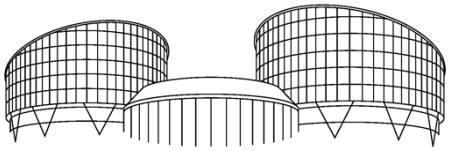

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ISAIA AND OTHERS v. ITALY

(Applications nos. 36551/22, 36926/22 and 37907/22)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Disproportionate non-conviction-based confiscation ("preventive confiscation") of the applicants' assets considered to be proceeds of unlawful activities committed or presumably committed by the first applicant • Significant time elapsed since the commission of the predicate offences on which confiscation was based • Shortcomings in domestic courts' decisions serious and manifestly incompatible with limitations and safeguards established under domestic law and case-law • Domestic authorities' failure to establish any link between the first applicant's criminal activities and the confiscated assets • Fair balance not struck

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 September 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Isaia and Others v. Italy,

The European Court of Human Rights (First Section), sitting 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 applications (nos. 36551/22, 36926/22 and 37907/22) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Italian nationals ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice of the applications to the Italian Government ("the Government");

the comments submitted by the association Unione delle Camere Penali Italiane, which had been invited by the President of the Section to intervene;

Having deliberated in private on 10 June and 8 July 2025,

Delivers the following judgment, which was adopted on that last-mentioned date:

INTRODUCTION

1. The case concerns the "preventive confiscation" (*confisca di prevenzione*) of the applicants' assets, ordered by the competent domestic courts under Article 24 of Legislative Decree no. 159 of 6 September 2011 (*Codice delle leggi antimafia e delle misure di prevenzione* (Code of Anti-Mafia Laws and Preventive Measures) – "Decree no. 159/2011"), as a result of the first applicant's status as an individual who had posed a danger to society during a certain period of time and of the fact that the confiscated assets were considered to be the proceeds of unlawful activities committed or presumably committed during that period. The applicants complained that the domestic courts' decisions had not been in compliance with the conditions established under domestic law and case-law for the imposition of the contested measure.

THE FACTS

2. The applicants, who were born in 1964, 1968 and 1991 respectively and live in Bagheria, were represented by Mr A. Turrisi, a lawyer practising in Palermo.

3. The Government were represented by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

4. The facts of the case may be summarised as follows.

5. On 13 December 2018 the head of the Palermo local police authority (*questore*) lodged an application with the Palermo District Court, Preventive Measures Division, seeking to obtain a declaration that Mr Giuseppe Isaia, the first applicant, was an individual who posed an "ordinary" danger to society (*pericolosità generica*) within the meaning of Article 1 § 1 (a) and (b) of Decree no. 159/2011, on account, in particular, of his being an individual who, on the basis of factual evidence, could be regarded as a "habitual offender" and an individual "habitually living, even in part, on the proceeds of crime" (see paragraph 20 below). The *questore* further asked the competent court to order the seizure and subsequent confiscation under Article 24 of Decree no. 159/2011 (see paragraph 20 below) of several assets directly and indirectly at the disposal of the person in question (*proposto*, that is, the person directly concerned by a request to apply a preventive measure), in particular, assets owned by the first applicant, his wife (the second applicant) and his son (the third applicant).

6. On 20 December 2018 the Palermo District Court, Preventive Measures Division, ordered the seizure of the assets indicated in the application lodged by the *questore*,: (a) an apartment within a public housing unit (*abitazione di tipo popolare*) officially purchased by the second applicant on 1 June 2010; (b) a plot of land and a residential building officially purchased by the third applicant on 21 November 2016; (c) a warehouse officially purchased by the second applicant on 10 June 2016; (d) a car officially purchased by the third applicant on 5 March 2018; (e) the available balances of the bank accounts in the three applicants' names opened by the first applicant in 1994 and 2014, by the second applicant in 1999 and 2016, and by the third applicant in 2016.

7. On 4 August 2020 the Palermo District Court granted the *questore*'s request and ordered the confiscation of the seized assets. The court considered that the first applicant had been an individual who posed a danger to society within the meaning of Article 1 § 1 (b) of Decree no. 159/2011 since he had been "habitually living, even in part, on the proceeds of crime" in the period between 1980 and 2008. It observed the following:

> "This assessment is based on the indisputable and uncontested fact, reported by the *proposto* himself, of the numerous final convictions handed down by the Assize Court against [the first applicant] for numerous property offences and in particular several robberies or attempted robberies in 1980, 1993, 1994, 1995, and again in 1998, aggravated theft in 1980 and 2008, extortion committed in 1987, conspiracy to commit robbery between 1990 and 1995, and handling stolen goods in 1995, and therefore

committed without substantial interruption (taking into account the periods in which the applicant was detained [from 1999 and 2006]) over a period of several decades.

Therefore, considering the repeated participation in the above-mentioned criminal conduct, which relates to numerous and serious property offences, also committed in association with others, the conditions required to classify the *proposto* in the above-mentioned category of dangerousness must be deemed to exist in the present case, as do, therefore, the subjective conditions that justify the requested confiscation."

8. It emerges from the applicant's criminal record that in most of the cases the domestic authorities confiscated unspecified goods at the moment of conviction. As to the extortion committed in 1987, the Palermo Court of Appeal applied mitigating circumstances, defined under Article 62 § 6 of the Criminal Code as making "full reparation of the damage prior to trial, either through compensation or, where possible, through restitution; [and] eliminating or mitigating the harmful or dangerous consequences of the offence ...". Also, it appears from the criminal record that the thefts committed in 1988 and 2008 and the robberies committed in 1980, 1994, and 1995 were attempted offences[1].

9. As to the link between the assets confiscated and the unlawful activities, the Palermo District Court examined only the disproportionate relationship between the assets owned and the amount of income earned, establishing as follows:

"The seizure order was based on financial investigations carried out [in respect of the first applicant], which revealed that his and his family's lawful income was completely disproportionate to the value of the assets purchased.

[T]he expert reconstructed the income received by the *proposto* and other members of the above-mentioned household since 1990 ... In addition, the expert took into account the expenses incurred for purchases and investments made, as well as the household expenses of the above-mentioned family unit, quantifying them on the basis of the tables drawn up by the National Statistics Institute (ISTAT), taking into account for each year its actual numerical composition, which changed over the years under examination, and excluding the cost of renting a property for the years in which the household in question appears to have lived in a property owned by them ...

However, that statement contains significant errors made by the expert in recording certain income and expenditure items, which must be taken into account ...

As regards the accuracy of the statistical data processed by ISTAT, it suffices to note, in general terms, that the need to use statistical data to determine household expenses stems from the practical impossibility of reconstructing such data analytically owing to the lack of reliable information in this regard. Obviously, although statistical data cannot provide an exact determination of the expenses actually incurred by a given household, they do provide a benchmark that allows for a fairly accurate assessment of the correlation between verified income and the expenses necessarily incurred for the maintenance of the household.

In other words, the statistical data appear representative only if considered in their entirety and intrinsic generality, without being related to the specific lifestyle habits of

[1] For an exhaustive list of the offences and their consequences, see Appendix II.

> the household in question, since this would require abandoning the statistical method and resorting to an analytical reconstruction of household expenses, which in the present case is impossible owing to the lack of reliable reference data, and the fact that the lifestyle habits of the family unit under investigation are neither known nor proved, and are likely to have evolved over the long period under consideration (from 1990 to 2017)".

10. The court also observed, on the basis of the expert assessment, that the lawful income of the applicants was insufficient to justify the assets they owned, for example, the purchase, in 2010, 2016 and 2018, of the seized properties (see paragraph 6 above); they could also not account for the provenance of the sums of money deposited in their bank accounts.

11. It further noted that the first applicant had accumulated wealth by selling properties that had been acquired through unlawful means and during the period in which he had posed a danger to society. In particular, the Palermo District Court observed that the first applicant had purchased a property in 1994, when he had had no lawful income and during a period in which he had committed several criminal offences. Although the applicants had argued that that purchase had been made with a sum of money gifted by the second applicant's grandfather, the court considered that it was not credible that such a sum of money would have been used to purchase a property and not satisfy the basic needs of the family, given the absence of any other lawful income. Therefore, according to the court, that property had been purchased with the unlawful proceeds of the criminal offences committed by the first applicant in that period. The court, however without providing any details, further observed that the property had subsequently been sold, and that the proceeds of the sale had been used several times to buy other properties. Therefore, in the court's view, all the subsequent properties acquired by the applicants' family had been purchased by reinvesting the unlawful proceeds of the crimes committed by the first applicant, and had been used in 1994 to buy the property in question.

12. On 9 September 2020 the applicants appealed against that judgment before the Palermo Court of Appeal. They argued that the first applicant could not have been considered an individual posing a danger to society in the period between 1998 and 2008, because the crimes he had committed had taken place between 1980 and 1998, and in 2008 he had merely committed the offence of attempted theft. The applicants further disagreed with the assessment of the first-instance court that they had had insufficient lawful income capable of justifying the purchase of the confiscated assets.

13. On 7 May 2021 the Palermo Court of Appeal dismissed the applicants' appeal. The court upheld the finding that the first applicant had to be considered an individual posing a danger to society in the period between 1980 and 2008. Furthermore, the Court of Appeal established that the unlawful origin of the confiscated assets, could be presumed from the disproportionate relationship between assets owned and income alone:

> "Having established [the first applicant's] dangerousness, the Court observes that, in matters of preventive confiscation, a disproportionate relationship [between assets owned and income] constitutes evidence of the unlawful origin of the assets; the legislature has in fact indicated, by way of example, as a possible indication – perhaps even the only one – of the unlawful origin of assets, the disproportionate relationship between the use of capital and the amount of known income, an element from which – once proven by the public prosecutor – it is reasonable to infer unknown income, which, under normal circumstances, is the result of illegal income-generating activities, as corroborated by the finding that the *proposto* carried out such activities ..."

14. According to the Court of Appeal, once such a presumption has been established,

> "... only positive proof of the lawful origin of the assets, in economic terms and not only in legal and formal terms, constitutes valid justification for an objectively disproportionate income-to-asset ratio ..., the burden of proof regarding the lawful origin of the assets cannot be satisfied by merely indicating the existence of sufficient funds for their purchase, but instead the factual elements from which the judge can infer that the asset was not purchased with the proceeds of illegal activities or through expenditure that is disproportionate to the individual's income must be indicated ..."

15. With regard to the assets formally owned by family members or cohabitants, the Court of Appeal held that

> "... the judicial assessment of the availability, on the part of the *proposto*, of assets formally registered in the name of third parties operates differently for the spouse, children and cohabitants of the defendant than for all other natural and legal persons, in that, with regard to the former [close relatives], such availability is legitimately presumed without the need for specific investigations, where and provided that the third-party owner has no economic resources of their own, while, with regard to the latter [unrelated third parties], specific evidence must be obtained regarding the fictitious nature of the registration ..."

16. The Court of Appeal observed that the confiscated assets had been purchased either during the period in issue, or using economic resources that derived from the sale of assets acquired in that period. It also observed that a disproportionate relationship between the assets owned and the family's income had been established, and that the assets belonged to family members who did not have sufficient economic resources to justify their purchase. Therefore the Court of Appeal, like the first instance court, concluded that the assets had been purchased through unlawful means (see paragraph 11 above).

17. On 19 May 2021 the applicants lodged an appeal on points of law with the Court of Cassation. They complained, in particular, of the absence of a temporal correlation between the period in which the first applicant had posed a danger to society and the point in time at which the confiscated assets had been purchased (see paragraphs 25-30 below). They further argued that the appeal judgment had been insufficiently reasoned, as the domestic court had failed to demonstrate on what grounds it could be argued that assets acquired after the period in which the first applicant had committed criminal offences could be considered the proceeds of unlawful activities.

18. On 14 December 2021 the Advocate General before the Court of Cassation requested it to uphold the applicants' appeal on points of law. Relying on the relevant case-law of the Court of Cassation, he observed that, under domestic law, assets acquired outside the period in which the addressee of the measure had committed criminal offences could only be confiscated where there were multiple factual elements demonstrating that those assets had been purchased using economic resources accumulated during that period. According to the Advocate General, however, the domestic courts had merely relied on the absence of proportionality between the value of the confiscated assets and the applicants' lawful income, in breach of the limitations established under domestic law. Accordingly, the Advocate General concluded that the measure had been ordered in breach of the principle of temporal correlation between the period in which the person in question had been committing criminal offences and the purchase of the confiscated assets.

19. In judgment no. 13458 of 7 April 2022, the Court of Cassation dismissed the applicants' appeal on points of law. It admitted that, in principle, only assets that had been purchased during the period in which the person in question had been committing criminal offences could be subjected to the measure at issue. However, it also observed that the relevant domestic case-law had acknowledged the possibility of confiscating assets acquired after that period, provided that there were sufficient factual elements capable of demonstrating that they had been acquired using economic resources accumulated during the period in question. In the specific circumstances of the case, the Court of Cassation considered that the lower courts had demonstrated that the confiscated assets had been purchased using economic resources accumulated during the period in which the first applicant had posed a danger to society on account of his committing several criminal offences (see paragraph 11 above). In particular, it held as follows:

> " ... the regional court, having limited the temporal scope of the presumption of danger to society and assessed the overall availability of the assets acquired by the family (*proposto* and close relatives), in ordering the confiscation also of the assets which were acquired outside of the specific time frame (albeit not by much), has not only highlighted the actual discrepancy between the value of the assets and the overall income of the entire family, but also the (illegal) origin of the funds which were used to purchase those assets subject to the confiscation order, acquired through the sale of other assets, which were themselves the result of the laundering of illegal proceeds from criminal activity. At the same time, it acknowledged the specific arguments put forward by the defence in the light of a reasonable reconstruction of the family's assets, showing a negative balance which progressively increased, which, in itself, sufficiently explained the illegal origin of the funds.
>
> In this context, therefore, the information provided by the [applicants], who, in an attempt to justify the origin of the assets subject to confiscation, have provided justification for each individual transaction (*dati economici della singola operazione*), is also irrelevant: the sector-specific evidence relating to the purchase of a single asset is completely irrelevant, given that the comparison between legitimately available

resources and individual purchases cannot be carried out in an isolated manner, detached from the overall context of the financial transactions and movement of assets carried out within the same, limited period of time, but must be carried out in the light of an overall consideration of the movement of assets during the period at issue and of the overall destination of all the economic resources available."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

20. The relevant domestic provisions are enshrined in Legislative Decree no. 159 of 6 September 2011 (*Codice delle leggi antimafia e delle misure di prevenzione* – Code of Anti-Mafia Laws and Preventive Measures). In particular, the "preventive confiscation" measure, provided for by Article 24, can be imposed on those individuals identified through the interplay between Articles 1, 4 and 16 of the Decree. Those provisions read as follows:

Article 1: Addressees

"1. The measures provided for by the present provision may be applied to:

(a) individuals who, on the basis of factual evidence, may be regarded as habitual offenders;

(b) individuals who, on account of their behaviour and lifestyle and on the basis of factual evidence, may be regarded as habitually living, even in part, on the proceeds of crime;

..."

Article 4: Addressees

"1. The measures provided for by the present provision may be applied to:

...

(c) the individuals indicated in Article 1;

...

"

Article 16: Addressees

"1. The provisions of the present Chapter [concerning preventive seizure and confiscation measures] may be applied to:

(a) the individuals indicated in Article 4;

..."

Article 24: Confiscation

"1. The court shall order the confiscation of the seized assets of which the person against whom the proceedings have been instituted (*proposto*) cannot justify the legitimate origin and of which, also through the intervention of a third party (*anche per*

interposta persona fisica o giuridica), he or she is the owner or has at his or her disposal, in any capacity, in a value disproportionate to his or her income, as declared for income tax purposes, or to his or her economic activity, as well as of the assets which are the proceeds of unlawful activities or constitute the reuse thereof. In any event, the person in question cannot justify the legitimate origin of the assets by alleging that the money used to purchase them is the proceeds or reuse of tax evasion. ...”

21. Individuals falling within one of the categories listed in Article 1 of Legislative Decree no. 159 of 2011 are considered to pose an “ordinary” danger to society (*pericolosità generica* – see *De Tommaso v. Italy* [GC], no. 43395/09, § 43, 23 February 2017, referring to the possibility, under Law no. 1423 of 1956, of imposing preventive measures on individuals in certain cases of “ordinary dangerousness”; the relevant parts of that Law were incorporated, unamended, into Article 1 of Legislative Decree no. 159 of 2011).

22. Article 26 regulates the issue of ascertaining “fictitious ownership” (*intestazione fittizia*), allowing for the imposition of preventive confiscation measures on third parties, who are not considered to pose a danger to society, who officially own assets that are considered to be “at the disposal” (*nella disponibilità*) of the person in question, that is, the person directly concerned by a request to apply a preventive measure. It reads as follows:

Article 26: Fictitious ownership

“1. Where the competent court finds that certain assets have been fictitiously registered in the name of or transferred to third parties, it shall declare in the decree ordering the confiscation that the relevant acts of disposition are null and void.

2. For the purposes of paragraph 1, the following situations shall be presumed fictitious until proven otherwise:

(a) transfers and registrations, even for payment, effected in the two years preceding the proposal to apply the preventive measure, to ascendants, descendants, spouses or long-term partners [of the person in respect of whom the measure has been requested], as well as to relatives up to the sixth degree and relatives-in-law up to the fourth degree;

(b) transfers and registrations, whether free of charge or for a sum, made in the two years preceding the proposal to apply the preventive measure.”

II. DOMESTIC CASE-LAW

A. The nature and severity of the crimes justifying a person being declared a danger to society

23. In judgment no. 31209 of 17 July 2015, the Court of Cassation clarified the elements that had to be assessed in order to conclude that an individual could be qualified as someone who “on account of their behaviour and lifestyle and on the basis of factual evidence, may be regarded as habitually living, even in part, on the proceeds of crime”, within the meaning

of Article 1 § 1 (b) of Decree no. 159/2011. The Court of Cassation held as follows:

> "Such qualification, which has to be made on the basis of appropriate factual elements (including reference to conduct and standard of living) requires the following conditions to be met:
>
> (a) the commission of criminal activities (this is an unequivocal condition) in a non-occasional way and for a significant period of time during the life of the person against whom the proceedings have been instituted;
>
> (b) the commission of criminal activities which, in addition to having the characteristic identified above, produce unlawful income (the profit);
>
> (c) the at least partial allocation of such profit towards providing for the needs of the person against whom the proceedings have been instituted and his or her family.
>
> The *contra legem* activity (whether ascertained in correlated criminal proceedings or autonomously ascertained in the proceedings concerning a preventive measure) must therefore be characterised as a – recurrent – criminal offence which produces income."

24. In judgment no. 24 of 27 February 2019, the Constitutional Court noted that, in the light of the relevant case-law of the Court of Cassation, the qualification of an individual as "habitually living, even in part, on the proceeds of crime" required a triple assessment. In particular, the Constitutional Court held as follows:

> "The 'categories of offence' that can serve as prerequisites for the measure are in effect likely to be established specifically within the present case under examination by the court in the light of the triple prerequisite – which must be proven on the basis of precise 'factual findings' that the court must substantiate precisely in its reasoning (Article 13 § 2 of the Constitution) – that the case must involve: (a) offences committed habitually (and thus over a significant period of time) by the individual, that (b) effectively gave rise to a profit for himself/herself or another person, which (c) in turn represent – or represented at a particular moment in time – the individual's only income, or at least a significant part of that income."

B. The temporal correlation between the period when the individual in question posed a danger to society and the purchase of the assets to be confiscated

25. In judgment no. 4880 of 2 February 2015, the Combined Divisions of the Court of Cassation set out clearly the principle, which it had already been possible to infer from the pre-existing case-law, of the necessity of a temporal correlation between the period during which the addressee of the preventive confiscation measure was found to pose a danger to society and the purchase of the assets to be confiscated, which were considered to be "dangerous" since they had been acquired by an individual that, at the point of acquisition, had posed a danger to society on account of the presumed commission of criminal offences. In particular, the Court of Cassation held as follows:

> "Thus, in the case of unlawfully acquired assets, the character of dangerousness is linked not so much to the way in which they were acquired or to their particular

structural characteristics, but rather to the subjective character of the individual who acquired them. This means that the purchaser's dangerousness itself reverberates on the purchased assets, but once again not in a static way, that is to say, by the very fact of their subjective character, but rather in a dynamic projection, based on the principle of the objective dangerousness of keeping illegally acquired assets in the possession of those who are considered to belong – or have belonged – to one of the subjective categories envisaged by the legislature.

The aforesaid reverberation ends up, then, by 'objectifying itself', translating itself into an objective attribute or special 'character' of the asset, capable of affecting its legal status. This is evident in the event of the death of the owner, already categorised as dangerous, or of formal transfer or fictitious registration (*intestazione fittizia*), given that the asset can, even in the possession of the successor in title, whether universal or particular, be subject to judicial attachment [that is, be confiscated]. In fact, it is evident that, in such circumstances, the confiscation to the detriment of heirs or apparent owners can no longer be justified by the relationship of pertinence between the *res* and the person in question (*proposto*), but only by reason of the objective 'character' of that asset, since it was, at the material time, acquired by an individual who posed a danger to society and, as such, was presumably the proceeds of a method of illegal acquisition. And, precisely because it has become 'objectively dangerous' (in the above-mentioned sense), by the same token it must be removed from the system of legal circulation.

...

It is necessary, at this point, to deal with the correlated question of the necessity or otherwise of a chronological delimitation, that is whether there must be a temporal correlation between the acquisition of the assets and the manifestation of the danger to society [posed by the individual concerned].

In this regard, with reference to ordinary dangerousness, it is necessary to lay down the legal principle according to which only assets that have been acquired during the period of time during which the individual's danger to society was manifested are capable of being confiscated, irrespective of whether the dangerousness persists at the moment when the proposal for application of the confiscation measure is lodged.

Such a conclusion derives from the assessment of the same reason justifying the preventive confiscation measure, that is the reasonable presumption that the assets were acquired with the proceeds of unlawful activities (remaining, in this way, affected by a sort of genetic unlawfulness or, as it has been argued in the literature, by an 'ontological pathology') and is, accordingly, fully consistent with the reiterated preventive nature of the measure in question.

By contrast, if it was possible to confiscate, indiscriminately, the assets of the individual in question, irrespective of the existence of any 'relation of pertinence' or temporal correlation with the danger to society posed by the individual, the measure would inevitably end up assuming the connotations of a real and proper penalty. Such a measure would therefore hardly be compatible with the constitutional parameters concerning the protection of economic initiative and private property, enshrined in Articles 41 and 42 of the Italian Constitution, as well as with the relevant Convention principles (in particular, with the principles in Article 1 of Protocol No. 1 to the Convention). In the light of these principles, the confiscation of assets, deemed to be of unlawful origin, can be considered legitimate, as an expression of the proper exercise of the legislature's discretionary power, only when it responds to the general interest of removing unlawfully acquired assets from economic circulation. On the other hand, it is obvious that the social function of private property can be fulfilled only on the

immutable condition that its acquisition is in conformity with the rules of the legal system.

Therefore, the *contra legem* acquisition of assets cannot be considered compatible with that function, so that an unlawful acquisition can never be relied on as an argument against the State ...

Moreover, there is no doubt that the identification of a precise chronological context within which the power of confiscation may be exercised renders the exercise of the right of defence much easier, in addition to fulfilling an essential general safeguard. ..."

26. In judgment no. 31634 of 27 June 2017, the Sixth Criminal Division of the Court of Cassation clarified that the person in question was allowed to provide evidence demonstrating that assets that had been acquired during the period in which he or she had been presumed to be committing criminal offences had actually been purchased using economic resources that pre-dated the commission of unlawful activities and, accordingly, could not be confiscated.

27. In judgment no. 13375 of 22 March 2018, the First Criminal Division of the Court of Cassation clarified that the competent domestic courts could not substitute the assessment of the existence of a danger posed to society by the individual with the assessment of the lack of proportion between the individual's lawful income and the acquired assets. This means that assets acquired outside the period in which the individual had been categorised as posing a danger to society could not be confiscated, irrespective of whether their value was disproportionate in respect to the individual's lawful income.

28. In judgment no. 14165 of 27 March 2018, the Second Criminal Division of the Court of Cassation confirmed the relevance of the principle of temporal correlation between the period in which the person in question had posed a danger to society and the acquisition of the assets to be confiscated (see also Court of Cassation, Second Criminal Division, judgment no. 30974 of 9 July 2018). The court held as follows:

"... this court has had occasion to affirm the principle according to which the danger posed to society by the individual, in addition to being an essential condition for the preventive confiscation measure, is also a temporal parameter (*misura temporale*) for its scope of application, leading to the consequence that, with reference to so-called ordinary dangerousness, only assets that were acquired in the period of time in which the individual was categorised as posing a danger to society may be confiscated; with reference to the so-called 'specific' dangerousness, the competent court must ascertain whether this involves, as is ordinarily the case, the entire existential path of the person in question, or whether a start and end date of the period in which he or she posed a danger to society can be identified, with the purpose of establishing whether all the assets attributable to that person can be confiscated, or only those acquired during the above-mentioned period ..."

The Court of Cassation further clarified that, in cases of persons who pose a "specific" danger to society (*pericolosità qualificata*), it was reasonable to presume that assets acquired immediately after the period in which the person in question had posed a danger to society had in fact been acquired through

unlawful means accumulated during that period, provided that there were sufficient factual elements justifying such a conclusion (see also Court of Cassation, Fifth Criminal Division, judgment no. 1543 of 14 January 2021). In particular, the court held as follows:

> "Where the acquisitions take place in the period immediately following that in respect of which the 'specific' dangerousness of the individual has been ascertained and the competent court demonstrates the existence of multiple factual elements which clearly indicate that those acquisitions derive directly from means accumulated during the period of criminal activity, the confiscation measure can legitimately be applied, in so far as there is a logical correlation between the factual elements, the dangerousness of the addressee [of the measure], and the 'unjustified' asset increase that generated the asset subject to confiscation."

29. The latter principle, which was developed in respect of cases of individuals who posed a "specific" danger to society, was extended to cases of individuals who posed an "ordinary" danger to society in judgment no. 12329 of 16 April 2020 of the First Criminal Division of the Court of Cassation. It argued that the principle of temporal correlation, while essential, should be read in the light of an "operative criterion which allows the upholding of the guarantee it enshrines without exposing it to unacceptable formalistic interpretations". Accordingly, the Court of Cassation held that assets acquired after the period in which the person in question had posed a danger to society could be subjected to confiscation measures, provided that specific conditions and safeguards were respected. In particular, the court held as follows:

> "It is necessary, as regards assets that have been acquired outside the period in which the person in question posed a danger to society, to identify, on the basis of appropriate reasoning capable of demonstrating their significance, the factual elements capable of demonstrating that those assets derive directly from unlawful wealth which was previously accumulated [during the period when the individual posed a danger to society]."

30. This principle was further clarified in judgment no. 36421 of 7 October 2021 of the Sixth Criminal Division of the Court of Cassation, in which it was highlighted that those factual elements had to be more rigorously and unequivocally demonstrated the greater the lapse of time between the period in which the person in question had posed a danger to society and the acquisition of the assets to be confiscated. In particular, the court held as follows:

> "As regards preventive confiscation measures, it is legitimate to order the measure in respect of assets acquired in the period subsequent to that in which the person in question had posed a danger to society, provided that the competent court provides evidence of the existence of multiple factual elements capable of demonstrating that the acquisitions of assets derive from the wealth accumulated in the period in which criminal activities were committed ...
>
> The concept of [assets deriving from wealth accumulated during the period in which an individual posed a danger to society] and the evidentiary burden underlying it change

depending on the lapse of time between the date of the acquisition [of the asset] and the final date of the period in which the person in question posed a danger to society: the value of the multiple 'factual elements' must in fact assume an increasingly important bearing, the greater the lapse of time between those points in time. And so, with respect to the purchase of an asset made immediately after the temporal delimitation of danger posed to society, the possibility of considering, in the absence of concrete elements of opposite demonstrative value, that the said asset was acquired with the direct reuse of the illicit accumulation of previous wealth, is supported by immediate persuasive reasonableness. By contrast, the possibility of confiscating an asset purchased after a lapse of time – even considerable time – from the time when the person in question no longer poses a danger to society, is dependent on the presence of specific elements enabling the purchase in question to be rigorously and unequivocally traced back to the direct reinvestment of capital previously accumulated in an illicit way."

C. The distribution of the burden of proof

31. As regards the distribution of the burden of proof, in judgment no. 4880 of 2 February 2015 the Combined Divisions of the Court of Cassation held as follows:

"... the prosecution still bears the burden of proof as regards any disproportionate relationship between assets owned and income, as well as in respect of their unlawful origin, which can also be proved on the basis of presumptions. Nevertheless, the person in question has the possibility of proving the contrary by providing evidence capable of negating those presumptions, so as to demonstrate the lawful origin of the assets."

32. In judgment no. 18569 of 3 May 2019, the Second Criminal Division of the Court of Cassation clarified the evidentiary burden on third parties whose assets were to be confiscated (see also Court of Cassation, Fifth Criminal Division, judgment no. 8984 of 19 January 2022):

"The third party challenging the confiscation order, while not bearing any evidentiary burden, does, however, bear a burden of proof in relation to an allegation, which consists precisely in refuting the public prosecutor's argument (according to which he or she is a mere formal owner) and in indicating factual elements that demonstrate that the asset is his or her exclusive property and at his or her exclusive disposal. It is therefore clear that, for the third party, the proceedings will revolve solely and exclusively around the above-mentioned burden, ... all those exceptions relating exclusively to the person in question (that is, the disproportionate value of the confiscated property compared to the declared income; the legitimate provenance), and that only the person in question could have an interest in asserting, being irrelevant for the third party."

III. RELEVANT INTERNATIONAL INSTRUMENTS

33. For the relevant international and European Union instruments concerning non-conviction-based confiscation see *Garofalo and Others v. Italy* (dec.), nos. 47269/18 and 3 others, §§ 59-76, 21 January 2025.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

35. The applicants complained under Article 6 § 1 of the Convention of the "preventive confiscation" of their property, arguing that the domestic courts' decisions had not complied with the conditions established under the domestic law and case-law for the imposition of the contested measure.

36. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018, and *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 217, 26 September 2023), the Court is of the view that the applicants' complaints fall to be examined solely under Article 1 of Protocol No. 1 to the Convention (see, for the same approach, *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 129, 13 July 2021; *Yordanov and Others v. Bulgaria*, nos. 265/17 and 26473/18, § 69, 26 September 2023; and *Mandev and Others v. Bulgaria*, nos. 57002/11 and 4 others, § 78, 21 May 2024), which 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."

A. Admissibility

37. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Whether there was an interference and the applicable rule of Article 1 of Protocol No. 1

38. Article 1 of Protocol No. 1, which guarantees in substance the right to property, comprises three distinct rules. The first one, which is expressed in the first sentence of the first paragraph, lays down the principle of peaceful enjoyment of property in general. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see, among many other authorities, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V; see also *Todorov and Others*, § 179, and *Yordanov and Others*, § 97, both cited above).

39. The Court notes at the outset that the parties did not dispute that the confiscation of the applicants' assets amounted to an interference with their right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1. The Court sees no reason to hold otherwise.

40. In some confiscation cases (see, for example, *Phillips v. the United Kingdom*, no. 41087/98, § 51, ECHR 2001-VII; *Saccoccia v. Austria*, no. 69917/01, § 86, 18 December 2008; *Bongiorno and Others v. Italy*, no. 4514/07, § 42, 5 January 2010; and *Telbis and Viziteu v. Romania*, no. 47911/15, § 72, 26 June 2018), the Court held that the interference with the applicants' rights fell within the scope of the second paragraph of Article 1 of Protocol No. 1, which, *inter alia*, allows the Contracting States to control the use of property in accordance with the general interest. In particular, the Court observed that where a confiscation measure had been imposed independently of the existence of a criminal conviction but rather as a result of separate "civil" (within the meaning of Article 6 § 1 of the Convention) judicial proceedings aimed at the recovery of assets deemed to have been acquired unlawfully, such a measure, even if it involved the irrevocable forfeiture of possessions, constituted nevertheless control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316-A; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Sun v. Russia*, no. 31004/02, § 25, 5 February 2009; *Silickienė v. Lithuania*, no. 20496/02, § 62, 10 April 2012 ; *Veits v. Estonia*, no. 12951/11, § 70, 15 January 2015; and *Gogitidze and Others v. Georgia*, no. 36862/05, § 94, 12 May 2015).

41. In other confiscation cases, the Court found similar measures to amount to deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see, for example, *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 30, 17 September 2015; *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 30, 4 July 2017; and *Yaşar v. Romania*, no. 64863/13, § 49, 26 November 2019).

42. However, in the Court's view there is no need to determine under which of the three rules of Article 1 of Protocol No. 1 the case should be examined, because the principles governing the question of justification are substantially the same (see *Todorov and Others*, § 182, and *Yordanov and Others*, § 98, both cited above; see also *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010).

2. Justification of the interference

43. In order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, § 281, 2 May 2024, with further references).

(a) The parties' submissions

(i) The applicants

44. The applicants submitted that the domestic courts' decisions had not complied with the conditions established under the domestic law and case-law for the imposition of the contested measure.

45. They observed that the first applicant had committed property offences between 1980 and 1998 but, after that point in time, he had only committed an attempted theft in 2008, a crime which by definition did not produce any unlawful income and, accordingly, could not in any way justify the presumption of illicit origin of the confiscated assets.

46. Relying on the case-law of the Court of Cassation and the Constitutional Court, the applicants stressed that a declaration that the first applicant had posed a danger to society, within the meaning of Article 1 § 1 (b) of Decree no. 159/2011, presupposed the "habitual" commission, over a significant time frame, of criminal offences producing unlawful income, and considered that that condition had not been met after 1998.

47. Moreover, the applicants stressed that, while the first applicant had been considered an individual who posed a danger to society in the period between 1980 and 2008, the confiscated assets had been purchased in 2010, 2014, 2016, and 2018. In their view, the domestic courts' decisions had

clearly been in breach of the principle of temporal correlation between the period in which the person in question posed a danger to society and the purchase of the assets to be confiscated, as stipulated in the relevant domestic case-law. In this regard, they observed that the Advocate General of the Court of Cassation had acknowledged a breach of that principle.

(ii) The Government

48. The Government submitted that the contested measure had been imposed in compliance with the criteria established under domestic law, as interpreted in the relevant case-law of the Court of Cassation and the Constitutional Court.

49. In particular, the Government argued that the domestic courts had correctly assessed the existence of the following conditions: (a) the commission, by the first applicant, of crimes capable of generating profit (nine convictions in respect of numerous offences against property, such as theft, receiving stolen goods, and aggravated robbery, committed in the context of membership of criminal organisations formed to commit those offences); (b) the habitual nature of the commission of those crimes over a significant period of time, in particular, between 1980 and 1998 and again, after serving a prison sentence between 1998 and 2006, in 2008; (c) the generation of profits constituting or having constituted, over a specified period of time, the sole component of the first applicant's personal income or a significant component of that income, specifically, between 1980 and 1998 and again in 2008.

50. The Government stressed that the measure at issue had been imposed in respect of assets purchased through the unlawful proceeds attributable to the first applicant since, in their view, they derived from the wealth accumulated during the period in which he had been found to pose a danger to society.

51. In the Government's view, the decision to impose the contested measure had been based on reasonable and reasoned assessment, adequate to support the presumption that the confiscated assets had been of unlawful origin. In particular, the lower courts had identified the crimes of which the first applicant had been convicted, over a period of more than twenty years, and observed that those crimes had allowed the first applicant and his family to accumulate economic resources which had been reinvested in real estate. The last offence, committed in 2008, confirmed that the first applicant continued to pose a danger to society. The Government attached particular relevance to the fact that the first applicant had not committed criminal offences between 1998 and 2008 solely because in that period he had been detained in execution of a prison sentence.

52. They further stressed that the applicant had provided no reasonable explanation for the provenance of the confiscated assets, whereas the court-ordered expert assessment had demonstrated that the applicants had had

no lawful income capable of justifying the purchase of the confiscated assets. Accordingly, the only reasonable explanation was that those assets had been purchased by reinvesting profit accumulated during the period in which the first applicant had committed the criminal offences which had led to the finding that he posed a danger to society. According to the Government, the domestic courts had demonstrated that those resources had been the result of the resale of properties acquired by unlawful means.

53. The Government further argued that the domestic courts' decisions complied with the principle, established in the domestic case-law, of the necessary temporal correlation between the period in which the person in question posed a danger to society and the acquisition of the assets to be confiscated. In their view, the domestic courts had demonstrated that the confiscated assets had been acquired using economic resources that had derived from the resale of assets purchased by unlawful means.

54. The Government further considered that the contested measure had been proportionate to the legitimate aim pursued, that is, removing from economic circulation assets that had been unlawfully acquired. They stressed, in particular, that the measure had been imposed on the applicants in proceedings that had offered multiple procedural safeguards and had not imposed an excessive burden on them.

55. They highlighted that the burden of proving the existence of the conditions for imposing the contested measure had lain with the public prosecutor, while the applicants had been entitled to provide evidence demonstrating the lawful origin of the assets concerned or that they had not actually been at the disposal of the person in question. Such a burden was not particularly onerous, since it was sufficient to submit the existence of facts, situations or events which, reasonably and plausibly, demonstrated the lawful provenance of the assets.

56. The Government further stressed that the applicants had benefited, in the proceedings that had led to the imposition of the measure, from several procedural safeguards, such as the possibility of having a public hearing, the cross-examination of the relevant evidence before the courts at three levels, and the possibility of submitting evidence, documents, witnesses and expert opinions. They further observed that the competent domestic courts had ordered an expert assessment and examined the arguments and evidence provided by the applicants.

(b) The third-party's comments

57. The association Unione delle Camere Penali Italiane considered that the Italian system for the imposition of preventive measures in respect of property did not provide the individuals concerned with a reasonable opportunity to present their arguments before the national courts in accordance with the adversarial principle.

58. The association further observed that, under domestic law, a very low standard of proof was imposed in order to demonstrate that the person in question posed a danger to society and that the assets to be confiscated constituted the proceeds of unlawful activities. In particular, all that was required was an assessment on the basis of probable and basically presumptive grounds. The applicable system of presumptions places the burden of proof on the person in question and interested third parties, who are required to prove the lawful origin of their assets even when they were acquired many years before the imposition of the contested measure.

59. In the opinion of the third-party intervener, the applicable domestic provision, as interpreted in the domestic case-law, placed an excessive burden on the individuals concerned and made the proceedings for the imposition of preventive measures in respect of property ontologically unfair.

(c) The Court's assessment

(i) Whether the measure complied with the principle of lawfulness

60. The Court reiterates 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 sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that 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 (see *Lekić v. Slovenia* [GC], no. 36480/07, § 94, 11 December 2018).

61. The existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, that is, it must be sufficiently accessible, precise and foreseeable in its application and consequences (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012), compatible with the rule of law and provide sufficient procedural guarantees against arbitrariness (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012). The requirement of lawfulness also demands compliance with the relevant provisions of domestic law (see *East West Alliance Limited v. Ukraine*, no. 19336/04, § 167, 23 January 2014; *Dimitrovi v. Bulgaria*, no. 12655/09, § 44, 3 March 2015; and *Zlínsat, spol. S r.o. v. Bulgaria*, no. 57785/00, §§ 97-98, 15 June 2006).

62. In the present case, the Court notes at the outset that the parties did not dispute that the contested measure had a basis in domestic law, specifically Article 24 § 1 of Decree no. 159/2011, and that it was accessible.

63. The parties' disagreement concerned, rather, compliance with the conditions and limitations imposed under domestic law, as interpreted in the relevant domestic case-law, in order to apply the contested confiscation, with

specific regard to: (i) the nature and severity of the crimes whose commission justified a finding that the person in question had posed a danger to society, entailing a presumption that assets acquired during that period were the proceeds of unlawful activities, and (ii) the temporal delimitation in respect of the assets that, in so far as acquired during the period in which the person in question had committed criminal offences, could be confiscated.

64. The Court considers that, in the present case, the question whether the measure at issue was imposed in accordance with the conditions and limitations established under the domestic law and case-law, and whether it was therefore compatible with the principle of lawfulness, is strictly connected to the question whether the measure was proportionate to any legitimate aim pursued. It will accordingly examine those issues jointly.

(ii) Whether the measure was adopted in the public or general interest

65. Irrespective of the applicable rule of Article 1 of Protocol No. 1, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate general interest. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community (see *The J. Paul Getty Trust and Others*, cited above, § 335, with further references).

66. In other cases concerning confiscation, in the absence of a criminal conviction, of property presumed to have been wrongfully acquired, the Court considered that the measure at issue had been effected in accordance with the general interest in ensuring that the use of the property in question did not procure advantage for the applicants to the detriment of the community (see *Gogitidze and Others*, cited above, § 103, and *Telbis and Viziteu*, cited above, § 74). With specific regard to the "preventive confiscation" measure prescribed by Italian law, the Court has already found that it was intended to ensure that crime did not pay and to prevent unjust enrichment, by depriving the individual concerned and third parties not having a valid claim over the property to be confiscated of the profits of criminal activities, and was, accordingly, essentially of a restorative and not punitive nature (see *Garofalo and Others v. Italy* (dec.), nos. 47269/18 and 3 others, § 134, 21 January 2025).

67. In the present case, the Court is satisfied that the Italian non-conviction-based confiscation regime pursued a legitimate aim in the public interest, that is, avoiding unjust enrichment derived from criminal offences, by depriving the persons concerned of unlawful profits (see *Garofalo and Others*, cited above, § 133; *Todorov and Others*, cited above, § 186).

(iii) Whether the measure was proportionate to the aim pursued

(α) General principles

68. The Court reiterates that the concern to achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights is reflected in the structure of Article 1 of Protocol No. 1 as a whole, regardless of which paragraphs are concerned in each case, and entails the need for a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *The J. Paul Getty Trust and Others*, cited above, § 374). The requisite balance will not be found if the persons concerned have had to bear an excessive burden (see *Todorov and Others*, cited above, § 187).

69. The Court further reiterates that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, it has been its constant requirement that domestic proceedings afford the aggrieved individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see *Rummi v. Estonia*, no. 63362/09, § 104, 15 January 2015).

70. The Court has already recognised the compatibility, in principle, with the Convention of procedures for the confiscation of property in the absence of a conviction establishing the guilt of the accused persons, where such property was linked to the alleged commission of various serious offences entailing unjust enrichment. As such, it has found that the applications were manifestly ill-founded or that there had been no violation in cases concerning Mafia-related offences (see *Raimondo v. Italy*, 22 February 1994, §§ 16-30, Series A no. 281-A; *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; and *Morabito and Others v. Italy* (dec.), no. 58572/00, ECHR 7 June 2005), drug trafficking (see *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; and *Saccoccia v. Austria*, no. 69917/01, §§ 87-91, 18 December 2008), corruption in the public services (see *Gogitidze and Others*, cited above, §§ 103-14), organised crime (see *Silickienė*, cited above, §§ 60-70), or money laundering (see *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, §§ 89-95, 8 October 2019, and *Zaghini v. San Marino*, no. 3405/21, §§ 60-71, 11 May 2023). The Court also made clear that confiscation should not be used to pursue further aims which are specifically targeted by other instruments, containing their own procedural guarantees (see *Todorov and Others*, cited above, § 203).

71. Summarising the approach followed in those cases, the Court noted, first, that common European and even universal legal standards could be said to exist which encouraged the confiscation of property linked to serious

criminal offences such as corruption, money laundering and drug offences, without the prior existence of a criminal conviction. Secondly, the onus of proving the lawful origin of property presumed to have been wrongfully acquired could legitimately be shifted onto the respondents in such non-criminal proceedings for confiscation, including civil proceedings *in rem*. Thirdly, confiscation measures could be applied not only to the direct proceeds of crime but also to property, including any income and other indirect benefits, obtained by converting or transforming the direct proceeds of crime or intermingling them with other, possibly lawful, assets. Finally, confiscation measures could be applied not only to persons directly suspected of criminal offences but also to any third parties which held ownership rights without the requisite bona fide with a view to disguising their wrongful role in amassing the wealth in question (see *Gogitidze and Others*, §§ 105 and 107, and *Telbis and Viziteu*, § 76, both cited above).

72. In assessing whether confiscation measures were compatible with the safeguards enshrined in Article 1 of Protocol No. 1, the Court assessed, first of all, the nature of the predicate offences and, in particular, their seriousness and the question whether they could be assumed to generate unlawful income (see *Todorov and Others*, cited above, § 200, and, especially, *Yordanov and Others*, cited above, § 115, the latter concerning a non-conviction-based confiscation similar to the one at issue in the present case). The Court expressed serious concerns in respect of domestic legislation which provided that procedures for the imposition of similar measures could be triggered not only by particularly serious offences such as those related to organised crime, drug-trafficking, corruption in the public service or money laundering, or other offences which could be assumed to always generate income, but by a variety of other offences as well, in addition to some administrative offences (see, in particular, *Yordanov and Others*, § 115, and *Todorov and Others*, § 200, both cited above). Moreover, although the Court found it legitimate for the relevant domestic authorities to issue confiscation orders on the basis of a preponderance of evidence which suggested that the respondents' lawful incomes could not have sufficed for them to acquire the property in question (see *Gogitidze and Others*, § 107; *Telbis and Viziteu*, § 68; and *Balsamo*, § 91, all cited above), it clarified that the possibility of imposing the measures should be subjected to the need to identify "significant" discrepancies between the established legal income of a person and the assets possessed by him or her (see *Todorov and Others*, cited above, § 204).

73. Secondly, the Court clarified that it was necessary that the domestic authorities establish a link between the assets to be confiscated and the predicate offences which had presumably been committed by the person in question (see *Todorov and Others*, cited above, § 212, concerning a post-conviction extended confiscation, and *Yordanov and Others*, cited above, § 124, also concerning a non-conviction-based confiscation). This approach was developed by the Court in the *Todorov and Others* and

Yordanov and Others cases on the basis of the Court's previous case-law. In particular, the Court observed that in previous cases it had taken into account whether the national authorities which had ordered the confiscation had established the criminal provenance of the assets concerned. For instance, in *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, § 301, 28 June 2018) it noted in its proportionality analysis the degree of culpability or negligence on the part of the applicants. In other cases, such as *Phillips* (cited above, § 53), *Veits* (cited above, § 74) and *Silickienė* (cited above, § 68), it had sought to satisfy itself that the illicit or criminal origin of the assets to be forfeited had been established in the domestic proceedings, even if not to a criminal-law standard of proof. By contrast, the Court did find violations of Convention provisions in some other confiscation cases where the domestic authorities had not shown that the forfeited assets had been the proceeds of crime or undertaken any assessment of the exact assets that could have been obtained through crime (see *Geerings v. the Netherlands*, no. 30810/03, § 47, 1 March 2007, and *Rummi*, cited above, § 107).

74. Accordingly, the Court held that, in determining whether the fair balance required under Article 1 of Protocol No. 1 had been achieved in cases concerning confiscation of assets presumably derived from unlawful activities, it had to assess whether the domestic courts had provided some particulars as to the alleged criminal conduct in which the assets to be confiscated had allegedly originated, and demonstrated in a reasoned manner that those assets could have been the proceeds of the criminal conduct shown or presumed to exist (see *Todorov and Others*, § 215, and *Yordanov and Others*, § 124, both cited above).

75. With specific regard to the "preventive confiscation" measure prescribed by Italian law, in *Garofalo and Others* (cited above) the Court held that it could not be considered a penalty, within the meaning of Article 7 of the Convention, on account of a series of limitations provided for by the applicable domestic law and case-law and, in particular, the fact that the confiscation in question could be applied exclusively in respect of assets that were presumed to have originated in unlawful activities, owing to the lack of evidence showing their lawful origin (ibid., § 129); that the measure could be justified only in so far as the criminal offences presumably committed by the individual concerned were a source of illegal profits, in an amount reasonably congruent with the value of the assets to be confiscated (ibid., § 130); that the measure could be applied only in respect of assets acquired by the individual concerned during the period in which he or she had presumably committed criminal offences entailing unlawful profits, thereby showing that this measure aimed to prevent unjust enrichment on the basis of the commission of criminal offences (ibid., § 131); and that it had to be applied only in respect of the unlawful profits derived from the crimes presumably committed by the individual concerned, without extending to the product of the crime (ibid., § 132).

76. Thirdly, as regards the procedural guarantees and specifically the standard of proof imposed on the domestic authorities, whenever a confiscation order was the result of proceedings related to the proceeds of crime derived from serious offences, the Court has not required proof "beyond reasonable doubt" of the illicit origins of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, have been found to suffice for the purposes of the proportionality test under Article 1 of Protocol No. 1 (see *Silickienė*, §§ 60-70; *Balsamo*, § 91; *Telbis and Viziteu*, § 68; and *Zaghini*, § 62, all cited above). However, the Court clarified that the domestic legal system should limit the period of time in which the relevant assets can be confiscated, in order not to make it excessively onerous for the individual concerned to provide proof of lawful income or lawful provenance of assets acquired many years before the opening of the confiscation proceedings (see *Todorov and Others*, § 201-02, and *Yordanov and Others*, §§ 116-17, both cited above).

77. Moreover, the domestic authorities were given leeway under the Convention to apply confiscation measures not only to persons directly accused of offences, but also to their family members and other close relatives who had been presumed to possess and manage the "ill-gotten" property informally on behalf of the suspected offenders, or who otherwise lacked the necessary bona fide status (see *Gogitidze and Others*, cited above, § 107, and *Telbis and Viziteu*, cited above, § 68, with further references). The Court found that it was reasonable for applicants who were presumed to have benefited unduly from the proceeds of crimes committed by family members to be required to discharge their part of the burden of proof by refuting the prosecutor's substantiated suspicions about the wrongful origins of their assets (see *Balsamo*, § 91, and *Telbis and Viziteu*, § 77, both cited above). However, the Court required the domestic authorities to demonstrate the evidence of a link between the property in question and the offences committed by the suspected offender, without relying on the mere discrepancy between the income and expenditure of the individual owning the asset (see *Todorov and Others*, cited above, § 221).

78. As long as the analysis concerning the link between the assets to be confiscated and the predicate offences has been carried out, the Court will generally defer to the domestic courts' assessment, unless the applicants have shown that assessment to be arbitrary or manifestly unreasonable (see *Yordanov and Others*, cited above, § 125, with further references).

(β) Application of the above principles to the present case

79. Having regard to the general principles reiterated above, and taking into account the applicants' complaints, the Court considers that in the present case it is required to assess whether the domestic courts substantiated in a reasoned manner and on the basis of an objective assessment of the facts and

evidence that the confiscated assets could be presumed to have been purchased with the proceeds of serious crimes generating unlawful income (see paragraph 74 above). In that context, the Court required the national authorities to provide at least some particulars as to the alleged unlawful conduct having resulted in the acquisition of the assets to be confiscated, and to establish some link between those assets and the unlawful conduct (*Todorov and Others*, cited above, §§ 220 and 238) in particular from a temporal point of view. The Court stresses that such an assessment is not only required under its case-law, but also under the relevant domestic case-law (see paragraphs 23-32 above).

80. In the present case, the Court notes that the domestic authorities observed that the first applicant had committed several crimes between 1980 and 1998 – including robberies and attempted robberies in 1980, 1993, 1994, 1995 and 1998, aggravated theft in 1980, extortion in 1987, conspiracy to commit robbery between 1990 and 1995, and handling stolen goods in 1995, and they further noted that he had committed another theft in 2008 (see paragraph 7 above). The Court remarks that, according to the applicant's criminal record, the last-mentioned offence was an attempted theft (see paragraph 8 above). The confiscation proceedings began in 2018 with the request of the *questore* and ended in 2022 with the final judgment of the Court of Cassation upholding the lower court's decision on confiscation (see paragraphs 5 and 19 above).

81. First, the Court notes that it has previously expressed serious concerns when it found that the domestic authorities had confiscated assets acquired many years after the commission of the predicate offences on which the contested measure had been based (see *Todorov and Others*, cited above, §§ 219 and 237, and, *mutatis mutandis*, *Dimitrovi*, cited above, § 46). In the present case, the Court notes that there is no apparent reason why the authorities waited ten years after the period in which the first applicant had posed a danger to society (from 1980 to 2008) had ended to start the confiscation proceedings (see paragraphs 5 and 7 above). Also, the Court points out that, according to the national courts, the first applicant first posed a danger to society in 1980, that is thirty-eight years earlier (see paragraph 7 above).

82. Secondly, as to the particulars of the criminal conduct which could have generated the alleged proceeds of crime and the ability of such offences to generate income in the case under examination, the Court observes the following: that the domestic authorities merely referred to the fact that the first applicant had been convicted of several offences (see paragraphs 7 and 13 above) without carrying out any assessment as to whether the predicate offences had yielded, in the specific circumstances of the case, some significant financial gain, particularly in view of the fact that the applicant was convicted in many cases of attempted offences; that on one occasion the domestic courts applied mitigating circumstances, defined under Article 62

§ 6 of the Criminal Code as making "full reparation of the damage prior to trial, either through compensation or, where possible, through restitution; [and] eliminating or mitigating the harmful or dangerous consequences of the offence".

As to the period between 1998 and 2008 more specifically, the Court observes that the applicant, after having spent a long time in prison, committed an attempted theft in 2008 (see paragraphs 7 and 8 above) and that the authorities have not provided any reasoning as to how that offence could have generated any unlawful income.

Furthermore, in most of the cases the criminal courts issued a confiscation order of unspecified goods at the time of the conviction (see paragraph 8 above). However, the courts' reasoning does not address those previous criminal confiscations or their potential impact on the preventive confiscation of the applicants' goods.

83. In the light of the above, and taking into account the cited domestic case-law requiring the commission during a "significant period of time" of "criminal activities which ... produce unlawful income" (see paragraphs 23-24 above), the Court considers that the domestic courts failed to substantiate in a reasoned manner that the first applicant could be presumed to have been committing on a habitual basis criminal offences capable of producing unlawful income.

84. Thirdly, as to the fact that the confiscated assets could have been the proceeds of criminal conduct, the Court notes that they were purchased in 2010, 2016 and 2018 (see paragraph 6 above), that is – with the exception of the purchase in 2010 – many years after the end of the period during which the applicant was considered to have posed a danger to society (2008) and even longer after he had committed offences capable of generating unlawful income (1998).

85. The Court observes that in the present case the domestic courts presumed the existence of a link between those assets and the unlawful conduct of which the first applicant had been accused, on the sole ground that the applicants' lawful income was insufficient to justify their assets (see paragraphs 9 and 13 above). The Court observes that, according to the Court of Appeal, the disproportionate relationship between assets owned and income might constitute the only evidence of the unlawful origin of those assets (see paragraph 13 above). Also, the Court of Cassation specified that in order to justify the origin of the assets subject to confiscation, providing "justification for each individual transaction [was] also irrelevant given that the comparison between legitimately available resources and individual purchases [could not] be carried out in an isolated manner, detached from the overall context of the financial transactions and movement of assets carried out within the same, limited period of time, but [had to] be carried out in the light of an overall consideration of the movement of assets during the period

at issue and of the overall destination of all the economic resources available" (see paragraph 19 above).

86. However, the Court has previously found that, regardless of the period in which confiscated assets were purchased, merely referring to the discrepancy between income and expenditure is insufficient to establish a link between the predicate offences and the confiscated assets (see *Todorov and Others*, cited above, § 221). Therefore, the Court holds that the domestic courts' reasoning fell short with respect to the existence of a link between the assets eligible for confiscation and the unlawful conduct.

Furthermore, the Court notes that the Court of Cassation clarified that, in principle, it was only possible to confiscate assets that had been acquired during the period of time in which the person in question had posed a danger to society (see paragraph 25 above) and that, accordingly, assets acquired outside that period could not be confiscated, irrespective of whether their value was disproportionate in respect to the individual's lawful income (see paragraph 27 above). The subsequent case-law clarified that assets purchased after that period could be confiscated, provided that some safeguards were implemented (see paragraph 29 above), requiring, in particular, that the competent court give evidence of the existence of multiple factual elements capable of demonstrating that the acquisitions of assets derived from the wealth accumulated in the period in which criminal activities had been committed, and with the clarification that such factual elements had to be more rigorously and unequivocally demonstrated the greater the lapse of time that had passed from the cessation of the danger to society posed by the individual in question (see paragraph 30 above). Additionally, the Court notes that by its judgment of 16 April 2020 the Court of Cassation clarified that, under certain specific conditions, preventive confiscation could also be imposed in respect of assets purchased after the period during which the individual concerned had posed a danger to society. It further observes that both the prosecutor's request for the seizure of the applicant's assets (see paragraph 5 above) and the Palermo District Court's judgment ordering such seizure (see paragraph 6 above) predate the abovementioned Court of Cassation's judgment.

87. Besides, the Court further notes that the domestic courts also relied on the fact that the first applicant had purchased a property in 1994, in the period in which he had committed the criminal offences which had led to him being declared an individual who posed a danger to society, and observed that that property had subsequently been sold, initiating a chain of transactions which, in their view, eventually led to the purchase of the assets confiscated in the present case (see paragraph 11 above).

88. Drawing on the above-mentioned considerations (see paragraphs 85-86 above), the Court observes that the shortcomings identified tainted the domestic courts' assessment of that property. Furthermore, beyond merely referring to the discrepancy between the applicants' income and

expenditure, the domestic courts did not engage in a rigorous assessment of the chain of reinvestments which eventually led to the purchase of the confiscated assets, failing to provide specific elements (see paragraphs 11, 13 and 19 above). By way of example, the Court notes that the domestic authorities confiscated bank accounts opened six and eight years after the period in which the first applicant had posed a danger to society had ended on the basis of the mere discrepancy between the income and expenditure of the family and without assessing in any way the bank transactions in order to trace back the origin of the money.

In this connection, the Court notes that their assessment did not meet even the reduced standard of proof required by the Court's case-law for the imposition of similar measures (see paragraph 76 above). Under the case-law of the Court of Cassation, the confiscation of properties acquired after a considerable lapse of time from when the person in question was considered to pose a danger to society was "dependent on the presence of specific elements enabling the purchase in question to be rigorously and unequivocally traced back to the direct reinvestment of capital previously accumulated in an illicit way" (see paragraph 30 above). The Court observes that the Advocate General of the Court of Cassation did not consider that the domestic courts' decisions contained any such reasoning (see paragraph 18 above).

Therefore, the Court finds that the domestic courts' reasoning did not comply with the requirement of a temporal connection between the confiscated assets and the offences allegedly generating the unlawful income.

89. Before concluding, the Court also notes that none of the assets that were confiscated in the present case were officially owned by the first applicant, who was the addressee of the contested measure, but were rather owned by the second and third applicants (see paragraph 6 above), who had not been found by the domestic authorities to be individuals who posed a danger to society. However, the domestic courts' decisions did not include any kind of reasoning as to why the confiscated assets could be considered to be at the disposal of the first applicant, as required by domestic law (see paragraph 22 above). They merely relied on the fact that the second and third applicants did not have sufficient lawful income to justify the purchase of the confiscated assets (see paragraph 9 above). The domestic courts therefore assumed that there was a link between the confiscated assets and the first applicant's criminal activities and they were thus the proceeds of crime, after finding that the second and third applicants had not provided proof of sufficient lawful income (see *Todorov and Others*, cited above, § 246).

90. The Court therefore finds that the domestic courts' decisions did not provide any reasoning demonstrating that the confiscated assets, purchased in 2010, 2016, and 2018 by the second and third applicants, could be considered to have been acquired with the proceeds of the criminal offences committed between 1980 and 1998 by the first applicant, and that they were

at his disposal. They therefore failed to substantiate in a reasoned manner and on the basis of an objective assessment of the facts and evidence that the confiscated assets could be presumed to have been purchased with the proceeds of the crimes committed by the first applicant.

(γ) Conclusions

91. In the light of the above, and reiterating that its power to review compliance with domestic law is limited to instances of manifestly erroneous application of the legal provisions in question or arbitrary conclusions being reached (see paragraph 78 above; see also *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 97, 24 February 2011, and *BTS Holding, a.s. v. Slovakia*, no. 55617/17, § 65, 30 June 2022), the Court considers that the shortcomings in the domestic courts' decisions were so serious and manifestly incompatible with several of the limitations and safeguards established under the relevant domestic law and case-law that the measure must be considered to have been imposed in an arbitrary or manifestly unreasonable way. In particular, the Court considers that the domestic courts' decisions did not comply with the limitations established under domestic law in respect of the identification of the offences producing unlawful income (see paragraph 82 above), the temporal delimitation in respect of the assets which could legitimately be subjected to confiscation (see paragraph 86 above), and the identification of the assets that, although officially owned by third parties, were considered to be at the disposal of the person in question (see paragraph 89 above).

92. In any case, and even assuming that the limitations established under domestic law had not been so seriously disregarded, the fact that the proceedings were initiated many years after the last offences (see paragraph 81 above) and that the domestic authorities failed to establish any link between the first applicant's criminal activities and the confiscated assets (see paragraphs 82, 86, 88, and 90 above) is sufficient for the Court to find that the requisite fair balance between the legitimate aims in the public interest pursued by the measure in question and the applicants' individual rights has not been achieved, that is, that the confiscation of the applicants' assets amounted to a disproportionate interference with their rights under Article 1 of Protocol No. 1.

93. There has accordingly been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The parties' submissions

95. The applicants requested the Court to order that the confiscated assets be returned to them or, in the alternative, to award pecuniary damage based on the value of the confiscated assets at the time of their purchase, as determined in the decision of the first-instance court.

96. The Government submitted that the applicants' claim was generic and unsubstantiated.

2. The Court's assessment

97. The Court reiterates that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 79, ECHR 2014, and *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, § 32, 18 June 2020). The Contracting States that are parties to a case are in principle free to choose the means whereby they comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1 of the Convention). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *G.I.E.M. S.r.l. and Others v. Italy* (just satisfaction) [GC], nos. 1828/06 and 2 others, § 37, 12 July 2023, with further references).

98. In cases of alleged pecuniary damage resulting from the confiscation of real property in violation of Article 1 of Protocol No. 1 to the Convention, the relevant factors to be taken into account in order to establish the extent of the damage include in particular the value of the land and/or constructions prior to their confiscation, whether or not the land could be built upon at that time, the designated use of the land in question under the relevant legislation and land-use plans, the duration of the inability to use the land and the loss of value caused by the confiscation while, if appropriate, deducting the cost of the demolition of any illegal buildings (ibid., § 40).

99. Therefore, the Court finds it appropriate to require the respondent State to ensure, by appropriate means and without undue delay, that the assets in question (see paragraph 6 above) be returned to the applicants.

100. The Court further notes that, in cases in which it ordered the return of assets unlawfully dispossessed by the State, it held that where restitution was impossible, the State was to pay the applicants a sum corresponding to the value of the assets at the time when the applicant lost ownership over them (see *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 103, 22 December 2009, *Vistiņš and Perepjolkins*, cited above, § 111).

101. In the present case the applicants requested, as an alternative to restitution, the reimbursement of the value of the assets at the time of their acquisition, as determined in the decision of the first-instance court.

102. The Court considers that, should the return of the confiscated assets be impossible on account of any damage or destruction of the assets in question that may have occurred in the meantime, the respondent State must reimburse the value of those assets (see, *mutatis mutandis*, *Akshin Garayev v. Azerbaijan*, no. 30352/11, § 73, 2 February 2023) as determined in the decision of the first-instance court (see paragraphs 6 and 7 above).

103. Lastly, the Court notes that the applicants have not submitted a claim in respect of non-pecuniary damage. The Court therefore considers that there is no call to award them any sum on that account either.

B. Costs and expenses

104. The applicants requested the reimbursement of the costs and expenses incurred in the proceedings, without providing any details.

105. The Government submitted that the applicants' claim was generic and unsubstantiated.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the breaches found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *Giuliano Germano v. Italy*, no. 10794/12, § 152, 22 June 2023). In the present case, the Court notes that the applicants have not submitted any evidence (bills or invoices) concerning the costs and expenses incurred, or demonstrating that they are legally or contractually obliged to pay them. Therefore, this claim must be rejected for lack of substantiation.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the applications admissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*, by six votes to one, that the respondent State shall ensure, by appropriate means and without undue delay, that the assets in question (see paragraph 6 above) be returned to the applicants or, should such return be impossible, that their value, as determined in the decision of the first-instance court, be reimbursed to the applicants;

4. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Chablais;
(b) Dissenting opinion of Judge Sabato.

CONCURRING OPINION OF JUDGE CHABLAIS

(Translation)

1. I voted in favour of finding a violation of Article 1 of Protocol No. 1; however, I consider it necessary to share some observations regarding my position.

My decision to vote with the majority stems from the very particular circumstances of the present case, which quite clearly justify imposing on the Italian authorities a heightened duty to provide reasons for the confiscation of the applicants' property. Nevertheless, I must admit to certain concerns about the broader implications of the general considerations in the judgment regarding the functioning of the preventive confiscation system under Italian law.

2. The features of the Italian system of preventive confiscation – currently regulated by the Code of Anti-Mafia Laws and Preventive Measures (*Codice delle leggi antimafia e delle misure di prevenzione*, "the Code") which was adopted by Legislative Decree no. 159 of 6 September 2011 – were summarised in the decision in *Garofalo and Others v. Italy* ((dec.), no. 47269/18, §§ 13-27, 21 January 2025).

3. The preventive-measures system in Italy is in fact a long-established one, dating back to the 19th century. Initially limited to individual measures, its scope was extended in 1982 to include measures in respect of property, thereby enabling assets to be confiscated. As currently in force, the system applies to two categories of individuals: (i) those persons referred to in Article 1 of the Code, who fall within the category of individuals who pose an "ordinary" danger to society ("*pericolosità generica*"), a concept introduced by Law no. 1423 of 1956; and (ii) those persons who pose a "specific" danger to society (*pericolosità qualificata*), a concept introduced by Law no. 575/1965 and applicable to individuals suspected of belonging to mafia-type organisations, which was later extended by Law no. 152 of 1975 to include those involved in subversive activities.

4. In a number of cases, the Court has already had occasion to examine the compatibility with the Convention of different preventive measures, both in respect of individuals (see *De Tommaso v. Italy* [GC], no. 43395/09, §§ 82-84, 23 February 2017, and the references cited therein) and/or property (see *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A; and *M. v. Italy*, no. 12386/86, Commission decision of 15 April 1991, Decisions and Reports 70, p. 59). In the *Garofalo and Others* case (cited above), the Court recognised the essentially restorative and non-punitive nature of the confiscation in issue, which was intended to ensure that crime did not pay and to prevent unjust enrichment, by depriving the individual concerned and third

parties not having a valid claim over the property being confiscated of the profits of criminal activities (see *Garofalo and Others*, cited above, § 134).

5. It follows from the features of this system that preventive confiscation under Article 24 of the Code, which is not imposed at the close of criminal proceedings, falls within the category of so-called non-conviction-based confiscation. It is not based on criminal responsibility or on a judgment establishing the criminal liability of the individual concerned. Rather than being linked to the commission of a particular offence or unlawful act, it is triggered by the existence of a pattern of behaviour which, under the relevant law, is deemed to pose a danger to society. As such, it constitutes an administrative [police] measure, which is autonomous in nature in relation to individual preventive measures.

6. Paragraph 67 of the present judgment reaffirms that preventive confiscation in Italy pursues a legitimate aim in the public interest, namely, avoiding unjust enrichment derived from criminal activity, by depriving the persons concerned of unlawful profits. In so doing, the judgment specifically referred to the *Garofalo and Others* decision (cited above, § 133). This finding had, in fact, already been made in a number of earlier Italian cases which remain relevant in this context, including *Arcuri and Others* (cited above), *Riela and Others* (cited above), *Raimondo* (cited above, § 30), *Bongiorno and Others* (*v. Italy*, no. 4514/07, § 45, 5 January 2010) and *M. v. Italy* (cited above).

7. Thus, in *Riela and Others*, the Court noted that the confiscation complained of sought to prevent the unlawful use, in a manner deemed dangerous to society, of assets whose lawful origin had not been established, so that the resulting interference pursued an aim that corresponded to the general interest. More generally, in the *Arcuri and Others* case, the Court pointed out that the impugned measure formed part of a crime-prevention policy and considered that in implementing such a policy, the legislature had to have a wide margin of appreciation, both with regard to the existence of a problem affecting the public interest which required measures of control and the appropriate way to apply such measures. Moreover, it observed that in Italy the problem of organised crime had reached a very disturbing level. The enormous profits made by the organisations [in question] from their unlawful activities gave them a level of power which placed the principle of the rule of law in jeopardy. Thus, in the Court's view, the means adopted to combat this economic power, particularly the confiscation measure complained of, could appear essential for the successful prosecution of the battle against the organisations in question.

8. The above considerations remain equally valid when assessing whether the Italian preventive-measures system complies with the Convention; it has certainly undergone numerous legislative and jurisprudential amendments, including as regards the scope of the persons concerned. However, the fact that, unlike the applicants in the present case, the applicants in the above-cited

cases were suspected of belonging to a criminal, mafia-type organisation rather than posing an "ordinary" danger to society as habitual offenders or individuals habitually living on the proceeds of crime (see Article 1 of the Code) does not undermine the legitimacy of the general-interest aim pursued, or the wide discretion available to the national legislature in formulating an effective crime-prevention policy and choosing the manner which it considers most appropriate to apply it. Indeed, it is the danger to society posed by the individuals in question which justifies the option of triggering a preventive-confiscation measure in respect of their assets, whether the individuals themselves are specifically suspected of belonging to a mafia-type organisation or whether their past behaviour demonstrates a propensity for regularly committing property-related offences.

9. In my view, the present case does not therefore raise any fundamental issue regarding the nature of preventive confiscation, the compensatory and non-punitive character of which the Court has already recognised, or regarding the conditions for its applicability to a situation where the person concerned ("*proposto*") poses only an "ordinary" danger to society. The sole issue arising in the particular circumstances of the present case is therefore the proportionality of the measure. This difficulty essentially arises on account of the chronology in this case, which was marked by extremely long time periods and the confiscation of assets that were acquired several years after the period in which the individual was considered to pose an ordinary danger to society.

10. It would appear that the first applicant committed multiple property-related offences between 1980 and 1998 (see Appendix II of the present judgment). Subsequently, after serving a custodial sentence for several years, he was convicted of only one offence, namely, attempted robbery in 2008. Although the continuity of the offense committed by the applicant is far from being clear after 1998, it is neither arbitrary nor unreasonable to interpret domestic law in such a way as to find, as did the Italian courts, that he posed an "ordinary" danger to society, within the meaning of Article 1 § 1 (b) of the Code, between 1980 and 2008 (rather than between 1980 and 1998) by reason of the fact that he had been habitually, or at least in part, living on the proceeds of crime throughout that period. However, it is in any event very difficult to understand why the authorities waited until 2018 – nearly a decade after the end of the period in which he posed a danger to society – before initiating the confiscation proceedings (see paragraph 6 of the present judgment). If the offence committed in 2008 was not "habitual" within the meaning of Article 1 § 1 (b) of the Code but rather an isolated offence, then nearly 20 years elapsed between the end of the period of continuous criminal activity (1998) and the initiation of the confiscation proceedings. However, the case file contains no convincing explanation as to why the authorities waited so long before taking action. Such an explanation was, however, necessary, not only to substantiate the

proportionality of the measure, but also for reasons of legal certainty, particularly since the Italian system does not appear to impose any time-limits for initiating preventive confiscation proceedings. Long delays of this kind may make it excessively difficult, for the person concerned or his or her relatives, to prove the lawful origin of the property subject to confiscation, as required by Article 24 of the Code (see, in this respect, *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 205 *in fine*, 13 July 2021, in which the need to take such difficulties into account was recognised).

11. In my view, the facts of going so far back in time to determine the period in which the applicant posed a danger to society, and of linking that period to assets that were acquired years after it had come to an end, necessarily imposed a duty on the Italian authorities to provide more in-depth reasons. This entails a burden of proof on the prosecution to justify the need for the confiscation measure. Moreover, domestic law itself lays down stricter requirements for the reasoning to be provided in such a context. Thus, in judgment no. 36421 of 2021, the Court of Cassation noted that the greater the lapse of time between the moment when the person in question ceased to pose a danger to society and the point when the assets to be confiscated were acquired, the more important it was to adduce, rigorously and unequivocally, factual evidence in support of the claim that acquisition had been funded through the reinvestment of unlawful profits (see paragraph 30 of the present judgment).

12. In the present case the confiscated assets consisted in real property purchased in 2010 and 2016 by the second applicant, real property and a vehicle acquired by the third applicant in 2016 and 2018 respectively, and the balances of various bank accounts opened by the applicants between 1994 and 2016. In none of those cases, therefore, were the assets acquired in the period *immediately* after the end of the period in which the first applicant was considered to pose a danger to society (see paragraph 84 of the present judgment). Regardless of whether that period is considered to have ended in 1998 or 2008, the time elapsed is far too long for a mere general presumption that the assets were obtained through the reinvestment of unlawful profits previously generated by the first applicant: in such circumstances, the authorities were required to provide specific and substantiated justification as to the necessity of confiscating those recently acquired assets, given that the first applicant had not posed a danger for ten years and had committed only one offence over the previous two decades. In the case of assets acquired through the reinvestment of profit from previous illegal activities, it becomes necessary to reconstruct past financial transactions in order to be able to link those assets to the period in which the individual posed a danger to society.

13. It follows from the above that the finding of a violation of Article 1 of Protocol No. 1 is primarily based on the first set of arguments outlined in paragraph 81 of the present judgment. In my opinion, the second and third sets of arguments outlined in paragraphs 81 et seq. can validly support the

finding of a violation only to the extent that the chronology of events in the present case is characterised by extremely lengthy time periods. In other words, I do not consider that it is possible to infer from those paragraphs guidelines that would be applicable to other types of cases, in which the acquisition of the assets to be confiscated occurred during the period in which the individual in question posed a danger to society, or even immediately after the end of that period.

14. In particular, paragraph 82 cannot be interpreted as establishing a requirement for the authorities, in the context of preventive confiscation, to carry out a systematic assessment in order to demonstrate that the prior offences committed have "yielded ... significant financial gain". Such an interpretation would be inconsistent with the administrative rather than criminal nature of preventive confiscation. Similarly, it would be incorrect to consider that only completed offences, to the exclusion of mere "attempted" ones, can be taken into account in order to demonstrate the danger to society posed by the individual concerned, and hence the need to confiscate the assets acquired by him or her. It must also be possible to take into account offences with regard to which mitigating circumstances have been recognised, even where this entailed payment by the offender of compensation for damage. All such forms of criminal conduct can show that the individual concerned poses a certain degree of danger to society, and can therefore justify the confiscation of assets belonging to him or her, or that are at his or her disposal if owned by close relatives.

15. With regard to the requirements in respect of the *link* to be established between the property to be confiscated and the first applicant's unlawful conduct (see paragraphs 85-88 of the present judgment), the exceptionally long period of time that had elapsed between the end of the period when he was considered to pose a danger to society and the acquisition of the property to be confiscated also warranted a stricter requirement that the authorities provide reasons. This translates to a special duty on the public prosecutor to establish the illicit origin of the assets in question and to conduct a rigorous examination of the reinvestment chain that ultimately led to their acquisition.

16. The *Todorov and Others* case, referred to in paragraph 86 of the present judgment, also concerned the confiscation of property acquired a considerable time after the offence had been committed (see *Todorov and Others*, cited above, §§ 219-21). Accordingly, it would be rash to infer from paragraphs 85-86 of the present judgment, in general terms, that the establishment of a "discrepancy between income and expenditure" – proof of which must be provided by the prosecution – cannot under any circumstances be the decisive factor in establishing a link between the offences and the property to be confiscated and, consequently, its unlawful origin.

17. The establishment of such a discrepancy, giving rise to a presumption of unlawful acquisition that must be capable of being rebutted by the person concerned (see paragraph 26 of the present judgment), is in fact a common

tool in the context of non-conviction-based confiscations. The Court has previously accepted that such a discrepancy may contribute to demonstrating the unlawful origin of assets, where the person concerned has failed to rebut that presumption (see, for example, *Telbis and Viziteu v. Romania*, no. 47911/15, §§ 77 and 80, 26 June 2018). In the *Gogitidze and Others* case the Court reiterated that it was legitimate for the competent national authorities to order confiscations on the basis of a preponderance of evidence suggesting that the defendants' lawful income could not have enabled them to acquire the property in question. Indeed, where a confiscation order was issued in civil proceedings *in rem* concerning the proceeds of serious offences, the Court has not required proof "beyond reasonable doubt" of the unlawful origin of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, has been found to suffice for the purposes of the proportionality test under Article 1 of Protocol No. 1 (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 107, 12 May 2015, and the references cited therein).

18. I consider that these principles concerning the burden of proof in respect of the unlawful origin of property and the role of a discrepancy between income and expenditure remain entirely relevant, including in the context of the preventive confiscation of property at the disposal of individuals posing an "ordinary" danger to society under Italian law. These principles must also be placed within the broader international and European legislative framework, which for several years has attached increasing importance to non-conviction-based confiscation mechanisms and has encouraged the use of presumptions based on unexplained wealth or discrepancies between expenditure and declared income (see *Garofalo and Others*, cited above, §§ 59-76).

DISSENTING OPINION OF JUDGE SABATO

I. INTRODUCTION

1. I wish to preface my remarks by stating that I concur almost entirely with the profound observations advanced by Judge Chablais in his concurring opinion, to which I accordingly have the honour to refer.

My divergence from the reasoning of my distinguished colleague is limited, and relates solely to the justifiability of the temporal interval between the underlying facts and the confiscation. Judge Chablais considers, as do I, that such a gap can be bridged in the light of the demonstration of financial

flows (see paragraph 13 in fine of Judge Chablais's opinion). In my view, that demonstration was indeed furnished (see paragraphs 39-42 f my opinion, below), whereas, in his assessment, it was not. For the rest, we concur in being unable to share the views of the majority for several reasons covered by my colleague.

Some additional reasons will be addressed in detail in my opinion, while others I shall either omit or touch upon briefly. I feel, however, a strong duty – in line with the legal tradition from which I come, which does not even allow dissenting opinions, precisely for the reason I am about to set out – not to undermine the authority of the Court's judgments, including the ones from which I dissent. That possibility of undermining the authority of judgments is, ultimately, a risk that every dissenting judge must have in mind: the Court is a vital safeguard of the rule of law in Europe and, potentially, worldwide, and it is currently operating in a particularly delicate historical period. Its errors in adjudication must therefore be highlighted, but strictly within the limits necessary to secure their correction, whether through referral to the Grand Chamber at the parties' initiative or by subsequent overruling.

2. The grounds of my dissent stem first and foremost from the blatant inadmissibility of the three applications. Yet, surprisingly, the majority found a way to declare them admissible notwithstanding that in each of the applications – which are essentially identical – the "facts" are set out in a mere twenty-one and a half lines. From those lines, it is not even possible to understand the nature of the domestic proceedings. Moreover, the two grounds for the complaint are too "skeletal" to be intelligible (see paragraph 7 below), which is also problematic for the assessment of the admissibility of the applications.

3. On the merits, the majority, in my view, fundamentally misapprehended both the facts of the domestic proceedings and the relevant domestic legal framework and decisions of the national courts. They then extended the bounds of the case – through what I consider to be a highly questionable widening of its scope and its recharacterisation (the case was initially brought solely under Article 6 and the majority decided to examine it under Article 1 of Protocol No. 1, contrary to the established rules on recharacterisation). Further, by inexplicably departing from the Court's settled case-law on non-conviction-based confiscation – relying instead on certain "principles" laid down in only a few country-specific judgments – they have placed in serious jeopardy the Italian system of non-conviction-based confiscation, which has existed for decades, has served as a model at the European Union and international levels, and has hitherto been endorsed in the Court's case-law.

4. I will therefore try to demonstrate my conclusion that the applications should have been declared inadmissible. In any event, no violation of the Convention should have been found – regardless of the Convention provision relied upon.

II. INADMISSIBILITY OF THE APPLICATIONS

A. The skeletal content of the application forms

5. As I mentioned, the majority held, first of all, that the applications were admissible. I do not understand how this could have been possible: the three application forms (which were practically identical for each applicant), at section E, page 5, contained a statement of "facts" only twenty-one and a half lines long, consisting of little more than a bare list of the assets confiscated and the identification data (numbers and dates) of the relevant domestic sets of proceedings and judgments.

6. Nothing was said about the reasons advanced by the head of the local police authority (*questore*) when requesting the confiscation, the applicants' counterarguments in the judicial proceedings, or the reasoning of the domestic judgments. In short, none of the substance that we can now read in paragraphs 2 to 19 of the majority's judgment was mentioned in that section of the application form, which – in other words – provided no details that would have enabled the Court to understand the domestic case. Were it not for the word "*prevenzione*" coupled with the details of the domestic courts which ordered the confiscation, even the broad legal category in which the case had to be placed was not mentioned.

7. Slightly more detail – though still entirely inadequate – was to be found in section F, page 8, where one, and only one, alleged violation was indicated, in the form of two complaints under Article 6 of the Convention:

(a) The first two paragraphs – which I identify as the first complaint – argued that the evidence actually demonstrated the lawful origin of the confiscated assets; the applicants cited a domestic precedent and alleged that an error in the evaluation of the evidence by the domestic courts had been made, in that, they submitted, their lawful resources had been sufficient to substantiate the purchases of assets after the period of "dangerousness". They also argued that there had been an "inversion of the burden of proof".

(b) "Secondly" (an adverb showing that there were two grounds of complaint, at least so far, and that this was the second), the applicants – referring also to a non-binding opinion of the public prosecutor– argued that no "temporal link between the period of dangerousness and the acquisition of the confiscated property" had been demonstrated.

(c) "Lastly" (an adverb starting a single, isolated sentence which could not be taken as starting another complaint, since the content had no independent weight, and was linked to the preceding issue of the "temporal link"), the applicants alleged that "a classification of social dangerousness *sine die* ... in the absence of decisive elements" constituted "a violation of human rights".

That is all. No further claims were made – in particular, none concerning the nature of the predicate offences, other aspects of the reasoning of the

domestic courts, the possible fictitious registration of assets in the names of relatives and/or reinvestment of unlawful gains, or proportionality either in general or in specific respects (these subjects – as we shall see – nonetheless "entered" into the scope of the case examined by the majority).

B. Why the claims under Article 6 were inadmissible: incomplete, unintelligible, fourth-instance and manifestly ill-founded

8. As will be seen, the majority judgment itself did not directly address the first complaint concerning the alleged "inversion" of the burden of proof. The applicants' relevant arguments – which were plainly incomplete, if not unintelligible – were inadmissible in support of a complaint. Even if they were admissible, their aim was clearly a request to the Court for it to reassess the evidence, that is, asking the Court to rule as a "fourth instance", which would, again, be inadmissible. And, even assuming that the complaint relating to the assessment of evidence was admissible, it would, at any rate, be a procedural complaint, as is evident from the fact that the only provision relied upon was Article 6.

9. The majority, instead, took into account – as part of a wider consideration of the "evidence" – the complaint concerning the "temporal correlation" (including the part on "social dangerousness *sine die*"). The applicants did indeed argue in their application forms that: no "temporal correlation between the period of dangerousness and the acquisition of the confiscated assets" had been shown; that the confiscated assets had been acquired some years after the dangerousness had ceased; and that domestic case-law (they cited judgment no. 12329 of 14 February 2020 of the Court of Cassation in *Turchi*) permitted such "delayed" correlation only subject to a duty on the domestic courts to provide reasons concerning the derivation of current assets from acquisitions made during the period of dangerousness.

10. I do not wish to express a final view on the formal admissibility of this complaint. Given its lack of clarity and completeness, which are closely linked to the inadequate statement of facts, this complaint was probably inadmissible already on this basis.

11. However, even assuming that the "formal" aspect of admissibility posed no problem, given that the applicants themselves acknowledged the possibility – under the case-law of the Court of Cassation – of "delayed" temporal correlation where the domestic courts provide reasoning concerning the fact that current assets could be presumed to be reinvestment of previously acquired funds, the Court should have verified the relevant documents and – given that the domestic courts clearly had provided reasoning on that point (something that the majority superficially denied, and of which I will try to demonstrate the existence) – the complaint would then, in any event, have been rejected *de plano* as manifestly ill-founded. As we shall see, on the contrary, surprisingly the majority took a very critical standpoint on delayed

correlation, even though the applicants themselves had recognised that it was permitted.

12. Be that as it may, this complaint too, if admissible, concerned, in essence, as has been seen, a question of evidence and/or lack of reasoning by the domestic courts. This clearly explains why the applicants relied solely on Article 6.

C. The artificial recharacterisation from Article 6 to Article 1 of Protocol No. 1 and the expansion of the scope, from application forms to observations: the original inadmissibility cannot be cured (*Fu Quan, s.r.o.* and *Grosam*)

13. The reader, at this point, will be wondering whether the case I am discussing is indeed the same dealt with in the majority's judgment. Yes, it is. Indeed, the reader, having read the copious arguments set out in the majority's judgment (in addition to the very few in the applications), will be wondering how it is possible that new arguments – unrelated to the initial ones I have carefully reproduced above – were added. Also, the reader will be wondering how these applications – which we have seen were clearly related only to fair-trial issues under Article 6 of the Convention –were recharacterised under Article 1 of Protocol No. 1, which was never relied upon. Where, then, in the initial applications were there clear and comprehensible complaints of an interference with the right to property?

14. In order to address the reader's doubts, I will regrettably have to illustrate a long and winding road that has led to a new scope for this unusual case being artificially identified. The driving forces were: (1) the recharacterisation of the complaints, beyond the established rules in this context; and (2) the acceptance of arguments that were advanced for the first time in the parties' observations, *as if they were supplementing the initial complaints* (alas, upon questions put by the Court which themselves exceeded the initial complaints and already proposed a recharacterisation).

15. I must immediately observe that the practice of dealing artificially with an enlarged scope of the case, beyond the initial content of application forms, was condemned by the Grand Chamber in two parallel authorities, *Fu Quan, s.r.o. v. the Czech Republic* ([GC], no. 24827/14, 1 June 2023) and *Grosam v. the Czech Republic* ([GC], no. 19750/13, 1 June 2023), to which I will quickly refer. In particular, in *Fu Quan, s.r.o.*, the Grand Chamber clearly stated (§§ 145-46):

> "[T]he applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention ... in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not ... ambiguous phrases or isolated words do not suffice for it to accept that a particular complaint had been raised ... This follows from Rule 47 § 1 (e)-(f) and § 2 (a) of the Rules of Court, which provides that all applications must contain, *inter alia*, a concise and legible statement of the facts and of the alleged violation(s) of the Convention and the relevant arguments, and that

> this information should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document."

16. Based on these principles, the recharacterisation of the complaints, since it exceeded the original scope of the applications, constituted the first rupture to the Court's good practice and the Rules of Court. Since the recharacterisation was already proposed at the moment when notice of the applications was given to the Government, through questions put to the parties, recharacterisation was also the driving force behind the arguments being expanded (the parties having, of course, answered the questions put), a second rupture of good practice and the Rules of Court. Strikingly, in the face of three applications which were by their nature inadmissible and concerned exclusively Article 6 complaints, the majority nevertheless – at paragraph 36 of their judgment – "ratified" the choice to examine the case under Article 1 of Protocol No. 1. In the rest of the judgment, as we shall see, the majority accepted to supplement the original (very few) submissions, with other submissions that were in breach of the Rules of Court.

17. In support of their choice on recharacterisation, the majority cited, at paragraph 35 of their judgment, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018. Let us read this quite well-known citation:

> "...it can be concluded that the scope of a case 'referred to' the Court in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant. It cannot, however, base its decision on facts that are not covered by the complaint. To do so would be tantamount to deciding beyond the scope of a case; in other words, to deciding on matters that have not been 'referred to' it, within the meaning of Article 32 of the Convention." (Emphasis added.)

18. Yet it is precisely on the basis of this Grand Chamber language (see emphasis added) that the majority's error becomes apparent: the Court may recharacterise, but only on the basis of the "facts" contained in the complaint, if necessary attributing to them a different characterisation in "law" (ibid., § 114). In the present case, however, as I have shown, the complaints contained no factual allegations indicative of a violation of the right to the peaceful enjoyment of possessions. Instead, they contained, as already explained, a vague procedural allegation concerning the inadequate assessment of evidence and the domestic courts' reasoning on the "temporal correlation" issue.

19. Equally mistaken – with all due respect – are the references made by the majority at paragraph 36 of their judgment to other alleged precedents, in particular, the misplaced reliance on *Todorov and Others v. Bulgaria* (no. 50705/99, § 129, 13 July 2006), *Yordanov v. Bulgaria* (no. 56856/00,

§ 69, 10 August 2006), and *Mandev v. Bulgaria* (no. 27222/04, § 78, 15 September 2015).

20. As is clear from a simple reading of these three judgments (which I will refer to as the Bulgarian confiscation case-law), in each of them the applicants themselves had relied on Article 6 § 1 together with Article 1 of Protocol No. 1 and Article 13, and had made appropriate factual and legal submissions related to an interference with property. The Court then chose to examine their complaints – clearly property-related – solely under Article 1 of Protocol No. 1. This is plain from §§ 128, 68 and 77 of those three judgments respectively.

21. By contrast, in *Isaia and Others*, the majority, faced with three applications which – as we have seen – were inadmissible on multiple grounds and which contained no factual or legal basis for any property-related complaint, "created" an Article 1 of Protocol No. 1 case out of nothing.

22. But, as mentioned already, the road to the breach of good practice and the Rules of Court was not only down to undue recharacterisation under Article 1 of Protocol No. 1 of the few arguments contained in the application form, thus including aspects not raised by the applicants. Much more importantly, the issue is that other complaints have, as we shall see, been conflated with the only initial allegation, that of insufficient evidence of "temporal correlation".

23. The additional complaints – which the reader will have noted going through the majority's judgment – appear for the first time in the parties' written observations: as I said before, they concern the nature of the predicate offences, other aspects of the reasoning of the domestic courts, the possible fictitious registration of assets in the names of relatives and/or reinvestment of unlawful gains, or proportionality either in general or in specific respects. These arguments – which cannot under *Fu Quan, s.r.o.* be regarded as part of the initial complaints, since they concern entirely separate and heterogeneous issues – were formulated, in particular, by the applicants in response to questions put by the Chamber.

24. But extension of the scope of the case by way of an error of the Court does not transform initial inadmissibility into admissibility. As the Grand Chamber recently clarified in *Grosam* (cited above, § 97), before declaring the relevant complaint inadmissible:

> "It ... follows that, by posing a question ..., the Chamber of its own motion extended the scope of the case beyond the one initially referred to it by the applicant in his application. The Chamber thereby exceeded the powers conferred on the Court by Articles 32 and 34 of the Convention."

25. To conclude, the series of mistakes that led to the case having a new scope do not alter the blatant inadmissibility of the initial applications.

III. NO VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

A. A majority misapprehending the facts and abandoning settled case-law

26. From this point onwards, I shall leave aside the admissibility issues. While those issues must indeed be stressed in order to highlight the surprising approach taken by the majority in examining the present case, the real importance of this case lies in the merits (see my concluding considerations in part IV of this opinion). This is also shown by the fact that the judgment has been classified as "leading" for the purposes of any future rulings of the Court.

27. Regrettably, however, the majority's approach to the merits was likewise unconvincing, partly for reasons linked to the highly artificial expansion of the scope of the case (already mentioned in the admissibility analysis), and partly for reasons of inconsistency not only with the facts of the case but – even more gravely – with the Court's own case-law.

28. The facts have, in one word, been "misapprehended", and the established case-law has been "abandoned" by the majority in favour of "importing" principles taken from isolated rulings concerning confiscations in Bulgaria, which are country-specific and thus ill-suited to the situation under examination. I will deal with those aspects separately.

B. The facts made simple – and the most striking misreadings by the majority

29. The case concerns a family residing in the province of Palermo, comprising, among others, the father, the son born in 1991, and the wife (who is the only member of the family who was not charged with any criminal offence, although she too was a party in the domestic proceedings as the registered holder of certain assets). Over the years, both the father and the son have faced numerous criminal charges, many of which have led to serious convictions, including, for both father and son, decisions given by the Juvenile Court for charges dating back to their youths.

30. The list of the father's final convictions is to be found in Appendix II to the judgment. The majority's judgment mentions only the convictions; however, the request submitted to the relevant domestic court by the *questore* of Palermo (referred to in paragraph 5 of the present judgment) provided a significantly broader overview, including evidence of facts not resulting in convictions. This request consisted in a 53-page reconstruction of events and of the family's asset situation, which was both highly detailed and comprehensive. This is a first element which the majority chose not to emphasise, probably owing to their erroneous approach that what counts in preventive confiscations is convictions alone; that is not the case (see below).

31. The request was submitted by the *questore* asking for the application of various measures, including first a "seizure", then a "preventive confiscation". The request also included information about the individuals with whom our applicants had been found during police checks – persons associated with well-known Mafia circles. This is a second element which the majority chose not to emphasise, possibly for the same reason expressed above.

32. A third element concerns the nature of the offences at issue: the charges leading to convictions never included participation in a mafia-type organisation; however, the offences on record comprised very serious offences such as extortion, drug trafficking, conspiracy to commit robbery, and robberies of banks' and supermarkets' armoured vehicles transporting cash.

33. The father had a criminal record spanning two decades. He served a prison sentence (following a series of previous arrests) for a "long time" (I take this generic expression from paragraph 82 of the majority's judgment; see, on this point, the Government's arguments in paragraphs 49 and 51, from which the majority drew almost no conclusions). As made clear by the Government's submissions (they strongly emphasised this point), since the father's prison term lasted from 1998 to 2006, in that period he committed no crimes. Regrettably he swiftly resumed criminal activities upon his release. The majority, referring only to a prison term for a "long time", without referring to the exact time span, lost the opportunity to identify a continuous trend of dangerous behaviour, interrupted only when the applicant was forced to do so.

34. The link between the father's prison term, the role of the son in the meantime, and the resumption of criminal activities after the prison term is a fourth element which was misapprehended by the majority. The son, regrettably, having already been convicted by the Juvenile Court, took up his father's mantle while he was in prison and thereafter, committing offences of a similarly grievous nature. Most of the details of the son's conduct were omitted from the paragraphs concerning the head of police's request (see paragraph 5 of the present judgment), the judgment of the District Court (see paragraphs 6-11 of the present judgment), and the further sets of proceedings (see paragraphs 12-19 of the present judgment). It is important to understand, however – and the majority unfortunately neglected to do so – that, although the imposition of a police supervision measure in respect of the son was refused and the confiscation order was directed only against the father, since the son and wife were held to be "fictitious" or intermediary holders of his wealth (see below), all three applicants were parties in the proceedings, two of them as "indirect parties" formally owning property, as imposed by domestic legislation. Their conduct is therefore also material.

35. The parts of the documents not considered by the majority contained numerous assessments, which could have been useful for the Court's

comprehension of the case. The substantial volume of information contained in those documents clearly demonstrated that the family operated as a single unit and that, although the property was formally registered in the names of relatives, that registration was fictitious and on behalf of the father. This was also evident from their conduct, and the matter was expressly addressed in the relevant legislation (see paragraph 22 of the present judgment) and in the domestic judgments. This is a fifth element neglected by the majority.

36. Moreover, at p. 5 of its judgment, in response to the son's appeal against the first-instance judgment which, although not imposing police supervision, nonetheless found him "dangerous", the Court of Appeal pointed to the convictions for offences committed personally by the young man between 2013 and 2017 – when he was aged between 22 and 26 – and stated that it had to be concluded that he too lived off the proceeds of criminal activity. As concerned the father, still by way of example, p. 6 of the Court of Appeal's judgment stated that "his criminal record ... is indicative of his persistent dangerousness, spanning from 1980 until his most recent criminal acts on 21 May 2008", that is, after his release from prison.

37. At p. 6 of its judgment, the Court of Appeal thus applied to the facts before it the domestic case-law which holds that the relationship between a person, his or her spouse, and his or her children constitutes a significant circumstance giving rise to "a high probability" (a threshold higher than that required for a balance of probability test in non-criminal matters) of the "fictitious nature of the registration of assets whose lawful origin the recipient cannot demonstrate", particularly where "the family member has no earning capacity". The Court of Appeal concluded that the District Court had made proper use of those criteria, affirming that the confiscated assets had been "acquired during a period in which the [father's] dangerousness was at its peak, and there [had been] a pronounced disparity between income and purchases within his family unit. Accordingly, all acquisitions made by the family unit during that period were disproportionate, in accordance with the presumption that acquisitions made by close relatives lacking financial means must be deemed to have been made with the illicit resources of the dangerous relative, or with proceeds from the disposal of assets acquired through criminal activity, which is itself illicit" (see p. 7 of the Court of Appeal's judgment).

38. In complete contrast with the domestic courts' reasoning on such fictitious registration that I have just provided, the majority's judgment offered the surprise, among others, to tell us (at paragraph 89) that "the domestic courts' decisions did not include any kind of reasoning as to why the confiscated assets could be considered to be at the disposal of the first applicant ... They merely relied on the fact that the second and third applicants did not have sufficient income to justify the purchase of the confiscated assets". On the contrary, I consider that the above reasoning (and much more that we find in the tens of pages of the domestic decisions) is clear,

well-written, totally understandable and Convention compliant. The sixth aspect neglected by the majority is, therefore, the facts demonstrating the fictitious registration of property (linked to the fifth aspect mentioned above).

39. But there is more: a seventh aspect which was overlooked by the majority is that the domestic judgments clearly provided reasoning demonstrating the chain of reinvestments which led from assets presumably acquired during the father's period of criminal activity to assets found in the possession of the relatives. From p. 8 to the end of the Court of Appeal's judgment, pp. 13-21 of the District Court's judgment and pp. 20-50 of the *questore*'s request, we find what is called in domestic practice an "asset analysis", usually contained in judgments of this kind. The revenues and expenditures of the family unit were examined and verified by a court-appointed expert, fully respecting the rights of the defence, including granting the applicants the right to be assisted by an accounting expert of their choosing. The applicants mentioned their own expert's report in their application.

40. The court-appointed expert's report demonstrated that documents and property registers disclosed a chain of purchases and resales which revealed that the confiscated assets had been acquired using funds accumulated, on the balance of probabilities, at the time when the father had committed his offences of robbery and extortion. This is the demonstration – of course of a circumstantial nature – of the close connection in time between the last reinvestment (2018) and the confiscation (also in 2018)[1] A summary of those findings was provided at p. 21 of the Government's observations; however, they were more thoroughly detailed in the numerous pages of findings by the *questore* and the District Court. My own assessment, in a nutshell, along with what was stated by the Government at p. 21 of their observations, is that there is evidence of a discrepancy of approximately 684,200 euros between the family unit's incomes and expenditures. To explain this discrepancy, the applicants have only submitted the existence of an unsubstantiated donation by a relative. I also find the following timeline of property purchases and sales very telling:

(a) purchase of the first property in 1994;

(b) sale of the first property in 2004 (towards the end of the father's prison term);

(c) purchase of the second property in 2005 (towards the end of his prison term);

[1] In the framework of circumstantial evidence, the types of crime (extortion, robbery, theft) cannot be ignored – or only naively – to conclude that relevant amounts of cash were available to the family. Usually, money "surfaces" through persons not linked to the family. In this case, the registration of an apartment (in 2016) and a car (in 2018) got the attention of the investigators because the "surfacing" was within the family (the purchase of 2010 was, perhaps, the only one which did not). The financial analysis of cash flows by the court-appointed expert explains very well what happened.

(d) sale of the second property in 2006 (coinciding with the end of his prison term);

(e) purchase and sale of the third property in 2006 (coinciding with the end of his prison sentence);

(f) purchase of the fourth property in 2007;

(g) sale of the fourth property in 2010;

(h) purchase of the fifth property – later confiscated – in 2010;

(i) purchase of the sixth property – later confiscated – in 2016;

(j) purchase of the vehicle – later confiscated – in 2018.

41. Thus, if we read the documents with less naivety than the majority did in its judgment, we notice that the chain is uninterrupted and brings the time span up to very close to the moment of the confiscation; also, in several of the transfers of property, the resale values were significantly higher, notwithstanding the limited time between the transfers. These are very clear indicators of a chain of reinvestments, with additional cash money being reintroduced into circulation.

42. This should also be kept in mind since – again, regrettably – the majority's judgment offered us the surprise of stating in paragraph 88 that "beyond merely referring to the discrepancy between the applicants' income and expenditure, the domestic courts did not engage in a rigorous assessment of the chain of reinvestments" and, at paragraph 90, that "the domestic courts' decisions did not provide any reasoning demonstrating that the confiscated assets, purchased in 2010, 2016, and 2018 by the second and third applicants, could be considered to have been acquired with the proceeds of the criminal offences ...". Again, the reader could get the impression that we are dealing with a different case.

C. The Court's consistent case-law, its place in European and international law, and the majority's regrettable departure from it

1. The framework of preventive-confiscation measures in Italy and the Court's endorsement up to Garofalo and Others

43. Before moving on to the regrettable task of demonstrating that, in addition to serious factual misapprehensions, the majority also chose an approach which was incorrect in law, I find it appropriate to first reiterate the *acquis* of the Court's case-law concerning preventive confiscation measures, both with reference to the respondent State's system (Italy having been a pioneer in this area of the law) and other States' systems, as well as with respect to EU and international law: as it stood prior to the ill-considered intervention of the majority in the present case, of course.

44. The system of preventive measures, in particular as in force in Italy, has been examined by the Court on many occasions. Most recently, in its decision in *Garofalo and Others* ((dec.), nos. 47269/18 and 3 others, 21 January 2025), the Court focused on personal and, more specifically,

patrimonial preventive measures[2]; the part devoted to the measure at issue in the present case – confiscation – is of particular interest.

45. Indeed, in *Garofalo and Others* (cited above, §§ 14-27), the Court provided a detailed history – in some respects clearer than the one provided by the majority in *Isaia and Others* – of the development of preventive measures, especially confiscation, within the Italian legal system and of the Court's approach to this measure.

46. In *Garofalo and Others* (cited above, § 115), in accordance with its previous case-law, the Court reiterated that preventive confiscation, as envisaged in Italy as a pioneering country, "appears to be the expression of an increasing international consensus [on its use] in order to remove assets of unlawful origin from economic circulation, with or without a previous finding of criminal liability". Indeed, the evolution that led to the introduction of preventive confiscation in the respondent State is often considered a positive one, even a "success", since, to some extent, the Italian experience has become a "model" for the legislation of other States, the EU framework, and treaty-based international law. I must, however, add that what can certainly be described as a "success" were sadly measures that the respondent State was obliged to put in place under the pressure of deeply rooted social ills, in particular the long-standing entrenchment of mafia-type organisations. This is something that those dealing with the law of preventive confiscations should bear in mind.

47. The Court's case-law thus acknowledged the profound functional and structural differences between proceedings in respect of preventive measures and criminal trials. In the former, what is assessed is not individual facts but overall patterns of behaviour, which are significant in the assessment of the category, as laid down in the law, of the danger to society posed by the individual in question (which must, however, be grounded in proof of "elements of a factual nature"[3] and not mere suspicion – see, for instance, the majority's description of the relevant category, paragraph 20 of the present judgment). In the latter, by contrast, it is single acts that are judged, to be measured against the constituent elements of specific criminal offences.

48. This "ontological" difference explains the autonomy of the two sets of proceedings and the fact that, in proceedings in respect of preventive measures, the judge is entitled to rely on evidential and circumstantial elements taken from criminal proceedings, regardless of their outcome, by

[2] The same expression – originating in Italian legislation and in the case-law of the Constitutional Court, most recently in judgment no. 24 of 2019 – is rendered in paragraph 24 of the majority judgment in *Isaia and Others* as "factual findings". In Italian, however, the phrase *elementi di fatto* denotes something less than a full judicial finding of fact, and the translation risks overstating its probative weight.

[3] The 1982 legislation was introduced by, among others, a member of parliament who was murdered a few months before its approval, in a mafia attack motivated – as investigations and domestic judgments showed – by his backing of these measures.

identifying the relevant facts established therein and reassessing them through the prism of preventive justice. Thus, for the purposes of prevention, a judge may take into account not only factual elements drawn from a conviction judgment, but also findings in judgments where the criminal court declared the offence time-barred (see Articles 578, 578-*bis* and 578-*ter* of the Code of Criminal Procedure). This autonomy – which is common to other European systems – leads to an independent outcome, whether the criminal trial precedes or runs parallel to the proceedings in respect of preventive measures. Accordingly, even an acquittal does not necessarily preclude the imposition of a preventive measure, since the assessment in the preventive-measures proceedings, aimed at establishing the danger to society posed by the individual, is based on different standards, provided, of course, that the criminal court has not excluded the very existence of the same facts at issue. In general, even simple investigative findings may suffice, if adequately assessed in the preventive-measures judgment.

49. In the relevant part of the decision, *Garofalo and Others* explained that "preventive measures applied independently of proof of the commission of an offence date back to the nineteenth century in Italy" (cited above, § 14). Following the entry into force of the Constitution in 1948, which placed particular emphasis on the protection of fundamental freedoms, these measures were reformulated in the important Law no. 1423 of 1956, later amended by Law no. 327 of 1988 (ibid., § 16). The judgment further clarified the relationship between the general framework – applicable to dangerous individuals regardless of any connection with mafia-type organisations – and the extension of the measures brought about by Law no. 575 of 31 May 1965, which provided for the applicability of preventive measures to persons suspected of *appartenenza* (belonging) to a mafia-type organisation (where *appartenenza* is a legal concept covering both actual members of such organisations and external persons) (ibid., § 17).

50. In *Garofalo and Others*, the Court also acknowledged the crucial role played by national case-law, and in particular the Constitutional Court (the only body in Italy whose judgments have the force of law), in shaping the old system of preventive measures and adapting it to the principle of legality (ibid., § 18).

51. The Court then observed (in §§ 19-20, which appear to have been overlooked in the majority judgment in *Isaia and Others*, as I shall explain) that, under the specific legislation adopted in 19824 confiscation as a preventive measure was made applicable "independently of whether there existed a current danger to society posed by the individual to whom the measure had to apply", and therefore also, as is obvious in the case of confiscation, long after the period in which the individual had posed a danger to society.

52. An additional legislative provision adopted in 2009 further allowed confiscation of property "regardless of the danger to society posed by the

person in question at the time of the request for the preventive measure" (see *Garofalo and Others*, cited above, § 21). This rule is now enshrined in Article 18 § 1 of the relevant Code (see below), as observed in paragraph 25 of *Garofalo and Others* – yet it is absent from the majority's reasoning in *Isaia and Others*. Could this explain why they insist on applying the concept of "temporal correlation" too rigidly?

53. Moreover, *Garofalo and Others* noted that in 2011 Italy had adopted the Code of Anti-Mafia Laws and Preventive Measures (subsequently amended in 2017), which had consolidated and restated the legislation on preventive measures (including those applicable to non-mafia contexts) (cited above, § 22).

54. From another perspective, *Garofalo and Others* (cited above, §§ 37-50) also reviewed relevant case-law of the Court of Cassation, highlighting several principles identified in judgment no. 4880 of the Combined Divisions of 2 February 2015 in *Spinelli*: namely, the preventive – and not punitive – nature of confiscation, based on the dangerousness of the person at the time of the acquisition of the assets, and not necessarily at a later stage when confiscation might take place; its underlying rationale of removing illicitly acquired property from circulation in order to reintroduce it into the legal economy; and, consequently, the applicability of the principle *tempus regit actum* under Article 200 of the Criminal Code (it was in order to determine the applicability of this rule that alternative solutions had previously been debated in the case-law).

55. Particularly detailed attention was devoted to the case-law of the Italian Constitutional Court, notably its judgment no. 24 of 24 January 2019 (see *Garofalo and Others*, cited above, §§ 52-57). This ruling – in addition to engaging with the Grand Chamber's judgment in *De Tommaso* on other aspects that are not material here – confirmed the preventive nature of confiscation, based on the reasonable presumption that assets were acquired with the proceeds of unlawful activities. Confiscation may thus be recognised as having a "merely restorative nature, its purpose being to restore the situation that would have existed if the asset had not been unlawfully acquired. Therefore, the latter is to be removed from illegal economic circulation, and instead be redirected ... to purposes of public interest ...".

56. Let us now come to the most interesting part of the Court's reasoning in *Garofalo and Others*, to be found in its presentation of the Court's existing case-law finding the Italian system to be Convention compliant. This is also the part most relevant for the discussion of the ill-considered approach of the majority in *Isaia and Others*. The Court noted (see *Garofalo and Others*, cited above, § 80), for instance, as follows:

> "[I]n a series of previous cases, the Convention institutions have held that the preventive measures prescribed by the Italian Acts of 1956, 1965 and 1982[4], which did not involve a finding of guilt, but were designed to prevent the commission of offences, were not comparable to a criminal 'sanction' (see, among others, *M. v. Italy*, no. 12386/86, Commission decision of 15 April 1991, Decisions and Reports 70, p. 59, at p. 98; *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A; *Prisco v. Italy* (dec.), no. 38662/97, §§ 2 and 4, 15 June 1999; *Arcuri and Others v. Italy* (dec.), no. 2024/99, 5 July 2001; *Capitani and Campanella v. Italy*, no. 24920/07, § 37, 17 May 2011, with further references)."

57. One could add to what appears in *Garofalo and Others* that, in the seminal case of *Gogitidze and Others v. Georgia* (no. 36862/05, § 105, 12 May 2015 – in which the Court recognised, as mentioned in *Garofalo and Others*, that common European and even universal legal standards could be said to exist which encourage the confiscation of property linked to serious criminal offences, without the prior existence of a criminal conviction), the Court accepted that the onus of proving the lawful origin of the property presumed to have been wrongfully acquired could legitimately be shifted onto the respondents and that measures could be applied not only to the direct proceeds of crime but also to property, including any income and other indirect benefits, obtained by converting or transforming the direct proceeds of crime or intermingling them with other, possibly lawful, assets. Finally, confiscation measures could be applied not only to persons directly suspected of criminal offences, but also to any third parties with ownership rights without the requisite *bona fide* with a view to disguising their wrongful role in amassing the wealth in question (in particular, the role of family members and other close relatives who were presumed to possess and manage the ill-gotten property informally on behalf of the suspected offenders; see *Raimondo*, cited above, § 30; *Arcuri and Others*, cited above; *Morabito and Others v. Italy* (dec.), no. 58572/00, 7 June 2005; *Butler v. the United Kingdom* (dec.), no. 41661/98, ECHR 2002-VI; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; *Saccoccia v. Austria*, no. 69917/01, § 88, 18 December 2008; *Silickienė v. Lithuania*, no. 20496/02, § 65, 10 April 2012, where a confiscation measure was imposed on the widow of a corrupt public official; *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, §§ 89 and 93, 8 October 2019, where a confiscation measure was also imposed on the children on account of their father's previous criminal record; and *Zaghini v. San Marino*, no. 3405/21, §§ 17 and 65, 11 May 2023, where the applicant was a son of a man found guilty of money laundering).

58. This line of authority should not be forgotten, and I will return to it, especially to *Gogitidze and Others*. And it should be noted that the *Garofalo and Others* decision, in updating its assessment in the light of the present

[4] The 1982 legislation was introduced by, among others, a member of parliament who was murdered a few months before its approval, in a mafia attack motivated – as investigations and domestic judgments showed – by his backing of these measures.

domestic legal framework in Italy, confirmed the conclusion that the measure was Convention compliant and that Article 7 was inapplicable on the basis of the following arguments:

(a) "the measure in question, as resulting from the 2008-09 legislative amendments and the clarifications provided in the subsequent domestic case-law, presents several elements that make it more comparable to restitution of unjustified enrichment rather than to a fine under criminal law" (ibid., § 126) ;

(b) "although the Court of Cassation distinguished the confiscation in issue from a proper *actio in rem* ..., it held that the focus of the measure was in any case to remove 'dangerous assets' from economic circulation ..., identified as such on the basis of the fact that they had been acquired by an individual who, at the time when they were acquired, fell within one of the subjective categories, provided for by law, of individuals suspected of having committed criminal offences ... The focus of the measure in respect of the property, and not the individual, is evident from the fact that the confiscation can be ordered even *vis-à-vis* property belonging to a third person who inherited or purchased it, if such property was acquired by one of the individuals referred to above, and the third person has no valid legal claim to it" (ibid., § 127);

(c) "the fact that the confiscation in question could be applied exclusively in respect of assets that were presumed to have originated in unlawful activities, owing to the lack of evidence showing their lawful origin" (ibid., § 129), and that, "in the light of the clarifications provided by the Constitutional Court in judgment no. 24 of 27 February 2019, the scope of the measure in question had to be limited by its purpose of preventing unjust enrichment: ... the measure could be justified only in so far as the criminal offences presumably committed by the individual concerned were a source of illegal profits, in an amount reasonably congruent with the value of the assets to be confiscated" (ibid., § 130). Furthermore, as "established by the Court of Cassation ... and confirmed by the Constitutional Court ..., ... the measure could be applied only in respect of assets acquired by the individual concerned during the period in which he or she had presumably committed criminal offences entailing unlawful profits", and more precisely "unlawful profits derived from the crimes presumably committed by the individual concerned" (ibid., §§ 131-32)[5]

59. Before concluding, in applying its criteria to determine whether confiscation constituted a penalty within the autonomous meaning of the

[5] The Court's choice of expression in this respect will require clarification, as the majority in *Isaia and Others* might have misinterpreted it to mean that confiscation could be ordered literally only with respect to assets acquired by the individual concerned during the period in which he or she had presumably committed criminal offences entailing unlawful profits. This is not the case, since the general criterion of reasonable congruence applies, and – as I will stress –assets deriving from presumed reinvestments may also be confiscated.

Convention, in *Garofalo and Others* the Court held that it was not decisive that "a confiscation order [could] be used to confiscate assets of a considerable value, and there [was] no upper limit on that value" (ibid., § 135), since "irrespective of the value, the confiscation [was] only applicable to property of which the legal origins [could not] be traced. In particular, it [was] limited to those assets in respect of which, owing to the danger to society posed by the individual when they [had been] acquired and the discrepancy between those assets and the individual's lawful income, there [was] a legally justified presumption that they [were] the profits of crime" (ibid., § 137). Accordingly – the Court concluded in *Garofalo and Others* – preventive confiscation in Italy was not to be regarded as a "penalty", and Article 7 of the Convention did not apply (ibid., § 140).

60. That said, the question now arises whether this traditionally favourable approach towards preventive confiscation has in fact shifted, and whether the subsequent case-law – in particular the Bulgarian confiscation case-law – has imposed such far-reaching limitations on its applicability as to render, in practice, the objectives of preventive confiscation unattainable. Before turning to that issue, however, I shall briefly set out the relevant European and international principles.

2. The wider European and international law context

61. In their judgment (see paragraph 33 of the present judgment), the majority rightly made reference to *Garofalo and Others*, in which the principal sources of EU and international law on non-conviction-based confiscation (a category encompassing preventive confiscation) were duly cited.

62. It is nevertheless useful to highlight certain provisions particularly relevant to the present case. Most importantly, the entire legal framework on non-conviction-based confiscation has been brought into sharper focus with the adoption of Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation. This instrument – intended to strengthen the ability of competent authorities to deprive criminals of the proceeds of crime by extending the scope of non-conviction-based confiscation – contains, in its Article 16, a striking innovation on the "confiscation of unexplained wealth linked to criminal conduct". Subject to a series of conditions, that provision allows regard to be had to the fact that "the value of the property is substantially disproportionate to the lawful income of the affected person", "there is no plausible licit source of the property", and "the affected person is connected to people linked to a criminal organisation".

63. As to international treaty law, it must be noted that the most widely adhered-to global instrument, namely, the United Nations Convention against Transnational Organized Crime – the so-called Palermo Convention of 12-15 December 2000, whose background is linked to the same

circumstances that led Italy to play a pioneering role in this area of the law – contains the interesting Article 12 § 7, which provides as follows:

> "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings."

64. A parallel clause appears in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS198), the so-called Warsaw Convention of 16 May 2005, expressly cited in *Garofalo and Others* (cited above, §§ 63-64). Article 3 § 4 stipulates as follows:

> "Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law."

65. It is therefore evident from the above provisions that there exists, at both European and international level, a clear consensus: procedural and evidential requirements are left to the assessment of the individual States, but it is not proscribed – indeed, it is explicitly expected – that the burden of proof on State authorities may be circumstantial, and that it may be reversed with regard to unexplained wealth held by individuals linked to criminal conduct.

3. *The current state of the Court's case-law: why the Bulgarian confiscation case-law is context-specific and not exportable, with reference to* Păcurar v. Romania

(a) Established case-law

66. As mentioned, the Court has dealt with various cases of non-conviction-based confiscation. Apart from the Bulgarian confiscation case-law, which I will discuss, the Court has – with very few exceptions based on issues not relevant to the present case – consistently found the domestic rules and practices of the various countries to be Convention compliant.

67. The Court's case-law concerning Italy has already been cited above. I would refer, for example, to the 1994 *Raimondo* case, concerning preventive confiscation in a mafia-related context (thus only partially comparable to our case, as with some of the other cases). The Court accepted that those were measures of an administrative character, not linked to the commission of a specific unlawful act but to a pattern of behaviour defined by law as indicative of social dangerousness. It is important to note that in this framework, as regards the burden of proof, the Court accepted that the prosecution should demonstrate evidence showing that the defendant belonged to mafia-type groups, together with a considerable discrepancy between his or her lifestyle and his or her apparent or declared income, in order to show that the property

concerned represented the proceeds of unlawful activities or their reinvestment. This shifted the burden onto the defendant to demonstrate the lawful source of the income or assets. After the confiscation, the applicant was later acquitted on the ground of insufficient evidence. Nevertheless, the preventive measures were not considered to amount to unlawful confiscation.

68. Similarly, in the 2001 *Arcuri and Others* case, as regards the burden of proof, the Court considered it sufficient that the evidence showed that at least part of the first applicant's considerable fortune had been unlawfully acquired, while documents found in his home revealed close contact with persons involved in organised crime; investigations also showed a discrepancy between his financial means and his lawful business activities and declared income. Again, the principle accepted by the Court was that it was for the prosecution to establish sufficient circumstantial evidence, such as a considerable discrepancy between lifestyle and declared income, to demonstrate that the property represented the proceeds of unlawful activities or their reinvestment.

69. Similarly again, in the *Riela* case, also in 2001, the Court declared the application inadmissible for reasons similar to those in the case above, again accepting that the burden was on the prosecution to establish sufficient circumstantial evidence.

70. Such is the Court's case-law concerning Italy; it is also interesting to note the case-law concerning other systems, sometimes different in nature. Setting aside the cases already cited regarding San Marino (which confirm the same approach as in Italy), it is worth noting the Court's case-law concerning the United Kingdom[6]. Two judgments are particularly important. The first is *Phillips v. the United Kingdom* (no. 41087/98, ECHR 2001-VII), concerning the confiscation of "imputed income" from drug trafficking. The Court accepted that a link with "some" criminal activity was sufficient, on the basis of a pattern of past criminal behaviour: the applicant had previous convictions (though not for drug-related offences). The Court accepted the important principle that it was for the prosecution simply to establish, on the balance of probabilities, that the applicant had benefited from drug trafficking, unless the applicant showed, also on the balance of probabilities, that the assumption was incorrect or that a serious risk of injustice would result.

---

[6] Five confiscation cases against the United Kingdom were decided to be inadmissible only a few days ago: *Bagnall v. the United Kingdom* (no. 54241/12), *Briggs-Price v. the United Kingdom* (no. 59494/09), *Gale v. the United Kingdom* (no. 25092/12), *Koli v. the United Kingdom* (no. 58671/12), and *Sharma v. the United Kingdom* (no. 51757/12). The first two were decided on 8 July 2025, the others on 1 July 2025, and all were notified on 28 August 2025. In particular, in *Briggs-Price*, the Court examined not only issues concerning the presumption of innocence, but also the differences between two evidentiary approaches – the "asset-based approach" and the "direct evidence approach" – which cannot be further discussed here.

71. The second is *Grayson and Barnham v. the United Kingdom* (nos. 19955/05 and 15085/06, 23 September 2008, again concerning the confiscation of "imputed income" from drug trafficking, though in this case in the presence of a conviction. In such circumstances, the law empowered a court to assume that "all" property held within the preceding six years represented the proceeds of drug trafficking, with the burden then shifting to the defendant to show, again on the balance of probabilities, that the money had instead come from a legitimate source.

72. The Court's three most recent judgments on the subject concern new democracies: *Ulemek v. Serbia* (no. 41680/13, 2 February 2021) and *Gogitidze and Others* (cited above), in addition to a case concerning Romania which I will come to later.

73. In *Ulemek*, the Court accepted that the link with particular crimes was imperfect. In particular, it found Convention compliant the absence of a requirement to prove a specific link between a particular offence and the acquisition of a property in order to apply forfeiture provisions. It was not necessary to prove the specific offence by which the assets had been acquired. In practice, the rule on the burden of proof was that conviction for especially serious crimes created a presumption that property had been illegally acquired until proven otherwise.

74. In *Gogitidze and Others*, which I have already partly covered, the case concerned the administrative confiscation of unexplained wealth specifically aimed at a public official, his family members, close relatives and so-called connected persons, even in the absence of the prior criminal conviction of the official concerned. Here, the Court accepted that the burden of proof was satisfied on a balance of probabilities of illicit origins: essentially, the discrepancy itself substantiated the presumption of unlawful origin, leading to confiscation unless rebutted. It was necessary to establish a link with a crime, but there was no requirement of conviction, nor to demonstrate a link between a specific property and a specific offence.

(b) Country-specific case-law concerning confiscations in Bulgaria

75. This would have been the current state of the Court's case-law on preventive confiscation, had it not been for a more recent line of judgments concerning Bulgaria, already referred to above. These include *Todorov and Others* (cited above), which was preceded by *Dimitrovi v. Bulgaria* (no. 12655/09, 3 March 2015), and later followed by *Yordanov and Others* and *Mandev* (both cited above).

76. For the sake of brevity, and without examining here the various Bulgarian legislative reforms – which make these cases highly country-specific – it suffices to note that Bulgaria has enacted successive laws on the forfeiture of "unlawful" assets (that is, assets not limited to the proceeds of crime or their reinvestment). These laws also allow for wide temporal coverage, with no requirement to establish even a minimal link

between the assets to be forfeited and the predicate offence, which itself could be a non-income-generating offence. The impossibility of comparing that situation with the one at hand in the present case should be evident to all.

77. It is, in my modest view, self-evident that whatever review the Court carried out of this Bulgarian legislative unicum cannot be extended to other legal contexts, and in particular not to a re-examination of the Italian legislation. The Italian framework is based on "ordinary" or "specific" dangerousness, grounded in "elements of a factual nature", with a need to establish in adversarial court proceedings a temporal correlation between the dangerousness and the confiscation and/or to provide reasoning to justify delayed correlation. This is a system that has already been examined in the Court's established case-law, which is fundamentally different to that in Bulgaria, but comparable – as we have seen – to many other systems.

78. It may be useful to identify the principles set out in the Bulgarian confiscation case-law that are closely linked to the defects of the Bulgarian legislation and are therefore not exportable. In examining below (see paragraph 94) the majority judgment in *Isaia and Others*, I shall endeavour to highlight these non-transferable findings which, on the contrary, have been erroneously exported.

79. I would, however, stress immediately – in concluding this review of the Bulgarian confiscation case-law – that even within the Court's specific analysis of those cases, the Bulgarian line shows the need – beyond defects in legislation – to assess the facts of each and every domestic confiscation. In *Todorov and Others*, for example, no violation was found in respect of certain applicants (Mr Rusev, Mr Katsarov and Mr Dimitrov – see *Todorov and Others*, cited above, §§ 251-81), because the domestic courts' conclusions as to their possible involvement in criminal activity – even beyond the offence of which they had been convicted – and as to the causal link between that activity and the assets to be forfeited, had not been arbitrary or manifestly unreasonable. And this was the case despite the flaws in the legislation. This, indeed, is the very principle that ought to have been applied to the Italian case at hand, even assuming that the Bulgarian confiscation case-law was exportable.

(c) The distinguishing of the Bulgarian confiscation case-law in *Păcurar v. Romania*

80. Perhaps my strongest criticism of the majority's extension to the present case of a non-applicable and non-consolidated line of case-law concerning Bulgaria lies in the fact that this case-law has already been distinguished by the Court.

81. Indeed, in *Păcurar v. Romania* (no. 17985/18, 24 June 2025 (not final)), deliberated on 3 June 2025 and therefore well known to the majority which adopted *Isaia and Others*, the Court expressly held that the Bulgarian confiscation case-law was not applicable, and instead explicitly endorsed the appropriateness of following the established Italian line of case-law.

82. That case concerned confiscation under provisions aimed at safeguarding integrity in the exercise of public office, where the provenance of assets was "unexplained". The proceedings did not even concern the establishment of criminal factual elements against the applicant, but rather the simple fact that, as a holder of public office, he had failed to declare the monies in his possession. This omission – a factual circumstance in some respects analogous to the notion of dangerous behaviour in the Italian system – triggered a reversal of the burden of proof as applied by the Romanian courts regarding the lawful origin of the assets, and this was found to be consistent with the Convention. The Court also held that the confiscation was proportionate, given the adequate safeguards provided in the relevant legal framework.

83. A crucial passage to which the majority in *Isaia and Others* should have paid due attention is to be found in paragraph 197 of *Păcurar*, which I reproduce below. This paragraph followed a series of considerations in which the Court found the Bulgarian confiscation case-law inapplicable, referring instead to the Italian case-law:

> "Lastly, the Court considers it appropriate to emphasise once again, just as the CJEU stressed in its judgment in *T.A.C. v. Agenția Națională de Integritate* when assessing the proportionality of another measure provided for by Law no. 176/2010 ..., that the assessment of the proportionality of the measure in question must be carried out in the light of the importance of the fight against corruption in the public sector in Romania, and the priority given to that objective by the Romanian Government ... The Court [has] constantly considered that the legislature must have a wide margin of appreciation with respect to measures adopted in the context of specific problems that particularly affect a member State, such as corruption or organised crime. For example, in a series of cases against Italy, the Court considered that in the context of the fight against organised crime, confiscation in the absence of criminal conviction was proportionate when it concerned the assets of people who were in regular contact with suspected members of criminal organisations solely when there was a considerable discrepancy between their financial resources and their income (see *Arcuri v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; and *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001). In the present case too, in the context of the fight against corruption in Romania, the Court considers the confiscation to be proportionate as it applied to a specific group of people ..., it entered into play solely upon the applicant's failure to fill in correctly his declarations of assets ... and when a difference (of more than EUR 10,000) was found between his income and his expenses, difference that could not be justified pursuant to the general rules of evidence in the civil proceedings ..."

84. In short, while the "Italian" line of case-law was expressly and positively endorsed (belonging of the person to a category of social dangerousness; unexplained wealth; safeguards for the defendants in adversary proceedings), the "Bulgarian" case-law was explicitly distinguished as being confined to its own, different context. Yet the majority judgment in *Isaia and Others* inexplicably failed to reflect this.

4. Points of dissent: specific reasons for rejecting the majority's departures from the Court's own line of authority

85. Against this background of a positively assessed domestic framework – confirmed not only by the Court's case-law in *Păcurar* (and the distinction of the Bulgarian confiscation case-law) but also by developments at European and international level – the majority judgment in *Isaia and Others* has introduced a series of ruptures, which will abruptly break off the well-established dialogue with a number of fora working on the potential of non-conviction-based confiscation (for example, the Council of Europe, GRECO and MONEYVAL). Also, after the Court clearly accepting in *Garofalo and Others* the restorative nature of preventive confiscation in the Italian system – comparing it to a civil-law remedy such as the restitution of unjustified enrichment (see above) – the majority in *Isaia and Others* has abruptly reversed course in this regard as well, citing *Garofalo and Others* but setting out new requirements for the Italian system that will be incompatible with a civil-like context.

86. A quick analysis of the majority's judgment – which contained a series of surprising steps backwards (based on the Bulgarian confiscation case-law, that they also often misinterpreted (see paragraph 94 below)) and disregarded the remaining case-law – will help make my dissent clearer.

87. Let us start from the Convention basis: despite citing in paragraph 40 the broad line of case-law (concerning Italy and comparable systems) which had consistently treated preventive measures as a form of "control of the use of property" within the meaning of the second paragraph of Article 1 of Protocol No. 1, the majority instead allowed themselves, in paragraph 42 of the *Isaia and Others* judgment, to be swayed by the recent case-law with respect to Bulgaria – again, a wholly different system with a too broad legislative ambit for confiscations – and declined to take a position on whether the measure constituted control of the use of property (second paragraph of Article 1 of Protocol No. 1) or deprivation of property (second sentence of the first paragraph).

88. Symbolically, this ambiguity is highly significant. Unlike in *Garofalo and Others*, the majority in *Isaia and Others* avoided affirming that the removal of assets presumed to be criminal from the illegal economy serves to regulate and protect the lawful economy. This constitutes the exercise of a particularly intense form of State authority – let us think of the expression "as it deems necessary" in the wording of the second paragraph of Article 1 of Protocol No. 1 – which, provided it is respectful of human rights, deserves to be recognised on a par with the collection of "taxes" and "penalties", rather than being diminished (the deliberate use of the verb "impair" in the second paragraph is very significant) by conflating it with other deprivations of property in the public interest under the first paragraph (such as expropriations for public utility, which are far closer to acquisitions of

property for a price than to confiscations). In my view, it is essential not to be ambiguous.

89. I must now turn to the way the majority decided to examine the case under the Convention's categories. Having recognised in the preceding paragraph 62 that the contested measure had a legal basis which was accessible, in paragraph 63 the majority – in addition to the peculiar declaration of admissibility which I have already, with regret, had to criticise – engaged in another creative exercise. They made the following assumption:

> "The parties' disagreement concerned, rather, compliance with the conditions and limitations imposed under domestic law, as interpreted in the relevant domestic case-law, in order to apply the contested confiscation, with specific regard to: (i) the nature and severity of the crimes whose commission justified a finding that the person in question had posed a danger to society, entailing a presumption that assets acquired during that period were the proceeds of unlawful activities, and (ii) the temporal delimitation in respect of the assets that, in so far as acquired during the period in which the person in question had committed criminal offences, could be confiscated."

90. Now, while of point (ii) – the so-called issue of "temporal delimitation" – there was indeed, as we have seen, a brief mention in the application forms, of point (i) – namely, the relevance of the nature of the offences underlying the finding of dangerousness – there was no mention whatsoever in the original applications. This issue was raised only later, in the parties' observations, and specifically in response to a question (Question 1.1.(a)) put by the Court. But the Court, as we have seen, may not go beyond the issues raised by the parties. The question was formulated by the Chamber outside its remit, and the majority ought not to have taken into account submissions that were extraneous to the original complaints.

91. My firm disagreement with this going beyond the scope of the original applications – even beyond what I have already discussed in relation to admissibility – leads me to fear that, should this case be referred to the Grand Chamber, the majority's approach will require comprehensive reconsideration. Nevertheless, for the purpose of what follows, I must address the reasoning of the majority as it stands, even though it is manifestly outside the proper bounds of the case.

92. My concern with the majority's approach deepens further: at paragraph 64, the majority examined the issues of lawfulness and proportionality together. I must also dissent here. With respect to proportionality, as we have seen, no such complaint was ever raised in the original applications. The parties only addressed the matter after the Court had prompted them to do so in Question 1.2. From this perspective as well, the Court exceeded the scope of the complaints and should not have examined these aspects.

93. From this point on, by merging together multiple issues – many of which were never raised by the applicants – the majority embarked on an unprecedented dismantling of the Italian system of preventive confiscation,

"dissolving" every aspect into a proportionality assessment under the guidance of inapplicable case-law. Such a method of adjudication cannot be commended.

94. Then, while up to paragraph 71 of the *Isaia and Others* judgment the majority still confined themselves to arguments at least marginally pertinent to the case, it is from paragraph 72 onwards, however, that they began to apply principles drawing upon the inapplicable Bulgarian confiscation case-law. In particular:

(a) At paragraph 72, "principles" were set out (which, as will be seen, are not "principles" at all, but mere points noted in a holistic approach), derived from the Bulgarian confiscation case-law, elevating into general – and, more importantly, standalone – rules what had been cautious observations of the Court, limited to that country's context. These concerned doubts as to confiscations based on offences that were presumably not serious, or not profit-generating, or imposed where the discrepancies between legitimate and actual income were not "significant". In a nutshell, in *Todorov and Others* and the subsequent case-law, the Bulgarian system was assessed by the Court – as often happens – globally and holistically (see, for example, *Todorov and Others*, cited above, § 215, where the Court clearly stated that the "balance" had been "tilt[ed]" as a "cumulative effect" of the features of the system; see also *Yordanov*, cited above, § 124): a doubt in one area did not necessarily require elimination of the relevant statutory setting, as even a single amendment in another area could restore balance. The majority in *Isaia and Others*, however, treated each of these doubts as standalone "principles" and sought to apply them, each independently from the other, to Italy (see, for example, in paragraph 72 of the majority judgment, the nature of the predicate offences).

(b) At paragraph 73, the judgment declared that there must be a "link" between the predicate offences and the assets to be confiscated. The reasoning which followed here becomes confused, blending that concept with other matters in a way that is, to my mind, unclear. What is important, in my view, is the role of presumptions, which – according to the Court's case-law – cannot be removed from this type of assessment, whereas the too rigid "link" as envisaged by the majority risks precisely that. Also, the reference to paragraph 212 in *Todorov and Others* is misused: the link referred to in the Bulgarian context could be "established" or also merely "presumable", and it could be "direct or indirect". This is the type of link which is acceptable in a preventive confiscation (and was indeed accepted by the Court in *Todorov and Others*, § 212, which the majority did not cite in its entirety).

(c) At paragraph 74, the majority stated that national courts should provide "some particulars" as to the "alleged criminal conduct in which the assets to be confiscated had allegedly originated" and should demonstrate in a reasoned manner that those assets could have been the proceeds of the alleged criminal conduct. Here too there is confusion: assets which are subject

to confiscation are not necessarily those directly (or indirectly) generated by offences. A link must indeed exist, but it does not require secure derivation; otherwise, one would be speaking of other forms of confiscation, not preventive confiscation.

(d) At paragraph 75, somewhat inexplicably, *Garofalo and Others* was invoked. Yet the selected passages do not accurately reflect the Italian system, particularly with respect to "temporal correlation". Indeed, no mention is made of the possibility of a "delayed" correlation, which – as we have seen (see paragraphs 9 and 11 above) – was accepted by the applicants themselves, who cited the relevant case-law in their applications, and was also mentioned by the majority in paragraph 30 of the present judgment.

(e) At paragraph 76, while the majority noted that "the Court has not required proof 'beyond reasonable doubt' of the illicit origins of the property", they immediately modified this principle by reference to the Bulgarian confiscation case-law, adding that "the domestic legal system should limit the period of time in which the relevant assets can be confiscated, in order not to make it excessively onerous for the individual concerned to provide proof of lawful income or lawful provenance of assets acquired many years before the opening of the confiscation proceedings". As already seen above (see paragraph 30 of the majority's judgment), Italian law expressly provides for the possibility of a "delayed" correlation, and domestic case-law has confirmed its lawfulness on the basis of thorough judicial reasoning. This requirement of judicial reasoning is the guarantee against an excessive burden of proof on the defendant.

(f) At paragraph 77, the majority, after reiterating the Court's traditional case-law that domestic authorities may apply confiscation not only to offenders themselves but also to family members and other close relatives presumed to hold or manage illicit assets (see *Gogitidze and Others*, cited above, § 107; *Telbis and Viziteu v. Romania*, no. 47911/15, § 68, 26 June 2018; and *Balsamo*, cited above, § 91), abruptly shifted position. Referring once again to the Bulgarian confiscation case-law, they now require a "link between the property in question and the offences committed by the suspected offender, without relying on the mere discrepancy between the income and expenditure of the individual owning the asset". In the context of confiscations concerning third parties – a matter specifically regulated under Italian law, as already noted – the implications of this requirement are entirely unclear.

D. Concluding on no violation of Article 1 of Protocol No. 1

95. Although, as I have explained, I consider that no complaint under Article 1 of Protocol No. 1 was ever raised, I have had to adapt my reasoning and criticise the majority judgment *as if* such a violation had been alleged.

96. Assuming, therefore, that such a hypothetical complaint existed, I trust that, in the light of my exercise, it is clear that no violation of Article 1 of Protocol No. 1 can be found. On the basis of the Court's established case-law, the Italian domestic courts – without breaching any provision of national law – gave ample reasons for finding that at least two members of the applicants' household fell within the statutory categories of social dangerousness, that there was a manifest imbalance between the assets held and their lawful income, and that – through reinvestments, which justified the temporal delay in confiscation – the assets could be presumed to derive from unlawful activities and to be held in sham ownership.

97. I find it particularly troubling that, in paragraphs 91 and 92, the majority in *Isaia and Others* go so far, without substantive justification, as to blame the domestic courts not only of having breached the Convention, but of having contravened supposed criteria set by domestic legislation and case-law. These criteria were presented, as I have shown, in a unilateral and confused manner, conflating misunderstood jurisprudential principles, and at times misrepresenting the legal framework (for instance, in relation to the demonstration of the reinvestment chain that justifies delayed correlation).

98. The Court – which normally considers domestic judges best placed to assess both the facts and the applicable law, in the spirit of subsidiarity – has, here, through the majority, assumed the dangerous role of a super-adjudicator. It has labelled as arbitrary domestic decisions which, in fact, remained entirely within the applicable legal framework and, most importantly, complied with the Convention.

IV. GENERAL CONCLUSION

99. The issues I have sought to address, as will be apparent, raise serious questions of interpretation and application of the Convention, touching both upon the admissibility of the applications (and the scope of the Court's powers to recharacterise and/or to take into account the parties' submissions supplementing the complaints made in the application forms) and upon their merits.

100. In a sense, while I have had necessarily to stress the questions of admissibility, I must acknowledge that – should the applications be found, contrary to my views, admissible, in whole or in part – what may be of greatest significance is the re-examination in the present case by the Court of the compatibility with the Convention of preventive confiscation measures. These have been the subject of consistent and well-established case-law (in a wider EU and international treaty context), most recently reaffirmed in *Păcurar* (cited above), in contrast with the majority's approach in *Isaia and Others*, which instead relied on a Bulgarian line of authority beginning with *Todorov and Others*.

101. Should this case be referred to the Grand Chamber, as I hope – at the request of the interested party – or should it just be taken up in subsequent judgments, I believe that the scope and mode of application of the above-mentioned conflicting and/or coexisting case-law will need to be clarified. This is all the more necessary in the light of the trend of increasing influx to the Court of cases involving non-conviction-based confiscations.

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	36551/22	Isaia v. Italy	14/07/2022	**Giuseppe ISAIA** 1964 Bagheria Italian	Antonio TURRISI
2.	36926/22	Scaletta v. Italy	19/07/2022	**Carmela SCALETTA** 1968 Bagheria Italian	Antonio TURRISI
3.	37907/22	Isaia v. Italy	19/07/2022	**Davide ISAIA** 1991 Altavilla Milicia Italian	Antonio TURRISI

APPENDIX II

Judgment (domestic court and date)	Date of the facts	Offence	Other information
Palermo Juvenile Court of Appeal 16/12/1982	13/04/1980	Attempted robbery Theft	
Palermo Juvenile Court of Appeal 13/01/1983	4/09/1981	Theft	
Palermo Court of Appeal 3/12/1987	25/03/1987	Extortion	Application of mitigating circumstances under Article 62 § 6 of the Criminal code ("[making] full reparation of the damage prior to trial, either through compensation or, where possible, through restitution; [and] eliminating or mitigating the harmful or dangerous consequences of the offence")
Palermo Court of Appeal 28/12/1988	11/09/1988	Attempted theft	Confiscation of the goods seized
Palermo District Court 12/02/19886	7/06/1994	Aiding and abetting (*favoreggiamento*)	
Palermo Court of Appeal	From 1990 to 05/1995	Conspiracy to commit robbery (see below)	Confiscation of the goods seized

27/02/1997	11/08/1993	Robbery Criminal damage Carrying a firearm without a permit	
	12/08/1994	Attempted robbery	
	11/03/1995	Robbery Criminal damage	
	11/04/1995	Attempted robbery	
	13/04/1995	5. Attempted robbery Criminal damage	
Palermo Court of Appeal 16/11/1999	12/09/1998	Robbery Criminal damage	Confiscation of the goods seized
Palermo Court of Appeal 31/01/2006	14/01/1995	Handling stolen goods Robbery Possession of prohibited weapon Carrying a firearm without a permit	Confiscation of the goods seized
Trapani District Court 9/08/2008	21/05/2008	Attempted theft	