



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

SECOND SECTION

CASE OF SILICKIENĖ v. LITHUANIA

(Application no. 20496/02)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

10/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Silickienė v. Lithuania,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 20 March 2012,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 20496/02) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Lithuanian nationals, Mr Mindaugas Silickis and Mrs Jurgita Silickienė (“the applicants”), on 15 May 2002 and 10 September 2003 respectively. On 24 April 2003 Mr M. Silickis died.

2. The applicants were represented before the Court by Mr Ričardas Girdziušas, a lawyer practising in Kaunas. The Government were represented by their Agent, Ms Elvyra Baltutytė.

3. Under Article 6 of the Convention Mrs J. Silickienė alleged that the criminal proceedings that resulted in confiscation of her property were not fair. Invoking Article 1 of Protocol No. 1 to the Convention, she also complained that the deprivation of her property had been unlawful.

4. By a decision of 10 November 2009, the Court declared the application, as concerns the complaints by Mrs J. Silickienė, admissible. The Court declared inadmissible the application as far as it concerned Mr M. Silickis (hereinafter – M.S.).

The name of the case has consequently been changed from *Silickis and Silickienė v. Lithuania* to *Silickienė v. Lithuania* and hereinafter the term “the applicant” refers to the second applicant, Mrs J. Silickienė.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Vilnius.

A. The criminal proceedings against the applicant's husband

7. On 16 August 2000 M.S., the applicant's husband, a high ranking tax police officer, was arrested on suspicion of having committed various offences of fraud. He was remanded in custody.

8. Later that month he was charged with forgery, fraud and inappropriate commercial activities.

9. In May 2001 M.S. was charged with more serious offences, including that of smuggling large quantities of alcohol.

10. In February 2002 M.S. was accused of further serious crimes, including forming and leading a criminal association in order to smuggle alcohol and cigarettes in large quantities.

11. In 2000 a criminal investigator froze certain property belonging to M.S., his mother and the applicant. The mother appealed against that decision, pursuant to Article 244¹ of the Code of Criminal Procedure (see the Relevant domestic law and practice part below). As a result, on 23 July 2002 the District Court of Kaunas City released some of her assets – an apartment, a garage and a plot of land – the seizure of which was deemed to have been unreasonable. The court noted, however, that the café and shares in a telecommunications company which had been in the possession of the mother of M.S. was property acquired as a result of his criminal activities. The seizure of those items was upheld.

The applicant did not appeal against the seizure of her property.

12. In August 2002 a prosecutor approved a bill of indictment against M.S. and three of his accomplices, K.K., J.M. and V.V. The case was transmitted to the Kaunas Regional Court.

13. On 24 April 2003 M.S. committed suicide in the Lukiškės Remand Prison.

14. On 25 and 28 April 2003 the applicant and the mother of M.S. requested the court to continue the case to enable his rehabilitation. That same day the Kaunas Regional Court decided to continue the proceedings in so far as they concerned the activities of the criminal association organised by the applicant's late husband. The court appointed a lawyer to defend the interests of the deceased.

15. On 28 May 2003 the Kaunas Regional Court received a request from the applicant and M.S.'s mother to discontinue the criminal proceedings. By a ruling of 2 June 2003 the court dismissed that request, noting that it had

already started examining the evidence in the case. It observed that, without having examined the evidence, the court could not establish whether grounds existed to rehabilitate M.S.

16. On 22 January 2004 the Kaunas Regional Court adopted its judgment. It noted that there were no grounds on which M.S. could be exculpated. On the contrary, the court found sufficient evidence to prove that the applicant's husband, being a State official, had indeed organised and led a criminal association for smuggling purposes between spring 1999 and March 2000. The offenders had succeeded in passing contraband on twenty-two occasions. However, in view of M.S.'s death, the court decided to discontinue the proceedings against him. Three of his co-accused, K.K., J.M. and V.V., were convicted and sentenced to prison sentences ranging from three years six months to six years. Two other co-accused were released from criminal liability because they had cooperated with the authorities and contributed to discovering the crimes.

17. The Kaunas Regional Court ordered the confiscation of certain items of property on the ground that they had been acquired as a result of M.S.'s criminal activities (Article 72 § 3 (2) of the Criminal Code). In particular, the court ordered confiscation of the applicant's apartment in Vilnius. The court established that the applicant had bought the apartment in August 1999, having obtained a sham loan of 80,000 Lithuanian litai (LTL, approximately 23,000 euros (EUR)) from the mother of V.V. The applicant's shares in a telecommunications company, to the value of LTL 29,997 (approximately EUR 8,700), were also to be confiscated on the ground that they had been obtained through an off-shore company which the criminal organisation used to hide the proceeds of its crimes. The trial court also ordered confiscation of a café belonging to M.S.'s mother as well as certain other items. Nonetheless, it lifted the seizure of a plot of land, a garden house, and some money and furniture that belonged to the applicant, given that there was no evidence of the illicit origin of that property. For the same reason, the seizure of flats and plots of land belonging to M.S.'s parents was also lifted. Lastly, the trial court ordered confiscation of V.V.'s car on the ground that it had been used as a means to smuggle goods (Article 72 § 2 (2) of the Criminal Code).

The reasons why each item of seized property should or should not be confiscated were set out in eight pages of the judgment.

18. Considering that the trial court's judgment was erroneous, M.S.'s family hired another lawyer, E.J., to prepare an appeal. As the applicant wrote in her application to the Court, from that moment the lawyer E.J. "*de facto* represented all persons [who were affected by the confiscation measure]". Appeals were also lodged by the prosecutor and three convicted persons.

19. In the appeal the lawyer E.J. contended that the criminal proceedings should have been discontinued after M.S.'s death. He also argued,

mentioning each item of confiscated property, that those assets had been obtained from legitimate sources and thus the confiscation was unlawful. As concerns the applicant, E.J. averred that there was no proof to find that the apartment and shares in the telecommunications company, both registered in her name, had been obtained from the proceeds of the crimes. For the lawyer, the trial court's conclusions about the circumstances in which the applicant had acquired the apartment and the shares were factually and legally erroneous.

20. On 25 October 2004 the Court of Appeal upheld the trial court's judgment. The appellate court emphasised that the persons convicted had acted as an organised group (*nusikalstamas susivienijimas*) which was the most dangerous form of conspiracy (*bendrininkavimas*). The group's criminal activity had lasted many years, was conducted systematically and did great harm to the State. The value of smuggled goods was millions of Lithuanian litai. Taking into account the scale, its systematic nature and the organisational level of the criminal activity, the case could be viewed as exceptional.

21. On the issue of confiscated property the Court of Appeal noted that of all persons whose property had been confiscated, only M.S.'s parents-in-law had testified before the trial court. Even so, they could not explain how they had obtained that property. Furthermore, M.S.'s conspirator V.V. had confirmed that his parents' financial situation was not good and he could not explain financial transactions by his mother.

22. As regards the applicant, the Court of Appeal also noted that she was well aware of the criminal activities of her husband's criminal association:

"Even though M.S.'s wife J. Silickienė herself has not been charged [in this case], the examined evidence leaves no doubt that she was well aware of her spouse's and the other co-accuseds' criminal activities. ... J. Silickienė was informed each time smuggled goods were loaded or unloaded as well as about the sale of those goods. ... There is evidence that J. Silickienė herself received money which had been paid for smuggled goods. ... Consequently, J. Silickienė without any doubt knew that property which the [trial] court confiscated and which had been registered in her name previously had been obtained as a result of criminal activities."

23. The appellate court also dismissed the argument by the lawyer E.J. that confiscation was not possible because criminal proceedings against M.S. had been discontinued. Article 72 of the Criminal Code obliged the court to confiscate property which was the proceeds of crime, if third persons to whom the property had been transferred knew about the unlawful origin of that property. Confiscation was in no way linked to whether those third persons had been charged with a crime or convicted. On the contrary, pursuant to the aforementioned provision, confiscation of the proceeds of the crime had to be ordered both when imposing a punishment and when a person has been released from criminal liability and even in the event that he or she had not even been charged with a crime.

24. The Court of Appeal also held:

“...M.S.’s lawyer has unreasonably linked the confiscation of all the property listed in the judgment with the fact that the proceedings had been discontinued against M.S. However, it has been forgotten that not only M.S. but also other persons had been charged in the criminal proceedings in question. Those other persons had smuggled goods together with M.S., and the illicit gains had been obtained together. Some of those co-accused had been released from criminal liability, but three of the co-accused, J.M., K.K. and V.V., were convicted. For Article 72 § 3 of the Criminal Code to be applied, it was not important that the third persons to whom the property had been transferred should be family members or relatives of the person who committed the crime. Moreover, even presuming that it was M.S. who had transferred the property to his wife, his parents and his parents-in-law, it did not mean that that property had been obtained from the criminal activity of him alone. In the present case that property had been obtained as a result of the criminal activities of all co-accused, including those who had been convicted. Furthermore, V.V., who was M.S.’s cousin, had played a very important role in the activities of the criminal organisation. Accordingly, the persons to whom the confiscated property had been transferred were connected by family links not only to M.S., who died, but also to V.V., who was convicted. These circumstances totally rebut the appellant’s contention that the property had been confiscated after the proceedings had been discontinued, because in reality confiscation had been ordered after [the trial court] adopted an accusatory judgment”.

25. Lastly, the appellate court pointed out that the trial court had exceptionally thoroughly set out the reasons why particular items had to be confiscated. In setting out its conclusions the trial court had relied on extensive analysis of the evidence examined in court, devoting a whole chapter of the judgment, eight pages in length, to that. In the appellate court’s view, the trial court’s findings had been reasonable. Even so, the appellate court again went through the evidence and upheld the trial court’s findings, dismissing E.J.’s arguments to the effect that the two confiscated items in the applicant’s ownership had a lawful provenance (see paragraph 19 above).

26. The lawyer E.J. submitted an appeal on points of law. He contended, first, that the criminal proceedings against M.S. should have been discontinued after his death and that confiscation of property was possible only if an accusatory judgment had been adopted. Secondly, he alleged that the property, the confiscation of which had been ordered by the trial court, including that of the applicant, did not meet the requirements of Article 72 § 3 of the Criminal Code. In his submission, no fault of third person whose property was confiscated had been established.

27. On 17 May 2005 the Supreme Court dismissed the appeal on points of law. As regards the confiscation of property, the Supreme Court ruled that confiscation as a penal measure (*baudžiamoji poveikio priemonė*) could be applied independently of whether the procedure had been concluded by acquittal or conviction, and even in cases where a person had not been charged with a crime (*kai asmuo netraukiamas baudžiamojon atsakomybėn*). The Supreme Court emphasised that it was a court’s duty to

confiscate property which fell under Article 72 §§ 2 and 3 of the Criminal Code. It was noted that, in its judgment, the trial court had thoroughly reasoned its choice as to which items of property should be confiscated as being the proceeds of illegal activities. The Supreme Court acknowledged that most of that property had been found in the possession of third persons. However, given the trial court's conclusion that those persons knew or should have known about the illicit funding of the items concerned, it was lawful to confiscate them even though those persons had not been charged in the criminal proceedings against M.S. and the criminal organisation.

B. Related criminal proceedings against the applicant and the mother of M.S.

28. By a judgment of 30 June 2005 of the Kaunas Regional Court the applicant was convicted of misappropriating property and falsifying documents. The court established that she was actively involved in organising unlawful money transfers to off-shore companies used by the criminal organisation led by her late husband, so that the money was hidden. She fully confessed that she had committed the crimes with the aim of helping her husband avoid criminal liability while he was in detention. The applicant was sentenced to four years' imprisonment.

29. The mother of the applicant's late husband was convicted of falsifying documents and sentenced to six month's imprisonment. The court noted that she was merely executing the orders of the applicant, but that they had the common goal of helping M.S.

30. Both the applicant and her late husband's mother were pardoned under an Amnesty Act.

II. RELEVANT DOMESTIC LAW

31. The Code of Criminal Procedure at the relevant time provided that a pre-trial investigator could freeze the assets of an accused, or assets which were acquired in a criminal manner but later were in a third party's possession, so as to protect a potential civil claim or confiscation order (Article 195 § 1). Appeals lay against such orders of investigators to two court instances (Article 244¹).

32. As concerns confiscation of property, at the material time the Criminal Code provided:

Article 72. Confiscation of Property

1. Confiscation of property shall be the compulsory uncompensated taking into the ownership of a State of any form of property subject to confiscation and held by the offender, his accomplice or other persons.

2. Confiscation of property shall be applicable only in respect of the property used as an instrument or a means to commit a crime or as the result of a criminal act. A court must confiscate:

1) the money or other items of material value delivered to the offender or his accomplice for the purpose of commission of the criminal act;

2) the money and other items of material value used in the commission of the criminal act;

3) the money and other items of material value obtained as a result of the commission of the criminal act.

3. The property transferred to other natural or legal persons shall be confiscated regardless of whether or not those persons are subject to criminal liability, where:

1) the property has been transferred to them for the purpose of commission of a criminal act;

2) when acquiring the property, they were aware, or ought to have been aware and could have been aware that this property, money or the valuables newly acquired by means thereof have been gained from of a criminal act.

4. The property transferred to other natural or legal persons may be confiscated regardless of whether or not a person who has transferred the property is subject to criminal liability, where this person ought to and could have been aware that that property may be used for the commission of a serious or grave crime.

<...>

7. When ordering confiscation of property, a court must specify the items subject to confiscation or the monetary value of the property subject to confiscation.”

III. LAW AND PRACTICE REGARDING CONFISCATION OF PROPERTY IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

33. In the legal systems of the Council of Europe Member States the concept of “confiscation” generally refers to a measure the effect of which is permanent deprivation of property by way of transfer of that property to the State. Seven countries (Albania, Germany, Georgia, Moldova, Romania, Sweden and Switzerland) provide for confiscation orders regardless of conviction. This type of confiscation order generally covers property that has been acquired through unlawful activities. As long as the origin cannot be justified, confiscation of such property may be imposed. Criminal liability of the offender is not relevant for the purposes of the confiscation order. For example, in Germany a court may order the confiscation of the proceeds of the crime despite the fact that the proceedings have been

discontinued, as long as it can be established that a wrongful act has indeed been committed.

34. Five States (Bulgaria, Estonia, Luxembourg, the Netherlands and the Russian Federation) in principle require conviction as a prerequisite for confiscation whilst allowing for some exceptions to the general rule. In Bulgaria, if it is established or there are reasonable grounds to believe that the suspect committed the offence, confiscation of property acquired through that offence is permitted, even if the suspect is not ultimately convicted because of his or her death. Estonia and the Russian Federation allow confiscation of property which constitutes material evidence in limited circumstances. In the Netherlands, as a rule, a confiscation order will not be available upon the death of the accused. However, confiscation of the property that has already been seized can be imposed if it is plausible that the deceased had indeed committed an economic crime.

Three States (Belgium, France and the United Kingdom) strictly rule out the possibility of confiscation without conviction.

35. Confiscation of property which is the proceeds of a crime may be imposed without conviction in certain circumstances either against third parties in general, or against family members in particular (Bulgaria, Estonia, Germany, Georgia, Moldova, the Netherlands, the Russian Federation, Switzerland and the United Kingdom). Knowledge of the illicit origin of the property, failure to justify its origin, the type of crime at issue and whether or not the third party is a fictitious owner are four most common circumstances in which a confiscation order may be made against property belonging to family members of an accused regardless of their conviction.

IV. RELEVANT INTERNATIONAL INSTRUMENTS

36. On 22 December 1994 the Republic of Lithuania ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990). The Convention aimed to facilitate international co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. Parties undertake in particular to criminalise the laundering of the proceeds of crime and to confiscate instrumentalities and proceeds (or property the value of which corresponds to such proceeds).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

37. The applicant alleged that the finding by the trial court of her late husband's "criminal acts", and the ensuing confiscation of her property on the basis of that finding, amounted to a fundamental abuse of process. She alleged a breach of Article 6 of the Convention, the relevant parts of which read as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. The parties' submissions

1. The applicant

38. The applicant argued that Article 6 of the Convention in its criminal limb was applicable in the present case. By the judgment of 22 January 2004 the Kaunas District Court had clearly found her late husband responsible for the organisation and execution of criminal acts, short of pronouncing the word "guilt" or imposing a sentence.

39. The applicant further alleged that the finding by the trial court of her late husband's "criminal acts", and the confiscation of their family property on the basis of that finding was in breach of her procedural rights under Article 6 § 1 of the Convention. She pointed to the fact that she was not a party to the criminal proceedings against her late husband. Although she was questioned as a witness, the procedural rights of witnesses could not be equated to the procedural rights of the accused. Thus, she could not question witnesses and submit evidence to prove that the confiscated property had nothing in common with the crimes attributed to her late husband. Whilst admitting that she could have objected to temporary seizure of her property, the applicant submitted that that measure was not determinative for the final confiscation order.

40. Lastly, relying on Article 6 § 2 of the Convention the applicant noted that the confiscation of her property was related to the findings of her late husband's criminal behaviour. It was not consonant with the presumption of innocence to direct that a person shall bear the loss of property in respect of crimes where the case has been discontinued.

2. The Government

41. The Government submitted at the outset that Article 6 of the Convention under its “criminal head” was not applicable to the confiscation procedure at issue. In the criminal proceedings against the criminal organisation led by M.S., in which the confiscation of the applicant’s property had been imposed, the applicant was not accused of any criminal offence and the domestic courts did not determine any charges in her respect. Neither was Article 6 applicable under its “civil head”, given that no question concerning the applicant’s property rights in the sense of civil law had been determined. In the Government’s view, the confiscation of certain property imposed on the applicant was merely a preventive measure, aiming at deterrence of serious crimes based on property reasons. In that connection the Government also noted that in her application the applicant had made no express reference to Article 6 in so far as it related to “her civil rights and obligations”.

42. The Government further argued that the applicant’s interests related to the confiscated property were duly represented and defended before the domestic courts. In particular, at the pre-trial stage she had had the right to appeal to a court against the decision to seize her property. M.S.’s mother had lodged such an appeal, as a result of which part of the seized property had been released. However, the applicant had not made use of that right. For the Government, the applicant also could have testified as a witness during the court proceedings in order to explain the sources from which the property registered in her name was obtained, as did her parents, but, as the Court of Appeal rightly noted, she chose not to testify of her own will.

43. The Government’s main argument lay in the fact that M.S.’s defence counsel had submitted an appeal against the Kaunas Regional Court’s judgment of 22 January 2004, whereby the confiscation of the applicant’s property had been imposed. In his appeal, the lawyer had challenged the confiscation of the applicant’s property, and claimed that the confiscation of the said property should be lifted. Accordingly, and if the applicant had any relevant evidence to provide to the domestic courts in defence of her property rights, she could have submitted such evidence through the defence counsel of M.S. Lastly, the Government pointed out that M.S.’s defence counsel had also submitted an appeal on points of law, in which he had reiterated the arguments as to unlawfulness of the confiscation of the property of the applicant. Taking into account that M.S. had been represented by defence counsels during the proceedings at all three levels of jurisdiction, and that the confiscation of the applicant’s and her late husband’s property had been disputed before the courts of three instances, the applicant could not claim that her interests had not been defended before the domestic courts.

44. In the light of the foregoing the Government considered that the applicant's procedural rights under Article 6 of the Convention had not been breached in the present case.

B. The Court's assessment

1. Applicability of Article 6 of the Convention with regard to the confiscation

45. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case. It is not bound by the characterisation given by the applicant or the Government. By virtue of the *iura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties and even under a provision in respect of which the European Commission of Human Rights had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see, most recently, *G.R. v. the Netherlands*, no. 22251/07, § 36, 10 January 2012). On the basis of the materials submitted to it the Court notes that the applicant has undoubtedly complained about the loss of her property. It considers that the confiscation measure consequential upon the acts for which the applicant's late husband was prosecuted affected in an adverse manner the property rights of the applicant and thus undoubtedly constituted an interference with her right to peaceful enjoyment of her possessions (see *AGOSI v. the United Kingdom*, 24 October 1986, § 65, Series A no. 108; *Arcuri and Others v. Italy* (dec.), no. 52024/99, 5 July 2001).

46. Property rights being civil rights within the meaning of Article 6 § 1 of the Convention, that provision was applicable under its civil head and the applicant was consequently entitled to have the dispute over her civil right determined by a tribunal. The Government's objection therefore must be dismissed.

Accordingly, the question arises whether Article 6 was complied with.

2. Compliance with Article 6 § 1 of the Convention

47. The applicant argued that she could not defend her rights in the framework of the criminal proceedings against her husband, which resulted in the confiscation of her property. The Court considers that it is not called upon to examine *in abstracto* the compatibility with the Convention of the provisions of the Lithuanian criminal law, which oblige the court to confiscate money and property which have been acquired in a criminal manner, including property transferred to third persons. Instead, the Court must determine whether the way in which the confiscation was applied in

respect of the applicant offended the basic principles of a fair procedure inherent in Article 6 § 1 (see, *mutatis mutandis*, *Salabiaku v. France*, 7 October 1988, § 30, Series A no. 141-A). It must be ascertained whether the procedure in the domestic legal system afforded the applicant, in the light of the severity of the measure to which she was liable, an adequate opportunity to put her case to the courts, pleading, as the case might be, illegality or arbitrariness of that measure and that the courts had acted unreasonably (see *AGOSI*, cited above, § 55; also see, *mutatis mutandis*, *Arcuri and Others*, cited above, and *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001). It is not, however, within the province of the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B).

48. The applicant's main argument lay in the fact that she had no benefit of fair proceedings, given that she was not a party to the criminal proceedings. Whilst noting that the applicant indeed was not a party to the criminal proceedings against the criminal organisation, the Court considers that the system in question was not without safeguards. It notes, first, that the confiscation of the applicant's property had its origins in a measure taken by the investigating authorities, namely seizure of her assets in 2000. The Court considers that it was open to the applicant to institute judicial review proceedings to challenge the reasons for that seizure and present evidence that those items of property had been acquired lawfully. Whilst acknowledging that the seizure was only a temporary measure, having no conclusive influence over the subsequent confiscation, the Court is of the view that at that time the applicant could reasonably foresee that the seizure could result in confiscation of the property at a later stage of the proceedings. Accordingly, this was an occasion for the applicant to present her arguments and thus to obtain the lifting of the seizure. On this last point the Court also notes that, as it appears from the facts of the case, M.S.'s mother was successful in her plea that some of the seized property had been acquired lawfully, given that seizure of some of the assets was lifted (see paragraph 11 above). Lastly and even though having certain reservations as to the Government's suggestion that the applicant could have explained the origin of her property had she chosen to testify in the criminal proceedings against the criminal organisation, the Court nonetheless finds that that was one more occasion for her to put forward any evidence in support of her claims. However, according to the Court of Appeal, she did not avail herself of that opportunity (see paragraph 21 above).

49. The Court also recalls that after the death of the applicant's husband, the Kaunas Regional Court appointed counsel to represent his interests. Furthermore, as the applicant admitted in her application to the Court, after the trial court adopted its judgment, M.S.'s family hired another lawyer,

E.J., who *de facto* defended her interests as well. The Court has particular regard to the fact that in his appeal and cassation appeal E.J. explicitly raised the matter of confiscation, arguing that the property belonged to third persons whose fault had not been established. In particular, E.J. challenged the confiscation in respect of each item of property, including those belonging to the applicant (see paragraphs 19 and 26 above). In these circumstances, the Court shares the Government's view that if the applicant had any evidence to adduce to prove that her property came from legitimate sources, she could have passed that information on to E.J., the lawyer of her choice (see *Bongiorno and Others v. Italy*, no. 4514/07, § 49, 5 January 2010).

50. In the light of the above, while the Court considers that, as a general principle, persons whose property is confiscated should be formally granted the status of parties to the proceedings in which the confiscation is ordered, it accepts that in the particular circumstances of the present case the Lithuanian authorities *de facto* afforded the applicant a reasonable and sufficient opportunity to protect her interests adequately. Accordingly, it finds that there was no violation of the applicant's rights under Article 6 § 1 of the Convention.

3. Compliance with Article 6 § 2 of the Convention

51. The applicant appears to argue that she was compelled to assume liability for crimes allegedly committed by her late husband who had not been convicted. In this context, the Court recalls that it is a fundamental rule of criminal law that criminal liability does not survive the person who has committed the criminal act. Imposing criminal sanctions on the living in respect of acts apparently committed by the deceased person calls for its careful scrutiny (see *A.P., M.P. and T.P. v. Switzerland*, 29 August 1997, §§ 46 and 48, *Reports of Judgments and Decisions* 1997-V). The Court further reiterates that the scope of Article 6 § 2 of the Convention is not limited to pending criminal proceedings but extends to judicial decisions taken after a prosecution has been discontinued (see, most recently, *Vulakh and Others v. Russia*, no. 33468/03, § 33, 10 January 2012). With regard to the application of the presumption of innocence, the Court's case-law also shows that the autonomous meaning of the expression "charge" in Article 6 of the Convention means that a person can be considered to have been "charged" for the purposes of that Article when that individual's situation has been "substantially affected" (see *Serves v. France*, 20 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI).

52. On the facts of the present case the Court recalls that because of M.S.'s death, the criminal proceedings against M.S. were indeed terminated without his conviction. It notes, however, that contrary to what has been implied by the applicant, the criminal proceedings did not end with that procedural step alone. The Kaunas Regional Court convicted three other

persons whom it had found to have formed a criminal organisation with her late husband. That conviction was upheld by the appellate and cassation courts.

53. Turning to the matter of confiscation, the Court recalls that, as it was explained by the Court of Appeal, the property confiscated from the applicant had not been acquired only through the criminal acts committed by M.S. alone. It had been obtained from illicit proceeds of criminal activities of the entire criminal organisation (see paragraph 24 above). To decide this point the trial court had regard to the fact that when purchasing the confiscated apartment the applicant had taken a loan from the mother of the convicted V.V., who, in turn, could not explain the provenance of his mother's possessions. As to the shares in the telecommunications company, they had been purchased through the off-shore company that the criminal organisation used to launder the money gained through passing contraband. The Court sees no reason to depart from the appellate court's findings, which were based on its direct knowledge of the facts of the case and the domestic law. Accordingly, the Court holds that the order to confiscate some of the applicant's property was not related to any finding of guilt on the part of the applicant in respect of the crimes allegedly committed by her late husband. Lastly, the Court cannot fail to observe that the present case is distinguishable from the facts in *A.P., M.P. and T.P.*, where new proceedings had been opened against the applicants, whereas in the instant case the criminal proceedings against M.S. and his co-accused merely continued after his death.

54. Bearing in mind the above, the Court finds that the applicant was not punished for criminal acts committed by her late husband and thus did not inherit his guilt. For the same reasons, even assuming that the applicant herself could be regarded as being "charged" with a criminal offence, the Court also considers that the confiscation order did not constitute a finding of the applicant's personal guilt for any offence. There has accordingly been no violation of Article 6 § 2 of the Convention.

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

55. The applicant argued that the confiscation of her property was in breach of Article 1 to Protocol No. 1 of 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’ submissions

56. The applicant complained about the confiscation of her property in the wake of the criminal proceedings against her late husband and his accomplices. She contended that she had not been aware of the unlawful origins of the confiscated property. The applicant admitted that, as the spouse of M.S., she could have known about the movement of merchandise; however, the domestic courts had not established that she was aware that crimes were being committed. Contrary to what has been suggested by the Government, in the other criminal proceedings (paragraphs 28-30 above), the applicant was convicted for crimes not linked to those of M.S. Whilst acknowledging that she had knowledge of the enterprises that her late husband and the co-accused used in their operations, the applicant maintained that those enterprises “had been engaged in lawful activities [in addition to unlawful ones]”. For the applicant, there was no public interest to deprive her of her property. Lastly, she contended that the domestic courts’ decisions had been erroneous in that they had incorrectly established the evidence proving that the confiscated property was the proceeds of crime.

57. The Government admitted that confiscation of the property belonging to the applicant could be considered as an interference under Article 1 of Protocol No. 1 to the Convention. In any event, the confiscation of part of the family’s property had been in accordance with domestic law (Article 72 § 3 of the Criminal Code) and amounted to a justified control of the use of property in the general interest. Referring to the Court’s case-law (*Raimondo v. Italy*, 22 February 1994, Series A no. 281-A), the Government contended that, in the interests of crime prevention, the State had a wide margin of appreciation in controlling property obtained by unlawful means or used for unlawful purposes. Referring to the decision of the Court of Appeal of 25 October 2004 and the applicant’s conviction on 30 June 2005, the Government considered that a fair balance between the public and individual interests had been achieved in the present case, particularly as the applicant, with her knowledge of her husband’s criminal activities, must have known full well that the property in question had been obtained from money gained unlawfully.

58. The Government stressed that both the trial and appellate courts had scrutinised the evidence relating to the circumstances in which the confiscated property had been acquired. The unlawfulness of the origin of the property at issue and the fact that the applicant ought to have been aware and could have been aware that the disputed property had been acquired from criminal acts had been proven during the criminal proceedings,

following strict standards of substantiation. The Government reiterated that when deciding upon confiscation of the seized items, the Kaunas Regional Court had lifted seizure of many items – plot of land, house and its contents – that had been registered in the names of the applicant and her late husband. The seizure of those items had been lifted because the trial court had not established that that property had been acquired as a result of criminal activity. Only two items in the applicant’s ownership – the apartment and shares in a telecommunications company – had been confiscated.

59. Lastly, the Government submitted that confiscation of property belonging to third persons regardless of whether or not criminal proceedings are instituted against them was also established in the law of other European countries. As concerns property that was the proceeds of a criminal act, such practice was in compliance with the guidelines by the Council of Europe.

B. The Court’s assessment

60. The Court reiterates that Article 1 of Protocol No. 1 to the Convention, which guarantees in substance the right to property, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see, among many authorities, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

61. On the facts of the case the Court recalls that the “possessions” at issue were the shares in a telecommunication company and an apartment which were confiscated from the applicant by a judicial decision. It is not in dispute between the parties that the confiscation order amounted to an interference with the applicant’s right to peaceful enjoyment of her possessions and that Article 1 of Protocol No. 1 is therefore applicable. It remains to be determined whether the measure was covered by the first or second paragraph of that Convention provision.

62. The Court reiterates its constant approach that a confiscation measure, even though it does involve a deprivation of possessions, constitutes nevertheless control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Sun v. Russia*, no. 31004/02, § 25, 5 February 2009 and case-law cited therein).

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

63. As the Court has held on many occasions, an interference with property rights must be prescribed by law and pursue one or more legitimate aims. In addition, there must be a reasonable relationship of proportionality between the means employed and the aims sought to be realised. In other words, the Court must determine whether a balance was struck between the demands of the general interest and the interest of the individuals concerned. In doing so it leaves the State a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV).

64. In that connection, the Court notes that the confiscation of the applicant's property was ordered pursuant to Article 72 § 3 (2) of the Criminal Code. It was therefore an interference prescribed by law.

65. The Court also recalls that the confiscation affected assets which had been deemed by the courts to have been unlawfully acquired by the criminal organisation led by M.S. The measure was effected with a view to preventing the illicit acquisition of property through criminal activities. In such circumstances the Court finds that the confiscation pursued a legitimate aim in the general interest, namely it sought to ensure that the use of the property in question did not procure for the applicant pecuniary advantage to the detriment of the community (see *Raimondo*, cited above, § 30).

66. As regards the balance between that aim and the applicant's fundamental rights, the Court reiterates that, where possessions are confiscated, the fair balance depends on many factors, including the owner's behaviour. It must therefore determine whether the Lithuanian courts had regard to the applicant's degree of fault or care or, at least, the relationship between her conduct and the offences which had been committed (see *AGOSI*, cited above, § 54; also see *Arcuri* and *Riela*, both cited above).

67. On the facts of the case the Court recalls the finding by the Court of Appeal that the applicant had directly participated in payments for the smuggled goods and that she must have known that the confiscated property could only have been purchased with the proceeds of the criminal organisation's unlawful enterprises (see paragraph 22 above). The Court is also particularly struck by the judgment of 30 June 2005 delivered by the Kaunas Regional Court which found the applicant guilty of the misappropriation of property and the falsification of documents. In so finding, it noted that the applicant had fully confessed to having committed the crimes with a view to helping her husband escape criminal liability, while he was detained.

68. As to the way the proceedings which resulted in confiscation of the assets registered in the applicant's name were held, the Court notes that the judicial review was conducted by three successive courts – the Kaunas Regional Court, the Court of Appeal and the Supreme Court, and concerned both the legality of and the justification for the confiscation. It also observes that the Lithuanian courts were debarred from basing their decisions on mere suspicions. Looking in detail at the steps taken by the courts to reach the final conclusion as to which pieces of property to confiscate, the Court notes that in respect of each item to be confiscated the courts were satisfied, on the basis either of the submissions by the applicants' counsel or the evidence adduced by the prosecution, that the confiscated assets had been purchased by virtue of reinvestment of the criminal organisation's unlawful profits (see, by contrast, *Vulakh*, cited above, § 46). In this context the Court also notes that only two items of the applicant's property were confiscated, when many more were seized.

69. Lastly, the Court cannot overlook the particular circumstances which prompted the Lithuanian courts to take measures against the applicant. In particular, as the domestic courts noted, the illicit pursuits of the criminal organisation involved twenty-two episodes of smuggling, the value of the goods smuggled amounted to millions of Lithuanian litai and, in view of the scale, systematic nature and organisational level of the criminal activity, they regarded the case as exceptional. In such circumstances the confiscation measure complained of may appear essential in the fight against organised crime (see, *mutatis mutandis*, *Raimondo*, cited above, § 30; *M. v. Italy*, no. 12386/86, Commission decision of 15 April 1991, Decisions and Reports 70, p. 101; also see the Relevant international instruments part, paragraph 36 above).

70. Bearing in mind the above and having regard to the margin of appreciation enjoyed by States in pursuit of a crime policy designed to combat the most serious crimes, the Court concludes that the interference with the applicant's right to the peaceful enjoyment of her possessions was not disproportionate to the legitimate aim pursued (see *Raimondo* and *M. v. Italy*, both cited above, paragraph § 30 and p. 102, respectively).

Consequently, there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection concerning the applicability of Article 6 of the Convention;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 2 of the Convention;
3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President