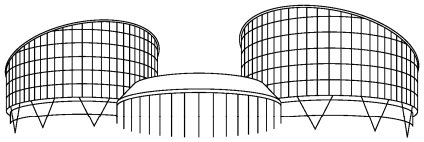

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 23001/08
Aleksandar MATIĆ and POLONIA DOO
against Serbia

The European Court of Human Rights (Third Section), sitting on 23 June 2015 as a Chamber composed of:

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 April 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

PROCEDURE

1. On 1 February 2014 the Court changed the composition of its Sections (Rule 25 § 1). These cases were thus assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

2. The applicants are Mr Aleksandar Matić ("the first applicant") and Polonia DOO ("the second applicant").

3. The first applicant is a Serbian national who was born in 1961 and lives in Mladenovac. He is also the second applicant's authorised

representative. The second applicant is a limited liability company based in Mladenovac. Both applicants were represented before the Court by Mr M. Grujičić, a lawyer practising in Belgrade.

4. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

A. The circumstances of the case

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

1. The proceedings concerning the applicants

6. In 2005 the second applicant bought a cargo ship (*teretni brod*) outside of Serbia. This ship's estimated worth was approximately 545,000 Euros ("EUR").

7. In September 2005 the first applicant, acting on behalf of the second applicant, retained the services of a forwarding company (*špediter*), which company specialised in customs-related matters.

8. On 13 September 2005 the forwarding company filed a declaration with the customs authorities, supplementing it with the relevant documentation provided by the applicants.

9. On 7 November 2005 the Belgrade Customs Office (*carinarnica*), having, *inter alia*, heard a number of witnesses, established that the ship had been improperly classified (*svrstan pod pogrešni tarifni stav*), as a sea-going vessel, which classification, in turn, implied that no customs duty would be payable. The forwarding company and its authorised representative, as well as the applicants in the present case, were thus found guilty of a customs offence (*cariski prekršaj*) and fined in accordance with the relevant legislation (see paragraph 16 below). In particular, the first and the second applicants were ordered to pay 10,000 and 3,000,000 Serbian Dinars ("RSD") respectively, whilst the forwarding company and its authorised representative were fined in the amount of RSD 3,000,000 and 10,000 in that order. The Customs Office noted that its own classification of the ship, as primarily a river-going vessel, was based on the assessment of one of the two expert organisations which had submitted opposing opinions during the proceedings. The Customs Office also referred to an attesting declaration, issued by the German authorities and provided by the applicants themselves, to the effect that the ship was "suitable for sailing on the Rhine, between Basel and the open sea". In any event, the head of the Customs Office, at one point, recommended that the ship be classified as a river-going one, but the applicants refused to do so.

10. On 11 October 2006 the Ministry of Finance (*Ministarstvo finansija*) partly accepted the appeals filed by the four defendants, and in so doing amended the fines imposed at first instance. In particular, the first and

second applicants were ordered to pay RSD 5,000 and RSD 2,000,000, (approximately EUR 60 and EUR 23,600 at that time), respectively, whilst the forwarding company and its authorised representative were fined less, i.e. RSD 500,000 and RSD 3,000 (approximately EUR 5,900 and EUR 35 at that time) respectively. The Ministry of Finance stated that the reason for this distinction was that the forwarding company had merely complied with the applicants' request for the improper classification of the ship in question, as established on the basis of a witness statement given in the course of the proceedings. Also, the Ministry of Finance accepted that there was no intent on the part of the applicants to deceive the authorities, which was why they were found guilty under Article 340 of the Customs Act, an offence not requiring the existence of such intent but rather the mere failure to provide accurate information upon submission of a customs declaration.

11. On 25 October 2006 the applicants lodged an appeal on points of law (*zahtev za vanredno preispitivanje pravosnažnog rešenja*), which appeal was supplemented on 8 December 2006, 31 January 2008 and 12 February 2008. Therein, the applicants maintained, *inter alia*, that: (a) although the Belgrade Customs Office had taken into account two expert opinions regarding the classification of the ship, it had accepted, without proper explanation, one opinion and effectively given no credence to the other; (b) they had had no expertise to navigate their way through the complex customs proceedings, which was why they had hired the forwarding company to deal with this issue; and (c) the impugned decisions of the customs authorities had been inconsistent with their decisions in other similar cases.

12. On 26 December 2007 the Supreme Court (*Vrhovni sud*) ruled on the applicants' appeal on points of law. The first applicant's claims were rejected as inadmissible (*odbačeni*), since the amount of the fine imposed in his case was below the statutory threshold of RSD 100,000 (see paragraph 22 below), whilst the second applicant's claims were considered on their merits and rejected (*odbijeni*). The Supreme Court endorsed the reasoning contained in the impugned decisions issued by the administrative authorities. The applicants received the Supreme Court's judgment on 10 March 2008.

13. The second applicant was granted the possibility to pay the fine in monthly instalments, and by January 2008 the fine was paid in full.

2. The legislation applied in the applicants' case

14. The above-described proceedings were conducted on the basis of the Minor Offences Act 1989, as amended in 2004, as well as the Customs Act 2003 (see paragraphs 16-24 below).

3. Relevant case-law provided by the parties

15. Between 25 September 2006 and 10 December 2010 the Ministry of Finance and the Supreme Court of Cassation (*Vrhovni kasacioni sud*), applying Article 340 of the Customs Act, issued six decisions in respect of situations broadly similar to that of the applicants. Specifically, they noted that it was the responsibility of the importer to provide accurate documentation to the forwarding company and the forwarding company's duty to properly classify the goods in the customs declaration. No intent to deceive the authorities was deemed necessary for the existence of the said offence. In two of these cases the importers were, ultimately, acquitted or formally cautioned (*opomenuti*), without being fined, whilst in the remaining four cases they were fined in accordance with the applicable legislation (see, for example, *rešenja Ministarstva finansija od 25. septembra 2006. i 21. januara 2007, Pžc nos. 1349/05 i 667/07*; as well as *presude Vrhovnog kasacionog suda od 12. februara 2010, 26. marta 2010, 11. juna 2010. i 10. decembra 2010, Upr nos. 2/10, 115/10, 12/10 i 110/10*).

B. Relevant domestic law

1. The Customs Act 2003 (Carinski zakon, published in the Official Gazette of the Republic of Serbia – OG RS – nos. 73/03, 61/05, 85/05, 62/06 and 63/06)

16. Article 340 provides, *inter alia*, that a company, as well as its authorised representative employed therewith (*odgovorno lice*), shall be liable for failing to provide accurate information upon submission of a customs declaration. They shall further be fined therefor in the amount of up to RSD 25,000 or the threefold value of the imported goods, as regards a natural person and a corporate entity respectively.

2. The Minor Offences Act 1989 (Zakon o prekršajima, published in OG RS nos. 44/89, 21/90, 11/92, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98 and 65/01)

17. Article 35 § 1 provides that should a natural person (*fizičko lice*), fail to pay the fine imposed, it shall be converted into a prison term on the basis that one day in prison shall be worth RSD 500, but that the imprisonment may not exceed a period of thirty days in all.

18. Article 36 § 2 provides that should a corporate entity fail to pay the fine imposed, it shall be collected "forcibly" (*naplatiće se prinudnim putem*).

19. Article 41 § 1 provides, *inter alia*, that a defendant may be formally cautioned, rather than fined, where there are serious extenuating circumstances.

20. Article 84 identifies, *inter alia*, the courts entrusted with conducting customs-related proceedings.

21. Article 234 § 1 (9) provides that proceedings shall be terminated if there is no proof that the defendant had committed the offence with which he has been charged.

22. Article 272 provides, *inter alia*, that a natural person, as well as an authorised representative of a corporate entity employed therewith (*odgovorno lice u pravnom licu*), shall be entitled to lodge an appeal on points of law if they have been fined in the amount of RSD 100,000 or more.

23. In accordance with Article 277, the Supreme Court shall, should it accept an appeal on points of law lodged by one of the parties concerned, have the power to overturn and/or amend the impugned decision or quash it and order the re-examination of the issue before the competent administrative authorities.

3. The Amendments to the Minor Offences Act 1989 adopted in 2004 (Zakon o izmenama i dopunama Zakona o prekršajima, published in OG RS nos. 55/04)

24. Article 17 of the Amendments Act adopted in 2004 amended Article 84 of the Minor Offences Act 1989, whereby administrative authorities were given the competence to conduct customs-related proceedings at first and second instance.

4. The Minor Offences Act 2005 (Zakon o prekršajima, published in OG RS no. 101/05)

25. On 1 January 2007 this Act repealed the Minor Offences Act 1989, as amended in 2004.

26. Article 306 of the Minor Offences Act 2005 provides that it shall be applicable to all pending cases where no second instance decision has been rendered on the merits by 1 January 2007. By implication, as regards all other pending cases, including the present case, the Minor Offences Act 1989, as amended in 2004, remained applicable until their very conclusion.

COMPLAINTS

27. Under Articles 6 § 1, 6 § 3 (d) and 14 of the Convention, as well as under Article 1 of Protocol No. 1, the applicants complained about: (a) their inability to question a certain witness at first instance; (b) the fairness and the arbitrary outcome of the proceedings brought against them; and (c) the adjudication of their case in a manner inconsistent with the settled administrative/judicial practice at the relevant time.

THE LAW

28. The Court, being the "master of the characterisation" to be given in law to the facts of any case before it (see, among many other authorities, *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that the above complaints fall to be examined under Articles 6 § 1, 6 § 3 (d) and 7 of the Convention, as well as under Article 1 of Protocol No. 1.

29. The said provisions, in so far as relevant, read as follows:

Article 6

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ....

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

Article 7

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

Article 1 of Protocol No. 1

"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. As regards the first applicant

30. The Court recalls that an appeal on points of law must, in principle and whenever available in accordance with the relevant Serbian procedural rules, be considered as an effective remedy within the meaning of Article 35 § 1 of the Convention (see, for example, *Petrović and Gajić v. Serbia* (dec.),

no. 36470/06, § 37, 17 March 2015; and *Rakić and Others v. Serbia*, nos. 47460/07 and others, § 37, 5 October 2010).

31. It is noted, in this context, that the first applicant's appeal on points of law was rejected as inadmissible (*odbačena*) since the amount of the fine imposed in his case had been below the statutory threshold of RSD 100,000 (see paragraph 22 above). The last "effective remedy" pursued by the first applicant was therefore the appeal lodged with the Ministry of Finance (see, for example, *INTERDNESTRCOM v. the Republic of Moldova* (dec.), no. 48814/06, § 33, 13 March 2012; and *D.P. and J.C. v. the United Kingdom* (dec.), no. 38719/97, 26 June 2001). This appeal, however, was rejected on the merits on 11 October 2006 and the first applicant received this rejection by 25 October 2006, at the latest (see paragraphs 10 and 11 above). Since the application in the present case was introduced on 16 April 2008, it follows that the first applicant's complaints have been lodged out of time and must, as such, be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. It is understood, in this regard, that the six-month rule is a public policy one and that, consequently, the Court has jurisdiction to, and must, apply it of its own motion, even when, such as in the present case, the Government themselves have not raised that objection (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012).

B. As regards the second applicant

1. The complaints considered under Article 6 §§ 1 and 3 (d) of the Convention

32. As already noted above, the second applicant complained about the various aspects of procedural fairness and the arbitrary outcome of the impugned proceedings.

(a) The parties' submissions

33. The Government maintained that, in view of the reservation deposited by Serbia upon ratification of the Convention, the second applicant's complaints under Article 6 §§ 1 and 3 thereof should be rejected as inadmissible *ratione materiae*.

34. The second applicant reaffirmed its original complaints, but made no additional comments.

(b) The Court's assessment

35. The Court notes that the reservation deposited by the State Union of Serbia and Montenegro upon ratification of the Convention read as follows:

> "While affirming its willingness fully to guarantee the rights enshrined in Articles 5 and 6 of the Convention, Serbia and Montenegro declares that the provisions of Article 5, paragraph 1[.c] and Article 6, paragraphs 1 and 3, shall be without prejudice

to the application of Articles 75 to 321 of the Law on Minor Offences of the Republic of Serbia (*Službeni glasnik Socijalisticke Republike Srbije*, no. 44/89; *Službeni glasnik Republike Srbije*, nos. 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 65/2001) that regulate proceedings before [the] magistrates' courts."

The relevant provisions of the laws referred to in this reservation regulate the following matters:

- proceedings before the magistrates' courts, including rights of the accused, rules of evidence and legal remedies (Articles 75 to 89 and 118 to 321 of the Law on Minor Offences of the Republic of Serbia);

- establishment and organization of the magistrates' courts (Articles 89a to 115 of the Law on Minor Offences of the Republic of Serbia); and

- measures for securing the presence of the accused (Articles 183 to 192 of the Law on Minor Offences of the Republic of Serbia)."

36. On 14 June 2006 the Committee of Ministers of the Council of Europe, *inter alia*, noted that:

"1. ... the Republic of Serbia will continue the membership of the Council of Europe hitherto exercised by the ... [State Union] ... of Serbia and Montenegro, and the obligations and commitments arising from it;

2. ... the Republic of Serbia is continuing the membership of [the State Union of] Serbia and Montenegro in the Council of Europe with effect from 3 June 2006; ...

4. ... the Republic of Serbia was either a signatory or a party to the Council of Europe conventions referred to in the appendix ... to which [the State Union of] Serbia and Montenegro had been a signatory or party [including the European Convention on Human Rights]; ..."

37. The above-cited reservation was withdrawn by the Serbian Government on 10 May 2011, and the withdrawal was registered at the Secretariat General of the Council of Europe on 11 May 2011.

38. The Court considers that, in such circumstances, it must examine whether the reservation was compatible with Article 57 of the Convention, which provides:

"1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2. Any reservation made under this article shall contain a brief statement of the law concerned."

39. The Court reiterates that a "reservation of a general character", in Article 57 § 1, means a reservation which does not refer to a specific provision of the Convention or is couched in terms that are too vague or broad for it to be possible to determine its exact meaning and scope (see *Belilos v. Switzerland*, 29 April 1988, Series A no. 132, p. 26, § 55; *Chorherr v. Austria*, 25 August 1993, Series A no. 266-B, p. 35, § 18; and *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, 23 October 2001). As

regards the Serbian reservation, however, and in contrast to, for example, the situation in *Belilos*, cited above, it could not be considered as having been of "a general character" since it referred to specific provisions of the Convention, i.e. Articles 5 § 1 (c) and 6 §§ 1 and 3, and was related to a number of listed provisions contained in a specified piece of domestic legislation. Also, as regards the "brief statement of the law concerned", in Article 57 § 2, the Court notes that the legislation cited in the reservation, i.e. the Minor Offences Act, was followed by a reference to the Official Gazettes in which it was published, so that anyone could identify precisely the provisions at issue and obtain information about them. Moreover, the reservation itself briefly outlined the subject matter regulated by the cited provisions.

40. Bearing in mind all of the above considerations, the Court is of the opinion that Serbia's reservation deposited in respect of Article 6 §§ 1 and 3 of the Convention was in compliance with Article 57 thereof.

41. Turning to the specific circumstances of the present case, the Court notes that the national authorities had carried out the impugned proceedings before the respondent State decided to withdraw its reservation and had based their decisions on the relevant provisions of the Minor Offences Act as covered therein (*Zakon o prekršajima*, published in OG RS nos. 44/89, with amendments published in 21/90, 11/92, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98 and 65/01). While it is true that the amendments to the Minor Offences Act adopted in 2004, not covered by the reservation, were applied to the proceedings in question, those amendments of Article 84 only provided for the additional competence of administrative authorities to deal with customs-related offences at first and second instance (see paragraphs 20 and 24 above). In other words, any minor offences case, whether within the competence of the courts or of the administrative bodies, could not but have been carried out within the framework of the Minor Offences Act as covered by the reservation, i.e. this Act's text as it stood prior to the amendments enacted in 2004. The Court lastly notes that although the reservation referred to the courts competent to deal with minor offences, and did not specifically mention administrative bodies, the final decision in the second applicant's case was ultimately given by a court of law, i.e. the Supreme Court itself, with competence to adjudicate on matters involving minor offences.

42. It follows that the second applicant's complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

2. The complaint considered under Article 7 of the Convention and Article 1 of Protocol No. 1

43. The second applicant further complained that the adjudication of its case had been inconsistent with the settled administrative/judicial practice at the relevant time.

(a) The parties' submissions

44. The Government maintained that neither Article 7 of the Convention nor Article 1 of Protocol No. 1 was applicable to the present case. Specifically, regarding the former provision, the fines imposed could not be considered as a "criminal penalty", while, regarding the latter provision, these fines were clearly necessary in order "to secure the payment of taxes". The Government further maintained that both Article 340 of the Customs Act and the relevant administrative/judicial practice were fully foreseeable in terms of what would constitute the offence in question and as regards the possible sanctions. This, however, could not be construed to mean that in every related case an identical fine should have been imposed. In any event, the second applicant was a corporate entity which should have proceeded with a greater degree of caution instead of merely acting in pursuit of its pecuniary interest to pay no import tax.

45. The second applicant reaffirmed its complaints, but made no additional comments.

(b) The Court's assessment

46. The Court recalls that the guarantee enshrined in Article 7 of the Convention should be interpreted and applied in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *S.W. v. the United Kingdom*, 22 November 1995, § 35, Series A no. 335-B; and *C.R. v. the United Kingdom*, 22 November 1995, § 33, Series A no. 335-C). Accordingly, it embodies, in general terms, the principle that only the law can define a crime and prescribe a penalty (see *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A). The term "law", however, implies qualitative requirements, including those of accessibility and foreseeability. An individual must know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable and what penalty will be imposed for the act committed (see *Kafkaris v. Cyprus* [GC], no. 21906/04, §§ 139-140, ECHR 2008, with further references). However, Article 7 of the Convention does not outlaw the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, "provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen" (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97

and 44801/98, § 50, ECHR 2001-II; *Radio France and Others*, cited above, loc. cit.; and *Eurofinacom v. France* (dec.), no. 58753/00, ECHR 2004-VII). Finally, a law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 37, Series A no. 316-B; and *Grigoriades v. Greece*, 25 November 1997, § 37, *Reports* 1997-VII).

47. The Court further reiterates that 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 someone's possessions should be lawful (*Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). This alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as case-law (see *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999; and *Baklanov v. Russia*, no. 68443/01, §§ 40-41, 9 June 2005). Where manifestly divergent case-law, concerning the same issue, interferes with the right to peaceful enjoyment of one's possessions and no reasonable explanation is given for this divergence, such interferences cannot be considered lawful for the purposes of Article 1 of Protocol No. 1. Inconsistent case-law had been deemed to lack the required precision to enable individuals to foresee the consequences of their actions (see, among other authorities, *Brezovec v. Croatia*, no. 13488/07, § 67, 29 March 2011; *Carbonara and Ventura v. Italy*, no. 24638/94, § 65, ECHR 2000-VI; *Mullai and Others v. Albania*, no. 9074/07, §§ 115-117, 23 March 2010; and *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 116-118, 27 May 2010).

48. Turning to the present case, the Court notes that on 7 November 2005 the Belgrade Customs Office established that the ship had been improperly classified as a sea-going vessel, which classification implied that no customs duty would be payable. The forwarding company and its authorised representative, as well as the applicants in the present case, were thus found guilty of a customs offence and fined. On 11 October 2006 the Ministry of Finance upheld the conviction but amended the fines imposed at first instance. In particular, the first and second applicants were ordered to pay approximately EUR 60 and EUR 23,600, respectively, whilst the forwarding company and its authorised representative were fined less. The Customs Office and the Ministry of Finance noted that their own classification of the ship, as primarily a river-going one, was based on the assessment of one of the two expert organisations which had submitted opposing opinions during the proceedings. They also referred to an attesting declaration issued by the German authorities to this effect, and noted that the forwarding company had merely complied with the applicants' request for the improper classification of the ship in question. Finally, it was

accepted that there was no intent on the part of the applicants to deceive the authorities, which was why they were found guilty, under Article 340 of the Customs Act, of merely failing to provide accurate information upon submission of a customs declaration. On 26 December 2007 the Supreme Court ruled on the applicants' appeal on points of law. The first applicant's claims were rejected as inadmissible, whilst the second applicant's claims were rejected on their merits.

49. The Court further notes that between 25 September 2006 and 10 December 2010 the Ministry of Finance and the Supreme Court of Cassation, applying the same provision of the Customs Act, issued a number of decisions in respect of situations broadly similar to that of the applicants. In so doing, they held that it was the responsibility of the importer to provide accurate documentation to the forwarding company and the forwarding company's duty to properly classify the goods in the customs declaration. No intent to deceive the authorities was deemed necessary. In two of these cases the importers were, ultimately, acquitted or formally cautioned, without being fined, whilst in the remaining four cases fines were imposed (see paragraph 15 above).

50. In this connection, the Court reiterates that Article 340 of the Customs Act had indeed stated that a company and its authorised representative would be liable for failing to provide accurate information upon submission of a customs declaration. They could also be fined therefor in the amount of up to RSD 25,000 or the threefold value of the imported goods, regarding a natural person and a corporate entity respectively. The available case-law further made it clear that no intent to deceive the authorities was required for the existence of this particular offence. Finally, Articles 41 § 1 and 234 § 1 (9) of the Minor Offences Act provided that a defendant could be formally cautioned, rather than fined, if there were serious extenuating circumstances and, also, that the proceedings would be terminated if there was no proof that the defendant had committed the offence in question (see paragraphs 19 and 21 above). It follows, therefore, that the second applicant's conviction and the punishment handed down were fully foreseeable, and as such "lawful" within the meaning of both Article 7 of the Convention and Article 1 of Protocol No. 1. It is, of course, further understood that this requirement does not mean that all persons charged with the same offence had to be found guilty or, for that matter, that if found guilty they all had to be fined in the same amount, or otherwise punished identically. The Court lastly notes that, according to the reasoning contained in the impugned domestic decisions, the second applicant had instructed the forwarding company to classify the ship in question as a sea-going vessel despite, at one point, being advised by the head of the Customs Office that it was primarily a river-going one and notwithstanding the existence of an attesting declaration issued by the German authorities to this

effect (compare and contrast this to the case-law referred to in paragraph 9 above where no such issue arose).

51. Even assuming its competence *ratione materiae*, the Court therefore finds that the second applicant's complaint about inconsistent domestic case-law, considered under Article 7 of the Convention as well as under Article 1 of Protocol No. 1, is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 July 2015.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President