

APPLICATION N° 24581/94

Greek Federation of Customs Officers, Nicolaos GIALOURIS,
Georgios CHRISTOPOULOS and 3,333 other Customs Officers
v/GREECE

DECISION of 6 April 1995 on the admissibility of the application

Article 6, paragraph 1 of the Convention *Not applicable to proceedings seeking recognition for a "right" which has no legal basis in the State in question*

In so far as, under the Greek Constitution, the right to property is protected only in relation to rights in rem, a claim for damages for economic loss suffered by customs officers as a result of the removal of internal customs barriers within the European Union has no basis in domestic law.

Article 13 of the Convention *This provision does not guarantee a remedy against legislation as such*

Article 25 of the Convention

a) The concept of "victim" is autonomous

Where a professional organisation, a non-governmental organisation, cannot itself claim to be a victim it cannot introduce an application concerning a measure affecting its members

b) The Commission cannot examine in abstracto the compatibility of a national law with the Convention, but a person may complain of a law itself when he runs the risk of being directly affected by it

Article 1, paragraph 1 of the First Protocol Future income constitutes a 'possession' only if the income has been earned or where an enforceable claim to it exists
The volume of business enjoyed by a liberal profession which is subject to the hazards of economic life does not constitute a "possession" within the meaning of this provision

THE FACTS

The application was introduced by the Greek Federation of Customs Officers (hereinafter the Federation"), its President, Mr Nicolaos Gialouris, its Secretary-General, Mr Georgios Christopoulos and 3,333 other customs officers whose names are available from the Commission's Secretariat

The applicants were represented before the Commission by Professor Epaminondas Spiliotopoulos and Ms Andriane Mitropoulou, who are both lawyers practising in Athens

The facts of the case, as submitted by the applicants may be summarised as follows

1 *Particular circumstances of the case*

Since January 1981, Greece has been a member of the European Communities and is currently a member of the European Union. The instrument of accession to the treaties establishing these communities (EEC, Euratom and ECSC) was ratified by Law No 945/1979

Law No 1681/1987 ratified the Single European Act, Article 13 of which inserted Article 8A into the EEC Treaty, providing that the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article without prejudice to the other provisions of this Treaty. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty'

Since 1 January 1993, in accordance with this Law, goods exported from Greece to other Member States of the European Union or imported into Greece from such Member States no longer go through Greek customs

According to a study carried out by the firm Deloitte and Touche in April 1992 on 'the consequences for customs officers of the abolition of customs procedures in 1993", 80% of customs officers' income up to 31 December 1992 came from customs

clearance work relating to goods being exported to or imported from other European Union Member States

2 *Relevant domestic law and practice*

a) In accordance with Article 28 paras 1 and 2 of the Greek Constitution and the provisions of the instrument of accession to the treaties establishing the European Communities, primary and secondary Community legislation is an integral part of the domestic legal system

b) Under the provisions of Law No 718/1977, access to the profession of customs officer is restricted and the profession is regulated and protected. A customs officer must obtain a licence in order to practise and is subject to a system of professional standards monitoring as well as to disciplinary rules

c) Article 17 of the 1975 Constitution, which is still in force, provides that

"I Property shall be protected by the State, rights deriving therefrom, however, may not be exercised contrary to the public interest

2 No one may be deprived of his property unless it is for the public benefit, which must be duly proved, when and as specified by law and only after full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which an application is made for immediate final determination of compensation, regard shall be had to the value at the time of the court hearing of the application

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d) According to Articles 87 para 2, 93 para 4 and 100 para 4 of the Constitution, the Greek courts have the power to review whether legislation is compatible with the Constitution and are obliged to refrain from applying a Law which contravenes the provisions of the Constitution

e) According to Greek constitutional law experts as well as to the established case law of the Court of Cassation (Aretois Pagos) and of the Council of State (Symvoulion Epikrateias), the concept of property as referred to in Article 17 of the Constitution is restricted exclusively to rights *in rem*

COMPLAINTS

1 The applicants complain that as a result of Law No 1681/1987 coming into force on 1 January 1993 they have suffered serious economic loss, equivalent to 80% of their income, without receiving any compensation. They invoke Article 1 of Protocol No 1

2 Secondly, the applicants refer to the case law of the Court of Cassation and Council of State, under which the right to property guaranteed by Article 17 of the Greek Constitution applies only to rights *in rem*. They claim that, as a result, any application to the domestic courts would fail, and complain that this constitutes a violation of Articles 6 para 1 and 13 of the Convention.

THE LAW

1 The applicants complain that as a result of Law No 1681/1987 coming into force on 1 January 1993 they have suffered serious economic loss equivalent to 80% of their income, without receiving any compensation. They invoke Article 1 of Protocol No 1.

Article 1 of Protocol No 1 provides that

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 Commission observes at the outset that the Federation is not claiming to represent its members in the same way as, for example, a lawyer represents his or her client. Instead, it claims that it is itself a victim of a violation of this provision.

The Commission must therefore examine whether the applicants qualify as potential victims of a violation of Article 1 of Protocol No 1.

The relevant part of Article 25 of the Convention reads:

The Commission may receive petitions from any person non governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention.

In order for applicants to be able to avail themselves of this provision, they must fulfil two conditions: they must fall into one of the categories of applicant referred to in Article 25 and they must have a claim to be a victim of a violation of the Convention.

a) As regards the applicant Federation, the first condition is met: it is a federation of individuals with common interests as defined by Greek domestic law. As such, it clearly falls into one of the categories of applicants mentioned in Article 25 of the Convention, namely that of a non governmental organisation (see No 9900/82 Dec 4 5 83, D R 32 p 261).

As for the second condition, the Commission recalls that the concept of "victim" as used in Article 25 of the Convention must be interpreted autonomously and independently of concepts of domestic law such as capacity to bring or take part in legal proceedings

In the Commission's view an applicant cannot claim to be the victim of a breach of one of the rights or freedoms protected by the Convention unless there is a sufficiently direct connection between the applicant as such and the injury he maintains he suffered as a result of the alleged breach (see No 10733/84, Dec 11 3 85, D R 41 p 211)

In this connection, the Commission recalls its case law that a person who is unable to demonstrate that he is personally affected by the application of the law which he criticises cannot claim to be a victim of a violation of the Convention (see No 9939/82, Dec 4 7 83, D R 34 p 213)

Here, it is not the Federation itself which is under threat of its income diminishing, but rather each of the customs officers who belong to it, taken individually

It follows that, as regards the alleged violation of Article 1 of Protocol No 1, the applicant Federation cannot claim that it is itself a victim of a violation of the Convention. This part of the application is therefore incompatible *rationae personae* with the provisions of the Convention under Article 27 para 2

b) As regards the 3,335 applicants who are natural persons, the Commission notes that they do run the risk of being directly affected by the Law in question (see No 10267/83, Dec 10 12 87, D R 54 p 5). The Commission concludes that all the applicants who are natural persons may claim to be victims of a violation of Article 1 of Protocol No 1

The Commission recalls that the Convention organs have consistently held that Article 1 of Protocol No 1 does no more than enshrine the right to the peaceful enjoyment of existing possessions (see Eur Court H R , Marckx judgment of 13 June 1979, Series A no 31, p 23, para 50). Therefore, the issue to be resolved in this case is whether the applicants have a vested right, a violation of which can be considered as an interference with the peaceful enjoyment of their possessions within the meaning of the above provision

The Commission notes that the applicants' licences have not been revoked, so that they have not lost the opportunity of continuing to practise their profession under those licences. However, the applicants claim that their licences gave rise to a vested economic right and that this has been almost entirely taken away. Further, they assert that it was legitimate and reasonable for them to expect that they would be able to continue to derive advantages from practising the profession covered by the licence

The Commission notes that the occupation of customs officer is a liberal profession, with no fixed income and no guaranteed turnover, but which is subject to the hazards of economic life. Although the abolition of customs barriers threatens to cause customs officers economic loss, the Commission considers that the latter cannot claim to be entitled to a guaranteed volume of business which could have qualified as a "possession" within the meaning of Article 1 of Protocol No. 1. Further, as regards the expectation of future revenue, the Commission recalls its previous case-law, according to which future income constitutes a "possession" only if the income has been earned or where an enforceable claim to it exists (see No. 10438/83, Dec. 3.10.84, D.R. 41 p. 170).

Having regard to the factors set out above, the Commission considers that the applicants' complaint is outwith the scope of Article 1 of Protocol No. 1 and is therefore incompatible *rationae materiae* with the provisions of the Convention pursuant to Article 27 para. 2.

2. Secondly, the applicants refer to the case-law of the Court of Cassation and Council of State, under which the right to property guaranteed by Article 17 of the Greek Constitution applies only to rights *in rem*. They claim that, as a result, any application to the domestic courts would fail and complain that this constitutes a violation of Article 6 para. 1 and Article 13 of the Convention.

Article 6 para. 1 of the Convention provides that:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by (a) ... tribunal ..."

Article 13 of the Convention reads:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that Article 6 para. 1 covers "contestations" (disputes) over (civil) "rights" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention (see Eur. Court H.R., Neves e Silva judgment of 27 April 1989, Series A no. 153-A, p. 14, para. 37). The Convention organs could not create by way of interpretation of Article 6 para. 1 a substantive right which has no legal basis whatsoever in the State concerned (see Sporrong and Lönnroth case, Comm. Report 8.10.80, para. 150, Eur. Court H.R., Series B no. 46, p. 62).

In the present case, the Commission notes that the only way for the applicants to obtain compensation for their alleged economic loss would have been to challenge the compatibility with the Constitution of the Law which had adversely affected them.

However, the Commission notes that, as interpreted by legal experts and by the domestic courts, Article 17 of the Greek Constitution, which enshrines the right to property, protects only rights *in rem*. Consequently, the right claimed by the applicants, that is, the right which, according to them, derives from the grant of a customs officer's licence, falls outwith the scope of the said Article.

Therefore the Commission finds that the applicants', in complaining of the fact that precedent condemns to failure any legal action they may take, are really complaining of the fact that they are unable to bring domestic proceedings in relation to a claim "contestation" which, in any event, cannot relate to any right recognised by domestic law (see, *mutatis mutandis*, Eur Court H R , Holy Monasteries judgment of 9 December 1994, to be published in Series A no 301-A, para 85)

Article 6 para 1 is therefore inapplicable and this part of the application is incompatible *rationae materiae* with the provisions of the Convention under Article 27 para 2

As regards the complaint raised by the applicants under Article 13 of the Convention, the Commission recalls that the Convention organs have consistently held that it cannot be deduced from Article 13 that there must be a remedy against legislation as such which is considered not to be in conformity with the Convention. Such a remedy would in effect amount to some sort of judicial review of legislation because any other review - generally sufficient for Article 13 which requires only a "remedy before a national authority" - could hardly be effective concerning legislation (see No 13013/87, Dec 14 12 88, D R 58 p 163)

It follows that this part of the application is manifestly ill founded within the meaning of Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE