



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

FIRST SECTION

Application no. 76967/17 against
Italy and 13 other applications
(see list appended)

SUBJECT MATTER OF THE CASE

The applications concern the confiscation of the applicants' assets, ordered by the domestic courts pursuant to Article 24 of Legislative Decree no. 159 of 6 September 2011 (*Codice delle leggi antimafia e delle misure di prevenzione*, "Decree no. 159/2011"). Some of the applications also concern the imposition of the measure of the special surveillance, pursuant to Article 6 of the same decree.

The applicants are either individuals that have been declared socially dangerous in accordance with Article 1 § 1 (a) and/or (b) of Decree no. 159/2011 (*pericolosità generica* or "ordinary dangerousness"), or family members or next-of-kin of individuals that have been declared socially dangerous pursuant to the same provision, whose properties were confiscated. As for the former, domestic courts considered that their assets were disproportionate to their lawful income and that the applicants had failed in demonstrating their lawful origin. As for the latter, domestic courts considered that the relevant assets were formally owned by the applicants, but actually belonged to their socially dangerous relatives (*intestazione fittizia* or "fictitious ownership") or, in any case, were under their effective control and at their disposal. They further observed that such assets were disproportionate to their and their relatives' lawful incomes and that they had failed to demonstrate their lawful origin.

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QUESTIONS

The applicants challenged the measures before the competent domestic courts. The dates of the final decisions adopted by the Court of Cassation are indicated in the appended table.

Relying on Article 1 of Protocol No. 1 to the Convention, all applicants complain of the alleged lack of clarity and foreseeability of the legal basis with regard to the individuals to whom confiscation of assets as a preventive measure is applicable. Two applicants raise the same complaints also under Article 7 of the Convention while others complain on the same ground of a violation of Article 2 of Protocol No. 4 to the Convention.

Some applicants further complain under Article 1 of Protocol No. 1 to the Convention of the alleged lack of proportionality of the interference with regard to the confiscated assets and the lack of the possibility of putting their arguments before the competent domestic courts. Some complain of the excessive burden allegedly suffered, on account of the fact that domestic courts confiscated all their assets, instead of those which were disproportionate to their lawful income.

One of the applicants complains of the alleged lack of proportionality of the measure of special surveillance imposed on him, alleging a violation of Article 2 of Protocol No. 4 to the Convention. He observes, in particular, that the measure was imposed on him in 2019, notwithstanding he had not committed any crime after 2015.

In one application the applicants complain under Article 6 § 1 of the Convention of the reversal of the burden of proof in respect of demonstrating the lawful origin of their assets. The second applicant further complains of the alleged violation of the presumption of innocence, guaranteed by Article 6 § 2 of the Convention. He submits that domestic courts justified the declaration of social dangerousness on the commission of crimes which had not been ascertained, since the criminal proceedings are still pending before the first-instance court.

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. Was the alleged interference with the applicants' peaceful enjoyment of possessions in accordance with the requirements of Article 1 of Protocol No. 1 to the Convention? In particular:

- a) was the interference in accordance with the conditions provided for by the law, as required by Article 1 of Protocol No. 1? Were the provisions (a) and/or (b) of Article 1 § 1 of Decree no. 159/2011 sufficiently precise and clear, foreseeable in their application and consequences, and compatible with the rule of law, in respect of the individuals to whom confiscation of assets as a preventive measure is applicable (see *De Tommaso v. Italy* [GC], no. 43395/09, § 126, 23 February 2017)?
- b) was the interference necessary and proportionate? In answering the question, the parties are requested to refer, *inter alia*, to the following points:

- (i) whether domestic authorities made a sufficiently individualised assessment of disproportion between the applicants' assets and lawful income, in order to identify which pieces of property to confiscate (see, *mutatis mutandis*, *Rummi v. Estonia*, no. 63362/09, § 108, 15 January 2015, and *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 221, 13 July 2021; *a contrario*, *Phillips v. the United Kingdom*, no. 41087/98, § 53, ECHR 2001-VII, *Silickienė v. Lithuania*, no. 20496/02, § 68, 10 April 2012, and *Gogitidze and Others v. Georgia*, cited above, §§ 105-107);

- (ii) whether domestic authorities showed that the confiscated assets belonged to the applicant's relative in a reasoned manner, on the basis of an objective assessment of the factual evidence (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 122, 12 May 2015, and *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 91, 8 October 2019);

- (iii) whether the applicants were afforded a reasonable opportunity of putting their argument before the domestic courts and whether the latter duly examined the evidence submitted by the applicants (*Telbis and Viziteu v. Romania*, no. 47911/15, § 78, 26 June 2018).

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2. Was the interference with the applicants' right to liberty of movement and freedom to choose their residence in accordance with the requirements of Article 2 of Protocol No. 4? In particular:

- a) was the interference in accordance with the law? Were the provisions (a) and/or (b) of Article 1 § 1 of Decree no. 159/2011 sufficiently precise and clear, foreseeable in their application and consequences, and compatible with the rule of law, in respect of the individuals to whom special surveillance as a preventive measure is applicable (see *De Tommaso*, cited above, § 126)?
- b) did domestic authorities strike a faire balance between the demands of general interest and the applicant's right?

3. 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, judgments no. 21 of 9 February 2012, and no. 24 of 27 February 2019), its nature and purpose, the procedures involved in its imposition and implementation, and its severity, did the confiscation applied to the applicants pursuant to Article 24 of Decree no. 159/2011 amount to a "penalty" within the meaning of Article 7 § 1 of 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*, cited above, § 121, and, *mutatis mutandis*, *Balsamo*, cited above, § 58 et seq., and contrast with *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 alleged lack of clarity and foreseeability of the applicable law?

4. Did the decisions of the domestic courts in the preventive proceedings reflect the opinion that the second applicant was guilty, notwithstanding the absence of a formal finding of guilt, given that the criminal proceedings against the applicant are still pending?

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)?