



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

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FIRST SECTION

Application no. 76967/17 against
Italy and 13 other applications
(see list appended)
communicated on 27 November 2023

SUBJECT MATTER OF THE CASE

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

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

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

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

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

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

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

QUESTIONS TO THE PARTIES

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

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

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

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

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

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

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

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

3. Taking into account the characterisation of the contested measure under the domestic law and case-law (compare, *inter alia*, Court of Cassation, judgments no. 18 of 3 July 1996, no. 57 of 8 January 2006, no. 39204 of 17 May 2013, and no. 4880 of 2 February 2015; *contra* judgment no. 14044 of 25 March 2013; see also, *inter alia*, Constitutional Court, judgments no. 21 of 9 February 2012, and no. 24 of 27 February 2019), its nature and purpose, the procedures involved in its imposition and implementation, and its severity, did the confiscation applied to the applicants pursuant to Article 24 of Decree no. 159/2011 amount to a "penalty" within the meaning of Article 7 § 1 of the Convention (compare *Arcuri v. Italy* (dec.), no. 52024/99, § 2, ECHR 2001-VII, *Capitani and Campanella v. Italy*, no. 24920/07, § 37, 17 May 2011, *Gogitidze and Others*, cited above, § 121, and, *mutatis mutandis*, *Balsamo*, cited above, § 58 et seq., and contrast with *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 214 et seq., 28 June 2018)?

If so, has there been a violation of Article 7 of the Convention on account of the alleged lack of clarity and foreseeability of the applicable law?

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

If so, has there been a violation of the presumption of innocence, guaranteed by Article 6 § 2 of the Convention (see *Allen v. United Kingdom* [GC], no. 25424/09, CEDH 2013, and, *mutatis mutandis*, *Geerings v. the Netherlands*, no. 30810/03, § 47, 1 March 2007)?

APPENDIX

List of applications:

No.	Application no. Case name Introduction date	Applicant's name Year of birth/Registration date Place of residence Nationality	Representative's name Location	Relevant domestic provision	Position in the domestic proceedings	Convention Articles (as invoked by the applicants), complaints and questions to the parties	Final domestic decision
1.			Giuseppe FEVOLA Latina	Article 1 § 1 (a) and (b) of Decree no. 159/2011	Third party – Son of F.P., declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 26905 of 30 May 2017
2.			Gaetano MARINO Latina	Article 1 § 1 (a) and (b) of Decree no. 159/2011	Thirdparty – Shareholder of a company which has been considered as belonging to F.P., declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 26905 of 30 May 2017
3.			Leone ZEPPIERI Latina	Article 1 § 1 (a) and (b) of Decree no.	Third party – owner a company which has been considered as belonging	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with	Court of Cassation, judgment no. 26905 of

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				159/2011	to F.P., declared socially dangerous in the domestic proceedings	regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	30 May 2017
4.			Luca GIUDETTI Latine	Article 1 § 1 (a) and (b) of Decree no. 159/2011	Declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a) Article 2, Protocol No. 4 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 2, lett. (a)	Court of Cassation, judgment no. 26905 of 30 May 2017

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5.			Giuseppe FEVOLA Latina	Article 1 § 1 (a) and (b) of Decree no. 159/2011	Third party – <i>de facto</i> cohabitant of F.P., declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 26905 of 30 May 2017
6.			William VOARINO Torino	Article 1 § 1 (a) and (b) of Decree no. 159/2011	Third party – owner of a property which has been considered belonging to A.V. and A.E., respectively the applicant's sister-in-law and brother-in-law, declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 6493 of 9 February 2018
7.			William VOARINO	Article 1 § 1 (a) and (b) of	B.D.G. (first applicant) – Declared socially	Article 1, Protocol No. 1 - lack of foreseeability	Court of Cassation, judgment

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			Torino	Decree no. 159/2011	dangerous in the domestic proceedings R.V. (second applicant) – Third party – First applicants' wife V.D.G. (third applicant) – Third party – First applicant's son	of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	no. 28434 of 20 June 2018
8.			Ferdinando BONON Padova	Article 1 § 1 (a) of Decree no. 159/2011	Declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to	Court of Cassation, judgment no. 57125 of 18 December 2018

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						whom preventive measures can be applied - question no. 1, lett. (a)	
9.			Marcello MADIA Rome	Article 1 § 1 (b) of Decree no. 159/2011	Declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 20557 of 9 July 2020
10.			Giacomo SCICOLONE Rome	Article 1 § 1 (b) of Decree no. 159/2011	Declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 20557 of 9 July 2020
11.			Anna LARUSSA	Article 1 § 1 (b)	Declared socially	Article 1, Protocol No.	Court of Cassation,

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			Reggio de Calabre	of Decree no. 159/2011	dangerous in the domestic proceedings	1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	judgment no. 9899 of 12 March 2021
12.			William VOARINO Torino	Article 1 § 1 (b) of Decree no. 159/2011	Declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a) Article 2, Protocol No. 4 - lack of foreseeability of the legal basis with regard to individuals to whom preventive	Court of Cassation, judgment no. 34924 of 21 September 2021

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						measures can be applied and lack of proportionality of the measure - question no. 2	
13.			Anna D'ALESSANDRO Rome	Article 1 § 1 (b) of Decree no. 159/2011	A.I. (first applicant) – Declared socially dangerous in the domestic proceedings F.I (second applicant) – Third party – First applicants' father M.V. (third applicant) – Third party – First applicant's mother S.P.I. (fourth applicant) – Third party – First	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a)	Court of Cassation, judgment no. 36173 of 5 October 2021

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					applicant's sister		
14.			Augusto SINAGRA Gorizia	Article 1 § 1 (b) of Decree no. 159/2011	Ville Management LTD (first applicant) – Third party – Owner a company which has been considered as belonging to the second applicant E.G. (second applicant) – Declared socially dangerous in the domestic proceedings	Article 1, Protocol No. 1 - lack of foreseeability of the legal basis with regard to individuals to whom preventive measures can be applied - question no. 1, lett. (a) Article 6 § 1 – reasonable opportunity of putting arguments before the domestic courts – question no. 1,	Court of Cassation, judgment no. 14777 of 15 April 2022

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						<p>lett. (b), iii)</p> <p>Article 7 – lack of foreseeability of the legal basis – question no. 3</p> <p>Article 6 § 2 – presumption of innocence – question no. 4 (as regards the second applicant)</p>	