



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

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FIRST SECTION

Application no. 29614/16
Salvatore CAVALLOTTI against Italy
and 3 other applications
(see list appended)
communicated on 10 July 2023

SUBJECT MATTER OF THE CASE

The applications concern the confiscation of the applicants' assets as a preventive measure pursuant to Law no. 575 of 31 May 1965.

Gaetano, Vincenzo and Salvatore Vito Cavallotti ("the first group of applicants") were charged in criminal proceedings with participation (*partecipazione*) in a mafia-type criminal organisation under Article 416 *bis* of the Criminal Code ("CC") and – as regards Gaetano and Vincenzo – of bid-rigging under Article 353 CC. The proceedings were subsequently discontinued with regard to bid-rigging and all the three applicants were acquitted of participation in a mafia-type criminal organisation, with the final judgment of the Palermo Court of Appeal of 6 December 2010.

Meanwhile, in the framework of proceedings for the application of preventive measures, the national courts found that the first group of applicants was suspected of membership (*appartenenza*) of a mafia-type criminal organisation and, based on their "special dangerousness" (*pericolosità qualificata*), confiscated a large number of their assets, including several companies, belonging to them or to their family members (Salvatore Cavallotti, Giovanni Cavallotti, Margherita Martini and Salvatore Mazzola; "the second group of applicants") The national courts considered that all such assets were at the disposal of the first group of applicants and disproportionate to the family's lawful income and that they were unable to

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demonstrate their lawful origin. The confiscation became final with the judgment of the Court of Cassation no. 4305 of 2 February 2016.

The complaints raised in each application are indicated in the appended table.

In particular, the applicants complain, under Article 6 § 1 of the Convention, of the excessive burden of proof as to the ownership and origin of the assets, of the use of presumptions and that the courts' decisions were based on mere suspicions. They further complain under Article 6 § 2 of the Convention of a violation of the presumption of innocence on account of their previous acquittal and under Article 7 of the Convention of the imposition of a penalty without a previous finding of criminal liability. Lastly, they invoke Article 1 of Protocol No. 1 to the Convention, complaining of an unlawful and disproportionate interference with their property rights.

QUESTIONS TO THE PARTIES

The complaints raised by each of the applicants, and the corresponding questions which the parties are requested to answer, are indicated in the appended table.

1. Taking into account that the first group of applicants were acquitted of the charge of participation in a mafia-type criminal organisation, did the decisions of the domestic courts reflect the opinion that they were guilty, notwithstanding the absence of a formal finding of guilt? If so, has there been a violation of the presumption of innocence, guaranteed by Article 6 § 2 of the Convention (see *Allen v. United Kingdom* [GC], no. 25424/09, CEDH 2013, and, *mutatis mutandis*, *Geerings v. the Netherlands*, no. 30810/03, § 47, 1 March 2007)?

2. Taking into account the characterisation of the contested measure under the domestic law and case-law (compare, *inter alia*, Court of Cassation, judgments no. 18 of 3 July 1996, no. 57 of 8 January 2006, no. 39204 of 17 May 2013 and no. 4880 of 2 February 2015; *contra*, judgment no. 14044 of 25 March 2013; see also, *inter alia*, Constitutional Court, judgment nos. 21 of 9 February 2012, and no. 24 of 24 February 2019), its nature and purpose, the procedures involved in its making and implementation and its severity, did the confiscation of the applicants' assets pursuant to Article 24 of Decree no. 159 of 2011 amount to a criminal "penalty" of "punishment" within the meaning of Article 7 § 1 the Convention (compare *Arcuri v. Italy* (dec.), no. 52024/99, § 2, ECHR 2001-VII, *Capitani and Campanella v. Italy*, no. 24920/07, § 37, 17 May 2011, *Gogitidze and Others v. Georgia*, no. 36862/05, § 121, 12 May 2015, and, *mutatis mutandis*, *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 58 et seq., 8 October 2019, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 214 et seq., 28 June 2018)?

If so, has there been a violation of Article 7 of the Convention on account of the ordering of the confiscation notwithstanding the acquittal of the first group of applicants of the charge of participation in a mafia-type criminal organisation (see *G.I.E.M. S.R.L. and Others*, cited above, § 251)?

3. Was the alleged interference with the applicants' peaceful enjoyment of possessions based on a sufficiently foreseeable law, as required by Article 1 of Protocol No. 1 to the Convention?

If so, was the interference necessary and proportionate?

The parties are invited to address the following points:

- a) whether, in light of the acquittal of the first group of applicants of the charge of participation in a mafia-type criminal organisation,

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- the finding of special dangerousness and the subsequent confiscation of assets were justified;
- b) whether the domestic authorities showed that the assets formally owned by the second group of applicants actually belonged to the first group of applicants in a reasoned manner, on the basis of an objective assessment of the factual evidence, and without relying on a mere suspicion;
 - c) whether the domestic authorities showed that the confiscated assets could have been of wrongful origin in a reasoned manner, on the basis of an objective assessment of the factual evidence, and without relying on a mere suspicion, also in light of the date of their acquisition (see *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 215);
 - d) whether the reversal of the burden of proof as to the lawful origin of assets acquired many years earlier imposed an excessive burden on the applicants (see *Todorov*, cited above, § 202 and, *mutatis mutandis*, *Dimitrovi v. Bulgaria*, no. 12655/09, § 46, 3 March 2015)?
 - e) whether the applicants were afforded a reasonable opportunity of putting their arguments before the domestic courts and whether the latter duly examined the evidence submitted by the applicants (*G.I.E.M. S.R.L. and Others*, cited above, § 302; *Telbis and Viziteu v. Romania*, no. 47911/15, § 78, 26 June 2018)?

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APPENDIX

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Complaints and questions to the parties
1.	29614/16 Cavallotti v. Italy 18/05/2016	Salvatore CAVALLOTTI 1957 Belmonte Mezzagno Italian		Article 1 of Protocol No. 1 – lack of foreseeable legal basis and disproportionate character of the confiscation (question no. 3)
2.	44617/16 Cavallotti v. Italy 20/07/2016	Vincenzo CAVALLOTTI 1956 Belmonte Mezzagno Italian Gaetano CAVALLOTTI 1959 Belmonte Mezzagno Italian	Baldassare LAURIA Alcamo	Art. 6 § 2 – presumption of innocence (question no. 1) Article 1 of Protocol No. 1 – lack of foreseeable legal basis and disproportionate character of the confiscation (question no. 3)
3.	44618/16 Cavallotti v. Italy 20/07/2016	Salvatore Vito CAVALLOTTI 1951 Belmonte Mezzagno Italian	Baldassare LAURIA Alcamo	Art. 6 § 2 – presumption of innocence (question no. 1) Article 1 of Protocol No. 1 – lack of foreseeable legal basis and disproportionate character of the confiscation (question no. 3)
4.	47278/16 Cavallotti and Others v. Italy 02/08/2016	Giovanni CAVALLOTTI 1965 Belmonte Mezzagno Italian Margherita MARTINI 1929 Belmonte Mezzagno Italian <i>Deceased in 2019</i>	Alberto STAGNO D'ALCONTRES Palerme	Art. 7 – confiscation without finding of liability (question no. 2) Article 1 of Protocol No. 1 – lack of foreseeable legal basis and disproportionate character of the confiscation (question no. 3)

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		<p><i>Heirs:</i> Salvatore CAVALLOTTI 1957 Giovanni CAVALLOTTI 1965 Gaetano CAVALLOTTI 1959 Salvatore Vito CAVALLOTTI 1951 Benedetta CAVALLOTTI 1953 Vincenzo CAVALLOTTI 1956</p> <p>Salvatore MAZZOLA 1953 Belmonte Mezzagno Italian</p>		

