

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

FIRST SECTION

CASE OF SHORAZOVA v. MALTA

(Application no. 51853/19)

JUDGMENT

Art 1 P1 • Control of the use of property • Lack of procedural safeguards for lengthy freezing of all applicant's property in Malta at legal assistance request of Kazakh authorities, likely tainted by political persecution motives
Art 6 § 1 (criminal) • Reasonable time • Duration of constitutional redress proceedings, lasting almost five years, not excessive in the specific circumstances of the case

STRASBOURG

3 March 2022

FINAL

03/06/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Shorazova v. Malta,

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

Péter Paczolay, *President,*
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Lorraine Schembri Orland,
Ioannis Ktistakis,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 51853/19) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Ms Elnara Shorazova ("the applicant"), on 1 October 2019;

the decision to give notice to the Maltese Government ("the Government") of the complaints concerning Article 6 § 1 (civil limb) in relation to the ordinary proceedings, Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 in relation to the length of the constitutional redress proceedings and to declare inadmissible the remainder of the application;

the indication by the Austrian Government that they did not wish to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

the parties' observations;

Having deliberated in private on 1 February 2022,

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

INTRODUCTION

1. The case concerns proceedings relating to a request for legal assistance and a consequent freezing order on the applicant's property, which had its basis in a request in connection with criminal proceedings ongoing in Kazakhstan against her. It raises issues under Article 1 of Protocol No. 1 to the Convention and Article 6.

THE FACTS

2. The applicant was born in 1976 in Kazakhstan and lives in Vienna. She was represented by Dr J. Giglio, a lawyer practising in Valletta.

3. The Government were represented by their Agents, Dr C. Soler, State Advocate, and Dr J. Vella, Advocate at the Office of the State Advocate.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicant is the widow of Rakhat Aliyev also known as Shoraz (hereinafter referred to as R.A.). The latter was, prior to his marriage to the applicant, married to D.N., the daughter of Nursultan Nazarbayev (hereinafter N.N.) who occupied a high-ranking position in the Communist party of Kazakhstan in 1983 when R.A. got married. In 1991 N.N. became the President of Kazakhstan and remained so until March 2019.

6. Between 1991 and 2002 R.A. was appointed by his then father-in-law to various government positions, until tensions arose between them, allegedly following United States reports that indicated that R.A. was being considered as a successor to N.N. At that point, in 2002, R.A. was appointed as ambassador to Austria. In 2005 R.A. returned to Kazakhstan as Vice-minister of Foreign Affairs.

7. Following the murder of the Kazakhstan opposition leader in 2006, and suggestions by certain Kazakh mass media (controlled by R.A.) to introduce democratic reform, tensions again arose between R.A. and N.N. Consequently, R.A. was again appointed as ambassador to Austria.

8. In May 2007 N.N. announced constitutional changes which would have further strengthened his position as ruler of Kazakhstan. R.A. openly expressed his criticism to such changes and declared that he would run for president in the 2012 election. In the same year he learnt that he was divorced from his wife D.N., although allegedly he had never been notified of the divorce procedure, in which he claimed his signature had been falsified. D.N. took control of all their property and the care and custody of their three children.

9. Immediately thereafter, the Kazakh government issued against R.A. an arrest warrant and a red notice through Interpol and lodged various requests for legal assistance with western authorities which continued until R.A. died in prison in Austria in February 2015.

10. In the meantime, in 2009, R.A. married the applicant and during the period 2009-2013 took residence in Malta, where he continued to advocate for democratic reforms in Kazakhstan.

B. Proceedings in European States

1. Austria

(a) First extradition request

11. On 25 May 2007 Austria received an extradition request from Kazakhstan, on the basis that R.A. and others had committed the crimes of kidnapping several people, appropriating their assets through blackmail and using forged documents.

12. The request was denied on 7 August 2007. Having considered reports from the U.S. Department of State and Human Rights Watch, the Austrian court considered that there was reason to believe that the criminal proceedings in Kazakhstan would be conducted in a manner contrary to the European Convention on Human Rights (in particular its Articles 3 and 6). Indeed, already during the extradition proceedings in Austria, the Kazakh authorities had repeatedly breached the principles of due process. It also noted that a certain A.D. had testified that he had been paid one million United States Dollars (USD) to testify against R.A. and was offered another one million USD to procure information about the way R.A. was being guarded in Austria and whether his security agents were carrying arms. Further, suspicions arose as to the divorce proceedings of R.A. in which his signature had been forged, which raised concerns in respect of the way in which criminal proceedings instituted would be carried out. The court further suspected that the criminal prosecution of R.A. and others connected to him had been the result of his political opinions which ran counter to those of the President of Kazakhstan.

(b) First criminal proceedings

13. In 2007 criminal proceedings were instituted against R.A. on charges of money laundering, in particular, concealing assets originating from crimes under the Kazakhstan criminal code. On 11 July 2007 a freezing order issued in those proceedings was revoked as no evidence showed any criminal activity. The file showed that the money laundering suspicions were notified by banking institutes solely on the basis of reports in the media, and the cash flows at issue, at least partly, were traceable on the grounds of the documents submitted.

14. The criminal proceedings were discontinued on 29 August 2007.

(c) Second criminal proceedings

15. In 2010 a further criminal investigation ensued against the applicant and R.A. based on claims of money laundering by the Kazakh authorities. The proceedings were discontinued.

(d) Second extradition request

16. In 2011 the Kazakh authorities requested the extradition of R.A. to expiate his sentence (see paragraphs 33 and 34 below in relation to the proceedings in Kazakhstan).

17. On 16 June 2011 the request was refused, it was noted that the judgments had been given *in absentia* and that it could not be ruled out that the case had a political character.

(e) Third criminal proceedings

18. In 2014 the Austrian authorities issued an arrest warrant against R.A. and other persons, and the former voluntary submitted himself to the authorities. R.A. and the applicant had left Malta precisely for this purpose. The proceedings in respect of R.A. were discontinued in 2015 before the start of the trial as he was found dead in the Austrian prison.

19. By an appeal judgment of 14 September 2016, the co-accused persons were acquitted of the charge of murder but found guilty of *inter alia*, kidnapping, threatening and ill-treating other persons, with the aid of R.A. In its judgment the court noted that there were considerable indications that the victims (two bank managers) had been killed by the Kazakh Security Service and that the entire abduction and murder case had been construed retroactively in order to eliminate R.A. and persons close to him. Further, it could not be ruled out that official Kazakh authorities might be behind a foundation which had invested about ten million euros (EUR) in persecution of R.A.

2. Germany

20. In 2010 a criminal investigation was initiated in Germany against the applicant and R.A. based on claims of money laundering by the Kazakh authorities.

21. The proceedings were discontinued on 5 January 2016 as the crimes at issue were not ascertainable.

3. Liechtenstein

22. In 2013, and again in 2015, the Kazakh authorities sought legal assistance from Liechtenstein, as result of which criminal investigations were initiated against the applicant and R.A. in Liechtenstein and a freezing order was issued on 16 December 2015, for two years, in relation to their property.

23. The investigations were discontinued on 29 June 2015 and the freezing order was lifted on 18 December 2017 as the requesting State had not substantiated a motion for the extension of the order.

24. The request for legal assistance was refused by the Royal Regional Court on 30 May 2018, *inter alia*, because it was contrary to public order, in particular due to the conduct of the National Security Committee of the Republic of Kazakhstan (KNB) in connection with the prosecution of R.A., and the fact that the requesting authority was continuing investigations against R.A. post mortem.

25. On 6 September 2018 the Princely High Court upheld the complaint of the public prosecutor, overturned the decision and ordered the Royal Regional Court to continue the judicial assistance.

26. The applicant and other involved persons filed an appeal which was dismissed by the Princely Supreme Court on 1 February 2019.

27. The appellants then lodged individual appeals against this order with the State Court of Justice, which on 2 September 2019 considered that the appellants constitutionally guaranteed rights had been violated, in part, mainly as concerned the non-arbitrary treatment. It thus upheld the appeals, save in respect of the deceased R.A., and referred the case back to the Supreme Court.

28. In particular, it considered that a foreign request may only be complied with if public order or other essential interests of the Principality of Liechtenstein were not violated. Examining the human rights situation in Kazakhstan, it noted that international reports indicated that proceedings there would not meet the requirements of a fair trial. The Secret Service was a special body directly subordinate to the President (whose immediate predecessor in office was R.A.'s former father-in-law) and there were indications that R.A.'s former companions had been arbitrarily arrested and mistreated in order to obtain confessions. The reports also showed the dominance of the President and the ruling party and the lack of an independent judiciary and of rule of law procedures. Violations by law enforcement officials and judicial officials were explicitly mentioned together with harassment leading to death, torture or ill-treatment of prisoners and detainees, and arbitrary arrests. These reports had also been relied on by the European Court of Human Rights in *Baysakov and Others v. Ukraine* (no. 54131/08, § 49, 18 February 2010). It further emerged from the final report of the Austrian Federal Ministry of Justice of 11 March 2009 that the abduction of R.A. had been planned and that he had subsequently been murdered. Other reports showed that KNB had been tasked with repatriating R.A. and other persons, possibly also by committing criminal acts. Further, it was credible that the applicant and R.A. were persecuted for political reasons and that the principles of a fair trial were not observed in the requesting State, in particular in relation to R.A. It thus concluded that the request for legal assistance was contrary to public order and thus could not be entertained by Lichtenstein. It followed that the decision of 6 September 2018 of the Princely High Court upholding the prosecutor's decision had to be annulled.

29. On appeal, on 7 February 2020, the Supreme Court was bound by the opinion of the State Court.

4. Cyprus

30. In 2016 the Cypriot authorities issued a freezing order in respect of the applicant's property, which was lifted a few months later. No further detail was provided to the Court in this respect.

5. Greece

31. In 2014, by means of a letter rogatory in terms of the United Nations Convention Against Transnational Organised Crime, the Kazakh authorities

requested the Greek authorities to conduct an inquiry into acts of money laundering committed jointly and repeatedly by various persons including the applicant. In 2014 the Judicial Council of the Athens Magistrates' Court accepted the request. By means of judicial council decision no. 4405/2014 a freezing order was issued on a series of accounts and safe deposits, including some owned by the applicant.

32. Following the relevant inquiry, by a judgment of 16 July 2020 the Judicial Council of the Athens Magistrates' Court rescinded the freezing order and held that no charges should be held against, *inter alia*, the applicant. It shared the prosecutor's arguments that the letter rogatory contained no information or document proving the incidents as described in the charges, which mainly relied on testimony of two individuals with no reference to the conditions under which they had been obtained. It further referred to a judgment of the Vienna Court of First Instance as well as other judgments given in European States which dismissed similar letters rogatory, noting that important questions arose in relation to the legitimacy of the criminal proceedings relied on. Noting the accused person's assertions of political prosecution, it found that no information had been included in the file showing that the accused were aware of the alleged criminal activities of R.A.

C. Proceedings in Kazakhstan

33. Following the Austrian authorities' refusal to extradite R.A., in 2007 he was tried *in absentia*. In 2008 he was convicted and sentenced to a twenty-year term of imprisonment.

34. In 2009, following another trial *in absentia*, R.A. was convicted of political offences by a secret military court and sentenced to a twenty-year term of imprisonment.

35. According to the applicant, she was never officially notified of any proceedings against her.

D. Proceedings in the Respondent State

1. The request for legal assistance via letters rogatory

36. In February 2013 the Maltese authorities received a request for legal assistance in terms of the United Nations Convention Against Transnational Organised Crime, concerning the applicant and R.A. in relation to crimes allegedly committed in Kazakhstan. At the time the Kazakh authorities were conducting an investigation into allegations of fraud and money laundering on the part of R.A. and the applicant.

37. The request was communicated to the Magistrate in line with Article 649(1) of the Criminal Code, who called for a number of witnesses to be questioned including the applicant, who was to be questioned on

31 October 2013, and R.A. In the meantime, an attachment order (*sekwestru*) was issued on 6 August 2013.

38. On 1 October 2013 the applicant and R.A. objected to the request and asked the Court of Magistrates not to execute the letter of request on the grounds that the Kazakh procedures were contrary to public policy and fundamental principles of Maltese law, as specified in Article 649(1) and (5) of the Criminal Code. They submitted relevant documentation to substantiate their claim. They asked the court not to pass on any already collected information and to ensure that they and other people who had been called to testify and whose identity had therefore been disclosed to the Kazakh authorities, be given due protection. The Attorney General made submissions in reply.

39. The applicant and R.A.'s objection was rejected on 21 October 2013, the Court of Magistrates noting that it could not decide any preliminary pleas and that these were not extradition proceedings during which the claimants could raise such arguments, which it considered of a constitutional nature. It noted, however, that in its collection of evidence it would apply the principles of Maltese law.

40. According to the Maltese authorities, on an unspecified date, criminal proceedings in Kazakhstan were instituted against the applicant and her husband on, *inter alia*, charges of money laundering. Nevertheless, evidence continued to be collected and witnesses continued to be heard, under Article 649 of the Criminal Code, in the absence of the applicant and her husband (who were not in Malta and had not been notified) or their representative.

41. A further request for legal assistance was received in January 2014 whereby the Maltese State was requested to identify and freeze assets belonging to the applicant and R.A.

2. The freezing orders

(a) The freezing order by the Criminal Court

42. Following a request by the Attorney General acting on the request of the Kazakh authorities, on 25 February 2014 the Criminal Court, in proceedings *in camera*, issued a freezing order *(ordni ta'ffrizar*) by which it ordered the freezing of the assets held in Malta by the applicant and her husband and prohibited them from transferring or disposing of any movable or immovable property in accordance with Article 435C of the Criminal Code and Article 10 of the Prevention of Money Laundering Act.

43. The freezing order was still in place at the time of the communication of the complaints to the Respondent Government and the subsequent observations, the Criminal Court having renewed it repeatedly upon the Attorney General's request. While still affected by the freezing order, the Criminal Court in the meantime, on the applicant's request, allowed her to

transfer in her name two cars, to rent out a property (the proceeds of which were also to be affected by the freezing order – save for a specific authorisation which was later granted to pay related tax and water and electricity bills), and to transfer onto her name part shares of a company (which was also to be subject of the freezing order).

(b) The freezing order by the Court of Magistrates

44. In the context of the proceedings for legal assistance, on 7 April 2014 the Court of Magistrates issued a freezing order over the applicant's and her husband's property under Article 23A of the Criminal Code (freezing of property of an accused person). No detail has been submitted concerning this order.

3. Continuation of the legal assistance

45. On 14 April 2014 all the evidence collected was sent to the Kazakh authorities.

46. On 12 September 2014 the applicant and her husband asked the Court of Magistrates to continue the proceedings in public. The request was denied on 2 October 2014 on the basis that they had no *locus standi* in the proceedings.

47. By a decree of 10 October 2014, following an intervention by the constitutional jurisdictions (see paragraph 51 below) on request by the parties, the Court of Magistrates declared, *inter alia*, that the applicant and her husband be considered accused persons in criminal proceedings in Kazakhstan, and they had thus, legal standing in these proceedings as accused, with the relevant rights (see paragraph 51 below).

48. Upon their request for a copy of the accusations on the basis of which these letters of request were being based, on 20 November 2014 the applicant and her husband, as well as the court, were handed over a copy of the charges by the Kazakh authorities, whose representative explained that investigations were still in process.

4. Constitutional redress proceedings

(a) First-instance

49. In the meantime, in June 2014 the applicant and R.A. instituted constitutional redress proceedings.

50. They complained that the proceedings instituted by the Attorney General in Malta on request of the Kazakh authorities were in breach of their rights under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention; that given the political situation in Kazakhstan the claimants had no guarantees that their rights in the proceedings in Kazakhstan (of which they had not even been notified) would be respected and thus that the Maltese authorities should not abide by the request for legal assistance, which also

included freezing their assets. They requested the court to bring to an end all the proceedings initiated in Malta and to order that all information which had been collected be destroyed and not sent to the Kazakh authorities as well as to make any relevant order to redress the said breaches.

51. By an interim decree of 10 October 2014, the court ordered that sittings before the Court of Magistrates be no longer held *in camera*, that no documents be sent to Kazakhstan until the case was decided and that the applicant's lawyer be given full access to the acts of those proceedings.

52. By a judgment of 5 October 2017 the Civil Court (First Hall) in its constitutional competence found a partial breach of Article 6 of the Convention (see paragraph 54 below) and ordered that the documentation collected by the Maltese authorities should not be sent – where it had not already been sent – to the Kazakh authorities as it had been collected in breach of the rights of the claimants; that any legal assistance requested from the Maltese authorities in relation to the now deceased R.A. should not continue nor should documents be sent to the Kazakh authorities. The latter finding was so since, in accordance with Maltese public policy, no criminal proceedings can be pursued against a deceased individual or his heirs.

53. It, however, found that the legal assistance in respect of the applicant should be continued and that all documentation collected be sent to the Kazakh authorities in relation to the criminal charges against her (as she had to be considered an accused person as agreed in the minutes of 10 October 2014) as long as Maltese law was being respected in that process.

54. In particular, it considered that the situation was one where the applicant and her husband were accused persons in criminal proceedings in Kazakhstan, but where the collection of evidence – a part of the criminal proceedings – was being undertaken in Malta. Thus, the collection of evidence and freezing of their assets could not have been made in the absence of the applicant (and her husband) who had standing as well as the relevant rights as accused persons, and in that connection there had been a breach of Article 6.

55. As to the rest, the court held that it had no competence to assess whether the proceedings in Kazakhstan were not genuine (*fazulli*) and whether they were politically motivated. It was for it [the Civil Court (First Hall) in its constitutional competence] only to decide, in the present case, whether the Maltese State was to continue assisting a judicial system which was allegedly corrupt and unable to give a fair hearing. While this was not a question of extradition, the court was of the view that legal assistance should not be given in relation to proceedings which could not guarantee a fair trial. However, the court noted that the Constitution of Kazakhstan, at least on paper, offered the guarantees of a fair trial. Secondly, despite reports from various entities considering that the judicial system in Kazakhstan was not conducive of fair trials, the United Nations nevertheless accepted Kazakhstan as a signatory to the Convention which provided for reciprocal assistance in

criminal matters. The court took note of the various reports presented to it on the matter, including concerning the regular use of torture in political trials. It found that, indeed, according to a judgment of the ECtHR, persons had also been tortured to give evidence against the applicant's husband. It, however, considered that the since the issue was not one of extradition, given the seriousness of the financial crimes with which the applicant was charged, the Maltese authorities should not obstruct the investigation by not sending the collected information, even assuming the proceedings against the applicant were not free from any political motives.

56. While other countries had refused extradition requests, it did not appear to be so with requests for assistance which in themselves were not determinative of guilt and thus the applicant's right to a fair trial would not be prejudiced. The court did not consider it appropriate to make any general assertions as to democracy in Kazakhstan, which was not relevant to the present case, as it had not been sufficiently proved that the applicant's trial was politically motivated.

57. While the court was not impressed by the witness testimony of A.Z. (a Kazakh official) who totally lacked credibility, it considered that it could not be said that the charges against the applicant were entirely ill-founded. Nor did the charges appear to be grounded or having any legal basis – but this did not prohibit another country from pursuing their investigations. Thus, while the applicant's request could not be considered as premature, despite proceedings not having come to an end, it was necessary to give guidance as to the way forward.

58. As to her complaint under Article 1 of Protocol No. 1, the court held that the freezing of her assets constituted a control of use of property in the general interest – it had been legal and pursued a legitimate aim, namely that of a deterrent in the fight against organized crime and money laundering, and was put in place in a way (at least after it was regulated by this court) which had achieved a fair balance between the interests at play. Thus, as submitted by the Attorney General, it had been proportionate having considered that the applicant (and her husband) who had been employees of the State at limited pay, had nonetheless managed to own various companies in Malta and abroad, as well as properties of a considerable value, which according to the Attorney General had been acquired *via* assets having an illicit origin.

59. In all fifteen hearings took place in these proceedings, during most of which written or oral evidence was presented.

(b) Appeal

60. Both parties appealed. The applicant challenged the judgment in so far as it rejected the complaint under Article 1 of Protocol No. 1 in relation to the freezing order (noting in particular that the domestic courts had not differentiated between investigated or accused persons and that while they became accused on 10 October 2014, the freezing order had been issued on

25 February 2014). She further appealed in relation to the continuation of the assistance to the Kazakh authorities. Particularly, in relation to the freezing order issued in February 2014, she considered that the court had based itself on legally and factually incorrect and unsubstantiated statements made by the Attorney General. She noted that it was not true that she had always been an employee on a limited wage and with a limited income, and that just because a property was expensive, it did not mean that it had been acquired by illicit means, in the absence of a shred of evidence.

61. The appeal was appointed for hearing on 13 November 2017 and was adjourned for pleadings to 12 February 2018. On the latter date the court adjourned the case for judgment. Two further adjournments for judgment ensued, and on 11 June 2018 the applicant requested to submit further documentation. The request was debated on 8 October 2018 following one adjournment, apparently because the casefile had been lost. The case was then adjourned five times for judgment.

62. By a judgment of 8 April 2019 the Constitutional Court rejected the applicant's appeal.

63. It confirmed that the complaint was not premature and that the continuation of proceedings after 10 October 2014 – the date on which they had been recognised as accused – in the absence of the applicant (and her husband), at a time when criminal proceedings were ongoing against them in Kazakhstan and when they therefore had the status of accused persons was in breach of the applicant's right to a fair trial. This was so given that under the Maltese law an accused person had the right to be notified of the proceedings arising from letters rogatory and to be present throughout the criminal process, including the collection of evidence in a foreign state, in order to safeguard their interests.

64. The Constitutional Court considered that whatever went on in Malta had to be in line with the domestic law in Malta and the applicant's fair trial rights. The first-instance court had thus been right to order that any evidence collected in breach of those rights should not be sent to the Kazakh authorities. However, that evidence should again be brought before the domestic courts in the presence of the applicant, so as to enable Malta to conform to its international obligations.

65. It further considered that the freezing order should be kept in place in respect of the applicant, but not her husband who was now deceased, since it was a precautionary measure – a tool provided for by the Criminal Code, which was often used in money laundering cases – and there was therefore no breach of any human right if it remained applicable until the end of the criminal proceedings. Given the seriousness of the offence with which the applicant was charged, the measure requested by the Attorney General had not been arbitrary or unreasonable, as also confirmed by the Criminal Court which issued the order on 25 February 2014. It was also not for the court to decide whether the applicant was guilty or not, but simply to decide whether

the freezing order had to be issued, and the first-court's considerations had been reasonable given the applicant's testimony.

66. In so far as the claimants had also requested the court to reverse the findings under Article 1 of Protocol No. 1, while no specific appeal plea was made in this regard, the Constitutional Court was of the view that no such breach could be upheld, since, contrary to a confiscation order, a freezing order did not deprive the claimants of their possession but was only a temporary measure which was lawful, in the general interest and proportionate to the aim pursued.

5. Further developments following the communication of the complaints to the Respondent Government on 2 November 2020

67. Following the conclusion of the parties' observations (submitted between March and May 2021), in November 2021 the applicant informed the Court of the following further developments which had occurred in the months preceding, and subsequent, to the filing of observations by the parties.

68. On 14 December 2020, the applicant filed an application with the Criminal Court complaining about the practice whereby similar requests for assistance were, essentially, automatically renewed by the court every six months, on request by the Attorney General, without the Maltese competent authorities asking whether the Requesting State was still interested in the assistance it had originally requested, and without the application of the Attorney General being notified to the persons impacted by the freezing order. The applicant thus asked the Criminal Court to set a hearing and to revoke the freezing order. She also submitted to the Criminal Court the Statement of Facts prepared by the Registry of the European Court of Human Rights in relation to her application before the Court which had, in part, been notified to the Respondent Government on 2 November 2020.

69. On the same day the Criminal Court invited the Attorney General to submit comments within twenty-four hours. Following a number of extensions, the latter made submissions on 22 February 2021. The Criminal Court set a hearing for 26 February 2021, wherein it ordered that the Attorney General get in touch with the Kazakh authorities to obtain information about the status of the alleged judicial proceedings in Kazakhstan.

70. On 19 March 2021 the Kazakh authorities informed the Attorney General that the Investigation Department of the National Security Committee of the Republic of Kazakhstan was still investigating the criminal case against the applicant, her husband and others. They thus asked the Maltese courts to maintain the freezing order as they considered that "at this stage of the investigation there are no grounds for lifting the restrictions on the seized assets of the Aliyev's criminal group".

71. On 25 March 2021 the Criminal Court deemed this reply insufficient and consequently requested the Attorney General to obtain more information. On 23 April 2021 the Attorney General filed a note in the acts of the

proceedings whereby he exhibited the additional information received, which was a replica of the previous reply.

72. Unsatisfied, on 18 May 2021, the Criminal Court asked for more information. It questioned why the information sent spoke about an investigation going on in Kazakhstan when the original request to the Maltese authorities had been made in terms of Article 435C of the Criminal Code because judicial proceedings had been instituted against the applicant, where "she was charged before the courts of Kazakhstan on 25 March 2013*"* (*fejn hija ġiet mixlija quddiem il-Qorti tal-Kazakhastan fil-25 ta' Marzu 2013*).

73. On 18 June 2021 the Kazakh authorities sent a further reply confirming that the pre-trial investigation was still underway, but that on 5 July 2019 it had been temporarily suspended because the accused persons were outside the Republic of Kazakhstan, and it was necessary to obtain additional evidence from several foreign countries. They specified that court proceedings had not yet commenced (except for individual court sessions conducted by an investigating judge to authorise certain investigative actions). Indeed, the criminal case against the applicant could not, at that stage, be sent to court since she had escaped from the investigation and was on the international wanted list. Since she was outside the borders of the Republic of Kazakhstan and evaded appearing before the criminal prosecution and the court, on 13 June 2015, a lawyer was appointed as her defender. They explained that he "participates" in all investigative actions affecting the applicant's interests including obtaining the authorisation of the investigating judge for the arrest of her property, as well as the seizure of bank information. At the same time, following the criminal procedure legislation of the Republic of Kazakhstan, the investigation body takes all the envisaged measures to notify her about this in due and proper form. However, since she never took part in the investigative actions and the court hearings held by the investigating judge, her interests were represented by the appointed defence lawyer. Lastly, they noted that under Kazakh law it was possible to confiscate property obtained by illegal means until the final decision was issued (non-conviction based asset forfeiture) and that they were ready to institute the procedure for pre-trial confiscation, in favour of the Republic of Kazakhstan, of the applicant's and her husband's assets which were frozen in Malta, and asked the Maltese authorities whether such a decision would be recognized in Malta.

74. On 22 July 2021, the Attorney General again filed an application asking the Criminal Court to extend the freezing order by another six months.

75. On 23 July 2021 the Criminal Court refused the request and revoked the freezing order. The relevant decree was published in the Government Gazette on 31 August 2021. The Criminal Court noted that Article 425C [*recte* 435C] of the Criminal Code and Article 10 of the Prevention of Money Laundering Act, on the basis of which the freezing order had been issued, referred to a person "charged or accused". Nevertheless, on the basis of the

information provided, it transpired that no proceedings had been undertaken in Kazakhstan against the applicant, the circumstances still being under pre-trial investigation (which moreover was suspended), seven years after the order was issued. Having examined the relevant laws of Kazakhstan the applicant was solely to be considered a suspect. It followed that the Criminal Court was no longer satisfied that the conditions under Maltese law for the keeping in place of the order still existed. The Court went as far as saying, that they never existed since proceedings were never initiated before any court in Kazakhstan (*il-Qorti ma għadhiex aktar sodisfatta illi l-kundizzjonijiet li wasslu għall-għemil tal-Ordni għadhom jezistu sebgħa snin wara, anzi tazzarda tgħid illi dawn il-kundizzjonijict għal ħrug tal-Ordni qatt ma kienu jezistu stante illi qatt ma ġew inizjati proceduri quddiem xi qorti fir-Repubblika tal-Kazkhstan*) and thus the applicant had not been "charged or accused", with the crimes indicated by those authorities.

RELEVANT LEGAL FRAMEWORK

I. THE CRIMINAL CODE

76. Article 23A of the Criminal Code, concerning the freezing of property of accused persons, in so far as relevant, reads as follows:

> "(1) In this article, unless the context otherwise requires:
>
> "relevant offence" means any offence not being one of an involuntary nature other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year;
>
> "the Act" means the Prevention of Money Laundering Act;
>
> "the Ordinances" means the Dangerous Drugs Ordinance and the Medical and Kindred Professions Ordinance.
>
> (2) Where a person is charged with a relevant offence the provisions of article 5 of the Act shall apply *mutatis mutandis* and the same provisions shall apply to any order made by the Court by virtue of this article as if it were an order made by the Court under the said article 5 of the Act.
>
> (3) Where the court does not proceed forthwith to make an order as required under sub-article (2) the court shall forthwith make a temporary freezing order having the same effect as an order made under article 5 of the Act which temporary order shall remain in force until such time as the court makes the order required by the said sub-article.
>
> (4) Where for any reason whatsoever the court denies a request made by the prosecution for an order under sub-article (2) the Attorney General may, within three working days from the date of the court's decision, apply to the Criminal Court to make the required order and the provisions of article 5 of the Act shall apply *mutatis mutandis* to the order made by the Criminal Court under this sub-article as if were an order made by the court under the same article 5. The temporary freezing order made under subarticle (3) shall remain in force until the Criminal Court determines the application.

(5) The person charged may within three working days from the date of the making of the order under sub-article (2) apply to the Criminal Court for the revocation of the order provided that the order made under sub-article (2) shall remain in force unless revoked by the Criminal Court."

77. Article 435C of the Criminal Code, concerning the freezing of property of persons accused of offences cognizable by courts outside Malta, in so far as relevant, reads as follows:

"(1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the temporary seizure of all or any or the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused" charged or accused in proceedings before the courts of that place or before the international court of a relevant offence, the Attorney General may apply to the Criminal Court for an order (hereinafter in this title referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) of the [Dangerous Drugs] Ordinance, and the provision of the said article 22A shall, subject to the provisions of sub-article (2), apply *mutatis mutandis* to that order.

(2) The provisions of article 24C(2) to (5) of the Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C.

(3) Article 22B of the Ordinance shall also apply to any person who acts in contravention of a freezing order under this article."

78. Article 649 of the Criminal Code, concerning the collection of evidence in relation to offences cognizable by courts of justice outside Malta, in so far as relevant, reads as follows:

"(1) Where the Attorney General communicates to a magistrate a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the examination of any witness present in Malta, or for any investigation, search or/and seizure (*perkwiżizzjoni jew/u qbid*), the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or court or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

(2) The provisions of sub-article (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority or by the international court is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country, or between Malta and the court, from which the request emanates or which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of subarticle (3) shall be applicable.

(3) (...)

(4) The magistrate shall transmit the deposition so taken, or the result of the investigation conducted, or the documents or things found or seized in execution of any order for search or/and seizure, to the Attorney General.

(5) For the purposes of sub-articles (1) and (3) the magistrate shall, as nearly as may be, conduct the proceedings as if they were an inquiry relating to the *in genere* but shall comply with the formalities and procedures indicated by the requesting foreign authority unless they are contrary to the fundamental principles of Maltese law and shall have the same powers, or as nearly as may be, as are by law vested in the Court of Magistrates as court of criminal inquiry, as well as the powers, or as nearly as may be, as are by law conferred upon him in connection with an inquiry relating to the *in genere*:

provided that a magistrate may not arrest any person, for the purpose of giving effect to an order made or given under article 554(2), or upon reasonable suspicion that such person has committed an offence, unless the facts amounting to the offence which such person is accused or suspected to have committed amount also to an offence which may be prosecuted in Malta.

(...)"

II. THE MONEY LAUNDERING ACT

79. Articles 5 and 10 of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, in so far as relevant, read as follows:

Article 5
(freezing of property of accused persons)

"(1) Where a person is charged under article 3 [money laundering], the court shall at the request of the prosecution make an order -

(*a*) attaching (*jissekwestra*) in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(*b*) prohibiting the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

(*a*) authorise the payment of debts which are due by the accused to bona fide creditors and which were contracted before such order was made; and

(*b*) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

(*a*) become operative and binding on all third parties immediately it is made, and the Director of the Asset Recovery Bureau shall cause a notice thereof to be published

without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property; and

(*b*) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The court may for particular circumstances vary such order, and the provisions of the foregoing subarticles shall apply to such order as so varied."

Article 10
(freezing of property of person accused with offences cognizable by courts outside Malta)

"(1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused (*imputata jew akkużata*) in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence under article 3, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in article 22A(1) of the Dangerous Drugs Ordinance, and the provisions of the said article 22A shall, subject to the provisions of subarticle (2) of this article, apply *mutatis mutandis* to that order.

(2) The provisions of article 24C(2) to (5) of the Dangerous Drugs Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C."

III. THE DANGEROUS DRUGS ORDINANCE

80. In so far as relevant, the Articles of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, mentioned above read as follows:

Article 22A

"(1) ... the court shall at the request of the prosecution make an order -

(a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring or otherwise disposing of any movable or immovable property:

Provided that the court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year:

Provided further that the court may also -

(*a*) authorise the payment of debts which are due by the accused to *bona fide* creditors and which were contracted before such order was made; and

(*b*) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

(*a*) become operative and binding on all third parties immediately it is made, and the Director of the Asset Recovery Bureau shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property, and

(*b*) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The court may for particular circumstances vary such order, and the provisions of the foregoing subarticles shall apply to such order as so varied.

(7) Where the court does not proceed forthwith to make an order as required under sub-article (1), the court shall forthwith make a temporary freezing order having the same effect as an order made under this article, which temporary order shall remain in force until such time as the court makes the order required by the said article.

....

(9) The person charged may within three working days from the date of the making of the order under sub-article (7) apply to the Criminal Court for the revocation of the order, provided that order shall remain in force unless revoked by the Criminal Court."

Article 24C

"(...) (2). The first proviso of article 22A(1) shall not apply to a freezing order made under this article unless:

(a) the accused is present in Malta on the date the order is made; or

(b) the Attorney General or any other interested person present in Malta applies to the court, before or after the order is made, for the application of that proviso in which case the court shall only apply the proviso to the extent that it is satisfied that the application of the proviso is necessary to allow the accused and his family a decent living.

...

(4) Subject to the provisions of subarticle (5), a freezing order under this article shall remain in force for a period of six months from the date on which it is made but shall be renewed by the court for further periods of six months upon an application for that purpose by the Attorney General and upon the court being satisfied that:

(a) the conditions which led to the making of the order still exist; or

(b) that the accused has been convicted of an offence as is referred to in subarticle (1) in the proceedings referred to in the same subarticle and the sentence in regard to the accused in those proceedings or any confiscation order consequential or accessory thereto, whether made in civil or criminal proceedings, has not been executed:

Provided that where the accused has been convicted as aforesaid but no confiscation order has been made in the sentence in respect of that conviction the freezing order shall nevertheless be renewed as requested by the Attorney General where the court is satisfied that civil or criminal proceedings for the making of such an order are pending or are imminent.

(5) Any freezing order under this article may be revoked by the Court before the expiration of the period laid down in subarticle (4):

(a) at the request of the Attorney General; or

(b) at the request of any interested person and after hearing the Attorney General upon the court being satisfied:

(i) that the conditions which led to the making of the order no longer exist; or

(ii) that there has been a final decision in the proceedings referred to in subarticle (1) by virtue of which the accused has not been found guilty of any offence as is referred to in the same subarticle."

RELEVANT INTERNATIONAL MATERIAL

81. Relevant international material concerning Kazakhstan is set out in *Batyrkhairov v. Turkey* (no. 69929/12, §§ 31-39, 5 June 2018).

82. In *Baysakov and Others v. Ukraine* (no. 54131/08, §§ 49-50, 18 February 2010 concerning an extradition to Kazakhstan, which the Court found would give rise to a violation of Article 3), based on relevant international reports, the Court had held, *inter alia*, that people associated with the political opposition in Kazakhstan were and continue to be subjected to various forms of pressure by the authorities, mainly aimed at punishing them for, and preventing them from engaging in, opposition activities. In particular § 33, the judgment made reference to an Amnesty International Report which, in connection with the applicant's husband, stated that Amnesty:

"received allegations in some high-profile criminal cases linked to the prosecution and conviction in absentia of the former son-in-law of President Nazarbaev, Rakhat Aliev, for planning an alleged coup attempt and several other charges, that associates or employees of Rakhat Aliev were arbitrarily detained by NSS officers, held incommunicado in pre-charge and pre-trial detention facilities where they were tortured or otherwise ill-treated with the aim of extracting "confessions" that they had participated in the alleged coup plot. In at least one case, relatives have alleged that the trial was secret and that the accused did not have access to adequate defence..."

83. Article 18 point 21 of the United Nations Convention Against Transnational Organised Crime reads as follows:

"Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre* public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION AND ARTICLE 6 § 1 OF THE CONVENTION IN RELATION TO THE ORDINARY PROCEEDINGS CONCERNING LEGAL ASSITANCE AND THE FREEZING ORDER

84. The applicant complained that the Maltese State's compliance with the request for legal assistance and the freezing order requested by the Kazakhstan authorities was not in compliance with Article 6 since the requests stemmed from a regime that could not offer any guarantees of a fair trial. She also particularly complained about the freezing order as well as its duration, which was based on politically motivated trumped up charges. She relied on Article 1 of Protocol No.1 to the Convention. The provisions read as follows:

Article 1 of Protocol No. 1

"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."

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

1. The applicant

85. The applicant submitted that compliance by the Maltese authorities with the request for assistance and the consequent freezing order was flawed. Such compliance constituted a breach of the Convention in so far as the request stemmed from a regime, which particularly in relation to the applicant (whose husband was an enemy of the regime), could not guarantee a fair, independent and impartial procedure. She considered that to be compliant with the Convention a State must not become an accomplice, by being the *lunga manus* of proceedings outside its jurisdiction which are tainted by manifest unfairness. She noted that neither her nor her husband had ever been investigated or even less convicted of money laundering in any European State. By focusing on the fairness of the proceedings in Malta, the domestic courts had ignored the very distressing foundations on which the proceedings

had been based. They had thus chosen to close an eye on all the evidence submitted – which showed that the situation amounted to political persecution of her now deceased husband – until the day when her extradition would possibly be requested.

86. The Court had already formally proclaimed its mistrust in the Kazakh authorities in its judgments in the names of *Kaboulov v. Ukraine* (no. 41015/04, §§ 110-14, 19 November 2009), *Baysakov and Others* (cited above, §§ 35 and 46-52) and *Batyrkhairov* (cited above, §§ 33-52). The Constitutional Court had also acknowledged that the Kazakh judicial system was flawed. Indeed, it had been particularly unimpressed with the constitutional law expert sent by the Kazakh authorities to testify in the applicant's case – so much so that it dismissed his testimony for lack of credibility (see paragraph 57 above). Nevertheless, it had allowed that regime to decide on the applicant's property, despite knowing that the she could not be present at those proceedings without risking her life.

87. The Court had established the principle that the likelihood of an unfair trial in a foreign jurisdiction was sufficient not to place an applicant in danger of that trial, and thus to prevent his or her extradition. In the applicant's view there was no reason to distinguish the situation in the present case from such violations, as all the Convention articles were worthy of protection.

88. Further, the applicant complained about the legitimacy and the duration of the freezing order. She considered that the measure did not pursue any genuine public interest (especially in Malta). She further considered that apart from a negative obligation, the Maltese State also had a positive obligation not to be complicit in the breaches of human rights to be perpetrated in Kazakhstan. Issuing a freezing order based on an allegation by a foreign dictatorship, that a prosecution for money laundering had been initiated, could not fulfil the State's onus of proving that there was indeed a genuine public interest behind the measure. She considered that the proceedings in Kazakhstan were politically motivated and they could not, in the applicant's case, offer any procedural safeguards against arbitrariness. Moreover, the freezing order which had already been in place for seven years, and had paralysed all her everyday economic activities, was certainly to become a confiscation. The applicant was thus in a situation where she had all her property immobilised and could do nothing about it. This was even more so given that she was oblivious to the proceedings in Kazakhstan – a State which according to the Austrian courts had gone through great lengths to eliminate the applicant's husband (see paragraphs 12 and 19 above).

89. In reply to the Government's arguments, the applicant submitted that the present case could not be treated as any other request for legal assistance, as it had originated in a State with a bad track record of respect for human rights, and was particularly directed at the applicant's husband who had been considered as an enemy of the State. It was also no consolation that she could earn interest or rent, which she once again could not use, as they were also

affected by the order. Nor did she consider it relevant that she owned other assets in other countries given that for more than seven years she could not use the assets held in Malta.

90. Lastly, the applicant contested the Government's submission that an oral hearing was held before the renewals of the freezing order. She noted that both the original order as well as the renewals were held *in camera*, and she had always only been notified of the renewal after a decision had been taken. According to the applicant, the decisions simply stated that the Attorney General's request was granted. Moreover, the Criminal Code did not specify any conditions which had to be met for the order to be renewed and in practice the court invariably acceded to such requests.

91. On submitting the factual update, following the closing of the regular rounds of observations, the applicant made no further submissions.

2. The Government

92. The Government submitted that Article 6 in its civil limb did not apply to the proceedings related to the request for legal assistance by which the gathering of evidence and freezing of assets were carried out. The Government noted that in these proceedings it was acting in its sovereign power and that the applicant had no civil right at play. However, even assuming there was such a right at play, there had been no dispute between two parties, as the proceedings were instituted unilaterally, for the court to collect evidence. Thus, they were of an investigative nature, and not proceedings against the applicant. Even if a right and a dispute existed, the proceedings were not directly decisive of any civil rights as their aim was to collect evidence.

93. The Government considered that the courts were not bound to examine whether proceedings in Kazakhstan fulfilled the guarantees under Article 6 before providing the required legal assistance and issuing freezing orders. They noted that often assistance had to be provided swiftly due to the nature of the crimes. Thus, placing such an obligation on a State would amount to a disproportionate burden, jeopardising international efforts aimed at preventing cross-border criminal activities.

94. They considered that generally a State was answerable only for proceedings carried out on their territory, not beyond. The present case did not fall within the two scenarios where, according to the Court, this assessment was required, namely extradition cases, or enforcement of foreign judgments. Moreover, in the context of extradition, the Court had set a very high standard. It required a rampant violation of fair trial rights for an extradition to conflict with Article 6. In the context of enforcement, it required an assessment of the entire proceedings of the foreign jurisdiction, which in the present case was not possible as proceedings were ongoing. The Government submitted that its approach to freezing orders appeared similar to that of other European States as shown by the facts of the present case,

where, for example, in Greece and Liechtenstein freezing orders were issued by the courts of those States and only later lifted.

95. The Government was of the view that although the domestic courts had no obligation to assess the compliance with Article 6 of the foreign proceedings, the applicant was not bereft of any protection. Indeed, when the applicant discovered that such proceedings were ongoing, she had filed an application for the court to desist from assisting Kazakhstan on account of the alleged political bias, and she had had an oral hearing. While it is true that her request was rejected, the Court of Magistrates nonetheless made it clear that proceedings in Malta would be continued with full regard and respect of her fundamental rights.

96. The Government submitted that the applicant was complaining only about the freezing order issued by the Criminal Court on 25 February 2014. They noted that the freezing order had the effect of attaching in the hands of third parties all monies and other movable property due or pertaining or belonging to the applicant and prohibiting her from transferring or disposing of any moveable or immovable property.

97. They considered that it had been issued in accordance with domestic law providing for legal assistance, *inter alia*, Article 649 and 435C of the Criminal Code and Article 10 of the Prevention of Money Laundering Act, which in their view satisfied the requirements of legality. They also considered that it pursued a public interest, namely, to combat crime and was undertaken in line with Malta's obligations under the United Nations Convention which provided for reciprocal assistance in criminal matters the purpose of which was precisely to prevent and combat transnational organised crime. Malta's respect for such international obligations was in itself in the public interest. Moreover, as already held by the Court, a freezing order to ensure that assets remained available to satisfy an eventual confiscation, was a legitimate aim.

98. As to proportionality, they noted that the purpose of a freezing order was to prevent the dissipation of assets which may be the result of criminal activity and which would be confiscated if a guilty verdict is rendered against the applicant. The assets remained of the accused and if held in a bank they accrued interest which was added to the capital. If they were immovable, they could still be transferred with the authorisation of the courts. Moreover, the measure was temporary.

99. Procedural guarantees were also of relevance. In general, they noted that while a freezing order is issued, on the request of the Attorney General in terms of Article 22A of the Dangerous Drugs Ordinance, without notice or prior warning (to avoid the concealment of assets), it is only in place for six months. For it to be renewed the Attorney General must lodge an application to that effect, and the court will accept to renew it only if, following an oral hearing, the court was satisfied that the conditions which led to the issuance of the first order were still met. Thus, according to the Government, the

default position was that the measure would be lifted unless, through the oral hearing, the court was convinced that there remained justification for maintaining it. This continuous judicial scrutiny, every six months, had provided the applicant with the requisite guarantees to ensure that the measure was not arbitrary or disproportionate. Moreover, such an order could be varied by means of a request under Article 22A (3) of the Dangerous Drugs Ordinance, to be decided by the Criminal Court following an oral hearing. Indeed, the applicant had made various such requests, some of which were upheld. As a result, the applicant was allowed to rent out one of her properties, transfer shares from a company onto herself, and deposit money received in rent into a bank account in her own name (see paragraph 43 above).

100. According to the Government, it was also important to consider that only the assets in Malta had been affected by the freezing order while the applicant had extensive assets of considerable value in both Malta and elsewhere. Indeed, neither during the domestic proceedings nor before the Court had the applicant explained in what way she had been suffering a disproportionate burden.

101. Following the factual update, the Government accepted that on 23 July 2021, the Criminal Court decided that it was no longer satisfied that the conditions which led to the issuing of the freezing order continued to be satisfied. They reiterated that it was not true that the domestic court automatically renewed the order every six months, as shown by the latter decision. They further submitted that the national authorities were in frequent contact with the Kazakh authorities when the freezing order was in force, and contact with the Kazakh authorities was not established in reaction to the applicant's application before the Criminal Court [of 14 December 2020]. To the extent that the applicant's update could be seen as challenging the legality of the freezing order, the Government noted that, when the request for the issuing of the freezing order was made to the Attorney General, the request spoke of criminal proceedings which were ongoing against the applicant and others in Kazakhstan. In other words, the Attorney General was informed that the applicant had the status of an 'accused' (sic.) person as also reflected in the Criminal Court's decree of 18 May 2021 (see paragraph 75 above).

B. The Court's assessment

1. Article 1 of Protocol No.1

(a) Admissibility

102. 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

(i) General principles

103. The Court reiterates that, according to its case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules: the first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it 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, are to be construed in the light of the general principle laid down in the first rule (see, among many other authorities, *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 289, 28 June 2018).

104. The freezing of assets in the context of criminal proceedings with a view to keeping them available to meet a potential financial penalty falls to be analysed under the second paragraph of Article 1 of Protocol No. 1, which, among other things, allows States to control the use of property to secure the payment of penalties (see, for example, *Apostolovi v. Bulgaria*, no. 32644/09, § 91, 7 November 2019 and the case-law cited therein; and, more recently, *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, § 144, 16 March 2021 in relation to temporary injunctions preventing the applicant from using and disposing of his assets). In such cases the Court must establish whether the measure was lawful and "in accordance with the general interest", and whether there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for example, *Džinić v. Croatia*, no. 38359/13, §§ 61-62, 17 May 2016).

105. In addition, the importance of the procedural obligations under Article 1 of Protocol No. 1 must not be overlooked. Thus the Court has, on many occasions, noted that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must also afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *G.I.E.M. S.R.L. and Others*, cited above, § 302 and the case-law cited therein). 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 (ibid).

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

106. The Court considers that the freezing order of 25 April 2014 (resulting from the request for legal assistance) amounts to an interference with the applicant's possession consisting of a control of use of property (see *Apostolovi*, cited above, § 91).

107. The Court observes that at the time of the regular observations it had not been disputed that the order complained of was issued in accordance with the law, namely Article 435C of the Criminal Code and Article 10 of the Prevention of Money Laundering Act. Subsequent to the belated factual update, and in particular the findings of the Criminal Court of 23 July 2021, it would appear that the freezing order issued and kept in place for nearly eight years had not been in accordance with the law *ab initio* since, according to the Criminal Court, the applicant did not have, and never had, the status of a charged or accused person in Kazakhstan, but only that of a suspect. The Court, however, observes that prior to that (besides the original order of the Criminal Court and subsequent renewals) other jurisdictions including the Court of Magistrates and the courts of constitutional competence – had repeatedly considered the applicant as a person charged or accused and confirmed the lawfulness of the measure. Indeed, this appears to have been compounded by the fact that the applicant and her husband requested to be considered as *accused* (see paragraph 47 above). In the absence of all the relevant documentation and detailed submissions on the matter, the Court will not take the place of the domestic courts to establish whether the order had originally been issued subject to the conditions provided for by law, *inter alia*, that the applicant be a person "charged or accused" in terms of Maltese law. However, the Court finds it disconcerting that in nearly eight years no authority or domestic court had thoroughly examined the matter in legal terms as well as ascertained the applicant's situation in the light of the available information – despite the Government's claim that they were in regular contact with the Kazakh authorities and the repetitive renewals of the order, as well as a constitutional challenge, during which the applicant highlighted that the courts had not distinguished between an investigated person and an accused person, which she considered she had become only months after the issuance of the order (see paragraph 60 above). The situation indicates a serious problem at the domestic level. Thus, the Court considers it opportune, in the exceptional circumstances of the present case, to examine the entirety of the applicant's complaint as brought to it and in particular to also address the question whether the law provided enough safeguards against an arbitrary or disproportionate interference, which will be examined below under the proportionality aspect (see, for a similar approach, *Apostolovi*, cited above, § 93, and *Karahasanoğlu*, cited above, § 147).

108. The Court observes that the freezing of the applicant's property was applied as a provisional measure aimed at securing enforcement of a possible confiscation order (which could be imposed at the outcome of criminal proceedings) which is normally accepted as being in the general interest (see, for example, *Džinić*, cited above, § 61 and the case-law cited therein), as is the case with the fight against money laundering (see *Piras v. San Marino* (dec.), no. 27803/16, § 54, 27 June 2017 and the case-law cited therein). However, the applicant argued that the 'charges' against her were not genuine, thus, that no general interest was served in the present case.

109. The Court would generally respect the State's authorities' judgments as to what is in the general interest unless that judgment is without reasonable foundation (see for example, *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I, and *Laduna v. Slovakia*, no. 31827/02, § 84, ECHR 2011). The same applies in the context of seizure of property, including bank accounts in the context of crime investigation (see, for example, *Benet Czech, spol. s r.o. v. the Czech Republic*, no. 31555/05, §§ 36 and 39, 21 October 2010). For example, in the latter case, the crux of the interference concerned the continuing assessment of a reasonable suspicion that the seized funds originated in criminal activities. Thus, the national authorities were clearly in a better position than the Court to evaluate these issues because they had a direct access to the available evidence (ibid.). In the circumstances of the present case, it has not been shown that the Maltese authorities were in such a position vis-à-vis the investigation undertaken in Kazakhstan.

110. The material provided to the Court and the domestic courts, consisting *inter alia* of international reports, various domestic judgments from various European jurisdictions, as well as the findings of this Court in the case of *Baysakov and Others* (cited above, §§ 49-50) are sufficient to consider that in the specific circumstances of the present case the applicant's deceased husband was an established political adversary to the Kazakh regime and could be the subject of reprisals on their part, including trumped up charges which may extend to the applicant. Certain findings of the Maltese domestic court, albeit at times contradictory, also acknowledge that situation (see paragraphs 55-57 above). Thus, while a freezing order may in principle be in the general interest, whether there existed a general interest behind the freezing order which was put, and kept, in place by the Maltese authorities in the specific circumstances of the present case was something which deserved particular evaluation by the domestic courts. It is in such contexts that effective procedural safeguards become indispensable.

111. The Court observes that the request for freezing the applicant's assets, made by the authorities of Kazakhstan, was based upon Article 18 of the United Nations Convention Against Transnational Organised Crime. The Court acknowledges the importance of the latter Convention for effectively combatting organised crime. At the same time, the Court stresses that the mutual legal assistance under the United Nations Convention Against

Transnational Organised Crime should be carried out in compliance with international human rights standards. Thus, in the Court's view, domestic courts have an obligation of review where there is a serious and substantiated complaint about a manifest deficiency in the protection of a European Convention right (see, *mutatis mutandis, Avotiņš v. Latvia* [GC], no. 17502/07, § 116, 23 May 2016). The Court further notes, in this context, that under the United Nations Convention Against Transnational Organised Crime mutual legal assistance may be refused, in particular, if the requested State Party considers that execution of the request is likely to prejudice *ordre public* or if it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted (see paragraph 83 above). These requirements are reflected in Maltese law only in respect of the procedure before the Court of Magistrates under Article 649 of the Criminal Code but not for the purposes of freezing orders issued by the Criminal Court (see also paragraph 120 below). In the present case, which concerned investigations in a jurisdiction other than that of the domestic courts of the Respondent State, and where there were sufficient grounds to question the genuine nature of the actions undertaken by that jurisdiction, the Maltese courts of constitutional competence proceeded to find that the measure pursued a general interest automatically and without a detailed assessment of the situation pertinent to the case (see paragraph 58 and 66 above). No other domestic court entered into that matter (see for example paragraph 39 above). In the absence of any such assessment, the Court cannot rubber stamp the domestic courts' findings.

112. Indeed, in the very specific circumstances of the present case, the Court has serious doubts about the general interest at play being the fight against crime. It is noted that the applicant has not been charged with money laundering in any European country (including Malta), despite investigations in, for example, Austria, Germany and Liechtenstein. The Court also has difficulty accepting that the freezing order was in the general interest because it aimed at securing an eventual confiscation of assets. This is so given that any such confiscation would result from criminal proceedings which, in view of the above materials, may, or are likely to consist of a flagrant denial of justice. However, the Court considers that even if one had to accept that a general interest existed, namely in so far as the Government argued that compliance with international obligations is in itself a matter of public interest, the Court must in any event make an overall examination of the various interests at stake, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of (see *Džinić*, cited above § 69). It will therefore proceed to consider the proportionality of the measure including the relevant procedural safeguards available to the applicant, if any.

113. According to the Court's case-law, the character of the interference, the aim pursued, the nature of property rights interfered with, and the behaviour of the applicant and the interfering State authorities are among the principal factors material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see *Karahasanoğlu,* cited above, § 149). While the length of time during which the restrictions remained in place is a crucial part of the Court's assessment, the scope and nature of restrictions as well as the presence or absence of procedural guarantees are no less relevant (ibid., § 151). Indeed in previous cases where lengthy precautionary measures gave rise to a violation of Article 1 of Protocol No. 1, the finding of a violation was based on an accumulation of factors (see for example *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, §§ 130-33, 5 November 2013, and *Džinić*, cited above, §§ 70-82).

114. Turning to the present case, the Court considers that the freezing of all of the applicant's property (in Malta) is, by its nature, a harsh and restrictive measure. It is capable of affecting the rights of an owner to such an extent that his or her main business activity or even living conditions may be put at stake (see *JGK Statyba Ltd and Guselnikovas*, cited above, § 129). It is true that in the present case, while the applicant claimed that her economic activities were paralysed, it has not been claimed that her entire business or living conditions have been put at stake. Indeed, as argued by the Government, the facts of the case show that the applicant has extensive means in various European States. However, nowhere does it appear from the documents available to the Court that the value of the property subject to the freezing order – the entirety of her property in Malta – was equal to the pecuniary gain allegedly obtained through any alleged predicate offence (offences of which she may or may not have been suspected). Nor that all her belongings had been suspected of being laundered money, offence of which she had been suspected (contrast, *Apostolovi*, cited above, § 93, and *Piras*, cited above, § 56). It is true that when the first request for legal assistance was issued the proceedings in Kazakhstan were clearly at the investigation stage. However, a few months later, presumably in January 2014, the Maltese authorities appear to have harboured the idea that proceedings were initiated and 'charges' were instituted against the applicant (who obtained the status of an accused person in Malta on 10 October 2014). Nevertheless, from the materials available to the Court, no domestic court appears to have made an assessment concerning the extent of the freezing order issued in February 2014 in relation to the "charges" set out by the Kazakh authorities, neither at the time nor in subsequent renewals (compare *Džinić*, cited above, §§ 70-82).

115. The Court reiterates that while the fact that freezing orders are made without notice being served on the accused or the other persons affected by them does not in itself raise an issue in terms of safeguards, given the one-sidedness of the proceedings, the freezing order's potentially

far-reaching consequences, and the fact that it takes effect immediately (according to Maltese law – see Article 22A 2 (a) of the Dangerous Drugs Ordinance, paragraph 80 above), careful consideration of the requests for such orders is called for in each individual case (see, *mutatis mutandis*, *Apostolovi*, cited above, § 98).

116. The applicant stressed the failure of the domestic courts to examine whether the request had been genuine and the excessive duration of the purported temporary measure.

117. The Court observes that in the present case the investigation was not being undertaken in Malta and the required action was not sought by the Maltese authorities who were solely acquiescing to the requests of the Kazakh authorities. Nevertheless, until 2021 – more than seven years after the issuance of the order – no assessment appears to have been made by the Criminal Court as to whether it would have been legitimate and proportionate to apply such a measure, given the circumstances of the case (see also the considerations made at paragraph 111 above). Thus, at no stage before the Criminal Court had there been any judicial assessment of the credibility of the 'charges' (contrast, *Piras*, cited above, § 60).

118. The Court further notes that the entirety of the applicant's assets held in Malta were frozen, and continued to be so, for nearly eight years. The only variations made by the domestic court (under Article 22A (3) of the Dangerous Drugs Ordinance) during that period, were of little significance since they did not lift the freezing order over any of the property. Save for the authorisation to make certain payments, they solely allowed for limited use and transfers of some of the property which was and remained affected by the freezing order. The relevant proceeds obtained from such transactions were also to be affected by the order (see paragraph 43 above) (see, *a contrario*, *Karahasanoğlu,* cited above, § 153). The remaining requests, as accepted by the Government, were rejected. Thus, the order remained far-reaching, despite the absence of any assessment as to any correlation to the 'charges' pending against the applicant (see paragraph 114 above), even assuming they were genuine and based on a persistent reasonable suspicion.

119. Furthermore, it would appear that, until 2021, the measure was extended automatically, without the applicant being heard. The Court observes that the parties are in disagreement about this factual point (see paragraphs 99 and 90 above). The Government claimed that an oral hearing took place at every renewal and that in general by default the Criminal Court would lift the measure after six months, unless it considered otherwise. The applicant categorically denied that oral hearings took place, noting that she only received notification of the decisions stating that "the Attorney General's request was granted", and that the Criminal Court invariably accepted such extension requests.

120. The Court notes that the law (Article 24C (4) of the Dangerous Drugs Ordinance which applied equally to freezing orders issued under Article 435C

of the Criminal Code) provided that the freezing order shall remain in force for a period of six months and "shall" be renewed if the court is satisfied that the conditions which led to the making of the order still existed. Nevertheless, save for the obligation on the Attorney General to verify that the offences at issue were also punishable in Malta (Article 10 of the Money Laundering Act) the law did not specify any particular conditions which had to be met for the order to be issued in the first place by the Criminal Court (see conversely, for example, the requirement applicable to the action of the Court of Magistrates under Article 649 of the Criminal Code to ensure that the request was not contrary to the public policy or the internal public law of Malta). However, even assuming that domestic practice made it clear that such conditions referred to the legal premises of a request – in the case of freezing orders in such context, namely, the status (suspect/charged or accused) of the person; the existence of the reasonable suspicion against the person; the correlation between the property subject to the freezing order and the charges, if any, against the individual; and the proportionality of the measure in the specific circumstances of a case – the Court has already held above that none of those considerations were made in the ordinary proceedings relating to the freezing order. This was the case until the final intervention by the Criminal Court in 2021, after the applicant's complaints had been communicated to the respondent Government and brought to that court's attention by the applicant (see paragraph 68 above).

121. Further, despite the Government's allegation, the Court observes that the law did not specify that before a decision to renew an oral hearing would take place, nor that the applicant would be allowed to make submissions at least in writing. In such circumstances, and given that the Government failed to substantiate this allegation by providing the minutes of such hearings or making any reference to the actual considerations made by the Criminal Court during such renewals, the Court finds it difficult to give credence to the Government's allegation, that any oral hearings took place before the applicant's request in December 2020, and the subsequent developments.

122. While it is unclear to the Court whether, prior to December 2020 and the communication of part of the application to the respondent Government, the applicant had ever attempted to request the revocation of the order by lodging an application under Article 24C (5) (b) of the Dangerous Drugs Ordinance, the Court notes that the Government have not claimed that she did and thus that she had made out her case, nor that she had not done so, despite an opportunity to do so. Further, the Court observes that the constitutional jurisdictions did not reject her complaint under Article 1 of Protocol No. 1 to the Convention for failure to exhaust ordinary remedies, that is for failing to challenge the impugned measure by these means. It follows that the Court has no reason to consider that her possibility to challenge the order under the just-mentioned Article 24C (5) (b) of the Dangerous Drugs Ordinance would have constituted an effective safeguard (compare the decision of the Court of

Magistrates to a similar challenge, at paragraph 39 above), had the applicant's complaints to the Court not been communicated to the respondent Government.

123. In the light of the above the Court considers that, in the procedure before the Criminal Court by which the freezing order was issued and repeatedly extended in the applicant's case, until July 2021, she was deprived of relevant procedural safeguards against an arbitrary or disproportionate interference. The constitutional jurisdictions failed to rectify those omissions as they merely paid lip service to the relevant criteria in their assessment of the impugned measure (see paragraphs 58 and 66 above) which the applicant had claimed was in breach of her rights under Article 1 of Protocol No. 1. As a result, her property rights were rendered nugatory.

124. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the applicant's case there has been a violation of Article 1 of Protocol No. 1 to the Convention.

2. Article 6 § 1

125. Bearing in mind the conclusions above the Court does not consider it necessary to examine separately the admissibility and merits of the complaint under Article 6 § 1 in relation to the ordinary proceedings (see, by implication, *Piras*, cited above, § 47, and *Dimitrovi v. Bulgaria*, no. 12655/09, § 30, 3 March 2015, and *mutatis mutandis*, *Džinić*, cited above, § 82).

II. VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RELATION TO THE LENGTH OF THE CONSTITUTIONAL PROCEEDINGS

126. The applicant complained about the duration of the constitutional redress proceedings, which she considered was contrary to the reasonable time principle as provided in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

127. The Court notes that the 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

128. The applicant complained about the length of the constitutional redress proceedings which lasted four years and ten months over two jurisdictions.

129. The Government submitted that the case was complex due to the volume of evidence brought before the court, particularly several witnesses who testified for several hours at a stretch, amounting to a transcript testimony of more than two hundred pages, and hundreds of pages of other documentary evidence. Moreover, the legal questions at issue were novel and complex, so much so that the parties had been given four months to submit their closing pleadings – a period of time longer than the norm. Moreover, on 11 June 2018, at a late stage in the proceedings, the applicant had asked to put forward new evidence, to which the Government objected. As a result, proceedings were prolonged by several months.

130. Furthermore, the domestic authorities had acted with the required diligence. In particular the case had been appointed for hearing immediately and a hearing took place within twenty days of it being lodged. At that stage the defendants had only been given eight days to file their reply instead of the usual twenty. By the second sitting, with the agreement of the parties, the court issued a decree instead of a preliminary judgment on the defendants' preliminary pleas, before the hearing of the merits, thus speeding up the procedure. At the second hearing witnesses started to be heard orally or by means of an affidavit. In all twenty-seven hearings took place regularly over the two levels of jurisdiction (while on 23 October 2015 the court had set the next hearing for January 2016, it had given reasons for so doing). The Government noted that while on 2 December 2016 the court had given the applicant until 12 March 2017 to file submissions, and the defendants until 14 July 2017 to submit their replies, these periods had been agreed by the parties. The judgment of the first-instance court was delivered on 5 October 2017, and appeal proceedings started being heard on 13 November 2017, when it was deferred to 12 February 2018 for oral submissions. Following a change in the composition of the Constitutional Court, on 11 June 2018, while the applicant agreed that the case be left for judgment, she requested to put forward new evidence. Thus, the court was bound to set a date to hear further oral submissions, namely 8 October 2018, with a judgment being delivered on 8 April 2019.

131. The Government recalled that the reasonable time guarantee, while also applying to the Constitutional Court, cannot be construed in the same way as for an ordinary court. Moreover, the applicant had not adduced any reasons, in relation to what was at stake for her, which would have required the courts to decide with particular haste. Of relevance was also the fact that

on 10 October 2014 the court had provided the applicant with interim relief (see paragraph 51 above).

2. The Court's assessment

(a) General principles

132. According to the case-law of the Court on Article 6 § 1 of the Convention, the "reasonableness" of the length of proceedings must be assessed in light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what is at stake for the applicant in the dispute (see, among other authorities, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 143, 29 November 2016; *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV; and *Sürmeli v. Germany* [GC], no. 75529/01, § 128, ECHR 2006-VII).

133. In requiring cases to be heard within a "reasonable time", Article 6 § 1 underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 224, ECHR 2006-V).

134. As the Court has often stated, it is for the Contracting States to organise their judicial systems in such a way that their courts are able to guarantee the right of everyone to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time (see, among many other authorities, *Frydlender*, cited above, § 43; *Superwood Holdings Plc and Others v. Ireland*, no. 7812/04, § 38, 8 September 2011; and *Healy v. Ireland,* no. 27291/16, § 49, 18 January 2018).

135. In a number of cases the Court had an opportunity to examine complaints concerning length of proceedings before constitutional courts (see, for example, *Süßmann v. Germany*, 16 September 1996, §§ 55-56, *Reports of Judgments and Decisions* 1996-IV; *Tričković v. Slovenia*, no. 39914/98, § 63, 12 June 2001; *Voggenreiter v. Germany*, no. 47169/99, §§ 46-53, ECHR 2004-I (extracts); *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01 and 2 others, §§ 125-37, ECHR 2005-V; *Pitra v. Croatia*, no. 41075/02, §§ 14-25, 16 June 2005; *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 109, ECHR 2010; *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 101-03, 19 November 2020; and *Galea and Pavia v. Malta*, nos. 77209/16 and 77225/16, §§ 43-45, 11 February 2020) and the Court accepts that the Constitutional Court's role of guardian of the Constitution sometimes makes it particularly necessary for it to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms (see *Oršuš and Others,* cited above, § 109).

(b) Application to the present case

136. The Court notes that the proceedings started on 18 June 2014, and where determined at first instance on 5 October 2017, and on appeal on 8 April 2019. They thus lasted a little less than four years and ten months at two levels of jurisdiction.

137. The Court notes that the applicant has not disputed the Government's explanations. It further considers that the subject matter of the case was of a certain complexity and concerned a novel situation which had to be dealt with by the constitutional jurisdictions. The courts heard various witness testimony including from persons who had to travel from abroad. Overall, twenty-seven hearings were held which amounted to around a hearing every two or three months. When time-limits allotted for submissions were longer than the usual ones this had been done with the agreement of the parties. Moreover, the applicant herself had asked to make further submissions at a late stage of the appeal proceedings – when the case had already been pending judgment for four months (see paragraph 134 above). Indeed, save for the further six months to deliver the appeal judgment – which can exceptionally be explained by the complexity of the case and the new submissions – there appears to have been no particular period of inactivity, nor has the applicant pointed out to any such periods, or any other deficient conduct on behalf of the authorities. Lastly, as also noted above (see paragraph 114) while the applicant claimed (in the context of other complaints) that her economic activities were paralysed, it has not been claimed that her entire business or living conditions have been put at stake.

138. Bearing in mind the above, and particularly the lack of any argumentation by the applicant – other than the total duration of the proceedings – and her conduct during the proceedings, the Court considers that while four years and ten months are generally a long period to have an issue determined over two levels of jurisdiction, even at the constitutional level, in the specific circumstances of the case, their duration was not excessive.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

141. The applicant claimed non-pecuniary damage on account of the suffering and stressed caused but did not quantify an amount.

142. The Government submitted that the applicant had not quantified a claim, and that in any event given the violations at issue such an award should be kept to a minimum.

143. The Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

144. The applicant also claimed EUR 586 for the costs and expenses incurred before the domestic courts in relation to the constitutional proceedings.

145. The Government did not challenge such expense.

146. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the sum claimed by the applicant of EUR 586 covering costs in the domestic proceedings, plus any tax that may be chargeable to the applicant.

C. Default interest

147. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention in relation to the length of the constitutional redress proceedings admissible;

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

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 § 1 of the Convention in relation to the ordinary proceedings;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention in relation to the length of the constitutional redress proceedings;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 586 (five hundred and eighty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Péter Paczolay
Deputy Registrar	President