

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

SECOND SECTION

DECISION

Application no. 19440/10
Maria Carmela MANISCALCO
against Italy

The European Court of Human Rights (Second Section), sitting on 2 December 2014 as a Chamber composed of:

Işıl Karakaş, *President,*
Guido Raimondi,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, *judges,*

and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 March 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mrs Maria Carmela Maniscalco, is an Italian national, who was born in 1952 and lives in Reggio Emilia. She was represented before the Court by Mr L. Golino, a lawyer practising in Rome.

2. The Italian Government ("the Government") were represented by their Agent, Mrs E. Spatafora, and their Co-agent Mr G. Mauro Pellegrini.

### A. The circumstances of the case

3. The facts of the case are disputed by the parties and may be summarised as follows on the basis of the information available to the Court, without prejudice to the merits of the case.

## *1. The facts of the case as they transpire from the documents submitted*

### (a) Termination of the applicant's employment contract

4. The applicant worked as a director in a subsidiary company of UNICREDIT Bank, until the date she resigned pending disciplinary proceedings brought against her following claims made by the bank in respect of misappropriation of funds by her. The bank also instituted proceedings against the applicant claiming damages and requested precautionary measures (namely, a conservatory seizure - to be distinguished from a precautionary seizure for the purposes of Italian legislation), particularly in connection with transfers to a certain Mr S.

5. Following her resignation the applicant was owed (by UNICREDIT bank) work-related credits including, amongst other things, salary arrears and TFR (*spettanza di fine rapporto*), a lump sum awarded in compensation at the end of an employment relationship.

### (b) The conservatory seizure of the applicant's assets

6. On 9 October 2009, upon an *ex parte* request of the bank, the labour judge within the Bologna tribunal (*Il Giudice del Lavoro*), considered that there existed both a "presumption of sufficient legal basis" (*fumus boni iuris*) and a "danger in delay" (*periculum in mora*): the applicant having resigned from her work, could easily dispose of or hide her possessions. It therefore ordered the conservatory seizure (*sequestro conservativo*) of the applicant's assets up to a value of EUR 5 million (amounting to the damage claimed by the bank), which reflected any prejudice in connection with transfers made to Mr S. The court fixed a date to hear the parties, namely 23 October 2009, and fixed the deadline for notification of the order at 16 October 2009 (notification occurred on 15 October 2009).

7. According to the enforcement act of the conservatory seizure, dated 15 October 2009, the judicial officer executing the order attached, "within the limits of the law, the sums owed by Unicredit to Mrs Maniscalco, under any title including those connected with the termination of her employment, as well as any deposits, shares, obligations or investment funds, that is any movables up to the amount in respect of which she appears to be a debtor, that is EUR 5 million."

8. On 23 October 2009 the applicant challenged the labour judge's decision of 9 October 2009. However, the order was confirmed on 9 December 2009. The court considered in detail the results obtained from the investigation to that date, namely that most suspicious dealings (transfer of funds) had been signed by the applicant. Nevertheless, the court noted that the applicant had not transferred any funds to herself, but to third parties, particularly Mr S. It considered that the bank's contention that such funds had been transferred on the applicant's own initiative was ill-founded.

Nevertheless, it was clear that the applicant had misappropriated funds contrary to internal bank rules, abusing her power as director of the bank branch. It followed that there was a real risk that the bank would lose such money, and therefore the requisite of *fumus boni iuris* persisted together with that of *periculum in mora*.

9. The court also considered that it could not accept the applicant's request to hear Mr S. (whose relation with the applicant was also of relevance, but that was not a matter to be assessed at that stage). It considered that although Mr S. was the beneficiary of the misappropriated funds, he had an interest in being a party to the proceedings, but he had not been summoned to intervene by any of the parties. Under Italian law a person who has an interest in being a party to the proceedings cannot be heard as a witness.

10. The applicant further challenged the measure on 22 December 2009, asking the court, *inter alia*, to revoke the conservatory seizure order, in so far as the requisites under Article 671 of the Code of Civil Procedure [COCP] had not been fulfilled, and in the absence of such revocation to limit the conservatory seizure order, in respect of her TFR to the amounts which might be attached according to Article 545 of the COCP.

11. After having heard the parties at a hearing on 10 February 2010, the labour court dismissed the applicant's challenge by a decision of 19 February 2010 filed in the relevant registry on 24 February 2010. It noted that the applicant had failed to disprove the findings referring to her involvement. Neither did the court accept her contention that only 20% of her TFR could be attached. It rejected the applicant's argument that in view of Article 545 of the COCP and Article 1246 of the Civil Code ("CC"), it was not possible to attach more than a fifth of her TFR, in the context of the legal relationship between the employer and the employee. The court held that it was so possible in accordance with constant case-law arising from a number of judgments (*inter pluribus,* the following Court of Cassation judgments: nos. 6214/2004; 9904/2003; 3564/1999; 6387/1997; 6033/1997; 12905/19954873/1995; 10447/1991; 1245/1987), and it had not been disproved by the one, one-off, case cited by the applicant (judgment of the Court of Cassation no. 10629/2006), which was more recent.

12. The attachment of her assets remained in place.

13. On 29 July 2010 the Brescia Tribunal (competent for the enforcement proceedings in the case) upheld the applicant's plea concerning the limitations on the attachment of her pension fund. The court noted that the fund had been funded partly through voluntary contributions by the employee of part of her salaries (which had to be considered as a voluntary transfer), partly through the TFR, and partly through the obligatory contributions of the employer. Thus, the part of the fund which referred to the sums voluntarily transferred by the applicant could be attached in its entirety but the other two parts which were made up of salaries and pension

contributions could only be attached up to a limit of 20%. In practice, this decision unblocked some of the fund and reduced the attachment of the applicant's pension fund to the global amount of approximately EUR 20,000.

14. This decision was notified on 3 September 2010 and on 8 September 2010 the applicant requested the liquidation of the relevant amount. Such funds were only released six months later, namely on 8 March 2011.

**(c) Proceedings on the merits of the dispute**

15. In the meantime the labour judge within the Bologna tribunal in the main proceedings had requested the parties to go through mediation with the aim of reaching a settlement. The latter not having been successful, the proceedings were continued and the rest of the assets remained attached.

16. On 13 June 2013 the labour judge within the Bologna tribunal issued a first-instance judgment on the merits of the case, which was filed in the registry on 15 October 2013. It found that the applicant had not been responsible for any misconduct in the transfer of funds to Mr S. Thus, the precautionary interim measure connected with this matter had no longer any useful effect. It further found both the applicant and the bank responsible for damage caused in connection with other matters and ordered the applicant to pay half of the damage incurred, namely EUR 1,626,429.

**(d) Donation by the applicant to her children**

17. Pending the appeal proceedings, the applicant proceeded to donate part of her immovable property to her children. In June 2014 UNICREDIT bank lodged an application before the domestic court challenging such a donation.

*2. The facts of the case subject to dispute between the parties*

18. The applicant claimed that following the interim measure of 9 October 2009 all her assets were attached. However, no documentation has been submitted to this Court specifying which movable and/or immovable assets had in fact been attached. From vague documentation, namely a mortgage history search on the basis of names (*ispezione ipotecaria per dati anagrafici*) issued by the land registry, it would appear that an unspecified apartment registered in the applicant's name was affected by the order of 9 October 2009. The application to the courts lodged by UNICREDIT bank, dated June 2014 (see paragraph 17 above), also makes reference to an enforcement act of the conservatory seizure of 14 October 2009 by which three immovable properties co-owned by the applicant were attached – however, the original enforcement act has not been provided.

19. The Government contested the applicant's allegations, claiming that she had not substantiated that all her assets had been frozen. According to the Government it was not for them to prove what had not been attached. They conceded, however, that on the basis of the enforcement of the order of 9 October 2009 approximately EUR 75,000 consisting of the applicant's pension fund had originally been attached. Despite certain documentation, the Government appeared to doubt whether an apartment, where the applicant lived with her family, and of which she owned 50%, had been attached. Even if that were so, the apartment at issue was subject to a mortgage in connection with a loan and thus could in any case not be sold.

## B. Relevant domestic law

### *1. The Italian Code of Civil Procedure [COCP]*

20. The relevant articles of the COCP, in so far as relevant, read as follows:

**Article 545 (assets which cannot be seized (*crediti impignorabili*))**

"Sums such as salaries, allowances or benefits, including termination of employment sums (TFR), owed by private individuals to their employees, may be seized to the extent allowed by a tribunal or judge. Only one fifth of such sums may be seized for the purposes of taxes owed to the state, province or commune, and in the same measure for any other credit.

Seizure in respect of more than one of the abovementioned purposes jointly cannot exceed half the mentioned sums.

Without prejudice to any other limitation expressly provided for in specialized legal provisions."

**Article 559 (custody of seized items)**

"Once seized the debtor becomes the custodian of the items seized as well as any accessories [...]"

**Article 669 *sexies* (procedure)**

"Having heard the parties and omitting any formality which is not essential for an adversarial procedure, the judge proceeds to examine the requirements necessary for the purposes of the requested measure, before accepting or rejecting the request by means of an order. If notification to the defendant may prejudice the coming to be of the measure, the judge may proceed by means of a reasoned decision or if necessary summary reasons. In such a case, by means of the same decision the judge shall fix a date to hear the parties, not later than fifteen days later, and award the applicant a peremptory time period of a maximum of eight days within which to carry out the notification of the application and the decision. At the hearing the judge may, by means of an order, confirm, modify or revoke the measures ordered in the decision."

**Article 671 (conservatory seizure)**

"On the request of the creditor who has a well-founded fear of losing any guarantee over his claim, the judge may authorise a conservatory seizure of movable or immovable property belonging to the debtor, or of any sums due to the creditor, within the limits allowed by the law for such seizures."

**Article 679 (execution of conservatory seizures)**

"A conservatory seizure over immovable property is enforced by registering the measure ordered at the relevant land registry (*l'ufficio del conservatore dei registri immobiliari del luogo in cui i beni sono situati*). Article 559 applies in respect of the custody of the immovable property."

*2. The Civil Code*

21. Article 1246 of the Civil Code provides for exceptions to what assets can be set-off, and includes under sub-article 3 "assets which cannot be seized".

22. Other relevant articles of the CC read as follows:

**Article 2905 – conservatory seizure**

"A creditor may request a conservatory seizure over the debtor's assets in accordance with the rules of the code of civil procedure.

Such a seizure may also be requested in respect of a third party acquirer of the debtor's assets, in so far as an appropriate action to declare the ineffectiveness of the transfer has been lodged."

**Article 2906 - effects**

"Transfers or any other acts concerning the affected assets may not prejudice the creditor requesting the measure, as provided in the rules for seizure (*pignoramento*)."

# COMPLAINTS

23. The applicant complained about the unfairness of the procedure leading to the order of conservatory seizure, in that it had not been adversarial, and of the latter's effects, namely it having deprived her of any means of subsistence.

# THE LAW

## A. Article 6 § 1 of the Convention

24. The applicant complained about a lack of equality of arms in so far as she had not been allowed to make submissions before the conservatory measure was issued, nor had the court accepted to hear her witness. Thus, she complained of a lack of an adversarial procedure, contrary to Article 6 of the Convention. The provision reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

### *1. The parties' submissions*

25. The applicant submitted that even assuming the law was in conformity with Article 6 requirements, the practice was not. No further submissions relevant to the matter communicated to the Government have been submitted.

26. The Government submitted that Italian legislation complied with Article 6 safeguards even in the ambit of interim measures and injunction proceedings. In the present case both the principle of equality of arms and the right to an adversarial hearing were respected. They noted that according to Article 669 sexies of the COCP (see paragraph 20 above) a court may order interim measures in the absence of the defendant only in exceptional cases, namely when to do otherwise would prejudice the effectiveness of the interim measure. In such exceptional cases, nonetheless, the court shall hold an adversarial hearing as soon as possible and not later than fifteen days.

27. In the present case, the interim measure was given *inaudita altera parte* because there was a real risk of prejudice to the creditor. An adversarial hearing was heard three days after the attachment order was notified to the parties, and the applicant had then the possibility to exercise all her procedural rights.

### *2. The Court's assessment*

#### (a) Applicability of Article 6 § 1

28. The Court reiterates that Article 6 § 1 in its civil limb applies only to proceedings determining civil rights or obligations. Not all interim measures determine such rights and obligations and the applicability of Article 6 will depend on whether certain conditions are fulfilled (see *Micallef v. Malta* [GC], no. 17056/06, § 83, ECHR 2009).

29. Firstly, the right at stake in both the main and the injunction proceedings should be "civil" within the autonomous meaning of that notion under Article 6 of the Convention. Secondly, the nature of the interim

measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure can be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 will be applicable (see *Micallef*, cited above, §§ 84-85).

30. However, the Court accepts that in exceptional cases – where, for example, the effectiveness of the measure sought depends upon a rapid decision-making process – it may not be possible immediately to comply with all of the requirements of Article 6. Thus, in such specific cases, while the independence and impartiality of the tribunal or the judge concerned is an indispensable and inalienable safeguard in such proceedings, other procedural safeguards may apply only to the extent compatible with the nature and purpose of the interim proceedings at issue. It falls to the Government to establish that, in view of the purpose of the proceedings at issue in a given case, one or more specific procedural safeguards could not be applied without unduly prejudicing the attainment of the objectives sought by the interim measure in question (see *Micallef*, cited above, § 86).

31. The Court observes that in *Kübler v. Germany* (no. 32715/06, § 48, 13 January 2011), it considered Article 6 applicable to preventive measures issued to protect the applicant's civil rights. The Court is also aware of the conclusions as to the inapplicability of the provision reached in *Štokalo and Others v. Croatia* ((dec.), no. 22632/07, 3 May 2011) and *Imobilije Marketing d.o.o. and Ivan Debelić v. Croatia* ((dec.), no. 23060/07, 3 May 2011) concerning precautionary measures in the form of conservatory measures protecting the applicants' civil rights. However, it considers those conclusions to be largely dependent on the specific complaints and circumstances of those two cases.

32. The Court observes that the reason behind the Court's new approach to the applicability of Article 6 to interim measures in *Micallef* was precisely that nowadays, where many Contracting States face considerable backlogs in their overburdened justice systems leading to excessively long proceedings, a judge's decision on an injunction will often be tantamount to a decision on the merits of the claim for a substantial period of time, even permanently in exceptional cases (see *Micallef*, cited above, § 79). It followed that, in the Grand Chamber's view, frequently interim and main proceedings decide the same "civil rights or obligations" and have the same resulting long-lasting or permanent effects (ibid.). The Grand Chamber thus no longer found it justified to automatically characterise injunction proceedings as not determinative of civil rights or obligations. It further noted that a defect in such proceedings would not necessarily be remedied at a later stage, namely in proceedings on the merits governed by Article 6, since any prejudice suffered in the meantime may by then have become irreversible and with little realistic opportunity to redress the damage

caused, except perhaps for the possibility of pecuniary compensation (ibid., § 90; see also *RTBF v. Belgium*, no. 50084/06, § 64, ECHR 2011 (extracts)).

33. Turning to the circumstances of the present case, the Court notes that the rights at stake in the main proceedings, as well as in the injunction proceedings, were undoubtedly of a civil character (see *Nedyalkov and Others v. Bulgaria*, (dec.), no. 663/11, § 109, 10 September 2013). As to the object and purpose of the measure as well as its effects on the right in question, the Court notes that the measure aimed to serve as a guarantee to the putative creditor by preventing the applicant, as alleged debtor, from dealing with or disposing of certain assets. The measure was in force, to different extents, for more than three and a half years (October 2009 to June 2013). It follows that the decision ordering the measure effectively determined the right of the creditor against the applicant as the debtor, at least temporarily. The Court therefore finds that the *Micallef* test is fulfilled and the proceedings at issue consequently fell under the application of Article 6 § 1 of the Convention under its civil limb.

**(b) Merits**

34. As to the merits, the Government argued that in the present case to allow for an adversarial hearing before the issuing of the measure would have unduly prejudiced the attainment of the objectives sought by the interim measure. The Court observes that it has already held that to be able to serve their purpose of preventing the dissipation of forfeitable assets, applications for freezing orders need to be heard without notice, and that is not in itself incompatible with the requirements of Article 6 § 1 of the Convention (see *Nedyalkov and Others*, cited above, § 117). Similarly, the Court considers that in circumstances such as those of the present case (where the alleged debtor could have disposed of her assets), to delay the proceedings by providing for an adversarial hearing at that stage could have unduly prejudiced the attainment of the objectives sought by the interim measure at issue, namely a conservatory seizure order.

35. Moreover, the Court notes that, in accordance with the procedure of the domestic system, on the day the measure was issued the court fixed a date to hear the parties. The hearing was in fact held fourteen days after the order was issued (and eight days following the notification) (see paragraph 6 above) and the applicant was able to challenge the order in both written and oral pleadings which were replied to by the court. Such challenge was determined within a reasonable time (approximately six weeks). Therefore, in the circumstances of the present case, the absence of an adversarial hearing before the measure was issued does not raise an issue under the Convention.

36. Furthermore, in so far as the applicant complained about the labour judge's refusal to hear Mr S., the Court reiterates that Article 6 § 1 does not explicitly guarantee the right to have witnesses called, and the admissibility

of witness evidence is in principle a matter of domestic law. However, the proceedings in their entirety, including the way in which evidence was permitted, must be "fair" within the meaning of Article 6 § 1 (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 31, Series A no. 274). In the circumstances of the present case, the Court is satisfied that the domestic court examined the applicant's request to have Mr S. called and gave detailed reasons for its refusal, which was based on domestic law (see paragraph 9 above). In the Court's view, that decision was not tainted by arbitrariness and did not amount to a disproportionate restriction on the applicant's ability to present arguments in support of her case in the proceedings.

37. It follows that the entirety of the complaint under Article 6 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## B. Article 1 of Protocol No. 1

38. Without invoking any article of the Convention, the applicant complained that the attachment order had deprived her of any means of subsistence.

39. The Court, being master of the characterisation to be given in law to the facts of the case, is not bound by the characterisation given by the parties (see *Gatt v. Malta*, no. 28221/08, § 19, ECHR 2010). By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009, and *Anusca v. Moldova*, no. 24034/07, § 26, 18 May 2010). A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see, for instance, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). Thus, in the present case, the Court considers it appropriate to examine this complaint under Article 1 of Protocol No. 1 to the Convention, it having considered that in essence the applicant is complaining about an interference with her property which she considered to be unlawful and disproportionate. The provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

*1. The parties' submissions*

40. The applicant submitted that she had been forced to resign and then had been left to fend for herself in dire circumstances. She submitted that following the order of 9 October 2009 she had been left without any means of subsistence as the order had provided for the "seizure" of all her goods, and it had affected her family home, a piece of agricultural land, her pension fund/TFR, her bank accounts, salaries (including that of September 2009), and other shares and titles of little value. In respect of the "seizure" of her immovable property the applicant relied on a certificate from the land registry (see paragraph 19 above). In respect of her family home, the applicant submitted that the Government were wrong in saying no prejudice had been suffered, as the home could still have been sold despite the existing loan, which was nearly entirely paid. The Government were also wrong in presuming that her husband provided for her or that she was in receipt of a pension. She declared to this Court that she had had no income since 2009. At the same time she acknowledged that the family lived off the retirement pension of her husband, which amounted to EUR 27,000 (gross) per year.

41. The applicant submitted that even if not actually seized the attachment of the property prevented the owner from disposing of the assets and was a prelude to expropriation/seizure. It also prevented the owner from using the good as a warranty for a possible funding request.

42. The applicant further contended that she had no responsibility in the matter. She noted that it had been unreasonable for UNICREDIT to make a request for a conservatory seizure and the court to give such an order, especially since she had not been the one who kept the monies, which, it had not been contested, had been transferred to Mr S., who had not been requested to refund them. In her view there existed no *periculum in mora* or any *fumus boni iuris*, and thus, there had been no basis for the order.

43. The Government submitted that the applicant was acting under a misunderstanding of the effects of a conservatory seizure order. They explained that when such an order is issued the attachment of the debtor's assets is authorised up to the global amount of the credit, which in this case amounted to EUR 5 million, and is limited to only those assets which can be attached under the law (see relevant domestic law, paragraph 20 above). According to the Government, in the present case the order resulted in the attachment of about EUR 75,000 (the entirety of her pension fund) for nine months (October 2009 to July 2010), an amount which was later reduced to EUR 20,000. Both sums were extremely reasonable given that the order of conservatory seizure concerned a maximum of EUR 5 million. They further noted that the documents submitted by the applicant did not show which immovable had been affected by the order but given that the applicant only partly owned one property it could be presumed that it had been the one affected. In that connection, the Government submitted that

even assuming that the applicant's family home had in fact been subject to the order, under Italian law (see relevant domestic law, paragraphs 20-21 above), the practical effect of the attachment of real estate was to ban the owner from disposing of the asset, but the owner was not dispossessed of it. Thus, since the applicant in the present case could anyway not sell the apartment, it being subject to a mortgage, she had suffered no prejudice in that respect, particularly given that she remained living in it. Moreover, there was no proof that the applicant and her husband had the intention of selling the property or using it as a guarantee for a further loan – which was even more improbable since it was still subject to a loan.

44. The Government highlighted that the applicant had not proved that anything more of her assets had been attached, such as salaries, other land, bank accounts, severance payments, etc., and it was not for the Government to prove a negative statement, i.e. that these had not been attached. They further noted that the documents submitted by the applicant were not relevant to prove which movable property had been attached, and she had failed to provide proper documentation, which could be obtained from the land registry where such attachments would be registered.

45. The Government noted that the enforcement of the order in respect of the EUR 75,000 of her pension fund was in accordance with the law, namely Article 545 of the Italian COCP as interpreted at the time, and it had later been reduced only as a result of a different interpretation of the applicable laws.

46. That interference had also been necessary to protect the creditor's interests during the civil proceedings. The fact that the applicant was being sued for misconduct could have led her to dispose of all her assets before it was too late for her. In this connection, the Government noted that the applicant had immediately liquidated 80% of her pension fund and requested it to be paid in cash (not cheques or money transfer into other accounts) as soon as it was made available – this they considered to be the typical action of debtors wanting to hide assets.

47. The Government also noted that the applicant had voluntarily resigned from her post (as upheld by the first-instance domestic court, although the matter was now pending on appeal), thus, if she had lost her means of support it was because of her choice and not the attachment order. Moreover, during the mentioned nine months, it was possible to suppose that the applicant's husband had provided for her as per Article 143 of the Italian Civil Code, which provided for an obligation on spouses to materially support each other. Furthermore, given that the applicant was fifty-seven years of age and had thirty-five years of service, it could be presumed that she had a pension (distinct from the pension fund which has been attached). It followed that the applicant had sufficient means to provide for her needs during the nine months at issue.

48. They further noted that it had been the bank which had without foundation asked for an order of EUR 5 million, and the fact that a creditor attached a debtor's assets without any reasonable cause was an individual responsibility which did not involve the State.

49. The Government further considered that they were not responsible for the delay in the restitution of the non-attachable portion of the pension fund. Firstly, the applicant had not immediately become aware of the order allowing the release of part of her fund, and secondly the restitution of such portion was not under the control and the responsibility of any public authority.

*2. The Court's assessment*

50. The Court notes at the outset that the facts of the case are disputed between the parties. In these circumstances, the Court can only examine the complaint on the basis of the factual certainties which appear from the documents submitted to it.

51. The Court observes that no relevant and specific documentation has been submitted to substantiate the applicant's financial position in its entirety as well as which of the applicant's assets have actually been attached as a result of the enforcement of the conservatory seizure.

From the documents it transpires that she co-owns a property which is subject to a mortgage, she owns a plot, and a number of bank accounts, gold objects which she was selling (in 2010), and that her husband receives a pension.

From the documents it can only be ascertained that the applicant's pension fund was attached in its entirety from October 2009 to July 2010, and subsequently, in part (equivalent to EUR 20,000 according to the Government and not contested by the applicant). It also transpires that the applicant's assets held by the bank had been attached "within the limits of the law", together with one immovable property of an unspecified address, for the duration of the conservatory measure.

52. It follows that the Court must proceed to its assessment on the basis of the few facts established, although the circumstances may render impossible the examination of certain aspects of the complaint.

53. The Court considers that the attachment order issued by a domestic court and its subsequent enforcement engage the responsibility of the State and amounted to an interference with the applicant's right to peaceful enjoyment of her possessions. Therefore, Article 1 of Protocol No. 1 is applicable.

54. The Court notes that the attachment of the applicant's assets did not deprive her of her possessions, but provisionally prevented her from using them and from disposing of them, with a view to securing a possible award of damages in favour of the creditor. It is thus comparable to the seizure of property for legal proceedings which normally relates to the control of the

use of property, and thus falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A, and *Borzhonov v. Russia*, no. 18274/04, § 57, 22 January 2009).

55. The Court further emphasises that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be "lawful": the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. The issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights only becomes relevant once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (see, among other authorities, *Baklanov v. Russia*, no. 68443/01, § 39, 9 June 2005, and *Frizen v. Russia*, no. 58254/00, § 33, 24 March 2005).

56. When speaking of "law", Article 1 of Protocol No. 1 alludes to the same concept that is to be found elsewhere in the Convention (see *Špaček, s.r.o. v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999, and *Baklanov*, cited above, § 40). This concept requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned, precise, and foreseeable (see *Beyeler v. Italy* [GC], no. 33202/96, § 109, ECHR 2000-I).

57. The Court notes that, save for part of her pension fund, there is no reason to doubt that the attachment order and its subsequent enforcement affecting the applicant's assets (as established by the Court above, paragraph 50 *in fine*), was lawful, namely in accordance with Article 545 of the Italian COCP. Despite the applicant's allegations, it does not transpire from the information provided that any of those assets had been seized exceeding the limits provided for by law, nor was this disputed by the applicant in the domestic proceedings. In so far as the applicant complained about the domestic court's assessment in relation to the requirements for issuing an order, the Court reiterates that its power to review compliance with domestic law is limited, as it is in the first place for the national authorities to interpret and apply that law (see *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 125, 6 December 2011). It does not appear that those decisions were arbitrary, and therefore they must be considered as fulfilling the lawfulness requirement.

58. As to the lawfulness of the attachment of the entirety of her pension fund (for a period of nine months), which was also based on the above-mentioned provision, the Court observes that while it is true that the court responsible for the execution of the order (the Brescia Tribunal) found

that it had not been correct to attach the fund in full, the Government argued that the previous decisions confirming its attachment in full had been in accordance with the interpretation of the law as it stood at the time. The Court observes that the decision of the labour judge within the Bologna tribunal of 24 February 2010 (see paragraph 11 above) was based on the prevailing jurisprudence at the time, while that of the Brescia Tribunal appears to be based on a novel interpretation of the law. Indeed, the applicant made no specific submissions on the matter. It thus transpires that in the present case there had been a reversal of jurisprudence. In this connection, the Court reiterates that, as held in *S.S. Balıklıçeşme Beldesi Tarım Kalkınma Kooperatifi and Others v. Turkey* (nos. 3573/05, 3617/05, 9667/05, 9884/05, 9891/05, 10167/05, 10228/05, 17258/05, 17260/05, 17262/05, 17275/05, 17290/05 and 17293/05, 30 November 2010) a reversal of jurisprudence falls within the discretionary powers of domestic courts, notably in countries having the system of written law (as in Italy) and which are not bound by precedent. In the present case, the novel interpretation was in favour of the applicant, and it therefore cannot be said that, at the time of the attachment order, the extent of such an order over her pension fund was not foreseeable in terms of the law.

59. It follows that the interference satisfied the lawfulness requirement.

60. It remains to be determined whether the interference pursued a legitimate aim in the public interest and whether it was proportionate. However, the Court notes that in the absence of exact information as to the assets owned by the applicant, as well as her financial position, the Court is unable to set a background against which it would be able to balance the effects of the limited attachment of her assets as transpire to the Court. In these circumstances the Court is unable to determine whether the applicant has suffered a disproportionate burden, as the complaint is partly unsubstantiated.

61. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

*Declares* the application inadmissible.

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| Abel Campos | Işıl Karakaş |
| Deputy Registrar | President |