



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

THIRD SECTION

CASE OF DEVEKOM DOO NIŠ v. SERBIA

(Application no. 16947/22)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Customs authorities' refusal to award interest on customs duties wrongly levied from the applicant company and reimbursed almost ten years later • Failure to strike a fair balance between competing interests • Individual and excessive burden • Failure to award, at minimum, simple statutory interest, deprived the applicant company of adequate and effective redress

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 October 2026

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 Devekom DOO Niš v. Serbia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović,

Canòlic Mingorance Cairat, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 16947/22) 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 Devekom DOO Niš (“the applicant company”), a company registered in Serbia, on 31 March 2022;

the decision to give notice to the Serbian Government (“the Government”) of the complaint concerning the applicant company’s right to peaceful enjoyment of its possessions and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 22 September 2026,

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

INTRODUCTION

1. The present case concerns the applicant company’s right to peaceful enjoyment of its possessions under Article 1 of Protocol No. 1 to the Convention. The applicant company complains, in particular, that it had to bear an excessive burden because the customs authorities refunded customs duties paid by it only after a considerable period of time and without interest.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant company is registered in Niš, Serbia. It was represented by Mr N. Stanković, a lawyer practising in Niš.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

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

5. In 2006, the applicant company imported goods from Bosnia and Herzegovina and from Croatia under a preferential customs regime, without

payment of customs duties (*uvozne dažbine*), in accordance with the relevant domestic legislation and international agreements duly ratified and in force at the material time. The Niš Customs Office (hereinafter “the first-instance customs authority”) issued following declarations (*deklaracije*) in that regard: JCI UV4 1071 of 2 March 2006, JCI UV4 2469 of 3 May 2006, JCI UV4 2751 of 15 May 2006, JCI UV4 3185 of 31 May 2006, JCI UV4 3393 of 30 June 2006, JCI UV4 4170 of 7 July 2006, JCI UV4 4591 of 27 July 2006, JCI UV4 5500 of 30 August 2006, JCI UV4 6282 of 28 September 2006, JCI UV4 6600 of 11 October 2006 and JCI UV4 7035 of 26 October 2006.

6. In 2009 the first-instance customs authority began, on its own initiative, a post-clearance check (*naknadna kontrola deklaracija*) of the above-mentioned declarations and found that the preferential treatment should not have been applied, concluding that the imports in question had not met the conditions required for the granting of preferential origin. They therefore ordered the applicant company, in twelve sets of proceedings, to pay customs duties on the imported goods. In particular, the first-instance customs authority issued the following decisions: nos. 02/6 UP/I-1595/2009 of 30 October 2009; 02/4 UP/I-1596/2009 of 30 October 2009; 02/1 UP/I-1597/2009 of 30 October 2009; 02/6 UP/I-1598/2009 of 30 October 2009; 02/6 UP/I-1603/2009 of 5 November 2009; 02/1 UP/I-1604/2009 of 5 November 2009; 02/1 UP/I-1605/2009 of 5 November 2009; 02/1 UP/I-1606/2009 of 5 November 2009; 02/6 UP/I-1599/2009 of 10 November 2009; 02/6 UP/I-1600/2009 of 11 November 2009; 02/6 UP/I-1601/2009 of 11 November 2009 and 02/6 UP/I-1602/2009 of 11 November 2009.

7. The applicant company appealed against those decisions, but since the appeal did not have suspensive effect it had to pay the amounts due immediately. The sum of 7,381,148 Serbian dinars (RSD – approximately 78,360 euros (EUR) at the time) was therefore collected.

8. After several remittals of the case, the customs authorities decided that the goods imported by the applicant company were not subject to customs duties, ordered that the amount paid in that respect be refunded to the applicant company and dismissed its claim for interest on that amount. That conclusion was contained in the following decisions, given on 13 November 2018, of the first-instance customs authority: nos. 04/7 UP/I-8666/2018; 04/7 UP/I-8667/2018; 04/7 UP/I-8668/2018; 04/7 UP/I-8669/2018; 04/7 UP/I-8670/2018; 04/7 UP/I-8671/2018; 04/7 UP/I-9021/2018; 04/7 UP/I-9022/2018; 04/7 UP/I-9049/2018; 04/7 UP/I-9050/2018; 04/7 UP/I-9051/2018 and 04/7 UP/I-9052/2018.

9. The applicant company appealed against the fact that it had not been awarded interest, but between 6 June and 16 July 2019 all the decisions were upheld by the relevant department of the Ministry of Finance, specifically the Department for Second-Instance Customs Procedure within the Sector for Second-Instance Tax and Customs Procedure (hereinafter “the second-instance customs authority”). In particular, the second-instance

customs authority issued following decisions: nos. 483-00-51/2019-39 of 6 June 2019; 483-00-52/2019-39 from 6 June 2019; 483-00-54/2019-39 of 6 June 2019; 483-00-55/2019-39 of 6 June 2019; 483-00-59/2019-39 of 6 June 2019; 483-00-60/2019-39 of 6 June 2019; 483-00-61/2019-39 of 6 June 2019; 483-00-56/2019-39 of 10 June 2019; 483-00-58/2019-39 of 10 June 2019; 483-00-53/2019-39 of 12 June 2019; 483-00-62/2019-39 of 12 June 2019 and 483-00-57/2019-39 of 16 July 2019.

10. In the period from 29 July to 29 August 2019 the exact amount paid by the applicant company in respect of customs duties was refunded to it. The refunds thus totalled RSD 7,381,148 (approximately EUR 62,671 at the time).

11. The applicant company brought actions with the Administrative Court (*Upravni sud*) against the above-mentioned decisions of the customs authorities. The court dismissed the applicant company's claims and upheld the disputed decisions. In particular, the Administrative Court – Niš Division issued the following judgments: nos. 11-3 U. 12252/19 of 20 May 2021; 11-1 U. 12253/19 of 3 June 2021; 11-2 U. 13134/19 of 16 September 2021; II-3 U. 12186/19 of 8 April 2021; 11-5 U. 12192/19 of 27 May 2021; 11-5 U. 12195/19 of 27 May 2021; 11-5 U. 12251/19 of 27 May 2021; 11-9 U. 12254/19 of 25 October 2021; II-3 U. 12198/19 of 20 May 2021; 11-8 U. 12197/19 of 4 June 2021; II-4 U. 12182/19 of 27 May 2021; and II-7 U. 12181/19 of 4 June 2021.

12. Dissatisfied with the excessive duration and outcome of the customs proceedings and the proceedings before the Administrative Court, the applicant company lodged constitutional appeals (*ustavna žalba*) in that connection with the Constitutional Court (*Ustavni sud*). By decisions of 14 October 2021 and 24 February 2022, the Constitutional Court found that the length of the customs proceedings had been excessive and awarded EUR 3,600 in total to the applicant company for non-pecuniary damage in that respect. The Constitutional Court dismissed the company's complaint under Article 1 of Protocol No. 1 to the Convention, which concerned the non-payment of interest, stating that it had failed to invoke any constitutionally-related grounds under Article 58 of the Constitution and, therefore, the criteria for the opening of the proceedings had not been met. The Constitutional Court further held that the contested judgments contained sufficient reasoning explaining why the applicant company's claims were dismissed as unfounded, and that a proper conclusion regarding the factual circumstances had been drawn from the established facts.

II. OTHER RELEVANT FACTS

A. Reasoning of the second-instance customs authority

13. All of second-instance decisions contain almost identical reasoning because of the adoption of the same legal position in all of the proceedings.

The reasoning provided in decision no. 483-00-58/2019-39 of 10 June 2019 can be taken as representative. That decision stated, *inter alia*, the following:

“Pursuant to Article 278 § 1 of the Customs Act (Official Gazette of the RS, nos. 18/10, 111/12, 29/15, 108/16), where the customs authority refunds a customs debt [paid by a taxpayer], including any interest or default interest charged at the time of payment of that debt, the customs authority shall not pay interest. However, paragraph 2 of the same Article provides that, by way of exception to [the rule in] paragraph 1, the customs authority shall, in accordance with Article 269 § 1 of the Act, pay interest where the decision approving the request for a refund has not been implemented within three months from the date of its adoption. Having regard to the aforementioned provisions, as well as to the fact that the issue of interest following the approved refund of paid customs debt does not constitute a customs procedure within the meaning of Article 5 § 1 item 14 of the Customs Act (Official Gazette of the RS, nos. 18/10, 111/12, 29/15, 108/16), and bearing in mind that Article 308 of the said Act prescribes that customs procedures initiated prior to the entry into force of that Act shall be completed in accordance with the regulations applicable until the date of its entry into force, it cannot be considered that a customs procedure has been initiated. For this reason, the issue of interest cannot be addressed within the meaning of Article 237 of the former Customs Act (Official Gazette of the RS, nos. 73/03, 61/05, 85/05, 62/06 and 9/10). This position has also been adopted by the Administrative Court, Niš Department, in its decision II-I U. 16603/12 of 22 August 2013. Therefore, the appellant may submit a request for the payment of interest only in cases where the decision approving the request for a refund has not been implemented within three months from the date of its adoption. Such a request would be subject to a separate administrative matter to be decided upon in accordance with Article 178 of the Customs Act (Official Gazette of the RS, nos. 18/10, 111/12, 29/15, 108/16). For these reasons, the issue of payment of interest under Article 278 of the aforementioned Act could not have been addressed by the contested decision.”

B. The inflation rate in Serbia during the relevant period (2009-2019)

14. Based on the report of the Statistical Office of the Republic of Serbia of 12 May 2025, in the period from 2009 to 2019 inflation amounted to 69.6%.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION OF THE REPUBLIC OF SERBIA (*USTAV REPUBLIKE SRBIJE*; PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA (“OG RS”) No. 98/06)

15. Article 58 of the Constitution guarantees the peaceful enjoyment of possessions and other property rights acquired by law. The “right to property” (*pravo na imovinu*) may be revoked or restricted only in the public interest (as established by the law) and in return for compensation, which cannot amount to less than the market value. The law may restrict the manner in which property is used. Seizure or restriction of property to collect taxes or other levies or fines shall be permitted only in accordance with law.

II. THE CUSTOMS ACT (*CARINSKI ZAKON*; PUBLISHED IN OG RS Nos. 73/03, 61/05, 85/05, 62/06 AND 9/10) IN FORCE FROM 1 JANUARY 2004 TO 2 MAY 2010

16. Article 24 of the Customs Act, in force from 1 January 2004 to 2 May 2010, provided that an appeal (*žalba*) could be lodged with the Appeals Committee of the Customs Administration against a first-instance decision taken by a customs authority in administrative proceedings. Such an appeal did not suspend the enforcement of the decision.

17. Article 25 provided that a second-instance decision given in administrative proceedings could, in accordance with the provisions of the Administrative Disputes Act, be challenged in an administrative dispute (*upravni spor*) before the competent court.

18. Article 105 §§ 1 to 7 regulated the customs declarations post and clearance check procedure. It provided that the customs authority could conduct a post-clearance check of the declaration after the goods had been released, including verification of the accuracy of the information and examination of commercial documents. If it was established that the declaration was based on incorrect or incomplete data, the authority had to take corrective measures to ensure proper application of customs regulations. All such audits and measures could be carried out within a five-year period from the date the declaration had been accepted.

19. Article 231 § 2 prescribed that compound interest (*kamata*) had to be calculated and paid starting from the due date, at a rate equal to the annual discount rate of the central bank of issue, increased by 15 percentage points.

20. Article 237 prescribed that if the customs authority repaid an amount of import duties, including credit interest and interest on arrears collected on payment of that debt, it had to calculate and pay interest on the repaid amount from the date of collection of the duties to the date of repayment.

III. THE CUSTOMS ACT (*CARINSKI ZAKON*; PUBLISHED IN OG RS Nos. 18/10, 101/12, 29/15, 108/16 AND 113/17) IN FORCE FROM 3 MAY 2010 TO 17 JUNE 2019

21. Article 254 of the Customs Act in force from 3 May 2010 to 17 June 2019 defined repayment as the total or partial refund of a customs debt which had been paid.

22. Article 269 prescribed that, where the amount of the customs debt has not been paid within the prescribed period, the customs authority had to apply simple interest on the amount of the debt from the due date, at a rate equal to the annual discount rate of National Bank of Serbia, increased by 10 percentage points.

23. Article 273 § 1 prescribed that, should it be established that a paid customs debt had not been legally owed, the amount unlawfully collected had

to be repaid. Article 273 §§ 4 and 5 prescribed that the customs authority could grant such repayment upon receipt of an application submitted by the person or legal person concerned, or on its own initiative.

24. Article 278 § 1 provided that repayment by the customs authority of customs debts paid to it, including credit interest and interest on arrears collected on payment of such debt, should not give rise to the payment of interest by the customs authority. Article 278 § 2 provided that, notwithstanding paragraph 1 of that provision, interest had to be paid in accordance with provisions of Article 269 § 1 of the Act where a decision to grant a request for repayment was not implemented within three months from the date the decision was issued.

25. Article 308 provided that customs procedures initiated before the date of entry into force of the new Act had to be completed in accordance with the regulations that were in force until the date of its entry into force.

IV. ADMINISTRATIVE DISPUTES ACT (*ZAKON O UPRAVNIM SPOROVIMA*; PUBLISHED IN OG RS No. 111/09)

26. Article 4 of the Administrative Disputes Act provides that an administrative act is an individual legal act by which the competent public authority, by direct application of the regulations, decides on a certain right or obligation of a natural or legal person, that is, another party to the administrative matter.

27. Article 11 § 1 provides that a natural, legal or other person can bring an administrative dispute before a court of law if it is believed that that person's rights or interests, based on the law, have been violated by an administrative act.

V. OBLIGATIONS ACT (*ZAKON O PARNIČNOM POSTUPKU*; PUBLISHED IN THE OFFICIAL GAZETTE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA Nos. 29/78, 39/85, 45/89, AND 57/89, THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA No. 31/93, AND OG RS No. 18/20)

28. Article 154 of the Obligations Act defines different grounds for claiming civil compensation.

29. Article 172 § 1 provides that a legal entity is liable for any damage caused by one of "its own bodies".

30. Article 210 establishes liability for unjust enrichment.

31. Article 214 defines the consequences of unjust enrichment.

VI. DOMESTIC CASE-LAW REFERRED TO BY THE GOVERNMENT

32. The Government provided the Court with one decision given by the Commercial Court in Belgrade (*Privredni sud u Beogradu*) and one decision given by the Commercial Court in Niš (*Privredni sud u Nišu*) in civil proceedings for compensation in which the claimants had been successful in their claims for interest on overpaid amounts of customs duties.

33. In judgment P. 101/19 of 12 March 2019, the Commercial Court in Belgrade examined a situation in which the claimant company had been ordered by the first-instance customs authority, on 8 November 2011, to pay import duties and other duties, which have been collected through enforcement proceedings. Following an appeal, the second-instance customs authority established that the previously charged amounts had been unlawfully collected and ordered a reimbursement of the nominal sum, but without interest. In the ensuing civil proceedings, the claimant sought statutory default interest for the period from the date of payment to the date of reimbursement of the overpaid amount, the return of the portion of the payment that had not been reimbursed, as well as lost profits, relying on the provisions of the Law on Obligations governing compensation of damage and unjust enrichment. The court held that, under the applicable legal framework, a party who had been required to pay undue customs was entitled to interest for the period from the date of payment to the date of reimbursement of the overpaid amount. This judgement was upheld by the Supreme Court of Cassation on 3 February 2022.

34. In judgment P. 187/20 of 29 October 2020, the Commercial Court in Niš examined a situation in which the claimant company had been ordered by the first-instance customs authority, on 28 September 2017, to pay excise duty and value added tax, which have been collected through enforcement proceedings. Following an appeal, the second-instance customs authority annulled the abovementioned decision on the ground that the company had not been given the opportunity to comment on the expert opinion relied upon in the customs procedure. In the ensuing civil proceedings, the claimant sought the return of the previously collected amounts relying on the provisions of the Law on Obligations governing unjust enrichment, as well as statutory default interest from the date the claim was filed. The court held that the claimant was entitled to reimbursement of the unlawfully collected sums together with statutory default interest from the date the claim was filed. That judgement was upheld by the Commercial Court of Appeal on 26 April 2023.

THE LAW

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

35. The applicant company complained that its right to peaceful enjoyment of its possessions had been breached. It relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. The parties’ submissions

36. The Government contested that the applicant company had a “possession” within the meaning of Article 1 of Protocol No. 1, arguing that it could not have had a legitimate expectation of receiving interest under the applicable domestic legislation (see paragraph 24 above). They further submitted that the applicant company had failed to exhaust available and effective domestic remedies, such as a civil claim for damages (see paragraphs 28-31 above).

37. In particular, the Government contended that such a claim brought in civil proceedings would have been sufficient for the applicant company to obtain the interest sought. In support of that position, the Government relied on domestic case-law, referring to two cases in which other companies had successfully obtained interest on the basis of comparable claims before the national courts (see paragraphs 32-34 above).

38. The applicant company disagreed and maintained that it had properly exhausted the legal avenue pursued and that it was not required to bring any additional proceedings concerning the same underlying issue. The applicant company further argued that the case-law submitted by the Government concerned factually and legally different situations from its own, given the point in time at which the proceedings before the customs authorities had been initiated and the different customs laws that had therefore been applicable, each of which regulated the issue of interest in a different manner.

2. *The Court's assessment*

(a) Whether the applicant company had a “possession” within the meaning of Article 1 of Protocol No. 1

39. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned events or decisions relate to his or her “possessions” within the meaning of that provision. The concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I).

40. According to the established case-law of the Court, “possessions” can be “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

41. Where the proprietary interest is in the nature of a claim it may be regarded as an “asset” only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecký*, cited above, § 52; *Draon v. France* [GC], no. 1513/03, § 68, 6 October 2005; and *Anheuser-Busch Inc.*, cited above, § 65).

42. Where that has been established, the concept of “legitimate expectation” can come into play, which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a final judicial decision (see *Draon*, cited above, § 65, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 73, ECHR 2002-VII).

43. Turning to the present case, the Court observes that the applicant company’s claim concerns the payment of interest on customs duties which were wrongly levied and subsequently refunded. It further notes that, at the time when the domestic proceedings were initiated, the applicable Customs Act expressly provided for the payment of statutory interest in situations of reimbursement of unduly collected duties (see paragraph 20 above). Moreover, the case-law submitted by the Government (see paragraphs 32-34 above) shows that at least two companies had successfully obtained interest through civil proceedings on the basis of the Obligations Act, even in situations where the applicable version of the Customs Act in the customs proceedings no longer expressly provided for such a right.

44. The Court therefore considers in the specific circumstances of this case that the applicant company must be regarded as having had a legitimate expectation that statutory interest would be awarded upon the successful completion of the proceedings. That expectation was grounded both in the explicit wording of the Customs Act in force when the proceedings commenced before the customs authorities and in the domestic case-law, submitted by the Government themselves, showing that other companies had successfully obtained interest even under the Obligations Act. Accordingly, the applicant company's claim to interest may be regarded, for the purposes of Article 1 of Protocol No. 1, as a "possession".

(b) Exhaustion of domestic remedies

(i) Relevant principles

45. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are exempted from answering for their acts before an international body before they have had an opportunity to put matters right domestically (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-46, 27 November 2023, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

46. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (*ibid.*, § 71).

47. To be effective, a remedy must likewise be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see, for example, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009, and *Vučković and Others*, cited above, § 74).

48. An applicant's failure to make use of an available domestic remedy or to make proper use of it (that is to say, by bringing a complaint at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law) will result in an application being declared inadmissible by the Court (see *Vučković and Others*, cited above, § 72).

49. The Court has also, however, frequently emphasised the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (*ibid.*, § 76, with further references). It would, for example, be unduly formalistic to require applicants to pursue a remedy which even the highest court of their country would not oblige them to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117-18, ECHR 2007-IV).

50. In legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, it is incumbent on the aggrieved individual to test the extent of that protection (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009).

51. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact pursued, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others*, cited above, § 77, with further references).

(ii) *Application of those principles to the present case*

52. Turning to the present case, the Court notes that the core of the applicant company's complaint revolves around its inability to obtain the interest sought. In this context, the applicant company made use of the domestic remedies available under the legislation governing the customs procedure in question.

53. With the above in mind, the Court concludes that the case-law submitted by the Government concerned situations that were similar but not identical to that of the applicant company (see paragraphs 32-34 above). In particular, those situations arose at a different time to the proceedings conducted by the applicant company before the customs authorities, and the companies involved were subject to a different statutory regime governing customs duties. The fact that those companies were successful in pursuing their claims through civil proceedings cannot, in itself, be regarded as sufficient for the Court to require the applicant company to have used that remedy. It cannot therefore serve as a sound basis for discounting the applicant company's reasonable choice of legal redress.

54. The Court further notes that the Constitutional Court itself, importantly, did not reject the applicant company's complaints on the grounds of its having failed to make use of any other prior effective legal remedies, including the various types of civil proceedings for damages, as it could have done (see paragraph 12 above; see also *Negovanović and Others*

v. Serbia, nos. 29907/16 and 3 others, § 67, 25 January 2022). It would thus be unduly formalistic for the Court to now hold otherwise (see, *mutatis mutandis*, *Dragan Petrović v. Serbia*, no. 75229/10, §§ 55-57, 14 April 2020).

55. In view of the foregoing, the Government's objection as to the non-exhaustion of domestic remedies, within the meaning of Article 35 § 1 of the Convention, must be dismissed, it being understood that even where more than one potentially effective remedy is available the applicant is only required to use one remedy of his or her own choosing (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012; *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014; and *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-11, ECHR 2014 (extracts)).

(c) Conclusion

56. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

57. The applicant company maintained that the customs authorities' failure to award it interest on the refunded customs duties amounted to an interference with its rights under Article 1 of Protocol No. 1 to the Convention. It argued that it had not been adequately compensated for the incorrectly applied customs payment, as the authorities had failed to take into account the ten years it took for the company to receive a refund, the inflation rate during that period, and the fact that it had been unable to use the funds for the purposes of its registered business activity during that time. It further submitted that the authorities had retroactively applied less favourable customs legislation, which did not provide for the payment of interest in such situations, instead of the legislation in force when the proceedings had been initiated, which had expressly guaranteed a right to interest.

58. The Government reiterated that there had been no violation of Article 1 of Protocol No. 1. They maintained that there had been no retroactive application of a less favourable legal framework. They further argued that the customs authorities had acted lawfully throughout the proceedings and that the measures taken had not amounted to any interference with the applicant company's possessions. In their view, customs duties, as a form of public revenue, served primarily to protect the State's economic and fiscal policies, regulate trade and control imports, and the absence of interest on repayments could not be regarded as imposing a disproportionate burden

or upsetting the fair balance between the individual interest and the legitimate public interest.

2. *The Court's assessment*

(a) **Whether there was an interference and the applicable rule**

59. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 98, ECHR 2014, with further references).

60. In the present case, it is in dispute between the parties whether the refusal of the domestic authorities to award interest on the collected and subsequently reimbursed customs duties amounted to an interference with the applicant company's right to the peaceful enjoyment of its possessions under Article 1 of Protocol No. 1.

61. The Court cannot accept the Government's argument that there had been no interference with the applicant company's possessions. Once it has been established that the applicant company had a "possession" in the form of a sufficiently established claim to interest, the subsequent refusal of the domestic authorities to recognise or enforce that claim necessarily constitutes an interference with the peaceful enjoyment of that possession within the meaning of Article 1 of Protocol No. 1.

62. As regards the issue as to which of the rules contained in Article 1 of Protocol No. 1 applies, the Court observes that the customs authorities collected the customs duties from the applicant and retained those funds for a period of ten years before reimbursing them, without paying any interest. The Court considers that there is no need to take a clear stance on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined – that is, whether it should be examined in the context of deprivation of property or control of its use – because the principles governing the question of justification in both contexts are substantially the same, involving, as they do, the legitimacy of the aim of any interference, as well as its proportionality and the preservation of a fair balance (see, *mutatis mutandis*, *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55,

1 April 2010, and *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, §§ 68-71, 21 July 2020).

(b) Whether the interference was provided for by law

63. The Court reiterates that the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness, which in addition presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, among other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 109, ECHR 2000-I, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012).

64. The Court observes that, at the time when the applicant company imported the goods, as well as at the time when the post-clearance check proceedings were initiated, the applicable customs legislation provided for a right to interest in the event of a refund of customs duties (see paragraph 20 above). However, at the time when it was ultimately established that the applicant company had not been liable to pay the customs duties that had been collected, the legislation in force no longer provided for such a right to interest in the event of a refund (see paragraph 24 above). It further observes that the later legislation, which was applied as the basis for rejecting the applicant company's request for interest, stipulated that customs procedures initiated before its entry into force were to be completed in accordance with the regulations previously in force (see paragraph 25 above).

65. The Court reiterates that it is primarily for the national authorities to interpret and apply domestic law; its role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for instance, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], cited above, § 113, and *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 67, 14 October 2021, with further references). In the present case, the Court does not consider it necessary to determine whether the interference "was subject to the conditions provided for by law" as, in any event, it was contrary to the requirements of Article 1 of Protocol No. 1 for the reasons set out below.

(c) Legitimate aim

66. Bearing in mind that customs duties or charges for imported goods must be regarded as falling within the realm of taxation, a matter which forms part of the hard core of public-authority prerogatives (see, among many other authorities, *Krayeva v. Ukraine*, no. 72858/13, § 28, 13 April 2022), the Court accepts that the customs-related measures pursued the legitimate aims of protecting the State's economic and fiscal policies (see paragraph 58 above).

(d) Proportionality of the interference

67. The remaining question for the Court to determine is whether the national authorities, when refusing to award interest on the refunded customs duties, struck the requisite fair balance between the applicant company's right of property and the requirements of the general interest, taking into account the margin of appreciation left to the Contracting States in that area. The requisite balance will not be achieved if the property owner concerned has had to bear "an individual and excessive burden".

68. The interference in issue resulted in the applicant company being unable to use for almost ten years the sums paid to discharge the customs duties, without its receiving any compensation in that regard. Following the post-clearance check initiated in 2009, the customs authorities concluded that the preferential treatment previously granted should not have been applied and issued a series of decisions imposing an obligation to pay customs duties. As the applicant company's appeal against those decisions had no suspensive effect, the company was required to pay the duties immediately in order to comply with the obligations imposed by the customs authorities, despite consistently contesting the underlying assessment. It was only in 2018 that the first-instance customs authorities ultimately determined that the duties had been wrongly levied and ordered a refund of the principal amount, but without any interest. The second-instance customs authority upheld that approach in 2019, as did the Administrative Court thereafter, and in 2022 the Constitutional Court dismissed the applicant company's complaint lodged in that connection under Article 1 of Protocol No. 1.

69. The Court has consistently linked the payment of default interest to delays by the authorities in refunding credits (see *Eko-Elda AVEE v. Greece*, no. 10162/02, § 29, ECHR 2006-IV). In particular, it has held that the adequacy of compensation under Article 1 of Protocol No. 1 is diminished if it is paid without reference to circumstances liable to reduce its value, such as unreasonable delay or prolonged inability to access or use the sums at issue (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 82, Series A no. 301-B; *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 54, ECHR 2000-I; and *Angelov v. Bulgaria*, no. 44076/98, § 39, 22 April 2004). In such a case the Court will mainly have regard to whether the authorities have paid late-payment interest to offset the depreciation of the amount due on account of the time that has elapsed (see, among other authorities, *Akkuş v. Turkey*, 9 July 1997, § 29, *Reports of Judgments and Decisions* 1997-IV; *Chinnici v. Italy (no. 2)*, no. 22432/03, § 43, 14 April 2015). The payment of interest is intrinsically linked to the State's obligation to make good the difference between the amount owed and the amount ultimately received by the creditor (see *Eko-Elda AVEE v. Greece*, cited above, § 29).

70. The Court has previously found that delays ranging from five to ten years in reimbursing overpaid taxes may have a serious impact on a

company's financial situation and cannot be remedied by the mere return of the principal (see *Buffalo S.r.l. in liquidation v. Italy*, no. 38746/97, §§ 36-37, 3 July 2003). Additionally, the Court has held, in the context of determination of just satisfaction under Article 41 of the Convention in cases concerning unlawful interferences with property rights, that compensation should, as far as possible, place the applicant in the position in which it would have been had the breach not occurred (see *Akhverdiyev v. Azerbaijan* (just satisfaction), no. 76254/11, § 33, 21 March 2019, *Boyadzhieva and Gloria International Limited EOOD v. Bulgaria*, nos. 41299/09 and 11132/10, §§ 54-55, 5 July 2018, and *Beshiri and Others v. Albania* (dec.), no. 29026/06, § 202, 17 March 2020). Thus, in order to reflect the lapse of time, the market value of property at the time when it is taken by the State should be converted to current value to offset the effects of inflation, and simple statutory interest applied to offset the period for which the applicant has been deprived of the property (see *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 105, 22 December 2009). Such considerations are relevant when determining the proportionality of the interference in the present case.

71. The Court reiterates that the principle of good governance requires public authorities, where they have made an error, to take appropriate steps to remedy it and to bear the consequences of their own mistakes rather than shifting the burden onto the individual concerned (see *Ibrahimbeyov and Others v. Azerbaijan*, no. 32380/13, §§ 53-54, 16 February 2023). In the applicant company's case, the authorities' refusal to award any interest meant that it received only the nominal amount it had paid almost ten years earlier. In particular, they did not take into account the length of time for which the applicant company had been unable to use the sums paid, the real economic loss resulting from that prolonged retention, or the erosion of the value of money caused by inflation (see paragraph 14 above).

72. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to strike the requisite fair balance between the demands of the general interest and the protection of the applicant company's property rights. Even taking into account the wide margin of appreciation afforded to the Contracting States in matters of taxation and the administration of customs duties, by refunding only the nominal amount nearly ten years later, without any mechanism to compensate for the effects of the passage of time, the company's prolonged inability to use the sums paid, or the erosion of their value through inflation, the authorities placed an individual and excessive burden on the applicant company. Such conduct did not redress the real economic loss sustained as a result of the authorities' retention of the money for almost a decade and therefore failed to secure the level of compensation required to maintain the requisite fair balance between the demands of the general interest and the protection of the applicant company's individual property rights. In the Court's view, the authorities were required, at a minimum, to award simple

statutory interest on the wrongly levied customs duties, as the absence of such interest deprived the applicant company of adequate and effective redress.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

75. The applicant company claimed 13,428,644 Serbian dinars (RSD – approximately 114,620 euros (EUR)) in respect of pecuniary damage, as the amount corresponding to interest on the wrongly collected customs duties, calculated from the date of collection until the date of reimbursement, arrived at by applying the statutory interest rate prescribed by the Customs Act in force at the time of reimbursement (see paragraph 22 above).

76. In support of its claim the applicant company submitted an expert report providing a detailed calculation of the pecuniary damage in three alternative scenarios: applying the statutory interest rate prescribed by the Customs Act in force at the time the proceedings were initiated, the statutory interest rate prescribed by the Customs Act in force at the time the proceedings were concluded, and the statutory default interest rate prescribed under the Law on Default Interest (*Zakon o zateznoj kamati*).

77. The Government challenged this claim, arguing that it was unsubstantiated and excessive in nature. They did not contest the validity of the expert report submitted by the applicant company, nor the methodology or calculations contained therein. Additionally, the Government stated that, in the event a violation was found, the statutory default interest rate prescribed under the Law on Default Interest should be applied.

78. Having regard to the fact that the Customs Act relied upon by the applicant company did not provide for the payment of interest in situations involving the reimbursement of wrongly collected customs duties (see paragraph 24 above), and noting the Government’s submissions in that regard (see paragraph 77 above), the Court considers that the statutory default interest rate prescribed under the Law on Default Interest provides an appropriate basis for the assessment of the applicant company’s pecuniary damage in the present case. This finding is based on the particular features of the domestic legal framework and the circumstances of the present case and

should not be understood as establishing a general rule as to the interest rate to be applied in other Contracting States.

79. However, the Court considers that the calculation of the potential losses sustained by the applicant company is a complex technical process, which it is unable to perform itself. Having regard also to the fact that the Government did not dispute the validity of the expert report submitted by the applicant company, nor the methodology on which it was based (see paragraph 77 above), the Court sees no reason not to rely on that report for the purposes of assessing the applicant company's claim (see *Sakskoburggotski and Chrobok v. Bulgaria* (just satisfaction), nos. 38948/10 and 8954/17, § 43, 2 May 2023).

80. Having regard to the fact that the principal amounts collected in respect of customs duties have already been reimbursed, the only outstanding pecuniary loss relates to the interest accruing between the date of collection and the date of reimbursement. The expert report referred to above, when using the statutory default interest rate established in the Law on Default Interest, calculated the applicant company's losses as RSD 11,163,347, the equivalent of EUR 95,284, in respect of all amounts that were incorrectly collected by way of customs duties, for the period running from the date of their collection until the date of their reimbursement. The Government shall, therefore, pay the applicant company EUR 95,284, plus any tax that may be chargeable, in respect of pecuniary damage.

B. Non-pecuniary damage

81. The applicant company claimed EUR 3,000 in respect of non-pecuniary damage.

82. The Government contested this claim.

83. The Court takes the view that the applicant company suffered non-pecuniary damage as a result of the violation found which cannot be made good by the mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award the applicant company EUR 3,000 under this head, plus any tax that may be chargeable.

C. Costs and expenses

84. The applicant also claimed EUR 17,960 for the costs and expenses incurred before the domestic authorities and for those incurred before the Court.

85. The Government contested this claim as unfounded and excessive.

86. The Court reiterates that 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 were also reasonable as to their

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). In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 4,500 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant company.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 95,284 (ninety-five thousand two hundred and eighty-four euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

DEVEKOM DOO NIŠ v. SERBIA JUDGMENT

Done in English, and notified in writing on 13 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President