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

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ECHR 243 (2024)
17.10.2024

Inability to effectively challenge the seizure of its bank assets infringed company's right to enjoyment of its possessions

In today's **Chamber** judgment[1] in the case of Amerisoc Center S.R.L. v. Luxembourg (application no. 50527/20) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerns the freezing, for six years, of a Costa Rican company's assets in a Luxembourg bank account pursuant to a request for international mutual legal assistance issued by the Peruvian authorities as part of a criminal investigation into money laundering.

The applicant company sought, unsuccessfully, to have its assets returned. The Court held that the seizure complained of constituted interference with the applicant company's right to the peaceful enjoyment of its possessions which, in the absence of a remedy by which to challenge this measure in an effective manner, was disproportionate to the legitimate aim pursued.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant is a Costa Rican company having its registered office in San Jose (Costa Rica).

On 5 December 2018 a Luxembourg investigating judge ordered a search for and the seizure of the assets in the applicant company's bank account pursuant to a request for international mutual legal assistance issued by the Lima prosecutor's office on 22 November 2018. This seizure was aimed at securing the subsequent confiscation of the funds as part of the criminal proceedings opened by the Peruvian authorities.

On 6 December 2018 bank funds in the amount of 2,605,589 United States dollars – which, according to the applicant company, constituted virtually all of its assets – were thus seized.

The applicant company tried, unsuccessfully, to challenge this seizure before the Peruvian and Luxembourg authorities. On 11 March 2024, in response to a question from the Court, the applicant company indicated that the funds were still frozen.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant company complained of the seizure of the assets it held in a Luxembourg bank account, submitting that the measure in question had not been accompanied by procedural safeguards, had not been provided for by law, had not pursued a legitimate aim and had been disproportionate.

The application was lodged with the European Court of Human Rights on 13 November 2020.

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.

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

Mattias **Guyomar** (France), *President*,
Lado **Chanturia** (Georgia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Stéphane **Pisani** (Luxembourg),
Úna **Ní Raifeartaigh** (Ireland),

and also Martina **Keller**, *Deputy Section Registrar.*

Decision of the Court

The Court found that the decision of 5 December 2018 ordering the seizure of the assets in the bank account constituted an interference with the applicant company's right to peaceful enjoyment of its possessions. This interference was provided for by the law on international mutual legal assistance and pursued a legitimate aim (cooperation between States with a view to combatting organised crime and preventing the unlawful use, in a manner dangerous to society, of possessions of potentially unlawful origin).

The Court noted that section 9 of the Luxembourg law on international mutual legal assistance provided that, where a seizure had been carried out by the Luxembourg authorities following a request from a foreign authority, the lawfulness of the proceedings was subject to systematic review. In such proceedings, the "third party concerned" (in the present case the bank's client, namely the applicant company) could submit "observations" within ten days from the date on which the bank was notified of the seizure order.

Where the bank informed the client about the seizure order, that client could submit observations and put forward its arguments, including those aimed at recovering the frozen funds.

Matters were different, however, if the bank chose not to disclose the existence of such an order to the client concerned. Indeed, the law on international mutual legal assistance did not provide for a compulsory mechanism to ensure that the third party concerned be informed of the request for international mutual legal assistance involving the seizure of their bank funds or assets. In such cases, the client was therefore unaware that the ten-day period for submitting observations under section 9 of the law on international mutual legal assistance had started to run.

This was what had happened in the present case, where the applicant company had only learned of the seizure order of 5 December 2018 after the expiry of the deadline for submitting observations provided for in section 9 of the law on international mutual legal assistance. Thus, the decision of 1 February 2019 of the *chambre du conseil* of the Luxembourg District Court – which had found that the procedure had complied with the formal requirements – had been delivered without the applicant company having had the opportunity to submit observations under section 9 of the law on international mutual legal assistance.

The applicant company had thus lodged an application for recovery of assets under section 11 of the law on international mutual legal assistance, which was dismissed as ill-founded.

The Court therefore found that the Luxembourg authorities had never assessed the proportionality of the measure which, by its nature and scope, appeared, on the face of it, significant and harsh and which, moreover, had been ongoing for six years.

It was the domestic courts' duty to satisfy themselves that the freezing of the applicant company's assets would not cause it more damage than that which inevitably flowed from such measures. The Court had previously pointed out that although any seizure entailed damage, the actual damage

sustained by those affected by such a measure should not be more extensive than that which was inevitable, if it were to be compatible with Article 1 of Protocol No. 1. The Court was certainly aware of the difficulties inherent in international cooperation. However, even where a measure had been ordered in the context of a request for international mutual legal assistance issued by another State, as in the present case, the national authorities had an obligation to apply those principles in substance, and to do so with regard to the particular characteristics and mechanisms of international mutual legal assistance.

In the present case the Court found that the scope of the Luxembourg courts' review had been too narrow to satisfy the requirement of seeking a "fair balance" inherent in Article 1 of Protocol No. 1. This conclusion was strengthened by the fact that the issue at hand had not been examined by Peruvian authorities either.

Thus, the national courts had not afforded the applicant a reasonable opportunity to put its case through adversarial proceedings. This situation had resulted, first, from the law on international mutual legal assistance, which did not provide that information about the freezing order be communicated to the bank client concerned and, second, from the national courts' decision not to examine the applicant's arguments under section 11 of that law.

The Court reiterated that the States were better placed to choose the appropriate means by which to ensure that their legal systems were in compliance with the requirements of the Convention. Thus, it was not required to rule on the question as to which of the two domestic remedies – provided for under sections 9 and 11 of the law on international mutual legal assistance, respectively – was the more apt to ensure compliance with Convention requirements.

The Court found that the seizure of the applicant company's assets constituted, in the present case, an interference with its right to the peaceful enjoyment of its possessions which, in the absence of a remedy by which to challenge that measure in an effective manner, was disproportionate to the legitimate aim pursued. There had accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company. It further held that Luxembourg was to pay the applicant company 11,500 euros in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.