



Combination of confiscation and compensation measures imposed on applicants for committing offence exceeded what was necessary to achieve reparative aim of confiscation

In today's Chamber judgment¹ in the case of [Florio and Bassignana v. Italy](#) (applications nos. 34324/15 and 65192/16) 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 concerned the combined effect of a measure imposed by the criminal courts to confiscate the proceeds of an offence, and an order by the Court of Audit to pay the authorities compensation for the damage caused by that same offence.

The Court observed that the Convention did not prohibit the combination of a reparative measure and a traditional punitive measure. In the present case, however, the confiscation measure had been intended not only to punish the applicants but also to restore the financial situation existing prior to their offences by depriving them of the proceeds. This had ultimately left the applicants in more unfavourable circumstances than before they had committed the offences.

The Court then found that the domestic authorities should have examined the combined effect of the confiscation and compensation measures and verified whether the reparative and punitive aims of the confiscation could have been achieved by less onerous means than combining the two measures in full.

Principal facts

The applicants, Mario Emanuele Florio, Monica Florio and Salvatore Florio (application no. 34324/15) and Luigi Bassignana (application no. 65192/16), are Italian nationals who were born in 1941, 1971, 1973 and 1959 respectively and live in Turin and Aosta.

Application no. 34324/15

Mario Emanuele Florio, Monica Florio and Salvatore Florio were charged with criminal association, bribery and fraud. In particular, it was alleged that they had been involved in a system run by a prosecutor between 1997 and 2005, whereby an accounting group provided unjustified consultancy services to the public prosecutor's office.

On 18 January 2010 the Milan preliminary investigations judge sentenced Mario Emanuele Florio to two years and six months' imprisonment, with a remission of sentence. Monica Florio and Salvatore Florio each received suspended prison sentences of one year and six months.

The judge further decided to confiscate the applicants' assets in the amount of the proceeds of the bribery and fraud offences and ordered the applicants to compensate the authorities for the damage caused.

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.

The final value of the damage was to be determined in subsequent civil proceedings.

The applicants appealed. On 17 January 2011 the Milan Court of Appeal noted that the charges against the applicants were in part time-barred. It reduced their prison sentences accordingly but upheld the other aspects of the first-instance judgment.

The applicants appealed to the Court of Cassation, which declared their action inadmissible.

At the request of the public prosecutor's office, the President of the Piedmont Regional Division of the Court of Audit had ordered the applicants' assets to be frozen on 9 March 2010. On 14 June 2012 that Division then ruled that the applicants' liability had been established and ordered them to pay damages to the Ministry of Justice. It ultimately held that the applicants – along with the prosecutor involved and a secretary from his office – were to pay the equivalent of the amounts they had received from the public prosecutor's office, in respect of pecuniary damage.

The applicants appealed. On 19 June 2014 the First Central Judicial Division of Appeal of the Court of Audit upheld the first-instance judgment in its entirety.

Emphasising the differences between the criminal and the compensatory proceedings, the Division of Appeal found that the confiscation had been intended as punishment and, for that reason, the confiscated amounts could not be deducted from the damages.

Application no. 65192/16

Luigi Bassignana, a former Aosta Valley public official, was involved in selecting companies for emergency public reconstruction works following floods in 2000. His conduct during the selection process led to disciplinary proceedings and a subsequent suspension from duties. He resigned on 27 October 2008.

As part of the criminal proceedings brought by the Aosta public prosecutor's office, the applicant was accused of taking bribes in exchange for awarding public-works contracts to certain private companies. He reached an out-of-court settlement with the Aosta Valley council in 2006, covering compensation for non-pecuniary and reputational damage and repayment of the authorities' costs and expenses.

On 4 April 2006 the Aosta preliminary investigations judge sentenced the applicant to a suspended prison term of 1 year, 11 months and 10 days and ordered the confiscation of the proceeds of the bribe-taking. The judgment became final when the Court of Cassation rejected the applicant's appeal.

On 14 June 2012 Switzerland's Federal Criminal Court found the applicant guilty of money-laundering for reinvesting the proceeds of the bribe-taking. It sentenced him to a suspended ten-day prison term to be aggregated with the Aosta preliminary investigations judge's sentence. It further ordered the confiscation of the sums deposited by the applicant in a Julius Baer bank account – the same account concerned by the Aosta confiscation order – and lifted the attachment over the remaining amounts. Finding that this sum was the proceeds of some of the bribe-taking committed in Italy, the Swiss court specified that the confiscation was not to be added to the confiscation of 400,000 euros (EUR) ordered by the Italian authorities, that all aggregation was to be avoided and that the proceeds of the bribe-taking should be returned to Italy.

Meanwhile, in Italy, on 18 June 2008 the public prosecutor's office had brought proceedings against the applicant in the Aosta Valley Regional Division of the Court of Audit, seeking compensation on behalf of the region for the damage caused by the applicant's criminal acts, as described above. It had acknowledged that compensation had already been paid for the non-pecuniary and reputational damage and had thus limited its claim to the pecuniary damage.

In a judgment of 12 December 2008, the Aosta Valley Regional Division ordered the applicant to pay it compensation and to cover the court fees. It found that the authorities had suffered damage

equivalent to the bribes taken by the applicant, since experience showed that companies typically passed the expense on to the authorities by increasing the price of their services.

Both the applicant and the public prosecutor's office appealed.

In a judgment of 2 July 2015, the Second Central Judicial Division of Appeal of the Court of Audit allowed the appeal of the public prosecutor's office and dismissed that of the applicant, amending the sentence to his detriment. It also rejected the applicant's request to have the confiscated amounts deducted from the compensation to be paid, finding that the two measures were not of the same nature. The purpose of the confiscation was to punish, whereas the compensation was intended to indemnify the authorities.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that the interference with their right of property had been disproportionate, particularly in view of the combined effects of the criminal confiscation measure and the Court of Audit's order to pay compensation.

The applications were lodged with the European Court of Human Rights on 13 July 2015 and 4 November 2016.

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

Ivana Jelić (Montenegro), *President*,

Erik Wennerström (Sweden),

Raffaele Sabato (Italy),

Frédéric Krenc (Belgium),

Davor Derenčinović (Croatia),

Alain Chablaïs (Liechtenstein),

Artūrs Kučs (Latvia),

and also **Ilse Freiwirth**, *Section Registrar*.

Decision of the Court

Having regard to the similar subject matter of the applications, the Court found it appropriate to examine them jointly in a single judgment.

Article 1 of Protocol No. 1

The Court observed that the Court of Audit's sentences had had a legal basis, namely general standards requiring reparation for damage caused by illegal acts. The sentences were thus provided for by law – an obligation under Article 1 of Protocol No. 1.

These compensatory measures had further served the general interest, in that they had been intended as reparation for damage caused to the authorities by illegal acts. They had pursued a separate aim from that of the confiscation which, according to the case-law applicable at the time of the events, sought to restore the financial situation existing prior to the commission of the offence. The fact that the Court of Cassation's case-law on the matter had since taken a new direction did not appear relevant for the examination of the case.

Regarding the proportionality of the measure, the Court of Audit had rejected the applicants' requests to have the amounts previously confiscated by the criminal courts deducted from the damages they had been sentenced to pay. It followed that the combined effect of the confiscation and the compensation measures had enabled the State to collect overall an amount far greater than the

damage sustained by the relevant authorities. In such circumstances, the Court considered that the measures in dispute had significantly exceeded what had been necessary to achieve the Court of Audit's aim, namely reparation for the damage.

The Convention did not prohibit the combination of a reparative measure and a punitive measure. In the present case, however, the confiscation measure had been intended not only to punish the applicants but also to restore the financial situation existing prior to their offences by depriving them of the proceeds. This had ultimately left the applicants in more unfavourable circumstances than before they had committed the offences. The combination of the two measures had therefore exceeded what had been necessary to achieve the reparative aim of the confiscation. The Court of Audit had referred solely to the punitive aim of the confiscation, omitting entirely to consider its simultaneous reparative aim.

Furthermore, justifying the combination of the two measures by the exclusively punitive aim of the first failed to take into account the fact that the criminal courts – whose role was above all to punish and which were responsible for ordering confiscation measures – had ruled out such a combination themselves. The domestic authorities should therefore have examined the combined effect of the two measures, taking into account the dual nature of the confiscation.

In any event, those considerations were in line with the Milan preliminary investigations judge's ruling – according to which any combination should be avoided – and with some of the relevant domestic case-law. The criminal courts, in particular, had long discouraged any such combination in their decisions, whereas the Court of Audit generally adopted a more restrictive approach. The Court considered that this difference in approach produced a paradoxical effect, since the total amount an individual might be ordered to pay upon conviction depended on the order in which the two proceedings were conducted. If, as in the present case, the Court of Audit was the last to rule on the matter, the amount confiscated could not be deducted from the compensation and the individual would effectively pay twice.

In light of the above, the Court found that the refusal to deduct the confiscated amounts from the compensation to be paid had amounted to an interference resulting in an excessive burden. There had been no assessment of whether combining the two measures in full was proportionate to the aims pursued, nor had any possibility of less restrictive measures been considered.

There had therefore been a violation of Article 1 of Protocol No. 1 on account of the absence of any examination of the proportionality of the combined effect of the confiscation and the compensation.

Just satisfaction (Article 41)

The Court held that Italy was to pay Ms Monica Florio and Mr Salvatore Florio EUR 191,641 each in respect of pecuniary damage, and Mr Bassignana EUR 5,000 in respect of non-pecuniary damage. It was also to pay Ms Monica Florio and Mr Salvatore Florio EUR 6,000 jointly and Mr Bassignana EUR 5,150 for 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.