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

FIRST SECTION

DECISION

Application no. 7952/17
Filippo TONOLO
against Italy

The European Court of Human Rights (First Section), sitting on 5 May 2026 as a Chamber composed of:

Ivana Jelić*, President*,
Erik Wennerström,
Gilberto Felici,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above application lodged on 19 January 2017,

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, Mr Filippo Tonolo, is an Italian national, who was born in 1965 and lives in Milan. He was represented before the Court by Mr G. Interrante, a lawyer practising in Milan.

2. The Italian Government ("the Government") were represented by their Agent, Mr L. D'Ascia, Avvocato dello Stato.

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

4. The applicant was accused, jointly with others, of an aggravated offence of fraudulently obtaining public funds pursuant to Article 640 *bis* of the Italian Criminal Code (CC) and of bankruptcy fraud pursuant to Article 223 of the Royal Decree no. 267 of 1942. As regards in particular the first offence, he was accused of having issued invoices for non-existent

transactions to a third party, which had then asked for refunds from the public administration; the invoices were issued on 10 December 2010 and 6 December 2011 for a total of EUR 682,000 EUR (though the applicant stated that he had received payment of only one of the invoices, which had been for EUR 370,000).

5. The applicant and the prosecutor agreed to a plea bargain and asked the Turin preliminary hearing judge to order one year and ten months of detention, conditionally suspended. The prosecutor left it to the judge as to whether any confiscation order would be made.

6. On 28 September 2015, the Turin preliminary hearing judge ordered the penalty requested by the parties and, in addition, ordered the confiscation of an amount equivalent to the proceeds of the crime of fraudulently obtaining public funds, pursuant to Article 640 *quater* of the CC.

The judge stated that an order for the confiscation of a value equivalent to that of the proceeds of a crime was a punitive order and could be made in full against any of the co-offenders on the basis of the principle of joint liability, without prejudice to their subsequently seeking contribution orders. The judge therefore ordered the confiscation of the applicant's assets up to the value of the public funds unlawfully obtained, amounting to EUR 3,751,767.03, without indicating against what assets the confiscation should be enforced.

7. The applicant appealed against the confiscation order to the Court of Cassation; he complained about its being made on the basis of joint liability, arguing that the preliminary hearing judge had not properly considered either his role in the commission of the crime or the share of the proceeds he had obtained. The Court of Cassation upheld the confiscation order in a judgment published on 21 July 2016.

8. In 2021 the confiscation order was partially enforced, by the confiscation of the sum of EUR 35,847.71 available on the applicant's bank accounts, of a motor vehicle, of a share of immovable assets formally owned by the applicant's daughter for the declared commercial value of EUR 188,800 and of an additional sum, made available by the latter, of EUR 30,975.50. In March 2022, the applicant also made available for confiscation a plot of land, declaring that its value amounted to EUR 150,000, but there is no indication of whether that land was actually confiscated.

9. The applicant's co-accused had been prosecuted in ordinary criminal proceedings. On 22 June 2021 the Turin Court of Appeal declared that the aggravated offence of fraudulently obtaining public funds with which they had been charged was time-barred.

10. On 10 February 2025, the applicant lodged an application with the Turin preliminary hearing judge, who was sitting as a judge on an application for enforcement. He asked for the partial revocation of the confiscation order on the basis of the principles established by judgment no. 13783 of 2025 of the Combined Divisions of the Court of Cassation (see paragraph 23 below).

On 5 May 2025 the preliminary hearing judge discussed the reasons given by the Combined Divisions (notably their rejection of the arguments previously made for joint liability and its disproportionate character) and held that the order should be re-examined in the light of those principles. Upholding the applicant's application, the judge therefore reduced the amount of the confiscation order to EUR 370,000. The decision became final on 25 May 2025.

RELEVANT DOMESTIC LAW AND PRACTICE

A. Confiscation

11. Article 240 of the CC, which forms part of a chapter dedicated to "preventive orders against property" (*misure di sicurezza patrimoniali*), provides for a direct form of confiscation. The provision reads as follows:

> "1. In the event of conviction, the judge may order the confiscation of things that were used or were intended to be used in the commission of the offence [in question], and of the things that constitute the product or proceeds of the offence.
>
> 2. [The judge] must order the confiscation:
>
> 1) of things that constitute consideration (*prezzo*) paid for the offence;
>
> 1-bis) ...
>
> 2) of things whose manufacturing, use, harbouring, possession or sale constitutes an offence – even if no conviction has been imposed. ..."

12. Article 322 *ter* of the CC – brought in by Law no. 300 of 2000 and subsequently amended by Law no. 190 of 2012 – requires confiscation in respect of certain crimes. The confiscation must whenever possible be of the direct proceeds of or consideration for the crimes ("direct confiscation"); in the alternative, it must be carried out against assets of equivalent value ("value confiscation" or "confiscation by equivalent means"). The provision currently reads as follows:

> "1. In the event of conviction or of an [agreement for a] plea bargain at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure, in respect of one of the offences provided by Articles 314 to 320 ..., [the judge] must order the confiscation of the goods constituting the proceeds of or consideration for the offences, unless they belong to a third party who has not taken part in the commission of the offence, or, when this is not possible, the confiscation of goods at the disposal of the offender of a value corresponding to consideration or proceeds.
>
> 2. In the event of conviction or of an [agreement for a] plea bargain at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure in respect of the offence provided by Article 321 ..., [the judge] must order the confiscation of the goods constituting the proceeds of the offence, unless they belong to a third party who did not take part in the commission of the offence or, when this is not possible, the confiscation of goods at the disposal of the offender to a value corresponding to those proceeds...

> 3. In the cases provided in paragraphs 1 and 2, the judge – in the judgment convicting the offender – shall determine the amount of money or identify the goods to be confiscated in so far as they constitute the proceeds of or consideration for the offence or their value corresponds to the proceeds of or consideration for the offence."

13. Article 640 *quater* of the CC – also introduced by Law no. 300 of 2000 – provides that Article 322 *ter* of the CC also applies to the offence of aggravated fraud, including fraudulently obtaining public funds, provided for by Article 640 *bis* of the CC.

14. Until it was amended by Law no. 190 of 2012, the first paragraph of Article 322 *ter* of the CC referred only to a value corresponding to the consideration paid for (and not to the proceeds realised from) offences referred to in that paragraph; however, the Court of Cassation did clarify before those amendments came into force that Article 640 *quater* of the CC should be interpreted as referring to Article 322 *ter* of the CC in its entirety – that is, extending mandatory confiscation to a value corresponding to the proceeds derived from crime (see, for instance, judgments of the Court of Cassation no. 41936 of 2005, no. 35807 of 2010 and no. 23108 of 2013).

B. Relevant provision and case-law on joint liability for value confiscation

15. Article 110 of the CC reads as follows:

> "When several persons take part in the commission of the same offence, each of them shall be subject to the penalty prescribed for that offence (...)"

16. The Court of Cassation stated for the first time in judgment no. 15445 of 2004 that where an offence for which a confiscation order could be made was committed by more than one person jointly and the direct confiscation of the proceeds of that offence was not possible, confiscation of a value equivalent to the entire proceeds could be ordered against any of the co-offenders, regardless of the shares actually obtained by any of them.

The Court of Cassation relied on a criminal law theory according to which, on the basis of an interpretation of Article 110 of the CC, all co-offenders are criminally liable for the entirety of an offence which is considered to be the result of their joint action (the *"teorica monistica"*); according to the Court of Cassation, it followed that the co-offenders should be jointly liable for the penalty, including confiscation.

The co-offenders could subsequently seek contribution orders against each other to recover their payments from others' shares of the proceeds, but that fell outside the sphere of criminal law.

17. The principle of joint liability for value confiscation was subsequently reiterated by the Court of Cassation in several cases (see, for instance, judgments nos. 30729 of 2006, 31988 of 2006 or 10838 of 2007).

18. Nevertheless, in some cases the Court of Cassation stated that confiscation could be ordered against each co-offender only in respect of his

or her share of the proceeds of the crime (see, for instance, judgments nos. 25877 of 2006, 31690 of 2007, or 35120 of 2007).

19. In judgment 26654 of 27 March 2008, which was published on 2 July 2008, the Combined Divisions of the Court of Cassation examined the allegedly divergent case-law on the principle of joint liability for value confiscation. Although the Combined Divisions acknowledged that there had been different interpretations, they held that the divergence was merely apparent since even the judgments which opposed the principle of joint liability left open the possibility of seizing an amount equal to the entire proceeds of a crime if the individual shares of co-offenders could not be quantified.

20. Following that case, some case-law continued to reiterate the principle of joint liability (see, for instance, the judgments of the Court of Cassation nos. 45389 of 2008, 33409 of 2009, 27072 of 2015, 33755 of 2016, or 26621 of 2018). Some judgments explicitly addressed the issue of the proportionality of confiscation orders which were based on the principle of joint liability, stating that they were proportionate given that the offender had participated in the production of the proceeds of the offence rather than because he or she was in actual possession of those proceeds; it was therefore reasonable to expect that every co-offender should be liable for confiscation of his or her assets where the proceeds of an offence could not be recovered from the other co-offenders (see, for instance, the judgments of the Court of Cassation nos. 13562 of 2012, 25560 of 2015, 26621 of 2018, or 19091 of 2020).

21. Another part of the case-law, however, interpreted the above-mentioned judgment no. 26654 of 2008 of the Combined Divisions as saying that, at least when it was possible to determine the individual shares of the proceeds, confiscation had to be limited to the specific person's share (see, for instance, the judgments of the Court of Cassation nos. 10690 of 2009, 33282 of 2012, 20101 of 2015, 6607 of 2021, 4727 of 2021, or 33757 of 2022).

22. On 5 March 2024 the sixth division of the Court of Cassation remitted the case to the Combined Divisions on that question, observing that there was an important and longstanding divergence of case-law and that judgment no. 26654 of 2008 had given rise to conflicting interpretations.

23. The divergence was addressed by judgment no. 13783 of 2025 of the Combined Divisions of the Court of Cassation, which acknowledged that most case-law since 2004 had relied on the principle of joint liability; nevertheless, from 2006 until recently, a minority of cases had been decided on the opposite principle and had stated that – at least when the individual shares of the proceeds of the offence could be identified – confiscation should be limited to the amount of the individuals' shares. The Combined Divisions judgment no. 26654 of 2008 had been referred to in both lines of case-law because on the one hand it confirmed the principle of joint liability and on the

other it suggested that it could only apply when it was impossible to determine the individual shares of the proceeds of a crime.

The Combined Divisions acknowledged the divergence but put an end to it by saying that the principle of joint liability did not apply. They found that in allowing for the confiscation of sums that were unrelated to the proceeds obtained by each offender it led to disproportionate results regardless of whether it was considered punitive or restorative in purpose. They relied on the principle of proportionality, as recognised by European Union Law, by the Court's case-law and by domestic law.

The Combined Divisions therefore concluded that, if there was more than one offender, confiscation must be ordered against each of them only in respect of the shares of the proceeds they had actually obtained; if those shares could not be determined, they should be presumed to be equal.

COMPLAINTS

24. The applicant complained, under Article 7 of the Convention and Article 1 of Protocol No. 1, about the confiscation of an amount equivalent to the entire proceeds derived from the crime by all co-offenders. He argued that the measure had not had a foreseeable legal basis, had been disproportionate, and had meant that he was being punished for the conduct of his co-offenders.

25. He further complained, under Article 7 of the Convention, that until Law no. 190 of 2012 was passed (see paragraph 14 above), it had been unclear whether Article 640 *quater* of the CC allowed for the confiscation of a value corresponding to the proceeds of crime, or only to the consideration paid for the crime.

THE LAW

A. The Government's objection of non-exhaustion of domestic remedies

26. The Government objected to the second part of the complaint raised by the applicant under Article 7 (see paragraph 25 above), saying that it should not be admitted for failure to exhaust domestic remedies. They argued that this part of the complaint had not been raised by the applicant before the Court of Cassation: although he had complained about the confiscation order, he had never argued that it should have concerned the consideration for rather than the proceeds of the crime.

27. The applicant pointed out that he had complained about the confiscation in the Court of Cassation.

28. The Court notes that the applicant's appeal to the Court of Cassation concerned the principle of joint liability and made no mention of the

distinction between the confiscation of the consideration paid for the crime and the proceeds thereof (see paragraph 7 above). The Court therefore upholds the Government's objection and declares that part of the application inadmissible for failure to exhaust domestic remedies, in line with Article 35 §§ 1 and 4 of the Convention.

B. Application of Article 37 of the Convention to the remaining part of the application

29. The Court notes that the remaining part of the application (see paragraph 24 above) concerns the confiscation order being made on the basis of joint liability.

30. On 30 June 2025, the applicant informed the Court that the Turin preliminary hearing judge had reduced the sum he had been ordered to pay (see paragraph 10 above). He acknowledged that the decision of the Turin preliminary hearing judge had in substance upheld all the arguments regarding the principle of joint liability that he had made to the Court; nevertheless, he asked the Court to continue the examination of the case because he had suffered serious damage from the violation for which he had as yet not obtained any redress. He pointed to the costs he had incurred in the domestic courts and in the Court (amounting to EUR 195,271.22) and to the harm caused to him by his prolonged inability to hold property in his own name because of the risk that it would be confiscated.

31. The Government argued that Mr Tonolo's complaint had been resolved and that his application had therefore become inadmissible.

32. The Court must therefore ascertain whether the continued examination of the application is no longer justified because the new facts show that this matter has now been resolved or for any other reason, so that the application may consequently be struck out of its list of cases in accordance with Article 37 § 1 of the Convention, which provides:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
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> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

33. In order to conclude that a matter has been resolved within the meaning of Article 37 § 1 (b) and that there is therefore no longer any objective justification for the applicant's pursuit of his application, the Court must examine, firstly, whether the circumstances directly complained about by the applicant still obtain and, secondly, whether redress has been given for

the effects of a possible violation of the Convention (see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 30, 20 December 2007, or *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002).

34. The Court notes that the decision of the Turin preliminary hearing judge of 5 May 2025 substantially acknowledged that the principle of joint liability did not have a clear legal basis and was disproportionate and thus revoked the part of the order that exceeded the amount of the proceeds the applicant had received individually (see paragraph 10 above). Accordingly, the circumstances complained of by the applicant no longer obtain.

35. As regards the question of whether redress has been provided to the applicant, the Court notes that it is unclear whether the confiscation order had been enforced against the applicant for an amount exceeding EUR 370,000 (see paragraph 8 above), and that the applicant is not complaining of any failure to return exceeding assets. Therefore, it does not clearly emerge from the case file that any assets should be returned to the applicant. In any event, following the decision of 5 May 2025, the applicant could have obtained the return of any exceeding assets at the domestic level. In these circumstances, and taking into account the considerations that follow on the applicant's additional allegations, the Court considers that the partial revocation of the confiscation order constituted sufficient redress.

36. The applicant argued that he suffered additional harm because he had been unable to hold property in his own name. The Court observes that he did not clarify whether he was referring to material harm or moral harm and did not produce any relevant evidence. It further observes that the applicant had not previously complained about such harm: in the observations he filed on 15 April 2024 he did not make any claim for just satisfaction, although his attention had been drawn to Rule 60 of the Rules of Court. Even if the Court were to find in the applicant's favour, it would therefore not make an award in respect of just satisfaction in the absence of exceptional circumstances (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 57-82, 30 March 2017).

37. Given the development in events and having regard to the parties' observations, the Court finds that the matter has been resolved (Article 37 § 1 (b)).

38. Furthermore, the Court is satisfied that respect for human rights as defined in the Convention and its Protocols does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

39. Consequently, the remaining part of the application should be struck out of the Court's list of cases.

40. The applicant argued that he had incurred significant legal costs. Although he had not submitted any claim in respect of costs and expenses with his observations on the merits, he subsequently argued that the Court should take the costs and expenses he had incurred before the Court and

before the domestic courts, which he quantified in overall EUR 195,271.22 into account as part of his case.

41. The Court considers that it is appropriate to make an award in respect of the costs incurred by Mr Tonolo, pursuant to Rule 43 § 4 of the Rules of Court. Taking into account the applicant's submissions, the moment of their submission, and the Court's criteria (see *Pisano*, cited above, §§ 53-54), the Court considers it reasonable to award him the sum of EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

For these reasons, the Court, unanimously,

1. *Declares* the complaint raised under Article 7 of the Convention regarding the confiscation of amounts corresponding to the proceeds of the crime, and not only of amounts corresponding to the consideration paid for the crime, inadmissible;

2. *Decides* to strike the remaining part of the application out of its list of cases;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and notified in writing on 28 May 2026.

Ilse Freiwirth Section Registrar	Ivana Jelić President