



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

Information Note on the Court's case-law 260

March 2022

Shorazova v. Malta - 51853/19

Judgment 3.3.2022 [Section I]

Article 1 of Protocol No. 1

Article 1 para. 2 of Protocol No. 1

Control of the use of property

Lack of procedural safeguards for lengthy freezing of all applicant's property in Malta at legal assistance request of Kazakh authorities, likely tainted by political persecution motives: *violation*

Facts – The applicant's assets in Malta were frozen, after the domestic authorities received a request for legal assistance in relation to crimes allegedly committed in Kazakhstan. At the time, the Kazakh authorities were conducting an investigation into allegations of fraud and money laundering on the part of the applicant and her husband. The applicant and her husband instituted and appealed unsuccessfully in constitutional redress proceeding against the freezing of their assets. In December 2020 the applicant filed an application with the Criminal Court complaining of the practice of essentially automatically renewing requests for legal assistance and arguing that the freezing order against her should be revoked. In July 2021 the Criminal Court found that there were no grounds for keeping the order in place, as there had never been any proceedings undertaken against the applicant by the Kazakh authorities. The freezing order was revoked.

Law – Article 1 of Protocol No. 1: The freezing order amounted to an interference with the applicant's possession consisting of a control of use of property.

It appeared that the freezing order, which had been issued and kept in place for nearly eight years, had not been in accordance with the law *ab initio* since, according to the Criminal Court, the applicant had not, and had never had, the status of a charged or accused person in Kazakhstan, but only that of a suspect. It was disconcerting that in nearly eight years no authority or domestic court had thoroughly examined the matter in legal terms as well as ascertained the applicant's situation in the light of the available information. The situation indicated a serious problem at domestic level. Thus, it was opportune, in the exceptional circumstances of the present case, to examine the entirety of the applicant's complaint as brought to the Court and in particular to also address whether the law had provided enough safeguards against an arbitrary or disproportionate interference, which would be examined under the proportionality aspect.

The freezing of the applicant's property had been applied as a provisional measure aimed at securing enforcement of a possible confiscation order (which could be imposed at the outcome of criminal proceedings), which was normally accepted as being in the general interest. However, the applicant had argued that the 'charges' against her had not been genuine and, thus, that no general interest had been served in the present case. The

Court would generally respect the State's authorities' judgments as to what was in the general interest unless that judgment was without reasonable foundation. In previous cases such as *Benet Czech, spol. s r.o. v. the Czech Republic*, the national authorities had clearly been in a better position than the Court to evaluate those issues because they had had direct access to the available evidence. In the circumstances of the present case, it had not been shown that the Maltese authorities had been in such a position *vis-à-vis* the investigation undertaken in Kazakhstan. There was sufficient material to consider that in the specific circumstances of the present case, the applicant's deceased husband had been an established political adversary to the Kazakh regime and could be the subject of reprisals on their part, including trumped up charges which might extend to the applicant. Thus, whether there had existed a general interest behind the freezing order which had been put, and kept, in place by the Maltese authorities in the specific circumstances of the present case had been something which had deserved particular evaluation by the domestic courts. It was in such contexts that effective procedural safeguards became indispensable.

The request for freezing the applicant's assets, made by the authorities of Kazakhstan, had been based upon Article 18 of the UN Convention Against Transnational Organised Crime ("the UN Convention"). While acknowledging the importance of the Convention for effectively combatting organised crime, the Court stressed that the mutual legal assistance thereunder should be carried out in compliance with international human rights standards. Thus, domestic courts had an obligation of review where there was a serious and substantiated complaint about a manifest deficiency in the protection of a European Convention right. The Court also noted that under the UN Convention, mutual legal assistance might be refused, in particular, if the requested State Party considered that its execution was likely to prejudice *ordre public* or would be contrary to the requested State Party's legal system for the request to be granted.

In the present case, the Maltese courts of constitutional competence had proceeded to find that the measure had pursued a general interest automatically and without a detailed assessment of the situation pertinent to the case. No other domestic court had entered into the matter. In the absence of any such assessment, the Court could not rubber stamp the domestic courts' findings. Indeed, in the very specific circumstances of the present case, the Court had serious doubts about the public interest at play. The applicant had not been charged with money laundering in any European country (including Malta), despite investigations in several of them. The Court also had difficulty accepting that the freezing order had been in the public interest because it had aimed at securing an eventual confiscation of assets: any such confiscation would result from criminal proceedings which, in view of the above, might, or would likely consist of a flagrant denial of justice.

The Government had argued that compliance with international obligations was in itself a matter of public interest. Even if one had to accept that a general interest had existed, the Court had in any event to make an overall examination of the various interests at stake. It therefore considered the proportionality of the measure including any relevant procedural safeguards available to the applicant:

The freezing of all the applicant's property (in Malta) was, by its nature, a harsh and restrictive measure. While the applicant had claimed that her economic activities had been paralysed, it had not been claimed that her entire business or living conditions had been put at stake. The applicant had extensive means in various European States. However, it did not appear that the value of the property subject to the freezing order – the entirety of her property in Malta – had been equal to the pecuniary gain allegedly obtained through any alleged predicate offence. Nor that all her belongings had been suspected of being laundered money. No domestic court appeared to have made an assessment concerning the extent of the freezing order in relation to the 'charges' set out by the Kazakh authorities, neither at the time nor in subsequent renewals.

Until 2021 – more than seven years after the issuance of the order – no assessment appeared to have been made by the Criminal Court as to whether it would have been legitimate and proportionate to apply such a measure, given the circumstances of the case. Thus, at no stage before the Criminal Court had there been any judicial assessment of the credibility of the ‘charges’.

The entirety of the applicant’s assets held in Malta had been frozen, and continued to be so, for nearly eight years. The only variations made by the domestic court had been of little significance. The order had remained far-reaching, despite the absence of any assessment as to any correlation to the ‘charges’ pending, even assuming that they had been genuine and based on a persistent reasonable suspicion.

Furthermore, it appeared that, until 2021, the measure had been extended automatically, without the applicant being heard.

It was unclear whether, prior to December 2020 and the communication of part of the application to the respondent Government, the applicant had ever attempted to request the revocation of the order by lodging an application under the relevant domestic law provision. However, the Court had no reason to consider that her possibility to challenge the order under that provision would have constituted an effective safeguard. The Government had not provided any arguments on the matter, and the constitutional jurisdictions had not rejected her complaint under Article 1 of Protocol No. 1 for failure to exhaust ordinary remedies (i.e. for failing to challenge the impugned measure by those means).

In the light of the above, in the procedure before the Criminal Court by which the freezing order had been issued and repeatedly extended in the applicant’s case, until 2021, she had been deprived of relevant procedural safeguards against an arbitrary or disproportionate interference. The constitutional jurisdictions had failed to rectify those omissions as they had merely paid lip service to the relevant criteria in their assessment of the impugned measure. As a result, her property rights had been rendered nugatory.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been no violation of Article 6 § 1, since in the specific circumstances of the case, the duration of constitutional redress proceedings had not been excessive.

Article 41: EUR 2,000 in respect of non-pecuniary damage.

(See also *Benet Czech, spol. s r.o. v. the Czech Republic*, [31555/05](#), 21 October 2010)