



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

FOURTH SECTION

CASE OF CREDIT EUROPE LEASING IFN S.A. v. ROMANIA

(Application no. 38072/11)

JUDGMENT
(Merits)

Art 1 P1 • Peaceful enjoyment of possessions • Seizure in the context of criminal proceedings against third parties • Lengthy duration (more than eight years) • Considerable value of assets • Lack of opportunity to challenge effectively challenge the seizure in proceedings to which applicant company was not a party • Excessive burden

STRASBOURG

21 July 2020

FINAL

21/10/2020

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

In the case of Credit Europe Leasing Ifn S.A. v. Romania,

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

Yonko Grozev, *President*,

Iulia Antoanella Motoc,

Branko Lubarda,

Carlo Ranzoni,

Georges Ravarani,

Jolien Schukking,

Péter Paczolay, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application 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 commercial company, Credit Europe Leasing Ifn S.A. (“the applicant company”), on 17 June 2011;

the decision to give notice to the Romanian Government (“the Government”) of the complaints concerning Article 6 § 1, Article 7 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 23 June 2020,

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

INTRODUCTION

1. The applicant company complained that its right of access to court had been breached and that the excessively lengthy seizure of its property had constituted a penalty and a breach of its right to peaceful enjoyment of possessions in the absence of an effective domestic remedy.

THE FACTS

2. The applicant company is based in Bucharest and was represented by Mr A. Morărescu, a lawyer practising in Bucharest. By a letter dated 23 July 2019, he notified the Court that the applicant company had changed its name to Credit Europe Asset Management S.A. The Court advised the parties on 21 August 2019 that it would continue processing the application under the case name of *Credit Europe Leasing Ifn S.A. v. Romania*.

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. LEASE CONTRACTS CONCLUDED BY THE APPLICANT COMPANY

A. The truck

5. On 6 July 2005 a finance lease contract was concluded between the applicant company, as financier, and company S.C., as user, represented by its administrator, Mr H.A. Under this contract, a truck bought by the applicant company was rented to S.C. in exchange for a monthly rent and an undertaking by S.C. to buy it at the end of the contract.

6. On 13 September 2006 the truck was sold by S.C. to the State-owned press distribution company R.

B. The kiosks

7. On 8 September 2006 a finance lease contract was concluded between the applicant company as financier and S.C. as user, represented by Mr H.A. Under this contract, 213 metal kiosks owned by the applicant company were rented to S.C. for eighty-four months in exchange for a monthly rent and an undertaking by S.C. to buy the kiosks at the end of that period. The value of the kiosks was set at 856,250 euros (EUR) excluding tax.

8. On 27 October 2006, 15 February and 23 April 2008 three more similar contracts were concluded between the same parties for the same period, for 500 metal kiosks (valued at EUR 2,500,000 excluding tax), 100 metal kiosks (valued at EUR 600,000 excluding tax) and twenty metal kiosks (valued at EUR 122,000 excluding tax) respectively.

9. These finance lease contracts provided that the applicant company had paid the supplier, company T., the price for the kiosks, and was ceding their use to the user (company S.C.), for the entire period in which the latter fulfilled its obligation to pay the rent. The contracts further provided that, at the end of the leasing period, and only if the user fulfilled all contractual obligations, the applicant company would transfer ownership of the goods to it.

C. The vans

10. On 22 October 2007 a finance lease contract was concluded between the applicant company as financier and S.C. as user, represented by Mr H.A. Under this contract, six vans owned by the applicant company were rented to S.C. for sixty months in exchange for a monthly rent and an undertaking by S.C. to buy the vans at the end of that period.

II. TERMINATION OF THE LEASE CONTRACTS

11. On 9 November 2009, because S.C. failed to fulfill its obligations, the applicant company notified it that the above-mentioned contracts had been terminated and that the truck, kiosks and vans should all be returned.

12. In November and December 2009 S.C. sold a number of kiosks, including the kiosks under the above-mentioned lease contracts, to company E. Some of these kiosks were then sold on by E. to another company.

13. Between August and October 2010 forty-nine of the above-mentioned kiosks were also sold by the applicant company to other commercial companies.

III. CRIMINAL INVESTIGATION AND SEIZURE OF THE APPLICANT COMPANY'S ASSETS

14. On 17 June 2010 an ongoing criminal investigation – started by the Directorate for Investigating Organised Crime and Terrorism (hereinafter, “the DIICOT”) of the prosecutor’s office attached to the High Court of Cassation and Justice and involving numerous individuals and commercial companies – was extended to Mr H.A., the administrator of S.C. (see paragraphs 5, 7 and 10 above). He was accused of fraud and money laundering in the context of the privatisation of the State-owned press distribution company R. (see paragraph 6 above). According to the prosecutors, between January 2004 and December 2009 the suspects had formed an organised criminal group and caused millions of euros in losses to the budget of the State-owned company. In July 2010 the investigation was extended to tax evasion.

15. According to a decision issued by the DIICOT on 22 June 2010 several commercial companies, including T. (see paragraph 9 above) and other companies in which Mr H.A. was associate or administrator, were included in the proceedings as parties liable under civil law for the damage caused by the offences under investigation. By the same decision, the prosecutor noted that the proceeds of the crimes under investigation had not yet been recovered and ordered the seizure of all movable and immovable assets belonging to these companies and Mr H.A, pursuant to Article 25 of Law no. 656/2002 on the prevention and sanctioning of money laundering, Article 13 of Law no. 39/2003 on combating organised crime and Article 163 of the former Code of Criminal Procedure (hereinafter “the old CCP” – see, respectively, paragraphs 37, 38 and 33 below). In the enforcement of this decision, on 24 and 25 June 2010 a number of vans and other vehicles used for the distribution of print media were seized from premises belonging to one of the commercial companies listed in the decision. The report drafted on that occasion by the police mentioned

among the seized items the six vans belonging to the applicant company (see paragraph 10 above).

16. On 29 October 2010 the DIICOT ordered the seizure of all kiosks in the possession of N. (former company R., see paragraphs 6 and 14 above), a company in which Mr H.A. and other accused had shares. The measure, based on Article 163 of the old CCP read in conjunction with Articles 24¹, 25(1) and 25(6) of Law no. 656/2002 (see, respectively, paragraphs 33 and 37 below), was taken in order to secure subsequent special confiscation justified by the need to recover the proceeds of crime and to guarantee payment of the fine applied.

17. On 1 November 2010, in the enforcement of the above-mentioned decision, some 1,483 kiosks were seized from premises belonging to N. According to a report drafted on that occasion by the police in the presence of the administrator and an employee representative of N., the value of the seized assets was EUR 2,859,000. The administrator of N. was appointed custodian of the seized assets. He was warned that the seized assets could not be altered, destroyed or assigned for any other purpose, as stipulated by Article 244 of the Criminal Code. The representatives of N. signed the report without objections.

IV. COMPLAINTS BY THE APPLICANT COMPANY AGAINST THE SEIZURE

18. On 23 November 2010 the applicant company lodged a complaint with the hierarchically superior prosecutor against the DIICOT's decision of 29 October 2010 (see paragraph 16 above). It explained that some of the kiosks seized by that decision were its property and submitted as proof copies of the purchase contracts and finance lease contracts. It claimed that the seizure had been unlawful as it was not party to the criminal investigation and requested the lifting of the measure as regards the kiosks belonging to it.

19. On 14 December 2010 the chief prosecutor of the DIICOT rejected the complaint as unfounded, holding that the legal framework governing the crimes under investigation and the preventive measures applied allowed for the seizure of assets from any third party for the purpose of subsequent special confiscation. It was further noted that the seizure of assets belonging to third parties was triggered by the nature of the crime of money laundering. In the specific circumstances of the case, the prosecutor explained that the measure was justified for several reasons: the proceeds of crime had not been recovered, the accused were shareholders of N. and there was a risk that assets belonging to it would be alienated, and also, the accused had put in place a fictitious circuit of money and assets, more specifically the kiosks in question, according to which N. became the final

beneficiary of the lease contracts since both companies – N. and S.C. – were controlled by the same accused.

20. On 17 February 2011 the complaint lodged by the applicant company with the Bucharest County Court against the DIICOT's decision of 29 October 2010 (see paragraph 16 above) was rejected as inadmissible. The court held that Article 168 of the old CCP, as interpreted by decision no. 71/2007 of the High Court of Cassation and Justice (see paragraphs 33 and 34 below), provided that any complaint under that provision had to be decided by the prosecutor if the criminal investigation was still pending, and by the court if the trial had started in the case. The court therefore concluded that the present complaint was inadmissible since it related to a case in which the investigation was still pending and which had not been brought before the courts. The decision was final.

21. On 24 February 2011 the applicant company lodged a petition with the DIICOT requesting, as owner of 827 of the kiosks seized, to be appointed custodian of these kiosks.

22. On 6 February 2012 the applicant company lodged a complaint with the DIICOT requesting the lifting of the seizure applied to its six vans (see paragraphs 10 and 16 *in fine* above).

23. On 12 September 2012 the applicant company, represented by a lawyer, lodged a new request with the DIICOT for the annulment of the seizure decision of 29 October 2010 (see paragraph 16 above). It clarified that it owned 779 of the 1,483 kiosks seized by the contested decision. It claimed that maintaining the measure breached its right to property, as guaranteed by the Constitution and Article 1 of Protocol No. 1 to the Convention. It also argued that the seizure had been unlawful since Article 163 §§ 2 and 3 of the old CCP (see paragraph 33 below) provided for the seizure of assets only from the suspect or accused, and none of the situations listed in Article 118 of the Criminal Code (see paragraph 38 below) were applicable in its case. In its opinion, the measure had also been unnecessary since the purpose of this type of measure was to prevent the suspect, accused or party liable under civil law from selling its assets or going bankrupt. However, the seizure decision did not refer to any specific fact necessitating the adoption of such a measure in respect of assets belonging to a third party to the criminal proceedings, such as itself. Lastly, the applicant company argued that the seizure of its assets had prevented it from using its property and had caused it a loss of EUR 387,352 excluding tax, as calculated by a financial expert.

24. On 14 May 2015 the applicant company reiterated its complaints in connection with the seizure of the 779 kiosks, six vans and one truck, seeking the lifting of the measure and compensation for losses incurred to date. It submitted a similar request on 19 January 2016.

25. No reply was received by the applicant company to the above-mentioned requests.

V. THE LIFTING OF THE SEIZURE

26. On 16 March 2018, at the request of company N., acting as owner of all the seized assets (see paragraph 16 above), the DIICOT decided to lift the seizure in respect of 1,390 kiosks. The prosecutor observed that in previous proceedings before the courts all sales contracts concluded by S.C. concerning the kiosks (see paragraph 12 above) had been annulled and the assets returned to N., therefore the reasons on which the seizure measure had been based were no longer valid. This decision was communicated to N.

27. On 21 November 2018 the applicant company lodged a new request for the lifting of the seizure and the return of the 779 kiosks, six vans and one truck. It also sought compensation for the losses incurred due to the seizure.

28. This request was partially allowed by the DIICOT in a decision adopted on 6 March 2019. The decision stated that on 16 March 2018 the seizure had already been lifted as regards 1,390 kiosks, following a request submitted by the injured party, N. (see paragraph 26 above). However, that decision had failed to identify the kiosks concerned and so, to date, there were still ninety-three kiosks formally seized. Therefore, since the reasons for the lifting of the measure applied to all the kiosks, it was decided to lift the measure as regards the remaining ninety-three kiosks and to reject the applicant company's request for the remaining kiosks as being devoid of purpose. As regards the six vans, noting that the applicant company had notified S.C. of the termination of the lease contract, the prosecutor considered that they had remained the applicant company's property and decided to lift the seizure, ordering their return to the applicant company. Since there was evidence indicating that the truck had been sold (see paragraph 6 above) and then sublet by S.C., the prosecutor considered that further verifications were necessary and decided to examine the request concerning the truck separately in a future decision. With respect to the applicant company's request for compensation for losses incurred, the prosecutor decided that such a request was not within the competence of the prosecutor's office.

29. This decision was communicated to the applicant company and received at its office on 13 March 2019.

30. On 4 April 2019 the applicant company contested the decisions of 16 March 2018 and 6 March 2019 (see paragraphs 26 and 28 above) before the chief prosecutor of the DIICOT. It claimed that the lifting of the seizure had been a mere formality since the assets concerned were not in its possession, had not been identified and had not been returned to it in the authorities' presence. It further requested that the ninety-three kiosks and six vans be identified, their depreciation due to use be valued by the prosecutor and possession of the goods be restored in the authorities' presence. It also contested the prosecutor's decision as regards the truck,

which, in its opinion, was in the same situation as the kiosks and vans. It requested that the seizure be lifted, that the truck be identified and that possession of the truck be restored under the authorities' supervision. Furthermore, it alleged that the prosecutor had wrongly rejected its complaint against the seizure of the 779 kiosks, since the decision of 16 March 2018 had ordered the lifting of the seizure in favour of N. and had not even been communicated to the applicant company. The latter also contested the rejection of its claim for compensation. In this connection, it submitted that the assets seized had been used for the benefit of N. and considered that the benefits generated by their use should be returned to it as rightful owner. In conclusion, the applicant company requested the annulment of the decisions of 16 March 2018 and 6 March 2019, the lifting of the seizure in respect of the 779 kiosks, six vans and one truck, their identification and valuation and restoration of possession in the authorities' presence.

31. By a decision adopted on 3 May 2019 the chief prosecutor of the DIICOT rejected the applicant company's complaint as ill-founded, maintaining the arguments of the 6 March 2019 decision (see paragraph 28 above) and observing that none of the kiosks were currently seized. No mention was made of the applicant company's request for the identification, valuation and restoration of possession of the seized assets. This decision was communicated to the applicant company on 10 May 2019.

32. At the time of the latest information available to the Court (11 November 2019), the criminal investigation was still ongoing at the DIICOT.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT PROVISIONS CONCERNING SEIZURE

33. The relevant provisions of the old CCP, in force between 30 April 1997 and 31 January 2014, read as follows at the relevant time:

Article 163 – Preventive measures (*Măsurile asigurătorii*)

“(1) Preventive measures are taken during the criminal proceedings by the prosecutor or by the court and consist of freezing, by means of seizure, movable and immovable property, with a view to securing special confiscation, to recover damage caused by an offence, as well as to guarantee the payment of a fine.

(2) Preventive measures aimed at recovering 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.

(3) Preventive measures aimed at guaranteeing the payment of a fine shall be taken only in respect of assets belonging to the suspect or accused.”

Article 165 – Procedure for seizure

“(1) The body responsible for enforcing the seizure shall identify and value the seized assets, and may, if need be, have recourse to experts.

...

(7) Seized assets shall be kept until the seizure is lifted.

...

(9) If there is a risk of alienation, the other seized movable assets (other than money, precious metals or perishable items) shall be sealed or taken away, and a custodian may be appointed.”

Article 168 – Complaints against preventive 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.”

34. The provisions of Article 168 of the old CCP 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 a seizure 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 to trial.

35. On 1 February 2014 a new Code of Criminal Procedure (“the new CCP”) entered into force, containing new provisions concerning preventive measures as follows:

Article 250 – Complaints against preventive measures

“(1) The suspect, accused and any other interested person may lodge a complaint with the court competent to decide on the merits of the case against the prosecutor’s decision to take a preventive measure within three days of its notification or the date of its enforcement.”

II. RELEVANT PROVISIONS CONCERNING CONFISCATION

36. The relevant provisions of Law no. 656/2002 on the prevention and sanctioning of money laundering, in force at the relevant time, read as follows:

Article 24¹

“The adoption of preventive measures shall be compulsory in cases concerning money laundering or the financing of terrorism.”

Article 25

“(1) In cases concerning money laundering and the financing of terrorism, the provisions on confiscation set forth by Article 118 of the Criminal Code shall apply.

...

(6) In order to ensure confiscation, the application of the preventive measures provided for by the Code of Criminal Procedure shall be compulsory.”

37. Article 13 of Law no. 39/2003 on combating organised crime, in force at the relevant time, included provisions similar to those in Law no. 656/2002 mentioned above as regards the applicability of Article 118 of the Criminal Code to confiscation ordered for the offence of conspiracy to commit crime.

38. The Criminal Code in force at the relevant time provided as follows:

Article 118 – Special confiscation

“(1) The following shall be subject to special confiscation:

(a) assets produced through the commission of an offence;

(b) assets that have been used, in any way, in the commission of an offence, if they belong to the perpetrator or to another person who knew the purpose of their use;

...

(e) assets acquired through the commission of an offence, if they are not returned to the injured party and if they are not used to indemnify the injured party;”

III. RELEVANT PROVISIONS CONCERNING COMPENSATION

39. Article 504 of the old CCP provided for the right to compensation for those who have been acquitted after a final conviction and those who had been unlawfully deprived of their liberty during the criminal proceedings. Article 504 § 3 provided that the unlawful deprivation of liberty had to be established by decision of the prosecutor or the court. The new CCP, in force after 1 February 2014, includes similar provisions in Articles 538 and 539 on the right to compensation for judicial error and unlawful detention. Under these provisions, a person who receives a final conviction has the right to be compensated for any damage suffered if the conviction has been overturned and a final decision for acquittal has been pronounced owing to a new or recently discovered fact that proves that the conviction was the result of a judicial error. A person unlawfully detained in the course of criminal proceedings has the same right.

40. Articles 998 and 999 of the former Civil Code, in force until 30 September 2011, provided that any person who had suffered damage could seek redress by bringing a civil action against the person who had intentionally or negligently caused it. In order for the action to be admitted, the interested party had to prove in court that the defendant had committed an illicit act with liability under civil law, that the plaintiff had sustained damage, and that there was a causal link between the illicit act and the damage sustained. Similar provisions were included in Article 1349 of the new Civil Code, in force after 1 October 2011.

IV. RELEVANT PRACTICE OF THE DOMESTIC COURTS

41. The Government submitted numerous judgments adopted by the domestic courts in cases in which third parties to the criminal investigation contested the seizure of their assets ordered by the prosecutor during the investigation. All these judgments were adopted in cases in which the criminal investigation had finished and the defendants had been sent to trial, or in cases concerning measures ordered after the entry into force of the new CCP.

42. In one judgment of 21 September 2016 the domestic court examined on the merits and rejected as ill-founded a complaint lodged by a third party to the investigation against the seizure ordered by the prosecutor on 1 February 2011, before the entry into force of the new CCP. It appears from this judgment that the criminal investigation had finished and that the defendant had been sent to trial at the time the complaint was lodged.

43. The Government also submitted a judgment 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 alleged unlawful detention, abusive investigation and several preventive or other measures adopted during the investigation against the plaintiff. The plaintiff in this case (an ex-customs officer and former member of parliament) had been placed in pre-trial detention for several months during the criminal investigation and then convicted by a court. Subsequently, his conviction had been overturned, the criminal investigation reopened and the charges against him dropped. In whole the proceedings against him lasted eleven years and ended with the prosecutor's decision to close the investigation as he had committed no crime. Under Articles 504 and 505 of the former CCP concerning the right to compensation for unlawful conviction and deprivation of liberty (see paragraph 39 above) and the general tort provisions in Articles 998 and 999 of the former Civil Code (see paragraph 40 above), the court awarded the plaintiff compensation for non-pecuniary damage. The court established that the plaintiff first had been held in pre-trial detention but subsequently had not 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 during the investigation and their excessive duration. These measures included the pre-trial detention and seizure of the plaintiff's car.

44. The Government also referred to decision no. 20 of 19 January 2016, in which the Constitutional Court held that the provisions of the CCP concerning preventive measures ordered by criminal bodies and, more specifically, the lifting of preventive measures, had to be supplemented by the provisions of the Code of Civil Procedure. The Constitutional Court explained that Article 957 § 1 of the Code of Civil Procedure provided for

the possibility of requesting the lifting of the seizure if a sufficient real or personal guarantee was given by the debtor. Accordingly, in criminal matters, a suspect or defendant whose assets had been seized could, during the criminal proceedings, request the lifting of the measure if he or she offered a sufficient guarantee, made a deposit covering the entire value of the debt or paid the entire debt.

THE LAW

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

45. The applicant company complained of interference with its 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.”

46. Relying on Articles 6 § 1 and 13 of the Convention, the applicant company further complained of the excessive length of that interference and of a lack of an effective remedy in that regard.

47. 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, §§ 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 78 below), the Court finds it appropriate to examine the complaints raised under Articles 6 § 1 and 13 of the Convention as part of the complaint under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 59, 9 October 2008).

A. Admissibility

1. Abuse of the right of application

(a) The Government’s objection

48. The Government pointed out that on 16 March 2018 and 6 March 2019 two decisions had been adopted by the authorities lifting the seizure measures at issue in the present application (see paragraphs 26 and 28 above). In their opinion, the fact that the applicant company had failed to

inform the Court of the above-mentioned decisions – that had re-established its property rights over the assets in dispute – had been an abuse of the right of application. Moreover, even after the Government had informed the Court on 20 March 2019 of the above-mentioned decisions and this correspondence had been forwarded to the applicant company on 2 April 2019, the latter had still not submitted any sufficient explanation for its silence on the issue.

49. Relying on the Court’s reasoning in the cases of *Constantinescu and Others v. Romania* ((dec.) no. 33605/03, 16 June 2009), *Cir v. Romania* ((dec.) no. 52330/07, 26 January 2010) and *Jian v. Romania* ((dec.) no. 46640/99, 30 March 2004), the Government considered that the applicant company had failed to inform the Court of an essential fact and that therefore the application should be declared inadmissible pursuant to Article 35 § 3 (a) of the Convention.

(b) The applicant company’s reply

50. The applicant company argued that it had never been informed of the decision of 16 March 2018. On 13 March 2019, when it had been notified of the decision of 6 March 2019 (see paragraph 29 above), notice of the present application before the Court had already been given to the Government; the latter had submitted their observations on the admissibility and merits on 11 June 2019. Subsequently, on 23 July 2019, in compliance with the procedure and within the time-limit granted by the Court, it had sent its comments in reply, including submissions as regards the two above-mentioned decisions of the national authorities.

51. Therefore, in its opinion, there had been no abuse of the right of application.

(c) The Court’s assessment

52. The Court reiterates that, under Article 35 § 3 (a) of the Convention, an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

53. In the present case, the fact that the applicant company waited until its turn to reply to the Government’s observations in order to submit information about the two decisions in question cannot be seen as an attempt to conceal any essential information from the Court. In any event, the Court notes that the core of the applicant company’s complaint is the absence of procedural guarantees for a decision interfering with its property

rights and the excessively long duration of that interference, which had already lasted more than eight years and eight months at the time it was informed of its discontinuance (see paragraph 63 below). In addition, the applicant company argued that the two decisions in question had failed to put an end to the interference complained of (see paragraph 67 below).

54. The Court also observes that the present case differs from the cases put forward by the Government (see paragraph 49 above). More specifically, two of these cases concern complaints of non-enforcement of domestic decisions where the applicants failed to inform the Court that the decisions concerned had in fact been enforced (see *Constantinescu and Others* and *Cir*, decisions cited above) while the case of *Jian* (decision cited above) concerned the applicant's use of a forged document in order to deliberately mislead the Court, by presenting a distorted image of the most serious part of his application.

55. In view of the above and having found no fraudulent intent on the part of the applicant company, the Court dismisses the Government's objection that there has been an abuse of the right of application.

2. Exhaustion of domestic remedies and loss of victim status

56. The Government submitted that the applicant company had failed to exhaust the available domestic remedies in connection with its complaints under Article 1 of Protocol No. 1 to the Convention. This failure, in their opinion, had also triggered the loss of the applicant company's victim status (see, notably, the Government's arguments summarised in paragraphs 60 to 62 below).

57. The Court considers that in the particular circumstances of the case, the Government's objections are so closely linked to the substance of the applicant company's complaint under Article 1 of Protocol No. 1 to the Convention that they should be joined to the merits.

3. Other grounds for inadmissibility

58. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 § 3 (a) of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The Government

59. The Government submitted that the seizure of the applicant company's assets had been lawful. They pointed out that it was questionable whether there had been an interference with the applicant company's property in the present case. When the measure had been taken, the property

in dispute – movable assets found in the possession of N., some of which had even been sold to third parties (see paragraph 12 above) – had appeared to belong to N. The measure had pursued the legitimate aim of securing the proceeds of crime pending the criminal proceedings, the ultimate purpose being their confiscation. The Government contended that the seizure had also been proportionate to the aim pursued in the context of the criminal investigation conducted in the present case and in view of the fact that national law provided for an obligation to adopt preventive measures in order to secure subsequent special confiscation (see paragraph 37 above).

60. The Government further submitted that the seizure of the applicant company's assets had been accompanied by sufficient procedural guarantees. More specifically, they argued firstly that the applicant company could have brought a claim before the courts for non-pecuniary damage under Article 504 of the old CCP, or Articles 538 and 539 of the new CCP from 1 February 2014 (see paragraph 39 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 alleged disproportionate seizure of their assets as shown in the case-law example provided in paragraph 43 above. Secondly, the Government submitted that the applicant company had also had the possibility to request the lifting of the seizure under Article 957 § 1 of the Code of Civil Procedure (see paragraph 44 above). Thirdly, referring to examples of case-law of the domestic courts (see paragraph 41 above), they argued that the applicant company could have claimed compensation from N. or from those accused in the criminal proceedings.

61. The Government also pointed out that the new CCP included in Article 250 provisions which allowed third parties to the criminal proceedings to contest measures taken during the investigation before the courts (see paragraph 35 above).

62. Furthermore, as of 6 March 2019 the seizure had been lifted for all property belonging to the applicant company (see paragraph 28 above). Therefore, in the Government's opinion, the facts on which the present complaint had been based no longer existed and their consequences – which could have caused a possible breach of the Convention – had been erased. In these circumstances, and in view of the fact that the applicant company had failed to bring a claim before the national authorities for compensation in respect of any additional damage, they contended that it had lost its victim status.

(b) The applicant

63. The applicant company alleged that it had not been a party to the criminal proceedings and that there had been neither suspicion nor proof that the seized assets were proceeds of crime. The seizure of its property had therefore been unlawful and unjustified. Given its excessive duration, the

seizure had also been disproportionate. On this point, the applicant company argued that its request to be appointed custodian of the seized assets had remained unanswered (see paragraphs 21 and 25 above), preventing it from using its property, while the same property had remained in the custody of N., which had made profit from its use.

64. The applicant company further submitted that it had not had sufficient procedural safeguards at its disposal against the seizure of its property, as the national legal framework had not provided for the possibility of contesting the prosecutor's decisions of 22 June and 29 October 2010 before the courts (see paragraphs 15, 16, 33 and 34 above).

65. In reply to the Government's allegations of non-exhaustion of domestic remedies and loss of victim status (see paragraphs 60 to 62 above), it explained that, in the specific circumstances of its case, there had been no effective remedy available in the domestic legal system. It argued that the provisions of Article 504 of the old CCP (see paragraph 39 above) had only applied to people who had been wrongfully convicted or unlawfully detained. It 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 43 above) concerned a claim for compensation for unlawful detention to which the claim for compensation for the alleged unlawful seizure had been accessory. As regards the Government's second allegation concerning the possibility to seek compensation from N. or from those accused in the criminal proceedings, the applicant company submitted that there was no legal provision allowing a third party to the criminal proceedings to be compensated for damage caused by an excessively lengthy preventive measure ordered by the prosecutor while the investigation was still ongoing. Also, the possibility to request the lifting of the seizure under Article 957 § 1 of the Code of Civil Procedure (see paragraph 44 above) was only available to a suspect or defendant and only after offering a guarantee. This avenue had therefore not been open to it.

66. The applicant company also argued that, even after the entry into force of the new CCP, which provided for the possibility of complaining against the seizure order before the courts, this possibility had not been open to it since such a complaint had to be lodged within three days of the adoption of the contested measure (see paragraph 35 above). It pointed out that the Government had not supported their arguments with any examples of domestic case-law relevant to the situation at issue in the present case.

67. The applicant company further submitted that the seizure had indeed been lifted by the decision of 6 March 2019 – the only decision it had been informed of (see paragraphs 28 and 29 above) – but not in respect of its truck. Moreover, the seized assets had never been identified and handed over to it. Its right to property therefore continued to be breached and it continued to be a victim within the meaning of the Convention.

2. *The Court's assessment*

(a) **The applicable rule**

68. From the facts of the case, the Court notes that the “possessions” at issue were movable assets seized by decision of the DIICOT in June and October 2010 (see paragraphs 15 and 16 above). The Government did not contest the interference with the applicant company’s property rights over the seven vehicles seized (six vans and a truck). However, as regards the kiosks, they claimed that these assets appeared to be the property of another company, which had even concluded valid purchase contracts in respect of them (see paragraphs 12, 13 and 59 above). The Court observes that, in accordance with the lease contracts concluded for the kiosks, the applicant company remained their owner (see paragraph 9 above). Moreover, following the user’s failure to fulfil its contractual obligations, the applicant company asked for the return of the kiosks (see paragraph 11 above). The Court further observes that the applicant company notified the prosecutor of its property rights over the seized kiosks on 23 November 2010 (see paragraph 18 above) and that the purchase contracts mentioned by the Government were annulled in court proceedings (see paragraph 26 above). Therefore, the seizure complained of may be regarded as an interference with the applicant company’s exercise of its right to the peaceful enjoyment of its possessions in respect of the seven vehicles as well as the 779 kiosks.

69. 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).

70. 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 consider seizure as a measure of control of use of property (see, *mutatis mutandis*, *Forminster Enterprises Limited*, cited above, § 63, and *Iordachescu v. Romania*, (dec.),

no. 32889/09, §§ 37 and 38, 23 May 2017; see also, *a contrario*, *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 30, 17 September 2015, and *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, no. 42079/12, § 38, 17 January 2017, where a confiscation was considered to amount to a deprivation of property by reason of its permanent nature, which entailed a conclusive transfer of ownership, without the possibility of recovery). However, in the present case, the measure affecting the applicant company's kiosks and vans lasted for almost nine years and, even after it was lifted, the authorities failed to identify the assets and return them to the applicant company. Moreover, for the truck claimed to be owned by the applicant company, the situation continues to be uncertain ten years later.

71. Under these circumstances, the Court considers that there is no need to take a clear stance on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined, because the principles governing the question of justification are substantially the same, involving as they do the legitimacy of the aim of any interference, as well as its proportionality and the preservation of a fair balance (see, *mutatis mutandis*, *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010).

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

(i) Whether the interference was prescribed by law

72. The Court reiterates that Article 1 of Protocol No. 1 above all requires 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 *Iordachescu*, decision cited above, § 39, with further references).

73. Turning to the present case, the Court notes that the seizure of the applicant company's property was ordered pursuant to Articles 24¹ and 25 of Law no. 656/2002 on the prevention and sanctioning of fraud, tax evasion and money laundering, Article 13 of Law no. 39/2003 on combating organised crime and Article 163 of the old CCP (see paragraphs 15, 16, 37, 38 and 33 above). Under the above-mentioned legal framework, the

adoption of preventive measures such as seizure was compulsory for the crimes under investigation in the present case (see paragraph 37 above). The Court further observes that the seizure was justified by the need to secure the subsequent special confiscation in order to recover the proceeds of crime and to guarantee payment of the fine applied (see paragraphs 15 and 16 above). The provisions on special confiscation set forth by Article 118 letters a) and e) of the Criminal Code in force at the relevant time, allowed for the confiscation of assets produced or acquired through the commission of a crime, in other words of the proceeds of crime, without specifying whether this concerned only assets belonging to the perpetrator (see paragraph 38 above). Nevertheless, on this point the Court considers, as held on numerous occasions, that it is not its task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see among many other authorities, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 52, Series A no. 222; and *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania*, no. 27227/08, § 42, 15 December 2015).

74. For the Court this issue is closely related to the question whether the requisite balance was struck between the means employed for the seizure of the applicant company's assets and the aims sought to be achieved. The Court therefore considers that it is not necessary to establish whether the domestic legal framework relied on in the present case could, *in abstracto*, constitute a foreseeable legal basis for the interference complained of and will continue the examination of the case, turning to the questions whether the interference pursued a legitimate aim and whether there were sufficient procedural guarantees in place.

(ii) Pursuit of a legitimate aim

75. As regards the legitimacy of the aim pursued by the impugned seizure, the Court observes that the measure was part of a legislative framework aimed at intensifying the fight against money laundering (see paragraphs 37-38 above). The seizure involved assets considered by the authorities to be necessary to recover the proceeds of crime and to secure their subsequent confiscation (see paragraphs 15, 16 and 19 above). Therefore, the seizure measure in the instant case was carried out in the general interest to ensure that the use of the property in question did not benefit the defendants to the detriment of the community (see, *mutatis mutandis*, *Phillips v. the United Kingdom*, no. 41087/98, § 52, ECHR 2001-VII). In conclusion, the measure was pursuing a general interest the importance of which has already been stressed in several judgments of the Court (see, for example, *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A; *Riela v. Italy*, no. 52439/99, 4 September

2001; *Grifhorst v. France*, no. 28336/02, §§ 92-93, 26 February 2009; and *Michaud v. France*, no. 12323/11, § 123, ECHR 2012).

(iii) *Proportionality of the interference*

76. 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 company's right to the peaceful enjoyment of its possessions, in particular by providing procedures affording the applicant company a reasonable opportunity of putting its case to the responsible authorities (see *AGOSI*, cited above, § 55, Series A no. 108, and *Arcuri v. Italy* (dec.), no. 52024/99, ECHR 2001-VII).

77. As regards the requisite balance to be struck between the means employed for the seizure of the applicant company's assets and the above-mentioned legitimate aim, the Court notes that the tenor of the applicant company's submissions in this regard called into question the duration of the measure and the absence of judicial review (see paragraphs 63 to 67 above).

78. 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 of putting 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).

79. In the present case, the Government submitted that the seizure had been accompanied by procedural guarantees since the applicant company had had various opportunities to bring its case before an independent body but had failed to use them (see paragraphs 60 and 61 above).

80. Firstly, 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 39 above) and its interpretation by the domestic courts, as shown in the example submitted by the Government (see paragraph 43 above), this was an avenue open specifically to people who had been wrongfully convicted or unlawfully detained. This was clearly not the case with the applicant company.

81. Secondly, the Government argued that the applicant company had also had the possibility to request the lifting of the seizure under Article 957 § 1 of the Code of Civil Procedure. The Court notes, along with the applicant company, that the Constitutional Court explained in the decision submitted by the Government (see paragraph 44 above) that this possibility was open to a suspect or defendant whose assets had been seized and only after offering a sufficient guarantee, making a deposit covering the entire value of the debt or paying the entire debt. However, the applicant company was neither a suspect nor defendant in the criminal proceedings. Even supposing that the above-mentioned provisions had been applicable to the applicant company, which was not party to the criminal proceedings, the Court observes that, in order to be able to apply for the lifting of the seizure, it would have had to cover the debt caused by the crimes under investigation. Under these circumstances, it is doubtful whether the above provisions may be considered a reasonable opportunity for the applicant company to challenge the seizure measure.

82. The Government also argued that the applicant company could have claimed compensation from N. or from those accused in the criminal proceedings. On this point, the Court observes that all the examples submitted by the Government in support of this argument (see paragraphs 41 and 42 above) concern cases which were at the trial stage, unlike the present case, in which no suspect had yet been brought before the courts.

83. In the instant case, the seizure was ordered by the prosecutor in the framework of criminal proceedings against third parties. The applicant company was not party to those proceedings and, under the legal framework in force at the time of the adoption of the seizure, it could not contest the measure in question before the courts (see paragraphs 20, 33 and 34 above). It is true that in 2014 new criminal law provisions entered into force providing for the possibility of contesting measures such as that in the present case before the courts (see paragraph 35 above). However, the new provisions also introduced a time-limit for lodging such complaints (three days from the adoption of the measure) and the Government did not submit any examples of case-law where the domestic courts had examined, after 2014, complaints against measures ordered by the prosecutors under the old CCP lodged by third parties during the criminal investigation. The judgment of 21 September 2016 submitted by the Government concerns a case in which the investigation had finished and it is therefore not similar to the present case (see paragraph 42 above).

84. Finally, the Court recalls that in situations concerning confiscation it has held that a compensation claim against the perpetrator entailed further uncertainty for a *bona fide* owner because the offender might be found to be insolvent. The compensation claim was not held to offer *bona fide* owners sufficient opportunity for bringing their cases before the competent national

authorities (see *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi*, cited above, § 50, with further references). The general nature of the argument adduced by the Government in the present case does not provide a sufficient basis for the Court to depart from its above-mentioned findings.

85. In view of the above, the Court considers that the Government did not prove how the above-mentioned avenues could have offered adequate redress for the applicant company's grievances. It follows that the Government's objection of non-exhaustion of domestic remedies (see paragraph 56 above) should be dismissed.

86. The Government also contended that since the seizure had been lifted and no claim for compensation brought before the national authorities, the applicant company had lost its victim status (see paragraph 62 above). On this point, the Court notes that the seizure was first ordered on 22 June 2010 (see paragraph 16 above) and was formally lifted in respect of all the kiosks on 6 March 2019 (see paragraph 28 above). It thus lasted for more than eight years and eight months. Moreover, according to the applicant company (see paragraphs 30 and 67 above), even after the measure was lifted, the authorities failed to identify the assets in question and return them to their lawful owner. Also, no decision was adopted in relation to the truck, which was also not returned to the applicant company. During this entire period, the applicant company was deprived of the possibility to use its assets and/or to contest their seizure before a court, and no specific legal provision or case-law example allows for the conclusion that it would have been able to obtain compensation for the interference with its property rights (see paragraph 85 above). The Court cannot therefore come to the conclusion that the applicant company lost its victim status; it follows that the Government's objection in this respect (see paragraph 56 above) should also be dismissed.

87. The Court acknowledges the importance of conducting investigations of suspected serious economic crimes, as in the instant case, with due diligence in order to ensure that the crimes are properly assessed and the proceedings duly terminated. Nevertheless, 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 company and the considerable value of those assets, as well as the lack of opportunity to challenge effectively the measure imposed in criminal proceedings in which it was not party, the Court finds that a fair balance has not been struck in the instant case between the general interest of society and the interests of the applicant company, as the latter has been obliged to bear an excessive burden (see, *mutatis mutandis*, *Forminster Enterprises Limited*, § 77; *Denisova and Moiseyeva*, § 64; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi*, § 52, all cited above).

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

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

89. The applicant company complained that the seizure of its assets had constituted a penalty imposed without basis in domestic law. It relied on Article 7 of the Convention, the first paragraph of which provides:

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

90. The Government rejected the idea that the seizure measure ordered by the prosecutor in the course of the criminal investigation in the present case had been a “penalty” and argued that Article 7 was not applicable.

91. The Court reiterates that the concept of a “penalty” in Article 7 has an autonomous meaning. To render the protection offered by this Article effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a “penalty” within the meaning of this provision. The wording of Article 7 § 1, second sentence, indicates that the starting-point in any assessment of the existence of a “penalty” is whether the measure in question is imposed following a decision that a person is guilty of a criminal offence. However, other factors may also be taken into account as relevant in this connection, namely the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity (see *G.I.E.M. S.R.L. and Others*, cited above, §§ 210 and 211, and *Welch v. the United Kingdom*, 9 February 1995, §§ 27 and 28, Series A no. 307-A).

92. The Court further reiterates its well-established case-law to the effect that in cases involving the seizure and confiscation of applicants’ property in the framework of criminal proceedings against third parties, such proceedings do not concern a “criminal charge” against the applicants (see *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV; *Bowler International Unit v. France*, no. 1946/06, § 67, 23 July 2009; and *AEI Investment Industry S.R.L. and Others v. Romania* [Committee] (dec.), no. 17910/15 and six other applications, § 38, 11 February 2020).

93. In the present case, the applicant company had never been charged or found guilty of any criminal offence by the Romanian courts. Accordingly, it cannot be concluded that the seizure in issue in the present case involved a finding of guilt subsequent to a criminal charge; it therefore did not constitute a “penalty” within the meaning of Article 7 of the Convention (see, *mutatis mutandis*, *AEI Investment Industry S.R.L. and Others*, § 38, and *Yildirim*, decisions cited above). That provision is accordingly not applicable in the case.

94. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, and must be rejected under Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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.”

96. The applicant company claimed the following amounts in respect of pecuniary damage:

- EUR 2,337,000 representing the value of the 779 kiosks as it resulted from an accountant evaluation report;
- EUR 199,920 representing the value of the six vans as it resulted from purchasing invoices;
- EUR 38,000 representing the value of the truck as it resulted from its purchasing invoice.

97. The applicant company also requested EUR 10,000 in respect of non-pecuniary damage. It further claimed EUR 7,500 in respect of costs and expenses incurred in the proceedings before the Court and submitted invoices in support of this claim.

98. The applicant company lastly expressed its availability to reach an agreement with the respondent Government.

99. The Government considered that the applicant company's claim was excessive, unjustified and submitted that the finding of a violation would be sufficient compensation for any damage sustained. They further asked the Court to reimburse only the costs and expenses that were actually and necessarily incurred and were reasonable as to quantum.

100. Having regard to the circumstances of the case, the Court considers that the question of the application of Article 41 of the Convention is not ready for decision. Consequently, it will reserve the question in its entirety and fix the subsequent procedure, bearing in mind the possibility of an agreement being reached between the respondent State and the applicant company (Rule 75 § 1 of the Rules of Court – see, for instance and *mutatis mutandis*, *G.I.E.M. S.R.L. and Others*, cited above, § 324). The Court invites the Government and the applicant company to notify it, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objections as to the non-exhaustion of domestic remedies and loss of victim status and *dismisses* them;
2. *Declares* the complaint under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
 - (a) reserves the said question in whole;
 - (b) invites the Government and the applicant company to notify the Court, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, of any agreement that they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 21 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Yonko Grozev
President