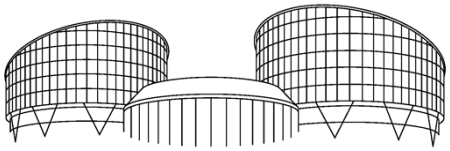

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF YAREMIYCHUK AND OTHERS v. UKRAINE

*(Applications nos. 2720/13 and 6 others - see appended table)*

JUDGMENT

Art 1 P1 • Control of the use of property • Unlawful confiscation (in respect of one applicant) of entire undeclared sum of money to border customs instead of that in excess of legal limit • Disproportionate mandatory confiscation (in respect of remaining applicants) of undeclared excess amount and imposition of fines for breaching customs control procedures • Mandatory nature of sanctions under new legislation precluding domestic courts from conducting balancing exercise between interests at stake and assessing measures on a case-to-case basis

STRASBOURG

9 December 2021

*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 Yaremiychuk and Others v. Ukraine,**

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Jovan Ilievski,
Ivana Jelić,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Ukrainian nationals ("the applicants") on the various dates indicated in the Appendix;

the decision to give notice of the applications to the Ukrainian Government ("the Government");

the parties' observations;

the letter from the Russian Government informing the Court that they do not wish to make use of their right to intervene in the proceedings concerning application no. 70418/13 (Article 36 § 1 of the Convention);

Having deliberated in private on 9 November 2021,

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

# INTRODUCTION

1. The present cases mainly concern the applicants' complaint under Article 1 of Protocol No. 1 that the imposition of fines as well as the confiscation in full of their lawfully acquired money following their failure to declare it to the customs authorities had been an unlawful and disproportionate measure.

# THE FACTS

2. The list of applicants and the relevant details of the applications are set out in the appended table.

3. The Government were represented by their Agent, Mr I. Lishchyna, of the Ministry of Justice.

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

5. When crossing the Ukrainian border the applicants used the "green channel" to pass through the customs control area without making a written declaration in respect of the cash they were carrying, which amounted to

more than 10,000 euros (EUR). The domestic courts found the applicants guilty of having breached customs control procedures in the simplified customs control area (Article 471 of the Customs Code). Fines for the amount specified in Article 471 ranging between 73 and 165 euros were imposed on the applicants and the confiscation of the portion of cash in excess of EUR 10,000 was ordered in each case, with the exception of application no. 38071/13, in which the entire sum of cash carried by the applicant was seized (see the Appendix below for more details). In determining the case, the domestic courts essentially relied on the Regulation on the transportation of cash and precious metals across Ukraine's customs border, which provided for the mandatory declaration in writing at the border of any foreign currency amounting to more than EUR 10,000; that provision placed, in the courts' view, a restriction on bringing any foreign currency into Ukraine (see paragraph 8 below). The applicants' arguments that their failure to declare the money had not been intentional, that the money in issue had been lawfully acquired and the amount was not insignificant to the applicants, as well as Mr Popelyuk's argument that he owned only part of the money (no. 74638/13) were disregarded or dismissed by the domestic courts.

6. On 21 July 2021 the Constitutional Court declared the part of Article 471 of the Customs Code providing for the mandatory confiscation of all undeclared cash to be unconstitutional. It found, in particular, that such a measure was not capable of ensuring the requisite balance between the public interest and an individual's right to the peaceful enjoyment of his or her possessions and that therefore it was contrary to the rule of law. The Constitutional Court further ruled that the impugned provision of the Customs Code would continue to apply for six months in order to give the authorities time to draft an alternative regulation concerning liability for the administrative offence in issue. On 14 September 2021 the relevant legislative amendments were submitted to parliament.

## RELEVANT LEGAL FRAMEWORK

7. The Customs Code of 13 March 2012, as worded at the material time, provided as follows:

**Article 197**
**Restrictions on the movement of certain goods across the customs border of Ukraine**

"1. In the cases provided for by law, certain goods shall be subject to restrictions on their movement across the customs border of Ukraine. The release of such goods across the customs border of Ukraine, and customs clearance, shall be carried out by the revenue and duties authorities on the basis of the documents obtained by use of information technology confirming that those restrictions have been observed, issued by the public authorities vested with carrying out appropriate checks and other legal

entities authorised to issue them, if the presentation of such documents to the revenue and duties authorities is provided for in the laws of Ukraine.

2. Lists of such goods (with their description and code under the Ukrainian Classification of Goods for Foreign Economic Activity), and the procedure for the issuing of authorisations and their circulation with the use of information technology, shall be approved by the Cabinet of Ministers of Ukraine. ...

3. Restrictions on importing and exporting currency into and from Ukraine, and the procedure for moving currency across the customs border of Ukraine, including specific provisions on declaring currency (in particular, the specification of the amount subject to written or oral declaration) may be determined by the National Bank of Ukraine."

**Article 366**
**Dual-channel system of customs supervision of goods and means of transport moved by individuals across the customs border of Ukraine**

"1. The dual-channel system is a simplified system of customs control that allows citizens to proceed, with a declaration, through one of the two channels for entry (including driving through by means of private transport) across the customs border of Ukraine.

2. The channel marked with the colour green ('green channel') shall be intended for citizens who declare that they are moving goods across the customs border of Ukraine which: (i) are in amounts that are not subject to customs charges; (ii) do not fall under the prohibition or restriction on importation into or exportation from the customs territory of Ukraine as established by legislation; and (iii) are not subject to a written declaration.

...

5. The choice of passing through the green channel shall be regarded as an individual's statement that the goods moved by him or her across the customs border of Ukraine are not subject to a written declaration, customs fees, or any prohibitions and/or restrictions on importing/exporting into and out of the customs territory of Ukraine, and shall constitute acts of legal significance.

6. Citizens entering (or driving) through the green channel shall be exempted from filling out a customs declaration. Exemption from filling out the customs declaration shall not discharge the individuals concerned from compliance with the procedure for the movement of goods across the customs border of Ukraine."

**Article 471**
**Violations of the customs control procedure in simplified customs control areas (channels)**

"1. Violations of the customs control procedure in simplified customs control areas (channels), as specified by this Code, that is, where an individual who has chosen to go through a green channel is carrying goods that are prohibited from being carried across the customs border of Ukraine or subject to restrictions in that regard, or is carrying them in quantities exceeding the non-taxable limit set for the movement of such goods across the customs border of Ukraine,

– shall be punishable by a fine of one hundred times the minimum personal tax-free allowance and, when direct objects of the offences are goods whose movement across

the customs border of Ukraine is prohibited or restricted by the legislation of Ukraine, by their confiscation."

8. The Regulation on the transportation of cash and precious metals across Ukraine's customs border, approved by Decree no. 148 of the National Bank of Ukraine of 27 May 2008 (as amended on 25 July 2012), provided as follows:

"2. Bringing cash into and out of Ukraine

1. Individuals may bring up to EUR 10,000 in cash (or the equivalent) into and out of Ukraine without declaring it in writing at the customs office.

2. Individual residents may bring more than EUR 10,000 in cash (or the equivalent) into and out of Ukraine subject to making a full declaration in writing at the customs office and furnishing a withdrawal receipt issued by a bank (financial institution) for the portion exceeding EUR 10,000 (or the equivalent). Withdrawal receipts shall be valid for thirty calendar days from the issue date.

3. Individual non-residents may bring more than EUR 10,000 in cash (or the equivalent) into Ukraine subject to making a full declaration in writing at the customs office.

4. Individual non-residents may bring more than EUR 10,000 in cash (or the equivalent) out of Ukraine if the amount does not exceed the amount declared by the individual at the customs office on his or her arrival in Ukraine. In this case, the cash is subject to a full declaration being made in writing at the customs office."

# THE LAW

## I. PRELIMINARY ISSUE

### *Locus standi* of the applicant's mother (application no. 38071/13)

9. On 26 October 2020 the applicant's mother informed the Court of the applicant's death on 5 September 2015 and of her wish to pursue the application on his behalf.

10. The Government requested the Court to strike the application out of the Court's list of cases in view of the applicant's death.

11. In the cases in which an applicant died after having lodged an application, the Court has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014). In this connection, the Court reiterates that human rights cases before it generally have a moral dimension and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

12. In view of the above and having regard to the circumstances of the present case, the Court accepts that the applicant's mother has a legitimate interest in pursuing the application in the late applicant's stead (see, for instance, *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014; *Mammadov and Others v. Azerbaijan*, no. 35432/07, § 80, 21 February 2019; and *Ghavalyan v. Armenia*, no. 50423/08, § 59, 22 October 2020).

## II. JOINDER OF THE APPLICATIONS

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

## III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

14. The applicants complained that the imposition of fines as well as the confiscation in full of their lawfully acquired money following their failure to declare it to the customs authorities had been an unlawful and disproportionate measure. They relied on Article 1 of Protocol No. 1, 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

15. The Government did not raise any objections as regards the admissibility of the complaints. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

##### (a) The applicants

16. Mr Rogach (no. 39154/15), Mr Gordeyev (no. 38071/13), Mr Tarakhovskyy (no. 60818/15) and Mr Sheverdinov (no. 70418/13) submitted that the confiscation measure had been unlawful and unforeseeable. Article 471 of the Customs Code, relied on by the domestic

courts, provided that the confiscation measure applied solely to goods whose import into Ukraine was prohibited or restricted. However, while physical persons were obliged to declare at the border any cash amounting to more than EUR 10,000, this was purely for information purposes and did not represent a "restriction" within the meaning of Article 471 of the Customs Code. The applicants referred, *inter alia*, to Article 366 of the Customs Code, which established the framework for using the green channel and distinguished between goods which were subject to a written declaration and those whose import into Ukraine was prohibited or restricted (see paragraph 7 above).

17. Mr Gordeyev (no. 38071/13) complained further that the entire sum of cash he had been carrying had been confiscated from him, not just the portion exceeding EUR 10,000.

18. According to all the applicants, the confiscation measure was an excessive and disproportionate measure: it had not been illegal to carry foreign currency across the customs border of Ukraine; the money had been legally acquired and had not been concealed but had been presented to customs officers at their request; the failure to declare the money had not been intentional and had not caused any damage to the State; and the confiscated amounts represented a not insignificant sum of money for the applicants. Despite being aware of all those factors, the domestic courts had nevertheless imposed the confiscation order, even though a fine would have been sufficient in the circumstances of their cases. According to the applicants, their situation was very similar to that of the applicant in *Sadocha v. Ukraine* (no. 77508/11, 11 July 2019), in which the Court had found that the undeclared money had been confiscated from the applicant in breach of Article 1 of Protocol No. 1.

**(b) The Government**

19. The Government conceded that there had been an interference with the applicants' right of property when the domestic authorities had confiscated the undeclared cash from the applicants. However, the interference had been lawful and proportionate. Without specifically addressing the applicants' arguments as regards the lawfulness of the application of the confiscation measure in their cases, they submitted that the confiscation, as a sanction for the administrative offence in question, had been provided for by Article 471 of the Customs Code and that the applicants were or should have been aware that the transfer of a considerable sum of cash across the border was subject to certain restrictions provided for by law. They could have reasonably been expected to make some enquiries into this matter before setting out on a journey.

20. The State also had a right and a duty to detect and monitor the movement of cash across its borders, since large sums of cash might be used for money-laundering, drug trafficking, the financing of terrorism or

organised crime, tax evasion or the commission of other serious financial offences.

*2. The Court's assessment*

21. The Court notes that it is not in dispute between the parties that the confiscated money constituted the applicants' possession, except for Mr Popelyuk, who claimed he had only owned a part of the confiscated sum, and whose alleged "possession" at issue in the present case is the money he claims as his own (see No. 4 in the Appendix). It is likewise not in dispute that domestic courts' decisions ordering confiscation of the undeclared cash amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions guaranteed by Article 1 of Protocol No. 1. The Court finds no reason to hold otherwise.

22. It further reiterates its consistent approach according to which a confiscation measure, even though it involves a deprivation of possessions, constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. However, this provision must be construed in the light of the general principle set out in the first sentence of the first paragraph (see, among other authorities, *Perdigão v. Portugal* [GC], no. 24768/06, § 57, 16 November 2010; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, no. 3503/08, § 36, 13 October 2015; and *Gyrlyan v. Russia*, no. 35943/15, § 21, 9 October 2018).

23. 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. 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, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012, and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012).

24. The Court has also acknowledged in its case-law that, however clearly drafted a legal provision may be, in any system of law there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adapting to changing circumstances. Again, while certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 568, 20 September 2011).

25. Turning to the circumstances of the present case, the Court notes that the applicants were essentially found guilty of failure to declare to the customs authorities the sum of cash that they were carrying. The obligation to declare the total sum of cash, when it was more than EUR 10,000, was set out in the Regulation issued by the National Bank of Ukraine (see paragraph 8 above). The regulatory framework for using the green channel, which excluded the use of that channel by a person carrying goods that were subject to a written declaration, was laid down in Article 366 of the Customs Code (see paragraph 7 above). The applicants' conduct was defined by the domestic authorities as the offence of breaching the customs control procedure in simplified customs control areas (Article 471 of the Customs Code), which applied, as specified by the wording of this provision, to instances where an individual who had chosen to go through a green channel was carrying goods that were prohibited from being carried across the customs border of Ukraine or subject to restrictions in that regard, or was carrying them in quantities exceeding the non-taxable limit set for the movement of such goods across the customs border of Ukraine (ibid.). The sanction for this offence was a fine and – in the case of goods that were either prohibited from being carried across the customs border or subject to restrictions in that regard – confiscation of the goods.

26. As regards Article 471 of the Customs Code, which was drafted in a manner which could give raise to difficulties, it was for the domestic courts to interpret and clarify any issues raised. A large number of similar applications pending before the Court and the judgment delivered in *Sadocha* (cited above) show that the domestic authorities had consistently interpreted and applied Article 471 to the effect that cash was a good whose entry into Ukrainian territory was subject to a restriction in the form of an obligation to declare it to the customs authorities where the amount was more than EUR 10,000, and that confiscation of the excess amount was applicable in the event of failure to comply with that obligation (see § 8 of *Sadocha*, cited above).

27. In these circumstances, and being bound by its subsidiary role, the Court accepts that the interference complained of met the lawfulness requirement under the Convention in respect of all applicants except Mr Gordeyev (no. 38071/13), who was deprived of all the cash he carried, not just the portion that exceeded EUR 10,000, contrary to the general practice of the domestic courts. In the absence of any reason advanced in this regard by the domestic courts or the Government, the Court finds that the interference with Mr Gordeyev's property rights was unlawful.

28. The Court further notes that States have a legitimate interest and also a duty by virtue of various international treaties to implement measures to detect and monitor the movement of cash across their borders, since large amounts of cash may be used for money laundering, drug trafficking, financing terrorism or organised crime, tax evasion or the commission of

other serious financial offences. The general declaration requirement applicable to any individual crossing the State border prevents cash from entering or leaving the country undetected and the confiscation measure which the failure to declare cash to the customs authorities results in is part of the general regulatory scheme designed to combat those offences. In this regard, the Court considers that the confiscation measure conformed to the general interest of the community (see, for example, *Sadocha*, cited above, § 26).

29. The remaining question to determine is whether the interference struck the requisite fair balance between the protection of the 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". Moreover, although the second paragraph of Article 1 of Protocol No. 1 contains no explicit procedural requirements, the Court must consider whether the proceedings as a whole afforded the applicants a reasonable opportunity to put their cases to the competent authorities with a view to enabling them to establish a fair balance between the conflicting interests at stake (see, among other authorities, *Boljević v. Croatia*, no. 43492/11, § 41, 31 January 2017).

30. The Court notes that Article 471 of the Customs Code did not leave any discretion to the courts as regards the sanction to be imposed, as confiscation of the excess amount was mandatory with no exceptions allowed. It also notes that in 2021, a number of years after the events in the present case, the Constitutional Court of Ukraine declared part of that provision unconstitutional, considering, in particular, that such a mandatory confiscation was not capable of ensuring the requisite balance between the public interest and an individual's right to the peaceful enjoyment of his or her possessions (see paragraph 6 above).

31. Like the Constitutional Court, the Court is of the view that such a rigid legislative approach is in itself incapable of ensuring the requisite fair balance between the requirements of the general interest and the protection of an individual's right to property (see, *mutatis mutandis*, *Gyrlyan*, cited above, § 31). In fact, it leaves no room for an assessment of the proportionality of the interference by the domestic courts by making any such assessment futile. Similarly, the automatic confiscation deprived the applicants of any possibility to argue their cases and have any prospect of success in the proceedings against them (see, *mutatis mutandis*, *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 38, 17 September 2015).

32. The lack of any discretion left to the domestic courts as regards the sanction to be imposed distinguishes the present case from that of *Sadocha* (cited above) referred to by the applicants (see paragraph 18 above), in which, pursuant to the legislation then in force, the Ukrainian courts did

have a choice in the matter but were found by the Court to have failed to duly perform the proportionality assessment when choosing the applicable sanction However, 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, for example, *Karapetyan v. Georgia*, no. 61233/12, § 36, 15 October 2020 and *Imeri v. Croatia*, no. 77668/14, § 76, 24 June 2021).

33. The Court notes in this respect that the act of taking foreign currency into and out of Ukraine was not illegal under Ukrainian law. Not only was it permissible to move the foreign currency across the customs border, but the sum was not, in principle, restricted at the time of the events, if declared (see paragraph 8 above). Furthermore, the case files suggest that it was not established by the domestic authorities in the present cases that the confiscated cash had been unlawfully obtained by the applicants or that the applicants had been engaged in money laundering or any other criminal activity.

34. The Court accepts that the confiscation measure in question was deterrent and punitive in its purpose. However, as established above, the mandatory nature of the confiscation of all the excess cash and a fine as a sanction precluded the domestic authorities from performing due analysis as to what measures would have been appropriate in the circumstances of each individual case.

35. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicants' property rights was unlawful in the case of Mr Gordeyev (see paragraph 27 above) and imposed a disproportionate burden on the remaining applicants in view of the mandatory application of confiscation of all excess cash as the sanction, in addition to a fine.

36. There has accordingly been a violation of Article 1 of Protocol No. 1.

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. On the basis of the same facts, some of the applicants further complained that the administrative-offence proceedings which had resulted in the confiscation order had been unfair. They relied, expressly or in substance, on Article 6 § 1 and Article 13 in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 1.

38. Having regard to its findings under Article 1 of Protocol No. 1 (see paragraph 35 above), the Court considers that the main issue at the heart of the applicants' complaint, specifically the lawfulness of the confiscation of the undeclared amount of money following the administrative proceedings against them, has been addressed by the Court and that it is not necessary to give a separate ruling on the admissibility and merits of the allegation of a

breach of Articles 6 and 13 of the Convention (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references, and *Mocanu and Others v. the Republic of Moldova*, no. 8141/07, § 37, 26 June 2018).

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

#### *1. Pecuniary damage*

40. The applicants claimed the amounts indicated in the relevant column of the Appendix in respect of pecuniary damage. Those amounts represented the confiscated cash, the amount of the fines paid, the accrued default interest running from the date of confiscation until the date of payment, the court fees paid in the domestic proceedings and other payments allegedly due to the applicants.

41. The Government considered the claims unreasonable and unsubstantiated, arguing mainly that there had been no violation of the Convention in the applicants' cases.

##### (a) As regards the fines

42. The Court observes that its finding under Article 1 of Protocol No. 1 in the present case does not imply that the applicants did not have to bear any responsibility for the breach of domestic law they had committed by failing to make a written declaration to the customs authorities to the effect that they were carrying cash across the border (see *Sadocha*, cited above, § 43). The Court's finding of a violation of Article 1 of Protocol No. 1 only concerned the confiscated excess sums, not the fines (see paragraphs 14 and 35 above).

43. Accordingly the Court rejects the claims of Mr Popelyuk (no. 74638/13), Mr Paliyenko (no. 9832/15) and Mr Rogach (no. 39154/15) for the return of the amount of the fines paid.

##### (b) Mr Popelyuk's claim for the return of the confiscated cash

44. Mr Popelyuk (no. 74638/13) submitted a claim in respect of the entire sum of cash which had been confiscated from him following the

judgment of the Kyiv Regional Court of Appeal of 21 June 2013. However, according to his own submissions, he was the lawful owner of only a part of the confiscated money, the other parts belonging to other individuals (see No. 4 in the Appendix).

45. Therefore, the Court accepts Mr Popelyuk's claim only in so far as it concerns his own part, that is his property, which, as established above, was confiscated from him in breach of Article 1 of Protocol No. 1 (see paragraph 35 above). The Court awards him EUR 1,435 accordingly, plus any tax that may be chargeable.

**(c) The other six applicants' claims for the return of the confiscated cash**

46. As to the other applicants, it appears from the case file that they were the lawful owners of the entire sum of cash which was confiscated from them. Having regard to its finding above that the mandatory confiscation sanction was 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. In these circumstances, the Court cannot but to award the applicants the full amounts which, in breach of Article 1 of Protocol No. 1, were confiscated from them (as specified in the relevant column of the Appendix), plus any tax that may be chargeable.

**(d) Remainder of the claims**

47. As to the remainder of the claims (see the Appendix below), the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses the remainder of the applicants' claims under this head.

*2. Non-pecuniary damage*

48. Mr Gordeyev (no. 38071/13) and Mr Tarakhovskyy (no. 60818/15) did not submit any claims in respect of non-pecuniary damage. The remaining five applicants claimed various amounts in respect of non-pecuniary damage (see the Appendix below).

49. The Government contested the claims.

50. The Court considers that in the circumstances of the present case, the finding of a violation of Article 1 of Protocol No. 1 constitutes in itself sufficient just satisfaction in respect of non-pecuniary damage, where claimed (see, for instance, *Sadocha*, cited above, § 44; *Gabrić,* cited above, § 49; and *Boljević*, cited above, § 54).

### B. Costs and expenses

51. The applicants, except for Ms Yaremiychuk (no. 2720/13) and Mr Tarakhovskyy (no. 60818/15), claimed various amounts for the costs and expenses incurred before the Court and in the domestic proceedings (see the Appendix below). They submitted copies of legal assistance contracts and invoices from their lawyers for the work done.

52. The Government contested those claims.

53. 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. In the present case, regard being had to the documents in its possession, the low level of complexity of the cases and the legal aid in the amount of EUR 850 awarded to some of the applicants, the Court dismisses the claim for costs and expenses in the domestic proceedings and considers it reasonable to award, for the proceedings before the Court, the sums indicated in the Appendix, plus any tax that may be chargeable to the applicants. As requested by four of the applicants, namely Mr Gordeyev (no. 38071/13), Mr Popelyuk (no. 74638/13), Mr Paliyenko (no. 9832/15) and Mr Rogach (no. 39154/15), the relevant amounts are to be paid directly into the bank account of their representatives listed in the Appendix (see, for example, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016).

54. As to Ms Yaremiychuk (no. 2720/13) and Mr Tarakhovskyy (no. 60818/15), the Court considers that, in the absence of a relevant claim, there is no call to make an award in respect of costs and expenses.

### C. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* admissible the complaints under Article 1 of Protocol No. 1;

3. *Holds* that there have been violations of Article 1 of Protocol No.1 in respect of all applicants;

4. *Holds* that there is no need to examine the complaints under Article 6 of the Convention and under Article 13 in conjunction with Article 1 of Protocol No. 1;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

6. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) in respect of pecuniary damage, the amounts indicated in the Appendix, plus any tax that may be chargeable;

(ii) in respect of costs and expenses, the amounts indicated in the Appendix, 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;

7. *Dismisses*, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 9 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

# APPENDIX

| No. | Application no. | Case name | Lodged on | Applicant<br>Year of Birth<br>Place of Residence<br>Nationality | Represented by | Final decision of the court | Sanction imposed | Just satisfaction claims | Award under Article 41<br>A) pecuniary damage<br>B) costs and expenses<br>in EUR |
|---|---|---|---|---|---|---|---|---|---|
| 1. | 2720/13 | Yaremiychuk v. Ukraine | 29/12/2012 | **Iryna Vasylivna YAREMIYCHUK**<br>1960<br>Chernigiv<br>Ukrainian | Sergiy Volodymyrovych SHKLYAR | Kyiv Regional Court of Appeal<br>2 July 2012 | Confiscation of EUR 9,455 out of a total of EUR 19,455<br><br>Fine: UAH 1,700 (EUR 165)[1] | EUR 9,455 of confiscated cash in respect of pecuniary damage<br><br>EUR 2,000 in respect of non-pecuniary damage | A) 9,455<br><br>B) - |
| 2. | 38071/13 | Gordeyev v. Ukraine | 27/05/2013 | **Viktor Petrovich GORDEYEV**<br>1972<br>Sevastopol<br>Ukrainian | Sergiy Anatoliyovych ZAYETS | Sumy Regional Court of Appeal<br>28 November 2012 | Confiscation of 55,150 United States dollars (USD)<br>(EUR 42,540[2]) and 50,000 Russian roubles (RUB)<br>(EUR 1,243) – the entire amount carried by the applicant<br><br>Fine: UAH 1,700 (EUR 159) | Pecuniary damage:<br>• USD 55,150 and RUB 50,000 of confiscated cash<br>• USD 16,663 and EUR 242 as default interest<br><br>EUR 3,425.94 for costs and expenses incurred before the Court | A) 43,783<br><br>B) 150[3] |

[1] In this and subsequent cases, the amount of the fine in UAH was converted into euros at the conversion rate applicable on the date of its imposition.
[2] In this and subsequent cases, the amounts of confiscated funds in currencies other than euros were converted into euros using the conversion rate applicable on the date of the imposition of the sanctions.
[3] The amount is equal to EUR 1,000 less EUR 850, being the sum paid by way of legal aid.

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|---|---|---|---|---|---|---|---|---|---|
| 3. | 70418/13 | Sheverdinov v. Ukraine | 07/11/2013 | **Sergey Vasilyevich SHEVERDINOV**<br>1983<br>St Petersburg<br>Russian | Aleksandr Vladimirovich LESOVOY | Crimea Court of Appeal<br>21 May 2013 | Confiscation of USD 21,817 (EUR 16,970) out of a total of USD 34,585<br><br>Fine: UAH 1,700 (EUR 160) | Pecuniary damage:<br>• USD 21,817 of confiscated cash<br>• USD 8,216.54 for loss of profit<br><br>Non-pecuniary damage: EUR 5,000<br><br>Costs and expenses:<br>• EUR 840 for costs and expenses incurred before the Court<br>• EUR 417 for travel expenses related to the participation in the domestic proceedings | A) 16,970<br><br>B) 840 |
| 4. | 74638/13 | Popelyuk v. Ukraine | 15/11/2013 | **Vasyl Vasylyovych POPELYUK**<br>1957<br>Chernivtsi<br>Ukrainian | Mykhaylo Oleksandrovych TARAKHKALO | Kyiv Regional Court of Appeal<br>21 June 2013 | Confiscation of USD 1,900 (EUR 1,435) out of a total of USD 15,000 owned by the applicant and EUR 3,900 and USD 3,000 (EUR 2,266) allegedly owned by the applicant's colleagues<br><br>Fine: UAH 1,700 (EUR 155) | Pecuniary damage:<br>• USD 4,900 and EUR 3,900 of confiscated cash<br>• EUR 1,839 as default interest<br>• UAH 1,700 of the fine paid<br><br>Non-pecuniary damage: EUR 15,000<br><br>EUR 2,700 for costs and expenses incurred before the Court | A) 1,435<br><br>B) 150[4] |

[4] The amount is equal to EUR 1,000 less EUR 850, being the sum paid by way of legal aid.

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|---|---|---|---|---|---|---|---|---|---|
| 5. | 9832/15 | Paliyenko<br>v. Ukraine | 16/02/2015 | **Valeriy Volodymyrovych PALIYENKO**<br>1965<br>Mykolayiv<br>Ukrainian | Anton Gennadiyevich DOLGOV | Odessa Regional Court of Appeal<br>31 January 2015 | Confiscation of USD 1,400 (EUR 1,236) out of a total of USD 13,917<br><br>Fine: UAH 1,700 (EUR 93) | Pecuniary damage:<br>• USD 1,400 of confiscated cash<br>• UAH 1,700 of the fine<br><br>UAH 50,000 in respect of non-pecuniary damage<br><br>Costs and expenses:<br>• UAH 30,000 (EUR 9005) incurred for the proceedings before the Court<br>• UAH 36,54 for the court's fee paid in the domestic proceedings | A) 1,236<br><br>B) 900 |
| 6. | 39154/15 | Rogach<br>v. Ukraine | 28/07/2015 | **Volodymyr Ivanovych ROGACH**<br>1984<br>Kyiv<br>Ukrainian | Mykhaylo Oleksandrovych TARAKHKALO | Kyiv Regional Court of Appeal<br>2 February 2015 | Confiscation of USD 65,050 (EUR 57,605) out of a total of USD 77,500<br><br>Fine: UAH 1,700 (EUR 93) | Pecuniary damage:<br>• USD 65,050 of confiscated cash<br>• EUR 9,943 as default interest;<br>• UAH 1,700 of the fine paid<br><br>Non-pecuniary damage: EUR 7,000<br><br>EUR 3,000 for costs and expenses incurred before the Court | A) 65,050<br><br>B) 150[6] |

[5] In this case, the amount claimed for costs and expenses in UAH was converted into euros at the conversion rate applicable on the date that the application was lodged.

[6] The amount is equal to EUR 1,000 less EUR 850, being the sum paid by way of legal aid

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|---|---|---|---|---|---|---|---|---|---|
| 7. | 60818/15 | Tarakhovskyy v. Ukraine | 26/11/2015 | **Yuriy Mykhaylovych TARAKHOVSKYY**<br>1968<br>Staten Island, NY, United States<br>Ukrainian | Igor Vitaliyovych BYELKIN | Kyiv Regional Court of Appeal, 26 May 2015 | Confiscation of USD 41,930 (EUR 38,175) out of a total of USD 53,250<br><br>Fine: UAH 1,700 (EUR 73) | Pecuniary damage:<br>• USD 41,930 of confiscated cash<br>• USD 6,070 as default interest | A) 38,175<br><br>B) - |