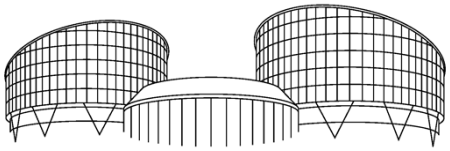

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CREDIT EUROPE LEASING IFN S.A. v. ROMANIA

(Application no. 38072/11)

JUDGMENT
(Just satisfaction)

Art 41 • Just satisfaction • Aggregate award for pecuniary and non-pecuniary damage sustained from violation of Art 1 P1 on account of excessively lengthy seizure of applicant company's assets and lack of opportunity to effectively challenge the seizure in proceedings in which it was not a party

STRASBOURG

10 October 2023

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 Credit Europe Leasing Ifn S.A. v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Faris Vehabović,
Branko Lubarda,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,

and Andrea Tamietti, *Section Registrar,*

Having deliberated in private on 19 September 2023,

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

PROCEDURE

1. The case originated in an application against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian commercial company, Credit Europe Leasing Ifn S.A. ("the applicant company"), on 17 June 2011. After being notified that the applicant company had changed its name to Credit Europe Asset Management S.A., the Court advised the parties on 21 August 2019 that it would continue processing the application under the name of *Credit Europe Leasing Ifn S.A. v. Romania*.

2. In a judgment delivered on 21 July 2020 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention on account of the excessively lengthy seizure of the applicant company's assets (779 kiosks, six vans and one truck) and the lack of opportunity to effectively challenge the seizure imposed in criminal proceedings in which it was not party (see *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, §§ 86-88, 21 July 2020).

3. Under Article 41 of the Convention, the applicant company sought 2,543,000 euros (EUR) plus VAT in just satisfaction for pecuniary damage, EUR 10,000 for non-pecuniary damage and EUR 7,500 for costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant company to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 100 and point 4 of the operative provisions).

5. As the parties did not reach an agreement, the applicant company submitted its claims for just satisfaction under Article 41 and the respondent Government submitted their observations in this regard.

THE LAW

6. Article 41 of the Convention provides:

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

A. Damage

1. The parties' submissions

(a) Pecuniary damage

7. The applicant company claimed the following amounts in respect of pecuniary damage:

- 2,337,000 euros (EUR) representing the value, excluding VAT, of the 779 kiosks specified in an accounting evaluation report dated 11 May 2011;
- EUR 168,000 representing the value, excluding VAT, of the six vans specified in purchase invoices;
- EUR 38,000 representing the value, excluding VAT, of the truck specified in its purchase invoice.

8. In total, the applicant company claimed EUR 2,543,000 plus EUR 483,170 in respect of VAT.

9. The applicant company submitted that the amounts requested in respect of just satisfaction were adequately substantiated by documents (the evaluation report drawn up in 2011 on the basis of documents by an authorised accounting expert contracted by the applicant company, according to which the sale price of similar kiosks in 2010 was EUR 3,000 each) and reasonable as to quantum. It alleged that even if it were also entitled to compensation for loss of use of the seized assets (EUR 74,342 per month for loss of rent for the kiosks as specified in the above-mentioned report), it would make no additional claim in this regard in order to avoid its request being considered excessive.

10. The Government considered that the amounts requested in respect of pecuniary damage were excessive and submitted that any deterioration of the goods or their loss of value could not be imputed to the authorities since all the seized goods had been left for safekeeping with the company which had been in possession of them on the basis of lease contracts concluded with the applicant company. Since the assets have remained in the possession of the business partner of the applicant company, the latter had failed to explain what prevented it from regaining possession of its property after the lifting of the measure by the authorities.

11. The Government further submitted that the value per kiosk was EUR 3,000, as was specified in the documents submitted to the investigative authorities. As regards the vans, the Government contended that some of

them had had various deteriorations at the time of seizure and, hence, a decreased value. They further maintained that any compensation for the seized vehicles should take into consideration their value at the time of seizure and not their purchase price, bearing in mind that the vehicles had already been used for several years before their seizure.

(b) Non-pecuniary damage

12. The applicant company requested EUR 10,000 in respect of non-pecuniary damage incurred as a result of the manner in which the seizure had been enforced and its duration in the absence of procedural safeguards.

13. Relying on the Court's case law (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, ECHR 2012, and *S.C. Britanic World S.R.L. v. Romania*, no. 8602/09, 26 April 2016), the Government submitted that the elements required for an award in respect of non-pecuniary damage to the applicant company were not met in the present case. They contested the amount claimed as unsubstantiated and exorbitant.

2. The Court's assessment

14. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1 of the Convention). If the nature of the breach allows for *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *G.I.E.M. S.r.l. and Others v. Italy* (just satisfaction) [GC], nos. 1828/06 and 2 others, § 37, 12 July 2023).

15. Once a violation of a Convention provision has been found, the Court must ascertain if a direct causal link may be established between that violation and the damage alleged by the applicant. Proof of pecuniary damage, the amount claimed in respect thereof and the causal link between the damage and the violations found, must in principle be adduced by the applicant (see *G.I.E.M. S.r.l. and Others*, cited above, §§ 38 and 39). Sometimes a precise calculation of the sums necessary to make complete reparation in respect of the pecuniary losses suffered by the applicant may be prevented by the

inherently uncertain character of the damage flowing from the violation. There might be other impediments. For example, it is impossible to calculate precisely the value of property which no longer exists. In order to determine just satisfaction, the Court has regard to the particular features of each case, which may call for an award less than the value of the actual damage sustained or the costs and expenses actually incurred, or even for no award at all. The nature and the extent of the just satisfaction to be afforded by the Court under Article 41 of the Convention directly depend on the nature of the breach. (see *East West Alliance Limited v. Ukraine*, no. 19336/04, §§ 247 and 249-50, 23 January 2014, with further references).

16. If one or more heads of damage cannot be calculated precisely, or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment. (see *Agrokompleks v. Ukraine* (just satisfaction), no. 23465/03, § 80, 25 July 2013).

17. Turning to the present case, the Court will assess the existence and quantum of the damage claimed by the applicant company applying the methodology set out in paragraphs 14-16 above. The Court observes that, in its principal judgment, it left open the question whether "the domestic legal framework relied on in the present case could, *in abstracto*, constitute a foreseeable legal basis for the interference complained of" (paragraph 74 of the principal judgment), the seizure being otherwise carried out in the general interest to ensure that the use of the property in question did not benefit the defendants to the detriment of the community (see paragraph 75 of the principal judgment), and found a violation of Article 1 of Protocol No. 1 based exclusively on the excessive duration of the seizure and the absence of opportunity to effectively challenge it (see paragraphs 86 and 87 of the principal judgment).

18. Furthermore, the Court cannot speculate as to what the eventual result might have been if the applicant company had been able to challenge the seizure effectively in proceedings that complied with the requirements of the State's procedural obligations under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Družstevní Záložna Pria and Others v. the Czech Republic* (just satisfaction), no. 72034/01, § 9, 21 January 2010, and *Pintar and Others v. Slovenia*, nos. 49969/14 and 4 others, § 118, 14 September 2021). Moreover, in the present case, even if it lasted for almost nine years, the measure affecting the applicant company's kiosks and vans was eventually lifted (see paragraph 70 of the principal judgment).

19. Nevertheless, the seizure of the applicant company's assets lasted a long time and according to the applicant company, the authorities have failed to identify the kiosks and vans and to return them to their legitimate owner (see paragraphs 70 and 86 of the principal judgment). Moreover, no proceedings for compensation or other form of redress are available to the applicant company under domestic law (see paragraph 86 of the principal

judgment). The Court also notes, as pointed out by the Government, that the assets in question remained in the possession of the applicant company's business partner, and that the applicant company had failed to offer an explanation as to what prevented it from regaining possession of its property after the lifting of the measure by the authorities (see paragraph 10 above). As regards the truck, the Court notes that the seizure had never been lifted (see paragraph 28 of the principal judgment) and, from the information submitted by the parties, it appears that no decision has been taken to date in its respect (see paragraphs 7-11 above).

20. As the seizure concerning the truck was never lifted, the applicant company is entitled to compensation for the value of the truck. Concerning the kiosks and other vehicles as mentioned in paragraph 19 above the Court finds that the applicant company has not adequately explained why these assets could not be reclaimed from the applicant's business partner. Accordingly, the applicant cannot claim the total value of the kiosks and vehicles as damages. On the other hand, the excessive length of the seizure meant that the applicant was deprived of the use of its property for several years. As shown by the evaluation report presented by the applicant these assets were of significant value and the loss of use must have caused the applicant a significant loss of income as well as the loss due to depreciation of the assets. Under the circumstances and based on the elements in the file the Court is, however, not in a position to establish with precision the pecuniary damage sustained by the applicant. Instead, a global assessment must be made.

21. At the same time, the Court considers that the violation in question must have caused the applicant company disruption and prolonged uncertainty in the conduct of its business. It must also have caused its managers feelings of helplessness and frustration (compare *East West Alliance Limited*, cited above, § 263).

22. In view of the foregoing and having regard to all the material in its possession, the Court finds it appropriate to make a global assessment in the present case (see the case-law quoted in paragraph 16 above). Therefore, it considers reasonable to award the applicant company an aggregate sum of EUR 200,000, covering all heads of damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

23. The applicant company claimed EUR 7,500 in respect of costs and expenses incurred in the proceedings before the Court. In support of this claim, they submitted invoices attesting to the payment of 12,500 Romanian Lei (ROL – approximately EUR 3,000) for expert fees. They also submitted invoices and a legal representation contract attesting to the payment of ROL 20,000 (approximately EUR 4,500) for legal fees.

24. The Government considered the amounts unjustified and unnecessary.

25. 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 their quantum. In the present case, regard being had to the documents submitted by the parties and the above criteria, the Court considers it reasonable to award the applicant company the sum of EUR 7,500 for costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant company on that amount.

FOR THESE REASONS, THE COURT

1. *Holds*, by six votes to one, that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 200,000 (two hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

2. *Holds*, unanimously, that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

3. *Holds*, unanimously, 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;

4. *Dismisses*, unanimously, the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President