



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

FIRST SECTION

CASE OF TARTAMELLA AND OTHERS v. ITALY

(Applications nos. 26338/19 and 2 others – see appended list)

JUDGMENT

(Merits)

Art 1 P1 • Peaceful enjoyment of possessions • Seizure and confiscation of the applicants' assets, of a value equivalent to the proceeds from offences committed by their family members, on the basis that they were at the offenders' disposal • Art 1 P1 applicable • Domestic courts' failure to show in a reasonable manner and on the basis of objective elements that the first two applicants were sham owners of the confiscated assets and that these belonged, in reality, to the offenders • Conversely, domestic courts investigated the behaviour of the third and fourth applicants and of the offenders in relation to the assets at issue and pointed at specific elements indicating that they were at the offenders' disposal

Art 6 § 1 (civil) • Access to court • Third applicant afforded reasonable and sufficient opportunity to adequately challenge the confiscation measure in the enforcement proceedings considered sufficient for the protection of her civil rights • No indication of arbitrariness or manifest unreasonableness

Art 7 • *Ratione materiae* • Confiscation by equivalent means not amounting to a penalty towards family members considered as sham owners • Provisional seizure not amounting to a penalty • Application of principles set out in *G.I.E.M. S.r.l. and Others v. Italy* [GC]

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 October 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tartamella and Others v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić, *President*,

Erik Wennerström,

Gilberto Felici,

Raffaele Sabato,

Frédéric Krenç,

Alain Chablais,

Artūrs Kučs, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the applications (nos. 26338/19, 1823/21 and 12868/22) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the applicants listed in the appended table (“the applicants”), on the various dates indicated therein;

the decision to give notice to the Italian Government (“the Government”) of the complaints raised under Article 6 § 1 and Article 7 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the applications;

the decisions by the Governments of Romania and Hungary not to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 30 September 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the confiscation of assets belonging to the applicants, the value of which was deemed to be equivalent to the proceeds (*profitto*) from offences committed by their family members. The confiscation was based on the finding that, even though the applicants were the formal owners of the confiscated assets, those assets were at the disposal (*disponibilità*) of the offenders.

THE FACTS

2. The applicants’ personal details and the names of their representatives are set out in the appended table.

3. The Government were represented by their Agent, Mr L. D’Ascia.

4. The facts of the case may be summarised as follows.

I. APPLICATION No. 26338/19

5. Ms F. Tartamella and Ms B. Tartamella (“the first two applicants”) were the owners of several buildings and land located in the municipalities of Brescia, Perugia, Erice and Valderice. The building (and surrounding land) that was located in Valderice had been purchased in 2002 for a price of 150,000 euros (EUR).

6. In 2008, a criminal investigation was opened in respect of the first two applicants’ father, F.P.T., for failure to submit a tax return (pursuant to Article 5 of Legislative Decree no. 74 of 2000), fraud and bankruptcy fraud.

7. In the course of the proceedings against F.P.T., on 7 November 2011 the Brescia preliminary investigations judge ordered the seizure of the first two applicants’ assets, with a view to the confiscation of an amount equivalent to the proceeds arising from the offence, pursuant to section 1 § 143 of Law no. 244 of 2007.

The seizure was based on the finding that the registration of the assets in the names of the first two applicants had been fictitious, and that F.P.T. had used his daughters as sham owners in order to prevent the seizure of those assets by his creditors. This conclusion rested on two elements: the applicants’ lack of funds to purchase the assets autonomously; and a witness statement according to which F.P.T. had claimed to own a building in Brescia through his daughters.

8. The first two applicants asked for the revocation of the seizure order, arguing, *inter alia*, that they had acquired the seized assets by means of inheritance, gifts of money from their grandparents, and bank loans.

9. On 18 July 2012, the Brescia preliminary investigations judge (*giudice per le indagini preliminari*) revoked the seizure order in respect of the assets located in Erice and Brescia, noting that (i) some of them had been inherited by the first two applicants and, (ii) in respect of the rest of them, there was insufficient evidence to indicate that the declared ownership was merely a sham. However, the judge confirmed the seizure of the assets in Perugia and Valderice on the basis of his view that the first two applicants could not have purchased them with their own funds, and in the light of their close family ties with F.P.T.

10. The first two applicants lodged an appeal against the decision of the Brescia preliminary investigations judge, requesting the revocation of the seizure order also in respect of the remaining assets. On 5 September 2012, the Brescia District Court noted that, in the meantime, those assets had been confiscated (see paragraph 11 below) and the seizure order was no longer in place; accordingly, it declared the appeal inadmissible.

11. On 18 July 2012 the Brescia preliminary hearing judge (*giudice dell’udienza preliminare*) convicted F.P.T. on all charges – including failure to submit a tax return. The proceeds derived from the non-payment of taxes were estimated at EUR 783,128.

The Brescia preliminary hearing judge confiscated those of the first two applicants' assets that were located in Valderice and Perugia. The judge deemed that, despite their formal ownership, those assets were in fact at the disposal of F.P.T. (as indicated by the first two applicants' lack of funds and by their close family ties with F.P.T.).

12. F.P.T. appealed against his conviction, and also against the confiscation. On 8 March 2013, the Brescia Court of Appeal upheld the conviction, estimating the proceeds of the offence at EUR 705,044. It further upheld the confiscation of the Perugia and Valderice assets, but reduced the specification of the value of the assets to be confiscated (namely, to a value of EUR 639,044 in respect of the Valderice assets and to a value of 46,000 in respect of the remaining assets). As regards the above-noted assertion that the assets had *de facto* been at the disposal of F.P.T., the Court of Appeal cited the first two applicants' lack of funds, their close family ties with F.P.T. and – in respect of the Perugia building – the fact that F.P.T. was domiciled there.

13. F.P.T. appealed, but – by a judgment of 26 January 2015 – the Court of Cassation declared his appeal inadmissible for his lack of any interest in respect of the confiscation of the first two applicants' assets, stating that the latter were at liberty to lodge a complaint with the enforcement judge.

14. The first two applicants lodged a complaint with the Brescia Court of Appeal (acting as enforcement judge), seeking the return of the confiscated assets. They argued that they were the true owners of those assets and – with particular regard to the Valderice assets – submitted that they had purchased them with funds provided by their grandparents and obtained through a bank loan.

15. By a judgment of 22 September 2015, the Brescia Court of Appeal dismissed their claims. It examined, in particular, the applicants' assertions regarding the provenance of the funds used to purchase the assets, concluding that they must have been provided by F.P.T. The Court of Appeal added that the investigation regarding F.P.T. had shown that, ever since 1993 (when he had been declared bankrupt) he had systematically resorted to registering the ownership of assets in the names of third parties (that is, sham owners). The Court of Appeal accordingly concluded that the confiscated assets – although formally owned by the first two applicants – had been at F.P.T.'s disposal, and confirmed their confiscation.

16. The first two applicants lodged an appeal (*opposizione*); on 1 July 2016, the Court of Appeal partially quashed that decision, revoking the order for confiscation of the Perugia assets, but upholding the confiscation of the Valderice assets. The decision focused mainly on the issue of the provenance of the funds in question, reiterating the previously advanced conclusions.

17. The first two applicants appealed to the Court of Cassation. The public prosecutor asked the court to allow their request for the revocation of the

confiscation order, noting that the domestic courts had merely ascertained the applicants' lack of sufficient funds to purchase the assets, whereas the confiscation of third parties' assets required also evidence that the assets in question were at the disposal of the offender – that is to say the offender had a factual relationship with those assets and exercised the powers of an owner. In this respect, according to the prosecutor, the domestic decisions had not been sufficiently reasoned.

18. By a judgment published on 21 November 2018, the Court of Cassation noted that the first two applicants had always argued that they had purchased the assets with funds obtained from their grandparents and from a bank loan. Since the domestic courts had established that those arguments were unfounded, it was logical to conclude that the purchase of the assets had been the result of an agreement between F.P.T. and the first two applicants to register the assets in question in the name of the latter (as sham owners). The Court of Cassation therefore upheld the confiscation of the Valderice assets.

II. APPLICATION No. 1823/21

19. Ms Koka ("the third applicant") was the owner of a boat, purchased in her name in 2016 for EUR 41,000.

20. On an unspecified date, a criminal investigation was opened in respect of her partner, S.Z., who was suspected of having engaged until 2015 in money laundering activities (Article 648 *bis* of the Criminal Code – hereinafter "the CC").

21. In the course of the proceedings against S.Z., on 9 October 2017 the public prosecutor – estimating that the proceeds of the alleged crimes amounted to EUR 134,880.03 – ordered the seizure of the third applicant's boat, with a view to its confiscation by equivalent means, pursuant to Article 648 *quater* of the CC.

The seizure order was based on the finding that: (i) part of the price of the boat (EUR 11,000) had been paid directly by S.Z.; (ii) the third applicant's own economic resources had been insufficient to cover the remaining part of the price; (iii) around the same period she had received other sums from S.Z. and had made unexplained deposits of cash into her bank account; (iv) some of the broker's invoices had been paid by S.Z. in cash; and (v) according to the broker's witness statements, S.Z. and the third applicant had together met her during the negotiation and conclusion of the purchase, but S.Z. had appeared to be the one making the decisions.

On the basis of those considerations, the prosecutor deemed that the third applicant was not the genuine owner of the boat, and that S.Z. was its true owner.

22. The seizure was carried out on 11 October 2017 and validated by the Milan preliminary investigations judge on 12 October, citing the same reasoning as that presented by the prosecutor.

23. On 24 July 2018 the Milan preliminary investigations judge (Judge A.C.), having approved a plea bargain, found that S.Z. had committed the offence of money laundering and ordered the confiscation of the seized boat. The judgment did not contain any further reasoning in respect of who the true owner of the boat was.

24. The third applicant lodged a complaint with the Milan preliminary investigations judge (acting as enforcement judge), seeking the return of the boat. She argued that she was the true owner of the boat, which she had paid for in part with a bank loan; she further submitted that S.Z. had gifted her the remaining sum of EUR 11,000 and that he had helped her with the relevant negotiations (which is not unusual in a couple), but that he had not exercised any of the prerogatives of an owner.

25. The prosecutor submitted the results of an investigation that had been conducted in respect of the third applicant's financial situation: among its findings was the fact that the third applicant had already lodged an application with the Milan preliminary investigations judge, seeking the return of the seized assets; that application had been dismissed (the applicant had initially lodged an appeal against that dismissal but had subsequently withdrawn it). Additionally, the prosecutor clarified that S.Z. had agreed to, in his initial request for the above-mentioned plea-bargain, the confiscation of the boat.

26. On 18 January 2019 the Milan preliminary investigations judge (Judge A.C.) dismissed the third applicant's request for the return of the boat, confirming that it had to be considered as being at S.Z.'s disposal. That conclusion was based on the same circumstances as those cited in the seizure order – that is to say the applicant's lack of sufficient funds to purchase the boat, the payment of part of the price by S.Z., the circumstances regarding the involvement of S.Z. in the negotiations (as reported by the broker) and the payment of the broker's invoice (see paragraph 22 above). Moreover, the judge noted that the third applicant's income had been insufficient to pay for the maintenance and docking of the boat; the judge added that part of the docking fees had been paid by S.Z., and that S.Z. had agreed to the confiscation of the boat in his request for a plea bargain.

27. The third applicant lodged an appeal. On 19 April 2019, the Milan preliminary investigations judge (in the person of Judge A.C.) dismissed the complaint, reiterating that the third applicant had not had sufficient funds to pay for the boat and that, at the time of the purchase (which had coincided with the time of the commission of the crime), she had received money from S.Z. that had likely originated from his money laundering activities.

28. The third applicant appealed to the Court of Cassation. The latter, by a judgment issued on 7 July 2020, ruled that the boat had been correctly considered – on the basis of several concurring factors – to have been at the disposal of S.Z., and confirmed the confiscation.

III. APPLICATION No. 12868/22

29. F.S., the husband of Ms Santorelli (“the fourth applicant”), was investigated in respect of his suspected membership of a criminal association (Article 416 of the CC) and unlawful adjustment payment (*compensazione*) – that is, claiming certain deductions against tax to which he had not been entitled (Article 10 *quater* of Legislative Decree no. 74 of 2000).

30. Within this context, on 15 November 2018 the Modena preliminary investigations judge ordered the seizure of assets belonging to F.S. up to the amount of EUR 23,408,052.32, with a view to their confiscation by equivalent means.

31. On 22 November 2018, the police entered an apartment (owned by F.S. but inhabited by the fourth applicant) and seized several items – including luxury clothing, accessories, watches, jewellery and gold. Some of those items (deemed to be women’s clothing and therefore at the fourth applicant’s exclusive disposal) were subsequently returned to her; however, the police retained possession of several watches, jewellery and gold that had been seized.

On 5 December 2018, the Modena District Court further ordered the seizure of an apartment owned by the fourth applicant in the town of Castelfranco Emilia.

32. On 12 May 2020, the Modena preliminary hearing judge convicted F.S. on all charges and ordered the confiscation of the seized assets, pursuant to Article 12 *bis* of Legislative Decree no. 74 of 2000 and Article 322-*ter* of the CC. F.S. lodged an appeal against both his conviction and the confiscation of the fourth applicant’s assets; according to the most recent information submitted to the Court, proceedings are still pending before the Bologna Court of Appeal.

33. The fourth applicant lodged an application for the return of her assets, arguing that they had been at her exclusive disposal and that she had either bought them herself or had received them from F.S. as a gift.

34. On 12 October 2020, the Modena preliminary investigations judge dismissed her application. He considered, in particular, that the jewellery and the watches must have been purchased by F.S. (since the fourth applicant had had limited resources); the judge further deemed that the question of whether or not she had ever used them was irrelevant, since they were assets bought as a form of investment.

35. The fourth applicant appealed. On 1 December 2020, the Modena District Court, acting as a review court (*tribunale del riesame*), upheld the decision to seize the fourth applicant’s assets, noting that: (i) all of her income derived from the companies involved in F.S.’s criminal activities; (ii) she had been fully aware of the fictitious registration of certain assets in her name (as indicated by the content of certain telephone conversations intercepted in the course of the criminal proceedings in which she had allowed F.S. to

register assets in her name); (iii) the apartment had been purchased by F.S. (as demonstrated by the fact that it had been he who had concluded the preliminary contract); (iv) the seller had been involved in criminal conduct and had never cashed the cheque issued by the fourth applicant as payment for the apartment; and (v) the apartment had been at the disposal of F.S., since it was currently empty and the keys were being held by one of F.S.’s business partners. Additionally, it had emerged from the telephone intercepts that the fourth applicant and F.S. had not truly been separated at the time in question, and that prior to the above-mentioned seizure of assets, F.S. had been able to access and use the assets seized from the family home.

36. The fourth applicant appealed to the Court of Cassation, which dismissed her appeal by a judgment published on 6 September 2021.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions on confiscation and seizure

37. Article 240 of the CC, which forms part of a chapter dedicated to “property security measures” (*misura di sicurezza patrimoniali*), provides in its relevant parts a direct form of confiscation. The provision reads as follows:

“1. In the event of conviction, the judge may order the confiscation of things that were used or intended to be used in the commission of the offence [in question], and of the things that constitute the product thereof or proceeds therefrom.

2. [The judge shall] always order the confiscation:

1) of things that constitute the price of the offence;

1-bis) ...

2) of things whose manufacturing, use, harbouring, possession or sale constitutes an offence – even if no conviction has been imposed. ...”

38. Article 322 *ter* of the CC – introduced by Law no. 300 of 2000 and subsequently amended by Law no. 190 of 2012 – provides mandatory confiscation in respect of certain crimes. Such confiscation must be carried out, whenever possible, in respect of the direct proceeds from or price of such crimes (“direct confiscation”); in the alternative, it must be carried out in respect of assets of equivalent value (“value confiscation” or “confiscation by equivalent means”). The provision currently reads as follows:

“1. In the event of conviction or of an [agreement to reach a] plea bargain at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure, in respect of one of the offences provided by Articles 314 to 320 ..., [the judge] shall always order the confiscation of the goods constituting the proceeds from or price of the offences, unless they belong to a third party who has not taken part in the commission of the offence, or, when this is not possible, the confiscation of goods at the disposal of the offender of a value corresponding to such price or proceeds.

2. In the event of conviction or of an [agreement to reach a] plea bargain at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure in respect of the offence provided by Article 321 ..., [the judge] shall always order the confiscation of goods constituting the proceeds from the offence, unless they belong to a third party who has not taken part in the commission of the offence or, when this is not possible, the confiscation of goods at the disposal of the offender to a value corresponding to such proceeds...

3. In the cases provided in paragraphs 1 and 2, the judge – in delivering the judgment of conviction – shall determine the amount of money or identify the goods to be confiscated in so far as they constitute the proceeds from or price of the offence or their value corresponds to the proceeds from or price of the offence.”

39. Since its entry into force the application of this provision has subsequently been extended to other crimes. In so far as is relevant for the present case, section 1 § 143 of Law no. 244 of 2007 (the 2008 Finance Act) established that Article 322 *ter* of the CC would thenceforth also apply in respect of the offences of failure to submit a tax return and unlawful adjustment payment, provided respectively by Articles 5 and 10 *quater* of Legislative Decree no. 74 of 2000.

40. Until the amendments introduced by Law no. 190 of 2012 (see paragraph 38 above), the first paragraph of Article 322 *ter* of the CC referred only to a value corresponding to the price (and not to the proceeds realised) in respect of offences falling under that paragraph; however, the Court of Cassation did clarify (before those amendments came into effect) that the reference contained in section 1 § 243 of Law no. 244 of 2007 should be interpreted as referring to Article 322 *ter* of the CC in its entirety – thus extending also to the proceeds derived from crime (see, for instance, judgments of the Court of Cassation no. 35807 of 2010 and no. 23108 of 2013).

41. Under Legislative Decree no. 158 of 2015, section 1 § 143 of Law no. 244 of 2007 was replaced by a substantially similar one, which is now contained in Article 12 *bis* of Legislative Decree no. 74 of 2000.

42. A provision on mandatory confiscation in respect of the crime of money laundering was introduced by Legislative Decree no. 231 of 2007 under Article 648 *quater* of the CC, which reads as follows:

“1. In the event of conviction or of an [agreement to reach a] plea bargain at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure in respect of one of the offences provided by Articles 648 *bis* ... , [the judge] shall always order the confiscation of the goods constituting the product of or proceeds from the offences, unless they belong to a third party who has not taken part in the commission of the offence.

2. If it is not possible to proceed to confiscation as provided under the first paragraph, the judge shall order the confiscation of sums of money, goods or other assets at the disposal of the offender – including through an intermediary [*per interposta persona*], for a value corresponding to the product of, proceeds from or price of the offences.”

43. Article 321 of the Code of Criminal Procedure (“CCP”) provides for the seizure of assets that are liable to confiscation. The provision is included in a chapter of the CCP dedicated to “property precautionary measures” (*misure cautelari reali*). Under the same provision, such a seizure may be ordered by the judge before whom the related criminal proceedings are currently pending; in the event of particular urgency, a seizure may be ordered by the public prosecutor or carried out directly by the police, subject to subsequent validation by the judge.

B. Nature and purpose of confiscation under domestic law

44. The domestic legal order distinguishes between penalties and security measures. In principle, penalties are aimed at sanctioning an offence that has been committed, whereas security measures are aimed at preventing the commission of a further offence.

45. Unlike Article 240 of the CC (see paragraph 37 above), the provisions subsequently introduced at Article 322 *ter* and Article 648 *quater* of the CC do not explicitly state whether the form of confiscation provided by those provisions constitutes a penalty or a security measure.

46. Until recently, the established case-law of both the Constitutional Court and the Court of Cassation held that confiscation by equivalent means was predominantly afflictive in nature and therefore had to be considered as constituting a punitive measure. That case-law rested (on the one hand) on the fact that assets were not confiscated because they are inherently dangerous, and (on the other hand) on the lack of any link (*nesso di pertinenzialità*) between the confiscated assets and the crime in question. It follows that the main purpose of confiscation by equivalent means is to restore the previously prevailing economic situation by imposing a corresponding sacrifice on the offender (see, among other authorities: judgments of the Constitutional Court nos. 97 of 2009, 301 of 2009 and 68 of 2017; judgments of the Court of Cassation nos. 15445 of 2004 and 39173 of 2008; and judgment of the Combined Divisions of the Court of Cassation no. 31617 of 2015).

47. The Combined Divisions of the Court of Cassation, by judgment no. 4145 of 2023, added that confiscation by equivalent means had a dual nature: by imposing on the offender an economic sacrifice that was equal to the proceeds that he or she had realised from the crime, confiscation served both a restorative and a punitive function. However, deeming that penalties were subject to the stricter rules provided by Article 25 of the Italian Constitution and by Article 7 of the Convention, judgment no. 4145 stated that the punitive nature of confiscation should prevail over all other non-criminal functions.

48. However, the most recent case-law called into question this approach (which rested on the different natures of direct confiscation and value

confiscation). The Constitutional Court, by judgments nos. 112 of 2019 and 7 of 2025, did not draw a distinction between direct confiscation and value confiscation; rather, it stated that the confiscation of the “proceeds” deriving from the offence had a purely restorative function, whereas the confiscation of its “product” or of the assets used in the commission of the crime had a punitive connotation, because it was not limited to restoring the economic situation that had been in place before the commission of the crime, but instead deprived the offender of additional assets. The recent judgment of the Combined Divisions of the Court of Cassation no. 13783 of 2025 confirmed this approach: it clarified that direct confiscation and value confiscation constituted two ways of enforcing the same measure and that they were of the same nature – that is, they constituted a merely restorative measure if they were limited to the proceeds derived from the crime in question, whereas they acquired a punitive connotation where they exceeded such proceeds.

C. The confiscation of assets formally owned by third parties

49. Assets belonging to a third party who has not taken part in the commission of an offence may not, as a rule, be subject to confiscation. Nevertheless, the confiscation of third parties’ assets by equivalent means is possible if such assets, although formally owned by others, are found to be at the disposal of the offender (see paragraphs 38 and 42 above).

50. The Court of Cassation has clarified that, in such situations, the confiscation measure in question is not directed at the third party, but at the offender. The third party is affected only indirectly because – regardless of who the formal owner is – the asset in question is *de facto* at the disposal of the offender (see judgments nos. 34602 of 2021, 4887 of 2019 and 4297 of 2013).

51. The relevant case-law of the Court of Cassation defines the notion of “disposal” as follows:

“The [notion of] ‘disposal’ of an asset ... does not coincide with the civil-law notion of ownership, but with that of possession, which encompasses all those situations in which the asset falls within the sphere of the offender’s economic interests – even if the power of disposal over it is exercised through third parties – and is expressed in the exercise of *de facto* powers corresponding to the right of ownership ...”

(Judgment no. 4456 of 2022; see, similarly, judgments nos. 4887 of 2019, 36530 of 2015, 18766 of 2014, 22153 of 2013, and 11732 of 2005).

52. The relevant domestic case-law further stipulates that the fact that the assets in question are at the offender’s disposal has to be established in a rigorous manner and on the basis of specific elements (and not of mere suspicions). In particular, it is not sufficient to establish the “negative element” that the formal owner did not have the financial resources to purchase certain assets; there has to be evidence of the “positive element” that the assets remain *de facto* at the disposal of the offender. The burden of proof,

in this respect, is placed upon the prosecution (see Court of Cassation judgments nos. 34602 of 2021, 4487 of 2019, 35771 of 2017, 36530 of 2015, 22153 of 2013, and 17287 of 2011).

53. The Government have submitted examples of case-law concerning instances when the assets in question were found, respectively, to have been at the offender's disposal on the basis of the following elements: the money in question had been deposited in a bank account to which the offender had had unlimited access (judgment of the Court of Cassation no. 13130 of 2020); the offender had assigned the asset in question to a trust that he himself had administered (judgment no. 13276 of 2011); and the assets in question had been jointly owned by the offender and by a third party (judgment no. 6894 of 2011).

54. The Court of Cassation has also clarified that, if an asset has been gifted by an offender to a third party, confiscation cannot be justified by the simple fact that the asset was transferred by the offender with the purpose of hiding it from State authorities; the domestic courts have to ascertain whether it is still *de facto* at the disposal of the offender (judgment no. 4456 of 2022).

D. Remedies available to third parties

55. Under Article 322 of the CPP, third parties claiming to be the owners of seized assets may contest a seizure order issued by a judge by lodging an application for a review (*richiesta di riesame*) within ten days of its enforcement.

They may also lodge an application requesting the return of seized assets (Article 321, paragraph 3, of the CCP). Against a decision dismissing such an application (or against any other decision concerning the seizure of the assets in question) they may lodge an appeal under Article 322-*bis* of the CCP (*appello cautelare*).

In the case of both an application for a review and an appeal, proceedings take place before the district court of the capital of the province (sitting as a collegial bench and acting as a review court – *tribunale del riesame*) in which the court that issued the decision is located.

Proceedings before a review court are held in camera (Articles 324 § 6 and 310 § 2 of the CCP).

Its decisions may be appealed against before the Court of Cassation (Article 325 of the CCP).

56. Third parties claiming to be the owners of assets that have been confiscated in the course of criminal proceedings are not entitled to appeal against a judgment delivered by the criminal court. They may, however, lodge an application with the enforcement judge, seeking the return of such assets (Article 676 of the CCP). In such cases, the enforcement judge – the same body as that which ordered the confiscation in the criminal proceedings

(Article 665 of the CCP) – issues a decision without having to observe any formal procedures (Article 667 § 4 of the CCP).

The decision of the enforcement judge may be contested in adversarial proceedings before the same judge (Articles 666 and 667 § 4 of the CCP). In the course of enforcement proceedings, the judge may ask public authorities for additional information and may admit fresh evidence at an adversarial hearing (Article 666, paragraph 5, of the CCP).

Proceedings before the enforcement judge are held *in camera* (Articles 666 § 3 and 667 § 4 of the CCP). However, by judgment no. 109 of 2015, the Constitutional Court ruled those provisions unconstitutional in so far as they did not allow a party with an interest in proceedings against confiscation to request a public hearing.

A decision of an enforcement judge may be appealed against before the Court of Cassation (Article 666, paragraph 6, of the CCP).

57. By judgment no. 48126 of 2017, the Combined Divisions of the Court of Cassation clarified the role of those remedies within the context of the protection of the interests of third-party owners of seized and confiscated assets. Under that judgment (which put an end to previous uncertainties), third-party owners may file an appeal to the review court according to Article 322-*bis* of the CCP (see paragraph 55 above) even after confiscation has been ordered, as long as that order has not become final. In fact, until that moment, the dispossession of the assets takes place on the basis of the seizure order and not of the confiscation order, which will not be enforced until it becomes final. After a final decision has been issued, third-party owners may lodge an application with an enforcement judge, seeking the return of such assets (see paragraph 56 above).

58. By judgment no. 253 of 2017, the Constitutional Court ruled that the combination of remedies described above ensured the protection of third-party owners during the entire course of proceedings.

59. As to the scope of the above-detailed remedies, according to well-established domestic case-law, it is limited to the question of whether the third parties are the true owners of the relevant assets and whether they were involved in the crime in question; if their claims are allowed, this shall be sufficient to secure the revocation of the confiscation and the return of the assets in question. Third parties may not otherwise call into question other grounds for the seizure or the confiscation order, such as the offender's criminal liability or the possibility to order direct confiscation instead of confiscation by equivalent means (see, for instance, judgments of the Court of Cassation nos. 17287 of 2011, 34704 of 2016, 36347 of 2019, and 13706 of 2022).

II. INTERNATIONAL LAW

60. Several international agreements provide for the confiscation of the proceeds of crime or of property of equivalent value following a criminal conviction.

The origins of such an approach may be traced to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Article 5 of which provided for – in addition to the more traditional confiscation of instruments used in the commission of such an offence (*instrumentum sceleris*) – the confiscation of the proceeds of drug-related offences (*productum sceleris*) or property of equivalent value. The provision established that the rights of bona fide third parties should not be prejudiced.

Over time, the provisions on confiscation were broadened to encompass cross-border crime, organised crime and other serious offences (for instance, under: Article 3 of the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; Article 8 of the 1999 International Convention for the Suppression of the Financing of Terrorism; and Article 12 of the 2000 United Nations Convention against Transnational Organised Crime). Most of those provisions stated that they should be implemented without prejudice to the rights of third parties acting in good faith.

61. By acceding to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the “Strasbourg Convention”) – which was opened for signature on 8 November 1990 in Strasbourg and which entered into force on 1 September 1993 – the signatory parties undertook to: adopt measures that would enable them to confiscate the instrumentalities and the proceeds of crimes (or property of equivalent value; adopt legislation establishing as an offence the laundering of proceeds of crime; and cooperate in the enforcement of such measures. The Strasbourg Convention allowed States parties thereto to limit its application to selected offences and to refuse cooperation in a large number of cases – including when the confiscation sought did not “relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed”, or where the third parties had not had an adequate opportunity to assert their rights.

62. Article 31 of the 2003 United Nations Convention against Corruption provided for the confiscation of the instrumentalities or proceeds of crime (or property of equivalent value) without prejudice to the rights of bona fide third parties. The Convention also provided for a form of non- conviction- based confiscation: under Article 54 § 1 (c) it provided that parties should “consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which

the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases”.

63. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which was opened for signature on 16 May 2005 in Warsaw and which entered into force on 1 May 2008 (“the Warsaw Convention”), was intended to supersede the Strasbourg Convention but was not ratified by all member States of the Council of Europe. Although containing substantially similar undertakings in respect of the confiscation of proceeds of crimes, it added under Article 23 § 5 the provision that States were required to cooperate with each other on the execution of measures equivalent to confiscation that did not constitute criminal sanctions, in so far as they were ordered to do so by a judicial authority in relation to a criminal offence.

64. Additionally, some international organisations have produced good practice guides and recommendations regarding non-conviction-based confiscation, such as a 2004 publication entitled “G8 Best Practice Principles on Tracing, Freezing and Confiscation of Assets”, the 2009 World Bank publication entitled “Stolen Asset Recovery: A Good Practices Guide for Non-Conviction-Based Asset Forfeiture” and the OECD’s Financial Action Task Force Recommendations entitled “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation” (first issued in 2012 and last updated in 2023).

III. EUROPEAN UNION LAW

65. Within the framework of the European Union, a number of instruments have been adopted in order to further progressive harmonisation and cooperation in the field of the confiscation of the proceeds of crime.

66. By a Joint Action of 3 December 1998 (98/699/JHA) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime, the EU member States undertook not to derogate from the Strasbourg Convention in respect of offences that are punishable by deprivation of liberty for a maximum of more than one year. Substantially similar provisions were subsequently included in the Council Framework Decision of 26 June 2001 (2001/500/JHA) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

67. The Council Framework Decision of 24 February 2005 (2005/212/JHA) on the confiscation of crime-related proceeds, instrumentalities and property reiterated these obligations (Article 2) and introduced a form of extended confiscation that was applicable to persons convicted of a number of serious crimes, in the event that the domestic courts were fully convinced that the assets in question derived from criminal activities (Article 3).

68. The Directive on the freezing and confiscation of the proceeds of crime in the European Union of 3 April 2014 (2014/42/EU) provided the obligation to enable the confiscation of instrumentalities and proceeds of crime or property of equivalent value, subject to a final conviction for a criminal offence (Article 4 § 1). The Directive provided for a form of non-conviction-based confiscation that was applicable in the event that criminal proceedings had been initiated and could have led to a criminal conviction in respect of an offence that could have afforded economic benefit to the accused, but conviction was not possible owing to illness or absconding of the accused person (Article 4 § 2). The Directive also provided for a form of extended confiscation of property belonging to a person convicted of a criminal offence that could have afforded him economic benefit, in the event that the domestic courts were convinced that that property derived from criminal conduct (Article 5). The Directive further established that member States should enable the confiscation of property that had been transferred by an offender to a third party – at least if the third party had known or ought to have known that the purpose of the transfer was to avoid confiscation; however, the rights of bona fide third parties should not be prejudiced (Article 6).

69. All the European Union instruments mentioned above have been replaced by the recent Directive on asset recovery and confiscation of 24 April 2024 (2024/1260/EU). The Directive substantially extended the forms of non-conviction-based confiscation. In addition to the traditional conviction-based confiscation of the instrumentalities and proceeds of crimes or property of equivalent value (Article 12) and to the extended confiscation already provided for under the previous legislation (Article 14), it provided for the confiscation of assets in the event that a conviction was not possible owing to the accused person being ill, absconding or dying, or to the expiry of a limitation period lower than fifteen years in length (Article 15); furthermore, it provided for the confiscation of property where the domestic courts were convinced that the property in question derived from criminal conduct engaged in within the framework of a criminal organisation and could give rise to substantial economic benefit (Article 16). Article 13 provided for the confiscation of assets that had been transferred by the offender to third parties, where it had been established that the third party knew or ought to have known that the purpose of the transfer was to avoid confiscation, and without prejudice to the rights of bona fide third parties.

THE LAW

I. JOINDER OF THE APPLICATIONS

70. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY OBJECTIONS

A. The parties' arguments

71. The Government objected to the admissibility of two of the applications.

72. As regards application no. 1823/21, they argued that the third applicant, Ms Koka, had failed to exhaust the available domestic remedies, because she had not contested the seizure of her assets before a review court (see paragraph 55 above). The effectiveness of this remedy would be demonstrated by the partially successful decision issued in respect of the other applicants (see paragraph 9 above).

73. As regards application no. 12868/22, the Government argued that, in so far as the fourth applicant, Ms Santorelli, had complained of the seizure of her assets, the complaint was inadmissible owing to her loss of victim status, because the measure of seizure (which had been purely provisional in nature) had been replaced by that of confiscation; in so far as she had complained of the confiscation, she had not exhausted the available domestic remedies, because she had not lodged an application with the enforcement judge seeking the return of her assets.

74. Ms Koka argued that the remedies indicated by the Government would have been ineffective, since they would not have allowed her to lodge her claims to the same extent as during the subsequent proceedings before the enforcement judge. In particular, she noted that before the review court, she had not been allowed to call witnesses, nor had the proceedings been conducted in public.

75. Ms Santorelli argued that she was still a victim of the contested measure, since there had been no acknowledgment of a violation, and no adequate redress had been afforded for the deprivation of her assets. She further noted that the confiscation had not yet become final; accordingly, there had never been a possibility to open proceedings before an enforcement judge (see paragraph 32 above).

B. The Court's assessment

76. The Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that individual is entitled to choose that remedy which best addresses his or her essential grievance. In other words, when one remedy has already been pursued, the use of another remedy that has essentially the same objective is not required (see, among other authorities, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019, and *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009). Accordingly, the Court examines whether the Government has submitted any arguments indicating that the available remedies do not have

“essentially the same objective” – that is to say, whether a remedy that has not been used by the applicant would have added any essential elements that were unavailable through that remedy which was used (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010, and *Köhler v. Germany* (dec.), no. 3443/18, § 69, 7 September 2021).

77. Under Italian law, two remedies are available to a third-party owner of an asset that has been seized and subsequently confiscated in criminal proceedings: proceedings before a review court and enforcement proceedings. The remedies have, to a certain extent, the same scope, as they allow third-party owners to assert their ownership of the assets and their non-involvement in the crime in question (see paragraph 59 above). Nevertheless, the two remedies concern two different measures: before a review court, third-party owners may challenge the provisional seizure of the assets in question (which is the only measure that is in force while criminal proceedings are still pending); before an enforcement judge, they may challenge a final confiscation measure (see paragraph 57 above). The Court therefore considers that the two remedies do not have essentially the same objective, as they are available at different stages of the criminal proceedings and concern different measures.

78. In Ms Koka’s case, it appears that the confiscation ordered against S.Z. had already become final, and that the third applicant made use of the only remedy that was available at that stage – namely, proceedings before the enforcement judge (see paragraph 24 above). As regards the Government’s argument that, at a prior stage, she could have raised a complaint before the review court, the Court notes that that remedy would have concerned a different measure – namely, the provisional seizure of the above-mentioned assets; in any event, the Government have not indicated what additional elements would have been available through proceedings before a review court.

79. Accordingly, the Court dismisses the Government’s preliminary objection regarding the third applicant’s case.

80. As to Ms Santorelli, she clarified that the confiscation ordered against F.S. had not yet become final; accordingly, she had made use of the only remedy that had been available to her at that stage – namely, proceedings before a review court (see paragraphs 32-33 above).

81. In this regard, the Court notes that Ms Santorelli complained both of the provisional seizure of her assets and of the confiscation order.

82. In so far as she complained of the confiscation, the Court notes that the measure has not yet become final since the proceedings involving the confiscation order is still pending at the domestic level (see paragraph 32 above). In accordance with domestic law (see paragraph 57 above) – and according to the applicant’s own statements – it would thus be too early to lodge an application with the enforcement judge. In this respect, therefore,

the fourth applicant's complaint is premature and must be declared inadmissible, pursuant to Article 35 §§ 1 and 4 of the Convention.

83. Conversely, as regards Ms Santorelli's complaint that she had been dispossessed of her assets as a result of the provisional seizure, it appears that she made use of the only remedy that was available to her. Accordingly, in this respect the Government's objection of non-exhaustion must be dismissed.

84. As to the objection regarding Ms Santorelli's loss of victim status, the Court notes not only that the seizure measure is still in place, but the Government have neither acknowledged a violation of the Convention nor afforded any redress (see, among many other authorities, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). Therefore, the objection regarding the fourth applicant's loss of victim status must also be dismissed.

85. It follows that the Court will examine the complaints raised by the fourth applicant only in respect of the provisional seizure of assets.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The third applicant, Ms Koka, complained that she did not have access to an effective remedy by which to contest the confiscation of her assets, as required by Article 6 § 1, which reads as follows:

“1. In the determination of his civil rights ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

A. The parties' arguments

1. The applicant

87. The third applicant argued that she had not had access to an effective remedy by which to contest the confiscation of her assets since, on the one hand, she had been unable to take part in the criminal proceedings during which the confiscation was ordered, and on the other hand, the proceedings before the enforcement judge had been ineffective.

88. In fact, the decision of the enforcement judge had inevitably been influenced by the decision already issued (without her being present) during the criminal proceedings; at that stage, the criminal liability of the offender had already been determined with final effect, and the third party's situation had inevitably been assessed at least on a preliminary basis.

89. In her observations (submitted on 22 April 2024), the third applicant further argued that the enforcement proceedings had been ineffective owing to a lack of impartiality, since they had taken place before the very judge (A.C.) who had ordered the confiscation in the criminal proceedings. In fact, in ordering the confiscation, A.C. had already deemed that the assets had been

at the offender's disposal – an issue that she had been called on again to examine in the enforcement proceedings.

90. As to the alternative remedies indicated by the Government, the third applicant argued that the possibility of instituting proceedings before the review court while the criminal proceedings had still been pending would have been equally ineffective. In fact, such proceedings would have been limited to a summary assessment and would not have encompassed a fully adversarial trial, since the applicant would have been unable to summon witnesses, access all the procedural documents or obtain a public hearing. She pointed out, in particular, that she could not have secured the hearing of a certain essential witness – namely, the broker who had concluded the purchase of the boat.

91. Lastly, as to the possibility of obtaining indirect protection in the course of criminal proceedings through the arguments raised by her partner, she noted that S.Z. had not raised any arguments in her favour.

2. The Government

92. The Government argued that Ms Koka, although she had not been able to take part in the criminal proceedings, had had open to her several means of defending her rights before domestic courts.

93. First of all, she could have done so indirectly through the arguments raised by her partner, S.Z., during the criminal proceedings.

94. Secondly, she could have filed a complaint before the enforcement judge, and thereby have secured a thorough examination of her position in an adversarial manner – indeed this had been an option that she had in fact exercised.

95. Thirdly, throughout the period during which the confiscation had not become final, she could have sought the return of the assets before the review court (the Government cited, in this respect, Court of Cassation judgment no. 48126 of 2017 – see paragraph 57 above). The effectiveness of this remedy, which the applicant had not used, would be demonstrated by the decisions issued in respect of the seizure of the assets of the other applicants (see paragraph 9 above), which had been partially favourable to them.

96. As regards the third applicants' arguments regarding the lack of a public hearing, the impossibility of summoning witnesses for examination before the review court and the lack of impartiality of the enforcement judge (see paragraphs 89-90 above), the Government submitted that those arguments had not been raised before the domestic courts and that in any case they constituted new complaints, as they had not been stated in the application form.

B. The Court's assessment

1. Admissibility

97. The general principles concerning the extent of an applicant's complaint have been set out in, among other authorities, the cases of *Radomilja and Others v. Croatia* ([GC], nos. 37685/10 and 22768/12, §§ 110-27, 20 March 2018), *Grosam v. the Czech Republic* ([GC], no. 19750/13, §§ 88-91, 1 June 2023) and *Fu Quan, s.r.o. v. the Czech Republic* ([GC], no. 24827/14, §§ 137-47, 1 June 2023).

98. In the present case, in her application to the Court Ms Koka complained under Article 6 § 1 of the Convention that she had not had access to a remedy on account of the fact that the only available remedy – namely, proceedings before the enforcement judge – had been ineffective, as those proceedings had been influenced by the decisions issued in the criminal proceedings. The applicant submitted that that influence had derived from the fact that certain elements – in particular, the criminal liability of the offender and the link between the criminal conduct and the confiscated assets – had already been established (see paragraph 88 above). The Court notes that at that stage, the applicant had not complained of the fact that the judge overseeing the enforcement proceedings had been the same person that had already imposed the criminal conviction on S.Z. – a fact that was not even mentioned in the description of the facts contained in Ms Koka's application to the Court.

99. In view of the above, the Court considers that the third applicant's complaint relating to the lack of impartiality of Judge A.C. (see paragraph 89 above) was not raised in the initial application to the Court but was formulated for the first time in the subsequent observations of 22 April 2024. It follows that this complaint was submitted more than six months¹ after the final domestic decision, which was issued on 7 July 2020 (see paragraph 28 above), and must therefore be declared inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

100. On the other hand, the Court notes that the third applicant did not complain – either in the initial application or in her subsequent observations – of the ineffectiveness of any proceedings that might have been held before a review court. Her argument that in such proceedings she would have been unable to obtain a public hearing and summon witnesses was aimed at rebutting the Government's objection that that remedy could have provided an alternative avenue for the protection of her property rights (see

¹ Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the final domestic decision was taken prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

paragraph 90 above). The Court, therefore, does not agree with the Government that those arguments amounted to raising new complaints.

101. As regards the complaint raised in the initial application and concerning the lack of an effective remedy to contest the confiscation, the Court notes that it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention and must therefore be declared admissible.

2. *Merits*

(a) General principles

102. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights and obligations brought before a court (see *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022; see also *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

103. The right of access to a court must be “practical and effective”, not “theoretical or illusory”. This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair hearing (*ibid.*, § 77, with further references). For the right of access to be effective, a person must have a clear, practical opportunity to challenge an act that interferes with his or her rights. Equally, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016, with further references).

104. In a number of cases involving the confiscation of property from applicants within the framework of criminal proceedings against third parties, the Court has examined whether the domestic legal system afforded the applicants (in the light of the severity of the measure to which they were liable) an adequate opportunity to put their case to the courts by pleading, as the case might be, that the measure in question had been illegal or arbitrary and that the courts had acted unreasonably (see *Telbis and Viziteu v. Romania*, no. 47911/15, §§ 49-50, 26 June 2018, and *Veits v. Estonia*, no. 12951/11, § 57, 15 January 2015, with further references).

105. In respect of those cases, the Court has stated that, as a general principle, persons whose property has been confiscated should be formally granted the status of parties to the proceedings during which the confiscation is ordered (*Veits*, cited above, § 59; see also *Silickienė v. Lithuania*,

no. 20496/02, § 50, 10 April 2012). Nevertheless, the Court accepted that, in the above-mentioned cases of *Silickienė* and *Veits*, the interests of the applicants had been sufficiently protected by other means, despite the fact that they had not taken part in the criminal proceedings in which confiscation was ordered. In particular, in the case of *Veits* (cited above, §§ 57-60), the Court pointed out that the domestic law had allowed the applicant to contest the temporary attachment of the property before its confiscation, and that the applicant's mother and grandmother (who had taken part in the criminal proceedings) had presented arguments in support of the applicant – thus *de facto* representing her interests in the proceedings. In the case of *Silickienė* (cited above, §§ 48-50), the Court noted that it was open to the applicant to contest the temporary seizure of her assets and that her interests were *de facto* represented by the lawyer who was defending the interests of her deceased husband in the criminal proceedings.

106. The Court has addressed a similar issue when examining the compliance of a confiscation measure with the procedural obligations provided by Article 1 of Protocol No. 1 to the Convention. Within that context, the Court deemed that, although third-party owners could not take part in criminal proceedings, their interests could be sufficiently protected by the possibility to lodge an application with a civil court, requesting the return of assets – provided that that court was not unduly influenced by the criminal proceedings and afforded an effective opportunity to challenge the confiscation measure (see *C.M. v. France* (dec.), no. 28078/95, 26 June 2001; contrast *Denisova and Moiseyeva v. Russia*, no. 16903/03, §§ 61-64, 1 April 2010).

107. More recently, in the case of *Zaghini v. San Marino* (no. 3405/21, § 67, 11 May 2023), the Court stated that Article 1 of Protocol No. 1 does not require that “real owners” be given a reasonable opportunity to put their case during criminal proceedings against perpetrators (that is, even before the measure is put in place); the Court ruled that a reasonable possibility for “real owners” to set out their arguments before the authorities after the criminal proceedings have come to an end would suffice.

108. In accordance with the above-stated principles, the Court considers that, for the purposes of Article 6 § 1, the fact that an alleged owner cannot take part in criminal proceedings during which the confiscation measure is ordered does not automatically mean that that applicant will not have access to a court for the purposes of protecting his or her civil rights. The Court will therefore investigate whether, despite the impossibility of an applicant participating in criminal proceedings, he or she has nevertheless been provided with a reasonable opportunity to put his or her case to the responsible authorities for the purpose of effectively challenging the measure in question.

(b) Application of the general principles to the present case

109. In the present case, it is undisputed that the third applicant did not have the possibility to take part in the criminal proceedings against S.Z. Nevertheless, according to the principles set out above, this is not in itself sufficient to conclude that the applicant did not have access to an effective remedy to challenge the confiscation measure.

110. The Court will therefore examine, first of all, if an effective opportunity to challenge the measure was provided in the course of the enforcement proceedings. In this regard, it takes note of the third applicant's arguments regarding (i) the allegedly limited scope of the review conducted by the enforcement judge and (ii) the influence on the decision of the enforcement judge of the previous decisions delivered by the criminal courts (see paragraph 88 above).

111. The Court finds it established that an enforcement judge does not have the power to call into question the criminal liability of an offender. Nevertheless, an enforcement judge has full jurisdiction to examine the issue of whether a third party is the true owner of confiscated assets (see paragraph 59 above). In this respect, it does not appear that an enforcement judge is in any way bound by the assessments made, in the third party's absence, during the criminal proceedings (see, *mutatis mutandis*, *C.M. v. France*, cited above).

112. The Court considers that, in respect of the third parties, such a scope of jurisdiction appears to be sufficient to ensure the protection of their proprietary interests. Once it has been established that a third party is the true owner of confiscated assets, those assets have to be returned – regardless of any other consideration in respect of their unlawful origin or on the criminal liability of the offender. On the contrary, if it is found that the third party was merely a sham owner of assets that, in reality, belong to the offender, the third party will not be able to claim any further right to those assets and will therefore have no interest in otherwise challenging the legal or factual grounds for the confiscation.

113. The Court further notes that, in the present case, not only was the enforcement judge entitled to conduct a full examination of Ms Koka's claims to be the true owner of the confiscated assets, but it appears that she did so thoroughly and without any appearance of arbitrariness – that is to say without merely referring back to the findings of the criminal courts (contrast *Denisova and Moiseyeva*, cited above, § 61). Indeed, at all stages of the enforcement proceedings, the domestic courts examined the third applicant's complaints in detail and listed the reasons why she was not considered to be the true owner (see paragraphs 26-28 above).

114. It should also be noted, in this regard, that the third applicant has not pointed to any argument or piece of evidence that (in her opinion) was disregarded by the enforcement judge, nor to any statement made by the domestic courts that rested merely on the outcome of the criminal

proceedings (rather than on the enforcement judge's own examination of the applicant's complaint). Rather, she appears to be complaining of the outcome of the case. However, it is not the Court's task to take the place of the domestic courts in the assessment of facts and evidence. The Court should not act as a fourth instance and will not therefore question under Article 6 § 1 any judgment delivered by the national courts that (as in the present case) does not appear to be arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015, and *Telbis and Viziteu*, cited above, §§ 51 and 57).

115. Therefore, the Court considers that the third applicant was afforded reasonable and sufficient opportunity to protect her interests adequately. Accordingly, it finds that there has been no violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

116. The applicants complained that, by confiscating their assets, the domestic courts had punished them for an offence committed by other persons; such punishment had been in breach of Article 7 of the Convention, which reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

...”

A. The parties' arguments

1. The applicants

(a) The first two applicants

117. Ms F. Tartamella and Ms B. Tartamella argued that the confiscation of their assets had amounted to a penalty under Article 7 of the Convention. They pointed out, in particular, that the domestic case-law classified confiscation by equivalent means as a punitive measure (see paragraph 44 above).

118. They submitted that that conclusion also applied in respect of third parties, since in the instant case the confiscation measure had been based on the fact that the purchases in question had been illicit and evasive. This had been further confirmed by the fact that – according to the first two applicants – it had not been duly established that the assets had been at the disposal of the offender.

119. Having established the criminal nature of the confiscation, the applicants argued that they had been subjected to a penalty for an offence that had been committed by another person – following proceedings to which they

had not been party – in breach of Article 7 of the Convention. They claimed that they had acted in good faith and had lawfully purchased the assets in question, and that those assets had no connection whatsoever with F.P.T.’s criminal conduct.

120. Additionally, in their observations (submitted on 22 May 2024) the applicants complained of the unforeseeable character of the confiscation.

(b) The third applicant

121. Ms Koka argued that – according to established domestic case-law – the confiscation had amounted to a penalty. It followed that she had been subjected to a penalty for an offence that had been committed by another person. She further argued that she had been the true owner of the confiscated assets.

(c) The fourth applicant

122. Ms Santorelli argued that the seizure of her assets with a view to their subsequent confiscation had amounted to a penalty. Therefore, she had been subjected to a penalty for the conduct of another person. Moreover, contrary to the domestic courts’ findings, she had been the true owner of the seized assets.

2. The Government

123. The Government noted that, according to domestic case-law (see paragraph 44 above), confiscation by equivalent means had a substantially punitive nature. They therefore acknowledged that, in respect of offenders, confiscation by equivalent means amounted to a penalty within the meaning of Article 7 of the Convention.

124. Nevertheless, this was not the case in respect of third parties. The confiscation measure did not, in fact, have a punitive purpose in respect of them, but affected them only in so far as they were considered not to be the true owners of the confiscated assets in question. Any assessment of the ownership of confiscated assets was based on civil-law concepts, such as that of possession and sham ownership.

125. Therefore, in the Government’s view, the confiscation measure did not amount to a penalty in respect of third parties who were considered to be merely sham owners.

B. The Court’s assessment

126. The general principles concerning the notion of “penalty” for the purposes of Article 7 of the Convention have been set forth in, among other authorities, *G.I.E.M. S.r.l. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, § 211, 28 June 2018); those principles have been recently reiterated

in cases concerning various confiscation measures under Italian law (see *Episcopo and Bassani v. Italy*, nos. 47284/16 and 84604/17, § 68, 19 December 2024, and *Garofalo and Others v. Italy* (dec.), nos. 47269/18 and 3 others, §§ 94-98, 21 January 2025). The Court will examine whether, in the present case, the measures complained of were imposed following conviction for a criminal offence. It will also examine: their characterisation under national law; their nature and purpose; the procedures involved in the devising and implementation of the measures; and their severity.

127. As a preliminary consideration, the Court notes that the first three applicants complained of a final confiscation measure. However, it further notes that the fourth applicant's complaints have been declared inadmissible in that respect (see paragraph 82 above). Therefore, the fourth applicant's complaint may be examined only in respect of the seizure of her assets. In view of the different nature of the two measures, the Court considers it appropriate to examine them separately.

1. Whether the confiscation of assets formally owned by third parties amounted to a penalty

128. The Government have acknowledged that confiscation by equivalent means, in respect of an offender, amounts to a penalty – both under domestic law, and for the purposes of Article 7 of the Convention (see paragraph 123 above). The Court sees no reason to call this finding into question.

129. Nevertheless, the Government have argued that a different conclusion should be reached in respect of third parties that are deemed to be merely sham owners. The Court will therefore examine the issue of whether the confiscation in question may be considered to amount to a penalty in respect of the first three applicants.

130. As to whether the confiscation was imposed following a criminal conviction, the Court notes that the applicants were neither accused of nor convicted of any criminal offence. In this regard, the Court has already found that third-party owners of confiscated assets are not, as such, charged with a criminal offence, but rather simply suffer in respect of their property rights from the confiscation in question (see *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV, and *AGOSI v. the United Kingdom*, 24 October 1986, §§ 65-66, Series A no. 108). Nevertheless, the Court has already found that this does not suffice to rule out the applicability of Article 7 (see *G.I.E.M. S.r.l. and Others*, cited above, § 217).

131. As to the classification of the confiscation under domestic law, as already stated above, it is undisputed that confiscation by equivalent means was deemed to amount to a penalty according to the relevant domestic case-law applicable at the material time (see paragraphs 46-47 above). Nevertheless, it does not appear, from the information available to the Court, that this conclusion extended to the consequences suffered by third-party owners. On the contrary, the Court of Cassation has clarified that, in such a

situation, the confiscation in question is not directed at the third party, but at the offender (see paragraph 50 above). Additionally, in assessing the position of third parties, the domestic authorities shall conduct an assessment that is largely based on civil-law concepts – notably that of possession, concerning the exercise of a *de facto* power corresponding to the right of ownership (see paragraph 51 above).

132. Similarly, nothing in the domestic law or in its application by the domestic courts reveals any punitive intent towards third parties. The purpose of the measure appears to be the punishment of offenders and the recovery of proceeds derived from unlawful conduct (see paragraph 47 above).

In this respect, the Court finds it significant that, if third parties are found to be the true owners of confiscated assets, then this finding alone is sufficient for them to be able to secure the revocation of the confiscation (see paragraph 59 above): in such cases, there appears to be no room for further investigation into the conduct of the third parties in question or into any link between the assets and the crime in question. This emerges very clearly from the most recent case-law of the Court of Cassation, which has ruled that, even if assets have been gifted by an offender to a third party, those assets cannot be confiscated unless there is proof that they have *de facto* remained at the offender's disposal (see paragraph 54 above).

133. From this perspective, the Court considers that the present case can be distinguished from situations where third-party owners of confiscated assets have been found to have suffered a “penalty” for an offence committed by another person (see *G.I.E.M. S.r.l. and Others*, cited above, § 272). In those cases, the third parties – even though they had not been convicted for any criminal offence – were the direct recipients of the penalty, in that they were the true owners of the confiscated assets. By contrast, in the case at hand, the applicants were considered to be merely sham owners: there is no indication that the measure was aimed at punishing them; rather, it appeared to have been aimed at targeting all assets of the offender, regardless of whether they had been registered in the names of other people (as sham owners).

134. Furthermore, the Court notes that the fact that a confiscation measure could be ordered against property belonging to a third person, who had no valid legal claims to that property, has already been found to be indicative of the fact that the measure was directed against property rather than having a punitive intent (see, *mutatis mutandis*, *Ulemek v. Serbia* (dec.), no. 41680/13, § 53, 2 February 2021).

135. As regards procedures in respect of the adoption and enforcement of confiscation measures, the Court observes that such measures are imposed by the criminal courts. However, this fact cannot in itself be decisive, since it is common for criminal courts to take decisions of a non-punitive nature – for example, ordering the taking of civil reparation measures in respect of the

victim of a criminal act (see *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 63, 8 October 2019).

136. Lastly, as regards the severity of a confiscation measure, the Court notes that, while confiscation may affect assets of a considerable value, it only applies to the third party in respect of assets that are found to be at the disposal of the offender, and of which that third party is merely a sham owner. While a confiscation measure does affect such a third party's formal property rights, it is designed not to have an impact on the third party's actual economic situation.

137. Having regard to all the considerations above, the Court concludes that the confiscation orders issued against the first three applicants did not amount to penalties within the meaning of Article 7 of the Convention.

138. The complaints must therefore be rejected as incompatible *ratione materiae* with Article 7 of the Convention, in accordance with Article 35 §§ 3 and 4 of the Convention.

2. *Whether the seizure amounted to a penalty*

139. The Court has already expressed doubts as to whether the seizure of assets with a view to their subsequent confiscation may amount to a penalty, given its interim (albeit long-lasting) nature (see *Dassa Foundation and Others v. Liechtenstein* (dec.), no. 696/05, 10 July 2007). Additionally, the Court has already found, on multiple occasions, that a provisional seizure does not involve the determination of a criminal charge entailing the applicability of the criminal limb of Article 6 (see, for instance, *Nedyalkov and Others v. Bulgaria* (dec.), no. 663/11, § 104, 10 September 2013; *Dassa Foundation and Others*, cited above; and *Dogmoch v. Germany* (dec.), no. 26315/03, 18 September 2006).

140. The Court considers that the same conclusion can be reached in respect of the applicability of Article 7 of the Convention.

141. Indeed, applying the criteria set out above (see paragraph 126), it notes that the seizure of assets is not a measure that is applied following a criminal conviction; rather (by definition), it precedes it. Under domestic law, it is considered to constitute a precautionary measure and not a penalty. Additionally, all other characteristics of a provisional seizure reflect its purely interim function: it does not pursue in itself a punitive aim, but rather the purpose of ensuring the enforceability of any subsequent confiscation. The procedure to be followed when carrying it out reflects its urgent character: it may be ordered by a public prosecutor or carried out immediately by the police, subject to subsequent judicial validation; its effects – even though they may be quite long-lasting, depending on the duration of the criminal proceedings – are nevertheless provisional and entail only dispossession of the assets in question, and not the loss of property (see paragraph 43 above).

142. Overall, therefore, the Court concludes that the seizure order issued against the fourth applicant did not amount to a penalty within the meaning of Article 7 of the Convention.

143. Therefore, the complaint raised by the fourth applicant under Article 7 of the Convention must also be rejected as incompatible *ratione materiae* with that provision, in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

144. The applicants argued that the seizure and the confiscation of their assets had not rested on a sufficiently foreseeable legal basis and had been disproportionate, in breach of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“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 preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The parties’ arguments

1. The applicants

(a) The first two applicants

145. Ms F. Tartamella and Ms B. Tartamella argued that the confiscation had been unlawful, as it had not had any foreseeable legal basis and had been carried out in breach of domestic law.

146. As to the first aspect, the first two applicants argued that the relevant domestic legislation had not ensured sufficient certainty: (i) the notions of Article 322 *ter* of the CC had been vague and generic – notably the notion of “disposal”, which (unlike other provisions) had not been accompanied by a clarification that such “disposal” could be obtained “through an intermediary” (see paragraphs 38 and 42 above); (ii) the measure of confiscation of an amount equivalent not only to the price, but to the proceeds of the offence in question had been subject to a degree of uncertainty at least until the 2012 amendments (see paragraphs 38 and 40 above); and (iii) the application of Article 322 *ter* to tax offences dated back to 2007 (see paragraph 39 above), that is to say after the purchase of the assets in 2002.

147. In any event, the applicants pointed out (as the prosecutor before the Court of Cassation – see paragraph 17 above) that the domestic courts had

not duly observed domestic law, because they had not established that the assets in question were at the offender's disposal. In this respect, the applicants clarified that, according to the relevant domestic case-law, it was not sufficient to demonstrate that the third parties had lacked funds to purchase the assets themselves: the domestic authorities had to show – on the basis of consistent and converging elements and not of mere suspicions – that the offender had maintained a factual relationship with the assets, exercising functions corresponding to those of an owner. In the present case, there was no indication that the assets in question had been at the disposal of F.P.T., and the confiscation of those assets had been ordered only on the basis of the applicants' lack of funds.

148. The confiscation had also been disproportionate, since the domestic courts had failed to consider the applicants' good faith and the fact that the assets had been acquired before the commission of the crimes and had had no connection to the offences in question. The applicants acknowledged that the measure of confiscation by equivalent means did not require that confiscated assets be directly derived from a crime, but simply that there be an equivalence of value; however, if there was no specific indication that the convicted person was the true owner of the assets, such equivalence of value could not justify the confiscation of a third party's assets.

149. The first two applicants also stated that the value of the confiscated assets exceeded the proceeds of the crimes, and that they had not had the possibility to effectively challenge the measure before domestic courts since, in the enforcement proceedings, they had borne the burden of proving the true ownership of the assets and the lawful origin of the funds used to purchase them.

(b) The third applicant

150. Ms Koka argued that the confiscation had been unforeseeable and in any event disproportionate, since the assessment that she was merely a sham owner had been incorrect and had rested on insufficient evidence. She argued, in particular, that she had purchased the confiscated boat partly with her own funds and partly with money received from S.Z. as a gift; the involvement of S.Z. in the purchase had not exceeded the usual support that is commonly provided to a partner.

(c) The fourth applicant

151. Ms Santorelli argued that the seizure aimed at the confiscation of her assets had been ordered in the absence of any legal basis, given that it had been in breach of the relevant domestic law. In fact, the applicant submitted, the domestic law in question had not permitted the confiscation of assets belonging to a third party who had not been involved in the criminal conduct

in question and had been acting in good faith. Additionally, the measure had been arbitrary and disproportionate.

152. She contested, on the one hand, the domestic courts' assessment of whether the assets had indeed been at F.S.'s disposal. She argued in particular that: she had purchased the confiscated house herself; had kept the jewelry and watches in a safe in the house where she had been living (separately from F.S.) and the latter had not had a key to the safe; and she had purchased the items of jewelry and watches either herself or had received them as a gift.

153. Additionally, she submitted that the burden of proving her good faith should not have been placed upon her. In any event, she had sufficiently shown that she had been acting in good faith at the time of the purchase, since the assets had been acquired before the commission of the crimes in question, and she had neither taken part in the criminal conduct in question or derived any advantage from that conduct. As to the content of the intercepted telephone recordings, that had been taken out of context and used in breach of domestic procedural law.

2. *The Government*

154. The Government argued that the legal basis for the confiscation was to be found in (i) section 1 § 143 of Law no. 244 of 2007 (which referred to Article 322 *ter* of the CC) in respect of the first two applicants, (ii) Article 12 *bis* of Legislative Decree no. 74 of 2000 (which also referred to Article 322 *ter* of the CC) in respect of the fourth applicant, and (iii) Article 648 *quater* of the CC in respect of the third applicant.

155. Those provisions had been, in the Government's view, sufficiently foreseeable, as they specified that assets formally owned by third parties could be confiscated if they were at the offender's disposal. The Government further submitted that the relevant domestic case-law had sufficiently clarified the notion of "disposal" – thus ensuring the foreseeability of the measure.

156. In particular, "disposal" had to be intended not as formal ownership, but as possession – that is to say a factual dominion over the assets in question that could be ascertained on the basis of a number of indicators, such as: the exclusive enjoyment of those assets; the choices made as to their use and transfer; the subordinate position of the third party; the simulated character of the contracts in question; or the third party's lack of funds to purchase the assets (see the case-law cited in paragraph 53 above). If it could be sufficiently demonstrated that the assets were at the offender's disposal and that the third party's registered ownership was merely a sham, it could also be concluded that the third party had not been acting in good faith.

157. The Government also clarified that, according to domestic case-law, it was not enough to demonstrate a third party's lack of resources; it was also necessary to ascertain additional elements in support of the finding that the assets in question were at the offender's disposal, and that the burden of proof

in this respect rested with the prosecution (see the case-law cited in paragraph 52 above).

158. Those principles had been correctly applied in the cases under examination, in which the domestic courts had ascertained that the confiscated assets had been at the offenders' disposal on the basis of a series of objective elements. The confiscation had therefore been foreseeable and proportionate.

159. In particular, as regards the first two applicants the fact that the assets had been at F.P.T.'s disposal had been demonstrated on the basis of: the applicants' lack of resources to purchase the assets; F.P.T.'s statements according to which he had owned a building through his daughters; and the overall conduct of F.P.T., for whom it had been routine practice to fictitiously register assets in the names of third parties.

160. As regards the third applicant the fact that the assets had been at S.Z.'s disposal had been demonstrated by: the fact that he had signed the preliminary contract; the lack of resources on the part of the third applicant to purchase the boat and to pay for its maintenance; the fact that part of the purchase price had been provided by S.Z. to the applicant by way of bank transfer; the fact that at the time of the commission of the crimes, the applicant had made unexplained cash deposits into her bank account; the payment of broker fees by S.Z.; and S.Z.'s role in the negotiations.

161. As regards the fourth applicant the fact that the assets had been at F.S.'s disposal had been demonstrated by: the statements recorded by means of the above-mentioned intercepted telephone calls (which had indicated that the applicant had agreed to have assets fictitiously registered in her name); the applicant's lack of resources to purchase the assets, and the fact that her resources had derived in any event from companies involved in criminal activities; the fact that the preliminary contract for the purchase of the building had been signed by F.S.; the fact that the building in question had been found to be empty and unfurnished and the keys held by one of F.S.'s collaborators; and the fact that the movable assets had been found in an apartment owned by F.S. to which he had had keys.

162. Lastly, the Government argued that the applicants had benefitted from adequate procedural guarantees, since they had been able to contest the measures in adversarial proceedings before domestic courts, and the latter had thoroughly examined their arguments.

B. The Court's assessment

1. Admissibility

163. The Court notes that the Government did not contest the applicability of Article 1 of Protocol No. 1. Nevertheless, considering that the present case focuses mainly on the issue of whether the seized or confiscated assets were genuinely owned by the applicants or whether the applicants were merely

sham owners, the Court finds it appropriate to address this issue of its own motion.

164. In this regard, the Court has already held that an applicant can allege a violation of Article 1 of Protocol No. 1 to the Convention only in so far as the impugned decisions concerned his or her “possessions”, within the meaning of this provision (see *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01 and 2 others, § 74, ECHR 2005-V, and *Telbis and Viziteu*, cited above, § 62). Consequently, a person who complains of an interference with his or her possessions must first show that such possessions existed (see *Arsimikov and Arsemikov v. Russia*, no. 41890/12, § 46, 9 June 2020, and *Novikov v. Russia*, no. 35989/02, § 33, 18 June 2009).

165. The concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning that is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004-XII, and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I).

166. In a number of cases, the Court has addressed this issue from the perspective of an applicant’s victim status and found that the complaints were inadmissible *ratione personae* because the applicants could not prove that the assets concerned had belonged to them (see, for instance, *Eliseev and Ruski Elitni Klub v. Serbia* (dec.), no. 8144/07, § 34, 10 July 2018, and *Telbis and Viziteu*, cited above, §§ 63-64; also contrast *Imeri v. Croatia*, no. 77668/14, § 53, 24 June 2021).

167. In other cases, in which the domestic courts had found that the applicants’ titles of ownership were invalid, the Court considered that they could still claim to have a possession within the meaning of Article 1 of Protocol No. 1 because, up until the events complained of, they had been in possession of the assets in question and had been considered to be their owners for all legal purposes (see *Rybářství Třeboň a.s. and Rybářství Třeboň Hld. a.s. v. the Czech Republic*, nos. 18037/19 and 33175/22, § 67, 7 November 2024, and *Ibrahimbeyov and Others v. Azerbaijan*, no. 32380/13, § 40, 16 February 2023).

168. Turning to the circumstances of the present case, the Court notes that, unlike in the first group of cases cited above (see paragraph 166), in the present case there is no dispute that the applicants concerned were the formal owners of the seized or confiscated assets. It is true that, in the domestic proceedings, the courts found that the applicants were not the true owners of the seized or confiscated assets, which were considered to have been at the disposal of the offenders. Nevertheless, before the events complained of, the

assets in question had been considered for all legal purposes to be owned by the applicants. The Court therefore considers that the present case rather falls within the second group described above (see paragraph 167).

169. Additionally, the Court notes that the applicants challenged, both in the domestic proceedings and before the Court, the domestic courts' findings concerning the true ownership of the assets, asserting that they were the owners thereof. Within this context, to consider that the applicants did not have a "possession" on the basis of the same findings which have been submitted to the Court's scrutiny would have the unreasonable effect of depriving them of the protection of the Convention.

170. In the light of the foregoing, the Court is satisfied that the applicants had a "possession" for the purposes of Article 1 of Protocol No. 1 of the Convention.

171. Noting that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in article 35 of the Convention, the Court declares them admissible.

2. Merits

172. The Court notes at the outset that the Government did not dispute that the seizure and confiscation of the applicants' assets had amounted to an interference with their right to the peaceful enjoyment their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. The Court sees no reason to hold otherwise.

173. Additionally, in the Court's view there is no need in the present case to determine under which of the three rules set out under Article 1 of Protocol No. 1 the instant case should be examined because – regardless of which of the three rules applies – the principles governing the question of justification are substantially the same (see, *mutatis mutandis*, *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 182, 13 July 2021, and *Episcopo and Bassani*, cited above, § 148).

174. In order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate – that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, § 281, 2 May 2024, with further references). The Court will examine these three steps in turn.

(a) Whether the measures complied with the principle of lawfulness

175. The general principles on the lawfulness of the interferences have been summarised in, among other authorities, the recent case of *The J. Paul Getty Trust and Others* (cited above, §§ 293-98).

176. In the present case, the Court is satisfied that the domestic provisions invoked by the Government (see paragraph 154 above) constituted the legal basis for the impugned measure. In particular, in respect of the first two applicants, the confiscation rested on section 1 § 143 of Law no. 244 of 2007 and Article 322 *ter* of the CC (see paragraphs 7 and 11 above); in respect of the third applicant, the confiscation rested on Article 648 *quater* of the CC (see paragraphs 21 and 23 above); and in respect of the fourth applicant, the seizure with a view to the subsequent confiscation of assets rested on a combination of Articles 321 of the CCP, Article 12 *bis* of Legislative Decree no. 74 of 2000 and Article 322 *ter* of the CC (see paragraphs 30 and 32 above). All of these provisions allowed for the seizure and subsequent confiscation of assets at the disposal of the offender.

177. The Court notes that the first two applicants complained that the relevant domestic legislation was not sufficiently foreseeable – mainly because Article 322 *ter* of the CC contained vague and generic notions with regard, in particular, to the possibility to confiscate assets at the “disposal” of an offender (see paragraph 146 above).

178. In this regard, the Court notes that well-established domestic case-law clearly defines the notion of “disposal” as the exercise of *de facto* powers corresponding to the right of ownership over an asset (clarifying, moreover, that such powers may also be exercised through third parties – see paragraph 51 above). This case-law also consistently holds that the domestic courts have to establish – in a rigorous manner, and on the basis of specific elements – that the assets in question are at the disposal of the offender; mere suspicions or the mere lack of adequate financial resources to purchase the assets will not suffice; additionally, the burden of proof shall rest upon the prosecution (see paragraph 52 above).

179. The Court further notes that the Government have provided a number of examples of the application of these criteria (see paragraph 53 above); by contrast, the applicants – aside from complaining of the application of these criteria in respect of their specific cases – did not point to any incoherence or residual lack of clarity in the relevant domestic case-law.

180. As to the first two applicants’ arguments that the possibility to confiscate the equivalent of the proceeds of an offence had been uncertain until 2012, and that Article 322 *ter* of the CC had not become applicable to tax offences until 2007, the Court has already stated that the relevant point in time for an assessment of the foreseeability of a confiscation measure is when the confiscation order in question was issued (see the above-cited cases of *The J. Paul Getty Trust and Others*, § 306, and *Episcopo and Bassani*, §§ 153-55). In the present case, at the time when the confiscation was ordered on 18 July 2012 (see paragraph 11 above), section 1 § 143 of Law no. 244 of 2007 was already in force, and it had already been clearly established by the relevant domestic case-law that the possibility to impose the confiscation

measure extended also to goods whose value amounted to the equivalent of the proceeds of crime (see paragraph 40 above).

181. Given those circumstances, the Court finds no reason to conclude that the legal basis for the confiscation of the first two applicants' assets was not sufficiently foreseeable.

182. It notes that the applicants also argued that the criteria established by the domestic law had been applied incorrectly (see paragraphs 147, 150 and 151 above). The Court considers it appropriate to address this issue with the question of whether the measures were proportionate.

(b) Whether the measures pursued a legitimate aim

183. The Court notes that the confiscation measure ordered in respect of the first three applicants was aimed at punishing the offenders by imposing on them an economic sacrifice corresponding to the proceeds that they had derived from the crime in question; it therefore had (primarily) a punitive purpose in respect of the offenders and (secondarily) a restorative one (see paragraphs 46-47 above). As to the seizure of the fourth applicant's assets, it was aimed at ensuring the enforceability of a possible subsequent confiscation – with the same ultimate aims.

184. The Court has already deemed, on several occasions, that the confiscation of the proceeds of crime is in line with the general interest of the community, as it both operates as a deterrent to those considering engaging in criminal activities, and guarantees that crime does not pay (see, among other authorities, *Todorov and Others*, cited above, § 186; *Gogitidze and Others v. Georgia*, no. 36862/05, § 102, 12 May 2015; and *Veits*, cited above, § 71). Furthermore, the Court has previously found that the application of provisional measures in the context of judicial proceedings aimed at anticipating a possible confiscation of property, is in the “general interest” of the community (see *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, § 148, 16 March 2021, and *Džinić v. Croatia*, no. 38359/13, § 65, 17 May 2016).

185. Therefore, the Court is satisfied that the seizure and confiscation of the applicants' assets pursued a legitimate aim in the public interest.

(c) Whether the measures were proportionate

(i) General principles

186. Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised. In other words, a “fair balance” must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the persons concerned have had to bear an excessive burden (see *The J. Paul Getty Trust and Others*, cited above, § 374, and *Todorov and Others*, cited above, § 187,

with further references). Within that context, a wide margin of appreciation is usually allowed to the State when it comes to measures of criminal policy (*Telbis and Viziteu*, cited above, §§ 70-71).

187. The character of the interference, the aim pursued, the nature of the property rights interfered with, and the behaviour of the applicant and the interfering State authorities are among the principal factors material to an assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant (see *Zaghini*, cited above, § 57, and *Ferhatović v. Slovenia*, no. 64725/19, § 43, 7 July 2022).

188. Furthermore, the Court has, on many occasions, noted that although Article 1 of Protocol No. 1 contains no explicit procedural requirements, domestic proceedings must afford the aggrieved individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging measures interfering with the rights guaranteed by this provision (see the above-cited cases of *Zaghini*, § 57; *Todorov and Others*, § 188; and *G.I.E.M. S.r.l. and Others*, § 302).

189. In a number of cases, the Court has examined measures entailing the confiscation of assets presumed to have been acquired with the proceeds of crime. In such cases, the Court found it legitimate for the relevant domestic authorities to issue confiscation orders on the basis of a preponderance of evidence that suggested that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. Indeed, whenever a confiscation order was the result of civil proceedings *in rem* that related to the proceeds of crime derived from serious offences, the Court did not require proof "beyond reasonable doubt" of the illicit origins of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, was found to suffice for the purposes of the proportionality test under Article 1 of Protocol No. 1. The domestic authorities were further given leeway under the Convention to apply confiscation measures not only to persons directly accused of offences but also to their family members and other close relatives who were presumed to possess and manage the ill-gotten property informally on behalf of the suspected offenders, or who otherwise lacked the necessary bona fide status (see *Yusifli and Others v. Azerbaijan* (dec.), nos. 21274/08 and 6 others, § 75, 6 December 2022; *Telbis and Viziteu*, cited above, § 68; and *Gogitidze and Others*, cited above, § 107, with further references).

190. Additionally, in a number of cases concerning the confiscation of third parties' assets, the Court examined whether the domestic authorities had duly examined whether the applicant had been acting in good faith (see, recently, *Korshunova v. Russia*, no. 46147/19, § 36, 6 September 2022). In this regard, the Court often states that it must determine whether the domestic courts had regard to the applicants' degree of fault or care or, at least, the

relationship between their conduct and the offences that had been committed (see *Silickienė*, cited above, § 66; see also, in respect of cases concerning the confiscation of assets used for the commission of a crime, *Yaşar v. Romania*, no. 64863/13, § 60, 26 November 2019; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, no. 3503/08, § 38, 13 October 2015; and *Yildirim*, cited above). In cases in which the main issue was whether the assets belonged to the applicants or to the offender, the Court examined whether the applicants had had the possibility to vindicate their property rights before the domestic authorities and whether the latter had duly examined that issue (see *Denisova and Moiseyeva*, cited above, § 60-64; also contrast *Yusifli and Others*, cited above, § 79).

(ii) *Application to the present case*

191. The Court will examine the proportionality of the impugned measures in the light of both of the aims of the measure – namely, the punishment of the offenders and the recovery of an amount equivalent to the proceeds of crime.

192. As to the punitive aim, the Court considers that, in order to be considered as necessary and adequate for its achievement, a measure of seizure or confiscation must affect assets that are genuinely owned by the offender. If that were not the case, the measure would be (on the one hand) unsuitable as a means of punishing the offender and (on the other hand) would impose an unjustified burden on the true owner of the assets. Furthermore, the conclusions reached in respect of the complaint raised under Article 7 would no longer hold true (see paragraphs 130-137 above).

193. The Court acknowledges that the second aim pursued by the impugned measures – namely, the recovery of an amount equivalent to the proceeds of crime – would not in principle require an assessment of whether the assets in question belong to the offender. Indeed, the Court has in many cases accepted that confiscation may affect third parties' assets, when these have been obtained unlawfully or the third party otherwise lacks bona fide status (see paragraphs 189-190 above).

Nevertheless, the domestic provisions applied in the present case do not provide for the confiscation of assets that are genuinely owned by third parties, and they have been consistently interpreted as allowing for the confiscation only of assets that are at the disposal of the offender – regardless of whether those assets have an unlawful origin (see paragraphs 49-54 above). Furthermore, in applying these provisions the domestic courts do not assess the unlawful origin of the assets; as to the assessment of third parties' good faith, as the Government state (see paragraph 154 above), it appears to be inherent in the question of whether they can be considered the true owners of the assets or merely fictitious ones.

194. Therefore, the Court deems that – when considering the proportionality of the type of confiscation in question – it is essential to assess

whether the domestic courts have shown, in a reasonable manner and on the basis of objective elements, that the applicants were merely sham owners of the confiscated assets and that these belonged, in reality, to the offenders.

195. With this aim in mind, the Court will apply the same standard of proof as that set out above in respect of the unlawful origin of assets. Although it does not require proof “beyond reasonable doubt” that an offender is indeed the genuine owner of assets that are to be seized or confiscated, it does require that such a conclusion rest on (i) a preponderance of elements suggesting that the owners in question are merely sham owners, and (ii) their inability to prove the contrary (see paragraph 189 above). It does not consider it sufficient that the domestic courts simply prove such owners’ lack of a sufficient income to acquire the assets in question, since this could, at most, only prove the unlawful origin of those assets but not their sham ownership.

196. The Court notes that these criteria substantially coincide with those set forth by the domestic case-law (and invoked by the Government), which require rigorous proof that such assets are *de facto* at the disposal of the offenders in question, without relying on mere suspicions or solely on a lack of funds to purchase the assets (see paragraphs 52 and 153-157 above).

197. It therefore remains to assess whether these criteria have been applied in the cases under examination.

198. In this respect, the Court is sensitive to the subsidiary nature of its role, and it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. It is not the Court’s task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 129, 5 September 2017, and *Radomilja and Others*, cited above, § 150).

199. In the present case, it will therefore confine its examination to establishing whether the domestic courts addressed this issue in a reasonable manner – pointing to at least some specific and objective elements indicating that the confiscated assets had been at the disposal of the offenders, and without relying on mere suspicions or on the mere fact that the applicants had not had sufficient resources to purchase those assets.

(α) The first two applicants

200. In respect of Ms F. Tartamella and Ms B. Tartamella in the course of the criminal proceedings the confiscation of their assets (notably, of the buildings located in Valderice) was ordered on the basis of the finding that they had been at the offender’s disposal. The indications cited by the domestic courts in support of this statement were the first two applicants’ close family

ties with F.P.T., and their lack of sufficient funds to purchase the assets (see paragraphs 11 and 12 above).

201. In the course of the enforcement proceedings the Brescia Court of Appeal confirmed the confiscation on the basis of the first two applicants' lack of funds and on F.P.T.'s allegedly systematic practice of registering third parties as the sham owners of assets (see paragraphs 15-16 above). As to the Court of Cassation, it confirmed the confiscation on the basis of these applicants' failure to submit other arguments in support of their genuine ownership of the assets (additional to their assertions that they had been purchased with funds obtained from their grandparents and from a bank loan); since those arguments had been proved to be unfounded, it was logical to conclude that the assets had been at F.P.T.'s disposal (see paragraph 18 above).

202. In the grounds cited by the domestic courts, the Court is unable to identify any specific element in support of the finding that the assets had been *de facto* owned by F.P.T: as stated above (paragraph 195), the findings concerning the first two applicants' lack of funds to purchase the assets are insufficient in this respect. Therefore, the finding relied upon by the Court of Cassation that the first two applicants had failed to demonstrate the alleged provenance of the funds from a donation and a bank loan is insufficient to point to a sham ownership.

203. As to the other elements cited by domestic courts and invoked by the Government (paragraph 157 above), the Court notes that witness statement according to which F.P.T. owned a building through his daughters referred to a building in Brescia and not to the confiscated buildings (see paragraph 7 above). As to the alleged systemic practices involving sham ownership, they have been referred to in a generic manner: no evidence has been cited, and nor has any link been established between these practices and the confiscated assets (see paragraph 15 above).

204. Given these circumstances, the Court – mindful of its subsidiary role – cannot speculate as to who was the true owner of the confiscated assets. Nevertheless, in its view, the grounds referred to by the domestic courts are insufficient to support the finding that the confiscated assets had been at the disposal of the offender.

205. Additionally, the Court notes that the domestic authorities appear to have made no efforts to investigate the true ownership of the assets: aside from examining the first two applicants' income, they made no attempt to determine, as required by domestic law, who exercised factual dominion over those assets – for example, by using them directly, taking care of their maintenance, managing them or drawing an income from them.

206. The Court is therefore unable to conclude that the domestic courts addressed the issue of the true ownership of the assets in a reasonable manner; nor did they point to at least some specific indications that the confiscated

assets had been at the disposal of the offender. It follows that, in respect of the first two applicants, the confiscation was not sufficiently justified.

207. There has therefore been a breach of Article 1 of Protocol No. 1 to the Convention in their regard.

(β) The third applicant

208. In respect of Ms Koka the judge ordering the confiscation in the course of the criminal proceedings did not indicate any specific grounds for holding that the assets were genuinely owned by the offender; nevertheless, the prosecutor's order for the seizure and the subsequent decision of the Milan preliminary investigations judge validating the seizure indicated a number of reasons relating to S.Z.'s involvement in the negotiations regarding the boat and its purchase and the fact that he had provided the funds both for the purchase and for the broker fees (see paragraphs 21-23 above).

209. In the course of the enforcement proceedings, the Milan preliminary investigations judge confirmed the confiscation on the basis of the same elements as those indicated above. The judge also cited the fact that: the third applicant had not been able to afford to pay for the maintenance and docking of the boat; part of the docking fees had been paid by S.Z.; and S.Z. had agreed to the confiscation of the boat in his request for a plea bargain (see paragraphs 26-27 above). The Court of Cassation confirmed these findings (see paragraph 28 above).

210. The Court therefore notes that the domestic authorities investigated the behaviour of the offender and of the third applicant in respect of the confiscated boat (instead of limiting their analysis to the applicant's lack of funds) and pointed to specific elements indicating that the boat had been at S.Z.'s disposal and that the third applicant was merely a sham owner.

211. There has accordingly been no violation of Article 1 of Protocol No. 1 in respect of the third applicant.

(γ) The fourth applicant

212. As a preliminary consideration, the Court considers it appropriate – in respect of the seizure of the assets of Ms Santorelli – to follow the same reasoning as that set out above. In fact, although the measure is a provisional one, it rests on the same grounds – namely, the fact that the assets were found to be at the disposal of the person accused of the crime.

213. The Court notes that, in respect of the fourth applicant, neither the judge who ordered the confiscation in the course of the criminal proceedings nor the authorities who carried out and validated the seizure cited any indications that the seized assets had been at the disposal of the accused person (see paragraphs 31-32 above).

214. In dismissing the fourth applicant's application for the return of her assets, the Modena preliminary investigations judge referred to the

applicant's lack of sufficient resources and to the nature of those assets (which are generally bought as a form of investment – see paragraph 34 above). The Modena District Court added that (i) the fourth applicant had been aware of the fact that the assets had been fictitiously registered in her name (as indicated by the content of intercepted telephone conversations), (ii) the offender had concluded the preliminary contract for the purchase of the confiscated apartment, and the keys to it were held by one of his partners, and (iii) the other seized assets had been held in the family home and F.S. had still been able to dispose of them (see paragraph 35 above).

215. The Court therefore notes that the domestic authorities investigated the behaviour of F.S. and of the fourth applicant in respect of the seized assets (instead of limiting their analysis to the fourth applicant's lack of funds) and cited specific elements indicating that they were at F.S.'s disposal and that the fourth applicant was merely a sham owner.

216. Therefore, it finds that there has been no violation of Article 1 of Protocol No. 1 in respect of the fourth applicant.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

217. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

Damage

218. Ms F. Tartamella and Ms B. Tartamella asked the Court to order the return of the confiscated assets and award them the amount of EUR 733,694 euros – plus statutory interest and an adjustment for inflation – in respect of damage caused by the deterioration of the assets.

In the alternative, they claimed EUR 1,147,246 – plus statutory interest and an adjustment for inflation – in respect of loss of property. Relying on a private expert report, they argued that this amount corresponded to the market value of the confiscated assets.

They further asked for just satisfaction in respect of the unavailability of the assets from the moment of their confiscation until their return – which, according to the above-mentioned expert report, amounted to EUR 39,037.64 per year – a total amount (as at the date of the latest observations received) of EUR 448,932.86, plus statutory interest and an adjustment for inflation.

In respect of non-pecuniary damage, the first two applicants claimed EUR 50,000 each.

They did not claim any sum in respect of costs and expenses.

219. The Government contested both the existence of the damage cited and the amount claimed, which they considered to be excessive.

220. The Court considers that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement being reached between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

221. In respect of non-pecuniary damage, it awards the first two applicants, jointly, EUR 5,000, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints raised by the fourth applicant in respect of the confiscation inadmissible;
3. *Declares* the complaints raised under Article 7 inadmissible;
4. *Declares* the complaint raised by the third applicant under Article 6 § 1 concerning the impartiality of Judge A.C. inadmissible and the remainder of her complaint under Article 6 § 1 admissible;
5. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the third applicant;
6. *Declares* the complaints raised under Article 1 of Protocol No. 1 admissible;
7. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the first two applicants;
8. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention in respect of the third and fourth applicants;
9. *Holds* that the question of the application of Article 41 in relation to application no. 26338/19 is not ready for decision in so far as pecuniary damage resulting from the violations found in the present case is concerned, and accordingly:
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the first two applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written

observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

- (c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be;

10. *Holds*

- (a) that the respondent State is to pay the first two applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-noted amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

11. *Dismisses* the remainder of the first two applicants' claim for just satisfaction in respect of non-pecuniary damage.

Done in English, and notified in writing on 23 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President

APPENDIX

List of applications

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	26338/19	Tartamella v. Italy	14/05/2019	Francesca TARTAMELLA 1982 Perugia Italian Barbara TARTAMELLA 1980 London Italian	Silvia RICCI
2.	1823/21	Koka v. Italy	23/12/2020	Szilvia KOKA 1974 Costa Volpino Hungarian	Filippo CARUSO
3.	12868/22	Santorelli v. Italy	01/03/2022	Silvia SANTORELLI 1985 Savignano sul Panaro Romanian	Pina DI CREDICO