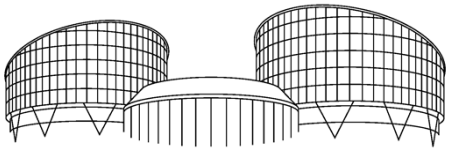

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PETRIGNANI AND OTHERS v. ITALY

(Applications nos. 26187/14 and 2 others –
see appended list)

JUDGMENT

Art 7 • *Nullum crimen sine lege* • *Nulla poena sine lege* • Confiscation of the applicants' assets, the value of which was deemed equivalent to the overall proceeds of criminal offences committed jointly by them and other co-offenders, on the basis of joint liability • No violation (application nos. 26187/14 and 24511/21) • Confiscation based on the applicants' joint liability did not amount to a penalty for a third party's conduct • Personal liability properly established • Clear link established between their conduct and the confiscation of the entire proceeds of crime • Applicants punished for their own conduct and not that of their co-offenders • Violation (application no. 31161/22) • Confiscation not a foreseeable penalty • Lack of legislative provision clearly establishing the principle of joint liability in confiscation orders and consistent case-law clarifying existing provisions • Absence of clear and foreseeable criteria for the determination of the amounts to be confiscated
Art 1 P1 • Peaceful enjoyment of possessions • Confiscation orders exceeded the share of the applicants' criminal proceeds and unrelated to their role in the commission of the crimes or to the gravity of their conduct (application nos. 26187/14 and 24511/21) • Impugned orders disproportionate to their pursued punitive purposes and exceeded what was necessary to pursue the restoration the applicants' financial situation before the commission of the crimes • Joint liability applied automatically • Unjustifiable shifting of the responsibility of recovering the co-offenders' shares of the proceeds of crime from domestic authorities to the applicants, imposing an excessive burden • Confiscation order lacked sufficiently clear and foreseeable legal basis (application no. 31161/22)

Prepared by the Registry. Does not bind the Court.

STRASBOURG

28 May 2026

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 Petrignani 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. 26187/14, 24511/21 and 31161/22) 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, whose names are set out in the appended table ("the applicants"), on the various dates also set out in the appended table;

the decision to give notice to the Italian Government ("the Government") of the complaints raised under Article 7 of the Convention and under Article 1 of Protocol No. 1 and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 5 May 2026,

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

INTRODUCTION

1. The case concerns the confiscation of assets belonging to the applicants the value of which was deemed to be equivalent to the overall proceeds (*profitto*) of offences committed jointly by the applicants and other co- offenders, on the basis of joint liability. It raises issues under Article 7 of the Convention and under Article 1 of Protocol No. 1.

THE FACTS

2. The applicants' personal details and the names of their representatives are set out in the appendix.

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.

I. APPLICATION NO. 26187/14 – *PETRIGNANI V. ITALY*

5. The applicant, an accountant, was accused of having provided support and assistance to the co-defendants and their companies in the commission of a number of tax-related crimes. He was charged with the offences of membership of a criminal organisation under Article 416 of the Italian Criminal Code (CC) and of tax-related crimes under Articles 2 and 8 of Legislative Decree no. 74 of 2000.

6. The applicant and the prosecutor agreed to a plea bargain and asked the Turin preliminary investigations judge to order one year and eight months of imprisonment, conditionally suspended. The judge noted that confiscation was mandatory for some of the offences, and asked the parties to address this issue.

7. On 13 June 2012 the prosecutor therefore asked the judge to order the confiscation of an amount equivalent to the sum that the applicant had obtained in exchange for his assistance in the commission of the tax offences, which amounted to 12,000 euros (EUR). The applicant did not contest this. He opened a savings account with a EUR 12,000 deposit and made it available for confiscation.

8. On 15 October 2012, the Turin preliminary investigations judge applied the penalty requested by the parties and, in addition, ordered the confiscation of an amount equivalent to the proceeds of the crimes, pursuant to section 1 § 143 of Law no. 244 of 2007 and Article 322 *ter* of the CC.

The judge observed that value confiscation had a punitive character and any individual co-offender could be ordered to repay the entire proceeds of the crime on the principle of joint liability. The affected person could then take contribution proceedings (*azione di regresso*) against the others in order to recover that person's notional share of the proceeds.

The judge quantified the proceeds of the tax evasion at EUR 5,047,500 (tax unpaid because of a failure to declare revenue in tax returns submitted on 30 September 2008 and 12 June 2010) and ordered the confiscation of the applicant's assets up to that value. The judge further stated that the measure should be enforced by confiscating the EUR 12,000 deposited in the above-mentioned savings account.

9. The applicant appealed to the Court of Cassation, which upheld the confiscation order in a judgment published on 18 September 2013. It confirmed, among other things, that the order was punitive and could be enforced against the applicant for the entire proceeds of the crime on the basis of the principle of joint liability.

II. APPLICATION NO. 24511/21 – *CARBONE V. ITALY*

10. The applicant Mr Carbone was accused jointly with others of fraud (under Article 640 of the CC), falsification of documents (under Article 479

of the CC) and failure to carry out repairs (under Article 677 of the CC). As regards in particular the first offence, he was accused of having falsely declared that certain buildings constructed under a contract won after a public tendering process had been built according to the legal requirements and the contractual provisions, and so having induced the public administration to pay the agreed price for the construction contract. The charges related to offences committed before 3 July 2013.

11. On an unspecified date, the sum in the applicant's bank account, which amounted to EUR 44,057.36, was confiscated. The applicant lodged an application with the Taranto preliminary hearing judge seeking the return of that sum.

12. The applicant and the prosecutor agreed to a plea bargain and asked the Taranto preliminary hearing judge to order ten months and 20 days of imprisonment, conditionally suspended.

13. On 31 January 2020, the Taranto preliminary hearing judge made the order requested by the parties. The judge acknowledged the punitive character of value confiscation and referred to the principle of joint liability. He observed that the amount seized from the applicant was lower than the overall proceeds derived from the crime of fraud, which amounted to EUR 725,022.27. The judge therefore dismissed the applicant's application for the return of the seized assets and ordered them to be confiscated under Article 640 *quater* of the CC.

14. The applicant appealed against the confiscation order to the Court of Cassation, which dismissed his appeal on 20 October 2020. The Court of Cassation reiterated that the prevailing purpose of the confiscation order was punitive, and confirmed that it was open to a court to order the confiscation of the overall proceeds of a crime on the basis of the principle of joint liability. As regards the applicant's argument that joint liability was disproportionate and so in breach of Article 1 of Protocol No. 1, the Court of Cassation stated that proportionality had to be assessed with regard to each co-offender's contribution to the obtaining of the proceeds of the offence and not to what proportion of those proceeds was in their possession.

III. APPLICATION NO. 31161/22 – *CURCI V. ITALY*

15. The applicant, a tax consultant, was accused of having provided support and assistance to a large number of companies in the context of a widespread tax evasion scheme which had been current between 2016 and 2017. He was charged with tax-related crimes pursuant to Articles 3, 4, 8 and 10 *quater* of Legislative Decree no. 74 of 2000 and of laundering the proceeds of crime pursuant to Article 648 *ter.1* of the CC.

16. On 15 January 2019 the Milan District Court found that through his professional activities the applicant had participated in the commission of tax crimes by a large number of companies, and that he had obtained financial

benefit from those activities, which he had invested. The District Court convicted him of most of the tax-related crimes he had been charged with and of laundering the proceeds of crime and sentenced him to six years of imprisonment and a fine of EUR 24,000.

The District Court ordered the confiscation of assets to a value equivalent to that of the proceeds of the tax-related crimes under Article 12 *bis* of Legislative Decree no. 74 of 2000. Having calculated the value of the overall proceeds of crime obtained by all the co-offenders at EUR 36,431,324.03, the District Court observed that the companies had at their disposal considerably less than that amount and therefore ordered that any remainder should be confiscated from the applicant on the basis of the principle of joint liability. The confiscation of his assets was therefore ordered up to a value of EUR 36,431,324.03. The District Court also justified its conclusions by reference to the applicant's essential contribution to the commission of the offences, since he had devised and implemented the tax evasion schemes. The confiscation of further amounts was ordered in respect of two charges on which the applicant alone was convicted.

17. The applicant lodged an appeal in the Milan Court of Appeal which, on 17 December 2020, upheld the previous judgment in his regard.

18. The applicant appealed to the Court of Cassation which, in a judgment published on 23 March 2022, partially quashed the previous judgment and remitted the case to the Court of Appeal for the determination of the penalty. Nevertheless, it upheld the confiscation order based on the principle of joint liability: pointing out the prevailing punitive purpose of that measure, and reiterating the above-mentioned considerations of the applicant's essential role in the commission of the crime, the Court of Cassation held that the applicant had substantially contributed to the realisation of those proceeds and therefore had to answer for all of them, regardless of the amount he had obtained individually. The confiscation order therefore became final.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Confiscation

19. Article 240 of the CC, which forms part of a chapter dedicated to "preventive orders against property" (*misure di sicurezza patrimoniali*), provides for a direct form of confiscation. The provision reads as follows:

> "1. In the event of conviction, the judge may order the confiscation of things that were used or were intended to be used in the commission of the offence [in question], and of the things that constitute the product or proceeds of the offence.
>
> 2. [The judge] must order the confiscation:
>
> 1) of things that constitute consideration (*prezzo*) paid for the offence;

1-*bis*) ...

2) of things whose manufacturing, use, harbouring, possession or sale constitutes an offence – even if no conviction has been imposed. ...”

20. Article 322 *ter* of the CC – brought in by Law no. 300 of 2000 and subsequently amended by Law no. 190 of 2012 – requires confiscation in respect of certain crimes. The confiscation must whenever possible be of the direct proceeds of or consideration for the crimes (“direct confiscation”); in the alternative, it must be carried out against assets of equivalent value (“value confiscation” or “confiscation by equivalent means”). The provision currently reads as follows:

“1. In the event of conviction or of an [agreement for a] plea bargain at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure, in respect of one of the offences provided by Articles 314 to 320 ..., [the judge] must order the confiscation of the goods constituting the proceeds of or consideration for the offences, unless they belong to a third party who has not taken part in the commission of the offence, or, when this is not possible, the confiscation of goods at the disposal of the offender of a value corresponding to consideration or proceeds.

2. In the event of conviction or of an [agreement for a] plea bargain at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure in respect of the offence provided by Article 321 ..., [the judge] must order the confiscation of the goods constituting the proceeds of the offence, unless they belong to a third party who did not take part in the commission of the offence or, when this is not possible, the confiscation of goods at the disposal of the offender to a value corresponding to those proceeds...

3. In the cases provided in paragraphs 1 and 2, the judge – in the judgment convicting the offender – shall determine the amount of money or identify the goods to be confiscated in so far as they constitute the proceeds of or consideration for the offence or their value corresponds to the proceeds of or consideration for the offence.”

21. Article 640 *quater* of the CC – also introduced by Law no. 300 of 2000 – provides that Article 322 *ter* of the CC also applies to the offence of aggravated fraud, including fraud against a public entity, provided for by Article 640 § 1, no. 1, of the CC.

22. Additionally, section 1 § 143 of Law no. 244 of 2007 (the 2008 Finance Act) also applied Article 322 *ter* of the CC to the tax offences in Legislative Decree no. 74 of 2000.

23. Under Legislative Decree no. 158 of 2015, section 1 § 143 of Law no. 244 of 2007 was replaced by a substantially similar provision, which is now in Article 12 *bis* of Legislative Decree no. 74 of 2000.

B. Nature and purpose of the confiscation

24. The domestic legal order distinguishes between penalties and security measures. In principle, penalties are aimed at punishing a person for having committed an offence, whereas security measures are aimed at preventing the commission of a further offence.

25. Unlike Article 240 of the CC (see paragraph 19 above), Article 322 *ter* and Article 640 *quater* of the CC do not explicitly state whether the confiscation under those Articles constitutes a penalty or a security measure.

26. Until recently, the case-law of both the Constitutional Court and the Court of Cassation held that value confiscation was predominantly afflictive in nature and therefore had to be regarded as punitive. That case-law rested on the one hand on the fact that the assets were not confiscated because they were inherently dangerous and on the other hand on the lack of any link (*nesso di pertinenzialità*) between the confiscated assets and the crime in question. It followed that the main purpose of value confiscation was to restore the previous financial balance by making the offender pay a corresponding sum (see, among other authorities: judgments of the Constitutional Court nos. 97 of 2009, 301 of 2009 and 68 of 2017; judgments of the Court of Cassation nos. 15445 of 2004 and 39173 of 2008; and judgment of the Combined Divisions of the Court of Cassation no. 31617 of 2015).

27. The Combined Divisions of the Court of Cassation also said in judgment no. 4145 of 2023 that value confiscation had a dual nature: by imposing on the offender a financial sacrifice that was equal to the proceeds that he or she had realised from the crime, confiscation served both a restorative and a punitive function. However, it stated that the punitive nature of confiscation should prevail over all other functions, because penalties were subject to the stricter rules provided by Article 25 of the Italian Constitution and by Article 7 of the Convention.

28. However, the most recent case-law called into question this approach, which rested on the different natures of direct confiscation and value confiscation. In judgments nos. 112 of 2019 and 7 of 2025 the Constitutional Court did not draw a distinction between direct confiscation and value confiscation; rather, it stated that confiscation of the "proceeds" deriving from the offence had a purely restorative function, whereas the confiscation of the "product" of an offence or of the assets used in the commission of the crime had a punitive connotation, because it was not limited to restoring the financial situation that had been in place before the commission of the crime but instead deprived the offender of further assets. The recent judgment of the Combined Divisions of the Court of Cassation no. 13783 of 2025 confirmed this approach: it clarified that direct confiscation and value confiscation constituted two ways of enforcing the same order and that they were of the same nature – that is, they constituted a merely restorative measure if they were limited to the proceeds derived from the crime in question but became punitive where their value exceeded that of the proceeds.

C. Relevant provisions concerning the liability of multiple persons

29. Article 110 of the CC reads as follows:

"When several persons take part in the commission of the same offence, each of them shall be subject to the penalty prescribed for that offence (...)"

30. Article 187, second paragraph, of the CC reads as follows:

"Persons who are convicted for the same offence are jointly required to pay compensation for the pecuniary or non-pecuniary damage caused by it"

31. Article 2055 of the Civil Code reads as follows:

"If a harmful act is attributable to multiple persons, all of them are jointly liable to pay compensation for any damage caused.

A person who has paid compensation has the right to seek a contribution order against each of the others, in an amount to be determined on the basis of the gravity of individual fault and of the extent of its consequences.

In case of doubt, the individual degrees of fault are presumed to be equal."

32. Article 1292 of the Civil Code defines the notion of the joint liability of debtors as the situation when

"multiple debtors are all bound to perform the same obligation, so that each of them can be compelled to fulfil the obligation in its entirety, and fulfilment by one releases the others."

33. Article 1299 of the Civil Code regulates the right to seek a contribution (*regresso*), providing that a debtor who pays an entire debt for which others were also jointly liable may obtain from any co-debtors the notional shares owed by each of them.

D. Case-law on joint liability for value confiscation

34. The Court of Cassation stated for the first time in judgment no. 15445 of 2004 that where an offence for which a confiscation order could be made was committed by more than one person jointly and the direct confiscation of the proceeds of that offence was not possible, confiscation of a value equivalent to the entire proceeds could be ordered against any of the co-offenders, regardless of the shares actually obtained by any of them.

The Court of Cassation relied on a criminal law theory according to which, on the basis of an interpretation of Article 110 of the CC, all co-offenders are criminally liable for the entirety of an offence which is considered to be the result of their joint action (the *"teorica monistica"*); according to the Court of Cassation, it followed that the co-offenders should be jointly liable for the penalty, including confiscation.

The co-offenders could subsequently seek contribution orders against each other to recover their payments from others' shares of the proceeds, but that fell outside the sphere of criminal law.

35. The principle of joint liability for value confiscation was subsequently reiterated by the Court of Cassation in several cases (see, for instance, judgments nos. 30729 of 2006, 31988 of 2006 or 10838 of 2007).

36. Nevertheless, in some cases the Court of Cassation stated that confiscation could be ordered against each co-offender only in respect of his or her share of the proceeds of the crime (see, for instance, judgments nos. 25877 of 2006, 31690 of 2007, or 35120 of 2007).

37. In judgment 26654 of 27 March 2008, which was published on 2 July 2008, the Combined Divisions examined the allegedly divergent case-law on the principle of joint liability for value confiscation. Although the Combined Divisions acknowledged that there had been different interpretations, they held that the divergence was merely apparent since even the judgments which opposed the principle of joint liability left open the possibility of seizing an amount equal to the entire proceeds of a crime if the individual shares of co-offenders could not be quantified.

38. Following that case, some case-law continued to reiterate the principle of joint liability (see, for instance, the judgments of the Court of Cassation nos. 45389 of 2008, 33409 of 2009, 27072 of 2015, 33755 of 2016, or 26621 of 2018). Some judgments explicitly addressed the issue of the proportionality of confiscation orders which were based on the principle of joint liability, stating that they were proportionate given that the offender had participated in the production of the proceeds of the offence rather than because he or she was in actual possession of those proceeds; it was therefore reasonable to expect that every co-offender should be liable for confiscation of his or her assets where the proceeds of an offence could not be recovered from the other co-offenders (see, for instance, the judgments of the Court of Cassation nos. 13562 of 2012, 25560 of 2015, 26621 of 2018, or 19091 of 2020).

39. Another part of the case-law, however, interpreted the above-mentioned judgment no. 26654 of 2008 of the Combined Divisions as saying that, at least when it was possible to determine the individual shares of the proceeds, confiscation had to be limited to the specific person's share (see, for instance, the judgments of the Court of Cassation nos. 10690 of 2009, 33282 of 2012, 20101 of 2015, 6607 of 2021, 4727 of 2021, or 33757 of 2022).

40. On 5 March 2024 the sixth division of the Court of Cassation remitted the case to the Combined Divisions on that question, observing that there was an important and longstanding divergence of case-law and that judgment no. 26654 of 2008 had given rise to conflicting interpretations.

41. The divergence was addressed by judgment no. 13783 of 2025 of the Combined Divisions, which acknowledged that most case-law since 2004 had relied on the principle of joint liability; nevertheless, from 2006 until recently, a minority of cases had been decided on the opposite principle and had stated that – at least when the individual shares of the proceeds of the offence could be identified – confiscation should be limited to the amount of the individuals' shares. The Combined Divisions judgment no. 26654 of 2008 had been referred to in both lines of case-law because on the one hand it confirmed the principle of joint liability and on the other it suggested that it

could only apply when it was impossible to determine the individual shares of the proceeds of a crime.

The Combined Divisions acknowledged the divergence but put an end to it by saying that the principle of joint liability did not apply. They found that in allowing for the confiscation of sums that were unrelated to the proceeds obtained by each offender it led to disproportionate results regardless of whether it was considered punitive or restorative in purpose. They relied on the principle of proportionality, as recognised by European Union Law, by the Court's case-law and by domestic law.

The Combined Divisions therefore concluded that, if there was more than one offender, confiscation must be ordered against each of them only in respect of the shares of the proceeds they had actually obtained; if those shares could not be determined, they should be presumed to be equal.

E. Other relevant provision

42. Article 628 *bis* of the Code of Criminal Procedure brought in by Legislative Decree No. 150 of 2022 reads as follows:

> 1. A convicted person or a person subject to a security measure may apply to the Court of Cassation asking it to quash a criminal judgment or conviction against him or her, to order the reopening of the proceedings, or to take any measures necessary to eliminate the harmful consequences arising from a violation of fundamental rights found by the European Court of Human Rights ...".

II. INTERNATIONAL AND EUROPEAN UNION LAW

43. Article 49 § 3 of the Charter of Fundamental Rights of the European Union provides that the severity of penalties must not be disproportionate to the relevant criminal offence.

44. The international and European Union instruments concerning the confiscation of the proceeds of crime or of property of equivalent value have been summarised in *Episcopo and Bassani v. Italy*, nos. 47284/16 and 84604/17, §§ 39-48, 19 December 2024 and in *Tartamella and Others v. Italy*, nos. 26338/19 and 2 others, §§ 60-69, 23 October 2025).

45. Additionally, Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders provides that domestic authorities making confiscation orders must ensure that the principles of necessity and proportionality are respected (Article 1 § 3). The relevant provisions of the Directive on asset recovery and confiscation of 24 April 2024 (2024/1260/EU) authorise Member States to provide that in exceptional circumstances confiscation should not be ordered or executed if that would result in undue hardship for the affected person, on the basis of the circumstances of the individual case.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. SCOPE OF THE CASE

47. In his observations in reply to those of the Government, Mr Petrignani complained that there had been a breach of Article 6 § 2 of the Convention; in his observations, Mr Carbone complained that there was no legal basis for the confiscation of his assets, because domestic law did not allow it where there was a plea bargain resulting in a sentence of less than two years' imprisonment.

48. The Court notes that these complaints were declared inadmissible at the stage of communication of the application (see the preamble above) and therefore no longer form part of the present case.

III. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

49. The applicants complained that the confiscation of an amount equivalent to the overall proceeds of the offences was in breach of Article 7 of the Convention, which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. ..."

A. The parties' arguments

1. The applicants

(a) Mr Petrignani

50. The applicant complained about the confiscation of an amount equivalent to the entire proceeds derived from the crime by all co-offenders. Arguing that value confiscation amounted to a penalty, he acknowledged that the order sought by the prosecutor – namely the confiscation of EUR 12,000, which corresponded to the sums he had actually obtained – had been justified. Nevertheless, the order made against him meant that up to EUR 5,047,500 might be confiscated from him. He argued that confiscating that sum would be unlawful and disproportionate and that it would mean he was being punished for the conduct of his co-offenders.

51. In the applicant's view, his having a right to seek contributions from his co-offenders clearly showed that the order originally covered their share

of liability as well. A contribution claim was civil in nature and could not be used as a remedy for the redistribution of criminal liability. The applicant said that joint liability could not have been imposed under Article 110 of the CC but must have been the result of an unjustifiable and illogical transposition of the concept of joint liability from ordinary civil proceedings.

52. The applicant also complained that the principle of joint liability had been applied automatically, which did not allow for an assessment of each co-offender's role in the commission of the offence. In his view, value confiscation – like any penalty – should correspond to an individual's role in the commission of the crime; in this respect, he referred to certain domestic judgments which had rejected the principle of joint liability (judgments of the Court of Cassation nos. 4902 of 2017 and 4727 of 2021 and the recent judgment of the Combined Divisions of the Court of Cassation no. 13783 of 2025).

53. Lastly, he pointed out that in his case it had been clear that he had not obtained any share of the proceeds made by the other co-offenders, since he was not a taxpayer but an accountant; he had only obtained EUR 12,000 in exchange for his professional advice.

(b) Mr Carbone

54. The applicant argued that the confiscation – which had amounted to a penalty – was disproportionate in that it included proceeds obtained by co-offenders. He argued that that meant he had had to answer for the conduct of third parties, and that his individual contribution to the commission of the offence had not been taken into account. He pointed out that he had obtained only EUR 27,631.70 whereas EUR 44,057.36 had been confiscated from him.

(c) Mr Curci

55. The applicant argued that the confiscation order made against him on the basis of joint liability had amounted to a penalty, since it had affected assets which were not derived – either directly or indirectly – from the commission of the offence. He therefore complained that the measure in question had breached Article 7 of the Convention, since it had not had a foreseeable legal basis.

56. The applicant pointed out that the relevant domestic provisions (notably, Article 12 *bis* of Legislative Decree no. 74 of 2000) allowed for the confiscation of assets which either were, or were equivalent to, the proceeds of an offence; but no domestic provision allowed for the confiscation from one co-offender of others' notional shares of the proceeds of a crime on the basis of the fact that he had carried out a particularly important role in the commission of that crime. The gravity of an individual's contribution to the commission of a crime could be punished by means of the ordinary criminal penalties.

57. The applicant further claimed that the confiscation provided for by Article 12 *bis* of Legislative Decree no. 74 of 2000 served the purpose of countering the unjust enrichment that derives from criminal conduct; it could therefore not constitute a legal basis for a measure that was clearly intended to be punitive, adding a further penalty to the ordinary ones established by the Criminal Code. Categorising the measure as punitive meant that the proceedings were subject to the stricter procedural rules for the criminal process but could not justify extending its scope beyond what was provided for by law.

58. In his observations in reply to those of the Government, the applicant argued that the domestic case-law cited by the Government in support of the principle of joint liability had extended the scope of criminal sanctions beyond the wording and scope of the relevant provisions, and therefore could not constitute an adequate legal basis for a confiscation order. He also contested the Government's reliance on Article 110 of the CC, which only concerned penalties in the stricter meaning adopted by domestic law and did not cover confiscation, as well as their reliance on Articles 1298 and 2055 of the Civil Code, which concerned civil obligations and not criminal penalties.

59. Confiscation on the basis of joint liability resulted in a penalty that was structurally unforeseeable, as the defendant could not know in advance how much would be confiscated from him. Joint liability meant that any of multiple offenders could be ordered to surrender assets of a value equivalent to the overall proceeds of the crime if the shares of the proceeds received by each offender could not be identified and quantified. The amount of the confiscation order would therefore depend only on whether the authorities could quantify and locate the co-offenders' shares of proceeds. The amount of the penalty was therefore unrelated to the conduct and culpability of each individual offender.

60. Lastly, the applicant argued that the case-law cited by the Government stated that there could be joint liability if the individual shares of the proceeds of an offence could not be identified; however, this could not apply to tax offences, where the shares are always identifiable as they correspond to the tax savings.

2. The Government

61. The Government pointed out in relation to the applicability of Article 7 of the Convention that domestic case-law had recognised the substantially criminal nature of value confiscation (Constitutional Court, judgments nos. 97 of 2009, 301 of 2009 and 68 of 2017; Court of Cassation, judgment no. 39173 of 2008; Court of Cassation, Combined Divisions, judgments nos. 31617 of 2015 and 4145 of 2023). They therefore acknowledged that although it had certain differences from other criminal sanctions, that type of confiscation amounted to a penalty.

62. As to the merits of the complaints, the Government argued that the principle of joint liability had a foreseeable legal basis. Referring to judgment no. 26654 of 2008 of the Combined Divisions of the Court of Cassation and judgment no. 33282 of 2012 of the Court of Cassation, they pointed out that at the relevant time (between 2008 and 2017) the principle of joint liability for value confiscation had been clearly established where direct confiscation of the proceeds was not possible and the individual shares of the proceeds could not be precisely quantified.

63. The Government observed that judgment no. 26654 of 2008 of the Combined Divisions of the Court of Cassation had clarified that the previous divergence in the case-law was only apparent (see paragraph 37 above); as to the subsequent divergence which had been brought to the attention of the Combined Divisions (see paragraph 40 above), the Government pointed out that the majority had supported the principle of joint liability, which was therefore the most foreseeable outcome.

64. The Government further argued that the principle of joint liability did not conflict with the principle of individual criminal liability, as it punished individuals for their complicity in the commission of the offence. They relied mainly on three grounds: Article 110 of the CC, the punitive nature of the measure, and tort law.

65. Firstly, the Government referred to Article 110 of the CC as the legal basis for the criminal law theory saying that co-offenders are jointly liable for the entire crime and any penalty (see paragraph 34 above). When read in combination with the provisions dealing with confiscation, therefore, Article 110 of the CC provided a clear legal basis for joint liability.

66. Secondly, the Government argued that a measure having a restorative purpose would have to be limited to what each offender received, whereas the predominantly punitive purpose of value confiscation entailed making each participant liable for the entire proceeds of the offence, without prejudice to the subsequent right to seek a contribution.

67. Thirdly, joint liability in tort was expressly provided for by article 2055 of the Civil Code. The degree of fault of each defendant was irrelevant to the party claiming damages, and would only come into play if the parties that had been found jointly liable later sought contributions among themselves.

68. Overall, the Government argued that joint liability for confiscation was a consequence of each offender's individual liability, as it was not related to whether or not the proceeds were available but was aimed at punishing the offenders' contribution to the commission of the offence and thus their contribution to the generation of the proceeds overall.

69. Finally, the Government pointed out that the confiscation order was made in respect of offences for which the applicants had been found liable, and not in respect of third parties' offences.

B. The Court's assessment

1. Admissibility

70. As regards the applicability of Article 7, the Government agreed that the confiscation in question amounted to a penalty, especially given the case- law in force at the relevant time (see paragraph 61 above). In the circumstances, the Court sees no reason to conclude otherwise.

71. The Court therefore notes that the complaints raised under Article 7 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention and declares them admissible.

2. Merits

(a) General principles

72. Article 7 of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) (see *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 78, ECHR 2013, and *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, § 67, 26 April 2022 ("*Advisory opinion P16-2021-001*"); see also *Yüksel Yalçınkaya*, *v. Türkiye* [GC], no. 15669/20, § 238, 26 September 2023).

73. The principle that offences and sanctions must be provided for by law entails that criminal law must clearly define the offences and the sanctions by which they are punished, such as to be accessible and foreseeable in its effects (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 242, 28 June 2018). This requirement is satisfied where the individual can know from the wording of the relevant provision, if need be with the assistance of the courts' interpretation of it and after taking appropriate legal advice, what acts and omissions will make him criminally liable and what penalty he faces on that account (see *Cantoni v. France*, 15 November 1996, § 29, *Reports of Judgments and Decisions* 1996-V; *Del Río Prada*, cited above, § 79; and *G.I.E.M. S.r.l. and Others*, cited above, § 242).

74. The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that

the punishment imposed did not exceed the limits fixed by that provision (see *Del Río Prada,* cited above, § 80, and the references therein).[1]

75. The Court has pointed out that when speaking of "law" («*droit*») Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statutory law as well as case-law and implies qualitative requirements, notably those of accessibility and foreseeability (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96 and 2 others, § 50, ECHR 2001-II, and *Yüksel Yalçınkaya*, cited above, § 238). Those qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence carries (see *Del Río Prada*, cited above, § 91; *Jidic v. Romania*, no. 45776/16, § 79, 18 February 2020; and *Advisory opinion P16-2021-001*, cited above, § 67).[2]

76. However clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances (see *Del Río Prada*, cited above, § 92; see also *Yüksel Yalçınkaya*, cited above, § 239). Moreover, the progressive development of the criminal law through judicial law-making is a well-entrenched and necessary part of legal tradition. Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see *S.W. v. the United Kingdom*, 22 November 1995, § 36, Series A no. 335-B; *Streletz, Kessler and Krenz*, cited above, § 50; and *Yüksel Yalçınkaya*, cited above, § 239). The lack of an accessible and reasonably foreseeable judicial interpretation can lead to a finding of a violation of the accused's Article 7 rights (see, in connection with the constituent elements of an offence, *Pessino v. France*, no. 40403/02, §§ 35-36, 10 October 2006, and *Dragotoniu and Militaru-Pidhorni v. Romania*, nos. 77193/01 and 77196/01, §§ 43-44, 24 May 2007; see, as regards penalties, *Alimuçaj v. Albania*, nos. 20134/05, §§ 154-62, 7 February 2012). Were that not the case, the object and the purpose of this provision – namely that no one should be subjected to arbitrary prosecution, conviction or punishment – would be defeated (see *Del Río Prada*, cited above, § 93, and *Yüksel Yalçınkaya*, cited above, § 239).

77. When examining if the domestic courts' broad interpretation of the text of the law was reasonably foreseeable for the purposes of Article 7 § 1 of the Convention, the Court has regard to whether the interpretation in

[1] Subsequent paragraphs of this standard citation have been eliminated for the sake of brevity.
[2] Subsequent paragraphs of this standard citation have been eliminated for the sake of brevity.

question was the resultant development of a perceptible line of case-law or its application in broader circumstances was nevertheless consistent with the essence of the offence (see *Parmak and Bakır v. Turkey*, nos. 22429/07 and 25195/07, § 65, 3 December 2019, and *Tristan v. the Republic of Moldova*, no. 13451/15, § 51, 4 July 2023; see also *Total S.A. and Vitol S.A. v. France*, nos. 34634/18 and 43546/18, § 55, 12 October 2023).

78. An interpretation capable of clarifying the meaning of an otherwise insufficiently clear provision which serves as the legal basis for an offence must, in order to comply with the requirements of Article 7, result from a practice (case-law) of the domestic authorities which is consistent. That is so because an inconsistent case-law lacks the required precision to avoid all risk of arbitrariness and enable individuals to foresee the consequences of their actions (see *Žaja v. Croatia*, no. 37462/09, §§ 103-105, 4 October 2016). No person should be forced to speculate, at peril of conviction, whether his or her conduct is prohibited or not, or to be exposed to unduly broad discretion of the authorities (*Žaja*, cited above, § 105, and *Pantalon v. Croatia*, no. 2953/14, § 53, 19 November 2020).

79. There is a correlation between the degree of foreseeability of a criminal-law provision and the personal liability of the offender. Thus punishment under Article 7 requires the existence of a mental link through which an element of liability may be detected in the conduct of the person who physically committed the offence (see *G.I.E.M. S.r.l. and Others*, cited above, § 242, and *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 116, 20 January 2009).

80. Another consequence of cardinal importance flows from the principle of legality in criminal law, namely a prohibition on punishing a person where the offence has been committed by another. While it is true that anyone must be able at any time to ascertain what is permitted and what is prohibited via clear and detailed laws, a system which punished persons for an offence committed by another would be inconceivable (see *G.I.E.M. S.r.l. and Ohers*, cited above, §§ 271-72).

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

(i) Punishment for a third party's conduct

81. The Court notes that two of the applicants (Mr Petrignani and Mr Carbone) argued that the confiscation of their assets based on joint liability had been in breach of Article 7 because it had been disproportionate, had not taken into account either what shares of the proceeds of the crime they had obtained individually or their specific roles in the commission of the crime, and had resulted in the imposition of a penalty on them for the conduct of a third party (see, respectively, paragraphs 50-54 above).

82. The Court acknowledges that the principle of joint liability results in the confiscation of shares of the proceeds of crime that have been obtained

by third parties. Nevertheless, this does not necessarily entail that the applicants have been punished for the conduct of third parties.

83. The Court notes that the applicants agreed to a plea bargain, accepting a penalty for the offences of which they were accused. The applicants therefore did not contest their personal liability for the offences on the basis of which the assets were confiscated. The Court finds that the applicants' personal liability was properly established (*a contrario*, *G.I.E.M. S.r.l. and Others*, cited above, § 272).

84. The Court further notes that both domestic case-law and the Government in their observations considered confiscation based on joint liability to be aimed at punishing the applicants for their contribution to the commission of the crime and to the generation of the entire proceeds derived from that crime (see paragraphs 34, 38 and 64-66 above). There was therefore a clear link between the applicants' conduct and the confiscation of the entire proceeds of the crime (see paragraph 79 above), and the applicants were not being punished for their co-offenders' conduct, but for their own.

85. In such circumstances, the Court does not find that the confiscation based on the principle of joint liability amounted to a penalty for a third party's conduct.

86. The Court has noted the applicants' additional arguments concerning the failure to assess their individual roles and shares of the proceeds. In this respect, the applicants' arguments are inextricably linked with the allegedly disproportionate character of the confiscation.

87. The Court notes, however, that it does not examine the proportionality of a penalty under Article 7 of the Convention. Nevertheless, the proportionality of penalties entailing an interference with the enjoyment of possessions may be examined under Article 1 of Protocol No. 1 (see, for instance, *G.I.E.M. S.r.l. and Others*, cited above, §§ 292-304).

88. In light of the foregoing, the Court finds that Mr Petrignani and Mr Carbone have not been subject to a penalty for a third party's conduct. It dismisses their claims in that regard. Their remaining arguments fall to be examined under Article 1 of Protocol No. 1 to the Convention.

89. Considering that Mr Petrignani and Mr Carbone did not raise any other complaint under Article 7 of the Convention, there has been no violation of that provision in their respect.

(ii) Foreseeability of a penalty based on the principle of joint liability

90. The Court notes that Mr Curci complained that confiscation based on joint liability did not have a foreseeable legal basis (see paragraphs 55-60 above).

91. The Government identified a combination of the provisions on confiscation and Article 110 of the CC as the legal basis for confiscation based on joint liability (see paragraph 65 above). Additionally, they referred to the interpretation provided by domestic case-law (see paragraphs 62-63

above), to the punitive character of the confiscation and to Article 2055 of the Civil Code (see paragraphs 66-67 above).

92. The Court notes that the value confiscation was made in the present case under Article 322 *ter* of the CC (as referred to in Article 12 *bis* of Legislative Decree no. 74 of 2000, see paragraph 16 above).

93. The Court notes that Article 322 *ter* of the CC does not clearly establish a principle of joint liability for value confiscation. It does not regulate the situation where there is more than one offender (see paragraph 20 above).

94. As to Article 110 of the CC (see paragraph 29 above), it appears to establish only that, if there are several co-offenders, they should all be held liable for the same crime and given a penalty within the same statutory range. However, it does not provide that penalties can be determined in an overall amount for which the co-offenders are jointly liable. Indeed, it is undisputed that where measures are classified as penalties in the domestic legal order (such as imprisonment or criminal fines), Article 110 of the CC is not interpreted as providing for joint liability: on the contrary, the judge will give each co-offender an individual penalty.

95. Similarly, the principle of joint liability in respect of value confiscation is not clearly set out in Article 2055 of the Civil Code – which concerns compensation for loss and damage arising from tort (see paragraph 31 above) – or from the punitive character of the confiscation.

96. Nevertheless, even though the cited provisions did not set out the principle of joint liability clearly enough, the Court accepts that a consistent interpretation in domestic case-law could have clarified the meaning, thus ensuring the foreseeability of the penalty (see paragraphs 77-78 above).

97. In this respect, the Court notes that in domestic case-law Article 110 of the CC was first taken to establish the principle of joint liability in 2004 (see paragraph 34 above). In the following years, that interpretation was repeated in some cases, but in others confiscation was ordered only in respect of each offender's share of the proceeds (see paragraphs 35-36 above). A first attempt at rationalising this divergence was made by the Combined Divisions of the Court of Cassation in judgment no. 26654 of 2008 (see paragraph 37 above). Nevertheless, that judgment gave rise to a further divergence (see paragraphs 38-39 above), which lasted until the recent judgment of the Combined Divisions no. 13783 of 2025 which acknowledged the existence of a long-standing divergence and put an end to it by excluding the principle of joint liability (see paragraph 41 above).

98. The Court therefore notes that the existence of diverging case-law, even after the judgment no. 26654 of 2008 – which appears to have raised further doubts instead of putting an end to them – has been explicitly acknowledged by the Combined Divisions in judgment no. 13783 of 2025, and it sees no reason to call that finding into question.

99. Furthermore, the Government themselves argued that judgment no. 26654 of 2008 had rendered the principle of joint liability foreseeable where the individual shares of the proceeds could not be identified (see paragraph 62 above); however, it does not appear that domestic courts even attempted to identify Mr Curci's shares of the proceeds. Additionally, the Government did not address the applicant's argument that the shares are easily identifiable in respect of tax offences (see paragraph 60 above).

100. The Government argued that the majority approach was the most foreseeable (see paragraph 63 above). The Court acknowledges that an interpretation of domestic provisions is not necessarily rendered unforeseeable by a few contrary judgments. Indeed, it reiterates that Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case. Nevertheless, in order to achieve such gradual clarification, the development of the case-law must be sufficiently consistent (see paragraphs 76-78 above). In the present case, although there was a majority approach, judgments to the contrary were neither isolated nor rapidly overcome, and the divergence in case-law lasted for about 20 years (see paragraphs 34-41 above). In those circumstances, the Court finds that the case-law was not sufficiently consistent to render joint liability foreseeable.

101. The Court therefore finds that, without a provision clearly establishing the principle of joint liability in confiscation orders and without consistent case-law clarifying the existing provisions, an order for the confiscation of the overall proceeds of a crime based on the principle of joint liability was not a foreseeable penalty.

102. As a subsidiary issue, the Court has taken note of the arguments raised by Mr Curci concerning the unforeseeable consequences of applying the principle of joint liability.

103. The Court points out that the amount to be confiscated is determined on the basis of the proceeds derived from the crimes, and is not subject to any upper limit. In this respect, it differs from other types of sanctions (such as, for instance, fines) which are predetermined by a range set out in statute. This is strictly an aspect of a confiscation order, and is not of itself incompatible with Article 7 of the Convention, but the Court considers that a closer scrutiny of the criteria used by judges to determine the amounts they order to be confiscated is required to ensure that they are foreseeable.

104. Furthermore, the Court has previously found, albeit in the context of Article 1 of Protocol No. 1, that where the relevant legislation failed to prescribe upper limits on the amount that could be made subject to confiscation and conferred a wide discretion on the authorities without setting out any criteria for its exercise, and where the criteria used by those authorities when making a confiscation order were inconsistent with the essence of the offence, the measure failed to meet the qualitative requirement of foreseeability (see *Imeri v. Croatia*, no. 77668/14, § 81, 24 June 2021; see

also, *mutatis mutandis*, *Markus v. Latvia*, no. 17483/10, §§ 72-75, 11 June 2020). This consideration should apply all the more in the context of Article 7 of the Convention, given that its object and purpose is to provide effective safeguards against arbitrary prosecution, conviction or punishment (see *Žaja*, cited above, § 105).

105. The Court observes that whenever direct confiscation of the assets obtained by crime has proved impossible, domestic courts can make a confiscation order against any co-offender to a value equivalent to the entire proceeds of the crime or may split the liability at their own discretion. The Court is unable to detect, either in domestic law and case-law, any precise criterion for how liability might be shared.

106. Although it may be reasonable to assume – as the applicant states – that how a court apportions the liability under a confiscation order will depend on the financial capacity of each offender, this is not something the other co-offenders could be expected to know at the time of the commission of the crime, and it is in any event unrelated to the conduct for which they are being punished.

107. The Court therefore finds that the confiscation of Mr Curci's assets based on the principle of joint liability was not foreseeable, particularly given the absence of clear and foreseeable criteria for the determination of the amounts to be confiscated.

108. For all of the foregoing reasons, there has been a breach of Article 7 of the Convention in respect of Mr Curci.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

109. The applicants complained that the confiscation of an amount of their assets equivalent to the overall proceeds of the offences had not had a sufficiently foreseeable legal basis and had been disproportionate, in breach of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "1. 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.
>
> 2. 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. The parties arguments

1. The applicants

(a) Mr Petrignani

110. The applicant Mr Petrignani argued that the confiscation had been ordered in breach of domestic law and constituted a disproportionate interference with his property rights. Largely reiterating the arguments that he had made in respect of Article 7 of the Convention (see paragraphs 50-53 above), he complained that his role in the commission of the offence and the share of the proceeds he had obtained had not been individually assessed; he pointed out, in particular, that he had only obtained EUR 12,000 as a result of his unlawful conduct, whereas he was exposed to the confiscation of his assets up to the value of EUR 5,047,500.

(b) Mr Carbone

111. The applicant Mr Carbone claimed that it had been disproportionate to order the confiscation of EUR 44,057.36 from him, as his share of the proceeds of crime had amounted to only EUR 27,631.70. This higher amount had not been provided for by law. He further argued that the domestic courts had not even attempted to order the confiscation of the co-offenders' shares of the proceeds.

(c) Mr Curci

112. The applicant Mr Curci complained that the confiscation of EUR 36,431,352.03 had not had a foreseeable legal basis and had in any event been disproportionate.

113. As to the first aspect, he argued that domestic law had only allowed for the confiscation of the proceeds he had derived from the crime, and not of the overall amount obtained by all co-defendants. He reiterated the arguments advanced under Article 7 of the Convention in this respect (see paragraphs 55-60 above), adding that the foreseeability of the measure was further undermined by a lack of procedural safeguards: in fact, the criminal courts did not address the issue of the distribution of the proceeds among the co-offenders because – according to the Government's claims – this was rather the task of civil courts in subsequent contribution claims; as to those civil actions, they did not constitute an effective procedural safeguard, because they did not call into question the exercise of state powers and were in any event conditional on the co-offenders' financial capacity; furthermore, he argued that it was uncertain whether a claim for a contribution could allow the recovery of unlawfully obtained sums.

114. As to the disproportionate character of the confiscation, he claimed that the amount confiscated had been excessive, had not been based on the proceeds he had obtained as a result of the offence and had therefore imposed

an excessive burden on him. He observed that confiscation based on joint liability was substantially unlimited, as the amount of an order depended only on other co-offenders' financial capabilities. Furthermore, relying on the principle of joint liability in respect of a punitive measure (and not of a measure merely aimed at the recovery of unlawfully acquired assets) was unjustified and led to disproportionate results.

115. In his case, the confiscation had extended to an amount equivalent to the tax savings of approximately a hundred companies, although, as a consultant, he had not benefited from the tax savings he had assisted the companies to realise. The order had been made against him only because he was the wealthiest and the first available among the co-offenders. As a consequence, he had been deprived of all of his possessions, and the ordinary penalties had still been imposed on him as well.

116. The applicant Mr Curci also complained that the domestic courts had failed to assess the proportionality of the measure and strike a fair balance among the various interests; he argued that the authorities should have carried out an individualised assessment of the proportionality of the confiscation order and should have had regard to the proceeds actually obtained by each co-offender.

117. As to the balancing factors put forward by the Government (see paragraph 120 below), the applicant contested their sufficiency and relevance: the obligation to attempt direct confiscation of the proceeds of crime first only ensured the proportionality of the measure when, because of contingent circumstances, the direct proceeds of the crime could still be detected; the fact that the overall confiscation could not exceed the proceeds of the offence merely avoided a duplication of the confiscated amounts, without ensuring proportionality in respect of each individual offender; and claims for contributions would always have an uncertain outcome and were in any event a clear admission of the disproportionate character of the initial measure of confiscation itself rather than a balancing factor.

2. The Government

118. The Government maintained that confiscation on the basis of joint liability had a foreseeable legal basis, for the same reasons as in respect of Article 7 of the Convention (see paragraphs 62-63 above).

119. As to the proportionality of the measure, they pointed out that the confiscation had been imposed in respect of offences for which the applicants had been found liable, and that it was reasonable not to require judges in criminal cases to establish agreement among the co-offenders as to their shares of the proceeds but to delegate this task to civil judges in subsequent contribution proceedings. It was also easier to determine individual shares in civil proceedings, where the parties were not worried about revealing information that could be used against them and could therefore submit more complete evidence.

120. Additionally, a number of balancing factors would ensure the proportionality of a confiscation order based on joint liability: value confiscation could only be ordered when the direct confiscation of the proceeds obtained by each co-offender had proven impossible; it could only be ordered in respect of the proceeds deriving from the specific offence committed by each offender, and not in respect of the proceeds of offences attributed only to the other co-offenders; it could never exceed the overall proceeds of the crime, so that there was no risk of duplication; and the co- offenders had a subsequent right to seek contributions from each other.

B. The Court's assessment

1. Admissibility

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

2. Merits

122. The Court observes at the outset that the Government did not dispute that the confiscation of the applicants' assets had amounted to an interference with their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. The Court sees no reason to hold otherwise.

123. Additionally, in the Court's view there is no need in the present case to determine under which of the three rules set out under Article 1 of Protocol No. 1 the present case should be examined because – regardless of which of the three rules applies – the principles governing the question of justification are substantially the same (see, *mutatis mutandis*, *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 182, 13 July 2021, and *Episcopo and Bassani v. Italy*, nos. 47284/16 and 84604/17, § 148, 19 December 2024).

124. In order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, in the general interest and 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 other authorities, *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, § 281, 2 May 2024, with further references). The Court will examine these three steps in turn.

(a) Whether the measures complied with the principle of lawfulness

125. The general principles on the lawfulness of an interference have been summarised in, among other authorities, the recent cases of *Episcopo and Bassani* (cited above, §§ 149-151).

126. Mr Curci complained that the interference with his property rights had been unforeseeable (see paragraphs 112-113 above).

127. In the present case, the Court has already found, in its examination of the complaints raised under Article 7 of the Convention, that the confiscation of the overall proceeds of the crime on the basis of joint liability did not have a sufficiently clear and foreseeable legal basis because there was no clear provision for it in law, because of the divergence of judicial interpretation until the recent judgment no. 13783 of 2025, and because there were no clear criteria for the determination of the amounts to be confiscated (see paragraphs 93-107 above). The Court sees no reason to reach a different conclusion under Article 1 of Protocol No. 1. There has therefore been a violation of that provision in respect of Mr Curci. Consequently, there is no need to examine whether the interference complained of pursued a legitimate aim and was proportionate.

128. The Court notes that the remaining applicants did not make a clear complaint under Article 1 of Protocol No. 1 that the confiscation order had had no foreseeable legal basis. The Court therefore finds it appropriate to continue its examination in their regard, in order to determine whether the interference with their property rights pursued a legitimate aim and was proportionate (see, *mutatis mutandis*, *Yaylalı v. Serbia*, no. 15887/15, §§ 44-45, 17 September 2024).

(b) Whether the measures pursued a legitimate aim

129. The domestic case-law of the time showed that the purpose of confiscation orders was to punish offenders by imposing on them an economic sacrifice corresponding to the proceeds that they had derived from their crime: it therefore had (primarily) a punitive purpose and (secondarily) a restorative one (see paragraphs 26-27 above).

130. The Court has on several previous occasions held that the confiscation of the proceeds of crime is in line with the general interest of the community, as it both operates as a deterrent to those considering engaging in criminal activities and guarantees that crime does not pay (see, among other authorities, *Todorov and Others*, cited above, § 186; *Gogitidze and Others v. Georgia*, no. 36862/05, § 102, 12 May 2015; and *Veits v. Estonia*, no. 12951/11, § 71, 15 January 2015).

131. The Court is therefore satisfied that the confiscation of the applicants' assets pursued a legitimate aim in the general interest.

(c) Whether the measures were proportionate

(i) General principles

132. Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim it pursued. In other words, a "fair balance" must be struck between the demands of the general interest of the

community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the persons concerned have had to bear an excessive burden (see *The J. Paul Getty Trust and Others*, cited above, § 374, and *Todorov and Others*, cited above, § 187, with further references). A wide margin of appreciation is usually allowed to the State when it comes to general measures of political, economic or social strategy (ibid., § 187; see also *Telbis and Viziteu v. Romania*, no. 47911/15, §§ 70-71, 26 June 2018).

133. The character of the interference, the aim pursued, the nature of the property rights interfered with, and the behaviour of the applicant and the State authorities are among the principal factors material to an assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant (see *Zaghini v. San Marino*, no. 3405/21, § 57, 11 May 2023, and *Ferhatović v. Slovenia*, no. 64725/19, § 43, 7 July 2022).

134. Furthermore, the Court has, on many occasions, noted that although Article 1 of Protocol No. 1 contains no explicit procedural requirements, domestic proceedings must 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 (see *Zaghini*, cited above, § 57, *Todorov and Others*, cited above, § 188, and *G.I.E.M. S.r.l. and Others*, cited above, § 302).

135. The Court has examined the proportionality of confiscation measures in a number of cases and in respect of a variety of domestic regimes (see *Todorov and Others*, cited above, §189-199, with further references).

136. In respect of various forms of confiscation of the proceeds of crime, the Court has generally verified whether the domestic courts had established, even if not to a criminal law standard, whether the confiscated assets had an unlawful origin. Where such connection (whether direct or indirect) has been sufficiently established, the Court has generally found the measures to be proportionate (see, for instance, *Melandri v. San Marino*, no. 25189/21, § 72, 12 September 2024; *Todorov and Others*, cited above, §§ 212 and 215; *Rummi v. Estonia*, no. 63362/09, § 107, 15 January 2015; and *Silickienė v. Lithuania*, no. 20496/02, § 68, 10 April 2012).

137. As regards punitive confiscation orders, while bearing in mind the discretion the national authorities enjoy in the area of penal policy, the Court has nonetheless held that the financial obligation resulting from the payment of a penalty could result in disproportionate interference with the right of property if it imposed an excessive burden on the person concerned or had a fundamental adverse effect on his financial situation (see *Markus*, cited above, § 67). In order to be proportionate, the interference should correspond to the severity of the infringement, and the sanction to the gravity of the offence it is designed to punish (*ibidem*, § 67, and *Yaylalı*, cited above, § 53).

138. Lastly, in a number of cases concerning the confiscation of assets belonging to persons other than those who had been convicted, the Court has stated that in assessing whether or not a confiscation order was proportionate it should be taken into account whether or not it was possible to seek an order against the convicted party in civil proceedings (see *Korshunova v. Russia*, no. 46147/19, § 41, 6 September 2022, *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, §§ 36-37, 4 July 2017, and *Sulejmani v. the Former Yugoslav Republic of Macedonia*, no. 74681/11, § 41, 28 April 2016). In such cases, the Court generally takes into account whether that remedy would be effective in enabling the owner of confiscated property to obtain compensation, taking into account the specific circumstances of the case (*S.C. Service Benz Com S.R.L.*, cited above, § 37 with further references; see, for instance, *Bowler International Unit v. France*, no. 1946/06, § 44, 23 July 2009, which considered the remedy inadequate because of the risk of insolvency of the offender).

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

139. The Court notes that Mr Petrignani and Mr Carbone argued, and the Government did not dispute, that the confiscation order exceeded the share of the proceeds they had each obtained from the crimes. The Court finds the same. It will therefore examine whether this resulted in a disproportionate interference with their possessions, taking into account both the punitive and the restorative purpose of the confiscation in question.

140. As to the first, the Court notes that the confiscation of amounts exceeding the applicants' shares of the proceeds was unrelated to their role in the commission of the crimes or to the gravity of their conduct. The domestic courts did not examine whether the applicants' particular contributions to the commission of the offences justified finding them jointly liable: they simply applied joint liability automatically. The Court has already found that there are no clear criteria for deciding the extent of a confiscation order and that, even assuming that in practice the criterion is that of the co-offenders' financial position, it would not be related to their criminal conduct (see paragraphs 105-106 above). The Court finds that the order was not proportionate to the punitive purposes it pursued (see paragraph 137 above).

141. As to the second purpose, namely the restoration of the applicants' financial situation before the commission of the crime, the Court notes that being made jointly liable left the applicants in a worse financial situation than they had been in prior to the commission of the offences. The confiscation orders therefore exceeded what was necessary to pursue that aim, leading to the confiscation of assets which had no connection – whether direct or indirect – with the commission of the crimes (see paragraph 136 above).

142. The Court has taken note of the Government's argument that it is reasonable not to require criminal courts to determine whether co-offenders agreed on the distribution of the proceeds of a crime and to delegate this task

to civil judges (see paragraph 119 above). The Court acknowledges that that might, in some cases, give rise to complex evidentiary problems. Nevertheless, it notes that there is no indication that the issue of the distribution of the proceeds of the crimes was particularly complex in the applicants' case, and that the domestic courts did not even assess whether it could be easily determined on the basis of the information available; furthermore, the Court finds that the same purpose could have been achieved by less restrictive measures, such as a preliminary determination of the shares based on the available information, which could then be tested in subsequent civil proceedings, or by treating the proceeds as having been held equally among those convicted, as suggested by the recent judgment no. 13783 of 2025 of the Combined Divisions (see paragraph 41 above).

143. The Government further argued that four balancing factors ensured the proportionality of a confiscation order based on joint liability, namely: a) the fact that value confiscation could only be ordered when direct confiscation had proved impossible; b) the fact that it could be ordered only in respect of the proceeds deriving from offences in which the persons against whom the confiscation was ordered had taken part and not in respect of the proceeds of other offences committed solely by co-defendants; c) the fact that the overall amount confiscated could never exceed the proceeds of the crime; and d) the fact that the co-offenders could seek contribution orders against each other (see paragraph 120 above).

144. The Court observes that the first three factors referred to by the Government did limit the extent of a confiscation order but did not prevent an individual applicant's being subject to the confiscation of assets which exceeded their share of the proceeds. Those factors cannot therefore affect the assessment of proportionality of the measures under examination.

145. As to the right of the co-offenders to seek contribution orders, the Court acknowledges that, in principle, that could allow the applicants to recover from the co-offenders and put themselves back into the financial position they were in before the commission of the crimes.

146. Nevertheless, as the Government themselves said, an order for value confiscation can be made only when the direct confiscation of the proceeds is impossible. That implies that when an order for value confiscation was being considered, the domestic authorities will have or should have attempted to confiscate the proceeds from the co-offenders first and that that will have proved impossible. Although the Government did not elaborate on whether the applicants would have been likely to obtain contribution orders against their co-offenders, the Court finds that at least doubtful, because of the risk that the co-offenders' would prove to be insolvent (see paragraph 138 above).

147. In addition, the Court observes that relying on joint liability meant shifting responsibility for recovering the co-offenders' shares of the proceeds of the crime from the State authorities to the applicants. The Court does not

find this shifting of responsibility justified given the punitive and restorative aims of the orders.

148. The Court notes that, in some cases, there might be a legitimate interest in recovering certain assets from persons who have them at their disposal and leaving it to them to seek contributions from the responsible parties. In the cases cited above (see paragraph 138), when the Court held that the ability to seek a contribution order against a third party meant the order was proportionate, there was a reason to confiscate the specific assets from the applicants, either because they were dangerous or unlawful in themselves or because they had been used in the commission of the crimes (see *Sulejmani*, cited above, concerning the confiscation of a vehicle which was not roadworthy; or *S.C. Service Benz Com S.R.L.*, cited above, concerning the confiscation of fuel tankers used for the commission of the crime). In the present case, there was no particular need to target specifically those assets owned by the applicants for confiscation.

149. In some cases there might be a legitimate interest in ordering restitution without making an injured party suffer the consequences of the insolvency of one of the co-offenders. This could be the case, for instance, in respect of the joint liability in tort as provided for by Article 2055 of the Civil Code (which the Government claimed had inspired the introduction of confiscation orders based on joint liability; see paragraph 67 above), or in respect of compensation orders for harm arising from an offence, as provided for by Article 187 of the CC (see paragraphs 30-31 above). However, compensating for harm does not appear to have been the purpose of the confiscation orders in question: indeed, there is no indication that the confiscation was ordered as an alternative to a civil claim, nor that the confiscated amount was subsequently transferred to the party that had suffered the harm. In this respect, the type of confiscation in question is more akin to unjust enrichment rather than to a civil claim for damages for liability in tort (see, *mutatis mutandis*, *Radelić v. Croatia*, no. 12432/22, § 61, 13 May 2025).

150. Given the nature and purposes of the confiscation orders in question, the Court finds that shifting the responsibility of recovering the co-offenders' shares of the proceeds from the domestic authorities to the applicants was not justifiable and imposed an excessive burden on the applicants. It therefore finds that making the confiscation orders on the basis of joint liability was not proportionate to the aims pursued.

151. It follows that there has also been a breach of Article 1 of Protocol No. 1 in respect of Mr Petrignani and Mr Carbone.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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

153. Mr Petrignani asked the Court to award him an equitable amount in respect of non-pecuniary damage.

154. Mr Carbone claimed EUR 3,000 for the damage he claimed he had suffered because of the passage of time since the confiscation of his assets. He further claimed EUR 16,425.66, corresponding to the difference between the confiscated amount and his share of proceeds of the crime.

155. Mr Curci argued that although he could obtain the reopening of domestic proceedings under Article 628 *bis* of the Code of Criminal Procedure, this only allowed for partial reparation. He therefore also asked for just satisfaction.

In respect of pecuniary damage (in the event that the above-mentioned reopening did not lead to the revocation of the confiscation order and the return of the confiscated assets) Mr Curci claimed EUR 19,010,838.67, corresponding to the value of the assets that had so far been confiscated from him and his family members. He further asked for statutory interest and an adjustment for inflation, amounting (as at the date of the applicant's observations) to EUR 5,036,524.28.

He also asked for an unspecified amount in respect of non-pecuniary damage.

156. The Government argued that the amounts requested in respect of non-pecuniary damage were excessive and that the damage was unproven.

157. The Court has found a violation of Article 7 of the Convention (in respect of Mr Curci) and of Article 1 of Protocol No. 1 (in respect of all applicants) arising from the domestic courts' reliance on the principle of joint liability, which resulted in the confiscation of assets exceeding the applicants' shares of the proceeds of the crimes. Since the domestic courts did not determine those shares, the Court does not find it appropriate to speculate on the amount that would have been confiscated if the domestic courts had not relied on joint liability. It therefore considers that a reopening of the domestic proceedings and a re-examination of the matter at the national level would constitute, in principle, an appropriate remedy for the violation (see, *mutatis mutandis*, *Todorov and Others*, cited above, § 321, and *Mandev and Others v. Bulgaria*, nos. 57002/11 and 4 others, § 144, 21 May 2024).

158. Domestic law – in particular, Article 628 *bis* of the Code of Criminal Procedure – provides that criminal proceedings may be reopened or, in any event measures may be taken to eliminate the harmful consequences of a violation of the Convention that has been found by the Court (see

paragraph 42 above). The Court therefore rejects the applicants' claims for pecuniary damage.

159. Nevertheless, taking into account the violations found, it considers that the applicants must have suffered non-pecuniary damage caused by the violations found. It therefore decides on an equitable basis, taking into account the applicants' complaints and the circumstances of each case (see paragraphs 8, 11 and 111 above), to award them the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable:

- Mr Petrignani: EUR 2,000;
- Mr Carbone: EUR 3,000;
- Mr Curci: EUR 5,000.

B. Costs and expenses

160. Mr Petrignani and Mr Carbone did not make a claim in respect of costs and expenses.

161. Mr Curci claimed the amount of EUR 10,688 for the costs and expenses incurred before the Court.

162. The Government argued that the sum was excessive.

163. 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.

164. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award Mr Curci the sum of EUR 10,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 7 of the Convention in respect of Mr Curci ;

4. *Holds* that there has been no violation of Article 7 of the Convention in respect of Mr Petrignani and Mr Carbone ;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of Mr Petrignani, Mr Carbone and Mr Curci;

6. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
  (i) Mr Petrignani: EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  (ii) Mr Carbone: EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  (iii) Mr Curci:
    (1) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    (2) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

APPENDIX

List of applications:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	26187/14	Petrignani v. Italy	17/03/2014	**Riccardo PETRIGNANI** 1972 Turin Italian	Andrea CIANCI
2.	24511/21	Carbone v. Italy	20/04/2021	**Vincenzo CARBONE** 1951 Giovinazzo Italian	Vincenzo Claudio DEMICHELE
3.	31161/22	Curci v. Italy	16/06/2022	**Ruggiero Massimo CURCI** 1968 Carapelle Italian	Tullio PADOVANI Raul Donato PELLEGRINI