



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

FIFTH SECTION

CASE OF ZHYTNIKOV v. UKRAINE

(Application no. 39259/18)

JUDGMENT

STRASBOURG

22 October 2026

This judgment is final but it may be subject to editorial revision.

In the case of Zhytnikov v. Ukraine,

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

María Elósegui, *President*,

Andreas Zünd,

Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 39259/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 9 July 2018 by a Ukrainian national, Mr Anatoliy Viktorovych Zhytnikov (“the applicant”), who was born in 1979 and lives in Mykolayiv, and was represented by Mr V.G. Byelik, a lawyer practising in Mykolayiv;

the decision to give notice of the complaint under Article 1 of Protocol No. 1 concerning the sanction imposed on the applicant in connection with an alleged breach of customs regulations – by the final decision of the Mykolayiv Regional Court of Appeal on 28 February 2018 – to the Ukrainian Government (“the Government”), represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 1 October 2026,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant’s complaint under Article 1 of Protocol No. 1 to the Convention that the sanction imposed on him following proceedings in respect of a customs-related offence was unlawful and disproportionate.

2. The applicant was a logistics manager at a private company, R. (“the R. company”). His duties included submitting documents to the customs authorities in connection with the importation of goods by that company. On 15 June 2017 he submitted an electronic customs declaration concerning goods imported by the R. company, including 45 kg of garlic oil valued at 43,065.73 Ukrainian hryvnias (UAH) (equivalent to 1,460 euros (EUR) at the time). The declaration was accompanied by an electronic copy of a consignment note pertaining to the Convention on the Contract for the International Carriage of Goods by Road (“CMR”), which bore stamps indicating that sanitary and epidemiological controls had been carried out on the goods. On the basis of those documents, the goods were cleared through customs and released into free circulation.

3. Following information received from the Security Service of Ukraine in the context of criminal proceedings concerning alleged offences connected with the activities of the R. company, the customs authorities obtained letters from the relevant sanitary and laboratory authorities. Those authorities stated that no sanitary or epidemiological controls had been carried out in respect of the goods covered by the applicant's declaration and that no relevant request had been made by the R. company. Criminal proceedings concerning the alleged use of forged documents during customs clearance were subsequently joined to those proceedings; they were later discontinued without the applicant being notified of any suspicion.

4. On 1 November 2017 the Mykolayiv customs office drew up a report on a violation of customs rules under Article 483 § 1 of the Customs Code. It alleged that the applicant had submitted a forged CMR document bearing forged stamps confirming that sanitary and epidemiological controls had been carried out and had used that as the basis for moving the goods across the customs border.

5. On 16 November 2017 the Central District Court of Mykolayiv ("the District Court") found the applicant guilty of a customs offence under Article 483 § 1 of the Customs Code. It held that the applicant, as the authorised customs declarant of the R. company, had submitted a CMR consignment note bearing stamps allegedly confirming that sanitary and epidemiological controls had been carried out, although the competent authorities had stated that no such controls had been carried out in respect of the goods. The court imposed a fine of UAH 43,065.73, an amount equivalent to the value of the goods, and ordered confiscation of the goods. Since the goods had already been released into free circulation and were no longer available for confiscation, the court relied on Article 541 § 2 of the Customs Code, which provided that, where confiscation of goods from persons who had violated customs rules was impossible, their value could be recovered through a court decision. It accordingly ordered the recovery from the applicant of the value of the goods, also in the amount of UAH 43,065.73.

6. On 28 February 2018 the Mykolayiv Regional Court of Appeal ("the Court of Appeal") upheld the first-instance decision. It rejected the applicant's arguments that the alleged forgery of the CMR consignment note and the stamps had not been established by an expert examination and that he could not be held liable for alleged omissions or wrongdoing of other persons or institutions. Relying on information from the relevant sanitary and laboratory authorities, the Court of Appeal held that the CMR consignment note submitted by the applicant bore forged stamps certifying that sanitary and epidemiological controls had been carried out. It further held that the applicant, as the person authorised to deal with customs matters for the R. company, could be treated as an official of that company for the purposes of customs liability. As regards the sanction, the Court of Appeal held that it had

been imposed within the limits of Article 483 § 1 of the Customs Code. The decision was final.

7. On 4 April 2018 two sets of enforcement proceedings were opened: one concerning recovery of the value of the goods and the other concerning recovery of the fine. On 8 April 2025 the State Bailiffs Service received payment in full in respect of both amounts, namely the value of the goods (UAH 43,065.73, equivalent to EUR 950 at the time) and the fine (UAH 43,065.73), together with enforcement fees and costs. On 14 May 2025 both sets of enforcement proceedings were terminated on the ground that the decision had been fully enforced.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

8. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the obligation imposed on him to pay, in addition to the fine, the value of the goods which had no longer been available for confiscation had been unlawful and disproportionate. He argued, in substance, that he had been made personally liable for the value of goods which had not belonged to him and that no assessment had been made as to whether such an additional burden had been justified in his individual circumstances.

9. The Government submitted that the interference had been lawful, had pursued a legitimate aim and had been proportionate. They argued that the applicant, the declarant in respect of the goods in question, had been lawfully found liable for a customs offence under Article 483 § 1 of the Customs Code and that, since confiscation of the goods had been impossible, the recovery of their value from him had expressly been provided for by Article 541 § 2 of the Customs Code.

10. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

11. The Court notes that in the present case, by the decision of 16 November 2017, the applicant was ordered to pay a fine of UAH 43,065.73 and, in addition, the same amount again, which was the equivalent of the value of the goods, because their confiscation was no longer possible. Although the goods themselves belonged to the R. company, the recovery of their value was ordered from the applicant personally and was subsequently enforced in full (see paragraph 7 above). The decision in question therefore affected the applicant's pecuniary interests and constituted an interference with his right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1.

12. The Court further notes that the measure in question falls within the scope of the second paragraph of Article 1 of Protocol No. 1, which allows

the Contracting States to control the use of property to secure the payment of penalties. 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). In particular, such an interference must be lawful, pursue a legitimate aim and strike a fair balance between the demands of the general interest and the protection of the individual's rights.

13. As regards lawfulness, the Court notes that the interference had a basis in domestic law. The fine and the confiscation order were based on Article 483 § 1 of the Customs Code, which provided for a fine and confiscation of goods where it had been established, *inter alia*, that goods had been moved across the customs border on the basis of forged documents. The recovery of the value of the goods was based on Article 541 § 2 of the Customs Code, which provided that, where confiscation of goods from persons who had violated customs rules was impossible, their value could be recovered by a court decision.

14. While the applicant disputed before the domestic courts his liability under Article 483 § 1 of the Customs Code, arguing, *inter alia*, that the CMR consignment note and the stamps affixed to it had not been shown to be forged and that he had not knowingly submitted forged documents, those arguments were examined and rejected by the domestic courts. The courts relied on information obtained from the competent sanitary and laboratory authorities and found that the document submitted by the applicant bore forged stamps certifying that sanitary and epidemiological controls had been carried out. Having regard to its limited role, in the context of a complaint under Article 1 of Protocol No. 1, in reviewing the assessment of facts and the application of domestic law by national courts, and in the absence of any arbitrariness or manifest unreasonableness in that assessment, the Court sees no basis to conclude that the interference lacked a lawful basis.

15. The Court is further satisfied that the interference pursued a legitimate aim in the general interest, namely that of ensuring compliance with customs rules, protecting the integrity of customs-clearance procedures and securing observance of mandatory sanitary and epidemiological control requirements.

16. As regards proportionality, the Court proceeds on the basis of the domestic courts' finding that the applicant had committed the customs offence by submitting, as the basis for customs clearance, a CMR consignment note bearing forged stamps certifying that sanitary and epidemiological controls had been carried out. Having regard to the applicant's professional role as the person authorised to deal with customs matters on behalf of the R. company and his experience in preparing customs declarations, he could be expected to exercise due diligence in relation to the documents submitted for customs clearance. In those circumstances, the

Court does not consider that the fine of UAH 43,065.73, corresponding to the value of the goods, was, taken in isolation, disproportionate to the gravity of the offence. Indeed, the applicant did not argue that that amount placed him in a particularly difficult financial situation. His grievance rather concerns the court's order, issued under Article 541 § 2 of the Customs Code, requiring him to pay the value of the goods because their confiscation was no longer possible.

17. The Court observes in that regard that Article 541 § 2 of the Customs Code appears to have been intended to preserve, where goods were no longer available, the practical effect of confiscation. Confiscation of goods which were the direct object of a customs offence may serve to protect the integrity of customs control and to preserve the effectiveness of customs sanctions. Where such offence is detected only after the goods have been released into free circulation, recovery of their value may, therefore, pursue the same practical purpose as physical confiscation. The Court does not call into question the State's choice to provide such a mechanism in customs-offence cases. Nor does it question that, in principle, a fine and a confiscation measure may be imposed cumulatively, provided that the overall burden imposed on the person concerned remains proportionate.

18. In the present case, however, the recovery of the value of the goods was imposed on the applicant in addition to the fine already imposed on him of the same amount. Under Article 541 § 2 of the Customs Code, as interpreted and applied in the applicant's case, his status as the person found liable for the customs offence was sufficient for the value of the goods to be recovered from him personally. The domestic courts did not carry out any separate assessment of whether it was proportionate, in his individual circumstances, to require him personally to bear that additional burden.

19. The Court accepts that the applicant's professional role as customs declarant could justify holding him liable for the customs offence and imposing a fine. However, that role in itself did not correspond to the distinct question whether he should also personally bear the economic equivalent of the confiscation of the goods owned by the R. company. In particular, no assessment was made as to whether the applicant had owned the goods, had obtained any economic benefit from their release, had had control over their disposal after customs clearance or had otherwise been in a position comparable to that of the owner or commercial beneficiary of the goods.

20. The Court does not lose sight of the fact that, in customs matters, confiscation may be ordered in respect of goods constituting the object of the offence, irrespective of whether they belong to the person found liable. However, had the goods still been available for confiscation, the measure would have affected the goods themselves, which belonged to the R. company, and would not have required the applicant to make any payment from his own assets. The fact that the goods had already been released into free circulation altered the practical effect of the confiscation measure:

Article 541 § 2 of the Customs Code was applied so as to convert it into a personal monetary obligation imposed on the applicant. He was thus required, in addition to the fine already imposed on him, to pay the full value of goods which he did not own and from which he was not shown to have derived any economic benefit.

21. In those circumstances, while the Court acknowledges the State's margin of appreciation in customs matters and in securing the effectiveness of penalties, it considers that the imposition of that additional burden on the applicant by reference to his status as the person found liable, without any individualised assessment of its proportionality, upset the requisite fair balance. The applicant was therefore made to bear an individual and excessive burden.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 11,784.36 euros (EUR) in respect of pecuniary damage. That amount corresponded to several sums recovered from him in enforcement proceedings, including the fine and the value of the goods in the present case, enforcement fees, and amounts recovered in another set of proceedings which does not form part of the present application. He also claimed EUR 2,540.06 in respect of non-pecuniary damage.

24. The Government contested the claims. They argued, in particular, that they were excessive, partly unrelated to the present case and, as regards non-pecuniary damage, unsubstantiated.

25. The Court observes that the violation found in the present case concerns the order made by the District Court on 16 November 2017, upheld by the Court of Appeal on 28 February 2018, requiring the applicant personally to pay the value of the goods which were no longer available for confiscation. It therefore awards the applicant EUR 950 in respect of pecuniary damage, corresponding to the amount recovered from him under that head on 8 April 2025 (see paragraph 7 above), plus any tax that may be chargeable.

26. Having regard to the material before it, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 950 (nine hundred and fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

María Elósegui
President