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

FOURTH SECTION

CASE OF PĂCURAR v. ROMANIA

(Application no. 17985/18)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Adversarial proceedings • Alleged unfairness of assets confiscation proceedings against public servant • Applicant represented by a lawyer of his choice, receiving thoroughly reasoned replies to all his allegations and requests to administrative authorities and courts • Burden of proof applied for explaining the income source in compliance with the Constitution and High Court's case-law • Absence of arbitrariness
Art 1 P1 • Peaceful enjoyment of possessions • Proportionate non-conviction-based confiscation of unexplained assets from high-ranking police chief on the basis of sufficiently clear and foreseeable legal framework on integrity in public office • Wide margin of appreciation in country-specific context of fighting corruption • Applicant's financial situation duly examined by domestic courts in adversarial proceedings • Sufficient safeguards • Fair balance between competing interests

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 June 2025

FINAL

24/09/2025

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

In the case of Păcurar v. Romania,

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

Lado Chanturia, *President*,
Faris Vehabović,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab, *judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 17985/18) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Ioan Păcurar ("the applicant"), on 10 April 2018;

the decision to give notice to the Romanian Government ("the Government") of the complaints concerning the fairness of the proceedings and the right of property, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 3 June 2025,

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

INTRODUCTION

1. The case concerns the confiscation of assets belonging to the applicant – a high-ranking police chief – which were deemed by a court in civil proceedings to be unexplained, on the basis of the legal framework on integrity in the exercise of public office. The applicant considers that these proceedings were unfair (Article 6 of the Convention) and that the confiscation of his assets violated Article 1 of Protocol No. 1.

THE FACTS

2. The applicant was born in 1960 and lives in Cluj-Napoca. He was represented by Mr R.L. Chiriţă, a lawyer practising in Cluj-Napoca.

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

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

I. BACKGROUND INFORMATION

5. The concept of the confiscation of unexplained assets existed in Romania as far back as 1968, when Law no. 18 on the control of the source of private property not acquired in a licit manner was enacted during the communist regime. In accordance with this Law, the assets of any private person could be verified if there was information or suspicions indicating that a clear disproportion existed between the value of someone's assets and his or her lawful income. Confiscation was to be applied if the licit acquisition of the assets in question could not be explained. The Law mentioned that the source of a person's assets was to be explained by proving that the assets in question had been acquired in a licit manner, more specifically, through work or legal acts concluded in accordance with the law (*acte juridice legale*).

6. After the fall of the communist regime, Law no. 115/1996 on the declaration of assets and the verification of assets of dignitaries (elected or appointed high-level public officials), members of the judiciary, people holding management positions and public servants ("Law no. 115/1996") was enacted with the aim of cleaning up the public sector following the transition from communism and increasing faith in the governing authorities (see paragraph 74 below). The scope of application of this new Law was restricted to some categories of public officials and it officially repealed Law no. 18/1968, which applied to the entire population (see paragraph 5 above).

7. In December 2006, in the process of Romania's accession to the European Union, the European Commission adopted a decision which set up the Cooperation and Verification Mechanism ("the CVM") as a transitional measure to facilitate progress in the fields of judicial reform and anti-corruption (see paragraph 102 below). By the same decision, a set of criteria (benchmarks) for assessing such progress was also established. Those benchmarks dealt with the effectiveness and transparency of the judicial system, key institutions in areas like integrity and the fight against corruption at all levels. More specifically, benchmark no. 2 was worded as follows: "Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken". Against this background, in 2007 the Law establishing the National Integrity Agency (*Agenția Națională de Integritate,* "the ANI") was enacted (see paragraph 77 below). The CVM was formally closed by the European Commission on 15 September 2023 after all benchmarks were considered to have been implemented by Romania and the functioning of the ANI was found to be efficient (see paragraph 106 below).

II. PROCEDURE FOR VERIFYING THE APPLICANT'S ASSETS

A. First step of procedure: The ANI

8. On 28 December 2011 the ANI noted that the applicant had not complied with legal provisions concerning the filling in of declarations of assets. As a result, on the basis of Article 12 §§ 1 and 2 of Law no. 176/2010 on integrity in public office (see paragraph 81 below), it started proceedings to verify his assets. It appears from the file that the applicant, in his declarations of assets, had not mentioned any income other than his salary and had been inconsistent in listing various immovable properties which he had acquired.

9. On 25 January 2012 the applicant was informed by registered mail of the start of the proceedings, as provided for by Article 13 of Law no. 176/2010 (see paragraph 81 below). Bearing in mind that the applicant had occupied a position in the county police inspectorate since 1985, he was informed that the verification concerned the period from 1996, when the obligation to fill in declarations of assets had been introduced following the entry into force of Law no. 115/1996 (see paragraph 6 above and paragraph 74 below), until the present.

10. The ANI inspector in charge of the case collected information from the applicant's employer, from other authorities and from banks where the applicant had accounts, pursuant to Article 15 § 1 of Law no. 176/2010 (see paragraph 81 below).

11. The applicant, upon being invited to do so by the inspector in charge of his case, went to the ANI offices and acquainted himself with the content of the entire verification file. He then submitted by post information on changes in his civil status and clarifications about expenses he had incurred as a result of the baptism of his son from his previous marriage.

12. On 31 August and 4 September 2012 the applicant was informed by registered mail and by phone respectively that significant differences (exceeding 10,000 euros (EUR)) between his income and expenses had been found in respect of the period during which he had held public office (see paragraph 14 below), and he was invited to submit his point of view and any relevant information. The applicant was also informed that he had the right to be represented by a lawyer.

13. The applicant, once again at the ANI offices, submitted a document concerning additional income he had gained in allowances in relation to his salary. He also alleged that the differences between his income and assets were due to financial gifts he had received at his wedding in 2005 totalling EUR 93,000, money belonging to his wife totalling EUR 79,000, and a yearly income ranging from EUR 8,000 to EUR 16,000 from his family's agricultural activities. Without giving any reasons, the applicant confirmed that he had failed to mention these amounts in his declarations of assets.

14. On 24 September 2012 the ANI concluded the verification with a report, in which it was explained that significant differences between the applicant's income and expenses had been found in relation to 2001, 2003, 2004 and 2008 to 2010, totalling 718,847.54 Romanian lei (ROL – approximately EUR 189,143). For example, the report mentioned that the applicant's annual salary had varied from approximately EUR 3,700 in 2001 to EUR 7,900 in 2004, and before 2001 his annual salary had been lower than EUR 3,000. However, in 2003 the applicant had acquired a plot of land and a house with 45,000 United States dollars (USD) and had started construction works on another house valued at approximately EUR 65,000, which had been finalised in 2004. In addition, in 2004 he had bought an apartment with EUR 18,000. The case was sent to the Commission for the Verification of Assets attached to the Cluj Court of Appeal, in view of the opening of verification proceedings under Article 18 of Law no. 176/2010 (see paragraph 81 below). The amounts allegedly received as gifts and those belonging to the applicant's wife had not been taken into account in the report, because it was considered that no proof had been submitted in support of the allegations.

B. Second step of procedure: Commission for the Verification of Assets attached to the Cluj Court of Appeal

15. The proceedings before the Commission for the Verification of Assets attached to the Cluj Court of Appeal ("the Commission") started in October 2012. The Commission was composed of two judges who were vice presidents of the Cluj Court of Appeal and one prosecutor. The proceedings were held in camera, in the presence of only the parties as provided by Article 10^2 § 1 of Law no. 115/1996 (see paragraph 74 below).

16. A hearing was set for 7 November 2012. The applicant was present and represented by a lawyer of his choice. Statements were given before the Commission by the ANI inspector who had drafted the verification report (see paragraph 14 above), the applicant and his wife. The applicant explained that he had gained significant amounts of money from farming and from gifts from his father, and he had kept these amounts in his home and had failed to declare them in his declarations of assets. He further stated that some of the money used to buy the various immovable properties he owned had belonged to his wife. Other significant amounts had been received as gifts at his wedding and on the occasion of his children's baptisms. The applicant's wife stated that her contribution to the family assets had been approximately EUR 91,000 plus EUR 8,600 that she had obtained from selling her car, a Volkswagen Golf, to a person whose name she could not remember. No written proof of the transaction could be submitted.

17. In support of his claims, the applicant submitted copies of statements given by his parents and his wife's parents, sale contracts for two immovable

properties, the declarations of assets he had submitted between 2005 and 2008, a letter from the local authorities mentioning that his father owned a farm as a family business, and an accounting expert report calculating the applicant's income and the value of his properties.

18. The Commission summoned the applicant's former wife, his son from his previous marriage, and another person who was alleged to have acquired goods from the applicant to appear before it.

19. At a hearing on 21 November 2012 the Commission heard statements from the applicant's son from his previous marriage, who explained that he had purchased a car from the applicant for EUR 11,000 and two other cars from the applicant's wife for a total price of EUR 34,400. He further stated that he had received a house from the applicant in 2004. He had rented out the house and the rent had been deposited in a bank account opened in the applicant's name. The applicant's former wife and the other witness stated that they had purchased various assets from the applicant. No documents were submitted in support of these statements.

20. At the same hearing the Commission asked for the parties' opinion on the necessity of an accounting expert report. The applicant did not oppose this, and so the Commission ordered one expert appointed by the court and one expert proposed by the applicant to prepare an accounting report. The parties were allowed to submit questions for the experts, and they made use of that right. The applicant asked the experts to calculate his income and expenses from 1996 onwards.

21. The applicant added to the case file a copy of a report issued by the tax authorities on 17 December 2012. After verifying the applicant's tax obligations in connection with the income acquired from rent between 2005 and 2008 and the sale of an immovable property in 2005, the authorities did not find any breaches of his tax obligations.

22. The accounting expert report added to the case file on 26 February 2013 listed changes in the applicant's assets between 1996 and 24 September 2012, his income and that of his family, their expenses for utilities for the same period, and a calculation of the differences between income and expenses for each year. It concluded that expenses had not exceeded income.

23. The parties were given time to submit their comments on the report and a new hearing was set for 13 March 2013.

24. At the hearing on 13 March 2013 the representative for the ANI submitted that the expert report had taken into consideration income whose source had not been proved and which had been mentioned only in the applicant's statements, not in documents. For example, the assertions about the gifts from the applicant's father and the alleged income from agricultural activities had not been supported by any documents. In addition, there was no material proof of the amounts allegedly received as wedding gifts, and they had not even been mentioned in the applicant's declaration of assets for the respective year, therefore they had been wrongly included as income in

the report. Similarly, the fact that several cars had been sold by the applicant or his current wife to his minor son from his previous marriage had wrongly been considered evidence of income in the absence of written proof.

25. The applicant's representative considered that the expert report was accurate and asked the court to dismiss the report prepared by the ANI as unlawful (see paragraph 14 above). She alleged that several legal provisions had been breached in the proceedings before the ANI. More specifically, no accounting expert report had been prepared as required by Article 16 of Law no. 176/2010 and no detailed explanations had been requested from the applicant, who had not had the opportunity to present all relevant documents in his defence, in breach of Articles 14 and 15 of the same Law (see paragraph 81 below). The ANI inspector had incorrectly calculated the difference between income and expenses for each year instead of distributing the differences over the entire period. In addition, several assets had been overlooked. She further submitted that the applicant had provided sufficient proof as to the source of his income. On the contrary, the ANI's findings in the contested report had not been proved. She therefore asked the Commission to order that the case be closed pursuant to Article 10^4 § 1 (b) of Law no. 115/1996 (see paragraph 74 below).

26. The Commission postponed the delivery of its decision in order to give the parties the opportunity to submit written arguments.

27. On 25 March 2013 the Commission found that the acquisition in 2004 of two immovable properties had not been entirely explained, since the income accumulated by the applicant and his family from 1996 until 2004, as indicated by the evidence adduced, did not cover the total expenses incurred in 2004. The difference between income proved to have been accumulated up until 2004 and expenses incurred in 2004 amounted to ROL 261,310 (approximately EUR 59,000) and was considered a significant difference within the meaning of Article 18 of Law no. 176/2010 (see paragraph 81 below). The Commission held that the fact that between 2007 and 2012 expenses had not exceeded income could not be taken into consideration and explain the difference in the preceding period. More specifically, expenses incurred in 2004 could not be explained by income gained subsequently. On the issue of the burden of proof, the Commission considered that the ANI had an obligation to prove the findings made in its report, while the applicant had the right to provide any evidence he deemed necessary in order to prove his allegations. Therefore, the burden of proof was shared between the two parties. The Commission found that the ANI had not proved the existence of the whole significant difference mentioned in its report, and the applicant had also not proved all his allegations. From the evidence submitted by the parties, the Commission found that only the amount of ROL 261,310 (approximately EUR 59,000) could be considered a significant difference that had not been explained. Consequently, the Commission decided to notify (*să sesizeze*) the Cluj Court of Appeal under Article 10^4 § 1 (a) of

Law no. 115/1996 (see paragraph 74 below) so that a decision could be taken on confiscation of the amount in question.

C. Proceedings before the Cluj Court of Appeal

28. Proceedings before the division of the Cluj Court of Appeal which dealt with administrative and tax disputes started on 27 May 2013. The ANI and a representative of the prosecutor's office attached to the Cluj Court of Appeal were also party to the proceedings. The applicant was represented by a lawyer of his choice.

29. The applicant submitted written observations in which he explained that the report prepared by the ANI (see paragraph 14 above) had been incorrect, as the calculation of his income and expenses had been done by year and not for the entire period; where income had exceeded expenses in one particular year, this should have been taken into account in relation to subsequent years. He also complained of incorrect calculations and mistakes in the report. As regards the proceedings before the Commission (see paragraphs 15-27 above), the applicant criticised the finding that the source of some of the income had not been proved. On this point, he explained that it had been fully proved that he had received income from his father's farming activities as the letter from the local authorities certified that his father had been registered as an agricultural producer from 1992 to 2005. The applicant also submitted documents that, in his opinion, fully proved that money had belonged to his wife: copies of invoices showing various construction projects on joint immovable property, his declaration of assets for 2003, and a witness statement. The applicant asked the court to hear several witnesses, in order to prove the source of the above-mentioned amounts and other income whose source had been considered unproved, such as the wedding and baptism gifts.

30. On 3 October 2012 the applicant asked the court not to allow access to the file to people other than the parties and for the proceedings to be held in secret in order to protect his right to respect for his private life, in the light of interest shown by the media. He stated that some of the documents in the file were not public, such as those related to the proceedings before the Commission. Other documents in the file contained personal data that should not be accessible to the public.

31. At a hearing on 7 October 2013 the court allowed the above application as formulated by the applicant and ordered that the proceedings should continue in camera. The court also informed the applicant that the documents concerning the proceedings before the Commission had been separated from the case file at the start of the court proceedings and were not accessible to the public. After hearing arguments from all parties, the court allowed all the witnesses proposed by the applicant (see paragraph 29 *in fine*

above), including those who were up to third-degree relatives and whose objectivity had been contested by the representative of the ANI.

32. At the next hearings on 28 October and 18 November 2013 eight witnesses were heard on behalf of the applicant. They stated that they had heard discussions or been told by the applicant or his wife that the applicant's wife and father had given him certain amounts of money. One witness stated that on one occasion he had heard the applicant's wife saying that she would give the applicant EUR 5,000 and on another occasion she had said that she would give him EUR 10,000, and once he had been present when the applicant and his wife had received money from the applicant's father. One witness stated that he had been told by the applicant's mother-in-law that she would give the applicant and his wife EUR 100,000. Another witness testified that he had been present when approximately EUR 90,000 in money received as gifts at the applicant's wedding had been counted out, and also when approximately EUR 96,000 in money received as gifts at the baptism of the applicant's child had been counted out. The remaining two witnesses testified to the extent of the applicant's father's agricultural and farming activities, such as the estimated number of animals and the area of agricultural land owned, as well as the estimated market price of certain farming and agricultural products.

33. The court also allowed additional requests for evidence from the applicant (for additional witnesses) and from the ANI (a request for information from the local authorities about income from agricultural activities declared by the applicant's father).

34. On 9 December 2013 the court heard other witnesses requested by the applicant, including the applicant's father and brother, who described their activities at the family farm and the money they had given to the applicant in 2004: an approximate total amount of EUR 78,000.

35. On the same date the applicant submitted observations on the accounting expert report (see paragraph 22 above), asking the court to order the recalculation of certain income and expenses for the years 2003 and 2004.

36. In a letter dated 23 January 2014, in reply to the court's enquiry (see paragraph 33 above), the tax authorities stated that the applicant's father had not declared any income for the period between 2004 and 2006; for 2007 and 2008 he had declared expenses exceeding his income, and for subsequent years until that date he had declared an annual income ranging from EUR 500 to EUR 1,400.

37. At the hearing on 17 February 2014 a new witness was heard by the court. He stated that he had bought a property from the family of the applicant's wife and had paid EUR 110,000 or EUR 120,000. He stated that when he had paid the price the applicant and the person who had facilitated the transaction had counted the money. No written proof of this transaction had been submitted.

38. At the same hearing the court allowed a new request for evidence from the applicant, who wanted clarifications to the expert report (see paragraph 35 above) and for his wife to be heard as a witness.

39. On 28 April 2014 a new accounting expert report was added to the case file; it had been reviewed in the light of the applicant's request (see paragraph 38 above) and the statements that the witnesses had given before the court in the meantime. Taking into account the amounts allegedly received by the applicant as indicated by the statements given by the witnesses, the new report found again that there was no difference between the applicant's income and his expenses for the reviewed period, and this time the income taken into consideration had been higher than in the last report. A new hearing was scheduled for 19 May 2014 so that the parties could have time to study the new report and submit their comments.

40. At the hearing on 19 May 2014 the court heard submissions on the merits of the case from the applicant and the prosecutor. The ANI's representative was not present. The applicant's representative submitted oral and written arguments reiterating the previous allegations (see paragraph 29 above). She further contended that the applicant could not be expected to have written evidence of all the amounts of money he had received, as some situations could not be proved by documents, such as the gifts received from his father, the wedding and baptism gifts, and his wife's financial contributions to the purchase of various assets. The evidence of the witnesses who had testified before the court should be considered sufficient in that regard.

41. The representative of the prosecutor's office considered that the witnesses had lacked credibility, as they had remembered with extreme accuracy specific amounts and events that had taken place many years earlier, and asked the court not to take their statements into account.

42. The court postponed the delivery of the judgment so that the parties could submit further written arguments.

43. In its written arguments, the ANI contested the findings in the new expert report (see paragraph 39 above) and claimed that the calculations made in its report (see paragraph 14 above) were based on documents gathered from various authorities, and that those documents could not be disproved by witness statements that were not corroborated by any written proof. Moreover, pursuant to the Code of Civil Procedure, legal transactions with a value higher than ROL 250 (approximately EUR 60) could not be proved by witness testimony.

44. The applicant submitted further written comments in which he replied to the arguments raised by the prosecutor and the ANI, claiming that all the witness statements were accurate and true. In a separate document, he submitted his reply to the ANI's comments on the new expert report (see paragraph 39 above), reiterating his previous arguments in connection with

the source of income that the ANI had wrongly considered not proved (see paragraph 40 above).

45. The court heard new submissions on the merits on 16 June 2014, at the request of the ANI's representative, who could not be present at the hearing on 19 May 2014 (see paragraph 40 above). The parties had the opportunity to put forward their comments and arguments in reply to each other's written submissions, including the objections to the new expert report raised by the ANI (see paragraph 43 above). In the light of the discussions between the parties on the findings in the new expert report (see paragraph 39 above), the court decided to send the parties' objections and comments to the experts for their reply, and allowed an application by the applicant for the appointment of a new expert nominated by him.

46. On 13 October 2014 the experts submitted their reply to the above-mentioned objections. They explained that the new report (see paragraph 39 above) had taken into account the amounts mentioned by the witnesses before the court, but only the court could decide what probative value to give these statements. On 3 November 2014 the new expert instructed by the applicant also delivered her reply. She agreed with her colleagues on most of the points and made a correction as regards the income calculated for 2005 and 2008, considering that the correct amounts were those included in the initial report prepared by the ANI (see paragraph 14 above) and not the ones calculated by the experts for the proceedings before the court.

47. At a hearing on 24 November 2014 the applicant and the ANI submitted written comments on the three experts' replies (see paragraph 46 above).

48. On the same date the court allowed an application submitted by the ANI for a new expert report prepared by three different experts whose names were to be selected by the court from a list of available court experts. The applicant submitted additional clarifications in writing for the new experts' attention. The court set the next hearing date for 19 January 2015 to allow time for the new expert report to be prepared.

49. Between 19 January and 11 May 2015 several hearings were adjourned owing to various procedural issues in relation to the preparation of the expert report.

50. At two hearings which took place between June and October 2015 the parties discussed the accounting report submitted by the new experts. The report took into account all the income alleged by the applicant and mentioned by the witnesses before the court, and found no significant differences between the applicant's income and expenses for the verified period. The report was cosigned by an additional expert on behalf of the applicant and another one on behalf of the ANI.

51. The comments submitted by the parties as regards this expert report were sent to the experts, who, in turn, submitted their reply. The applicant's

comments mainly concerned the method of calculating the value of an immovable property and a failure to include additional income for the year 2006. The court approved an application by the applicant to testify before the court and for a new witness to be heard.

52. On 5 October 2015 the applicant and the witness he had proposed – the owner of the restaurant where the applicant's wedding party had been held in 2005 – testified as to the expenses incurred in relation to the applicant's wedding.

53. At the same hearing, the court ordered the experts who had prepared the latest report (see paragraph 50 above) to reply to additional questions raised by the parties and by the court. The applicant submitted additional documents (relating to his purchase of an apartment from his current wife and her daughter in 2004, before their marriage, and the sale of that apartment in 2005) and written arguments to support his claim that his family's lawful income had consistently been higher than their expenses.

54. At a hearing on 16 November 2015 the experts submitted their reply, in which they explained their calculation method and, as requested by the court, provided a fresh calculation of the applicant's income and expenses. Taking into consideration the statements given by the witnesses before the court, the experts found that in 2003 and 2004 expenses had exceeded income by EUR 696 and EUR 2,815 respectively.

55. At the same hearing the court decided that it was necessary to hear the applicant, his wife and another witness, and set a new date for a hearing. The court also sent the applicant's submissions (see paragraph 53 above) to the experts for their comments.

56. On 16 December 2015 the applicant testified about the source of the amounts received from his former wife and his current wife, and about the expenses incurred in relation to the construction of one of his houses. The applicant's current wife stated that she had contributed money to the construction of the above-mentioned house, money which she had received from her parents and from the sale of the apartment in 2004 (see paragraph 53 above). No written proof was submitted in connection with the money she had allegedly received from her parents. The applicant's father was also reheard and stated that he had not kept any accounts for his farming activities and did not have any documents to support his statements about his income and the money he had given the applicant. Another witness, a former work colleague of the applicant, stated that he had heard discussions about the applicant receiving money from his current wife and from his father.

57. On 25 January and 8 February 2016 the applicant filed additional written submissions and documents, reiterating his previous arguments and clarifying certain factual aspects of the witness statements. He asked the court to conclude that his assets had been obtained in a licit manner.

58. After hearing the parties' closing arguments, the court delivered its judgment on 8 February 2016.

59. It firstly set out the applicable legal framework – Law no. 115/1996 (see paragraph 74 below) and the new Code of Civil Procedure that had entered into force on 15 February 2013. It then confirmed the period to be taken into account for the verification (1996-2012 – see paragraph 9 above) and set out the limits of its jurisdiction in relation to the Commission's notification, more specifically, verification of the lawful source of the amount of ROL 261,310 (approximately EUR 58,500 – see paragraph 27 above). The court also set out the limits of its jurisdiction by noting that the Commission had found that the amount in dispute was the unexplained difference between the applicant's income and expenses for the year 2004. It therefore considered that any arguments about income received after that year were not relevant to its verification in the case.

60. The court then went on to examine and reply extensively (on eighteen pages) to each argument raised by the applicant. An additional income of ROL 6,386 (approximately EUR 1,400) claimed by the applicant was added by the court to the explained income for 2004. The court considered that this amount was explained income because it had been proved by evidence (a payment order issued by the tax authorities in the applicant's name, for the regularisation of income tax).

61. However, other allegations made by the applicant were dismissed by the court. Firstly, it was considered that no proof had been provided as regards the claims that the applicant had received various amounts of money from his father. On this point, several pages of the court's judgment examined the contradictions between the various statements and the absence of any written proof of either the father's income and farming activities (such as tax declarations, invoices, accounting documents) or the applicant having received these amounts. Secondly, as regards certain expenses incurred in 2003, the court also found contradictions between the various statements made by the applicant and the witnesses, and that there was no written proof such as invoices to show that the construction expenses relating to the house (see paragraph 56 above) had been paid by the applicant's wife or that these expenses had been as high as the applicant had claimed. As regards the amounts given to the applicant by his wife, the court found inconsistencies in the applicant's statements before the ANI and before the court as regards the moment when he had received them and the exact amounts he had received. Moreover, the court found that no proof of the source of those amounts had been provided, bearing in mind that the applicant's wife did not have the necessary financial means. The court concluded that the findings in the accounting expert report were to be taken into consideration only where they concerned proven facts, therefore it considered that the Commission had correctly identified a difference between income and expenses for the year 2004. The remaining difference after the deduction of ROL 6,386 (explained income, as found by the court, see paragraph 60 above) was ROL 254,924 (approximately EUR 57,000).

62. The court concluded that under Article 44 § 8 of the Constitution (see paragraph 72 below), property was presumed to have been acquired in a licit manner. However, this presumption ceased to exist when there was definite evidence (*dovezi certe*) that some assets belonging to the people referred to in Laws nos. 115/1996 and 176/2010 had not been acquired in a licit manner (see paragraphs 98-101 below, where domestic court practice as regards the presumption of the licit acquisition of property is summarised). For public servants, the legal framework in which the presumption of the licit acquisition of property ceased to apply was set by Law no. 115/1996 (see paragraph 74 below), and was closely linked to the obligation to declare their assets. In view of the above, the court considered that there was definite evidence that the source of the ROL 254,924 (approximately EUR 57,000) had not been explained by the applicant, and ordered confiscation of that amount pursuant to Article 18 § 1 of Law no. 115/1996.

D. Appeal before the High Court of Cassation and Justice

63. The applicant lodged an appeal on points of law (*recurs*) against the above judgment with the High Court of Cassation and Justice ("the High Court"). The proceedings were conducted before the division of the High Court dealing with administrative and tax disputes.

64. In his written submissions to the High Court, the applicant reiterated his arguments in connection with the amounts received from his father and his wife. He considered that income received between 2001 and 2004 should also have been taken into consideration when calculating the difference between income and expenses for subsequent years. He submitted a statement from his wife, who claimed that she had received EUR 40,000 from her former husband and knew that the applicant had received certain amounts from his father; a letter from his employer attesting to his income for the period 2005-2013; a copy of a contract attesting to his father's sale of a car for 14,500 Deutschmarks (DEM); and authorisation confirming that the applicant could sign that contract and receive the money paid for the car in 2001.

65. As regards the income allegedly received from his father, the applicant further contended that failing to pay taxes on a certain income (such as the income his father had incurred from farming) did not mean that the income in question had not existed or had been obtained in an illicit manner. By refusing to take such income into account, the Cluj Court of Appeal had breached the presumption of the licit acquisition of property instituted by Article 44 § 8 of the Constitution (see paragraph 72 below). In his opinion, it is for the person alleging the illicit nature of a certain income to prove his or her allegations.

66. The applicant also pointed out that the verification should have been restricted to the period during which he had held the position of chief of a

county police inspectorate, starting with the year 2005. The verification of his assets before the year 2005 should render the ANI's report unlawful. Moreover, in the proceedings before the ANI, he had been under the impression that only the declarations of assets which he had made while he had been chief of a county police inspectorate had been verified, therefore he had not adduced evidence relating to his income before that time. Hence, he requested that the period before 2005 be excluded from the verification. He asked the court to re-examine the merits of the case, re-evaluate the evidence and reject the Commission's notification.

67. During the hearing before the court the applicant also complained that throughout the proceedings he had not had the benefit of the presumption of the licit acquisition of property provided for by Article 8 § 3 of Law no. 176/2010 (see paragraph 81 below).

68. The ANI submitted its comments on the applicant's above-mentioned submissions. The applicant and his wife submitted additional written comments in reply, reiterating the arguments summarised in paragraph 64 above.

69. On 1 March 2017 the High Court decided to confirm the findings of the lower court and reject the applicant's appeal. After reviewing the applicant's arguments and the evidence submitted by the parties throughout the entire proceedings (starting with the ANI's verification and ending with the Cluj Court of Appeal), the High Court held that the difference between the applicant's income and expenses in 2004 – identified firstly by the Commission and then corrected by the Cluj Court of Appeal – had not been explained and that the confiscation of that amount was in accordance with the law.

70. As regards the argument about the alleged breach of the presumption set out in Article 8 § 3 of Law no. 176/2010, raised by the applicant at the first hearing of his appeal on points of law (see paragraph 67 above), the High Court noted that the applicant had failed to raise it before the Cluj Court of Appeal during the examination of the merits of the case. Nevertheless, the High Court examined that argument as raised by the applicant in his written submissions, in connection with the evaluation of the evidence submitted to prove the income allegedly received from his father (see paragraph 65 above). The High Court explained how the evidence provided by the applicant to prove the source of the amounts allegedly received from his father had been assessed throughout the proceedings. The finding that the source of these amounts had not been proved had been based not only on the absence of a declaration of the farming income for tax purposes, but also on the weight and credibility of the witness statements and the absence of any written evidence of the farming activities or the income which the applicant's father had gained from such activities. That assessment had been in compliance with the applicable law.

71. As regards the applicant's arguments concerning the period to be taken into consideration for the verification of his assets (see paragraph 66 above), the High Court considered that the applicant had been a public servant since 1985, therefore starting the period for the verification of his assets from the entry into force of Law no. 115/1996 (see paragraph 74 below) had been lawful. Moreover, the applicant had failed to raise that complaint before the Commission or the lower court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

A. The Constitution

72. The relevant parts of the Romanian Constitution provide as follows:

Article 44 – Right of private property

> "(1) The right of property and claims against the State which relate to debts (*creanțele asupra Statului*) are guaranteed. The content and limitations of these rights shall be established by law. ...
>
> (8) Assets (*averea*) acquired in a licit manner (*dobândită licit*) shall not be confiscated. The licit acquisition [of such assets] shall be presumed.
>
> (9) Any goods intended for, used in or resulting from criminal offences or misdemeanours (*contravenții*) may be confiscated only in accordance with the provisions of the law."

73. In accordance with Article 16 § 3 of the Constitution, public service (*funcțiile publice*) may be civilian or military.

B. Declaration of assets and verification of assets procedure

74. Asset declarations were introduced by Law no. 115/1996 on the declaration of assets and the verification of assets of dignitaries (elected or appointed high-level public officials), members of the judiciary, people holding management positions and public servants ("Law no. 115/1996" – see also paragraph 6 above). The purpose of the Law was to require certain categories of public officials to disclose to the competent authorities all external activities, occupations, investments, assets and substantial gifts or advantages that could potentially result in a conflict of interest with their public duties. In accordance with that Law, as amended by Law no. 176/2010 on integrity in public office (see paragraphs 79-81 below), members of the judiciary, people holding management positions in public institutions and certain categories of public officials were under an obligation to declare their assets within fifteen days of their appointment and repeat this every year. The verification of assets could be conducted from the submission of the first

declaration of assets and no later than three years after the date when the person's public duties had ended (Article 28 § 3). If, in a final judgment, a person's assets were found to be totally or partly unexplained, the unexplained part or the equivalent of that amount was to be confiscated by the court (Article 18 § 1) and the person in question had to be released from his or her public office (Article 33). If the court found that an unlawful act might have been committed in connection with the unexplained assets, the case would have to be sent to the prosecutor for investigation (Article 18 § 2). Pursuant to Article 31, the terms of the Law were supplemented by the provisions of the Code of Civil Procedure.

Other provisions of Law no. 115/1996 as in force at the relevant time were as follows:

Article 10 § 1

"A commission for the verification of assets, henceforth the verification commission, shall function within each court of appeal and shall be composed as follows:

(a) two judges from the court of appeal, appointed by the president of the court, one of whom shall be the president [of the commission];

(b) one prosecutor of the prosecutor's office attached to the court of appeal, appointed by the chief prosecutor of that prosecutor's office."

Article 10^2 § 1

"Acts and proceedings before the commission are not public. The person concerned [by the verification] may have access to the documents in the file and may be represented by a lawyer."

Article 10^3

"Those summoned before the verification commission shall be heard one by one and shall present the evidence on which the evaluation report was based. The person whose assets are [being] verified has the opportunity to submit evidence in his or her favour to the commission or may ask the commission to take (*să administreze*) such evidence, and if he or she considers [it] necessary, he or she may submit a statement explaining his or her income and the manner in which the assets [were] acquired."

Article 10^4

"1. The verification commission decides by a majority of votes ... in a reasoned decision (*ordonanță*) making the following order:

(a) to send the case before the court of appeal ... if it finds, on the basis of the evidence taken, that ... certain assets are unexplained;

(b) to close the case, when it finds that the source of the assets is explained;

(c) to suspend the verification and send the case to the prosecutor, in the event that it transpires that a crime has been committed in connection with assets that have been found to be unexplained.

2. The parties and the prosecutor's office or, as the case may be (*după caz*) ..., the tax authorities are notified of a decision to close the case.

3. The verification may be reopened by the commission if:

(a) after the closing of the case, new elements appear that may lead to an opposite conclusion;

(b) after the investigation, in the [situation] provided for by paragraph 1 (c), the prosecuting authorities do not send the case before a court (*nu sesizează instanța penală*)."

Article 15

"The verification may be restarted by the National Integrity Agency if:

(a) after the closing of the case, new elements appear that may lead to an opposite conclusion;

(b) [repealed]."

Article 18 § 1

"In the event that it is determined that the acquisition of certain assets or part of an asset is not explained, the court of appeal shall order either the confiscation of those assets or the unexplained part [of the asset in question], or the payment of an amount of money equating to the value of the asset, as set by the court on the basis of an expert report. ..."

C. The ANI

75. In 2007 Romania introduced a system for assessing and auditing the assets of certain categories of public officials, as part of its accession to the European Union on 1 January 2007 (see paragraph 7 above).

76. In substance, the system was intended to fulfil the requirements set by the European Commission in Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56). The second of those benchmarks concerned the establishment of an integrity agency with responsibilities for verifying assets and for issuing mandatory decisions on the basis of which dissuasive sanctions could be taken (see paragraphs 84 and 102-106 below). The fulfilment of the above-mentioned benchmarks was binding on Romania (see paragraph 107 below).

77. Consequently, Law no. 144/2007 established the ANI, an autonomous administrative authority with a legal personality, whose objective is to ensure integrity in public office and prevent institutional corruption by auditing the assessment of asset declarations, data and other related information, as well as changes in assets, incompatibilities and potential conflicts of interest in the performance of public duties and the holding of public office (see, for further details, the description in the judgment of the Court of Justice of the European

Union (CJEU) in *Agenția Națională de Integritate*, C-40/21, EU:C:2023:367 – paragraph 110 below).

78. Several chapters of Law no. 144/2007 were declared unconstitutional by the Constitutional Court in decision no. 415 of 14 April 2010 (see paragraph 91 below).

79. After the above Constitutional Court decision, and owing to criticism by the European Commission in its reports on Romania's progress under the CVM (see paragraphs 103 and 104 below), a new Law was adopted, Law no. 176/2010 on integrity in public office and on the amendment of Law no. 144/2007 and for the amendment of other laws including Law no. 115/1996 (see paragraph 74 above). It introduced the obligation for thirty-nine categories of public officials to declare their assets and interests upon being appointed, annually thereafter and at the end of their term.

80. The explanatory memorandum to Law no. 176/2010 states that the purpose of the Law is to prevent corruption in public office and hold individuals in public office accountable to society. The ANI is presented as an independent authority that seeks to ensure a unified system for verifying the application of various administrative instruments for fighting institutional corruption. In addition, the explanatory memorandum states that preventing and fighting corruption is not only a real demand of Romanian society, but also reflects what the country's European and international partners have requested. It further mentions that in the 2009 report tracking Romania's progress within the CVM, the European Commission confirmed that the ANI's activities ensured the effective prevention of corruption. Similarly, the Constitutional Court, in decisions nos. 1412 of 16 December 2008 and 1082 of 8 September 2009 (see paragraph 90 below), confirmed that the provisions of Law no. 176/2010 were justified by the need to prevent corruption among certain categories of people.

81. The most relevant provisions of Law no. 176/2010, as in force at the time of the events in the present case, were as follows:

Article 1

"1. The present Law applies to the following categories of persons, who have an obligation to declare their assets and interests:

...

31. people holding management and supervisory positions, as well as public servants, including those with special statute, that are working for all central or local public authorities, or in all public institutions;

...

3. The National Integrity Agency conducts the verification (*evaluarea*) of the declarations of assets, data, information and modifications to assets, the declarations of interests and incompatibilities of the people listed in paragraphs 1 and 2 ..."

Article 3 § 2

“Declarations of assets are made in writing, are a person’s own responsibility, and contain the rights and obligations of the person filling in [the declaration], [his or her] spouse and [his or her] dependent children ...”

Article 4 § 2

“Those mentioned in the present Law have an obligation to submit and update their declarations of assets and interests on a yearly basis ...”

Article 6

“1. Staff responsible for enforcing the legal provisions on declarations of assets and interests carry out the following functions:

...

(f) send certified copies of declarations of assets and interests to the Agency [ANI] for verification, ... within 10 days of receiving them; ...

Article 7 § 1

“If, within ten days of receiving the declarations, the responsible staff notice deficiencies in how the declarations have been filled in, they shall recommend ... that the declarations be rectified ... The rectified declarations may be accompanied by supporting documents. ...”

Article 8

“1. The purpose of the Agency is to ensure integrity in the exercise of public duties (*demnitățile publice*) and functions and the prevention of institutional corruption, by exercising responsibility in the assessment of asset declarations, data and information regarding assets, as well as patrimonial changes, incompatibilities and potential conflicts of interest concerning the persons provided for in Article 1 during the performance of their public functions and duties. In order to achieve this goal, the Agency can develop collaborative relationships by concluding protocols with entities from [Romania] or abroad...

3. The principles in accordance with which verification activity is carried out are legality, confidentiality, impartiality, operational independence, promptness, good administration, the right to defence, as well as the presumption of the licit acquisition of assets.”

Article 11

“1. The verification of declarations of assets, data and information concerning existing assets and changes to existing assets during the period when a person held public functions or duties, and the verification of conflicts of interest and incompatibilities, shall be carried out while [the person subject to verification] is holding those public functions or duties and up to three years after the end [of those functions or duties].

2. The activity carried out during the period mentioned in paragraph 1 consists of the evaluation of declarations of assets, data and information concerning existing assets, changes to those assets, conflicts of interests or incompatibilities, exclusively for the period when a person held public functions or duties.”

Article 12

“1. The Agency carries out the verification [activity] provided for by Article 8 of its own motion, or following a petition submitted by any legal or natural person ...

2. Verification started of [the Agency’s] own motion may take place:

(a) on the basis of a report prepared by the president of the Agency;

(b) on the basis of a note prepared by an integrity inspector, approved by a superior; ...

4. Verification started both of [the Agency’s] own motion or following a petition is randomly assigned [to an inspector]; ...”

Article 13 § 1

“After the random assignment of the case, the integrity inspector proceeds as follows to the verification of the declarations of assets, existing data, information and changes to the assets, in accordance with the provisions of the present Law:

(a) performing only administrative tasks involving information that is in the public domain, before the person whose assets are being verified is informed about the verification and invited to express a point of view;

(b) asking natural or legal persons for information that is not public, after the person whose assets are being verified is informed about [the verification] and invited to express a point of view.”

Article 15 § 1

“During the assessment, the integrity inspector may ask all institutions and public authorities, other legal entities subject to public or private law and natural persons for the documents and information necessary to carry out the assessment activity, while complying with the obligation to maintain confidentiality.”

Article 16

“1. To clarify all aspects regarding significant differences, in the sense of the provisions of Article 18, an extrajudicial expert report may be produced, in accordance with the law and with the consent of the person whose assets are subject to evaluation.

2. The person whose assets are subject to evaluation has the right to choose an assisting expert, at his or her own expense, under the provisions of paragraph 1.”

Article 17

“1. If, after the person invited to do so has expressed [his or her] point of view verbally or in writing, or, in the absence [of the expression of such a point of view], 15 days after confirmation that the information has been received by the person who is the subject of the evaluation, significant differences in the sense of the provisions of Article 18 are further identified on the basis of the existing data and information at the integrity inspector’s disposal, the integrity inspector shall draw up an evaluation report.

...

4. The person whose assets have been verified and, if necessary, the fiscal, criminal or disciplinary authorities and the verification commission provided for by

Law no. 115/1996 shall be notified of the evaluation report within five days from its conclusion (*finalizare*) ...”

Article 18

“Within the meaning of this Law, significant differences are differences between changes in assets (*avere*) during the exercise of public duties and functions and the income earned (*veniturile realizate*) during the same period which are greater than 10,000 euros or the equivalent amount in lei.”

82. Article 17 § 7, taken together with Article 21 §§ 1 and 2, provides that the evaluation report drawn up by the integrity inspector may be contested within fifteen days from the persons concerned being notified of that report, in application of the general provisions on administrative disputes.

83. The final and transitory provisions of Law no. 176/2010 repeal the following Articles of Law no. 144/2007 (see paragraph 77 above): Articles 1-9, Article 11 (e), (f) and (g), Article 12 § 2, Article 14 (c), (d), (e) and (f), Article 42 §§ 2, 3 and 4 and Articles 45-50.

84. The efficiency of the ANI and the above-mentioned legal framework was noted by the European Commission in its periodical monitoring in the framework of the CVM, and was one of the factors leading to the decision to formally close the CVM in 2023 (see paragraphs 105 and 106 below).

D. Other provisions

85. Details about the meaning of the term “illicit” in civil law may be found in the Civil Code under the provisions governing contracts, the relevant parts of which read as follows:

Article 1225 § 3

“The subject matter of a contract is illicit when it is prohibited by law or when it is contrary to public order or good morals.”

Article 1236 § 2

“The reason [for concluding a contract] is illicit when it is against the law and public order.”

Article 1237

“The reason [for concluding a contract] is also illicit when the contract has been concluded in order to avoid the application of a compulsory legal provision.”

86. The Romanian legal system includes multiple legal provisions allowing for confiscation outside the criminal legal framework. Government Ordinance no. 2/2001 on the rules applicable to administrative offences (*contravenții*), with reference to complementary sanctions, mentions the confiscation of goods that are intended for, used in or produced by the commission of an administrative offence (Article 5 § 3 (a)). Article 1 of the

Ordinance provides that the legal framework concerning administrative offences protects social values that are not protected under criminal law. Various legal provisions mention the confiscation of goods intended for, used in or produced by the commission of an administrative offence. For example: Article 3 of Law no. 12/1990 on the protection of the population against illicit commercial activities, production or services; Article 61 § 1 of Government Ordinance no. 21/1992 on consumer protection; Article 11 § 1 of Government Emergency Ordinance no. 28/1999 on the obligation of commercial operators to use electronic cash registers; Article 14 (e) of Government Emergency Ordinance no. 12/2006 on measures regulating the cereal market; Article 19 § 13 of Law no. 171/2010 on sanctioning administrative offences related to forestry regulations; and Article 220 § 2 (b) of the Tax Procedure Code. In some of the cases set out in the above-mentioned legal instruments, confiscation is carried out automatically by the police or by other competent administrative authorities.

87. Article 28 of Law no. 554/2004 on administrative proceedings states that the provisions of that Law are complemented by the Civil Code and the Code of Civil Procedure.

II. DOMESTIC PRACTICE

A. Practice of the Constitutional Court

88. The Romanian Constitutional Court has examined the legal framework governing the verification of assets on numerous occasions, and has consistently held that it complies with the Constitution, with the exception of one decision adopted in 2010 (see paragraph 91 below).

1. Prior to 2010

89. In decision no. 321 of 29 March 2007, the Constitutional Court examined the compatibility with the Constitution of several provisions of Law no. 115/1996 (see paragraph 74 above). Petitioners had criticised Article 18 § 1, arguing that it was in breach of the provisions of Article 44 §§ 8 and 9 of the Constitution, which had instituted the presumption of the licit acquisition of assets (see paragraph 72 above). The Constitutional Court considered that criticism unfounded and held that the wording of paragraphs 8 and 9 of Article 44 of the Constitution indicated that courts could also order the confiscation of property in cases other than those concerning proceeds of crime, if they established that the property in question had not been acquired in a licit manner. With respect to the composition of the commission for the verification of assets, the Constitutional Court held that prosecutors and judges were officers of the court under a legal obligation of impartiality, and that their decisions could be appealed against to the courts

in compliance with the right of access to a court set out in the Constitution and the right to a fair trial set out in Article 6 § 1 of the Convention.

90. In decisions nos. 1412 of 16 December 2008 and 1082 of 8 September 2009, delivered shortly after the enactment of Law no. 144/2007 on the establishment of the ANI (see paragraph 77 above), the Constitutional Court rejected pleas of unconstitutionality based on the alleged discriminatory nature of the provisions of Law no. 144/2007, which obliged certain categories of employees of public institutions to declare their assets. The Constitutional Court held in this context that the application of the impugned Law to specific categories of personnel only was in compliance with the Constitution, and that the purpose of the Law was to prevent corruption amongst certain categories of employees of public institutions.

91. In decision no. 415 of 14 April 2010 the Constitutional Court examined complaints concerning Articles 1-9, Articles 11-17, Article 38 § 2 (f), (g) and (h), Articles 42-57 of Law no. 144/2007 governing the powers of investigation of ANI inspectors and their ability to make decisions about the existence of a significant difference between income and expenses and the issue of whether the source of certain assets was not explained, and to propose confiscation. The complaints also raised issues about the fact that the ANI was an administrative institution which had jurisdiction over an activity similar to that of a prosecuting body, although the inspectors carrying out that activity were public officials subordinated to Parliament. The Constitutional Court held that the provisions of Articles 1-9, Article 11 (e), (f) and (g), Article 12 § 2, Article 14 (c), (d), (e) and (f), Article 42 §§ 2, 3 and 4 and Articles 45-50 of Law no. 144/2007 – granting ANI inspectors the power to make decisions about the existence of a significant difference between income and expenses and the issue of whether the source of certain assets was unexplained, and to notify a prosecutor of the existence of a crime or propose that a court confiscate the disputed assets – were not in compliance with the Constitution; this was because they conferred on those inspectors jurisdictional powers that could only belong to courts of law. The power given by Law no. 144/2007 to ANI inspectors to decide that confiscation should be ordered was also in breach of Article 44 §§ 8 and 9 of the Constitution (see paragraph 72 above), because it allowed the confiscation of unexplained assets. On this point, the Constitutional Court considered that the constitutional presumption of the licit acquisition of assets should also apply to people whose assets were verified under Law no. 144/2007, and those who claimed that someone’s assets had been acquired in an illicit manner should prove it. On this point, the Constitutional Court observed that before the enactment of Law no. 144/2007, the power to establish the existence of a significant difference between lawful income and expenses had rightfully belonged to “investigation commissions” composed of judges and prosecutors.

2. After 2010

92. After decision no. 415 of 14 April 2010 (see paragraph 91 above), the consistent opinion of the Constitutional Court was that Law no. 176/2010, that had amended and replaced Law no. 144/2007, repealing the provisions which had been declared unconstitutional (see paragraph 83 above), was in full compliance with the Constitution.

93. For example, in decision, no. 449 of 16 June 2015, the Constitutional Court held that Article 11 of Law no. 176/2010 (see paragraph 81 above) rightfully set out a time-limit for verification of a person's assets – the period of time which he or she spent in public office, plus three years from when that person's public duties ended. This provision was found to be in compliance with the Constitution.

94. In decision no. 388 of 23 September 2019 the Constitutional Court again examined both Law no. 115/1996 (see paragraph 74 above) and Article 18 of Law no. 176/2010 (see paragraph 81 above) and found them to be compatible with the Constitution. As regards the alleged lack of clarity and foreseeability of Law no. 115/1996 in general, and in particular the provisions regulating the activity of the verification commission (Articles $10\text{-}10^4$ and 15), the Constitutional Court noted that it had previously examined petitions in connection with those provisions on numerous occasions, and had consistently found them to be in compliance with the Constitution. Accordingly, it had previously held that the Law in question had clear provisions that established the composition and competencies of the verification commission, the role of that commission being solely to verify the information put forward by the ANI in a report. The Law also included guarantees against arbitrariness and a lack of impartiality, and guarantees of the right to adversarial proceedings, to equality of arms and to a defence for those whose assets were verified. Amongst these safeguards, the Constitutional Court listed the composition of the verification commission (judges and prosecutors who were under an obligation to be impartial) and its adoption of reasoned decisions that could be contested before the courts. The Constitutional Court considered that the commission was an intermediary between the ANI and the courts, one which exercised a filtering function and sent to the courts only cases that were accompanied by the relevant evidence and reasoning. It was the courts which decided whether or not to confirm the commission's proposal and whether or not to order confiscation.

95. As regards the alleged breach of Article 44 § 8 of the Constitution (see paragraph 72 above) by the provisions of Law no. 115/1996, the Constitutional Court considered that the control of assets and the confiscation of assets that could not be proved to have been acquired in a licit manner as set out in Law no. 115/1996 were in full compliance with the Constitution, as they applied indiscriminately and confiscation was ordered only by a court decision. Moreover, reading the provisions of paragraphs 8 and 9 of Article 44 of the Constitution jointly, the Constitutional Court reiterated its

previous finding that the Constitution allowed for the application of the measure of confiscation in respect of not only proceeds of crime, but also in other cases.

96. As regards the provisions of Article 18 of Law no. 176/2010, the Constitutional Court considered that the text of that Article was clear and foreseeable. The term "significant difference" was clearly explained and referred to differences of more than EUR 10,000 or the equivalent amount in lei. It was also clear that such a difference could arise only where there was a discrepancy in the information included in the declarations of assets submitted at various points in time. The person subject to verification was invited to express his or her point of view, could be represented by a lawyer and had the opportunity to present evidence. An inspector did not limit the verification to statements of the person in question, but had a duty to search for information and clarify any issues that needed clarification, and an expert report could be drafted with the agreement of the person whose assets were being verified and that person could choose an expert. Moreover, the Constitutional Court considered that terms such as "assets" (*avere*) and "earned income" (*venituri realizate*) had a clear meaning which came from the usual definition of those words.

B. Practice of the High Court of Justice and Cassation

97. On numerous occasions the High Court of Justice and Cassation ("the High Court") also provided an interpretation of Article 44 § 8 of the Constitution in line with that of the Constitutional Court.

98. In a decision of 20 December 2011 the High Court held "It is true that Article 44 § 8 of the Constitution (see paragraph 72 above) sets out the presumption of the licit acquisition of assets and prohibits the confiscation of property acquired in a licit manner in order to give effect to the principle of respect for the right of property provided for in paragraph 1 of the same Article, but this presumption is not of an absolute nature, [and] it ceases to exist when someone's assets include [those] whose source cannot be explained by lawful income proved by evidence". The same reasoning was included in the High Court's decisions of 5 April 2017 and 10 May 2018. In a decision of 26 November 2015, on the issue of the administration of evidence in proceedings for the verification of assets started on the basis of Law no. 115/1996 (see paragraph 74 above), the High Court held that in order to reverse the constitutional presumption of the licit acquisition of assets, all types of evidence allowed by the Code of Civil Procedure could be taken.

99. In a decision of 5 July 2013, the High Court stated that the procedural framework for proceedings for the verification of assets was set by the Code of Civil Procedure.

100. In a decision of 21 November 2017 the High Court expressed the following view as regards the notion of unexplained assets:

> “The presumption of the licit acquisition of assets is a presumption instituted by law that may be overturned by evidence to the contrary. The ANI took certain evidence (documents, expert reports) to support the unexplained nature of the asset in question, evidence that was considered sufficient by the commission to raise doubts as to the licit [acquisition of the asset] and hence reverse the burden of proof. Following a court being notified [of verification], the burden is on the [person subject to verification] to provide evidence in order to disprove the evidence put forward by the ANI, more specifically, to submit evidence to the contrary in respect of the same facts.”

101. The Government submitted a report prepared on 16 December 2020 by the research department of the High Court. The report indicates that extensive case-law was developed by the High Court on the issue of declarations of assets and incompatibilities governed by Laws nos. 115/1996 and 176/2010 (see paragraphs 74 and 81 above), and that unexplained assets were clearly understood as being assets whose licit source could not be proved. The case-law quoted in the report (decisions adopted by the High Court between 2011 and 2019) shows a consistent application of civil procedure rules and principles. It further demonstrates that the consistent opinion of the High Court was that, in the event that certain income or assets allegedly acquired during a period subject to verification were not mentioned in a declaration of assets when they should have been, the burden of proof to show that their source was licit or that they had been acquired in a licit manner lay with the person subject to verification. The evidence provided in such cases had to be conclusive and capable of persuading the court of the facts to which it referred. The High Court also consistently held that assets which had not been explained by income earned lawfully during a period when a person had been in public office, as supported by definite evidence, could be confiscated. Such confiscation was in full compliance with the presumption set out in Article 44 § 8 of the Constitution (see paragraph 72 above).

In decision no. 3222 of 20 October 2015, quoted in the report, the High Court stated as follows:

> “The presumption of the licit acquisition of assets is established by law, is set out in the Constitution, and is relative because it does not prevent verification of the manner in which assets have been acquired.
>
> This means that the presumption cannot be overturned *de plano*, but only in the course of verification of assets proceedings, on the basis of evidence taken pursuant to the general rules on evidence.
>
> Article 44 § 8 of the Constitution as interpreted by the Constitutional Court taken together with the provisions of Law no. 115/1996 indicate the following:
>
> - correctly filling in a declaration of assets places the burden to prove the illicit acquisition [of assets] on the person who claims [that the assets] are illicit;
>
> - filling in a declaration of assets in breach of the provisions of Law no. 115/1996, more specifically, failing to declare or incorrectly declaring acquired assets, are acts that give rise to the presumption that the undeclared assets have been acquired in an illicit manner.

The above reasoning is based on the fact that declarations of assets are considered documents from an evidential point of view, and hence they may be used against the persons who filled them in and took responsibility for them.

The presumption is relative, because it does not prevent the person subject to verification from putting forward a defence and proving that although the assets were not declared as required by law, they were acquired in a licit manner. ...

In the light of the circumstances of the case, taking into consideration the evidence and the allegations of the person subject to verification, the High Court considers that it is beyond any doubt that the person subject to verification acted in a premeditated (*premeditat*) and consistent way in order to hide some of the assets acquired during the relevant period.

[The person subject to verification acted in a] premeditated way (with intent) because [he] did not claim to have made an error in filling in the declarations, and the legal obligation to declare is simple, clear and has a scope accessible to any person with medium comprehension skills and should have been fulfilled in good faith, in compliance with the social purpose for which it was instituted.

The appellant A. also acted consistently with a view to hiding some of his assets, because [he] omitted to declare the amount received from F. in all declarations of assets submitted in the relevant period.

The alleged loan was mentioned only when the need to balance income and expenses became obvious.

... bearing in mind that the people from whom the person subject to verification claimed to have received money do not have substantial financial resources at their disposal and are not in a financial situation that would allow them to lend considerable amounts for a long period, it was correctly concluded that the alleged facts were not true or credible. ...

Balancing the above-mentioned declarations of assets against the other evidence taken, it appears – beyond any reasonable doubt – that the person subject to verification intended to hide a considerable amount of his assets, more specifically, the part that had been acquired in an illicit manner.”

III. INTERNATIONAL MATERIAL

A. The European Union

1. The Cooperation and Verification Mechanism

102. The Cooperation and Verification Mechanism (“the CVM”) was introduced in the process of Romania’s accession to the European Union in 2007 as a transitional measure to facilitate progress in the fields of judicial reform and anti-corruption (Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, see also paragraph 7 above). The CVM allowed the European Commission to issue regular reports assessing Romania’s progress on or deviation from the above-mentioned reform agenda. Excerpts from the relevant reports are as follows.

103. In its first report of 2007 in the context of the CVM, the European Commission noted:

> "Romania has stepped up efforts at the highest levels in the fight against corruption. While recognizing these efforts much remains to be done. ... Deeply rooted problems, notably corruption require the irreversible establishment and effective functioning of sustainable structures at investigative and enforcement level capable of sending strong dissuasive signals."

In connection with the second benchmark, the Commission recommended that efforts in the pursuit of judicial reform and the fight against corruption had to be increased so as to demonstrate the effectiveness of the newly created ANI.

104. In a subsequent report of 2008 tracking Romania's progress within the CVM, the European Commission mentioned that a poll conducted by Transparency International in the first half of 2008 suggested that there had been an increase in "everyday corruption" compared with the previous year, and urged the "Romanian authorities to show that the judicial system work[ed] and that investigations into corruption [led] to arrests, prosecution and, depending on the court's judgement, convictions with dissuasive effect and seizure of assets". The report concluded that:

> "Romania presents a mixed picture. It has put the fundamental elements of a functioning system in place. But the foundation is fragile and decisions on corruption are highly politicised. Each step in the right direction engenders a divisive internal political debate, fostering legal uncertainty. Commitment to reform by Romania's key institutions and bodies as well as with regard to different benchmarks is uneven. For example, while there is a strong will by the prosecution to achieve tangible results at the pre-trial phase the same determination is not demonstrated throughout the judicial process. Urgently needed legislative proposals such as a new Criminal Procedure Code and anti-corruption measures such as sufficiently deterrent mandatory minimum sentences for high level corruption cases do not get a sufficiently strong push from the government. Politicisation of corruption cases by the Romanian Parliament and the failure of the judicial system to deliver sentences in high level corruption cases has weakened the public perception of respect for the rule of law. Genuine efforts by the administration at local, regional or central level to fight corruption are too often frustrated at political level."

105. In its 2012 report on Romania's progress under the CVM, the European Commission commended the track record of the ANI, considering that it was a step in the right direction, along with the steps taken to tackle key high-level corruption cases by the National Anti-corruption Directorate, the High Court, and some government bodies addressing corruption in their ranks. In its relevant parts, the report mentioned:

> "Set up in 2007, ANI swiftly became operational and put in place an efficient administration and investigation methodology. It established centralised, electronic public access to all declarations of assets and interests, an important contribution to transparency. With support from both the national budget and EU funds, it set up a computerised case management system and cooperation agreements with a variety of administrative and judicial authorities.

Today, ANI has evolved into an essential component of the anti-corruption institutional framework and can demonstrate significant results. However, ANI's progress has been held up by a series of challenges. ANI's legal base was declared unconstitutional in 2010, putting in doubt ANI's core power to seek the confiscation of unjustified assets. The debate on how to amend ANI's legal basis revealed that the political will to effectively tackle integrity and to fulfil accession commitments was shallow. Representatives from all major political parties in Parliament re-opened the issue of ANI's existence. Parliament has also failed to implement decisions on incompatibility and conflict of interest.

ANI's weakened legal base makes it more difficult for ANI's work to bring results and is still the subject of constitutional challenge, although two complaints were rejected by the Constitutional Court in June. The new wealth investigation commissions – established as an extra stage between ANI and courts for cases where ANI suggests the confiscation of unjustified assets – seem to have made the task of pursuing unjustified wealth more difficult. ...

Despite the weaknesses in judicial follow-up, a significant number of incompatibility findings have become definitive and led to resignations and disciplinary sanctions. Results are more disappointing regarding the follow up to ANI's cases concerning the confiscation of unjustified assets and conflict of interest. Improvements to ANI's legal basis may help to address this issue, but the political, judicial and administrative system as a whole needs to see ANI as an asset to be encouraged. The handling of ANI cases by the courts and the cooperation between institutions needs to improve if the [ANI] is to serve its purpose as driving a major shift in attitudes towards integrity in Romania."

106. In the 2022 CVM report, the Commission concluded that Romania had made sufficient progress in meeting its commitments at the time of its accession to the EU and that all benchmarks could be satisfactorily closed. As regards the ANI, the report noted its efficiency and its consistent track record. Subsequently, on 15 September 2023 the CVM was formally closed after all the specific commitments listed in the conclusions of the CVM reports were considered to have been implemented by Romania and all the benchmarks were considered to have been satisfactorily met.

107. In its judgment of 18 May 2021 in *Asociaţia Forumul Judecătorilor din România and Others v. Inspecţia Judiciară and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393), and subsequently in its Order of 3 February 2025 in *Asociația Inițiativa pentru Justiție v. European Commission* (T-1126/23, EU:T:2025:138), the CJEU ruled, in connection with the benchmarks introduced by the European Commission's decision of 2006 (see paragraph 102 above), that those benchmarks were binding on Romania, and consequently it was under a specific obligation to address them and take appropriate measures to meet them as soon as possible. The CJEU held that Romania was required to refrain from implementing any measure which could jeopardise those benchmarks being met. It further stated that those benchmarks were formulated in clear and precise terms and were not subject to any condition, with the result that they had direct effect. As regards the legal effects of the reports drawn up by the Commission in the context of the CVM, the CJEU found that those reports formulated requirements with regard to Romania and made recommendations

to it with a view to the benchmarks being met. In accordance with the principle of sincere cooperation set out in Article 4(3) of the TEU, Romania had to take due account of those requirements and recommendations and refrain from adopting or maintaining measures in the areas covered by the benchmarks which could jeopardise the result prescribed by those requirements and recommendations.

2. Other EU material

108. The European Commission 2014 Anti-corruption Report makes the following relevant remarks in respect of Romania:

> "The National Integrity Agency (ANI) checks conflicts of interests, incompatibilities and personal wealth of public officials. Since its establishment in 2008, the ANI has shown good results overall. In the past five years, the confirmation rate of the ANI's decisions on incompatibilities, as well as the administrative decisions on conflicts of interest exceeded 80%. Following the ANI's decisions, over EUR 1 million in unjustified personal wealth was confiscated on the basis of final court decisions. However, over time the follow-up of the ANI's decisions encountered considerable difficulties. The political will to support the independence, stability and capacity of the anti-corruption institutions and the judiciary has not been constant over time."

109. After the closing of the CVM (see paragraph 106 above), the European Commission continued to accompany sustainable reform in member States in the framework of the Rule of Law Cycle. As part of that cycle, the Commission's annual Rule of Law Report, which since 2022 also includes recommendations to the member States, acts as a preventive tool, deepening dialogue and joint awareness of rule of law issues. It also makes it possible to monitor the implementation of many of Romania's agreed reforms. In its most recent Rule of Law Report on the situation in the European Union in 2024, the European Commission stated, as regards Romania, "The National Integrity Agency continued to work efficiently on conflicts of interest, asset declarations and whistleblowing".

110. In the judgment of 4 May 2023 in *T.A.C. v. Agenția Națională de Integritate (ANI)* (C-40/21, C:2023:367), the CJEU held that Law no. 176/2010 (see paragraph 81 above) sought to ensure integrity and transparency in the exercise and holding of public functions and offices and to prevent institutional corruption. It also held that the measure prohibiting the holding of elective public office formed part of a broader set of measures, all of which pursued that objective in a complementary manner, and consequently contributed to the fulfilment of the benchmarks provided for by Decision 2006/928 (see paragraphs 7 and 102 above), in full compliance with EU law.

Relevant parts of that judgment read as follows:

> "23. In the present case, it is apparent from the information provided by the referring court and from the statement of reasons relating to Law No 176/2010 that that law

implements the second benchmark set out in the annex to Decision 2006/928, namely to establish an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.

24. As the Court has held, the benchmarks set out in the annex to that decision are binding on Romania in the sense that it is subject to the specific obligation to address those benchmarks and to take appropriate measures to meet them. ...

25. Moreover, the said decision places Romania under the obligation to combat, effectively and irrespective of any adverse effect on the EU's financial interests, corruption, in particular high-level corruption, and to provide for the application of penalties that are effective and that act as a deterrent in the case of offences of corruption in general (see, to that effect, judgment of 21 December 2021, Euro Box Promotion and Others, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 189 and 190 and the case-law cited).

...

27. It follows from those considerations, as the Advocate General observed in point 21 of his Opinion, that Law No 176/2010, ... constitutes a measure implementing EU law ...

37. With regard to the first criterion, concerning the classification of the offence under national law, it follows both from the wording of Article 25(1) of Law No 176/2010, which refers to a 'disciplinary offence', and from the national case-law cited in the request for a preliminary ruling, in particular from that of the Curtea Constituțională (Constitutional Court), that, under Romanian law, neither the automatic termination of the term of office in the event of a finding of a conflict of interest nor the prohibition on the holding of any elective public office, in addition to that termination, is regarded as a criminal penalty. In addition, it is apparent from the file before the Court that those measures are imposed pursuant to an administrative procedure. While it is true that Romanian law also provides for the criminal offence of conflict of interest, the penalties incurred in that respect are, ..., imposed through a distinct and independent set of proceedings.

38. As regards the second criterion, relating to the intrinsic nature of the offence, it must be ascertained whether the measure at issue has, *inter alia*, a punitive purpose, ...

39. In the present case, it is apparent from the request for a preliminary ruling and from the observations of the parties before the Court that Law No 176/2010 seeks to ensure integrity and transparency in the exercise and holding of public functions and offices and to prevent institutional corruption, and that the measure prohibiting the holding of elective public office, such as that liable to be imposed in the case in the main proceedings, forms part of a broader set of measures all of which pursue, in a complementary manner, that objective and, consequently, contributes to the benchmarks provided for by Decision 2006/928 being met. Thus, the purpose of that prohibition, like that of the automatic termination of the term of office, is to preserve the proper functioning and transparency of the State, by putting to a lasting end situations of conflict of interest.

...

41. In the light of those factors and in the light of the case-law cited in the preceding paragraph, it appears that a measure prohibiting the holding of elective public office for a period of three years, such as that which is liable to be imposed in the case in the main proceedings, pursues an essentially preventive – and not punitive – objective.

42. In terms of the third criterion, concerning the degree of severity of the penalty, it must be pointed out, as the Advocate General observed in point 33 of his Opinion, that such a measure does not consist in imposing a sentence of deprivation of liberty or a fine, but in banning the future exercise of specific activities, namely elective public office, targeting individuals belonging to a limited group with a special status. That ban is also of limited duration and does not apply to the right to vote."

As regards the proportionality and necessity of the measure prohibiting the holding of elective public office set out in Law no. 176/2020, the CJEU stated as follows:

"53. In the case at hand, it must be borne in mind at the outset that Law No 176/2010, Article 25(2) of which prohibits the holding of elective public office for a three-year period, is intended to ensure integrity and transparency in the exercise and holding of public functions and offices and to prevent institutional corruption. The aims of that law, which contribute to the benchmarks set out in the annex to Decision 2006/928 being met, thus constitute a legitimate objective recognised by the European Union.

...

60. It should be added that the scale of the conflicts of interest and the level of corruption observed in the national public sector must be taken into account in determining whether or not national legislation such as that at issue in the main proceedings exceeds the limits of what is necessary to attain the objective of ensuring integrity and transparency in the exercise and holding of public functions and offices and to prevent institutional corruption. In that regard, it must be recalled that Law No 176/2010 implements the second benchmark set out in the annex to Decision 2006/928, which is binding on Romania and seeks to ensure that dissuasive sanctions may result from the mandatory decisions of the ANI. That decision also obliges that Member State to combat corruption effectively.

61. Having regard to the preventive component of the measure at issue, which is intended, *inter alia*, to deter persons who hold public office from undermining the integrity of their office, it is necessary, in such a national context, to set a predetermined period for that measure in order to ensure its effectiveness.

62. Moreover, the prohibition on holding elective public office laid down in Article 25(2) of Law No 176/2010 is limited in time and applies only to certain categories of persons performing particular duties. In particular, a person exercising an electoral mandate as mayor, like the applicant in the main proceedings, is vested with responsibilities and important powers and has the task of representing his fellow citizens.

63. That prohibition, moreover, applies only to defined activities, namely elective public functions, and does not prevent the pursuit of any other professional activity, particularly in the private sector.

...

65. Regarding the proportionality of the measure at issue and, in particular, whether its severity is commensurate with the seriousness of the offence, it is appropriate to recall the importance of the fight against corruption in the public sector in certain Member States and the priority which has been given by the Romanian legislature to that objective, which represents a genuine requirement of Romanian society, as is indicated in the statement of reasons relating to Law no. 176/2010, also imposed by Decision 2006/928."

B. The Council of Europe

111. In its First Evaluation Report on Romania, adopted at its Plenary Meeting held between 4 and 8 March 2002, the Council of Europe Group of States against Corruption (GRECO) mentioned Law no. 115/1996 (see paragraph 74 above) among the preventive measures to combat corruption, while observing the following as regards the situation in Romania:

> "... corruption affects the activities of almost all public institutions in Romania and is a worrying phenomenon. The most serious acts of corruption are directly linked to organised crime, with the attendant risk that government bodies and the judicial system have been infiltrated. In particular, several investigations have outlined the existence of corruption within the Romanian courts and police system, and the levels of satisfaction with these services are the lowest for all public services assessed. According to the Corruption Index 2001, published by Transparency International, Romania lies in 69th place (jointly with Venezuela). The World Bank's 2001 Report on corruption in Romania states, *inter alia*, that 38% of officials were offered bribes in 2000, and that 42% of individuals in contact with public administrations claimed to have been asked, directly or indirectly, to pay bribes or to have offered bribes themselves."

112. In its Second Evaluation Report on Romania, adopted at its Plenary Meeting held between 10 and 14 October 2005, GRECO observed and recommended the following:

> "... the system for supervising declarations of assets is not effective, in particular, because the investigatory commission is only seldom applied to, the level of evidence required to initiate that process is very high and because of the absence of a preliminary and independent administrative review of these declarations in order to identify actual or apparent violations of the law, unjustified fluctuations in the public officials' financial situation, conflicts of interests, incompatibilities and prohibited gifts. Lastly, there is also no appropriate system for verifying declarations of interest. Consequently, the GET [the Group's Evaluation Team] recommends introducing an effective system for supervising declarations of assets and interests."

113. Several years later, the Fourth Evaluation Report on Romania, adopted by GRECO at its Plenary Meeting held between 30 November and 4 December 2015, read as follows in its relevant parts:

> "2. ... Romania has a system in place for the declaration of income, assets and interests which can be seen as exemplary in various respects and which is under the supervision of the National Integrity Agency. The latter can be strengthened further through a more proactive approach and better data processing capabilities.
>
> ...
>
> 45. Romania has put in place an ambitious system of declaration of wealth, income and interests. The legal framework is provided by the Law no. 176/2010. It applies to a large number of categories of public officials, including deputies and senators (as well as candidate-members of parliament). The system is meant to ensure that the officials concerned do not obtain additional sources of illegitimate income and it is designed to assess possible variations in the patrimonial situation of the declarants. The system is also designed to ensure that declarants comply with certain obligations, for instance parliamentarians who can be in a situation of incompatibility by exerting other top responsibilities in the public sector, in the business sector, unions etc. There are thus

> two sets of declarations. These declarations are received and centralised by a specific agency created specifically for that purpose, the National Integrity Agency.
>
> ...
>
> 49. The GET is pleased to see that Romania has put in place an ambitious mechanism for the declaration of assets and interests for public officials which also applies to members of parliament (as well as judges and prosecutors). The information system has positively evolved from the submission of a single confidential form a few years ago, to a fully-fledged declaration system. Measures have been taken to ensure that declarants comply with the deadlines for submission and as a result a wealth of information is available nowadays on-line, which largely meets the expectations of GRECO. The information includes the income in an accurate format as well as debts/loans, and it applies to the spouse and first degree relatives (children). The next step will probably be to have the data submitted in an electronic format instead of paper versions which are subsequently scanned, but the GET is overall pleased by the above system. It could inspire other countries."

C. The Organisation for Economic Cooperation and Development (OECD)

114. In its report entitled Evaluation of the Romanian Anti-corruption Strategy for the period 2016-2020, the OECD noted the following:

> "... it is true that Romania had made progress on the institutional and legislative framework for fighting corruption. ...
>
> Administrative verifications of declarations of assets and interests put in place by the ANI have led to confiscations of unjustified wealth and dismissals of public officials, including at high-level, for conflicts of interests and incompatibilities. These sanctions, together with the transparency component of the assets and interest disclosures contributed to reducing the incentive for corruption. In 2016, ANI published almost 7 million asset declarations."

115. The OECD's Financial Action Task Force (FATF) issued a set of recommendations entitled "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation" (updated October 2016). Recommendation no. 4 states that countries should consider adopting measures that allow non-conviction-based confiscation "to the extent that such a requirement is consistent with the principles of their domestic law". Recommendation no. 38 calls on States to ensure they have the authority to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law.

D. Other international material

116. Article 54 § 1 (c) of the 2003 United Nations Convention against Corruption recommends that parties, for the purposes of mutual legal assistance, should consider taking such measures as may be necessary to

allow confiscation of property without a criminal conviction in cases in which the offender cannot be prosecuted “by reason of death, flight or absence or in other appropriate cases”.

117. In its 2020 Global Report on Enhancing Government Effectiveness and Transparency: The Fight Against Corruption, the World Bank outlined the challenges and deficiencies of the Romanian asset declaration system in a chapter entitled “Enhancing effectiveness of asset declarations in Romania”. The relevant parts of the report read as follows:

> “Since the asset disclosure forms were first introduced in 1996, Romania has been one of the few countries that has aimed to control and sanction unjustified variations of wealth of public officials by embedding civil confiscation tools in its financial disclosure system. Although other countries have civil confiscation tools in place, there are few systems where civil confiscation is so intertwined with the asset declaration system.
>
> The original mechanism for verifying the accuracy of asset declarations that was in place between 1996 and 2007 was rudimentary and difficult to use. ... The results achieved ... in the area of wealth verifications were modest. The system lacked accountability mechanisms and transferred tasks to the judiciary that should have been dealt with by administrative control bodies. ...
>
> After 2007, ANI initiated verification procedures based on complaints or *ex-officio*. Staff used relevant government databases (such as the companies register, vehicle registration register, police database) to crosscheck information provided by declarants. One of the most important features of the Romanian integrity mechanism is the power of ANI to request any type of data and information from both public and private entities, including financial information from financial institutions regarding transactions, bank accounts or credits. This proved to be extremely useful when assessing the wealth accumulated by a public official during his mandate and in the process of verifying the accuracy of the disclosed data. Public officials were able to provide additional information during the verification process, and ANI’s findings were challengeable in court. Around 70% of ANI’s cases are challenged before courts.
>
> Following the Constitutional Court’s 2010 decision related to the procedure for controlling wealth, the September 2010 law introduced an additional filter. This was that ANI decisions would have to be analyzed by a commission of two judges and one prosecutor set up at the level of each court of appeal. This is a combination of the initial institutional set-up of ANI and the old system of wealth control. If the commission agrees with ANI’s findings, the case is sent to the administrative litigation section within the Courts of Appeal with a final appeal to the High Court of Cassation and Justice. While ANI is limited to asking for further clarifications only from the subject of the investigation (the filer), the Wealth Investigation Commission attached to the Court of Appeal (another filter) can gather its own additional evidence and can hear other individuals than the subject of the investigation. A final finding of unjustified variation of wealth results in the confiscation of the wealth that the public official cannot adequately account for.
>
> ...
>
> In implementing its asset and disclosure system, Romania confronted strong and sustained opposition from individuals and groups that benefited from corruption. Public support and international pressure were essential to build political will and overcome those trying to stifle reform. In particular, pressure from the European Commission

through the EU accession process and the Cooperation and Verification Mechanism ensured the country kept strengthening its asset and interest disclosure system and did not backtrack on its anti-corruption efforts.”

THE LAW

I. PRELIMINARY REMARK

118. The Court notes from the outset that the scope of the case before it is circumscribed by the factual allegations and legal arguments as raised by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10, § 126, 20 March 2018; and *Fu Quan, S.R.O. v. the Czech Republic* [CG], no. 24827/14, § 145, 1 June 2023). Therefore, it shall further examine the domestic legal framework and its application in the present case solely from the standpoint of the facts and complaints as submitted by the applicant (see paragraphs 123, 142-143 and 161-162 below).

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

119. The applicant complained of the unfairness of the confiscation proceedings, in particular that he had been forced to bear an excessive burden of proof. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

A. Admissibility

1. *Applicability of Article 6 § 1*

(a) The parties’ submissions

120. The Government argued that this complaint was incompatible *ratione materiae* with the provisions of the Convention.

121. Firstly, as regards the civil limb of Article 6, the Government contended that the procedure in the present case concerned obligations connected to the applicant’s public function, and hence related to the manner in which public office was exercised. Therefore, it fell outside the scope of Article 6 of the Convention.

122. Secondly, they submitted that Article 6 was not applicable under its criminal limb either. As regards the first of the three criteria set out in *Engel and Others v. the Netherlands* (8 June 1976, Series A no. 22), they submitted that domestic law did not classify the procedure for the verification of assets provided for by Law no. 176/2010 as disciplinary, much less criminal, and the confiscation measure in the present case had not been accompanied by any disciplinary, administrative or criminal sanction. As regards the second

and third criteria, the Government submitted that the measure imposed on the applicant was of a preventive or deterrent nature and was provided for by a Law that was not of general application, since it concerned only those holding public office. The applicant had not been charged with a criminal offence and the measure of confiscation in itself did not reach the level of severity to be considered a criminal sanction. They also mentioned that the proceedings for the verification of assets set out in Law no. 176/2010 (see paragraph 8 above) had been examined by the CJEU in the judgment of 4 May 2023 in *T.A.C. v. Agenția Națională de Integritate (ANI)*, in which it had been stated that the measures provided for by the Law in question, including the measure prohibiting the holding of public office for a period of three years, "pursue[d] an essentially preventive – and not punitive – objective" (see paragraph 110 above).

123. The applicant submitted that Article 6 of the Convention in its criminal limb was applicable in the present case. He argued that Article 44 §§ 8 and 9 of the Constitution (see paragraph 72 above) provided that confiscation was a criminal sanction. In his opinion, the same approach had been adopted by the Constitutional Court in decision no. 415 of 14 April 2010 (see paragraph 91 above). Furthermore, confiscation was a sanction that could be found only in criminal law in the Romanian legal system. He further contended that the confiscation in his case, in addition to its deterrent nature, had mainly been punitive, and the proceedings in which it had been ordered had implied a finding of guilt on his part. Furthermore, the applicable legal rule sought to protect the general interests of society and the sanction applied had been severe as the amount confiscated had been considerable. Therefore, the measure in question had clearly been a genuine criminal sanction with a punitive scope.

(b) The Court's assessment

(i) Existence of a "criminal charge"

124. The Court reiterates that the concept of a "criminal charge" in Article 6 § 1 is an autonomous one. The Court's established case-law sets out three criteria, commonly known as the "*Engel* criteria", to be considered in determining whether or not there was a "criminal charge" (see *Engel and Others*, cited above, § 82). The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge. The fact that an offence is not punishable by imprisonment is not by itself decisive for the purposes of the applicability of the criminal limb of Article 6 of the

Convention since, as the Court has stressed on numerous occasions, the relative lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see *Nicoleta Gheorghe v. Romania*, no. 23470/05, § 26, 3 April 2012, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 122, 6 November 2018).

125. As regards the first criterion – the classification in Romanian law of the confiscation of unexplained assets – the Court notes that an examination of the relevant legislation (see paragraphs 74-81 above) and domestic case-law (see paragraphs 98 and 101 above) shows that the measure in question is regarded as an administrative sanction with no connection to criminal law. Moreover, in the present case, the measure was applied in administrative proceedings conducted before the administrative courts (see paragraphs 28 and 63 above) in application of the principles of civil procedure (see paragraphs 43, 59 and 74 above). In addition, it must be noted that in the domestic legal system, confiscation is a measure that is not only provided for in criminal law, but is widely regulated as an administrative sanction in the field of administrative offences (see paragraph 86 above). However, the first of the *Engel* criteria is of relative weight and serves only as a starting-point (see *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 85, 22 December 2020).

126. As regards the second criterion – the nature of the offence or sanction – which is a factor of greater weight (see *Engel and Others*, cited above, § 82, and *Öztürk v. Germany*, 21 February 1984, § 52, Series A no. 73), the Court previously examined whether the measure in question concerned a specific group of persons (see *Ramos Nunes de Carvalho e Sá,* cited above, § 125) or was of general application (see *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 69, 3 November 2022); whether the measure was intended to be pecuniary compensation for damage or served a purpose that was deterrent and punitive (see *Jussila v. Finland* [GC], no. 73053/01, § 38, ECHR 2006-XIV); and whether the measure concerned a general interest protected by criminal law (see *A. Menarini Diagnostics S.R.L. v. Italy*, no. 43509/08, § 40, 27 September 2011).

127. In the present case, the Court observes that the provisions authorising the confiscation of unexplained assets were not aimed at the public in general, but at specific categories, namely elected or appointed high-level public officials, members of the judiciary, people in management positions in public institutions and public servants (see paragraphs 74, 79 *in fine* and 81 above). This limited area of application had also been confirmed by the Constitutional Court (see paragraph 90 above). Moreover, on this point, the Court had already held that a Law which applied to persons performing public functions or duties was not of general application because its provisions were applicable only to a particular group with a special status (see *Cătăniciu v. Romania* (dec.), no. 22717/17, § 39, 6 December 2018).

128. As regards the purpose of the measure, the Government contended that the measure in question was of a preventive or deterrent nature, as it was based on a Law that provided for measures designed to preserve integrity in public office (see paragraph 165 below). In contrast, the applicant alleged that the measure served a punitive purpose (see paragraph 123 above). The Court notes that it is common ground among the domestic authorities, the Constitutional Court and the EU institutions that the purpose of the two Laws applied in the applicant's case was preventive (see paragraphs 80, 90, 104 and 110 above). On this point, the Court reiterates its well-established case-law to the effect that proceedings for confiscation which do not stem from a criminal conviction or sentencing proceedings and thus do not qualify as a penalty, but rather represent a measure of control of the use of property within the meaning of Article 1 of Protocol No. 1, cannot amount to "the determination of a criminal charge" within the meaning of Article 6 § 1 of the Convention and should be examined under the "civil" head of that provision (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 121, 12 May 2015, with further references). The Court further notes that the measure in question in the present case stems from a legal framework that aims to ensure the application of administrative instruments for maintaining integrity in public office and fighting corruption, which are general interests of society that are also protected by the Criminal Code. However, this element alone is not sufficient to bring the measure within the field of criminal sanctions. The Court notes that, in the domestic authorities' view, the above-mentioned provisions were designed to protect the honour and reputation of public office, and to maintain public trust in public officials; they could be applied in addition to and in conjunction with the existing criminal instruments, but as separate instruments (see paragraphs 74-81 above). Therefore, it can be concluded that the measure did not have a punitive purpose.

129. With regard to the third criterion – the nature and severity of the penalty – the Court firstly notes that the sanctions that the applicant could have incurred under the legal framework on the verification of assets were disciplinary in nature and could not lead to imprisonment (see paragraphs 74-81 above; see also, *mutatis mutandis*, *Müller-Hartburg v. Austria*, no. 47195/06, § 47, *19 February 2013*). From this point of view, the present case differs from *Anghel v. Romania* (no. 28183/03, § 52, 4 October 2007) and *Bendenoun v. France* (24 February 1994, § 47, Series A no. 284), where the sanctions imposed on the applicants were fines or tax surcharges along with imprisonment in the event of non-payment.

130. On this point, it must also be mentioned that when discussing the applicability of Article 7 of the Convention, the Court has consistently held that the severity of the sanction is not in itself decisive for its classification as a "penalty", since many non-penal measures may have a substantial impact on the person concerned (see *Welch v. the United Kingdom*, 9 February 1995, § 32, Series A no. 307-A; *Del Río Prada v. Spain* [GC], no. 42750/09, § 82,

ECHR 2013; and *Longo v. Italy* (dec.), no. 35780/18, §67, 27 August 2024). Although the amount confiscated in the present case was substantial, the Court considers that, in the light of its findings in paragraphs 125-128 above, the severity of the sanction in itself does not bring it into the criminal sphere (see *Müller-Hartburg*, cited above, § 47, where the size of the potential fine of approximately EUR 36,000, though having a punitive effect, was not so severe as to bring the matter within the criminal sphere; see, similarly, *Ramos Nunes de Carvalho e Sá*, cited above, §§ 25, 71, 126 and 217, where the maximum penalty corresponded to EUR 43,750; and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 120, 1 June 2023, where the amount of the fine the applicant risked incurring was EUR 30,981). It should also be noted that the Court has already had an opportunity to examine the applicability of Article 6 under its criminal head to disciplinary proceedings against enforcement officers (bailiffs), and that it held that the proceedings in question had not involved the determination of a "criminal charge", even though the disciplinary sanction at stake in that case had been removal from office coupled with a substantial fine (see *Grosam*, cited above, § 121).

131. The Court further notes that in the present case, the confiscation measure was in fact limited to the amount found by a court to be unexplained in comparison with the applicant's lawful income. The measure was an administrative tool that complemented the general criminal framework, and was aimed at a specific category of people with the purpose of maintaining integrity in public office and preventing corruption – interests to which the Council of Europe (see paragraphs 111-113 above) and the Court (see *Telbis and Viziteu v. Romania,* no. 47911/15, §§ 74 and 77, 26 June 2018, and *Gogitidze and Others,* cited above, § 106,) attach significant importance.

132. In view of the foregoing, the Court considers that the facts of the case provide no basis for finding that the proceedings for the verification of the applicant's assets concerned the determination of a criminal charge within the meaning of Article 6 of the Convention. Accordingly, that Article is not applicable under its criminal head.

(ii) Existence of a "dispute" relating to "civil rights and obligations"

133. The Court has consistently held that for Article 6 § 1 in its "civil" limb to be applicable, there must be a "dispute" regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right, but also to its scope and the manner of its exercise; and lastly, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 71, ECHR 2016; *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, ECHR 2017;

and *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018). Article 6 § 1 does not guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Roche v. the United Kingdom* [GC], no. 32555/96, § 117, ECHR 2005-X). The starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (ibid., § 120; see also *Károly Nagy v. Hungary* [GC], no. 56665/09, § 62, ECHR 2017, and *Regner*, cited above, § 100). The Court would need strong reasons to differ from the conclusions reached by the superior national courts by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Károly Nagy*, cited above, § 62).

134. Applying these principles to the present case, the Court observes firstly that there was a "dispute" concerning the exercise of the right of property, a right that is clearly recognised by domestic law and is set out in Article 44 of the Constitution (see paragraph 72 above). The Court further observes that the dispute was "genuine", as the parties disagreed as to whether the applicant could justify the source of his assets. Moreover, the dispute was "serious", having regard to the direct pecuniary consequences for the applicant, and was "directly decisive" for the right at issue because it resulted in the confiscation of the applicant's property.

135. As regards the "civil" nature of the right in dispute, the Government contested the applicability of Article 6, arguing that the dispute was in the area of public law, and that consequently there was no "civil" right at issue (see paragraph 121 above). In this connection, the Court has already stated that the scope of the "civil" limb has been substantially extended in relation to public-employment disputes, a field which is directly relevant to the present case. In *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II) the Court, having regard to the existing state of affairs in the Contracting States and in view of non-discrimination considerations in relation to civil servants compared with private employees, established a presumption that Article 6 applied to "ordinary labour disputes" between a civil servant and the State and that it would be for the respondent Government to show that a civil servant did not have a right of access to a court under national law and that this exclusion of the rights under Article 6 was justified.

136. In the light of the above principles, the Government's argument that the civil limb of Article 6 § 1 is not applicable solely because the applicant's dispute falls within the field of public law and there is no "civil" right at stake is not convincing. As shown above, a public-law dispute may bring the civil limb into play if the private-law aspects predominate over the public-law ones in view of the direct consequences for a civil pecuniary or non-pecuniary right (see *Denisov*, cited above, § 53). The Court notes that its case-law has developed in recent years, and it has come to accept that disciplinary

proceedings where, for example, the right to continue to practise a liberal profession was at stake can give rise to "disputes" over "civil rights" within the meaning of Article 6 § 1 of the Convention simply because the suspension of the exercise of the profession appears in the catalogue of possible measures against the applicant (see *Peleki v. Greece*, no. 69291/12, § 39, 5 March 2020, with further references). In the present case, the applicable law also provided for the disciplinary sanction of dismissal (see paragraph 74 above).

137. Moreover, the Court has recognised that Article 6 § 1 of the Convention was applicable in its civil limb not only when an applicant was the subject of a temporary or permanent ban on the practice of his profession, but also in the case of the imposition of a fine (see *Grosam* cited above, § 109). The Court has also consistently held that property rights are civil rights within the meaning of Article 6 § 1 of the Convention (see, amongst many authorities, *Arcuri and Others v. Italy, no. 52024/99, § 2, 5 July 2001*; *Veits v. Estonia*, no. 12951/11, §§ 58-60, 15 January 2015; *Silickienė v. Lithuania*, no. 20496/02, §§ 45-46, 10 April 2012; and *Gogitidze and Others*, cited above, § 121).

138. Indeed, the present case may not concern an "ordinary labour dispute" or a disciplinary dispute and relates to obligations connected to the applicant's public function, as the Government contended, but it involved the confiscation of assets owned by the applicant and whose source could not be explained. Such a measure clearly had an impact on the applicant's property rights.

139. In view of the above, there is no reason to conclude that there was no "civil" element in the applicant's dispute, or that such an element was insufficiently significant to bring the "civil" limb of Article 6 into play.

140. Applying the *Vilho Eskelinen* test further, it is clear that domestic law provides for access to a court in proceedings for the verification of assets of people holding public office (see paragraphs 74-82 above). Accordingly, Article 6 applies under its civil head. Therefore, the Government's objection with respect to incompatibility *ratione materiae* must be rejected.

2. *Conclusion*

141. 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*

142. The applicant argued that the proceedings in his case had not been fair. More specifically, he had wrongly been forced to bear the burden of proof in relation to explaining the source of his income, and doubts as regards

certain sources of income had wrongly been held against him. In support of this argument, the applicant argued that the Constitutional Court, in decision no. 415 of 14 April 2010 (see paragraph 91 above), had held that this obligation, as well as other provisions of the former Law no. 144/2007, were unconstitutional, because they required persons subject to verification to prove the lawful origin of their assets and placed an unfair burden of proof on those persons, and any doubt was wrongly held against them. The applicant claimed that Law no. 115/1996 (see paragraph 74 above), which contained similar provisions to those criticised in the above decision of the Constitutional Court, had not been amended as regards the burden of proof or to include an obligation that the illicit nature of assets be established before the adoption of a decision to confiscate those assets.

143. The applicant also alleged that he had been treated differently from the ANI when he had been forced to prove the lawful source of his income – the ANI had had to prove only that there was a difference between his income and expenses, and not that the source of the income in question was unlawful. He had repeatedly raised this point before the High Court, but to no avail. Moreover, he considered that the courts had wrongly disregarded the expert reports submitted in the case and the evidence he had put forward, and had required an excessively high standard of proof, bearing in mind that he had had to prove the source of income and assets earned many years prior to the proceedings, while the ANI had not submitted any evidence to rebut his claims. He considered that the courts should also have taken into consideration his income prior to 1996, but the verification should have concerned only his assets after 2003, when police officers had stopped having military status and had become public servants who were obliged to submit declarations of assets. The applicant also complained about the wrongful interpretation of the evidence by the courts alleging that he had submitted relevant evidence proving the source of his assets but the courts disregarded it. Relying on *Dimitrovi v. Bulgaria* (no. 12655/09, § 47, 3 March 2015), the applicant concluded that all the above elements proved that the procedure for the verification of assets was unforeseeable with regard to the manner and the extent to which he was required to prove the legal origin of his assets.

144. The Government submitted that all fair trial guarantees had been respected in the case. The applicant had had ample opportunity to present his arguments to the courts in adversarial proceedings before an impartial tribunal established by law, and was represented by a lawyer of his choice. The proceedings in the present case had been based on Laws nos. 115/1996 and 176/2010 (see paragraphs 74 and 81 above), which had not been the subject of decision no. 415 of 14 April 2010 of the Constitutional Court (see paragraph 91 above), that had specifically concerned the provisions governing the powers of the ANI set out in Law no. 144/2007. The provisions which had been declared unconstitutional had been repealed by Law no. 176/2010 after the publication of the above-mentioned decision (see

paragraph 83 above). In numerous decisions, the Constitutional Court had declared that those two Laws were in compliance with the Constitution and had held that the presumption of the licit acquisition of assets ceased to apply when there was definite evidence before a court that certain assets had not been acquired in a licit manner (see paragraphs 94-96 above). The Government also referred to decision no. 321 of 29 March 2007 (see paragraph 89 above), where the Constitutional Court, with respect to the composition of the commission for the verification of assets, had held that prosecutors and judges were officers of the court under a legal obligation of impartiality, and that their decisions could be appealed against to the courts, in compliance with the right of access to a court set out in the Constitution and the right to a fair trial set out in Article 6 § 1 of the Convention.

145. As regards the burden of proof, the Government contended that it had complied with the general legal principle that whoever made an allegation should prove it. Therefore, the ANI had had to prove the findings in the evaluation report, while the applicant had had the right to put forward any evidence that he had considered necessary to support his arguments. Referring to domestic case-law examples (see paragraphs 97-101 above), the Government also explained that on numerous occasions the domestic courts had held that on the basis of certain Laws, the presumption of the licit acquisition of assets set out in Article 44 of the Constitution (see paragraph 72 above) ceased to apply when it was clearly established that assets belonging to persons mentioned in those Laws had not been acquired in a licit manner. The Government also considered that the applicant had failed to properly raise before the domestic courts the breach of his right to have the benefit of the presumption of the licit acquisition of assets guaranteed by the Constitution.

2. The Court's assessment

146. The Court reiterates that in previous cases involving the compatibility of non-conviction-based confiscation with the civil-law aspect of Article 6, it held that it had to be determined whether the way in which confiscation had been applied in respect of applicants had breached the basic principles of a fair procedure inherent in Article 6 § 1. Accordingly, it had to be ascertained whether the procedure in the domestic legal system had afforded the applicants, in the light of the severity of the measure to which they had been liable, an adequate opportunity to present their case to the courts, pleading, as the case might be, that the measure was illegal or arbitrary and that the courts had acted unreasonably (see *Veits*, cited above, § 57, with further references).

147. The Court has also consistently held that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation and assess the facts. It is not the Court's task to substitute its own

assessment of the facts for that of the domestic courts or to give a ruling as to whether certain elements were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which the evidence was taken, were fair (see *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII).

148. In this connection, the Court notes that the proceedings in the present case involved several steps at administrative and judicial levels. During the initial phase of the proceedings, the applicant was informed of the start of the verification by the ANI and had the opportunity to raise his arguments, submit documents, make requests for evidence and expert reports, be represented by a lawyer and view the content of the verification file in person (see paragraphs 9, 11 and 12 above).

149. Subsequently, before the Commission, the applicant took part in adversarial proceedings in which he had the opportunity to raise his arguments and request evidence while being represented by a lawyer of his choice (see paragraphs 16-19, 21 and 26 above). The Commission ordered the preparation of an expert report with the parties' involvement (one expert being appointed by the Commission and one by the applicant), and the applicant had the opportunity to put questions to the experts and submit comments on the report (see paragraphs 20 and 22-25 above). The Court observes that the Commission responded to all the arguments raised by the applicant, and it is noteworthy that some of the arguments and evidence presented to explain the origin of some of the assets in dispute were accepted by the Commission, which led to an amount being deducted from the total sum to be confiscated (see paragraph 27 above).

150. The Court further notes that the Commission's finding was reviewed by a court, again in adversarial proceedings and in oral hearings in which the applicant, represented by a lawyer of his choice, was able to raise his arguments and submit evidence (see paragraphs 28-38 and 40 above). On this point, it must also be noted that the proceedings, which were in principle open to the public, were held in camera following the applicant requesting that his privacy be protected (see paragraphs 30 and 31 above). Furthermore, new expert reports were produced with the applicant's participation. More specifically, the applicant was once again given the opportunity to put specific questions to the experts (see paragraphs 35 and 39 above), propose an expert of his own choosing (see paragraph 45 above), make comments on the findings in the reports and reply to the comments and arguments presented by the ANI in connection with the reports (see paragraphs 45 and 47-51 above). Again, some of the arguments presented by the applicant to explain the origin of some of the assets in dispute were accepted by the court, leading to an additional amount being deducted from the total sum to be confiscated (see paragraph 60 above). The Court notes that the applicant's arguments before the Cluj Court of Appeal were limited to calling into question the findings of fact and their probative force, and that the court responded to all

those arguments in a judgment delivered on 8 February 2016 (see paragraphs 58-62 above). Moreover, the court based its finding that some of the applicant's assets had not been explained on an interpretation of the applicable legal provisions, which was in compliance with the general interpretation of those legal provisions by the Constitutional Court and the High Court (see paragraphs 62 and 92-101 above).

151. The Court observes that the applicant also had the opportunity to lodge an appeal on points of law against the judgment of the Cluj Court of Appeal with the High Court, thereby raising his arguments in connection with the facts and the law again and submitting additional evidence (see paragraphs 63-67 above). The High Court, after examining the evidence submitted throughout the entire proceedings, considered that the findings of the Cluj Court of Appeal had been correct as regards its evaluation of the evidence (see paragraph 69 above). All the arguments raised by the applicant were responded to in accordance with the applicable law and procedural rules (see paragraphs 70-71 above).

152. The applicant argued that, pursuant to the provisions of Law no. 115/1996 (see paragraph 74 above), he had wrongly been forced to bear the burden of proof in explaining the lawful source of his income, and that the Constitutional Court had found this obligation unconstitutional in decision no. 415 of 14 April 2010 (see paragraph 142 above). On this point, the Court previously held that there could be nothing arbitrary, for the purposes of the "civil" limb of Article 6 § 1 of the Convention, in the reversal of the burden of proof onto respondents in forfeiture proceedings *in rem* after authorities had submitted a substantiated claim (see, among other authorities, *Gogitidze and Others*, cited above, § 122). In the present case, the Court notes that this argument was raised in the last stage of the domestic proceedings before the High Court where the applicant contested the Cluj Court of Appeal's decision that the allegations about the income received from his father had not been supported by evidence; no reference was made to decision no. 415 of the Constitutional Court (see paragraphs 65 and 67 above). Furthermore, the Court notes that the applicant did not mention decision no. 415 of the Constitutional Court at any stage before the domestic courts. Nevertheless, it must be noted that the High Court responded to his argument in the context in which it had been raised, explaining and confirming that the lower court's assessment of the evidence was in accordance with the law (see paragraph 70 above).

153. As regards the burden of proof, the Court further notes that, contrary to the applicant's allegations, the applicable law required the ANI to present to the courts the evidence on which a verification report was based (Article 10^3 of Law no. 115/1996 – see paragraph 74 above). Furthermore, the issue of the burden of proof had been addressed by the Commission, which had explained how the burden of proof was shared between the parties. The ANI also had to prove its findings, as demonstrated by the fact that the

Commission deducted an amount that had not been proved by the ANI from the total sum to be confiscated. At the same time, it accepted that an amount proved by the applicant had been explained (see paragraph 27 above). The Court also notes that after the adoption of the Constitutional Court decision referred to by the applicant, the provisions of Law no. 144/2007 referred to in that decision were repealed (see paragraph 83 above). Lastly, the burden of proof applied in the domestic proceedings in the present case was in compliance with the Constitution and the case-law of the High Court (see the domestic case-law quoted in paragraphs 93-101 above).

154. As to the calling into question by the applicant of the domestic courts' findings of fact or interpretation of the evidence (see paragraph 143 above), the Court reiterates that it cannot act as a court of fourth instance and will not therefore question the judgment of the domestic courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for instance, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, 5 February 2015, and the case-law quoted in paragraph 146 above). In the present case, the Court sees no signs of arbitrariness.

155. As regards the applicant's allegations that the procedural rules applicable to proceedings for the verification of assets were unforeseeable (see paragraph 143 *in fine* above), the Court notes that Law no. 115/1996 clearly provided that its provisions were supplemented by the Code of Civil Procedure (see paragraph 74 above). Moreover, the Law on administrative proceedings sets out the general principle that administrative procedure is complemented by the provisions of the Civil Code and the Code of Civil Procedure (see paragraph 87 above). In addition, the domestic courts have consistently applied the general rules of evidence of civil procedure to verification of assets proceedings, as indicated by the case-law of the High Court (see paragraphs 99 and 101 above).

156. In view of the above, the Court finds that the applicant had ample opportunity to participate in the proceedings from the outset, and that he made use of that opportunity. He was represented by a lawyer of his choice and had the opportunity to present his arguments to the administrative authorities and the courts both in writing and in oral hearings, receiving thoroughly reasoned replies to all his allegations and requests, in the absence of any arbitrariness and in compliance with the applicable law. Therefore, the Court concludes that the applicant's right to a fair trial was not breached in the present case.

157. There has accordingly been no violation of Article 6 § 1 of the Convention.

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

158. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the confiscation of his property.

159. The relevant provision 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

160. 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. Arguments of the parties

(a) The applicant

161. Relying on *Dimitrovi v. Bulgaria* (no. 12655/09, 3 March 2015), the applicant submitted that the legal framework and proceedings for the verification of his assets had not been foreseeable as regards the manner and extent to which he had been required to prove the licit source of his income and assets. More specifically, there had been no limitation in time regarding how far back the verification could go. In the applicant's case, the verification had taken into account an unreasonably long period of time, and he had been expected to prove the source of income received some fifteen years earlier.

162. The applicant considered that the legal framework and proceedings for the verification of his assets had also lacked adequate safeguards against arbitrariness, because they had allowed the confiscation of unexplained income and not unlawful income. In his opinion, only income proved to be unlawful should be confiscated. Income or assets that could not be explained by evidence could not automatically be considered unlawful, and the burden to prove the unlawful origin of the income or assets in question should be on the authorities which sought confiscation. In his case, the authorities had provided no proof that the unexplained income had been unlawful. He alleged that the confiscation of his assets in the absence of the establishment of his guilt for a criminal or administrative offence had been contrary to the Constitution. On the basis of these arguments, the confiscation of his assets had also lacked a legitimate aim.

(b) The Government

163. The Government submitted that the confiscation of the applicant's assets had been in compliance with the law.

164. The Government further submitted that the legal framework applied in the applicant's case, including the provisions of Article 18 of Law no. 115/1996 (see paragraph 74 above), had been examined on several occasions by the Constitutional Court, which had found that they were in compliance with the Constitution, foreseeable and provided for adequate safeguards against arbitrariness (see paragraphs 89 and 92-96 above).

165. The confiscation in this case was based on a legal framework that pursued the legitimate aim of preserving the integrity of those holding public office through the submission of annual declarations of assets and interests.

166. The Government argued that the measure against the applicant had been proportionate and pointed out that the confiscation measure had been applied following adversarial judicial proceedings in which the applicant, represented by a lawyer of his choice, had had every opportunity to submit his arguments and evidence before the courts and receive thoroughly reasoned replies.

167. In view of the above arguments, the Government submitted that the proceedings leading to the confiscation of the applicant's assets had been in compliance with the law, the guarantees of a fair trial, respect for the presumption of innocence and protection of the right of property.

2. *The Court's assessment*

(a) Existence of an interference and the applicable rule of Article 1 of Protocol No. 1

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

169. It is not in dispute between the parties in the present case that the confiscation of the sum of ROL 254,924 from the applicant amounted to an interference with his right to the peaceful enjoyment of his possessions as protected by Article 1 of Protocol No. 1.

170. In previous cases concerning the forfeiture of property, the Court considered that interference with those applicants' rights fell under the second paragraph of Article 1 of Protocol No. 1, allowing control of the use of

property in the general interest (see, for example, *Telbis and Viziteu*, cited above, § 72). In other cases, the Court treated such forfeiture as deprivation of property, as dealt with in the second sentence of the first paragraph of the provision (see *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 30, 4 July 2017). Nevertheless, the Court considers that there is no need to take a clear stance on the question of the rule in Article 1 of Protocol No. 1, under which the present case should be examined, because the principles governing the question of justification are substantially the same (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).

(b) Whether the interference was justified

(i) Lawfulness

171. The Court reiterates that an essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful (see *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I).

172. As regards the lawfulness of the interference, the applicant considered that the legal framework applicable in his case had not been foreseeable, because there had been no provision limiting the period of time that could be verified. In addition, the legal framework had also lacked safeguards against arbitrariness, because it had allowed for the confiscation of unexplained assets in the absence of a criminal conviction, and this was contrary to the Constitution (see paragraphs 161 and 162 above). The Government contested these arguments and considered that the interference had been provided for by law and adequate safeguards against arbitrariness had been in place (see paragraphs 163 and 164 above).

173. The Court observes that the confiscation of the applicant's property had its basis in the legal framework on integrity in public office, more specifically, Article 18 of Law no. 115/1996 (see paragraphs 62 and 74 above).

174. The applicant complained that there had been no limit in law for the period of time that could be verified, and in this regard referred to *Dimitrovi* (see paragraph 161 above), where the Court had found that the confiscation of the applicants' assets had not been lawful, as the applicable law had failed to meet the foreseeability requirement (see *Dimitrovi*, cited above, § 46). The Court observes that, in the case mentioned by the applicant, the finding that there was no limitation in time for the verification of the source of the applicants' assets was coupled with the authorities' ability to open, suspend, close and reopen proceedings as they wished at any time in relation to the same period of time, and with the fact that the proceedings were very rarely resorted to (ibid.); these factors allowed for the conclusion that the applicable law did not meet the foreseeability requirement.

175. In the present case, the Court notes that the application of the law was limited to the period during which the person subject to verification had exercised a public function, and could not be applied more than the three years after his or her public duties had ended (see Article 28 § 3 of Law no. 115/1996, mentioned in paragraph 74 above). It is true that, in the applicant's case, the verified period went back many years. However, the Court observes that, unlike the situation in *Dimitrovi*, in the present case, a clear legal framework providing for the obligation for public servants to submit declarations of assets and setting forth rules for the verification of those declarations had existed in Romania since 1996 (see paragraphs 9 and 74-81 above). It also results from the documents in the file that the applicant had submitted such declarations throughout his employment as public servant (see paragraphs 8 and 9 above). Therefore, it can be said that the applicant was aware of the legal obligation to declare his assets as long as he occupied a position as a public servant, the ANI's duty to verify his declarations, and his obligation to explain the source of assets which he failed to declare. The Court further observes that the applicant raised this argument at domestic level only before the High Court, in the last stage of the proceedings, and only in another context not specifically calling into question the foreseeability of the applicable law, but mostly claiming that only the period when he had held a management position should have been verified (see paragraph 66 above). Nevertheless, the High Court examined and responded to this argument, rejecting it as ill-founded in a thoroughly reasoned decision on the basis of the applicable law (see paragraph 71 above). Like the domestic court, the Court also notes that the obligation to declare one's assets, as set out in Law no. 115/1996 and then Law no. 176/2010, applied to all public-sector employees such as the applicant, not only those holding management positions (see paragraphs 74 and 81 above).

176. Moreover, again contrary to the situation in *Dimitrovi*, the applicant did not claim – either before the domestic courts or before the Court – that the authorities in the present case had been free to open, suspend, close and reopen proceedings as they wished at any time in relation to the same period of time. The legal framework applicable in the present case does not indicate this either. Such a possibility existed in the present case only if new elements that could lead to a different conclusion were discovered (Article 10^4 § 3 and Article 15 of Law no. 115/1996 – see paragraph 74 above), and only while a person held public office and for up to three years after the end of those duties (Article 11 § 1 – see paragraph 81 above). In the applicant's case, a court decision was adopted, a decision that had final and binding effect and was covered by the principle of *res judicata*, pursuant to the general rules of civil procedure.

177. The Court further observes that, unlike in *Dimitrovi*, the legal provisions applied in the present case were examined on numerous occasions and were the subject of extensive interpretation by the Constitutional Court

and the High Court, which consistently found that they were in compliance with the Constitution, foreseeable and provided adequate safeguards against arbitrariness (see paragraphs 89 and 92-101 above). Moreover, the applicant's specific criticism concerning the alleged lack of a time-limit for verification of a person's assets was examined by the Constitutional Court and found to be in compliance with the Constitution (see paragraph 93 above).

178. As regards the confiscation of property in the absence of a criminal conviction, the Court notes that this argument was not raised by the applicant before the domestic courts. Even so, it must be noted that the legal provisions allowing for the confiscation of unexplained assets in the absence of a criminal conviction as applied in the present case were also subject to extensive interpretation by the Constitutional Court and the High Court, which consistently found that they were in compliance with the Constitution, foreseeable and provided adequate safeguards against arbitrariness (see paragraphs 92-101 above).

179. In the light of the above considerations, and bearing in mind that it is not its task to take the place of the domestic courts and that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, § 73, 21 July 2020), the Court is satisfied with the domestic courts' interpretation of the applicable legal provisions, and concludes that in the present case there was a sufficiently clear legal basis for the confiscation of the applicant's property.

(ii) Legitimate aim

180. The parties also disagreed as to the existence of a legitimate aim for the interference with the applicant's right to the peaceful enjoyment of his possessions.

181. Any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Because of their direct knowledge of their society and its needs, the national authorities enjoy a wide margin of appreciation in determining what is in the general interest of the community. Furthermore, the notion of "public interest" is necessarily extensive. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Könyv-Tár Kft and Others v. Hungary*, no. 21623/13, § 45, 16 October 2018).

182. Turning to the present case, the Court observes that the measure in question was part of a legislative framework aimed at intensifying the fight against corruption and assuring integrity in public office in a domestic and

international context that encouraged and even urged the adoption of concrete steps in the fight against corruption in Romania (see paragraphs 6, 7 and 102-114 above). Moreover, the measure had its basis in a legal framework adopted in order to comply with the requirements of rule of law put forward by the European Commission in the context of Romania's accession to the European Union (see paragraph 7 above). Therefore, like the Government, the Court considers that the confiscation measure in the present case was implemented in accordance with the general interest in preserving the integrity of those holding public office and ensuring that the use of the property in question did not procure any advantage for the applicant to the detriment of the community (compare *Telbis and Viziteu*, cited above, § 74).

(iii) Proportionality of the measure

183. The Court has held on many occasions in cases concerning interference with property rights that there must be a reasonable relationship of proportionality between the means employed and the aims sought to be achieved. In other words, the Court must determine whether a balance was struck between the demands of the general interest and the interests of the individuals concerned (see *Telbis and Viziteu*, cited above, § 70).

184. The Court has also previously held that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, domestic proceedings must afford the aggrieved individual a reasonable opportunity to put his or her case to the responsible authorities for the purpose of effectively challenging measures interfering with the rights guaranteed by this provision (see *Rummi v. Estonia*, no. 63362/09, § 104, 15 January 2015 , and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 302, 28 June 2018). 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*, cited above, § 302).

185. The Court refers to previous cases where it was required to examine proceedings for the confiscation of assets in the absence of a criminal conviction. In those cases, the confiscated property was presumed to have been acquired either fully or partly with the proceeds of corruption or other types of offences involving organised crime, and the Court, examining those proceedings from the standpoint of the proportionality test of Article 1 of Protocol No. 1, saw no problem in finding the confiscation measures proportionate. This was the case even in the absence of a conviction establishing guilt in relation to either the accused persons or the owners of the property subject to confiscation, if the owners were not accused persons

(see, among numerous authorities, *Gogitidze and Others*, § 114, and *Telbis and Viziteu*, § 81, both cited above).

186. Turning to the present case, the Court considers important to emphasise firstly that Laws nos. 115/1996 and 176/2010 and the activity of the ANI were commended by Council of Europe and European Union bodies (such as GRECO, OECD and the European Commission) as having supported Romania in moving in the right direction in combating corruption (see paragraphs 105, 106, 113 and 114 above).

187. The Court further notes that on the basis of Laws nos. 115/1996 and 176/2010 aimed at combating corruption and protecting the integrity of public servants, the applicant, as a public servant, was under an obligation to declare his assets and explain their source. The applicable legal framework and the domestic courts' consistent and unified interpretation of that framework indicate that failing to do so would cast doubt on the licit source of the assets in question (see paragraph 101 above) and trigger the need to apply sanctions in order to preserve the scope of the law. The applicant failed to respect the legal provisions on declarations of assets and therefore the procedure aimed at verifying the source of his assets was started (see paragraphs 8 and 13 above). The Court further notes that the proceedings in question followed the clear and generally applicable rules of civil procedure (see paragraph 59 above). On this point, the Court considers that its findings in respect of Article 6 § 1 of the Convention (see paragraphs 148-157 above) are also relevant in the context of Article 1 of Protocol No. 1 as regards the question whether the domestic proceedings afforded the applicant a reasonable opportunity of putting his case to the authorities in order to effectively challenge the confiscation measure (see, *mutatis mutandis*, *Veits*, § 74*,* and *Telbis and Viziteu*, § 78, both cited above).

188. The applicant argued that the present case was similar to *Dimitrovi* (see paragraph 161 above), where the Court had found that the confiscation of the applicants' assets had not been lawful, as the applicable law had failed to meet the foreseeability requirement (see *Dimitrovi*, cited above, § 46) and had not adequately protected the applicants from arbitrariness (ibid., §§ 47 and 48), and that the impugned measure had not pursued any legitimate aim (ibid, §§ 51-55).

189. On this point, as regards the alleged lack of foreseeability, the Court firstly notes that it has already responded to this argument and found that the legal framework applicable in the present case differed from the one examined in the case quoted by the applicant and was foreseeable (see paragraphs 155 and 174-179 above).

190. Secondly, unlike the above-mentioned case, where the Court held that the forfeiture of the applicants' assets had not been shown to pursue any legitimate aim in the public interest (see *Dimitrovi*, cited above, §§ 51-55), in the present case, the Court has found that, as put forward by the Government, the confiscation pursued the legitimate aim of preserving the integrity of

public servants in the context of the fight against corruption (see paragraph 182 above).

191. Thirdly, as regards the safeguards against arbitrariness provided by the applicable law, in *Dimitrovi* (cited above, §§ 47-48) the Court found that the applicants had had to prove their "lawful" income, and in this context it criticised the lack of clarity under the domestic law as to what constituted such an income, coupled with the national courts' conflicting findings in that regard, and the fact that significant periods of time covered by the verification were characterised by major economic change in Bulgaria and galloping inflation. The Court considered that such an economic situation "inevitably resulted in some uncertainty and imprecision". The situation in the present case clearly differs from the one described in *Dimitrovi*, firstly because no such situation of economic change or galloping inflation has been alleged by the applicant in relation to the period subject to verification in his case. Furthermore, even though the legal framework applicable in the present case contained no specific definition of the acceptable means of establishing that assets were "unexplained", such a concept had existed in the Romanian legal system for a long time (see paragraph 5 above) and had been interpreted in a consistent and unified manner by the domestic courts and the Constitutional Court (see paragraphs 89-101 above). In addition, the Court reiterates that in the present case the clear and foreseeable general rules of evidence set out by the Code of Civil Procedure were applied (see paragraphs 59 and 187 above) as provided by the legal framework on the verification of assets.

192. In a series of cases the Court had the opportunity to examine the new legal framework concerning the confiscation of "unlawful" assets which had been put in place in Bulgaria after the adoption of the above-mentioned *Dimitrovi* judgment. Most recently, in *Yordanov and Others v. Bulgaria* (nos. 265/17 and 26473/18, §§ 100-111 and 117-124, 26 September 2023) the Court noted that both the Bulgarian Government and the Constitutional Court had stated that the legal framework in question aimed to combat organised crime and corruption by depriving the perpetrators of such offences of any financial profit and by ensuring the forfeiture of the proceeds of those crimes. Against this background, the Court concluded that the legal framework in question pursued the aim of preventing the illicit acquisition of property through criminal or administrative offences. The Court then found a violation of Article 1 of Protocol No. 1 on account of the wide scope of the Bulgarian legal framework that was also applied retroactively, and the presumption under that legal framework that persons who could not explain the source of their assets had been involved in criminal activities – a presumption followed by the confiscation of such assets without any connection being established between those assets and the presumed criminal activities.

193. In contrast with the above case of *Yordanov and Others*, the aim of the legal framework under examination in the present case is not to prevent the illicit acquisition of property through criminal or administrative offences,

but to preserve integrity in public office by ensuring that declarations of assets and interests are correctly filled in and submitted, as established in paragraph 182 above. The applicant in the present case was never charged with a criminal or administrative offence and there was no legal presumption that his unexplained assets had been obtained through criminal activity, nor did the authorities operate on the basis of such a presumption. Moreover, the Romanian legal framework has a clear and foreseeable scope, applies to a specific category of people, unlike the Bulgarian law, which is of general application (see *Dimitrovi*, § 23, and *Yordanov and Others,* § 40, both cited above), does not apply retroactively and provides for a series of safeguards as examined above (see paragraphs 187-191 above).

194. It must also be noted that the confiscation in the present case was a mandatory sanction provided for by law. In such cases, the Court has examined whether confiscation was applied automatically, without applicants having any opportunity to argue their case and have any prospect of success in the confiscation proceedings (see *S.C. Service Benz Com S.R.L.*, cited above, § 34, and *Waldemar Nowakowski v. Poland*, no. 55167/11, § 38, 24 July 2012).

195. On this point, the Court firstly reiterates that the verification of the applicant's assets was triggered by his failure to fill in his declarations of assets correctly (see paragraphs 8 and 187 above). Also, by law, the measure of confiscation was conditioned by the finding, following a specific procedure, that there was a significant difference between his income and his assets. Secondly, the measure was applied on the basis of a thorough examination of the evidence submitted to the courts by both the applicant and the ANI, in proceedings that the Court found to be in compliance with the fair trial guarantees and in which the applicant's full participation was ensured before two levels of jurisdiction (see paragraphs 148-157 above). The applicant's personal circumstances were fully taken into account by the courts, which accepted evidence submitted by the applicant and also by his family and friends, including several expert reports in which the applicant had fully participated by appointing an expert of his choice and by receiving answers to his questions and objections. The confiscation measure was applied only after several steps relating to verification, and after the courts had formed the opinion that there were significant differences between the applicant's income and his assets, and that he had not fulfilled his obligation to declare the total amount of his income.

196. Furthermore, on the basis of the documents and the examples of domestic case-law submitted to the file (see paragraph 101 above), as regards the proportionality safeguards included in the legal framework under examination, the Court considers that the measure of confiscation is applied on a case-by-case basis and is limited by law only to the amounts found by the courts to be unexplained at the end of the proceedings. On this point, the Court notes that some of the arguments and evidence produced by the

applicant to explain the origin of some of his assets were accepted by the Commission and the courts, and led to certain amounts being deducted from the total sum to be confiscated from the applicant (see paragraphs 27, 60 and 149 above).

197. Lastly, the Court considers it appropriate to emphasise once again, just as the CJEU stressed in its judgment in *T.A.C. v. Agenția Națională de Integritate* when assessing the proportionality of another measure provided for by Law no. 176/2010 (see paragraph 110 above), that the assessment of the proportionality of the measure in question must be carried out in the light of the importance of the fight against corruption in the public sector in Romania, and the priority given to that objective by the Romanian Government (see paragraphs 80 and 110 above). The Court had constantly considered that the legislature must have a wide margin of appreciation with respect to measures adopted in the context of specific problems that particularly affect a member State, such as corruption or organised crime. For example, in a series of cases against Italy, the Court considered that in the context of the fight against organised crime, confiscation in the absence of criminal conviction was proportionate when it concerned the assets of people who were in regular contact with suspected members of criminal organisations solely when there was a considerable discrepancy between their financial resources and their income (see *Arcuri v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; and *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001). In the present case too, in the context of the fight against corruption in Romania, the Court considers the confiscation to be proportionate as it applied to a specific group of people (see paragraph 127 above), it entered into play solely upon the applicant's failure to fill in correctly his declarations of assets (see paragraph 8 above) and when a difference (of more than EUR 10,000) was found between his income and his expenses, difference that could not be justified pursuant to the general rules of evidence in the civil proceedings (see paragraphs 12 and 81 above).

198. In conclusion, the Court observes that the domestic courts duly examined the Commission's proposal in adversarial proceedings, in the light of the numerous supporting documents available in the case file and several expert reports. That evidence led the domestic courts to the finding that the considerable assets acquired by the applicant's family during the time when he had held public office could not have been financed by his official salaries alone, when he and his family had had no other significant sources of income. A careful examination of the applicant's financial situation confirmed the existence of a considerable discrepancy between his income and his assets, and that discrepancy, which was a well-documented factual finding, then became the basis for the confiscation. Nothing in the conduct of the proceedings in this case suggests either that the applicant was denied a reasonable opportunity to put forward his case or that the domestic

courts' findings were tainted with manifest arbitrariness (see, *mutatis mutandis*, *Telbis and Viziteu*, cited above, § 81).

199. In view of the above, the Court considers that the legal framework applicable in the present case provided for sufficient safeguards so as to ensure the proportionality of the measure, and it cannot be concluded that the measure was applied automatically or that the applicant had no opportunity to argue his case.

200. In the light of the foregoing, having regard to the Romanian authorities' wide margin of appreciation in their pursuit of the policy designed to combat corruption in the public service (see the case-law quoted in paragraph 181 above) and the fact that the domestic courts afforded the applicant a reasonable opportunity to have his case dealt with in adversarial proceedings, the Court concludes that the proceedings for the confiscation of the applicant's property, which were based on a procedure which was moreover in line with the relevant international standards, did not upset the requisite fair balance between the protection of the right of property and the requirements of the general interest (see paragraph 154 above; see also, *mutatis mutandis*, *Gogitidze and Others*, cited above, §114).

201. 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 6 § 1 of the Convention;

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

Done in English, and notified in writing on 24 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President