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

FIRST SECTION

CASE OF MELANDRI v. SAN MARINO

(Application no. 25189/21)

JUDGMENT

Art 1 P1 • Confiscation of sum of money derived from crime and applicant's inability to recover it, following his conviction for money laundering • Measure proportionate to legitimate aim of fighting against money laundering • Procedural safeguards available to applicant in relevant proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 September 2024

FINAL

12/12/2024

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

In the case of Melandri v. San Marino,

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

Ivana Jelić, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström, *judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 25189/21) against the Republic of San Marino lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Vincenzo Secondo Melandri ("the applicant"), on 7 May 2021;

the decision to give notice to the San Marinese Government ("the Government") of the complaints concerning Article 6 §§ 1 and 3 (a) and (b) 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;

the decision of the Government of Italy not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated in private on 27 August 2024,

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

INTRODUCTION

1. The case concerns a complaint under Article 6 §§ 1 and 3 (a) and (b) of the Convention in relation to criminal proceedings against the applicant for money laundering and a complaint concerning the consequent confiscation of the applicant's property under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1969 and lives in Russi, Italy. He was represented by Mr A. Pagliano, a lawyer practising in Naples.

3. The Government were represented initially by their Co-Agent, Ms M. Bovi and later by their Agent Ms S. Bernardi.

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

I. BACKGROUND TO THE CASE

5. On 28 November 2012, the Financial Intelligence Agency (hereinafter 'FIA') reported to the Investigating Judge a number of banking transactions carried out by the applicant and L.C., at B. C. S.p.a. – a San Marino bank (hereinafter 'the bank') – that could constitute money laundering.

6. It transpired that in the period from 2 September 2009 to 17 March 2010, the applicant had deposited into an account in his name, held at the bank, 4,865,830 euros (EUR) in cash and a number of cheques amounting to approximately EUR 500,000.

7. Meanwhile L.C. – who had been introduced to the bank by the applicant – had also opened a current account with the bank, in the name of a wine company named O. (hereinafter 'company O.'), of which he was the sole director. Over the period 20 October 2010 to 22 December 2010 EUR 310,000 had been credited to company O. by company A.G. which was traceable to the applicant.

8. The FIA reported that it had learned from press reports in June 2012 that the applicant, together with L.C., had been subjected to measures restricting personal freedom as a result of the investigation called "Operation Baccus", promoted *inter alia* by the Bari Anti-Mafia District Directorate. The applicant and others had been charged, in Italy, with a number of crimes, including money laundering, conspiracy to commit extortion, usury, and fraud against the State, via a series of fictitious operations in the wine sector (proceedings no. 14219/09). The illegal activities had been intended to eventually defraud the Italian tax authorities and the European Union.

9. According to the Italian judicial authority (see precedent paragraph), the criminal association carried out a number of fictitious business operations in the wine industry. In particular, a number of companies in Puglia had issued invoices to company A.G. for apparent supplies of must. Through such fictitious transactions the criminal organisation's illicit proceeds were laundered, while company A.G. benefitted from the reduction of costs resulting in tax savings and the receipt of undue benefits. The pattern of these operations was confirmed, according to the FIA, in the relations between company O. and company A.G. as reflected in the respective bank accounts.

II. THE CRIMINAL PROCEEDINGS IN SAN MARINO

A. The preliminary stages

10. As a result of the above, criminal proceedings no. 865/2012 were opened in San Marino. The Investigating Judge in San Marino acquired, by means of letters rogatory, the relevant documentation from the Italian authorities. The latter pointed out that the amounts deposited by the applicant in the bank were not compatible with his personal savings but were the result

of the activities carried out with his associates of the mafia organisation referred to in the Italian criminal proceedings no. 14219/09. Further information received by the same means, in 2013, highlighted the role of fictitious operations of company O. *inter alia* with company A.G., in the context of the complex scam perpetrated by the criminal organisation. On 14 November 2013 the Court of Appeal of Bari sent a copy of its judgment in criminal proceedings no. 14219/09 whereby the applicant had been found guilty of issuing false invoices and criminal association (confirmed later by the Court of Cassation in the most part, save some counts listed in the charges which had become time-barred).

11. On 22 November 2013 the Investigating Judge in San Marino, also on the basis of the elements acquired by virtue of international judicial assistance, charged the applicant and L.C. with the offence of money laundering pursuant to Article 199 *bis* of the Criminal Code (hereinafter 'CC'). He also ordered the preventive seizure of a life insurance policy with a single premium taken out with C.S.A. S.p.a. on which securities and sums amounting to roughly EUR 6,800,000 had been transferred, an account in CIS bank, holding EUR 480, as well as of any other account traceable to the applicant with any other financial institute in San Marino.

12. The seizure of the policy was enforced on 5 December 2013.

13. On 9 December 2014 the applicant was notified that he was being charged for the offences under Articles 50 (continuous offences) and 199 *bis* (money laundering) of the CC, as well as those under Articles 50, 73 (co-participation and co-operation) and 199 *bis* of the CC committed together with L.C.

14. On 12 and 13 March 2015 the applicant and LC. were questioned.

15. On 27 March 2015 the Investigating Judge ordered the seizure of a safe deposit box and its contents held at the bank in the applicant's name. The seizure was enforced on 30 March 2015 and the box opened on 15 April 2015, date when the applicant's challenge to the seizure was rejected.

16. On 17 April 2015 the Investigating Judge issued an indictment against the applicant for

i) (first charge) the criminal offences provided for and punished by Articles 50 and 199 *bis* of the CC, because with several actions in pursuance of the same criminal plan, he transferred and concealed (*occultava*) money obtained from crimes (namely, misappropriation of funds obtained by the use of false invoices, fraud (*frode*) to the detriment of the treasury and scams to the detriment of the European Union (*truffe comunitarie*)). The funds were transferred to San Marino as apparent commercial operations with company A.G. administered by the applicant. In particular the applicant deposited in current account X, opened in his name at bank CIS, EUR 6,132,577.39 in cash and EUR 1,768,915.53 in cheques. After having been invested in movable property and foreign funds, the transferred funds, together with other sums provided by the applicant were in part withdrawn (EUR 1,986,081.50

in cash) and in part (EUR 8,669.923,31) used to make bank transfers (*bonifici*) into other accounts in the applicant's name. Part of the latter sum was used to open a life insurance policy in the applicant's name which, on 10 March 2011, stood at EUR 6,832,907.67, on 11 December 2011 a further EUR 44,5000 were added into the policy, and on 22 December 2011 EUR 20,000 were withdrawn and transferred into another account held by the applicant. The latter sum was then in part (EUR 10,000) withdrawn from that account and in the remaining part issued in the form of two cheques (each of EUR 5,000). The impugned behaviour occurred in San Marino and came to an end on 5 December 2013, date when the life insurance policy was seized; and

ii) (second charge) for the offences provided for and punished by Articles 50, 73 and 199 *bis* of the CC because with several actions in pursuance of the same criminal plan, together with L.C., he transferred money obtained from crime (fraud to the detriment of the treasury and the European Union and false invoices). In particular, in relation to the sum of EUR 310,000 transferred to company O. by company A.G. and eventually transferred in part (EUR 160,000) in favour of a certain A.M., withdrawn in cash in respect of EUR 14,500 and the remainder used to issue cheques. This conduct having occurred in San Marino until 22 December 2013.

B. The trial

17. The applicant was assisted by counsel throughout the criminal proceedings against him. During the trial the preliminary motions raised by the defendants were upheld. The FIA Director provided a supplementary report detailing all the banking operations which had been carried out by the applicant in San Marino which showed in particular that cash had been deposited in current account X until 2 December 2010 and cash had been withdrawn until 5 April 2011. The report also showed that the opening of the insurance policy and the relevant deposit had taken place on 10 March 2011, whereas the sums covered by the policy had been transferred until 27 December 2011 (date of partial redemption).

18. The defendants submitted their defence pleadings, in particular the applicant argued that there was no proof of the illicit origin of the funds and that the crime of self-laundering was only introduced by means of Law no. 100/2013 (see paragraph 31 below), that is, after the ascribed conduct, and subsidiarily asked to benefit from the privilege of self-laundering to obtain the lesser punishment in respect of the predicate offences. The FIA Director gave testimony as well as a certain M.G. who testified to have issued false invoices to company O. The relevant reconstruction of the timelines and transfers, as presented at the trial, was not challenged.

1. *The first-instance judgment*

19. By a judgment of the Judge of First Instance (*Commissario della Legge*) of 10 January 2019 the applicant was found guilty of money laundering, for having transferred and concealed funds of illicit origin, in relation to both charges considering the continuous nature of the offences taken together (but only in relation to acts committed after the amendments of 2013 which entered into force on 29 July 2013 (Law no. 100/2013) to Article 199 *bis* of the CC). L.C. was acquitted in the absence of concrete evidence that the co-operation with the applicant, with which he had been charged, continued after the entry into force of Law no. 100/2013. Leaning towards the minimum scale of punishment, the applicant was sentenced to, *inter alia*, four years and six months imprisonment. Moreover, according to Article 147 of the CC (see paragraph 27 below) the judge ordered that the property previously seized (see paragraphs 11 and 15 above), and the interest accrued thereon, be confiscated.

20. The Judge of First Instance considered that the applicant had been involved in various criminal proceedings related to economic crime which generated substantial sums of money (millions of euros). The circumstances of the case, including the timelines and methods used, showed that the funds held by the applicant derived from such wrongdoing. That evidence (*prove logiche*) sufficed to convince the judge, as required by domestic case-law, irrespective of a finding of guilt in respect of those predicate offences. Indeed, in Italy the applicant had only been found guilty in part (including various conduct related to issuing false invoices as of 1997) as other offences had become time barred or had not been sufficiently proven (the fraud). Furthermore, the applicant's recapitulation of his business dealings turned out to be ill-founded and in various aspects disproved, to the extent, *ad abundantiam*, that the false invoices referred to quantities which could not even have been held in the stores considering the latter's size. Substantial sums of money were deposited in San Marino, shortly after those circumstances, which could not have been the fruit of his licit activity – indeed the applicant had not proved that. It could not be ignored that the applicant had been involved in organised crime over a number of years and that the deposits had been made in cash, typical of persons who wanted to hide the origin of the funds. The applicant's conduct thus amounted to the offence under Article 199 *bis* of the CC, and the elements of the crime, both the objective element and the deliberate intent had been established.

21. In the first-instance court's view, the permanent nature of the behaviour intended to hide the funds (*occultamento*) meant that it only came to an end on 22 November 2013 when the funds had been seized, justifying the classification as continuous offences. In the light of the applicant's argument that the offence of self-laundering had been introduced only in 2013, the applicant could therefore only be sanctioned for the period subsequent to that law, which entered into force on 29 July 2013.

2. *The appeal proceedings*

22. The applicant appealed submitting, in so far as relevant, that the amounts defined in the charges corresponded to his capital and business profile and arguing that there was no connection between the funds deposited in San Marino and the crimes with which he had been charged [in Italy], pointing out how such funds actually originated from value added tax ('VAT') refunds obtained from the Italian tax authorities, and, thus, could not be considered illicit. He further argued that the conduct attributed to him amounted to self-laundering in so far as he would also be the author of the predicate offences. However, the offence of self-laundering was created by means of the amendments to Article 199 *bis* of the CC (removing the exception that applied to persons who had committed the predicate offence). The latter only entered into force on 29 July 2013, and thus, had not existed at the time of the impugned conduct, which could therefore only concern the transfers which came to an end in March 2011, and thus he could not be punished for it. Nor could Law no. 99/2010 (see paragraph 32 below) apply to his case.

23. By a judgment of 6 November 2020, filed in the relevant registry on 11 November 2020, the Judge of Appeal in criminal matters (hereinafter 'the Judge of Appeals') upheld the finding of guilt on the first charge while varying its basis. In particular, he considered that the applicant had indeed committed self-laundering, which was nevertheless prosecutable in the present case given that Law no. 99/2010 (see paragraph 32 below) had already provided that the relevant exception under Article 199 *bis* of the CC did not apply in relation to the predicate offence of fabricating false invoices. The applicant's appeal, referring to Article 1 (f) of Law no. 99/2010, was unclear as to why it should not apply, indicating arguments which could only be relevant for conduct related to the period antecedent to June 2010. However, the offence at issue had been committed as from 10 March 2011, i.e. after the entry into force of Law of no. 99/2010, until 27 December 2011, date of the last transfer of the insurance policy.

24. On the merits of the first charge, the Judge of Appeals noted that the findings of the Italian Court of Appeal confirmed by the Court of Cassation (see paragraph 10 above) were clear in relation to the use of false invoices in favour of company A.G. for fictitious services, in relation to which the applicant had obtained undue tax reimbursements from the State. The Judge of Appeals considered, *inter alia*, that the findings of the first-instance court as to the illicit origin of the sums at issue had been based on numerous, serious, precise and compellent indications and there was no doubt that the funds were the result of offences committed via the dealings of company A.G. In addition, it would have been normal and easy for the applicant to prove that the funds originated from his licit business. This was not so and there was little doubt that any such licit funds would not have been circulated in cash. According to the Judge of Appeals, those funds, or the most part,

constituted the personal profit made by the applicant in exchange for his participation in the criminal association, within which his role was to receive false invoices and pay them by means of bank transfers. Thus, in a sense, those sums derived from the orchestrated tax fraud to the detriment of the Italian State, and in particular the use of false invoices to obtain financial advantages and undue reimbursements of VAT. Such profits (in the form of an economic advantage) had to be considered as also being derived from crime (*misfatto*), as required by Article 199 *bis* of the CC. The substantial sum was also obtained as a result of the misappropriation of funds mentioned in the indictment, and possibly also from money laundering in Italy, although the latter was not referred to in the indictment given the insufficient evidence.

25. The Judge of Appeals further acquitted the applicant of the second charge, considering the finding of the first-instance court incongruous, given the reasons for acquitting the co-accused (despite it being based on a wrong premise, namely the lack of proof of the continued existence of the offence following the 2013 amendments). In any event, even on the correct premise being applied on appeal, the funds at issue in the second charge were rather the means to commit the crime not the profits and thus it was for that reason that both had to be acquitted. In consequence it redefined the punishment imposed to, *inter alia*, four years and three months of imprisonment. It confirmed the rest of the first-instance judgment.

26. On 10 December 2020 the Enforcement Judge ordered the confiscation of the assets previously seized (including the life insurance policy), and the interest accrued thereon, in favour of the San Marino State treasury.

RELEVANT LEGAL FRAMEWORK

I. THE CRIMINAL CODE

27. Article 147 (1) and (2) of the Criminal Code concerning confiscation as in force from July 2009 until 13 August 2013 read as follows:

> “1. The instrumentalities belonging to the criminal offender, which served or were destined to commit the crime, and the things being the price, product or profit thereof, shall be confiscated.
>
> 2. Regardless of conviction, confiscation shall also apply to the illegal making, use, carrying, holding, sale of or trade in property, even if not owned by the criminal offender, which constitutes a crime.”

28. Article 147 (3) of the Criminal Code was modified three times on different dates between 2009 and 2011 (covering the period in relation to the commission of the offence of which the applicant was found guilty, namely from 10 March 2011 to 27 December 2011), and read, in so far as relevant, respectively, as follows:

From 5 July 2009 to 15 July 2010 and from 11 November 2010 to 31 May 2012

"In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the criminal offence referred to in Article 199 *bis* (...), as well as of the things being the price, product or profit thereof, shall always be mandatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money corresponding to the value of the instrumentalities and things referred above."

From 15 July 2010 to 11 November 2010

"In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the criminal offence referred to in Article 199 *bis* (...), as well as of the things being the price, product or profit thereof, shall always be mandatory. In the event that the instrumentalities that served or were destined to commit the criminal offence or those being the price, product or profit thereof have been mixed entirely or partially with goods having a licit origin, the judge shall order the confiscation of the combined goods up to the estimated value of the instrumentalities that served or were destined to commit the criminal offence or those being the price, product or profit thereof. In the cases indicated in the third sub-article, the judge shall order the confiscation of money, goods or other instrumentalities of which the person found guilty cannot prove the licit origin. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money corresponding to the value of the instrumentalities and things referred above."

29. As of 13 August 2013, Article 147 of the Criminal Code read as follows:

"1. By passing a judgment establishing the defendant's liability, the judge shall order the confiscation of the instrumentalities that served or were destined to commit the offence, and of the things being the price, product or profit thereof.

2. Regardless of conviction, confiscation shall also apply to the illegal making, use, carrying, holding, sale of or trade in property, even if not owned by the criminal offender, which constitutes a crime.

3. In the event of acquittal due to mental illness, the confiscation of the instrumentalities referred to in paragraph 1 shall always be mandatory when there is an ascertainable and tangible risk that they might be used by the individual to commit offences.

4. For the purposes of confiscation, the assets that the offender has fictitiously registered in the name of third persons, or in any case, owns through an intermediary, shall be regarded as belonging to him/her.

5. The confiscation of the profit, price or product of the offence shall also be ordered against the person who, having nothing to do with the offence, has taken advantage thereof, if he/she could be aware of the illicit origin of the things available to him/her.

6. Confiscation may also be ordered with respect to property the ownership of which has been transferred to a person other than the offender by virtue of inheritance law. In this case, confiscation shall be ordered only with respect to the assets currently available to the heir.

7. Confiscation shall not affect the rights of *bona fide* third parties on the things confiscated.

8. If the instrumentalities indicated in paragraph 1 above cannot be confiscated for any reason, the judge shall order the confiscation of money, property or other benefits

available to the convicted person, also through an intermediary, for a value corresponding to the product, profit or price of the offence

9. When the instrumentalities referred to in paragraph 1 have been intermingled, in whole or in part, with property acquired from legitimate sources, the judge shall order the confiscation of the intermingled proceeds, up to the assessed value of the instrumentalities that served or were destined to commit the offence or of the things being the price, product or profit thereof. If the instrumentalities referred to in paragraph 1 have been transformed or converted, in whole or in part, in other assets, confiscation shall affect such assets, as well as the benefits deriving from the transformation, conversion or intermingling.

10. In case of conviction for the crimes referred to in Articles 150, 158, 157, 168, 168 bis, 169, 177 bis, 177 ter, 194 paragraph 3, 195, 195 bis, 195 ter, 196, 199, 199 bis, 204 paragraph 3 number 1, 204 bis, 204 ter, 207, 212, 237, 239, 241, 242, 246, 251, 252 ter, 287 bis, 287 ter, 295, 296, 297, 298, 299, 300, 305 bis, 308, 309, 337 quater, 337 quinquies, 371, 372, 373, 374 paragraph 1, 374 ter paragraph 1, 401, 401 bis, 403, 403 bis, the crimes for the purpose of terrorism, the crime referred to in Article 1 of Law no. 139 of 26 November 1997 and the crime referred to in Article 2 of Law no. 99 of 7 June 2010, the judge shall order the confiscation of benefits available to the convicted person, of which the offender is not able to demonstrate the lawful origin.

11. Confiscated properties or equivalent sums shall be allocated to the State budget or, where appropriate, destroyed."

30. Article 199 *bis* of the Criminal Code (Money Laundering) (Law no. 123/1998 as amended by Law no. 28/2004 and Law no. 92/2008) reads as follows[1]:

"1. Apart from cases of participation in the commission of the offence, anyone who conceals, substitutes or transfers money, or cooperates or intervenes in causing it to be concealed, substituted or transferred, knowing that such money is proceeds of a criminal offence, for the purpose of concealing its true origin, commits a money laundering offence.

2. Also anyone who uses money, or cooperates or intervenes in causing it to be used in economic or financial activities, knowing that such money is proceeds from crime, commits a money laundering offence.

3. The provisions of this article also apply when the criminal offender from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the criminal offence to be proceeded against. Where the predicate offence was committed abroad it shall be criminally prosecutable and punishable also in San Marino.

4. Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money.

5. Anyone who commits the crimes set forth in this article shall be punished by terms of fourth-degree imprisonment, second-degree daily fine and third-degree disqualification from public offices and political rights. The punishments may be decreased by one degree based on the corresponding amount of money or assets and on the nature of the transactions carried out. The punishments may be increased by one degree when the facts have been committed in the exercise of a commercial or

[1] translation provided by the Government.

professional activity subject to the authorisation or qualification by the competent public authorities.

6. The judge shall apply the punishment corresponding to that imposed for the predicate offence, if this is less serious."

31. By means of Law no. 100/2013 which entered into force on 29 July 2013 the words "Apart from cases of participation in the commission of the offence", and thus the exemption from prosecution in the cases where the offender of the offence of money laundering had also committed the predicate offence generating the laundered money, was removed.

II. OTHER RELEVANT LAWS

32. Article 1 of Law no. 99 of 7 June 2010 (Rules for the prevention of tax evasion through the use of forged documents and introduction of criminal conspiracy as an aggravating circumstance) reads as follows:

"For the purposes of this Law:

[.......] f) In case of issuance, use or release of invoices or other documents for non - existing transactions or services, the reserve clause referred to in Article 199 *bis* of the Criminal Code ("except for cases of participation in the commission of the offence") shall not apply."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

33. The applicant complained that he was unable to defend himself since he had been charged with money laundering but was ultimately found guilty of self-laundering, in breach of Article 6 §§ 1 and 3 (a) and (b) of the Convention, which read as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing [...]

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence; [...]."

A. The parties' submissions

1. The Government

34. The Government submitted that the applicant had adequately been informed of the charges against him, and defended himself accordingly, so much so that he had been acquitted of the second charge. They therefore

considered that the complaint should be rejected for lack of significant disadvantage, and in the alternative as manifestly ill-founded.

35. The Government explained that the offence of money laundering existed in San Marino legislation as early as 1998, together with its respective punishment, albeit amendments to that law were made in 2004, 2008, 2010 and 2013, in line with relevant international recommendations. While the original law provided for the ‘privilege of self-laundering’ namely the fact that the person who committed the predicate offence could not be prosecuted for money laundering, the latter privilege was abolished in 2013 allowing for prosecution for the charge of money laundering even if the accused had been the perpetrator of the predicate offence. Thus, allowing for a more effective repression of the increasing phenomenon of money laundering.

36. However, Article 1 (f) of Law no. 99/2010 (see paragraph 32 above) had already excluded that privilege in connection with the predicate offence of issuance, use or release of invoices or other documents for non-existing transactions or services (at issue in the present case). Thus, in that connection, the offence of self-laundering existed already then, it being incorporated into Article 199 *bis* to which no exception applied in the present case. In that light, the applicant had been clearly informed both at investigation stage and at trial about the charges being held against him in sufficient detail, as it was sufficient to rely on Article 199 *bis* of the CC. The Government emphasised that in the San Marino legal system (unlike the Italian system by which the applicant appeared to be inspired) the offence of money laundering and self-laundering was one and the same, covered by the same provision.

37. In particular, the applicant had also been informed of the specific transactions at issue and the relevant dates and was questioned about them at the investigation stage. That relevant information was reiterated in his indictment in even greater detail including reference to the elements constituting the money laundering offence: the substitution, transfer and concealment operations carried out by the applicant using the illicit proceeds held in San Marino, the dates of execution, including the date of the commission of the crime and its legal classification, as well as the predicate offences generating the funds.

38. The Government further referred to the applicant’s appeal which had clearly covered argumentation both in respect of Law no. 100/2013 (eliminating the privilege of self-laundering *in toto*) and Law no. 99/2010 (excluding that privilege in relation to the predicate offence of false invoices).

39. Lastly, for clarification purposes, the Government submitted that the only reason why the first-instance court had not referred to Law no. 99/2010 was that it had focused on the continuing offence of money laundering. Given that the concealment of the funds had continued until 2015 it sufficed to apply Law no. 100/2013. Subsequently, in view of the applicant’s appeal on this matter, the Judge of Appeals provided a different legal interpretation of the facts, taking into consideration, as the time of the commission of the offence,

the period starting from the day of the entry into force of Law no. 99/2010 to the day of the last transfer of the sums covered by the insurance policy (27 December 2011). Therefore, the latter took into account all the transfers, considering them as standalone, instantaneous, acts of money laundering which had been carried out by the applicant after the entry into force of Law no. 99/2010 and had concerned sums derived from the commission of the offence of tax fraud in Italy through the use of invoices relating to fictitious transactions. The latter was an autonomous legal assessment of the facts charged to the defendant, a prerogative inherent in the very exercise of the judicial function. Moreover, it had no effect on the applicant's defence since the crime of tax fraud, committed in Italy as the predicate offence of money laundering, had also already been indicated in his judicial notice and the indictment.

2. *The applicant*

40. The applicant submitted that bearing in mind the different amendments to Article 199 *bis* of the CC, he had not been informed in sufficient detail of the nature and cause of the accusation against him, with a view to preparing an adequate defence, as required by Article 6 §§ 1 and 3 (a) and (b) of the Convention. In particular, while he had been charged with money laundering, he was ultimately found guilty of self-laundering (an offence which had been introduced only in 2013). He noted that the confusion in the state of affairs was clear from the contradictory findings of the first-instance court and those of the appeal court. Firstly, those courts had focused on different aspects of the illicit gains made in Italy and thus the vagueness of the predicate offences (*inter alia*, fraud being referred to beyond the false invoicing) persisted all throughout, and secondly, they had had different views of the applicable laws. The first-instance court had applied the 2013 legislation while the Judge of Appeals applied the 2010 legislation, the latter rightly correcting the erroneous timelines which had been applied by the first-instance court. In that light, the applicant was unable to properly defend himself. This had been compounded by the unclarity concerning the predicate offences.

41. In the applicant's view, the legislative option of having the different facts of money laundering and self-laundering covered by a common incriminating provision perpetuated both ambiguity and approximation, with the inevitable result of making the defence almost impossible, since the elements of the legal fact could not be identified. This confusing situation was even more confounded by the Government's own observations in the present case.

B. The Court's assessment

1. General principles

42. Under the terms of paragraph 3 (a) of Article 6 of the Convention, everyone charged with a criminal offence has the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him". This provision points to the need for special attention to be paid to the notification of the "accusation" to the defendant. An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on notice of the factual and legal basis of the charges against him (see *Kamasinski v. Austria*, 19 December 1989, § 79, Series A no. 168, and *Sejdovic v. Italy* [GC], no. 56581/00, § 89, ECHR 2006-II).

43. The scope of the above provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention. In criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 52, ECHR 1999-II, and *Sejdovic*, cited above, § 90).

44. The accused must be made aware "promptly" and "in detail" of the cause of the accusation, that is, the material facts alleged against him which are at the basis of the accusation, and of the nature of the accusation, namely, the legal qualification of these material facts. While the extent of the "detailed" information referred to in this provision varies depending on the particular circumstances of each case, the accused must at any rate be provided with sufficient information as is necessary to understand fully the extent of the charges against him with a view to preparing an adequate defence (see *Mattoccia v. Italy*, no. 23969/94, §§ 59-60, ECHR 2000-IX).

45. In this respect, the adequacy of the information must be assessed in relation to sub-paragraph (b) of paragraph 3 of Article 6, which confers on everyone the right to have adequate time and facilities for the preparation of their defence, and in the light of the more general right to a fair hearing embodied in paragraph 1 of Article 6 (see *Pélissier and Sassi*, cited above, § 54; *Mattoccia*, cited above, § 60; and *Penev v. Bulgaria*, no. 20494/04, §§ 35-36, 7 January 2010).

46. The "rights of defence", of which Article 6 § 3 gives a non-exhaustive list, have been instituted, above all, to establish equality, as far as possible, between the prosecution and the defence. The facilities which must be granted to the accused under Article 6 § 3 (b) are restricted to those which assist or may assist him or her in the preparation of the defence (see *Mayzit v. Russia*, no. 63378/00, § 79, 20 January 2005).

47. Article 6 § 3 (b) implies that the substantive defence activity on behalf of an accused may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the ability to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996; *Mayzit*, cited above, § 78 and *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008).

2. Application of the general principles to the present case

48. The Court notes that the applicant was only found guilty of money laundering in relation to the transfers which had occurred from 10 March 2011 until 27 December 2011, date of the last transfer of the insurance policy (see paragraph 23 above). The details or the classification or interpretation of any actions or omissions prior or following that date fall outside the scope of the complaint.

49. In the present case the indictment clearly indicated the name of the accused, the relevant articles of the CC, a description of the criminal behaviour (the facts), and the relevant place and dates, as well as the predicate offences (see, *mutatis mutandis*, *Sofia v. San Marino* (dec.), no. 38977/15, § 50, 2 May 2017). In particular, it referred in detail to specific operations carried out by the applicant, indicating precise sums, the entire period of time at issue as well as the dates of the transfers, both of which were elaborated on at the trial through the report of the FIA director which was not challenged by the applicant. The indictment further referred to a list of predicate offences through which the illicit sums had been derived indicating explicitly a number of predicate offences, including those related to the use of false invoices (see paragraph 16 above).

50. The applicant's main argument is in fact that he had been unaware of the legal qualification of these material facts, the applicant being of the view that there was a distinction between the offence of money laundering and that of self-laundering albeit being covered by the same provision (Article 199 *bis* of the CC).

51. The Court observes firstly that Article 199 *bis* of the CC concerns the offence of money laundering. However, according to Article 199 *bis* of the CC (as it stood prior to 2013), the perpetrator of the predicate offence (which had produced the assets which were eventually laundered) could benefit from the exclusion clause to a charge of money laundering (see *Staiano v. San Marino* (dec.), no. 75201/16, § 58, 3 September 2019). As argued by the Government (see paragraph 36 above) and held by the Court of Appeal (see paragraph 23 above), already prior to 2013, this exclusion clause was not applicable to the "issuance, use or release of invoices or other documents for non-existing transactions or services" as per Article 1 (f) of Law no. 99/2010 (as also admitted by the applicant in his application form). The Court accepts

that, under the San Marino legal system, while legal jargon may refer to "money laundering" and "self-laundering", as submitted by the Government (see paragraph 36 *in fine* above) the offence under Article 199 *bis* of the CC remains one and the same, irrespective of any exception that can come into play whether via the same provision or other laws affecting that provision. The Court thus cannot share the applicant's argument that that situation creates ambiguity making the defence impossible (see paragraph 41 above).

52. Given the detailed facts set out in the indictment, comprising the reference to a series of predicate offences including those related to false invoices, the applicant could and ought to have expected, if necessary, with appropriate legal advice, that Article 199 *bis* of the CC would be applied to the facts of his case (see, *mutatis mutandis*, *Staiano*, cited above, § 62, in the context of Article 7) in the light of other legislation (related to the predicate offence in relation to the false invoicing) having an impact on that provision.

53. The foregoing considerations are sufficient to enable the Court to conclude that the applicant had been informed, in detail, of the nature and cause of the accusations against him, enabling him to prepare with adequate time and facilities an appropriate defence (see paragraphs 44 to 47 above).

54. Thus, the complaint under Article 6 §§ 1 and 3 (a) and (b) of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention. In these circumstances it is unnecessary to examine the Government's objection concerning non-significant disadvantage.

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

55. The applicant complained about the unlawfulness and the disproportionality of the confiscation imposed on him, following criminal proceedings, which he considered was in breach of 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

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

B. Merits

1. The parties' submissions

(a) The applicant

57. The applicant complained that the confiscation imposed on him was not lawful (it being based on a retroactive application of the law, since self-laundering was not an offence prior to 2013), nor proportionate, so much so that, although he had been acquitted of the second charge on appeal, no alteration to the confiscation issued by the first-instance court had occurred. In his view, the Judge of Appeals should have established which sums which had been seized and whose confiscation was ordered had related to the second charge of which he had been acquitted. There had therefore been no proportionality between the harmful conduct and the amount confiscated.

58. The applicant noted that, in their submissions to the Court, the Government relied on Article 147 (2) of the CC, and this was the first time the applicant was being made aware that the confiscation had not been linked to his conviction. Indeed, no mention of this provision had been made at the domestic level, nor did the applicant consider it was applicable to the present case, given that money was not an objectively dangerous good. It was therefore evident that the only possible legal basis for the confiscation in his case was Article 147 (1) of the CC, given that the seized and confiscated money constituted "the price, profit or product of the crime" and therefore the Judge of Appeals should have made an assessment relevant to his findings and adapted the confiscation accordingly, namely, excluding money derived from the activities described in the second charge of which he had been acquitted.

59. Nevertheless, neither at first instance nor on appeal had there been any assessment of which assets derived from which offence, nor a specific finding that the proceeds were illicit. The assumption had always been to confiscate all the assets, in the absence of an adequate and provable estimate of which assets resulted from which crime. In the applicant's view this was the reason why the Judge of Appeals had maintained the confiscation unchanged, allowing no possibility for the applicant to challenge the absence of such an assessment. The measure in question had thus applied to everything held by the applicant in the San Marino accounts, without distinction of time, correlation, or proportionality.

(b) The Government

60. The Government submitted that the confiscation was in accordance with the law, namely Article 147 (2) of the CC, to prevent the circulation of such illicit funds and the commission of further offences. It was therefore preventive and not punitive in nature. Thus, in the Government's opinion, the

reference to proportionality was inappropriate in the absence of a sanctioning element.

61. In particular, the measure was justified even though the applicant had been acquitted of the second charge, given that the Judge of Appeals had found that the conduct described therein was part of a more complex criminal operation to the detriment of the Italian tax authorities of which the applicant had been part. Indeed, the Italian judgments, constituting *res judicata*, had established the illicit origin of the proceeds, and the San Marino authorities had relied on those findings and a preponderance of evidence – given that the applicant had had the possibility, at both instances, but had been unable to prove the licit origin of the funds. His earlier challenge to the seizure had also not been upheld. Thus, the judicial authorities could legitimately confiscate that money even in the absence of a conviction.

62. It was also not irrelevant that in his appeal against the entirety of the judgment the applicant had made no specific argumentation about the confiscation measure applied by the first-instance court.

2. *The Court's assessment*

(a) General principles

63. The Court reiterates its case-law that a confiscation measure, even though it does involve a deprivation of possessions, constitutes nevertheless control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316-A, § 34; *Silickienė v. Lithuania*, no. 20496/02, § 62, 10 April 2012, § 62; *S.A. Bio d'Ardennes v. Belgium*, no. 44457/11, § 48, 12 November 2019, § 48; and *Markus v. Latvia*, no. 17483/10, § 70, 11 June 2020). However, in some cases, where the confiscation involved a permanent transfer of ownership and the applicant had no realistic possibility of recovering its possessions, the Court considered that the measures in question amounted to a deprivation of property (see, for example, *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 30, 17 September 2015; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, no. 42079/12, § 38, 17 January 2017; and *Yaşar v. Romania*, no. 64863/13, § 49, 26 November 2019).

64. In both situations, the Court must establish whether the measure was lawful and "in accordance with the general interest", and whether there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Džinić v. Croatia*, no. 38359/13, §§ 61 and 62, 17 May 2016, and *Gogitidze and Others v. Georgia*, no. 36862/05, §§ 96 and 97, 12 May 2015). The character of the interference, the aim pursued, the nature of the property rights interfered with, and the behaviour of the applicant and the interfering State authorities are among the principal factors material to an assessment of whether the

contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant (see *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, § 149, 16 March 2021, and *Ferhatović v. Slovenia*, no. 64725/19, § 43, 7 July 2022).

(b) Application of the general principles to the present case

65. Preliminarily, and despite the parties' submissions or lack thereof, the Court notes that it has not been shown or proven that the sum of EUR 310,000 which had been credited to company O. by company A.G. (traceable to the applicant) and later dispersed elsewhere (see paragraph 16 *in fine*), which was the subject of the second charge of which the applicant was acquitted, had been found in the applicant's possession (in any of his bank accounts or financial instruments held in San Marino) at the time of the seizure, and later confiscated. Rather, that sum having been credited by company A.G. to company O. in 2010 (see paragraph 7 above), that is, prior to the seizure, it appears evident that it had not formed part of the seized and later confiscated funds, and thus falls outside the scope of the present complaint.

66. Moreover, the Court observes that at no point did the applicant indicate the exact sums which have been seized and eventually confiscated, his submissions solely indicating that they amounted to more than EUR 6,800,000 (the latter representing the sum in the life insurance). It is therefore with that in mind that the case must be examined.

67. As regards the question under which rule of Article 1 of Protocol No. 1 the impugned interference should be examined, in the instant case, it is clear that there is no realistic possibility for the applicant to recover the confiscated sums. Nevertheless, the Court decides to leave this question open as it is unnecessary to decide it in the present case (see, for a similar approach, *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010; *Aktiva DOO v. Serbia*, no. 23079/11, § 78, 19 January 2021; and *Zaghini v. San Marino*, no. 3405/21, § 58, 11 May 2023).

68. As to whether the measure was lawful, the Court notes, primarily, that no unlawfulness exists in relation to his conviction given that, as noted above and as admitted by the applicant in his application form, self-laundering was a crime as of 2010 if the predicate offence related to the issuance of false invoices (Law no. 99/2010), as in the present case. Indeed, the Judge of Appeals limited the finding of guilt to the period following the entry into force of Law no. 99/2010, which penalized self-laundering if the offence related to false invoices (as in the present case), until the date of the last transfer namely 27 December 2011. Thus, at the time when the applicant performed the impugned acts, there was in force a foreseeable legal provision which made those acts punishable and it was that provision (applicable at the time of the commission of the facts of which the applicant had been found guilty) which was applied by the Judge of Appeals (irrespective of the findings of the

first-instance court) thus no issue of lawfulness arises in that connection (see, *mutatis mutandis*, *Sofia*, cited above, § 50, 2 May 2017).

69. As to the precise legal basis of the confiscation, the Court emphasises the regrettable and recurrent lack of any specification by the domestic courts as to which sub-article of Article 147 of the CC was being applied (see also to this effect, and most recently, *Zaghini*, cited above, § 59), and, where relevant, which version of that provision was applied (see also to this effect, *Sofia*, cited above, § 64), given the manifold amendments over the years (see paragraphs 27-29 above). It notes that, while in certain circumstances the provision and relevant sub-article may be evident, this may not always be the case and in the latter scenario it should not be for the parties to argue this before the Court and for the latter to determine which of – nowadays – a plurality of sub-articles (see paragraph 29 above) best fits the situation.

70. The Court observes that in relation to the lawfulness of confiscation measures in San Marino it has previously found confiscations, in the absence of convictions, to be lawful under Article 147 (2) of the CC, relied on by the Government in the present case (see *Zaghini*, cited above, § 59, and *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, §§ 73 and 89, 8 October 2019), and confiscations following conviction to be lawful under Article 147 (1) and at the time (3), now (10), of the CC (see *Sofia*, cited above, § 69). In the present case the applicant has been convicted of the offence of money laundering in relation to transfers of money committed as from 10 March 2011 until 27 December 2011, date of the last transfer of the insurance policy. The Judge of Appeals held that those funds, or the most part, constituted the personal profit made by the applicant in exchange for his participation in the criminal association. Thus, those sums were found to be derived from crime (see paragraph 24 above). Moreover, the applicant himself admitted that the confiscated money was the price, the profit or the products of the crime and that the only possible legal basis for the confiscation in his case was Article 147 (1) of the CC (see paragraph 58 above). It follows that in the present case, given the relevant conviction, it would suffice to accept that the confiscation imposed on the applicant was in accordance with the law, namely Article 147 (1) (or 3 in its various versions).

71. It is also clear that the measure in the present case pursued a legitimate aim, in the general interest, namely the fight against money laundering (see, *Zaghini*, cited above, § 60; *Sofia*, cited above, § 70; and *Piras v. San Marino* (dec.), no. 27803/16, § 54, 27 June 2017).

72. As to whether it was proportionate, while there is no doubt that a considerable sum was confiscated, the domestic courts at both instances considered it to be derived from crime and found that the applicant had not been able to demonstrate that those sums had had a licit origin. In this connection, and as far as procedural safeguards are concerned, the Court refers to its earlier finding that the criminal procedure respected the rights of the defence (see paragraph 53 above). Bearing in mind all the relevant facts

and the Italian proceedings, according to the Judge of Appeals the relevant transactions amounted to money laundering (in other words the transfer of proceeds of a criminal offence) and the Court observes that those transactions corresponded to the sums (seized and eventually) confiscated. Indeed, the applicant has not indicated what sums had been confiscated in excess, nor had he made this argument on appeal despite him having already been found guilty of this charge and the confiscation applied.

73. Further, as noted above, nothing shows that the money referred to in the second charge had ever been (seized and eventually) confiscated. Similarly, there is no indication that the confiscation was meant to cover any profits made in connection with the second charge of which the applicant had been acquitted. Thus, the applicant's argument that the confiscation should have been varied following that acquittal (see paragraph 58 above) is misconceived.

74. Against this background, and given, in particular, the importance of the aim pursued, as well as the relevant procedural safeguards available to the applicant within the relevant proceedings, the Court does not consider that the measure was disproportionate (compare, *Sofia*, cited above, § 72).

75. It follows that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 12 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President