



## KEY THEME<sup>1</sup>

### Article 1 of Protocol No. 1

### Confiscation / Seizure of assets

(Last updated: 31/08/2023)

#### Introduction

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This Key Theme focusses on certain aspects of confiscation/seizure in criminal, administrative and civil proceedings which may also be interrelated. Confiscation/seizure can take place in different contexts, such as criminal proceedings, customs control, tax proceedings or for the protection of health and morals in a democratic society<sup>2</sup>.

Confiscation, which is a permanent measure, and seizure, which is a temporary measure and often precedes a confiscation,<sup>3</sup> are generally regarded by the Court as a “control of use” of property, within the meaning of the second paragraph of Article 1 of Protocol No. 1. The Court has also on some occasions distinguished cases concerning the confiscation of instruments of a crime and examined them as “deprivations” within the meaning of the first paragraph of Article 1 of Protocol No. 1. This Key Theme seeks to describe, *inter alia*, the circumstances where these approaches have been applied.

#### Applicability of Article 1 of Protocol No. 1 in confiscation/seizure cases

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- Article 1 of Protocol No.1 applies to a person’s existing possessions. In certain circumstances, a “legitimate expectation” of obtaining an asset may also enjoy its protection (*Denisova and Moiseyeva v. Russia*, 2010, §§ 47 and 48).

#### Applicable rule

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- Once the Court is satisfied that Article 1 of Protocol No. 1 is applicable to the circumstances of the case, it defines the interference at issue and then it embarks on a substantive analysis to determine which of the “three rules” enunciated in that Article apply (*Sporrong and Lönnroth v. Sweden*, 1982, § 61; and, in the confiscation context, *G.I.E.M. and Others v. Italy* [GC], 2018, § 289; *Gabrić v. Croatia*, 2009, § 31).<sup>4</sup> In cases where the Court is satisfied that there has been an interference with property, the analysis of whether a violation occurred is substantially the same for both control of use and deprivation.

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<sup>1</sup> Prepared by the Registry. It does not bind the Court.

<sup>2</sup> The Key Theme does not deal extensively with different facets of confiscation in the context of criminal proceedings which is of key importance for combating unlawful enrichment from the proceeds of crime. It should be noted, however, that in the criminal-law context, confiscation may also occur parallel to criminal proceedings, in an administrative or civil framework.

<sup>3</sup> See definitions under Article 1 of the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*:

- d) "confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
- g) "freezing" or "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.

<sup>4</sup> For further details, see *Guide on Article 1 of Protocol No. 1*, Protection of Property, Chapter B, “Three rules” approach.

To be deemed compatible with Article 1 of Protocol No. 1, the interference must:

- Firstly, it must comply with the principle of lawfulness (*Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 67). Furthermore, the relevant legislation and the criteria used by the domestic authorities for imposing confiscation must not be inconsistent with the essence of the offence: otherwise, the interference with the applicant's right of property can be seen as failing to meet the qualitative requirement of foreseeability (*Imeri v. Croatia*, 2021, §§ 69-70 and 80-81). If the legal basis for confiscating the property is the result of a manifest error in law, then the confiscation violates Article 1 of Protocol No. 1 (*Spasov v. Romania*, 2022, §§ 116-119).
- Secondly, it must pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (*Denisova and Moiseyeva v. Russia*, 2010, §§ 55 and 64; *JGK Statyba Ltd and Guselnikovas v. Lithuania*, 2013, §§ 118 and 144; *Pendov v. Bulgaria*, 2020, §§ 42 and 50; *Todorov and Others v. Bulgaria*, 2021, §§ 187 and 215). In other words, the Court must determine whether a fair balance was struck between the demands of the general interest and the interest of the individuals concerned. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (*B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, §§ 47 and 52).
- A variety of factors, including the attitude adopted by the applicant, are important for the proportionality analysis (*S.C. Service Benz Com S.R.L. v. Romania*, 2017, §§ 27-30; *Yaşar v. Romania*, 2019, § 60; see also *AGOSI v. the United Kingdom*, 1986, § 54).

## Principles drawn from the current case-law

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### Control of use:

- Generally, the Court's approach is to treat confiscation, even though it does involve a form of deprivation of possessions, as an instance of a control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, both in criminal law and other contexts (see, for the criminal-law context, *Riela and Others v. Italy* (dec.), 2001; *Arcuri and Others v. Italy* (dec.), 2001; *C.M. v. France* (dec.), 2001; or in connection with customs offences; *AGOSI v. the United Kingdom*, 1986, § 51; *Air Canada v. the United Kingdom*, 1995, § 34; *Sadocha v. Ukraine*, 2019, § 23; *Stoyan Nikolov v. Bulgaria*, 2021, § 55; *Yaremychuk and Others v. Ukraine*, 2021, § 22; *Yusifli and Others v. Azerbaijan* (dec.), 2022, §§ 69-71; see, for other contexts, *Handyside v. the United Kingdom*, 1976, § 62; *S.A. Bio d'Ardennes v. Belgium*, 2019, § 48).
- The Court has treated confiscation/seizure measures as control of use in certain contexts:
  - **Confiscation as an enforcement measure.** In general, the Court considers confiscation to fall within the scope of control of use of property when the confiscation measure is ordered to ensure the enforcement of a law. Examples include the enforcement of customs laws (*AGOSI v. the United Kingdom*, 1986, § 51; *Jucys v. Lithuania*, 2008, § 34), the enforcement of payment of penalties (*Gyrlyan v. Russia*, 2018, § 21), and the enforcement of sanctions regimes set forth by the United Nations (*Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland* [GC], 2005, § 142).
  - **No permanent transfer of ownership (seizure).** If the measure in question does not result in the permanent transfer of ownership of the property, the Court is likely to consider the measure to qualify as control of use rather than deprivation. Accordingly, the Court has considered a temporary restriction on the use of property, that did not involve a transfer of ownership, as amounting to control of use (*Air Canada v. the United Kingdom*, 1995, §§ 32-33; *JGK Statyba Ltd and Guselnikovas v. Lithuania*, 2013, § 115).

- Furthermore, there can be no permanent transfer of ownership if a possibility of restitution of the property exists (*Raimondo v. Italy*, 1994, §§ 27 and 29; *C.M. v. France* (dec.), 2001; *Yildirim v. Italy* (dec.), 2003; *Hábenczius v. Hungary*, 2014, § 28). Conversely, confiscation will be considered permanent if there is “no realistic possibility of recover[y]” (*B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, § 38; see below for further details).
- **Duration of the seizure.** The Court has reiterated that the damage entailed by a seizure or confiscation should not be more extensive than that which is inevitable (*Stożkowski v. Poland*, 2021, §§ 56 and 58; see also *Łysak v. Poland*, 2021, §§ 79 and 91; *Akpaz Société à responsabilité limitée v. Turkey*, 2022, §§ 86 and 97-100; *Shorazova v. Malta*, 2022, §§ 107-123; *Sebeleva and Others v. Russia*, 2022, § 67; *İpek Société à Responsabilité Limitée v. Turkey*, 2022, §§ 92-94; *Akshin Garayev v. Azerbaijan*, 2023, §§ 55-56).
- **Confiscated property acquired unlawfully.** In criminal cases, the Court may also consider confiscation to qualify as control of use, even if there is a permanent transfer of ownership, if the assets in question were themselves unlawfully acquired.<sup>5</sup> Thus, in *Arcuri and Others v. Italy* (dec.), 2001, the Court noted that, even though the measure in question led to a deprivation of property, this amounted to control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 because the confiscation affected assets which had been unlawfully acquired, and the measure was intended to prevent the applicant from using the assets to make a profit for himself or for the criminal organisation to which he was suspected of belonging, to the detriment of the community (see also *M. v. Italy* (dec.), 1991).
- In addition, in *Ulemek v. Serbia* (dec.), 2021, § 65, the Court observed that the aim of the confiscation ordered within a criminal-law context consists of removing the value of the proceeds from possible future use in criminal activities. In *Rummi v. Estonia*, 2015, § 103, the Court further noted that a confiscation order in respect of criminally acquired property operates in the general interest as a deterrent to those considering engaging in criminal activities, and also guarantees that crime does not pay (see also *Yildirim v. Italy* (dec.), 2003; *Veits v. Estonia*, 2015, § 71).
- **Confiscation in criminal proceedings.** In criminal cases, where a State seizes the property to build their case against a third person, the authorities must balance their aims against an individual’s right to peaceful enjoyment of property (*Korshunova v. Russia*, 2022 §§ 35 and 41-42; *Căpăţînă v. Romania*, 2023, §§ 48-50). Additionally, if a State seizes something from someone they charge with a crime, but they do not convict the defendant, then that person must enjoy procedural safeguards against an arbitrary or disproportionate interference with his rights (*Ferhatović v. Slovenia*, 2022, §§ 51-52). Furthermore, when a State seizes property, it must prevent the property from deteriorating (*SCI Le Château du Francport v. France*, 2022, §§ 42 and 53). Finally, a State cannot indefinitely seize someone’s property without giving them any legal recourse to get it back (*Călin v. Romania*, 2022, §§ 73-74 and 84).
- **Confiscation as punishment.** In addition, in criminal cases in which the confiscation is intended as a deterrent or punishment, the Court may consider the measure to be a form of control of use of property to secure the payment of penalties (*Phillips v. the United Kingdom*, 2001, §§ 50-51; *Ismayilov v. Russia*, 2008, §§ 30 and 38; *Markus v. Latvia*, 2020, §§ 69-70).

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<sup>5</sup> In criminal cases, confiscation normally leads to the final deprivation of property: see Article 1 of the *Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* and Point 26 of the *Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*.

**Deprivation:**

- Although the Court most often treats confiscation as control of use, it has under very specific circumstances considered confiscation of property to amount to a deprivation within the meaning of the first paragraph of Article 1 of Protocol No. 1 (*Waldemar Novakowski v. Poland*, 2012, § 46).
- The Court considered this to be the case in *Waldemar Novakowski v. Poland*, 2012, § 46, where the police had confiscated an entire collection of antique arms the applicant had collected over 50 years. The Court noted, *inter alia*, that criminal proceedings against the applicant had been discontinued due to the negligible seriousness of the offence and since the domestic court had had regard to the applicant's character and the lack of criminal intent on his part. The circumstances of the case were therefore fundamentally different from cases where confiscation orders were made in the context of criminal proceedings concerning charges of serious or organised crime and where there was a strong suspicion or certainty confirmed by a judicial decision that the confiscated assets were the proceeds of an offence. For these reasons the measure amounted to a deprivation of property.
- Furthermore, the following two key factors have been identified in cases where the Court has, in recent years, considered the confiscation in question to amount to a deprivation of property: (1) whether the confiscation is a permanent measure which entails a conclusive transfer of ownership; and (2) whether or not there is any possibility for the applicant to seek restoration of the property in question, in particular if the applicant was a (*bona fide*) owner and/or a distinct person from the offender (see also here below "Confiscation of property belonging to third parties"), and where the goods were not illegally obtained.
- Cases where the two key factors are present and where the Court found that a confiscation amounted to a deprivation of property include the following:
  - *Andonoski v. the Former Yugoslav Republic of Macedonia*, 2015, § 30: the applicant, a taxi driver, was charged with smuggling migrants across the Macedonian-Greek border, and his car was seized. The charges against him were withdrawn for lack of evidence that he had been aware that his passengers were illegal migrants. Nevertheless, the trial court ordered the mandatory confiscation of the applicant's car on the grounds that it had been used to commit the offence. The Court noted that the confiscation of the applicant's car was a permanent measure which entailed a conclusive transfer of ownership and that the Government did not argue that there was any possibility for the applicant to seek restoration of his car.
  - *S.C. Service Benz Com S.R.L. v. Romania*, 2017, § 30: two oil tankers belonging to the applicant company were confiscated in the context of an offence committed by one of the company's customers. The Court observed that the confiscation of the tankers was a permanent measure which entailed a conclusive transfer of ownership to the State and that there was not a possibility for the applicant company to seek restoration of the fuel tankers.
  - In *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, §§ 37-39 and 49-52, the applicant company's lorry was used by a third party to smuggle heroin into Slovenia. In the context of criminal proceedings against the third party, the lorry and its trailer were seized. Although the trailer was eventually returned to the applicant company, the lorry was sold at public auction. The Court noted that the case concerned the legislation providing for mandatory confiscation of *instrumenta sceleris* for the purpose of prevention of further commission of crime and adopted the same approach as in *Andonoski v. the Former Yugoslav Republic of Macedonia*, 2015.
  - In *Yaşar v. Romania*, 2019, §§ 49 and 62, a vessel belonging to the applicant was confiscated after Romanian authorities had discovered that a third-party sailing crew

had illegally displayed the Romanian flag and had carried out unauthorised fishing activities in the Romanian exclusive economic zone. The applicant had not been aware of these unlawful activities. The Court noted that the confiscation of the applicant's vessel was a permanent measure which entailed a conclusive transfer of ownership. The vessel was eventually sold to a private party. In assessing the proportionality, the Court held that the applicant could have proved his good faith, which could have led to the restitution of his property.

- The Court has explained the rationale for exceptionally treating confiscations as deprivations of property in the criminal-law context as follows: “confiscation of an instrument for the commission of criminal offences from a third party does not involve the same level of urgency as confiscation of proceeds or objects of a criminal offence, viewed from the perspective of policy responses in the general interest. Thus, it may in certain circumstances be examined under the second sentence of the first paragraph of Article 1 of Protocol No. 1 which covers deprivation of property” (*B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, § 38).

### ***Circumstances where the Court has abstained from differentiation:***

- Finally, in some cases the Court has abstained from determining whether the interference at issue constituted a deprivation of possessions or a control of use because it considered this distinction unnecessary: it directly proceeded to examining whether there was a violation of the principles of lawfulness, legitimate aim and proportionality (*Denisova and Moiseyeva v. Russia*, 2010, § 55; *Lavrechov v. the Czech Republic*, 2013, § 43; *Aktiva DOO v. Serbia*, 2021, § 78; *Todorov and Others v. Bulgaria*, 2021, § 182; *Par and Hyodo v. Azerbaijan*, 2021, §§ 50-51; *Căpăţînă v. Romania*, 2023, § 50).

### ***Confiscation of property belonging to third parties:***

- In the criminal-law context in particular, the Court has accepted that the authorities may apply confiscation measures not only to property belonging to persons directly accused of offences but also to their family members and other close relations presumed to possess or manage the ill-gotten gains informally on behalf of the suspected offenders, or who otherwise lacked the necessary *bona fide* owner status.
- The confiscation of an instrument of crime that belongs to a third party generally does not constitute a violation where the third party acted in bad faith or did not disprove bad faith (*Yaşar v. Romania*, 2019, §§ 62-66), or where the third party may claim compensation from the offender (*Sulejmani v. the former Yugoslav Republic of Macedonia*, 2016, §§ 41-43; *S.C. Service Benz Com S.R.L. v. Romania*, 2017, §§ 37-43).

### ***Article 1 of Protocol No. 1 (procedural limb):***

- Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (*G.I.E.M. S.R.L. and Others v. Italy* [GC], 2018, §§ 290 and 302, where the confiscation was ordered following acquittal; see also *AGOSI v. the United Kingdom*, 1986, §§ 55 and 58-60; *Air Canada v. the United Kingdom*, 1995, § 46; *Arcuri and Others v. Italy* (dec.), 2001; *Riela and Others v. Italy* (dec.), 2001). In particular, such proceedings must comply with the standards of equality of arms and the adversarial principle (*G.I.E.M. S.R.L. and Others v. Italy* [GC], 2018, § 302; *Shorazova v. Malta*, 2022, § 105).

- Persons whose property has been confiscated must be afforded a reasonable opportunity to put their case to the responsible authorities for the purpose of effectively challenging the confiscation, pleading, as the case might be, illegality or arbitrary and unreasonable conduct (*Yildirim v. Italy* (dec.), 2003).
- Article 1 of Protocol No. 1 does not, of itself, give rise to an entitlement to compensation for any loss alleged to have been suffered as a result of the impounding of the property's during the criminal proceedings: Contracting States are entitled to define the conditions to obtain compensation for such damages (*Adamczyk v. Poland* (dec.), 2006; *Stożkowski v. Poland*, 2021, § 78).
- Public authorities responsible for the storage of seized assets should act with the diligence necessary to preserve their value (*Tendam v. Spain*, 2010, § 51; *Stożkowski v. Poland*, 2021, §§ 73-74). In *Tendam v. Spain*, 2010, § 54, the Court noted that the burden of proof concerning the conditions in which the applicant's assets had been stored fell upon the domestic authorities responsible for the impoundment (see, *a contrario*, *Adamczyk v. Poland* (dec.), 2006; *Stożkowski v. Poland*, 2021, § 79).

## Noteworthy examples

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### ***Confiscation/Seizure as control of use:***

#### **Confiscation/Seizure by customs authorities exercising the control of imports**

- *Jucys v. Lithuania*, 2008 – confiscation of mink furs that the applicant tried to smuggle across the border (criminal offence) even though the offence of smuggling did not carry penalty of confiscation: violation.
- *Ismayilov v. Russia*, 2008 – confiscation of applicant's lawfully possessed money for failure to declare it to customs authorities: violation.
- *Grifhorst v. France*, 2009 – confiscation of the entirety of 500,000 Netherlands guilders (EUR 233,056) for failure to declare that amount: violation.
- *Gabrić v. Croatia*, 2009 – confiscation of foreign currency further to the applicant's failure to declare DEM 20,000 in cash to the customs authorities: violation.
- *Moon v. France*, 2009 – confiscation of EUR 40,422 for failure to declare a sum that exceeded the EUR 7,622 threshold required for disclosure: violation.
- *Rummi v. Estonia*, 2015 – confiscation of precious metals smuggled into Estonia by applicant's deceased husband: violation.
- *Boljević v. Croatia*, 2017 – confiscation of the entirety of EUR 180,000 for failure to declare it to customs authorities, because the applicant had not proved the legitimate destination of the money he had carried across the border: violation.
- *Gyrylan v. Russia*, 2018 – confiscation of USD 90,000 for having failed to declare the sum of USD 100,000 at customs: violation.
- *Sadocha v. Ukraine*, 2019 – confiscation of EUR 31,000 for failure to declare the amount of EUR 41,000 at customs: violation.
- *Imeri v. Croatia*, 2021 – confiscation of NOK 530,000 for failure to declare the amount while the applicant was crossing the border between Slovenia and Croatia: violation.
- *Par and Hyodo v. Azerbaijan*, 2021 – unlawful retention of undeclared sums of money seized from the applicants by the customs authorities: violation.
- *Stoyan Nikolov v. Bulgaria*, 2021 – imposition of a fine and confiscation of undeclared amount: violation.

- *Zaklan v. Croatia*, 2021 – foreign currency seized by the Yugoslav authorities in 1991 in Croatia when that State has still been part of the former Yugoslavia.
- *Akpaz Société à responsabilité limitée v. Turkey*, 2022 – confiscation of the applicant's company merchandise (electronic equipment) on suspicion of smuggling: violation.
- *İpek Société à responsabilité limitée v. Turkey*, 2022 – confiscation of the applicant's company merchandise (electronic equipment) on suspicion of smuggling: violation.

### Confiscation/seizure of assets belonging to a third party in criminal and administrative proceedings

- *AGOSI v. the United Kingdom*, 1986 – seizure of gold coins (*objectum sceleris*) by customs authorities of which the applicant was defrauded and which the buyers subsequently attempted to smuggle into the United Kingdom. While the applicant company's request to have the coins restored was denied, the Court considered that domestic law fully complied with the requirements of the second paragraph of Article 1 of Protocol No. 1, as it afforded the applicant a reasonable opportunity to put the case to the competent authorities to challenge the measure (§§ 60-62): no violation.
- *Air Canada v. the United Kingdom*, 1995 – seizure of aircraft as liable to forfeiture by customs authorities since it had been found to contain 331 kilograms of cannabis resin, subject to payment of a sum of money for its return: no violation.
- *C.M. v. France* (dec.), 2001 – seizure of a vehicle used by third party to smuggle drugs (nineteen grams of heroin); domestic provision allowing owners who have acted in good faith to recover seized or forfeited goods if they had nothing to do with the offence committed; restitution subject to payment of a friendly settlement: inadmissible (manifestly ill-founded).
- *Yildirim v. Italy* (dec.), 2003 – refusal to return to the owner a rented vehicle seized after being used to transport illegal immigrants by a third party; possibility of restitution of ownership based on showing evidence of good faith: inadmissible (manifestly ill-founded).
- *Arcuri and Others v. Italy* (dec.), 2001 – confiscation of assets belonging *de facto*, but not *de jure* (assets officially belonging to the first applicant's wife and children), to the applicant, suspected of being a member of a criminal organisation involved in drug trafficking: no violation.
- In *Silickienė v. Lithuania*, 2012 – confiscation measure imposed on property belonging to the applicant, the widow of a corrupt public official; it was considered that the applicant must have known that the confiscated property could only have been purchased with the proceeds of unlawful enterprises: no violation.
- *Balsamo v. San Marino*, 2019 – confiscation measure imposed on assets that were found to have initially been obtained by the applicants' father through illicit means, notwithstanding the applicants' acquittal of the money laundering offence: no violation.
- *Markus v. Latvia*, 2020 – confiscation of property not connected to the crime, including a house registered in the applicant's name but used by his adult son with his own family; lack of an individualised assessment or proportionality analysis of the penalty of confiscation of property: violation.
- *Imeri v. Croatia*, 2021 – entire sum of money seized from the applicant, allegedly jointly owned by him and his relatives, while crossing the border between Slovenia and Croatia. Since the applicant did not specify his exact share and since the domestic authorities did not elucidate which part of that money belonged to him, the Court considered that the "possession" in that case was the entire sum confiscated (compare and contrast with the Court's approach in *Karapetyan v. Georgia*, 2020, where the applicant claimed that she was

the owner of a specific part of the confiscated sum, and where the Court held that the alleged “possession” was only the amount she had claimed as her own): violation.

- In *Godlevskaya v. Russia*, 2021 – seizure and sale imposed on the applicant’s property following the criminal conviction of her former husband; lack of a proper domestic legal basis: violation.
- *Yusifli and Others v. Azerbaijan* (dec.), 2022 – the applicants were friends and family of defendants (who had illegally misappropriated the State property), and had assets seized in the trial: inadmissible.
- *Zaghini v. San Marino*, 2023 – confiscation of sums of money following criminal proceedings against the applicant’s father for money laundering and the applicant’s subsequent claim to recover that money: no violation.

### ***Confiscation/Seizure in the context of public health regulations:***

- *S.A. Bio d’Ardennes v. Belgium*, 2019 – compulsory slaughter of numerous animals infected with brucellosis because of several breaches of animal health regulations amounting to a control of use: no violation.

### ***Confiscation/seizure as control of use in the context of criminal proceedings (recent examples<sup>6</sup>):***

- *Stożkowski v. Poland*, 2021 – excessive damage suffered by the applicant as a result of a lengthy seizure of his car, in the context of ongoing criminal proceedings against him, for which he did not obtain any compensation: violation.
- *Sebeleva and Others v. Russia*, 2022 - seizure of the applicants’ company shares for a prolonged time, without providing justification: violation.
- *Călin v. Romania*, 2022 – protracted seizure of the applicant’s assets during criminal investigation and lack of procedural safeguards: violation.
- *Taganrog LRO and Others v. Russia*, 2022 – confiscation the applicant’s property as part of a crackdown on Jehovah Witnesses: violation.
- *Ferhatović v. Slovenia*, 2022 – seizure and confiscation of the applicant’s copper wire without a criminal conviction: violation.
- *SCI Le Château du Francport v. France*, 2022 – protracted seizure of the applicant’s castle returned four years later in a deteriorated state: violation.
- *Căpăţînă v. Romania*, 2023 – seizure of the applicant’s assets for alleged acts of corruption and the method used to calculate the proceeds of crime raised no issue of disproportionality: no violation.

### ***Confiscation/seizure as deprivation in the context of criminal proceedings:***

- *Waldemar Novakowski v. Poland*, 2012 – confiscation of an entire collection of antique arms despite the negligible seriousness of the offence: violation.
- *Andonoski v. the Former Yugoslav Republic of Macedonia*, 2015 – permanent confiscation of a taxi used to smuggle migrants without its owner being aware: violation.
- *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017 – mandatory permanent confiscation of a company’s lorry, following customs control, because it was used for drug

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<sup>6</sup> For further details, see *Guide on Article 1 of Protocol No. 1*, Protection of Property, Chapter J, Confiscation of the Proceeds of Crime.



trafficking without the company's knowledge, coupled with the lack of a realistic opportunity to obtain compensation for its loss: violation.

- *S.C. Service Benz Com S.R.L. v. Romania*, 2017 – permanent confiscation for breach of excise duties on the grounds of strict liability where an innocent owner could seek compensation from the guilty party for breach of contract: no violation.
- *Yaşar v. Romania*, 2019 – permanent confiscation of applicant's vessel used by a third person for illegal fishing, where the domestic courts had established the applicant's bad faith: no violation.
- *Akshin Garayev v. Azerbaijan*, 2023 – continuing and lengthy retention of the applicant's gas turbines did not meet the required proportionality: violation.

## Confiscation under Article 2 of Protocol No. 7 of the Convention

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- *Saqueti Iglesias v. Spain*, 2020 – no appeal available against a heavy customs fine, for carrying a sum of money exceeding the limit for compulsory declaration, imposed without any consideration of proportionality (§ 42, reliance on the case law relating to customs' sanctions under Article 1 of Protocol No. 1): violation.

## Recap of general principles

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General principles on the applicable rule:

- Confiscation/seizure as control of use within the meaning of the second paragraph of Article 1 of Protocol No. 1 (for criminal law, *Călin v. Romania*, 2022, §§ 68-69; *Akpaz Société à responsabilité limitée v. Turkey*, 2022, §§ 86-87; *Stożkowski v. Poland*, 2021, §§ 52-56; see also *Aktiva DOO v. Serbia*, 2021, § 78; for customs offences, *Imeri v. Croatia*, 2021, §§ 64-66).
- Confiscation as a deprivation of property entailing a conclusive transfer of ownership (*Yaşar v. Romania*, 2019, § 49; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, §§ 36-).
- Confiscation of an instrument of crime belonging to a third party (*Sulejmani v. the former Yugoslav Republic of Macedonia*, 2016, § 34).
- Availability of judicial review (*Yaşar v. Romania*, 2019, § 62; *S.C. Service Benz Com S.R.L. v. Romania*, 2017, § 37).

General principles on lawfulness and proportionality:

- Lawfulness: *Călin v. Romania*, 2022, § 71; *Akpaz Société à responsabilité limitée v. Turkey*, 2022, §§ 88-89; *Par and Hyodo v. Azerbaijan*, 2021, § 52.
- Proportionality: *Stożkowski v. Poland*, 2021, § 54; *Akpaz Société à responsabilité limitée v. Turkey*, 2022, § 92.
- Proportionality with respect to sums of money confiscated by the customs authorities (*Boljević v. Croatia*, 2017, § 41; as to the severity of sanctions, *Imeri v. Croatia*, 2021, §§ 84-87; *Stoyan Nikolov v. Bulgaria*, 2021, §§ 63-65).

## Further references

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### Council of Europe Conventions:

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141, 1990)

- [Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism \(ETS No. 198, 2005\)](#)

***United Nations Conventions:***

- [Convention against Transnational Organized Crime and the Protocols Thereto \(2000\)](#)
- [Convention against Corruption \(2003\)](#)

***European Union legal acts and reports:***

- [Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union](#)
- [Regulation \(EU\) 2018/1805 on the mutual recognition of freezing orders and confiscation orders](#)
- [Asset recovery and confiscation: ensuring that crime does not pay \(European Commission report, 2020\)](#)

***Other documents:***

- [The Use of Non-Conviction Based Seizure and Confiscation \(Council of Europe, 2020\)](#)

## KEY CASE-LAW REFERENCES

- *Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976, Series A no. 24 (no violation of Article 1 of Protocol No. 1);
- *Sporrong and Lönnroth v. Sweden*, nos. 7151/75 and 7152/75, 23 September 1982, Series A no. 52 (violation of Article 1 of Protocol No. 1);
- *AGOSI v. the United Kingdom*, no. 9118/80, 24 October 1986, Series A no. 108 (no violation of Article 1 of Protocol No. 1);
- *M. v. Italy* (dec.), no. 12386/86, 15 April 1991 (inadmissible);
- *Raimondo v. Italy*, no. 12954/87, 22 February 1994, Series A no. 281-A (no violation of Article 1 of Protocol No. 1 in one instance, violation in another);
- *Vendittelli v. Italy*, no. 14804/89, 18 July 1994, Series A no. 293-A (violation of Article 1 of Protocol No. 1);
- *Welch v. the United Kingdom*, no. 17440/90, 9 February 1995, Series A no. 307-A (violation of Article 7 para. 1 (art. 7-1));
- *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, Series A no. 306-B (no violation of Article 1 of Protocol No. 1);
- *Air Canada v. the United Kingdom*, no. 18465/91, 5 May 1995, Series A no. 316-A (violation of Article 1 of Protocol No. 1);
- *C.M. v. France* (dec.), no. 28078/95, 26 June 2001, ECHR 2001-VII (inadmissible);
- *Phillips v. the United Kingdom*, no. 41087/98, 5 July 2001, ECHR 2001-VII (no violation of Article 1 of Protocol No. 1);
- *Arcuri and Others v. Italy* (dec.), no. 52024/99, 5 July 2001, ECHR 2001-VII (inadmissible);
- *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001 (inadmissible);
- *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002, ECHR 2002-VI (inadmissible);
- *Yildirim v. Italy* (dec.), no. 38602/02, 10 April 2003, ECHR 2003-IV (inadmissible);
- *Kopecký v. Slovakia* [GC], no. 44912/98, 28 September 2004, ECHR 2004-IX (no violation of Article 1 of Protocol No. 1);
- *Morabito and Others v. Italy* (dec.), no. 58572/00, 7 June 2005 (inadmissible);
- *Baklanov v. Russia*, no. 68443/01, 9 June 2005 (violation of Article 1 of Protocol No. 1);
- *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland* [GC], no. 45036/98, 30 June 2005, ECHR 2005-VI (no violation of Article 1 of Protocol No. 1);
- *Adamczyk v. Poland* (dec.), no. 28551/04, 7 November 2006 (inadmissible);
- *Dassa Foundation and Others v. Liechtenstein* (dec.), no. 696/05, 10 July 2007 (inadmissible);
- *Jucys v. Lithuania*, no. 5457/03, 8 January 2008 (violation of Article 1 of Protocol No. 1);
- *Grayson and Barnham v. the United Kingdom*, nos. 19955/05 and 15085/06, 23 September 2008 (no violation of Article 1 of Protocol No. 1);
- *Ismayilov v. Russia*, no. 30352/03, 6 November 2008 (violation of Article 1 of Protocol No. 1);
- *Saccoccia v. Austria*, no. 69917/01, 18 December 2008 (no violation of Article 1 of Protocol No. 1);
- *Sun v. Russia*, no. 31004/02, 5 February 2009 (violation of Article 1 of Protocol No. 1);

- *Gabrić v. Croatia*, no. 9702/04, 5 February 2009 (violation of Article 1 of Protocol No. 1);
- *Grifhorst v. France*, no. 28336/02, 26 February 2009 (violation of Article 1 of Protocol No. 1);
- *Moon v. France*, no. 39973/03, 9 July 2009 (violation of Article 1 of Protocol No. 1);
- *Denisova and Moiseyeva v. Russia*, no. 16903/03, 1 April 2010 (violation of Article 1 of Protocol No. 1);
- *Tendam v. Spain*, no. 25720/05, 13 July 2010 (violation of Article 1 of Protocol No. 1);
- *Silickienė v. Lithuania*, no. 20496/02, 10 April 2012 (no violation of Article 1 of Protocol No. 1);
- *Waldemar Novakowski v. Poland*, no. 55167/11, 24 July 2012 (violation of Article 1 of Protocol No. 1);
- *Lavrechov v. the Czech Republic*, no. 57404/08, 20 June 2013 (no violation of Article 1 of Protocol No. 1);
- *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, 5 November 2013 (violation of Article 1 of Protocol No. 1);
- *Paulet v. the United Kingdom*, no. 6219/08, 13 May 2014 (violation of Article 1 of Protocol No. 1);
- *Cacucci and Sabatelli v. Italy* (dec.), no. 2979/09, 17 June 2014 (inadmissible);
- *Hábenczius v. Hungary*, no. 44473/06, 21 October 2014 (violation of Article 1 of Protocol No. 1);
- *Rummi v. Estonia*, no. 63362/09, 15 January 2015 (violation of Article 1 of Protocol No. 1);
- *Veits v. Estonia*, no. 12951/11, 15 January 2015 (no violation of Article 1 of Protocol No. 1);
- *Gogitidze and Others v. Georgia*, no. 36862/05, 12 May 2015 (no violation of Article 1 of Protocol No. 1);
- *Andonoski v. the Former Yugoslav Republic of Macedonia*, no. 16225/08, 17 September 2015 (violation of Article 1 of Protocol No. 1);
- *Sulejmani v. the former Yugoslav Republic of Macedonia*, no. 74681/11, 28 April 2016 (no violation of Article 1 of Protocol No. 1);
- *B.K.M. Lojistik Tasimacilik Ticaret Limited Siketi v. Slovenia*, no. 42079/12, 17 January 2017 (violation of Article 1 of Protocol No. 1);
- *Boljević v. Croatia*, no. 43492/11, 31 January 2017 (violation of Article 1 of Protocol No. 1);
- *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, 4 July 2017 (no violation of Article 1 of Protocol No. 1);
- *Sakskoburggotski and Chrobok v. Bulgaria* (dec.), no. 38948/10, 20 March 2018 (inadmissible);
- *G.I.E.M. and Others v. Italy* [GC], nos. 1828/06 and 2 others, 28 June 2018 (violation of Article 1 of Protocol No. 1);
- *Gyrylan v. Russia*, no. 35943/15, 9 October 2018 (violation of Article 1 of Protocol No. 1);
- *Sadocha v. Ukraine*, no. 77508/11, 11 July 2019 (violation of Article 1 of Protocol No. 1);
- *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, 8 October 2019 (no violation of Article 1 of Protocol No. 1);
- *S.A. Bio d’Ardennes v. Belgium*, no. 44457/11, 12 November 2019 (no violation of Article 1 of Protocol No. 1);
- *Yaşar v. Romania*, no. 64863/13, 26 November 2019 (no violation of Article 1 of Protocol No. 1);

- *Filkin v. Portugal*, no. 69729/12, 3 March 2020 (violation of Article 1 of Protocol No. 1);
- *Pendov v. Bulgaria*, no. 44229/11, 26 March 2020 (violation of Article 1 of Protocol No. 1);
- *Markus v. Latvia*, no. 17483/10, 11 June 2020 (violation of Article 1 of Protocol No. 1)
- *Karapetyan v. Georgia*, no. 61233/12, 15 October 2020 (no violation of Article 1 of Protocol No. 1);
- *Aktiva DOO v. Serbia*, no. 23079/11, 19 January 2021 (violation of Article 1 of Protocol No. 1);
- *Ulemek v. Serbia* (dec.), no. 41680/13, 2 February 2021 (inadmissible);
- *Imeri v. Croatia*, no. 77668/14, 24 June 2021 (violation of Article 1 of Protocol No. 1);
- *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, 13 July 2021 (no violation of Article 1 of Protocol No. 1 in some instances, violations in other ones);
- *Stoyan Nikolov v. Bulgaria*, no. 68504/11, 20 July 2021 (violation of Article 1 of Protocol No. 1);
- *Łysak v. Poland*, no. 1631/16, 7 October 2021 (violation of Article 1 of Protocol No. 1);
- *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, 14 October 2021 (violation of Article 1 of Protocol No. 1 and violation of Article 13 in conjunction with Article 1 of Protocol No. 1);
- *Par and Hyodo v. Azerbaijan*, nos. 54563/11 and 22428/15, 18 November 2021 (violation of Article 1 of Protocol No. 1);
- *Godlevskaya v. Russia*, no. 58176/18, 7 December 2021 (violation of Article 1 of Protocol No. 1);
- *Yaremiychuk and Others v. Ukraine*, nos. 2720/13 and 6 others, 9 December 2021 (violation of Article 1 of Protocol No. 1);
- *Zaklan v. Croatia*, no. 57239/13, 16 December 2021 (violation of Article 1 of Protocol No. 1);
- *Stoŭkowski v. Poland*, no. 58795/15, 21 December 2021 (violation of Article 1 of Protocol No. 1);
- *Akpaz Société à responsabilité limitée v. Turkey*, no. 6800/09, 18 January 2022 (violation of Article 1 of Protocol No. 1);
- *İpek Société à responsabilité limitée v. Turkey*, no. 29214/09, 18 January 2022 (violation of Article 1 of Protocol No. 1);
- *Sebeleva and Others v. Russia*, no. 42416/18, 1 March 2022 (violation of Article 1 of Protocol No. 1);
- *Shorazova v. Malta*, no. 51853/19, 3 March 2022 (violation of Article 1 of Protocol No. 1);
- *Călin v. Romania*, no. 54491/14, 5 April 2022 (violation of Article 1 of Protocol No. 1);
- *Taganrog LRO and Others v. Russia*, no. 32401/10, 7 June 2022 (violation of Article 1 of Protocol No. 1);
- *Ferhatović v. Slovenia*, no. 64725/19, 7 July 2022 (violation of Article 1 of Protocol No. 1);
- *SCI Le Château du Francport v. France*, no. 3269/18, 7 July 2022 (violation of Article 1 of Protocol No. 1);
- *Korshunova v. Russia*, no. 46147/19, 6 September 2022 (violation of Article 1 of Protocol No. 1);
- *Yusifli and Others v. Azerbaijan* (dec.), nos. 21274/08, 21904/08, 26193/08, 33248/08, 36604/08, 41334/08 and 43125/08, 6 December 2022 (inadmissible);

- *Akshin Garayev v. Azerbaijan*, no. 30352/11, 2 February 2023 (violation of Article 1 of Protocol No. 1);
- *Spasov v. Romania*, no. 27122/14, 3 February 2023 (violation of Article 1 of Protocol No. 1);
- *Căpățînă v. Romania*, no. 911/16, 28 February 2023 (no violation of Article 1 of Protocol No. 1);
- *Zaghini v. San Marino*, no. 3405/21, 11 May 2023 (no violation of Article 1 of Protocol No. 1).