October 1986, § 15, Series A no. 108, where the confiscation measure had been applied to goods whose importation was prohibited).

107. The applicants were found to have failed to comply with the declaration and/or certification requirements when crossing the State’s border. The cash thus carried by them was immediately temporarily seized (see paragraph 9 above). The purpose of the temporary seizure (see paragraph 34 above) is to enable the domestic authorities to enquire about the provenance of the carried cash and determine, *inter alia*, whether an individual has committed a misdemeanour, or a more serious criminal offence, such as smuggling, money laundering, tax evasion or drug trafficking. In the present case, although the relevant legislation provides such a possibility (see paragraph 42 above), 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.

108. Following the hearings before the competent misdemeanour courts that followed on the same respective days – some in the presence of a lawyer or court interpreter, and some not – the applicants were each found guilty of committing a misdemeanour (see paragraph 11 above). In particular, the fourth applicant was found guilty of deliberate non-compliance, while entering the respondent State, with the declaration obligation in respect of an excess amount, which was found in his wallet (see paragraphs 6 and 11 above). The remaining applicants were found guilty of negligent failure (i) to declare cash carried in excess of the statutory limit and (ii) to obtain an entry cash declaration receipt in respect of excess cash, which they were supposed to present to the customs authorities when leaving the country (see paragraphs 7, 11 and 36 above). Following these proceedings, and in addition to the fines, the seized cash was confiscated either in its entirety, or in the case of the first applicant, in the amount of 60% of the seized sum (see paragraph 13 above).

109. The Court notes that it has not been argued that prior to the incidents in question, during the time the cash had been temporarily seized or subsequently to the events, any of the applicants were charged with, or suspected of, any criminal activity, or that money in issue had been criminally acquired (see *Sadocha*, cited above, § 28, and *Gyrlyan v. Russia*, no. 35943/15, § 27, 9 October 2018; and compare and contrast *Amerisoc Center S.R.L. v. Luxembourg*, no. 50527/20, § 41, 17 October 2024). On that basis, the Court distinguishes the present case from cases in which the confiscation measure covered assets and goods which had been the instruments or proceeds of a criminal offence (see, for example, *Phillips v. the United Kingdom*, no. 41087/98, ECHR 2001-VII), or intended for use in illegal activities, or the activities of organised crime (see *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002, and *Ulemek v. Serbia* (dec.), no. 41680/13, 2 February 2021). Accordingly, there is nothing to suggest that by confiscating the seized amounts the authorities were seeking to forestall any illegal activities (see *Yaylali*, cited above, § 51).

110. On the contrary, domestic courts appear to have accepted that the applicants had proved the lawful origin of the cash originating from other countries (see paragraph 18 above and the Appendix). The Government confirmed that finding, except in respect of the second applicant (see paragraph 79 above), without providing any reasoning for this claim, apart from indicating that the cash had been “hidden” (see paragraph 84 above). Therefore, the applicants had been, in essence, found guilty only of non-compliance with the declaration duty.

111. The amounts seized were undoubtedly substantial for the applicants, who have all indicated that the money had come from their savings, salaries or sale of property (see the Appendix). At the same time, the harm that the applicants might have caused to the respondent State was minor: they had not avoided customs duties or taxes, provoked any flow of foreign currency capital originated from Serbia or caused any other pecuniary damage to the State; their failure to declare the amounts had only deprived Serbia of the information about the transit of these sums through the national territory. Thus, it cannot be said that the confiscation measure was intended as pecuniary compensation for the damage to the State, but was rather deterrent and punitive in its purposes (see *Gyrlyan*, cited above, § 29).

112. The Court has found similar confiscation measures to be disproportionate (see, for example, the above-cited cases of *Gabrić*; *Grifhorst*; *Boljević*; and *Sadocha*). While deeming that the measure of full or partial confiscation imposed an excessive individual burden on the applicants, the Court has on many occasions emphasised, among other factors, the lawful origin of the confiscated sums and the lack of any intent to deceive the authorities (see, among other authorities, *Togrul v. Bulgaria*, no. 20611/10, § 44, 15 November 2018; as well as above-cited cases of *Ismayilov*, § 36; *Sadocha*, §§ 29-33; *Gabrić*, § 37, and *Gyrlyan*, § 27). In other cases the Court came to the same conclusion while affording less importance to the applicant’s failure to prove that the source and intended use of the cash had been legitimate or the lack of intent (see the above-cited cases of *Boljević*, §§ 41-46; and *Imeri*, § 80, on whether these criteria were consistent with the essence of the misdemeanour). In any event, it is crucial for the domestic authorities to perform an adequate assessment of the proportionality and convincingly show why the sanction imposed was necessary to achieve the desired effect in the circumstances of each particular case.

113. Moreover, the decisions to confiscate the entire amounts of undeclared cash (or the significant portion thereof) also appears to be at odds with the requirement, existing in many Contracting States and EU law, that the severity of a penalty, even in order to be lawful, must not be disproportionate to the offence in question (see paragraphs 69-71 above, and see *Imeri*, cited above, §§ 71-72, for further reference to the EU law).

114. The Court has already found that the wording of Article 64 of the Foreign Currency Transactions Act remained imprecise in its key elements in relation to the leeway allowed for confiscation measures (see paragraphs 100-102 above). This has precluded the misdemeanour courts from conducting a meaningful examination of the proportionality in ordering the confiscation measure, and from achieving the desired deterrent and punitive effect that would correspond to the severity of the infringement committed, 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 (see *Yaylali*, cited above, § 53).

115. Essentially, it appears that the courts deemed that the applicants' misconduct would result in the automatic confiscation of the entire amounts of cash carried, justifying it by reference to Article 64 § 1 of the Foreign Currency Transactions Act, and/or "the way in which the offence had been committed". Apart from the first applicant's case, the Government have not provided any other example in which the misdemeanour courts had applied the partial confiscation under Article 64 § 2 of the Act.

116. The Court has already noted the incoherent approach by the courts to the same determinative factors in the first applicant's case and in the other applicants' cases (see paragraph 100 above). The applicants' arguments were found to be irrelevant or rejected as unjustified, and no other factors worthy of assessment have been identified by the courts (see paragraph 21 above).

117. Finally, the Court notes that the range of fines for the misdemeanour in question was set at between RSD 5,000 and 150,000, which at the time of the events corresponded to the sums ranging from approximately EUR 40 to 1,400 (see paragraph 36 above). It cannot accept the Government's argument that the amount confiscated need not to have been correlated with the amount of the fine levied in addition, since both formed part of the punitive sanction.

118. Therefore, it would appear that not only the vague wording of Article 64 § 2 of the Foreign Currency Transactions Act does not give any indication regarding the characteristics of any situation that would lead to full or partial confiscation, but the misdemeanour courts also have failed to dispel clearly such interpretational doubts in respect of the discretion conferred on them when deciding whether to apply Article 64 §§ 1 or 2.

(β) Constitutional complaint

119. All five applicants have submitted constitutional complaints, and the Constitutional Court therefore had a possibility to remedy the above failure by the misdemeanour courts to perform a proportionality analysis. However, it rejected the applicants' complaints either (i) by finding Article 58 of the Constitution not applicable, or (ii) by being satisfied that the confiscation had had a legal basis, therefore not requiring an assessment of the proportionality (see paragraphs 22 and 23 above). Moreover, in the applicants' case the Constitutional Court, as well as the

Government, explicitly stated that no proportionality assessment had been necessary (see paragraphs 23 and 86 above), contrary to the requirements inherent in Article 1 of Protocol No. 1 (see case-law cited in paragraph 105 above).

120. The Court notes with interest the jurisprudential development since 2018 consisting in the Constitutional Court's examination of the proportionality of the interference. Although it post-dates the present five applications, these developments appear relevant, in so far as the Constitutional Court has, first, confirmed the need to perform a proportionality analysis in principle and, second, provided guidance on when and how Article 64 of the Foreign Currency Transactions Act should be applied by the misdemeanour courts. Thus, in its decisions taken in 2018, the Constitutional Court criticised the lack of assessment by the misdemeanour courts of the "motives and other circumstances" as well as their failure to assess the effect on the outcome of the case of various factors, including the proof of lawful origin of the cash seized, the appellant's intent and knowledge of the applicable regulations, and the overall proportionality of the confiscation measure (see paragraphs 47-54 above).

121. The Court then notes the Constitutional Court's landmark decision UŽ-5214/2016 of 2020 and its subsequent application (see paragraphs 56-65 above) which provided a number of important clarifications in respect of the application of the Foreign Currency Transactions Act. The Constitutional Court, firstly, confirmed that the proportionality analysis should be conducted by the misdemeanour courts under Article 64 § 2 of that Act. It then placed the burden of proof on an "offender", who should advance arguments and present evidence that would be relevant for partial confiscation as an exception to the measure of full confiscation. Furthermore, this onus was placed on an "offender" from the very start of proceedings – from his or her appearance before a first-instance misdemeanour court. In the Constitutional Court's view, only such advanced arguments and evidence could prompt the misdemeanour courts to examine whether the statutory conditions for the application of Article 64 § 2 had been fulfilled and to carry out a proportionality assessment. No other clarifications have been issued on "the motives or circumstances" that could be assessed for the purpose of the application of Article 64 § 2 of the Foreign Currency Transactions Act.

122. It appears that since 2019 onwards, the Constitutional Court justified the measure of full confiscation in addition to the fine as being proportionate, referring to the appellants' alleged failure to prove at first instance that the source and intended use of confiscated money had been lawful and legitimate, refusing, moreover, a bank withdrawal statement as evidence in that respect (see paragraph 57 above; see, for the same approach, paragraph 61 above). In this context, even though the Court does not intend to examine the jurisprudence which has post-dated the applicants' case, it recalls that using such factors for justifying confiscation for a mere non-declaration of cash may, in certain circumstances, raise issues with the principle of proportionality (see *Imeri*, cited above, §§ 80-81). Furthermore, as already noted above, the domestic authorities should confine their assessment to the factors which correspond to the essence of the obligation to declare the cash at the border and not to other presumed offences.

(e) Conclusion

123. In view of the foregoing, the Court finds that the broad and imprecise legislative framework, coupled with the narrow scope of the review carried out by the domestic courts,

could not 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 under Article 1 of Protocol No. 1 to the Convention. The domestic courts, including the Constitutional Court at the time, decided that, in addition to the fines, the confiscation of the entire or substantial part of the amounts that the applicants had carried across the border without declaration had been necessary. In doing so, they failed to engage in a meaningful analysis as to what sanctions have been necessary in each case, in view of the applicants' intent of the offence, origin of the money and other relevant factors, as well as to clarify the rules of proof that applied.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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."

126. The applicants claimed various sums (presented in the Appendix) in respect of pecuniary damage, with accrued interest as of the date of confiscation to the date of payment, as well as the costs and expenses incurred before the domestic courts and the Court. The first applicant also claimed 10,000 euros (EUR) in respect of non-pecuniary damage and costs.

127. The Government contested those claims.

A. Damage

1. *Pecuniary damage*

128. Having regard to its finding above that the confiscation constituted a clearly disproportionate measure, the Court cannot speculate as to whether the confiscation of only part of the sums in question would have been justified and, if so, in what amount for each applicant. The Court awards the applicants, as requested, the full amounts that were confiscated from them in breach of Article 1 of Protocol No. 1, plus any tax that may be chargeable (see the above-cited cases of *Yaremiychuk and Others*, § 46, *Gabrić*, § 48; and *Gyrlyan*, § 36). As regards the statutory default interest, the Court notes that the applicants did not specify either the amount or the rate or the method of its calculation. It therefore does not award them any sum on that account (see *Boljević*, cited above, § 53).

2. *Non-pecuniary damage*

129. As regards the first applicant's claim for non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction in this respect (see the above-cited cases of *Sadocha*, § 44; *Gabrić*, § 49; *Boljević*, § 54; and *Yaremiychuk and the Others*, § 50).

B. Costs and expenses

130. The applicants also claimed the costs and expenses incurred both before the domestic courts and the Court, as specified in Appendix.

131. 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-noted criteria, the Court considers it reasonable to award the applicants the sums specified in the Appendix, for the costs and expenses incurred under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the applicants;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the first applicant;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) the amounts indicated in in the Appendix to the present judgment, in respect of pecuniary damage, plus any tax that may be chargeable;
 - (ii) the amounts indicated in the Appendix, for the costs and expenses, plus any tax that may be chargeable to the applicants;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar

Ioannis Ktistakis President

