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

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Applicant company's right to respect for property violated by denial of compensation (on grounds of failure to establish State liability) for damage to château seized in criminal proceedings

In today's **Chamber** judgment[1] in the case of SCI Le Chateau du Francport v. France (application no. 3269/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights.

The case concerned a château belonging to the applicant company (SCI Le Château du Francport), which had been seized as part of a judicial investigation into suspected offences before being returned to the applicant four years later in a state of disrepair, and the applicant's claim for compensation, which had been rejected for failure to prove that the damage sustained had been the consequence of gross negligence on the part of the State.

The Court determined that the failure to take a full inventory at the time the seals had been placed on the château, and the complete failure to act on the various notifications provided by the applicant company, which had been deprived of access to the château throughout the time it had remained seized, had precluded the applicant from establishing a causal nexus between the improper functioning of the public administration of justice – which the domestic courts had found to be made out – and the damage sustained.

The onus of proof regarding the damage to the property seized had therefore properly been on the public authorities tasked with the administration of justice – whose responsibility it had been to preserve the château throughout the time it had remained seized and under seal – and not on the applicant company, which had thus been required to adduce evidence that was not available to it – an excessive burden incompatible with respect for Article 1 of Protocol No. 1.

The domestic courts which had examined the applicant company's claim had not taken into account the responsibility of the public authorities tasked with the administration of justice or afforded it redress for the damage sustained as a consequence of the inadequate preservation of the property seized.

Principal facts

The applicant, Société Civile Immobilière (SCI) Le Château du Francport, is a legal person constituted under French law.

In May 2000 the applicant company bought the château du Francport from an Irish company.

On 5 June 2002 a judicial investigation was opened into charges of money laundering, misuse of company property and corporate malpractice in relation to insolvency proceedings (*banqueroute*), among other offences. One of the targets of the investigation was R.P., a British property developer who was the chair of SA Château du Francport and manager of the applicant company.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 27 August 2002 the investigating judge ordered the château to be seized and placed under seal. The judge ordered the seals to be removed on 26 July 2006.

On 12 March 2010 the investigating judge discontinued the money-laundering charge and sent the case for trial to the Compiègne Criminal Court, which on 17 May 2011 acquitted all the defendants, including R.P., who was found not guilty of corporate malpractice in relation to insolvency proceedings (by misappropriation of assets and false accounting) and misuse of company property. On appeal by the public prosecutor, the Amiens Court of Appeal, by a judgment of 15 March 2013, convicted R.P., as chair and general manager of SA Château du Francport, of corporate malpractice in relation to insolvency proceedings by misappropriation of the assets of that company. R.P. was handed a suspended prison sentence of three months and a fine of 5,000 euros (EUR). R.P.'s acquittal on the charge of corporate malpractice in relation to insolvency proceedings by false accounting and on the charge of misuse of company property was upheld.

On 13 September 2010 the applicant company brought a State liability claim seeking compensation for damage which it put at EUR 5,534,075.14, alleging gross negligence in the administration of justice by reason of a failure to protect the château while it had been under seal. On 7 January 2015 the Paris *tribunal de grande instance* dismissed the claim for lack of standing on the ground that the claimant was a sham company.

The Paris Court of Appeal reversed that ruling and found against the applicant company on the merits. Having determined that the applicant was the proprietor of the château and therefore had an interest entitling it to institute a claim, the Court of Appeal concluded, in particular, that the applicant had not "proved damage directly attributable to the improper functioning of the public administration of justice".

The applicant company lodged an appeal on points of law, which was dismissed by the Court of Cassation.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant company complained that its claim for compensation had been rejected for failure to prove damage directly attributable to the State, whereas the domestic authorities responsible for the upkeep and preservation of the château had taken no effective measures to protect and preserve it throughout the time it had remained seized.

The application was lodged with the European Court of Human Rights on 8 January 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1

As to the legal basis for the seizure, the Court noted that there had been shortcomings, at the relevant time, in the French law concerning preventive seizures of immovable property. Specifically, the provisions in place had been directed mainly at the physical taking of tangible moveable property and were ill-suited to the seizure of immovable property or intangible moveable property, or to seizures which did not involve dispossession. The applicant company contended, and the Government did not dispute, that the domestic courts had, in practice, made orders for seizure without dispossession even before the enactment of Law no. 2010-768.

The parties disagreed as to whether the château had been an instrument of the offence in respect of which R.P., the manager of the applicant company, had been charged and ultimately convicted. The Court observed in this connection that the charge of money-laundering against R.P. had been discontinued and that he had been convicted only of the offence of misappropriation, committed by mere negligence and not by the setting up of structures and transactions directed at a fraudulent end. It followed that the château had not represented the proceeds of a large-scale "criminal" enterprise.

That being so, the Court harboured doubt as to the lawfulness of the interference at issue and the legitimacy of the aim pursued. However, it saw no need to decide those issues in this case, as the interference had violated Article 1 of Protocol No. 1 for the reasons given below.

The Court reiterated that the means employed had to be reasonably proportionate to the aim pursued by any measures applied by the State. The applicable rules of procedure had to afford an opportunity for a person who had sustained an interference with the enjoyment of his or her possessions to put forward his or her case before the competent authorities, and to challenge effectively the measures which had violated his or her rights under Article 1 of Protocol No. 1. In keeping with its previous judgment in *Dzugayeva v. Russia*, the Court underscored that the authorities were under a duty to take the necessary steps to protect and preserve such property in proper condition and to take an inventory upon seizure and return of the property.

The Court pointed to the Court of Appeal's view that it had been for the public authorities tasked with the administration of justice to preserve the building which they had placed under seal and thereby rendered inaccessible to the applicant company. That view notwithstanding, the Court of Appeal had nonetheless criticised the applicant for not engaging a caretaker at the château from August 2002 to November 2004 and had held that the State would not bear liability in respect of that period. However, the Court observed that Article 706-143 of the Code of Criminal Procedure, under which the owner of the seized property was to assume the costs of maintaining and preserving it until it was released, had not been enacted until July 2010, several years after the château had been returned to the applicant.

As regards whatever damage had been incurred between November 2004 and April 2006, the Paris Court of Appeal had accepted that the applicant had reported it to the investigating judge; the court had found that there had been a negligent failure to act by the public authorities tasked with the administration of justice during that period. Yet it had rejected the applicant company's claim for compensation, on the ground that the letters of notice it had sent had contained no specific details and had therefore not provided conclusive evidence of damage directly attributable to the improper functioning of the public administration of justice.

The Court determined that the failure to take a full inventory at the time the seals had been placed on the château, and the complete failure to act on the various notifications provided by the applicant company, which had been deprived of access to the château throughout the time it had remained seized, had precluded the applicant from establishing a causal nexus between the

improper functioning of the public administration of justice – which had been found to be made out – and the damage sustained.

In the Court's view, the onus of proof regarding the damage to the property seized had therefore properly been on the public authorities tasked with the administration of justice – whose responsibility it had been to preserve the property throughout the time it had remained seized and under seal – and not on the applicant company, which had thus been required to adduce evidence that was not available to it – an excessive burden incompatible with respect for Article 1 of Protocol No. 1.

The domestic courts which had examined the applicant company's claim had not taken into account the responsibility of the public authorities tasked with the administration of justice or afforded it redress for the damage sustained as a consequence of the inadequate preservation of the property seized.

The Court therefore concluded that there had been a violation of Article 1 of Protocol No. 1.

Article 6 § 1

The Court held that the procedural violation alleged by the applicant company had been sufficiently addressed by the reasons set out for its conclusion that there had been a violation of Article 1 of Protocol No. 1. Hence, in its view, no separate question arose under Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

As the question of the application of Article 41 was not ready for decision, the Court reserved it and held that France was to pay the applicant company EUR 19,000 in respect of costs and expenses.

The judgment is available only in French.

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