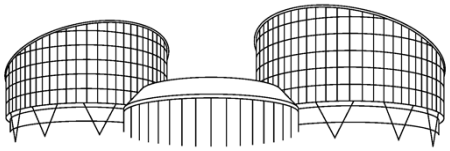

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CĂLIN v. ROMANIA

(Application no. 54491/14)

JUDGMENT

Art 1 P1 • Control of the use of property • Protracted seizure of applicant's assets in the context of a criminal investigation against him • Lack of opportunity to effectively challenge the seizure • No evidence of possibility of obtaining compensation • Excessive burden

Art 6 § 1 (criminal) • Excessive length of criminal investigation

STRASBOURG

5 April 2022

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 Călin v. Romania,

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

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 54491/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Oprea Călin ("the applicant"), on 25 July 2014;

the decision to give notice of the application to the Romanian Government ("the Government");

the parties' observations;

Having deliberated in private on 15 March 2022,

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

INTRODUCTION

1. The application concerns, in particular, the applicant's complaint that his property was seized for an excessive amount of time, constituting a breach of his right to the peaceful enjoyment of his possessions in the absence of an effective domestic remedy. It also concerns the allegedly excessive length of the criminal investigation in respect of the applicant. The case raises issues under Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1.

THE FACTS

2. The applicant was born in 1937 and lives in Bucharest. He was represented by Ms E.R. Cozma, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms S.M. Teodoroiu, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CRIMINAL PROCEEDINGS

5. On 20 March 2003, following a complaint lodged by a bank, a criminal investigation was launched by the Bucharest General Police Department ("the

BGPD") in respect of the applicant and seventeen other people suspected of unlawfully approving non-performing loans in their capacity as members of the board of directors of the bank in question.

6. On 1 April 2003 the BGPD, on the basis of Articles 163-66 of the former Code of Criminal Procedure (hereinafter "the old CCP" – see paragraph 29 below), ordered the seizure of all assets owned by the applicant in order to cover the damage in the amount of 360,500 United States dollars (USD) allegedly caused to the bank by the offences under investigation.

7. On the basis of the above decision, on 2 April 2003 police officers from the BGPD carried out a search at the applicant's home. The seizure report, drafted by the police officers after the search, mentioned that the seizure measure had been taken in relation to the applicant's apartment and two cars; the title deeds to the apartment and the registration and property documents for the two cars were to be kept by the police while the assets in question remained in the applicant's possession. According to documents from the tax authorities, the value of the seized apartment was approximately USD 141,873. The search report, also drafted on the same date, mentioned that the title deeds to the applicant's apartment, the property and registration documents for his two cars, and money in several currencies amounting to approximately 4,000 euros (EUR) that had been found during the search, were to be seized pursuant to Articles 96-97 of the old CCP (see paragraph 31 below).

8. On 3 April 2003 the applicant was informed that he was charged with dereliction of duty (*neglijență în serviciu*) and on 6 May 2003 a statement was taken from him by the police.

9. Throughout the year 2003 an accounting expert report was requested by the police and statements were taken from other suspects and one witness.

10. The accounting report was produced on 26 August 2004 and quantified the damage caused to the bank at USD 415,804. One month later the applicant gave a new statement to the police.

11. In 2005 and 2006 various prosecutor's offices declined jurisdiction to deal with the case.

12. On 16 November 2006 the police finalised the investigation and sent the case to the prosecutor with a proposal to commit several of the accused for trial and to close the criminal investigation as regards other accused, including the applicant.

13. On 22 January 2007 the prosecutor's office attached to the Bucharest County Court decided to relinquish its jurisdiction to deal with the case in favour of the prosecutor's office attached to the Bucharest 4th District Court.

14. In a decision of 3 February 2009, the case prosecutor ordered the continuation of the investigation by the police as regards the applicant and other suspects.

15. On 16 March 2011 the Chief Prosecutor of the prosecutor's office attached to the Bucharest 4th District Court quashed the decision of

3 February 2009 and decided that the investigation by the prosecutor should continue. The next day, the case prosecutor decided to close the investigation as regards some of the suspects and to send the case back to the police to continue the investigation as regards the remaining ones, including the applicant.

16. On 13 July 2012, in an internal note, the prosecutor in charge of the case found that the investigation had exceeded a reasonable time and proposed that the police be contacted to speed up the proceedings.

17. On 29 January 2014, on the basis of Article 249 § 1 of the old CCP, the charges against the suspects including the applicant were dropped (*scoatere de sub urmărire penală*) because their actions could not be characterised as offences. As regards one of the suspects, the criminal investigation was closed on the basis of Article 245 § 1 of the old CCP owing to his death. The prosecutor also decided to maintain the seizure measures ordered in the case but to return the assets seized from the suspects, without identifying which assets or suspects were concerned.

II. COMPLAINTS LODGED BY THE APPLICANT DURING THE CRIMINAL INVESTIGATION

18. In 2008 and 2009 the applicant lodged two complaints regarding the length of the proceedings and the duration of the seizure of his assets, explaining that that measure was causing him damage, especially as regards the two cars, which were deteriorating as time went by. The complaints were rejected as ill-founded by the prosecutor on 29 September 2008 and 1 May 2009. It was held that the investigation had not exceeded a reasonable duration since it concerned numerous suspects and complex facts.

19. On 31 August 2009 and 25 November 2011 the applicant complained again about the delay in the investigation and requested the return of the registration documents for the two cars so that he could use them. He mentioned that he considered that there had been an abuse of process in his case and that the failure to return the property documents to him had caused him pecuniary and non-pecuniary damage. His complaints were rejected by the prosecutor, who considered that, as matters stood, the investigation had not exceeded a reasonable time and the registration documents for the two cars "that the applicant claim[ed] had been seized" were not in the file.

20. On 24 July 2012 the applicant was informed by the prosecutor that the delays in the investigation had not been the prosecutor's fault. They had been caused by the high number of suspects and the complexity of the case.

21. On 4 March 2013 the applicant lodged a request with the prosecutor's office for the return of the car registration documents, arguing again that the cars had deteriorated with time. No reply was received.

22. On 16 July 2013 the applicant asked for the lifting of the seizure measure ordered in his case as it had exceeded a reasonable time. He also

requested the resolution of the case without delay and mentioned that his right to a fair trial within a reasonable time as guaranteed by Article 6 of the Convention had been breached. In the absence of a reply, he reiterated his requests in August 2013. In a decision of 15 October 2013, the Chief Prosecutor noted that the applicant's initial request of 16 July 2013 had been rejected because the investigation was still pending. Therefore, he considered that the second request should be rejected as being devoid of purpose. However, the applicant never received the decision adopted in response to his complaint of 16 July 2013.

23. On 23 September 2013 the applicant complained to the Bucharest 4th District Court that both the investigation and the seizure measure had exceeded a reasonable time and asked the court to lift the measure in question. His complaint was rejected as inadmissible by the court on 22 October 2013. The court held that in the light of the decision of the High Court of Cassation and Justice (see paragraph 30 below), as long as the investigation was still pending, it lacked jurisdiction to examine the applicant's complaints.

III. COMPLAINTS LODGED BY THE APPLICANT AFTER THE END OF THE INVESTIGATION

24. On 7 March 2014 the applicant requested the prosecutor's office to lift the seizure measure applied to his assets. His request was forwarded by the prosecutor to the preliminary chamber judge of the Bucharest 4th District Court on the basis of Article 250 § 1 of the new Code of Criminal Procedure ("the new CCP" – see paragraph 33 below). The court, in turn, considered that the request fell within the scope of Article 339 § 1 of the new CCP (see paragraph 34 below) and decided to send it back to the prosecutor to be examined pursuant to that Article.

25. On 31 March 2014 the applicant complained to the courts on the basis of Article 340 of the new CCP against the prosecutor's decision of 29 January 2014. He alleged that the continuation of the seizure in respect of his assets had been unlawful and unfounded and asked the court to lift the measure. The court considered that the applicant's complaint was inadmissible as, in accordance with Article 340 and Article 341 § 6 letter (a) of the new CCP (see paragraph 34 below), the prosecutor's decision could be contested only in so far as it entailed closing or abandoning the criminal investigation. The court's decision, taken *in camera* on 26 May 2014, was final.

26. On 25 June 2014 the Chief Prosecutor of the prosecutor's office attached to the Bucharest 4th District Court examined and rejected the applicant's complaint of 7 March 2014 (see paragraph 24 above), to which it joined two other requests lodged by the applicant in the meantime concerning the return of the property documents and the money seized, as mentioned in the search report of 2 April 2003. The prosecutor explained that Article 245 § 1 letter (c) of the new CCP provided that the seizure measure was to be

considered lifted *de jure* if the injured party did not lodge separate civil claims within thirty days from the prosecutor's final decision (see paragraph 32 below). As regards the request for the return of the documents and money, the prosecutor stated that it was inadmissible since the return of the seized assets had already been ordered by the decision of 29 January 2014 (see paragraph 17 above) and the responsibility to enforce that decision belonged to the police. Therefore, a copy of the applicant's request would be sent to be dealt with by the Bucharest 4th District Police.

27. On 1 July 2014 the applicant lodged written requests to the Bucharest 4th District Police and the BGPD, asking them to enforce the prosecutor's decision and to return the assets and documents seized from him that were mentioned in the search report (see paragraph 7 above). The BGPD informed the applicant that his request had been forwarded to the Bucharest 4th District Police. At the time of the latest information available to the Court (12 November 2019), no reply had been received from the Bucharest 4th District Police.

28. From an extract of the Immovable Property Register (*Extras de carte funciară*) dated 7 May 2019 it appears that, at that date, no seizure measure was listed as regards the applicant's apartment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGAL FRAMEWORK

29. The relevant provisions of the old CCP in force until 31 January 2014 concerning seizure read as follows at the material time:

Article 163 – Precautionary measures [*Măsurile asigurătorii*]

"(1) Precautionary measures are taken during the criminal proceedings by the criminal investigation body [*organul de urmărire penală*] or by the court and consist in freezing, by means of seizure, movable and immovable property, with a view to securing special confiscation, in order to cover damage caused by an offence, as well as to guarantee the payment of a fine.

(2) Precautionary measures aimed at covering damage [caused by an offence] may be taken in respect of assets belonging to the suspect, accused or party liable under civil law, up to the maximum value of the damage."

Article 168 – Complaints against precautionary measures

"(1) The suspect, accused, party liable under civil law and any other interested person may lodge a complaint with the prosecutor or the court, at any stage of the criminal proceedings ...

(3) After the adoption of a final decision in the criminal trial, in the event that no complaint has been lodged with respect to the enforcement of the precautionary measure, a complaint may be lodged under the provisions of civil law."

30. The provisions of the above-mentioned Article 168 were clarified in an appeal on points of law by the High Court of Cassation and Justice, which held (in decision no. 71/2007) that precautionary measures could only be contested before the prosecutor while the investigation was ongoing, and before the courts once the investigation had been concluded and the case sent for trial.

31. The relevant provisions of the old CCP concerning the seizure of objects and documents as evidence read as follows:

Article 96 – Seizure of objects and documents

"The criminal investigation body or the court is under the obligation to seize objects and documents that may serve as evidence in the criminal proceedings."

Article 97 – Surrender of objects and documents

"1. Any natural or legal person in possession of an object or a document that may serve as evidence is under an obligation to present and surrender it to the criminal investigation body or the court upon its request.

2. Where the criminal investigation body or the court finds that a copy of a document may serve as evidence, it shall retain only that copy."

Article 109 – Decisions concerning seized objects

"1. The criminal investigation body or the court shall decide whether objects and documents constituting evidence should be attached to the case file or otherwise stored ...

3. Material evidence is stored by the criminal investigation body or by the court pending the resolution of the case.

4. Objects surrendered or seized during a search that are unconnected to the case shall be returned to the person to whom they belong. Objects that may be confiscated shall not be returned.

5. Objects serving as material evidence, if not subjected to confiscation, may be returned to the person to whom they belong, even before the final resolution of the case, except where such a return could hinder the discovery of the truth. The criminal investigation body or the court shall warn the person to whom the objects or documents are returned that they must be kept until the case has been finally resolved."

32. Article 245 of the old CCP provided for the elements to be included in the decision to close the investigation. More specifically, Article 245 § 1 letter (c) of the old CCP provided that the seizure measures that had been kept in place when the investigation was closed were to be considered lifted if the injured person had not lodged civil claims within thirty days from the closure of the investigation. Those provisions, which also applied to a decision to drop the charges, have been reproduced in Article 315 § 2 letter (a) of the new CCP.

33. On 1 February 2014 the new CCP entered into force and started to apply to all pending criminal proceedings (with a few exceptions which are

not relevant in the context of the present case). No specific transitory provisions were adopted with reference to seizures. The new CCP included the following relevant new provision as regards precautionary measures:

Article 250 § 1 – Complaint against precautionary measures

"The suspect, accused or any other interested person may lodge a complaint with the court with jurisdiction to decide on the merits of the case against the prosecutor's decision to take a precautionary measure, within three days of its notification or the date of its enforcement."

34. Article 339 of the new CCP, as in force at the material time, set forth the general provisions concerning complaints against the measures adopted and the acts carried out by the prosecutor or under his or her orders. Paragraph 1 provided that such a complaint was to be dealt with by the Chief Prosecutor of the relevant prosecutor's office. A person whose complaint against a decision to close or to abandon the investigation had been rejected by the Chief Prosecutor could lodge an appeal with a court under Article 340. The court examining the appeal could, on the basis of Article 341 § 6 letter (a), adopt a decision rejecting it as out of time, inadmissible or ill-founded, in cases where the criminal trial had not started (*nu s-a dispus punerea în mișcare a acțiunii penale*).

35. The relevant provisions of both the old and the new CCP and of the Civil Code regarding compensation are described in *Credit Europe Leasing Ifn S.A. v. Romania* (no. 38072/11, §§ 39 and 40, 21 July 2020).

II. RELEVANT PRACTICE OF THE DOMESTIC COURTS

36. The Government submitted examples of judgments adopted by the domestic courts in cases in which the seizure of assets ordered during an investigation had been contested before the courts. All these judgments were adopted in cases in which the criminal investigation had ended with the defendants being sent for trial, or in cases concerning measures ordered after the entry into force of the new CCP.

37. The Government also submitted the following examples of case–law.

38. In a judgment of 1 April 2014 adopted by the Oradea Court of Appeal in the context of a complaint lodged on 3 February 2014 (on the basis of the new CCP) against a seizure measure ordered by the prosecutor on 7 January 2013 (on the basis of the old CCP), the court explained that such a complaint had to be lodged within the three-day time-limit set by Article 250 § 1 of the new CCP.

39. In a judgment of 15 September 2017, the High Court of Cassation and Justice examined a request for the acknowledgment of the *de jure* termination of a seizure measure that had been kept in place by the prosecutor when closing an investigation in respect of a suspect on the grounds of the latter's death. The court explained that the new CCP did not specifically provide for

the possibility of complaining against a prosecutor's decision to close the investigation while keeping the seizure measure in place, notwithstanding whether the measure had been ordered on the basis of the old CCP or the new CCP. However, in the specific circumstances of the case – in the light of the fact that the civil party had brought a claim for damages before the civil courts – the court decided to examine the claim and dismiss it.

40. Lastly, a judgment was adopted by the High Court of Cassation and Justice on 30 January 2014, concerning a claim for compensation for damage incurred as a result of an allegedly unlawful detention and investigation and several preventive or other measures adopted during the investigation in respect of the plaintiff. The plaintiff in the case in question (a former customs officer and former member of parliament) had been placed in pre-trial detention for several months during the criminal investigation and then, eleven years later, the proceedings against him had ended with the prosecutor's decision to close the investigation as he had committed no offence. Under Articles 504 and 505 of the old CCP, concerning the right to compensation for unlawful conviction and deprivation of liberty and the general tort provisions in Articles 998 and 999 of the former Civil Code, the court awarded the plaintiff compensation in respect of non-pecuniary damage. The court established that the plaintiff had first been held in pre-trial detention but had not subsequently been brought before a court and had had the charges against him dropped. This was considered by the court to be a judicial error, giving rise to the right to compensation. The court awarded compensation for a number of measures adopted by the prosecutor and their excessive duration. These measures included the pre-trial detention of the plaintiff and the seizure of his car.

THE LAW

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

41. The applicant complained that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

42. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

43. The applicant submitted that the criminal investigation in respect of him had been unnecessarily prolonged by numerous periods of inactivity and several conflicts of jurisdiction, all of which were imputable to the authorities.

44. The Government asked the Court to take into consideration the efforts made by the Romanian authorities to address the applicant's difficult criminal case in a prompt manner. They submitted that the duration of the proceedings had been influenced by a number of factors, such as the complexity of the case, the high number of defendants and the numerous documents in the case file, and the fact that some of the suspects had fled or had refused to cooperate with the authorities.

45. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

46. In the present case the period to be taken into consideration began on 2 April 2003 (see paragraph 7 above) when it can be considered that the applicant was substantially affected by the measures taken in the criminal investigation against him (see *Liblik and Others v. Estonia*, nos. 173/15 and 5 others, § 94, 28 May 2019) and ended on 29 January 2014 (see paragraph 17 above). The proceedings thus lasted ten years and ten months, for the criminal investigation phase alone.

47. While the case involving the applicant and a number of other suspects may have been of some complexity, the Court notes that over the entire course of the proceedings there were procedural delays, such as an accounting report being produced only after a delay of one year (see paragraph 10 above) or the successive relinquishments of jurisdiction (see paragraphs 11 and 13 above), and also numerous periods of inactivity on the part of the authorities. Moreover, the authorities themselves noted that the proceedings had exceeded a reasonable time (see paragraph 16 above). It does not appear from the file that the applicant had been responsible for any delays.

48. In the leading case of *Vlad and Others v. Romania* (nos. 40756/06 and 2 others, 26 November 2013), the Court found a violation in respect of issues similar to those in the present case. In addition, in the subsequent leading case of *Brudan v. Romania* (no. 75717/14, § 88, 10 April 2018) the Court found that, at the time the present application was lodged, there had been no domestic remedy available for complaints similar to those raised by the applicant in the present case.

49. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of

persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

50. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

51. The applicant complained that the seizure of his assets had interfered with his property rights, contrary to 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."

52. Relying on Article 13 of the Convention, the applicant also complained of a lack of an effective remedy in respect of that interference.

53. Being the master of the characterisation to be given in law to the facts of the case (see, for example, *Radomilja and Others v. Croatia* [GC], no. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) and bearing in mind the procedural requirements inherent in Article 1 of Protocol No. 1 (see the case-law quoted in paragraph 76 below), the Court finds it appropriate to examine the complaint raised under Article 13 of the Convention as part of the complaint under Article 1 of Protocol No. 1 (see *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, § 47, 21 July 2020).

A. Admissibility

54. The Government submitted that the applicant had failed to exhaust the available domestic remedies in connection with his complaint under Article 1 of Protocol No. 1 to the Convention (see paragraphs 64-66 below).

55. The Court considers that in the particular circumstances of the case, the Government's objection is so closely linked to the substance of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention that it should be joined to the merits (see *Credit Europe Leasing Ifn S.A.*, cited above, § 57).

56. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

57. The applicant alleged that, given its excessive duration, the seizure of his assets had been a disproportionate and unjustified interference with his property rights. He argued that, even though the apartment and the cars remained in his possession, the title deeds to the apartment and the registration and property documents for the cars remained in the authorities' possession. Under those circumstances, he could not use the cars or dispose of his apartment. To date, in spite of numerous complaints and requests he had still not received back the above-mentioned documents and the money seized from him. The two cars, which he could not use in the absence of their registration documents, had now totally deteriorated.

58. The applicant further submitted that he had not had sufficient procedural safeguards at his disposal against the seizure of his assets, as the national legal framework had not provided for the possibility of contesting the prosecutor's decision of 29 January 2014 before the courts (see paragraphs 24, 25 and 30 above).

59. As regards the availability of domestic remedies in his situation, the applicant explained that the provisions of Article 504 of the old CCP (see paragraph 35 above) had only applied to people who had been wrongfully convicted or unlawfully detained. He pointed out that the decision of the High Court of Cassation and Justice of 30 January 2014 on which the Government had based their arguments (see paragraph 40 above) concerned a claim for compensation for unlawful detention, in relation to which the claim for compensation for the allegedly unlawful seizure had been secondary.

60. As regards the Government's submissions concerning the cessation of the seizure pursuant to the provisions of Article 245 of the old CCP and Article 315 of the new CCP (see paragraph 66 below), those provisions related to a different situation, namely the closure of the investigation, whereas in the applicant's case the charges had been dropped, that being a different scenario provided for by Article 249 of the old CCP, which did not include any specific provisions concerning the measures taken by the prosecutor.

61. As regards the civil actions suggested by the Government (see paragraph 66 below), the applicant explained that he had already tried, to no avail, all possible remedies available within the criminal proceedings. Moreover, the action to rectify the Immovable Property Register had lacked any purpose since the seizure was no longer listed in that register (see paragraph 28 above).

62. The applicant submitted in conclusion that, in spite of the numerous requests and complaints he had lodged with the relevant authorities, he was

still not in possession of the property documents for the apartment and the two cars and had still not been returned the money seized, more than eighteen years from the seizure.

(b) The Government

63. The Government submitted that the seizure of the applicant's assets had been lawful and pursued the legitimate aim of guaranteeing the reparation of the damage caused by the offences under investigation. The measure had also been proportionate to the aim pursued as its duration was due to a complex investigation, involving numerous suspects whose assets had also been seized. Moreover, the apartment and the cars seized remained in the applicant's possession.

64. The Government further submitted that the seizure of the applicant's assets had been accompanied by sufficient procedural guarantees. More specifically, referring to examples of case-law, they pointed out that Article 250 of the new CCP included provisions which allowed the suspect or the accused to contest measures taken during the investigation within a specific time-limit before the courts (see paragraphs 33 and 36-39 above).

65. They also argued that adequate domestic remedies had been available in the applicant's situation. Firstly, the applicant could have brought a claim before the courts in respect of non-pecuniary damage under Article 504 of the old CCP, or Chapter VI of the new CCP from 1 February 2014 concerning the procedure for compensation for judicial errors (see paragraph 35 above). Under those legal provisions, those who had been subjected to a judicial error were entitled to seek compensation for any damage sustained, including in the event of the allegedly disproportionate seizure of their assets, as shown in the case-law example provided in paragraph 40 above.

66. Secondly, in accordance with Article 245 of the old CCP and Article 315 of the new CCP (see paragraph 32 above), the seizure of the applicant's assets had ended once thirty days had elapsed from the prosecutor's decision of 29 January 2014, in the absence of a civil claim being lodged before the civil courts by the injured party. In the light of the above-mentioned legal provisions concerning the *de jure* termination of the seizure, the applicant could have brought an action in the civil courts for confirmation of the *de jure* termination of the seizure under Article 35 of the Civil Code or for correction of the Immovable Property Register so that the seizure measure in connection with the apartment would no longer be listed.

2. The Court's assessment

(a) Existence of an interference with the right to property and the applicable rule

67. From the facts of the case, the Court notes that the "possessions" at issue were immovable and movable assets seized on 2 April 2003 (see paragraph 7 above). The Government did not contest the interference with the

applicant's property rights over the assets in question. Therefore, the seizure complained of may be regarded as an interference with the applicant's exercise of his right to the peaceful enjoyment of his possessions.

68. The Court further points out that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many authorities, *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 185, ECHR 2012).

69. The Court observes that the seizure of assets ordered during criminal proceedings is in principle a measure which amounts to a temporary restriction on their use and does not involve a transfer of ownership. This line of reasoning has led the Court to regard seizure as a measure entailing control of the use of property (see, among other authorities, *Stołkowski v. Poland*, no. 58795/15, § 53, 21 December 2021; *Cernea v. Romania*, no. 7486/12, § 42, 18 December 2019; *OOO SK Stroykompleks and Others v. Russia*, nos. 7896/15 and 48168/17, § 86, 17 December 2019; and *Iordăchescu v. Romania* (dec.), no. 32889/09, §§ 37 and 38, 23 May 2017).

70. Accordingly, the Court considers that the same approach must be followed in the present case.

(b) Compliance with Article 1 of Protocol No. 1

(i) Whether the interference was prescribed by law and pursued a legitimate aim

71. The Court reiterates that Article 1 of Protocol No. 1 requires above all that any interference by a public authority with the enjoyment of property be in accordance with the law: the second sentence of the first paragraph only authorises deprivation of property "subject to the conditions provided for by law"; the second paragraph entitles the States to control the use of property by enforcing "laws". Moreover, the rule of law, which is one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. It follows that the need to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights

becomes relevant only once it has been established that the impugned interference satisfied the requirement of lawfulness and was not arbitrary (see *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I, and *Iordăchescu*, cited above, § 39, with further references).

72. Turning to the present case, the Court notes that the seizure of the applicant's property was ordered pursuant to two different legal bases: Articles 163-66 of the old CCP (see paragraphs 6 and 29 above) that allowed for the seizure of assets in order to cover the damage caused by the offences in question and Articles 96-97 of the old CCP (see paragraphs 7 and 31 above) that allowed for the seizure of documents and objects that could serve as evidence. The Court is therefore satisfied that the interference with the applicant's property right was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

73. The Court further observes that the measure based on Articles 163-66 of the old CCP was ordered and carried out in the context of a criminal investigation into offences that had allegedly caused damage to a third party (see paragraph 10 above). Therefore, the Court accepts that the interference was in the "general interest" of the community because it was aimed at securing the civil claims of the injured party (see *Borzhonov v. Russia*, no. 18274/04, § 58, 22 January 2009). As regards the measure based on Articles 96-97 of the old CCP, the Court accepts that retention of physical evidence may be necessary in the interests of proper administration of justice, which is also a "legitimate aim" in the "general interest" of the community (see *Smirnov v. Russia*, no. 71362/01, § 57, 7 June 2007).

(ii) Proportionality of the interference

74. The question is therefore whether, in the circumstances of the case, the measure was proportionate to the aim pursued; in other words, whether a fair balance was struck between the requirements of the general interest and the protection of the applicant's right to the peaceful enjoyment of his possessions, in particular by providing procedures affording him a reasonable opportunity to put his case to the responsible authorities (see *AGOSI*, cited above, § 55, and *Arcuri v. Italy* (dec.), no. 52024/99, ECHR 2001-VII).

75. As regards the requisite balance to be struck between the means employed for the seizure of the applicant's assets and the above-mentioned legitimate aim, the Court notes that the tenor of the applicant's submissions in this regard called into question the duration of the measure and the absence of judicial review (see paragraphs 57-58 above).

76. The Court has on many occasions noted that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must also afford the individual a reasonable opportunity to put his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this

provision. An interference with the rights provided for by Article 1 of Protocol No. 1 cannot therefore have any legitimacy in the absence of adversarial proceedings that comply with the principle of equality of arms, allowing discussion of aspects that are important for the outcome of the case. In order to ensure that this condition is satisfied, the applicable procedures should be considered from a general standpoint (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 302, 28 June 2018).

77. In the present case, the Court already noted that the seizure of the applicant's assets was carried out pursuant to two separate decisions with different legal bases (see paragraph 72 above). First, his apartment and two cars were seized pursuant to Articles 163-66 of the old CCP. Second, the property and registration documents for the apartment and two cars, as well as an amount equivalent to EUR 4,000, were seized as evidence pursuant to Articles 96-97 of the old CCP. Both measures were taken by the police and were reviewed by the prosecutor upon complaints lodged by the applicant (see paragraphs 18-22 above).

78. The Government submitted that the seizure measure ordered by the BGPD on 1 April 2003 had been accompanied by procedural guarantees since the applicant had had various opportunities to bring his case before an independent body but had failed to use them (see paragraphs 64-66 above).

79. Firstly, the Government argued, citing examples of case-law (see paragraphs 36-38 above), that the applicant had the possibility of contesting the seizure decision of 1 April 2003 under Article 250 of the new CCP (see paragraph 33 above). The Court notes that under the legal framework in force for a period of ten years and ten months after the adoption of the measure (from 1 April 2003, when the applicant's assets had been seized, until 1 February 2014, when the new CCP entered into force), the applicant could not contest the measure in question before the courts (see paragraphs 24 and 30 above). He availed himself of the opportunity, provided by the legal framework in force during the investigation (Article 168 § 1 of the old CCP), to contest the measure before the prosecutor. However, the replies received from the prosecutor were formalistic and do not allow the Court to conclude that the applicant's complaints were examined on the merits (see paragraphs 18-22 above). It is true that on 1 February 2014 new criminal-law provisions entered into force providing for the possibility of contesting seizure measures before the courts from that date onwards (see paragraph 33 above). However, besides the fact that they referred specifically to measures adopted only by the prosecutor, the new provisions also introduced a time-limit for lodging such complaints (three days from the notification or enforcement of the measure), and the Government did not submit any examples of cases in which the domestic courts had examined, after 2014, complaints against measures ordered by the prosecutors under the old CCP where the three-day time limit had been exceeded, as in the present case. The only judgment submitted by the Government that concerned a similar

situation to the present case proves that the time-limit in question must be complied with (see paragraph 38 above). In addition, no example was submitted that concerned measures adopted by the police as in the present case.

80. Secondly, the Government contended that the procedure governed by Article 504 of the old CCP could have been followed by the applicant in order to obtain compensation for any damage sustained. The Court observes as regards the procedure provided for by Article 504 of the old CCP (Articles 538 and 539 of the new CCP) that from the wording (see paragraph 35 above) and its interpretation by the domestic courts, as shown in the example submitted by the Government (see paragraph 40 above), this was an avenue open specifically to people who had been wrongfully convicted or unlawfully detained. This was clearly not the applicant's case (see *Credit Europe Leasing Ifn S.A.*, cited above, § 80).

81. The Government also argued that since no claim for compensation had been brought before the civil courts within thirty days from the prosecutor's final decision of 29 January 2014, the seizure had ended. In order to have that situation confirmed, the applicant should have instituted additional proceedings before the civil courts (see paragraph 66 above). On this point, the Court notes that the seizure was ordered on 1 April 2003 (see paragraph 6 above) and was never formally lifted (see paragraph 17 above). Even assuming that the measure had ended *de jure* thirty days after the prosecutor's decision of 29 January 2014, by that time it had already lasted ten years and ten months. During this entire period and to the present day the applicant was not able to lawfully use or sell the two cars – even though they remained in his possession – in the absence of their registration documents (see paragraph 27 above) and in the light of their subsequent deterioration. As regards the apartment, it is true that the applicant was able to use it, but he could not dispose of it in any way as long as the seizure measure was in place and, moreover, the uncertainty of the situation was prolonged in the absence of his ownership documents (ibid.). Furthermore, the Court considers that, in view of the numerous proceedings already instituted by the applicant and their outcome, an additional action with the purpose of confirming the *de jure* termination of the seizure would not have been an effective remedy in order to contest its proportionality and duration.

82. The Court also notes that no procedural safeguards or other possible remedies have been suggested by the Government in connection with the seizure as evidence of the applicant's property documents and money. On this point the Court observes that the legal framework in force at the end of the investigation against the applicant included the possibility of asking for the return of the objects that served as evidence (see paragraph 31 above). The applicant had used this opportunity, but to no avail (see paragraph 27 above).

83. Therefore, the applicant was deprived of the possibility of using and disposing of his assets and contesting their seizure before a court, at least for

a period of ten years and ten months in respect of the apartment and for more than eighteen years in respect of the cars and the money. Moreover, no specific legal provision or case-law example allows for the conclusion that he would have been able to obtain compensation for the interference with his property rights (see paragraph 80 above). It follows that the Government's objection of non-exhaustion of domestic remedies (see paragraphs 54, 65 and 66 above) should be dismissed.

84. On the basis of the above-mentioned considerations, and taking into account, notably, the duration of the seizure of the assets belonging to the applicant, their value, the lack of opportunity to challenge effectively the measure imposed in criminal proceedings and the lack of evidence that he could have obtained compensation in separate civil proceedings, the Court finds that a fair balance has not been struck in the instant case between the general interest of society and the applicant's interests, as he has been obliged to bear an excessive burden (see, *mutatis mutandis*, *Credit Europe Leasing Ifn S.A.*, cited above, § 87; *Hábenczius v. Hungary*, no. 44473/06, § 36, 21 October 2014; and *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 77, 9 October 2008).

85. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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."

A. Damage

87. The applicant claimed in respect of pecuniary damage the following amounts: 3,771.49 euros (EUR), representing the interest lost for the amounts of money seized; and EUR 50,000, representing the loss of value of the two cars. The applicant also requested EUR 50,000 in respect of non-pecuniary damage.

88. The Government submitted that the applicant's claims were excessive and unjustified and that the finding of a violation would be sufficient compensation for any damage sustained.

89. As regards pecuniary damage, the Court considers that the applicant did not substantiate his claims in the absence of any supporting documents submitted. Thus, the Court dismisses those claims as unfounded.

90. However, the Court considers that the applicant has suffered non-pecuniary damage on account of the violation of Article 6 § 1 and

Article 1 of Protocol No. 1 to the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

91. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objection as to the non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Yonko Grozev President