



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

## FOURTH SECTION

### DECISION

Application no. 58721/16  
Marina LAZOVIĆ  
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 28 May 2024 as a Committee composed of:

Anne Louise Bormann, *President*,

Branko Lubarda,

Sebastian Rădulețu, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 58721/16) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 27 September 2016 by a Serbian national, Ms Marina Lazović (“the applicant”), who was born in 1976, lives in Čačak and was represented by Mr M. Ivanić, a lawyer practising in Belgrade;

the decision to give notice of the complaints under Article 6 § 1 and Article 7 of the Convention to the Serbian Government (“the Government”), represented by their Agent, Ms Zorana Jadrijević Mladar, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated, decides as follows:

### SUBJECT MATTER OF THE CASE

1. The application concerns customs-related minor offence proceedings in which the applicant was found guilty of and fined for the offence of driving, on roads in Serbia, a car that was owned by her brother and registered in France without the applicable Serbian import duties having been paid in relation to that vehicle.

2. On 3 June 2013 the Leskovac Police Department drew up a report, noting, based on the testimony of the police officers involved, that the

applicant had been stopped by the police on 29 April 2013 while driving a car with French number plates. It was established that the car was owned by the applicant's brother, who was not in the vehicle with her, but that the applicant had his permission to use it. At first the applicant stated that her brother was in Serbia but she subsequently said that he was in fact in France at the time.

3. On 17 October 2013 the Leskovac Minor Offences Court (Medveđa department) found the applicant guilty of a customs offence (Article 296 read in conjunction with Article 292 § 1 (3) and Article 63 of the Customs Act – see paragraph 6 below) and fined her an amount equivalent to approximately 2,370 euros (EUR). The applicant was also ordered to pay approximately EUR 9 for costs and the vehicle was confiscated. The court explained, *inter alia*, that the conditions under which the applicant could have driven her brother's car in Serbia, without customs duties having to be paid, were set out in the Customs Goods Processing Decree (*Uredba o carinski dozvoljenom postupanju sa robom*, published in the Official Gazette of the Republic of Serbia – “OG RS” – no. 93/10, as applicable at the material time), but that in her case those conditions had not been satisfied – while noting the fact that on 29 April 2013 the applicant's brother was in France, not Serbia (see paragraph 7 below). The court noted that the vehicle in question had never been declared to the relevant authorities for the applicable import duties to be levied (see paragraph 6 below). The applicant, in the court's view, had had to be aware of all this and had thus committed a customs offence in breach of the said provisions. Lastly, a traffic-related stop by the police of the applicant while driving the vehicle before 29 April 2013 was clearly of no relevance for the adjudication of the present case.

4. On 14 January 2014 the Minor Offences Appeals Court (Niš department) amended the above-mentioned judgment in relation to the fine but upheld its remainder. The fine itself was reduced to the equivalent of approximately EUR 604, and the court also ruled that should the applicant fail to pay it within a period of fifteen days the fine would be converted into a sixty-day actual prison term. The court endorsed the reasoning of the judgment given at first instance. Furthermore, it added, *inter alia*, that the applicant should have been aware that customs duties had to be paid, particularly since she had driven the car for an extended period of time, between February 2011 and April 2013. The relevant regulations concerning the applicant's situation were to be found in the Customs Goods Processing Decree rather than in the Motor Vehicles Registration Decree, given that the applicant was accused of a customs-related offence rather than a breach of any road-traffic regulations (see paragraphs 7 and 9 below). Moreover, there was nothing in Article 63 of the Customs Act itself that could lead to a different conclusion (see paragraph 6 below).

5. On 1 March 2016 the Constitutional Court ruled against the applicant and in so doing noted, *inter alia*, that it was not its function to examine cases

as yet another court of appellate jurisdiction. That decision was served on the applicant on 2 June 2016.

6. Article 63 of the Customs Act (*Cariski zakon*, published in OG RS nos. 18/10 and 111/12, as applicable at the material time) provided, *inter alia*, that persons who entered the customs area of the Republic of Serbia were obliged to declare and bring the relevant goods, without delay, to the customs authorities so that import duties could be levied. That, however, did not exclude the implementation of traffic regulations if their implementation would not have jeopardised the enforceability of the customs regulations themselves. Article 292 § 1 (3) of the same Act provided, *inter alia*, that a fine would be imposed upon a person if he or she did not declare or bring to the customs authorities the imported goods in question, in violation of Article 63. Article 296 of the Customs Act provided, *inter alia*, that anyone caught using imported goods which he or she knew or should have known had to be declared or brought to the customs authorities would, in accordance with Article 292 § 1 (3), be penalised with the same punishment envisaged for the breach of that latter provision.

7. Article 327 of the Customs Goods Processing Decree provided, *inter alia*, that domestic natural persons residing in the customs area of the Republic of Serbia were entitled to full exemption from payment of import duties for the private use of their vehicles registered abroad if they had an approved temporary place of residence outside Serbia for a specified period of time and if the vehicles in question were used for their annual holidays or family visits. Members of the immediate families of the persons mentioned above were also entitled to use such vehicles in Serbia for as long as their owners were in the customs area of the Republic of Serbia.

8. Article 273 of the Road Traffic Safety Act (*Zakon o bezbednosti saobraćaja na putevima*, published in OG RS nos. 41/09, 53/10, 101/11 and 32/13, as applicable at the material time) provided, *inter alia*, that vehicles registered abroad could not be driven in Serbia by persons residing in Serbia. Exceptionally, such vehicles could be driven by persons residing in Serbia if they had an approved temporary place of residence abroad for a continuous period of at least six months, or if they were accompanied by a person who was entitled to drive such a vehicle in Serbia.

9. Article 1 of the Motor Vehicles Registration Decree (*Uredba o obavezi registracije motornih vozila kojim upravljaju lica sa prebivalištem u Republici Srbiji*, published in OG RS no. 28/09, as applicable at the material time) provided, *inter alia*, that a person residing in Serbia could not drive a vehicle registered abroad on roads in Serbia unless he or she registered that vehicle in Serbia within a period of three months from the date of the decree's entry into force. Exceptionally, a person residing in Serbia with an approved temporary place of residence abroad for a period exceeding six months, and members of his or her immediate family, were entitled to drive such a vehicle in Serbia.

10. Under Article 6 § 1 of the Convention, the applicant complained that the decisions of the national judicial authorities had not been properly reasoned, and under Article 7 of the Convention she complained that her conviction had been based on the domestic legislation which had itself not been foreseeable.

## THE COURT'S ASSESSMENT

11. The Government maintained that the relevant domestic legislation was sufficiently precise and as such foreseeable. They also argued that decisions of the national courts had been properly reasoned.

12. The applicant reaffirmed her complaint and maintained that the relevant domestic customs and traffic regulations, taken together, were contradictory, that the impugned judicial decisions had not been adequately reasoned, and that, in any event, the car in question had never been intended to be imported, which was why no customs duties had been applicable. The applicant noted that the owner of the car, namely her brother, had himself been neither charged with nor convicted of any offence. The applicant also recalled that she had been stopped by the police while driving the vehicle in question on an earlier occasion but had not been charged with a customs offence. Lastly, she referred to her correspondence with the police on related issues.

13. The Court, being master of the characterisation to be given in law to the facts of any case before it, considers, having regard to its case-law, that the applicant's complaints fall to be examined under Article 7 of the Convention only (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018; see, *mutatis mutandis*, *Žaja v. Croatia*, no. 37462/09, §§ 62-64, 4 October 2016).

14. Furthermore, the Court is of the opinion that the customs-related offence at issue was of a criminal character and that as such it clearly attracted the guarantees of Article 7 of the Convention (see, *mutatis mutandis*, *Žaja*, cited above, §§ 85-88; see also paragraph 4 above as regards the fine and its possible conversion into an actual prison term).

15. The relevant principles as regards Article 7 have been summarised, most recently, in *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 237-42, 26 September 2023).

16. The Court considers that, as noted rightly by the national judiciary, there was indeed a distinction to be drawn between the requirements of road-traffic regulations on the one hand and those of customs regulations on the other, in respect of which the applicant was found guilty (see paragraph 4 above). While the former were, *inter alia*, concerned with which motor vehicles registered abroad could be driven on roads in Serbia, the latter provided for when and under what conditions precisely such motor vehicles

could be exempted from the obligation to pay import duties (see paragraphs 6-9 above).

17. Article 63 of the Customs Act specifically stated the obligation to declare and bring the relevant goods to the customs authorities (see paragraphs 6, 3 and 4 above, in that order). This provision also did not exclude the implementation of traffic regulations unless their application would have undermined the enforceability of the relevant customs regulations themselves (see paragraph 6 above). In other words, when it came to customs-related issues it was, quite reasonably, the customs regulations that would take precedence.

18. The domestic courts also rightly held that the exception provided for in Article 327 of the Customs Goods Processing Decree did not apply in the applicant's case given the fact that she had been stopped by the police on 29 April 2013, without her brother being in the vehicle or even the country at the time (see paragraph 3 above). This was so, in the Court's view, even assuming that the applicant could be deemed a member of her brother's "immediate famil[y]" within the meaning of that provision (see paragraph 7 above). Lastly, the fact that the applicant had been driving the vehicle for an extended period of time, between February 2011 and April 2013, in particular, led the domestic courts to the rational conclusion that she had indeed been intent on using it in Serbia without having to pay the applicable import duties (see paragraph 4 above).

19. In this situation, it was foreseeable that the applicant's conduct would amount to an offence under the legislation applicable at the material time. In particular, that it would be in breach of Article 296 read in conjunction with Article 292 § 1 (3) and Article 63 of the Customs Act (see paragraphs 6, 3 and 4 above, in that order).

20. The circumstance that the applicant's brother was not convicted of the same offence was not a basis for the exclusion of the applicant's own responsibility or a precondition for it. Indeed, there was nothing in the domestic law or the case file to suggest otherwise, and the applicant's mere claims to the contrary remained unsubstantiated (see also Article 296 of the Customs Act, summarised in paragraph 6 above).

21. In view of the foregoing, the Court is satisfied that the manner in which the relevant provisions of customs law were applied in the applicant's case did not run counter to the requirements of Article 7 of the Convention. It is likewise understood that any prior traffic-related stops by the police of the applicant while driving the vehicle, that is before 29 April 2013, were of no bearing on the applicant's subsequent conviction for a customs infraction (see paragraph 3 above). It was also ultimately up to the domestic courts to interpret the relevant national customs legislation irrespective of the applicant's correspondence with the police which, in any event, essentially had to do with the application of traffic regulations only (see paragraphs 9 and 12 above).

LAZOVIĆ v. SERBIA DECISION

22. The Court therefore finds that the applicant's complaints are 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 20 June 2024.

Simeon Petrovski  
Deputy Registrar

Anne Louise Bormann  
President