



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

FOURTH SECTION

CASE OF CĂPĂȚÎNĂ v. ROMANIA

(Application no. 911/16)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Temporary seizure of applicant's assets during criminal proceedings on corruption charges and post-conviction confiscation of proceeds of crime not arbitrary • No issue of disproportionality with amounts seized and confiscated in the circumstances and bearing in mind calculation method used • Adversarial and fair proceedings • Fair balance between competing interests not upset

STRASBOURG

28 February 2023

FINAL

28/05/2023

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

In the case of Căpățină v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović

Iulia Antoanella Motoc,

Branko Lubarda,

Armen Harutyunyan,

Anja Seibert-Fohr, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 911/16) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms Daniela Căpățină (“the applicant”), on 21 December 2015;

the decision to give notice to the Romanian Government (“the Government”) of the complaint raised under Article 1 of Protocol No. 1 to the Convention concerning the forfeiture and confiscation of the applicant’s assets and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 7 February 2023,

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

INTRODUCTION

1. The application concerns the seizure of some of the applicant’s assets by the prosecutor during criminal proceedings brought against her and other individuals for alleged acts of corruption, and the method used to calculate the proceeds of crime which were confiscated from the applicant following her criminal conviction for participating in organised crime and bribe-taking. The Government were given notice of the application, under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1968 and lives in Rădăuți. She was represented by Ms A.M. Horhogeia, a lawyer practising in Iași.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

5. At the time of the events giving rise to the present application, the applicant was a border police officer in the customs office at Siret, a border

crossing point between Ukraine and Romania. She resigned during the criminal proceedings described below.

6. On 30 January and 1 February 2011 the National Anti-corruption Directorate (*Direcția Națională Anticorupție* – hereinafter “the prosecutor”) opened criminal proceedings against the applicant and over sixty other individuals, border police officers and customs officers, on suspicion of participating in organised crime and bribe-taking in connection with the unlawful importation of cigarettes, diesel and alcohol from Ukraine. The prosecutor investigated acts that had allegedly occurred from September 2010 to January 2011.

7. During the investigation, the prosecutor found evidence that the officers who had checked the cars entering Romania had taken bribes from traffickers in exchange for allowing them to cross the border with illicit goods. According to the prosecutor’s calculations, during each shift the officers in question received between 8,000 and 25,000 Romanian lei (RON – between approximately 1,800 euros (EUR) and EUR 5,600). They hid the money in safe places and at the end of each shift they shared it proportionally with all the colleagues working during that shift.

8. The charges against the applicant consisted of thirteen counts of alleged bribe-taking, which had occurred between 17 and 25 December 2010.

9. By an order of 18 April 2011, on the basis of Articles 163 to 166 of the former Code of Criminal Procedure (hereinafter “the old CCP” – see paragraph 22 below), the prosecutor ordered the seizure of some of the applicant’s assets to cover the damage allegedly caused by her, which was estimated by the prosecutor to amount to RON 28,800 (about EUR 7,000 at the relevant time). The prosecutor accordingly seized from the applicant, until the end of the proceedings, the sums of EUR 5,530 and 24 United States dollars (which were estimated to amount to the equivalent of RON 22,192), as well as a car which had remained in her possession. The applicant was present when the measure was carried out by the prosecutor. She argued that she had not caused any damage and she also contested the method of estimation used by the prosecutor.

10. On 26 April 2011 the prosecutor committed for trial sixty-seven police officers and customs officers, including the applicant, before the Suceava Court of Appeal for their alleged participation in the illegal trafficking. The prosecutor noted that it was impossible to calculate the exact amounts taken by each individual in bribes, as they had shared the sums obtained in that manner according to the work tasks of each individual during each of the shifts worked from September 2010 to January 2011, taking into account the date and time of day of the shift and other factors. For that reason, the prosecutor proposed having regard, for each of the accused persons, to their number of shifts during that period and their duties during each shift, as well as to the average amount taken per shift. On the basis of that calculation, the prosecutor estimated that the amount to be confiscated from the applicant was

RON 28,800 (approximately EUR 7,000 at the relevant time – see paragraph 9 above).

11. On 17 October 2011 the applicant applied to the Court of Appeal to have the measure ordered by the prosecutor on 18 April 2011 lifted and the assets taken from her returned (see paragraph 9 above). She argued that the prosecutor had failed to indicate the estimated value of the damage allegedly caused by her acts. She submitted a letter from the National Authority for Integrity (*Agenția Națională de Integritate*) and bank contracts, with the aim of proving that the money seized from her had been lawfully obtained.

12. By an interlocutory judgment of 24 November 2011, the Court of Appeal dismissed her application. It considered that the applicant had not proven that the money seized by the prosecutor corresponded to the sums indicated in the documents presented and it observed that the money lawfully obtained by the applicant might have been spent on other things.

13. In a judgment of 6 May 2014, the Court of Appeal convicted sixty-three individuals, including the applicant, of taking bribes. It observed, on the basis of the evidence adduced – in particular, video recordings – that each worker had had a role in the commission of the criminal offence during his or her shift, and that the bribe-taking had become institutionalised and normalised to such an extent that the officers were taking bribes – in the form of either money or goods, such as cigarettes, alcohol, cakes and diesel – in the presence of other workers and their superiors, who had all become part of the scheme. In respect of the applicant, the court found that she had committed acts of bribe-taking but it decided to convict her only for those acts which she could be seen committing in video recordings. She was thus convicted of six of the thirteen counts of bribe-taking identified by the prosecutor (see paragraph 8 above) and was given a two-year suspended prison sentence.

14. The Court of Appeal took note of the manner in which the prosecutor had estimated the amounts to be confiscated as the proceeds of the crimes (see paragraph 10 above) and agreed with it. It observed that the exact amounts received by each convicted person could not be established, and for that reason, when calculating the amounts to be confiscated, it took into account the number of shifts during which it was established that the individual concerned had taken bribes and the calculation method proposed by the prosecutor, which attributed an amount ranging from RON 1,400 (approximately EUR 300 at the relevant time) to RON 300 (approximately EUR 70 at the relevant time) to each individual according to their position during the relevant shift. In respect of the applicant, the Court of Appeal issued a confiscation order for RON 3,400 (approximately EUR 800 at the relevant time), an amount considered equivalent to the proceeds of the crimes. Relying on Article 112 § 1 (e) of the new Criminal Code and on Article 118 § 1 (e) of the old Criminal Code (see paragraph 24 below), the court ordered that the money be paid from the value of the forfeited assets and that the

difference be returned to the applicant at the end of the proceedings. The applicant was also ordered to pay RON 6,000 (approximately EUR 1,300 at that time) for costs, namely RON 3,000 for the proceedings before the prosecutor and RON 3,000 for the proceedings before the Court of Appeal.

15. The court upheld the order of 18 April 2011 (see paragraph 9 above) and decided that the amounts remaining after payment of damages and costs would be returned to each individual when the decision became final.

16. All the parties appealed to the High Court of Cassation and Justice (hereinafter “the High Court”). The applicant sought her acquittal for all the alleged acts of bribe-taking. She also requested that the measure ordered by the prosecutor on 18 April 2011 (see paragraph 9 above) be lifted, arguing that, as shown in a new report by the National Authority for Integrity of 22 April 2013, her assets were not disproportionate to her income.

17. In a final decision of 17 March 2015, the High Court dismissed the appeals lodged by the convicted persons, including the applicant, and upheld the appeal lodged by the prosecutor. In addition to upholding the conviction for the offence of bribe-taking handed down by the Court of Appeal, the High Court found that all the accused persons were also guilty of forming an organised criminal group. The applicant’s prison sentence remained unchanged. In addition, she was ordered to pay RON 1,000 (approximately EUR 225 at the relevant time) for costs incurred in the proceedings before the High Court.

18. As for the amounts that the convicted persons, including the applicant, were ordered to pay, the High Court observed that the evidence in the case file proved that they had received bribes and, at the same time, they had failed to prove that the seized assets had been lawfully obtained. It also endorsed the method used by the prosecutor to calculate the damage (see paragraph 10 above). In respect of the applicant, it additionally upheld the Court of Appeal’s decision not to accept the entire amount proposed by the prosecutor, as that sum had been calculated for all thirteen alleged acts of bribe-taking, thus exceeding the counts for which she had eventually been convicted (see paragraph 13 *in fine* above). For those reasons, the High Court upheld the order for the confiscation of RON 3,400 (see paragraph 14 above).

19. The High Court also upheld the remaining findings of the Court of Appeal (see paragraph 14 above).

20. The decision was made available to the parties on 16 September 2015.

21. On 21 September 2015, after two requests by the applicant (on 30 June and 3 August 2015), the Administration of Public Finance reimbursed the remaining sum, that is, RON 13,785 (approximately EUR 3,200 at the exchange rate applicable at the date when the sum was returned).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

22. The relevant domestic provisions concerning the seizure of assets during criminal proceedings, notably Articles 163 and 168 of the old CCP, as in force at the date of the facts of the present case, and Article 250 of the new Code of Criminal Procedure (“the new CCP”), in force since 1 February 2014, as well as the relevant provisions of both the old CCP and the new CCP and of the Civil Code regarding compensation, are described in *Călin v. Romania* (no. 54491/14, §§ 29-35, 5 April 2022, with a further reference).

23. The same judgment also contains a description of domestic practice in cases in which the seizure of assets ordered during an investigation had been contested before the courts (*ibid.*, §§ 36-40).

24. In addition, under the provisions of the Criminal Code, goods obtained through the commission of a criminal offence are to be confiscated unless they are used to pay compensation for the damage caused (Article 112 § 1 (e) of the new Criminal Code, in force since 1 February 2014, and Article 118 § 1 (e) of the old Criminal Code).

THE LAW

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

25. The applicant complained of the seizure of her assets by the prosecutor during the criminal investigation against her, the subsequent confiscation order and the manner in which the difference between the amount of money seized and the sum confiscated by the courts had been returned to her by the authorities.

The applicant relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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

A. Admissibility

1. *The parties’ submissions*

(a) The Government

26. The Government argued that the applicant had failed to exhaust domestic remedies, as she had not lodged an objection against the

prosecutor's order of 18 April 2011 (see paragraph 9 above), a remedy provided for in Article 168 of the old CCP and in Article 250 of the new CCP (see paragraph 22 above).

27. Furthermore, she could have sought compensation from the State in the civil courts for damage allegedly caused by a State agent, if she considered that the prosecutor had overstepped his powers when bringing charges against her or that the criminal investigation had been unlawful or had lasted too long (the Government cited *Ibriș v. Romania* (dec.), no. 15193/12, §§ 29-31, 21 June 2016).

(b) The applicant

28. The applicant submitted that she had objected to the prosecutor's order (see paragraph 11 above) and that for that reason it would be disproportionate to require her to have taken the civil path as well.

2. The Court's assessment

29. In respect of the requirement to exhaust domestic remedies, the Court refers to the well-established principles of its case-law (see, in particular, *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

30. In particular, the Court reiterates that in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance. In other words, when one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019, with further references).

31. In this connection, the Court observes that the applicant contested the seizure of her assets before the courts which had examined the criminal charges against her, and those courts addressed her arguments (see paragraphs 11-12 and 16-18 above). The present case thus differs from *Călin v. Romania* (no. 54491/14, §§ 17 and 83, 5 April 2022), where the applicant had not had a genuine opportunity to bring his grievances before a court, as the criminal charges against him had been dropped by the prosecutor.

32. The Court considers that the applicant in the present case could reasonably have expected the Suceava Court of Appeal and the High Court to address her grievances in respect of the seizure. In these circumstances, the fact that the applicant did not lodge an objection against the prosecutor's order of 18 April 2011 (see paragraph 26 above) cannot be held against her when assessing whether she exhausted domestic remedies. Indeed, in requesting that the Court of Appeal and the High Court lift the measure

imposed by the prosecutor, the applicant made normal use of the remedies which were available and sufficient in respect of her Convention grievances (see *Gherghina*, cited above, § 85). Moreover, as far as the confiscation is concerned, the Court observes that the applicant had been convicted of bribetaking and of forming an organised criminal group; that conviction became final (see paragraph 17 above). In these circumstances, the Court is of the opinion that a separate civil action against the State for allegedly unlawful acts committed by the prosecutor (see paragraph 27 above) would have had little prospect of success and that it was highly unlikely that the applicant could have obtained the restitution of the sums considered by the criminal courts to be the proceeds of crime.

33. For these reasons, the Court considers that the Government's objection of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

35. The applicant argued that the prosecutor had confiscated her assets despite evidence that they had been lawfully obtained (see paragraphs 9, 11-12 and 16 above) and that the value of the assets seized had been disproportionately high, bearing in mind the final confiscation order issued by the courts against her.

36. Moreover, she complained that the damages she had been ordered to pay had been calculated randomly and arbitrarily by the courts (see paragraphs 10, 14 and 18 above), which had acknowledged the impossibility of establishing the exact amounts allegedly received by the applicant and the other defendants.

37. Lastly, she contended that the reimbursement of the difference between the forfeited amounts and those ordered to be confiscated had been calculated in Romanian lei at an exchange rate which the applicant considered to be unfavourable, and that it had taken place more than one year after the first-instance court's decisions and more than six months after the final decision (see paragraph 21 above), thus causing an additional infringement of her right to the peaceful enjoyment of her possessions.

(b) The Government

38. The Government accepted that the measures taken against the applicant in the present case had constituted interference with the right protected by Article 1 of Protocol No. 1 to the Convention.

39. In their view, the measure ordered by the prosecutor had been necessary to control the use of property in accordance with the general interest, had been applied in accordance with the procedure prescribed by law (Article 163 of the old CCP – see paragraph 22 above), had pursued the legitimate aims of ensuring public order and prevention of crime, and had been justified. They submitted that States enjoyed a wide margin of appreciation in choosing the measures to be applied and in assessing whether their consequences were legitimate.

40. The Government further argued that the prosecutor and the courts had thoroughly considered the circumstances in which the criminal offences had been committed before proposing and upholding the method of calculating the damages owed by each of the convicted persons.

41. They also submitted that the applicant had been able to present her point of view and evidence and that her pleas had been examined by the courts in adversarial proceedings which had been fair and in which the applicant's defence rights had been respected.

2. *The Court's assessment*

(a) **General principles**

42. The Court reiterates 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 deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest 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 other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I, with further references).

43. The Court reiterates that Article 1 of Protocol No. 1 requires above all that any interference by a public authority with the enjoyment of property be in accordance with the law (see *Călin*, cited above, § 71).

44. Furthermore, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of

public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 87, 8 October 2019).

45. Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised. In other words, a “fair balance” must be struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see *Yaşar v. Romania*, no. 64863/13, §§ 50-51, 26 November 2019).

(b) Application of those principles to the facts of the present case

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

46. The Court reiterates that the applicant complained mainly about the seizure, confiscation and subsequent return of some of her assets during the criminal investigation and the proceedings brought against her, which resulted in her conviction (see paragraph 25 above).

47. Those measures may be regarded as an interference with the applicant’s exercise of her right to the peaceful enjoyment of her possessions (see, *mutatis mutandis*, *Călin*, cited above, § 67, in respect of the seizure of assets, and *Phillips v. the United Kingdom*, no. 41087/98, § 50, ECHR 2001-VII, in respect of the confiscation of assets). The Government did not contest the existence of an interference (see paragraph 38 above).

48. The seizure of assets ordered during criminal proceedings is regarded by the Court as a measure entailing control of the use of property, thus falling within the scope of the second paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Călin*, cited above, § 69, with further references).

49. As for the confiscation of assets following a criminal conviction, in some cases the Court has considered it a permanent measure which entailed a conclusive transfer of ownership to the State thus amounting to a deprivation of property for the purposes of the first paragraph of Article 1 of Protocol No. 1 to the Convention (see *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 30, 4 July 2017, with further references; *Yaşar*, cited above, § 49; and *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, no. 42079/12, §§ 37-38, 17 January 2017). In other cases, however, the Court has regarded it as a measure entailing control of the use of property, thus falling within the scope of the second paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Phillips*, cited above, § 51, and *Telbis and Viziteu v. Romania*, no. 47911/15, § 72, 26 June 2018).

50. Be that as it may, the Court reiterates that, as noted above (see paragraph 42 above), both the second sentence of the first paragraph and the second paragraph of Article 1 of Protocol No. 1 should be construed in the light of the general principle enunciated in the first sentence of the first

paragraph. The Court therefore considers that it should examine the situation complained of as a whole in the light of that general rule (see *Beyeler*, cited above, § 106, and, *mutatis mutandis*, *Đokić v. Bosnia and Herzegovina*, no. 6518/04, § 56, 27 May 2010).

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

51. The Court notes that both measures at issue in the present case were in conformity with the relevant provisions of the applicable domestic law: Articles 163 to 166 of the old CCP allowed for the seizure of an accused's assets (see paragraphs 9 and 22 above), and Article 112 § 1 (e) of the new Criminal Code and Article 118 § 1 (e) of the old Criminal Code allowed for the confiscation of the proceeds of crime (see paragraphs 14 and 24 above). The Court is therefore satisfied that the interference with the applicant's property right was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention (see *Călin*, cited above, § 72, and, *mutatis mutandis*, *Telbis and Viziteu*, cited above, § 73, and *S.C. Service Benz Com S.R.L.*, cited above, § 31).

52. Furthermore, the Court has no doubt that the measures in question were taken in the general interest with a view to punishing acts of corruption, ensuring public order and preventing crime and in the interests of the proper administration of justice (see, among many other authorities, *Călin*, cited above, § 73). In particular, the decision to seize the applicant's assets was made in order to cover the damage which the prosecutor considered to have been caused by the criminal acts allegedly committed by the applicant (see paragraph 9 above), while the confiscation of part of the sums seized was aimed at deducting the proceeds of crime from the perpetrator's assets (see paragraphs 14 and 24 above).

(iii) *Proportionality of the interference*

53. The question is therefore whether, in the circumstances of the case, the measures were proportionate to the aim pursued; in other words, whether a fair balance was struck between the requirements of the general interest and the protection of the applicant's right to the peaceful enjoyment of her possessions, in particular by providing procedures affording her a reasonable opportunity to put her case to the relevant authorities (see *Călin*, cited above, § 74, with further references).

54. In so far as the complaint concerns the seizure of the applicant's assets, the Court reiterates, at the outset, that the applicant contested the measure before the courts (see paragraph 31 above). She submitted several documents in an attempt to prove that the assets seized by the prosecutor had been lawfully obtained; that evidence was examined by the domestic courts but was eventually found to be insufficient (see paragraphs 12 and 18 above). The applicant did not assert that she had submitted any other evidence

concerning the origin of the seized assets or that any such evidence she had submitted had been disregarded by the courts (see, *mutatis mutandis*, *Radu v. Romania* (dec.), no. 484/08, § 28, 3 September 2013). There is nothing in the conduct of those proceedings to suggest either that the applicant was denied a reasonable opportunity to put forward her case or that the domestic courts' findings were tainted with manifest arbitrariness (see, *mutatis mutandis*, *Telbis and Viziteu*, cited above, § 79).

55. For these reasons, the Court cannot accept the applicant's assertions that she had proven the lawful nature of the seized assets (see paragraph 35 above). The fact that the Court of Appeal did not find in the applicant's favour supports that conclusion.

56. The Court also notes that the seizure of the applicant's assets was only temporary in nature and affected the applicant during a period of a little over four years and five months (see paragraphs 9 and 21 above). Bearing in mind the complexity of the criminal proceedings, which related to the daily activity of more than sixty accused persons over a period of five months (see paragraph 6 above), the Court finds that the overall length of time during which the applicant's assets were seized was not unjustified (contrast *Călin*, cited above, §§ 83-84, which concerned the seizure of some assets for ten years and other assets for eighteen years). Moreover, during the time when the measure was in place, the applicant had access to courts, which verified the lawfulness and necessity of that measure (see paragraphs 11 and 16 above, and contrast *Călin*, cited above, § 83).

57. As for the applicant's allegation that the sum seized by the prosecutor was disproportionately high (see paragraph 35 above), the Court cannot but observe that the prosecutor calculated that sum on the basis of thirteen counts of bribe-taking of which he accused the applicant. The Court does not see any appearance of arbitrariness in the manner in which the prosecutor conducted the investigation and indicted the applicant for thirteen counts of bribe-taking or in the manner in which the courts examined the accusations brought against her. Therefore, although the applicant's final conviction only concerned six of the thirteen counts of alleged bribe-taking (see paragraph 13 above), the amount seized by the prosecutor does not appear disproportionately high for all thirteen counts, bearing in mind the method of calculation used (see paragraph 10 above).

58. The Court further notes that the applicant also contested the method of calculation used by the prosecutor and the courts and the resulting amount which was confiscated (see paragraph 36 above). However, the Court observes that the confiscation measure was applied by the domestic courts on the basis of their findings, following an examination of the evidence in the case file, that the applicant had committed the criminal offences under investigation and had thus obtained illicit gains (see paragraphs 14 and 18 above; see also, *mutatis mutandis*, *Phillips*, cited above, § 53). In this respect, it is noteworthy that, having found the applicant guilty of only six of the

thirteen counts of bribe-taking identified by the prosecutor (see paragraph 13 above), the Court of Appeal decided to confiscate only a part of the sum seized and ordered that the difference be returned to the applicant (see paragraph 14 above), thus ensuring the proportionality of the confiscation *vis-à-vis* the level of guilt which had been established in respect of the applicant.

59. Lastly, the Court observes that the applicant complained of delays in the return of the remaining assets and the manner in which it took place (see paragraph 37 above). However, those assets were returned only a few days after the final decision was made available to the parties (see paragraphs 20-21 above). It does not appear that the applicant complained to the domestic authorities about either the time it had taken the High Court to finalise its decision or the manner in which those assets had been returned. That said, the Court has already found that the mechanism put in place by the respondent State whereby an applicant can complain about delays in proceedings, including in the drafting stage of court decisions, may offer individuals in the applicant's situation the safeguards required by the Convention standards in relation to this matter (see, *mutatis mutandis*, *Mierlă and Others v. Romania* (dec.), nos. 25801/17, 26272/18 and 4052/19, §§ 111-14, 17 May 2022; *Ibriș*, cited above, §§ 21 and 30-31; and *Mand and Others v. Romania* (dec.), no. 39273/07, § 139, 19 November 2019).

60. Having regard to all the above considerations, and in particular to the fair way in which the domestic courts assessed the case, the Court finds that the proceedings in the present case cannot be considered to have been arbitrary. Having regard to the wide margin of appreciation enjoyed by States in pursuit of a crime policy designed to combat corruption in the public service (see, *mutatis mutandis*, *Telbis and Viziteu*, cited above, § 81), and to the fact that the domestic courts afforded the applicant a reasonable opportunity of putting her case through adversarial proceedings (see, *mutatis mutandis*, *Balsamo*, cited above, § 94), the Court concludes that the interference with the applicant's right to the peaceful enjoyment of her possessions did not upset the requisite fair balance.

61. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

CĂPĂȚÎNĂ v. ROMANIA JUDGMENT

Done in English, and notified in writing on 28 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President