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HELGA PEDERSEN MOOT COURT COMPETITION

Marlier

vs

Zemland

Submission of the Applicant

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List of abbreviations

§/para: paragraph

App. no(s).: application number(s)

Art(s).: Article(s)

CoE: Council of Europe

EU: European Union

MoA: margin of appreciation

P1-1: Article 1 of Protocol No. 1

The Applicant: Ms Adela Marlier

The Court: The European Court for Human Rights

The ECHR: The European Convention on Human Rights

The Respondent: Zemland/the State

Clarification: Answers to clarification questions

MS: multiple sclerosis

Summary of submissions

- The Applicant submits that jurisdiction is established and the case is admissible.
- The Applicant argues that the process of approval of unauthorised drugs based on compassionate grounds was illusory, consequently the Respondent violated their positive obligations under Art. 8
- The Applicant does not contest that interference with the Applicant's rights was prescribed by law or had followed a legitimate aim, but the Applicant does contest that it was necessary in a democratic society.
- The Applicant submits that the interference with their possessions was not in accordance with the criteria of the three-part test required under P1-1. Firstly, it did not meet the requirement of being prescribed by law, as the legal basis relied upon by the Respondent was vague, inadequately foreseeable, and failed to provide sufficient safeguards against arbitrariness.
- Secondly, the means employed were in no way proportionate to the appellant's circumstances. The interference imposed an excessive burden on the Applicant, failing entirely to strike a fair balance between the public interest and their individual rights.

1. JURISDICTION

1. The Court is competent to adjudicate in the present proceeding.

1.1. Jurisdiction ratione personae

2. The Court has jurisdiction *ratione personae* to examine the Applicant's application against the Respondent. In accordance with Art. 34 of the ECHR, an application from any legal or physical person may be brought before the Court against a High Contracting Party.

3. Firstly, the Applicant is a natural person and citizen of Zemland (the Respondent), which, as a Member State of the CoE and a party to the ECHR, is bound by its obligations under the ECHR.[1] The Applicant has suffered pecuniary and non-pecuniary damage due to the Respondent's violation of her rights under Art. 8 of the ECHR and P1-1, arising from criminal proceedings and sentencing for cultivating cannabis for medical use.

4. Secondly, for the Court to be competent *ratione personae*, the alleged violation of the ECHR has to be committed by a Contracting State or be in some way attributable to it.[2] The violations in the present case were conducted by the Respondent's state bodies, including the judiciary, which must adhere to the ECHR when interpreting and applying national law.[3] The domestic courts' decisions, as part of the judicial process, are attributable to the Respondent, linking the contested measures to Zemland's responsibility to respect ECHR rights.

5. As both components of the Art. 34 are satisfied, the Court has jurisdiction *ratione personae.*

1.2. Jurisdiction *ratione materiae*

6. The Applicant is bringing her application before the Court claiming violations of her rights protected under Art. 8 of ECHR and P1-1 to the ECHR.

7. The Court's jurisdiction *ratione materiae* is confined to complaints concerning the rights and freedoms enshrined in the ECHR and its Protocols.[4]

8. The Applicant alleges that the Respondent's actions, including criminal proceedings and the forfeiture of her property, violated her rights under Art. 8 of the ECHR and P1-1. She asserts that these measures interfered with her private life, particularly her personal autonomy and quality of life, as well as her right to peaceful enjoyment of possessions. Both provisions fall squarely within the material scope of the ECHR and its Protocols, which Zemland has ratified.

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[1] Case study, § 1

[2] Harris, O'Boyle, Warbrick, (2018), p. 83.; Gentilhomme, Schaff-Benhadji and Zerouki v France, app. no. 48205/99, 48207/99, 48208/99, § 20; M. A. and Others v Lithuania, app. no. 59793/17, § 70

[3] Assanidze v Georgia, app. no. 71503/01, § 146; Catan and Others v Moldova and Russia, app. nos. 43370/04; 8252/05 and 18454/06, § 392

[4] Harris, O'Boyle, Warbrick, (2023), p. 99

9. The Applicant further contends that these interferences raise substantial questions as to whether the Respondent adhered to the permissible limitations under the ECHR, thereby bringing the matter within the Court's jurisdiction *ratione materiae*.

10. Therefore, the Court has jurisdiction *ratione materiae* to examine the Applicant's claims, as her allegations involve violations of rights explicitly protected under the ECHR and its Protocols. The Applicant maintains that Respondent's actions unjustifiably interfered with her private life and property rights, requiring the Court to evaluate her claims within its material jurisdiction.

1.3. Jurisdiction ratione temporis and ratione loci

11. The Court's competence *ratione loci* in the present case is clearly present, as the alleged violations occurred within the Respondent's territory, which is a party to the ECHR.

12. Similarly, the competence *ratione temporis* is also satisfied, given that the Respondent is a Contracting Party to the ECHR, having ratified it along all its additional protocols, thereby binding the Respondent to the ECHR in this case.[5]

2. ADMISSIBILLITY

2.1. Victim status

13. The Applicant claims that she is a direct victim of a violation of her rights protected under Art. 8 and P1-1 as required by Art. 34 of the ECHR.

14. The Court has consistently held in its case-law that the ECHR does not provide for the institution of an *actio popularis* and that its task is to determine whether the manner in which the relevant law and practice were applied to or affected the applicant gave rise to a violation of the ECHR.[6] To establish direct victim status, an applicant must show they were directly and personally affected by the measure complained of.[7] This requires proving a specific impact, not just potential harm.

15. The Applicant has undoubtedly been directly affected due to the Respondent authorities' interference with her property rights through the forfeiture of her land and bank accounts and violation of her personal dignity and right to private life. A share of her land was permanently confiscated without the possibility of future restitution, along with the seizure of her entire

[5] Case study, § 24

[6] Roman Zakharov v Russia [GC], app. no. 47143/06; § 164; N.C. v Italy [GC], app. no. 24952/94, § 56; Krone Verlag GmbH & Co. KG v Austria (no. 4), app. no. 72331/01, § 26; Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania [GC], app. no. 47848/08, § 10

[7] Tănase v Moldova [GC], app. no. 7/08; § 104; Burden v the United Kingdom [GC], app. no. 13378/05, § 33; Lambert and Others v France [GC], app. no. 46043/14, § 89

bank account assets amounting to a total of 20,000 EUR and suffered severe pain and personal hardship.

2.2. Fourth instance

16. The "fourth instance" doctrine does not preclude the admissibility of the present complaint. While it is well-established that the Court is not empowered to act as a court of appeal or to substitute its own assessment of the facts or application of domestic law for that of the national authorities,[8] this principle does not relieve domestic bodies of their duty to ensure that ECHR rights are safeguarded at every stage of proceedings. National authorities are, admittedly, granted a MoA in their decision-making,[9] but their actions remain subject to the Court's scrutiny to verify compliance with the fundamental standards of fairness, proportionality, and effective protection of individual rights under the ECHR.[10]

17. The Court has consistently held that it is not sufficient for domestic procedures to observe national rules in a purely formal manner; on the contrary, they must be conducted so as to ensure that ECHR rights are practical and effective, not merely theoretical or illusory.[11] The "fourth instance" doctrine, therefore, cannot be invoked as a shield by domestic authorities to avoid accountability where a failure to consider the applicant's ECHR arguments can be meaningfully discerned.[12]

18. National courts are under a procedural obligation to address ECHR arguments in a meaningful and reasoned manner. By neglecting to do so, the Zemlandic Supreme Court failed to act as the primary guarantor of the Applicant's ECHR rights, thereby triggering the Court's supervisory function.[13]

19. Since the process of approval for unauthorised drugs in the present case is only illusory as is demonstrated below[14] and Zemlandic domestic courts did not meaningfully engage with the Applicant's statements regarding her rights under the ECHR and imposed grossly unproportional criminal sanctions, the Court's supervisory role is necessarily engaged.[15] In such circumstances, the Court's intervention is warranted - not to re-examine the facts as a "fourth instance," but to ascertain whether the domestic authorities have fulfilled their

[8] García Ruiz v Spain, app. no. 30544/96, § 28 see also Kemmache v France(no. 3), app. no. 17621/91 § 44
[9] Handyside v the United Kingdom, app. no. Sapp. no. 5493/72, § 48
[10] Z and Others v the United Kingdom, app. no. 29392/95, § 92
[11] Airey v Ireland, app. no. 6289773 § 24 see also Artico v Italy, app. no. 6694/74, § 33
[12] Tysiąc v Poland, app. no. 5410/03, §§ 113–114
[13] Ibid. § 116; see also K. and T. v Finland, app. no. 25702/94, § 155; Dickson v the United Kindgdom, app. no. 4444362/04, § 82
[14] see below chapter 3.1.1.1 Lack of procedural requirements
[15] Practical Guide on Admissibility Criteria, §§ 364, 366

obligations under the ECHR and whether their determinations have resulted in a violation of the rights protected therein.[16]

3. MERITS

3.1 Violation of Article 8

20. The Applicant submits that her right to private life has been violated on two grounds, the first aspect dealing with her rejection to be granted unauthorised medication based on compassionate grounds and the second dealing with the severity of the sanction imposed.

3.1.1 Process of approval of drugs based on compassionate ground

21. The present case concerns the process of approving unauthorised drugs on compassionate grounds. Specifically, the Respondent did not establish a viable way of acquiring exceptional treatment, which interfered with the Applicant's private life.

22. While the Court has noted that the ECHR does not explicitly guarantee a right to health or a specific medical treatment, it recognizes that issues related to access to medical treatments can engage Art. 8 of the ECHR.[17] This Art. protects the right to respect for private life, which is underpinned by the notions of personal autonomy and quality of life.[18]

23. The Respondent has a positive obligation under Art. 8 to secure respect for private life, which may involve the adoption of measures designed to ensure access to essential medical treatment.[19]

24. In determining whether a fair balance has been struck between the competing interests of the individual and the community, the Court must consider whether the interference is proportionate to the legitimate aims pursued, such as protecting public health and safety.[20] As this matter pertains to a positive obligation, it is unnecessary to examine whether the measure was prescribed by law or whether a legitimate aim has been established.[21] This fair balance test involves weighing the applicant's interest in obtaining access to the desired medical treatment against the Respondent's interest in ensuring the safety and efficacy of medical treatments.[22] Therefore, any interference with an individual's right to access medical treatment must be justified by relevant and sufficient reasons, demonstrate that a fair balance has been struck

[16] ibid.
[17] Vasileva v Bulgaria, app. no. 23796/10, § 63
[18] Hristozov and Others v Bulgaria, app. nos. 47039/11 et al. see also § 116; Pretty v the United Kingdom, app. no. 2346/02, §§ 61 and 65
[19] Haas v Switzerland, app. no. 31322/07, § 53
[20] Hristozov and Others, app. nos. 47039/11 et al. § 117; see also Haas, app. no. 31322/07, §§ 56 and 58
[21] Harris (2018), p. 438
[22] Durisotto v Italy, app. no. 62804/13, §§ 35-41

between the individual's rights and the public interest, and fall within the Respondent's MoA under Art. 8 of the ECHR.[23]

25. As established in Hristozov and Others,[24] states are afforded a narrow MoA when determining whether to provide exceptional treatment to an applicant. Conversely, a wide MoA is granted when assessing the quality or scope of such exceptions, due to the absence of a settled consensus on the standards and nature of these exceptional measures.

3.1.1.1 Lack of procedural requirements

26. The process of approval of drugs based on compassionate grounds lacks procedural safeguards which makes it illusory.

27. The Court has consistently held that ECHR rights must be practical and effective, not merely theoretical or illusory.[25] A purely formal procedure that does not ensure the applicant's personal circumstances are effectively taken into account, or fails to provide clear criteria and reasons for granting or refusing access to treatment, may limit the real possibility of obtaining such treatment and thus render the right theoretical and illusory.[26] Moreover, the absence of a mechanism to effectively challenge a refusal or to seek a meaningful review of the decision can further compromise the protection offered by Art. 8.[27]

28. The Court held that the Respondent, having opened up a possibility – however limited – was obliged to ensure that the procedure for determining eligibility was sufficiently transparent, fair, and supported by reasoned decisions.

29. As such, the Court's role is not to review domestic legislation in the abstract but rather to examine how it was applied in the specific circumstances of the case before it, confining its attention as far as possible to the concrete situation at hand.[28]

30. In *Tysiąc v Poland*, although Polish law did not guarantee an absolute right to abortion, it did allow for abortion under certain medical conditions.[29] By declining to provide an effective means for the applicant to ascertain whether she met the statutory conditions, Poland violated Art. 8.[30] Similarly, in *R.R. v Poland*, the only theoretical existence of prenatal genetic testing was declared insufficient under the ECHR – as procedures were not timely, accessible, or

[23] Hristozov and Others, app. nos. 47039/11 et al., § 117; see also Abdyusheva and Others v. Russia, app. nos. 58502/11 et al., § 112
[24]Hristozov and others, app. nos. 47039/11 et al., § 123
[25] Airey v. Ireland, app. no. 6289773 § 24; see also A, B and C v. Ireland, app. no. 25579/05, § 24
[26] Tysiąc v Poland, app. no. 5410/03, § 117; R.R. v. Poland, app. no. 27617/04, § 200
[27] Koch v Germany, app. no. 497/09, §§ 49-53
[28] S.H. and Others v Austria, app. no. 57813/00; § 92 see also Sommerfeld v Germany, app. no. 31871/96, § 86; Hristozov and Others, app. nos. 47039/11 et al., § 105, Pretty, app. no. 2346/02, § 70
[29] Tysiac, app. no. 5410/03, § 114
[30] Ibid. § 130

backed by effective mechanisms to challenge refusals, the alleged right remained illusory.[31] Taken together, the judgments in Tysiąc and R.R. confirm that even conditional or limited rights must be rendered effective in practice, not merely recognized in theory.

31. The Court's approach is consistent across various contexts. In *Jivan and Diaconeasa*,[32] although domestic law theoretically provided an option, the courts' refusal to meaningfully consider the applicants' evidence and arguments rendered the right illusory. The Court again stressed that a fair balance between public interests and individual rights could not be achieved by procedures that exist only on paper, fail to function in practice, or disregard the individual's vulnerability.[33]

32. This principle applies equally to the present case. The Applicant may not have a guaranteed right to medicinal cannabis, but Zemlandic law, at least nominally, provides a possibility – an "exception" – to obtain it. The Ministry of Health denied the Applicant's request with minimal explanation,[34] provided no transparent standards for granting such requests,[35] and, to date, has approved none.[36] No effective mechanism exists to challenge this decision.[37] The Applicant's personal vulnerability – her medical condition and the urgent need for medication – has been entirely overlooked by both the Ministry and the domestic courts.

33. There is no evidence of a fair and effective mechanism that would allow her to establish the legitimacy of her claim. Thus, the existing procedure is both theoretical and illusory, amounting to a violation of her right to respect for private life—encompassing her personal autonomy and quality of life—under Art. 8 of the ECHR.

34. In Durisotto, the scientific value of the therapy the applicants sought has similarly not been established. The Ministry of Health issued a negative opinion on the testing of the "Stamina" method which could have been and was legally challenged.[38] In contrast, the Applicant in the present case cannot legally challenge the decision of the Zemlandic Ministry of Health.[39] Unlike in Zemland, the available route for the use of unregistered drugs in Italy has already proven real at least in part, as many applications were granted.[40]

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[31] R.R., app. no. 27617/04, §§ 97-103
[32] Jivan v Romania, app. no. 43939/13, § 49 see also Diaconeasa v Romania, app. no. 23247/16, § 65
[33] ibid.
[34] Clarification Q17, Q26
[35] Clarification Q24
[36] Clarification Q17
[37] Clarification Q7 and Q17
[38] Durisotto, app. no. 62804/13, § 12
[39] Clarification questions Q 39
[40] Durisotto, app. no. 62804/13, §§ 19 and 20

35. In *Hristozov v Bulgaria*, the authorities had established a clear and transparent mechanism allowing patients who could not be adequately treated with authorized medicines to access unauthorised medicinal products. One of the criteria was that the treatment be authorised in another country. This arrangement represented a careful balancing of interests, demonstrating a deliberate emphasis on minimizing medical risks by relying on products that had undergone safety and efficacy tests abroad.[41] Crucially, patients – including terminally ill individuals – were given a comprehensible framework and were fully informed of the reasons for any refusal.[42] By contrast, the Zemlandic authorities cannot claim the same level of careful consideration or transparency. Medicinal cannabis is widely authorized internationally and has been for a considerable time, yet Zemlandic law does not offer a similarly meaningful path to access it. Instead of providing clear criteria and thorough explanations for refusals, the Zemlandic government offers only a vague and opaque process.[43]

36. The procedural inadequacies and substantive deficiencies in the respondent State's framework for compassionate use of unregistered drugs constitute a violation of the applicant's rights under Art. 8. Such deficiencies undermine the ECHR's fundamental aim of ensuring that rights are not merely formally guaranteed but are genuinely and effectively safeguarded in practice.

3.1.2 Sanctions

37. The severity of the measures imposed on the Applicant – the two-and-a-half-year prison sentence, the forfeiture of her land, and the closure of her bank accounts – warrants careful scrutiny under Art. 8 of the ECHR.[44]

38. Interference with protected rights is justified only where it is prescribed by law, pursues a legitimate aim, and is demonstrably necessary in a democratic society for the attainment of that aim.[45]

[41] Hristozov, app. nos. 47039/11 et al., § 125
[42] Ibid. §125
[43] Clarifying questions Q7 and Q17
[44] Case study, § 13
[45] Dudgeon v the United Kingdom, app. no. 7525/76, § 43 see also Boultif v Switzerland, app. no. 54273/00, § 41; Sunday Times v the United Kingdom, app. no. 6538/74; Silver and others v the United Kingdom, app. no. 5947/72 et al.

3.1.2.1 Prescribed by law

39. The Applicant does not dispute that national law is accessible, allowing individuals to understand the applicable legal rules, and sufficiently precise to enable them to foresee, with reasonable certainty, the consequences of their actions, even if not with absolute certainty[46]

3.1.2.2 Legitimate aim

40. The legitimate aim pursued in the present case lacks sufficient weight to justify the interference.

41. A legitimate aim is established where the interference pursues objectives such as safeguarding national security, public safety, or the economic well-being of the country, preventing disorder or crime, protecting health or morals, or ensuring the rights and freedoms of others. Additionally, States may regulate activities they consider dangerous to protect individuals from potential harm they might inflict upon themselves.[47]

42. In the case *Abdyusheva and others v Russia*, the applicants wished to obtain access to opiate substitution treatment using substances classified as drugs by the Government: methadone and buprenorphine, the use of which for the treatment of drug addiction was prohibited by Russian federal law. The Court concluded that their request aims at the lifting of the prohibition contained in the law,[48] hence considerate weight was given to the respondent's legitimate aim. However, the Applicant in the present case only requests the approval of her individual exception. Accordingly, the legitimate aim in the present case is weaker.

43. In this aspect, the present case is similar to the cases of Hristozov and Durisotto. In Hristozov, the applicants sought access to an unproven and unlicensed medicinal product, raising concerns about its quality, efficacy, and safety, which were open to doubt.[49] The applicants acknowledged these uncertainties but argued that they should be allowed to try the treatment as a last resort.[50]

44. In Hristozov, the Court identified three main public interests in regulating access to experimental treatments: firstly, protecting vulnerable patients from potential harm due to the lack of clear data on risks and benefits; secondly, upholding the regulatory framework to prevent the dilution or circumvention of authorization procedures; and thirdly, ensuring that

[46] Sunday Times, app. no. 6538/74 § 49; see also Chelleri and Others v Croatia, app. nos. 49358/22 et al., § 140; Borislav Tonchev v Bulgaria, app. no. 40519/15, § 129; N.F. and others v Russia, app. nos. 3537/15 et al. §§ 39, 162

[47] Pretty, app. no. 2346/02, § 74; see also Hristozov and others, app. nos. 47039/11 et al. § 116

[48] Abdyusheva and Others, app. nos. 58502/11 et al., § 111,

[49] Hristozov, app. nos. 47039/11 et al., § 120

[50] Ibid.

the development of new medicinal products is not compromised.[51] The Court recognized that balancing these interests against the applicants' rights involved complex ethical and risk-assessment issues.[52] In Durisotto, the scientific value of the disputed therapy has similarly not been established.[53]

45. In the present case, the public interest considerations do not carry the same weight. The safety and efficacy concerns associated with medical cannabis, when used for treating MS, are mitigated by its established use in other countries – 21 European states, as well as other countries across the globe.[54] Furthermore, the Applicant's use of these products does not hinder the development of new medicinal treatments, as the medicine required is already developed and widely utilized abroad. Therefore, the risks to public health and the regulatory considerations carry less weight compared to those in Hristozov and Durisotto.

46. As recognized by the Court in *Thörn v Sweden*, the regulation of certain medical treatments, particularly those involving drug-related offenses, serves the legitimate aims of preventing disorder or crime and protecting health or morals, as outlined in Art. 8 §2 of the ECHR.

47. In the present case, the legitimate aim lacks sufficient weight to justify the interference, as the public interest considerations are significantly weaker compared to the aforementioned cases. The Applicant's request for an exception to access a widely recognized treatment does not pose comparable risks to public health or the regulatory framework.

3.1.2.3.4. Necessary in a democratic society

48. The Respondent did not act within the bounds of its MoA in striking the specific balance between the Applicant's interest in accessing pain relief and the broader public interest in maintaining the regulatory framework for the control of narcotics and medicines.

49. To be deemed necessary in a democratic society under Art. 8, the interference must correspond to a pressing social need and be proportionate to the legitimate aim pursued.[55] The principle of proportionality requires that even when pursuing a legitimate aim, the state must not exceed what is necessary to achieve that purpose.[56]

50. Domestic courts are required to provide sufficiently detailed reasons for their decisions to demonstrate that they have genuinely weighed the competing interests. A lack of such

[51] Ibid. § 122
[52] Ibid. § 122
[53] Durisotto, app. no. 62804/13, § 12
[54] Filippini et al., 2019
[55] Pretty, app. no. 2346/02, § 70 see also Olsson v Sweden, app. no. 10465/83, § 67, Dudgeon, app. no. 7525/76, § 51
[56] Z v Finland, app. no. 22009793 § 94 see also Open Door and Dublin Well Woman v Ireland, app. no. 14234/88 et al. § 70; Handyside, app. no. 5493/72, § 49

reasoning presents a violation of Art. 8 of the ECHR. If the necessary balancing is not embedded within the legislation, it must be undertaken by the domestic courts themselves.[57] In sum, the proportionality of the interference, the MoA granted to the state, and the severity of the sanction imposed are all central considerations in determining whether a restriction is "necessary in a democratic society" and whether it complies with the ECHR.

3.1.2.3.1 Margin of appreciation

51. The MoA doctrine in international human rights law is the judicial practice of assigning weight to the respondent state's reasoning in a case.[58] The scope of the MoA is influenced by several factors, including the existence of a consensus, the nature of the fundamental rights at stake, the specific Art. of the ECHR invoked, the legitimacy and aim of the interference, the proportionality or seriousness of the infringement,[59] the surrounding contextual circumstances, and the principle of subsidiarity.[60]

52. The reclassification of cannabis at the global level – such as the United Nations Commission on Narcotic Drugs decision in December 2020 to remove cannabis from the most strictly controlled category of narcotic drugs – has helped shift perceptions toward recognizing cannabis's potential therapeutic uses.[61] Moreover, in the European Parliament's resolution on the use of cannabis for medicinal purposes, there is an acknowledgment that certain cannabis-based medicines, subject to rigorous scientific research and regulation, may provide therapeutic benefits for patients who have not responded to conventional treatments.[62] While these developments do not amount to an enforceable pan-European consensus, they do indicate a gradual movement toward a more permissive stance, at least for evidence-based, medically supervised applications.

53. The Court proceeds from the principle that matters of healthcare policy, including the regulation of access to medical treatments and medicines, generally fall within the wide MoA afforded to the domestic authorities.[63]

54. At the same time, the Court has consistently recognized that the breadth of this MoA may vary depending on the context. While it is normally quite extensive in matters of general policy, including those related to health and social welfare, it becomes significantly more constrained

[57] Lacatus v Switzerland, app. no. 14065/15, § 120
[58] Legg (2014), p. 17
[59] Spillmann, 2012
[60] Ainoko, 2022 106-107
[61] UN commission reclassifies cannabis, yet still considered harmful
[62] European Parliament resolution on the use of cannabis for medicinal purposes (2019/2775(RSP))
[63] Hristozov and Others, app. nos. 47039/11 et al., § 119 see also Dubská and Krejzová v the Czech Republic, app. nos. 28859/11 et al. § 178; Shelley v the United Kingdom, app. no. 23800/06

when State-imposed restrictions disproportionately affect particularly vulnerable groups – such as persons with disabilities or elderly dependent individuals – who have experienced a history of discrimination or disadvantage. In such circumstances, the state must advance very weighty reasons to justify the contested measures.[64]

55. Diagnosed with MS, the Applicant's condition has progressively worsened, leaving her to grapple with severe physical and mental symptoms.[65] As such she undoubtedly qualifies as a person with a disability who is wholly dependent on the Respondent's medical care structure. She is also a low-wage factory worker, which only adds pressure to her already vulnerable position.[66]

56. In the present case, the evolving international recognition of cannabis's therapeutic potential, combined with the Applicant's disability and precarious socio-economic situation, requires that the Respondent advance especially weighty reasons to justify withholding effective medical treatment.

3.1.2.3.2 Lack of engagement of Domestic courts regarding human rights violations

57. The Zemlandic Supreme Court, by merely stating that there were "no human rights issues" and failing to provide a substantive examination of the applicant's Art. 8 claim, breached its procedural obligation under the ECHR to address the applicant's ECHR arguments at the domestic level in a meaningful and reasoned manner.

58. The Court emphasised that it is primarily for the domestic courts to examine the merits of ECHR claims and not to sidestep them by invoking procedural barriers.[67] The principle that emerges is clear: national courts are under a procedural obligation to address ECHR arguments in a meaningful and reasoned manner.[68]

59. The Court's role is not to review domestic legislation in the abstract but rather to examine how it was applied in the specific circumstances of the case before it, confining its attention as far as possible to the concrete situation at hand.[69]

60. The Applicant in the present case explicitly relied on Art. 8 in her appeal. She clearly requested the Zemlandic Supreme Court to consider whether the prohibition and severe

[64] Jivan, app. no. 43939/13 § 42 see also Diaconeasa, app. no. 23247/16, § 48, 61, 64, McDonald v the United Kingdom, app. no. 4241/12, § 54, Guberina v Croatia, app. no. 23682/13, § 73
[65] Case study, § 2
[66] ibid. § 16
[67] Koch, app. no. 497/09, §§ 65, 71
[68] Koch, app. no. 497/09, § 72
[69] S.H., app. no. 57813/00 § 92, see also Sommerfeld, pp. no. 31871/96 § 86, 2003; Hristozov and Others, app. nos. 47039/11 et al., § 105; Pretty, app. no. 2346/02, § 70

sanctions unduly restricted her right to respect for her private life.[70] Yet, the Supreme Court merely stated that there were "no human rights issues" and concluded that the penalty was not disproportionate, without providing any substantive assessment of the applicant's human rights claim.[71] This lack of engagement is not merely a procedural irregularity; it effectively deprives the applicant of her ECHR right to have her claims of a violation properly examined at the domestic level, as shown in *Koch v Germany*.[72]

3.1.2.3.3 Severity of sanctions

61. The Respondent State, in balancing the applicant's interest in accessing pain relief against the general public interest in enforcing the regulatory framework for narcotics and medicines, failed to remain within the limits of its MoA.

62. The Court has held that States must adopt proportionate measures that address public interest concerns without imposing undue burdens on vulnerable individuals.[73] The Court in Lacatus emphasized that measures, which fail to consider the specific circumstances of vulnerable individuals disproportionately harm their dignity and are not compatible with the ECHR.[74]

63. As previously established, the Applicant has a severe chronic condition. Standard medical protocols and psychotherapy provided no meaningful relief.[75] Faced with no viable alternatives, Ms. Marlier resorted to cultivating cannabis for personal use on a small portion of her family's land. As her health improved marginally with its use, she also shared cannabis without charge with acquaintances suffering from similar conditions, who also reported improvement.[76] The Respondent effectively prohibits the use of medical cannabis even under compassionate grounds, denying individuals any lawful means of alleviating their suffering.[77] The absence of accessible and effective alternatives directly compromises the health and quality of life of individuals with MS, heightening their vulnerability.

64. Zemland's rigid regulatory framework, which denies access to effective treatments, has forced the Applicant, into circumstances that closely parallel those examined in *Lacatus v Switzerland*. The Applicant's situation mirrors the dehumanizing conditions highlighted in Lacatus, where the Court found that penalizing a person for unavoidable survival actions

[70] Case study § 17
[71] ibid. § 22
[72] Koch v Germany, app. no. 497/09, § 72
[73] Lacatus, app. no. 497/09, §§ 113-115
[74] Ibid. §§ 100-103
[75] Case study §§ 2 and 3
[76] Ibid. § 6
[77] Ibid. § 31 and Clarifying questions Q 17

was disproportionate and violated Art. 8 of the ECHR.[78] In Lacatus, despite being fined a relatively modest amount, the applicant was unable to pay due to her financial destitution, as her offense was begging and it was evident she had no means to settle the fine. Consequently, she was compelled to serve a custodial sentence.[79] Similarly, Zemland's denial of her application for use of cannabis-based medication on compassionate grounds compelled the Applicant to act against the law to manage her health, leaving her vulnerable to prosecution and economic deprivation. The Applicant's conviction, which included the forfeiture of her share of the family land and a substantial fine, further exacerbated her hardship, undermining her ability to live with dignity.[80]

65. Zemland's zero-tolerance approach disregards the Applicant's specific circumstances, neglects less restrictive alternatives, and disproportionately affects individuals seeking relief from chronic illnesses. As in Lacatus, the measures in question lack the flexibility and nuance required to respect the applicant's dignity and rights.

66. The Applicant here was not only in a vulnerable position due to her mental health issues – aggravated by the physical symptoms of MS – but also faced dire economic consequences.

67. In *Thörn v Sweden,* the domestic courts engaged in a thorough balancing exercise. They acknowledged that, due to a major accident, the applicant suffered from severe pain and that conventional treatments were ineffective, prohibitively expensive, or produced intolerable side effects.[81] The applicant in the aforementioned case was charged with two offenses: a narcotics offense consisting in the manufacture and possession of narcotics, and a minor narcotics offense consisting in the use of narcotics.[82] However the Supreme Court altered the verdict so that the applicant was only being convicted of manufacturing narcotics – thus reclassifying it to a minor offense, factoring in the applicant's personal hardship, the limited potential for drug dissemination, and the absence of any broader risk. The fine imposed – roughly EUR 520 – was set at a level that was shown not to be financially burdensome.[83] Moreover, the applicant subsequently received a lawful cannabis-based medication during the domestic proceedings, effectively ensuring that his medical needs were met.[84] Given this careful consideration, the Court found that no violation of Art. 8 had occurred in that case, holding that the Swedish

[78] ibid., §§ 115-116
[79] Lacatus, app. no. 497/09 §§ 107, 108
[80] Case study §§ 13, 16
[81] Thörn, app. no. 24547/18, §§ 5-6
[82] Ibid. § 8
[83] Ibid. § 57
[84] Ibid. § 58

authorities had properly balanced the competing interests at stake and remained within their MoA.[85]

68. Unlike in Thörn, where the domestic system ultimately allowed access to effective medication, the Zemlandic authorities failed to invoke available compassionate use mechanisms, leaving the Applicant without any lawful or affordable way to mitigate her suffering and deepening the disproportionate nature of the sanction.

69. Moreover, as noted in §§ 55, 63, 64, 66 of this memorandum, the Applicant's situation was far more vulnerable: the sanctions were harsher, her medical needs went unmet, and her arguments under the ECHR received no acknowledgment.

70. In sum, the sanctions imposed on the Applicant – marked by their severity and lack of proportionality – failed to account for her vulnerable circumstances and pressing medical needs. Unlike in comparable cases, the Respondent State neither provided effective alternatives nor engaged in a meaningful balancing exercise to justify the interference, resulting in measures that overstepped the bounds of necessity in a democratic society and undermined the Applicant's dignity and ECHR rights.

71. Accordingly, the State's actions amounted to a violation of Art. 8 of the ECHR.

3.2. Violation of P1-1

72. The primary legal question is whether the State of Zemland's forfeiture of the Applicant's property, comprising her land, cannabis plants, and financial assets, constitutes a lawful, proportionate, and necessary interference with her rights under P1-1 of the ECHR. Specifically, the question is whether Zemland's enforcement of drug laws was necessary and proportionate, given the Applicant's medical use of cannabis, or imposed an undue burden on her property rights.

73. P1-1 of the ECHR guarantees the right to peaceful enjoyment of possessions yet allows for certain limitations when they serve the public interest. Under this provision, a state may restrict property rights if such interference is lawful, serves a legitimate purpose, and achieves a fair balance between individual rights and public needs.

74. To comply with P1-1, state interference with property rights must meet three essential criteria. First, the lawfulness requirement mandates that interference must be based on a clear, accessible, and predictable legal framework to prevent arbitrary application.[86] Second, it must

[85] Ibid. § 59

[86] Former King of Greece and Others v Greece [GC], app. no. 25701/94, § 79; Broniowski v Poland [GC], app. no. 31443/96, § 147; Lekić v Slovenia app. no. 36480/07, § 94; Iatridis v Greece [GC], app. no. 31107/96, § 58.

serve a legitimate aim, such as promoting public health or deterring crime.[87] Third, the interference must be proportionate, ensuring the State's action is not excessively burdensome to the individual and that it maintains a fair balance, between public interest and individual rights.[88] As reinforced in *Beyeler v Italy*, these conditions protect against undue burdens on individuals and require that any interference is tailored to fulfill the public interest without unnecessary harm to the applicant.[89]

3.2.1. Concept of possessions

75. The Applicant's possessions fall within the scope of property under the first part of P1-1. Under P1-1, the concept of "possession" is central and is interpreted autonomously by the Court to include physical property, movable assets, financial holdings, and rights with economic value.[90] This encompasses both "existing possessions" and assets with a legitimate expectation of acquiring rights.[91]

76. In the present case, the state ordered the forfeiture of the land where cannabis plants were grown, six cannabis plants found on the property, all dried cannabis located on the family premises, and approximately 20,000 EUR across the Applicant's bank accounts. Ownership of land is a well-established example of property protected under P1-1, as confirmed in *Sporrong and Lönnroth v Sweden*.[92] Cannabis plants and dried cannabis fall under the category of tangible, movable property safeguarded by the Art., as highlighted in *Beyeler v Italy*.[93] Likewise, bank account funds, including deposits and savings, constitute protected possessions under the Art., as recognized in *Raimondo v Italy*.[94]

77. The Applicant's land, cannabis plants, dried cannabis, and bank funds constitute "possessions" under P1-1. Their forfeiture by the state amounts to an interference with her property rights, necessitating an assessment of its justification under the ECHR.

3.2.2. The three rules approach

78. In the present case, the forfeiture of the property constitutes an interference with the Applicant's rights as deprivation of possessions or expropriation.

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[87] Béláné Nagy v Hungary [GC], app. no. 53080/13, § 113; Butler v the United Kingdom, app. no. 41661/98 (dec.); Denisova and Moiseyeva v Russia, app. no. 16903/03, § 55

[88] Ališić and Others v Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia [GC], app. no. 60642/08, § 108; Novoseletskiy v Ukraine, app. no. 47148/99, § 102

[89] Beyeler v Italy [GC], app. no. 33202/96, §108, 111, 114

[90] Anheuser-Busch Inc. v Portugal, app. no. 73049/01, § 72; Sporrong and Lönnroth v Sweden, app. nos. 7151/75 and 7152/75, § 57

[91] Anheuser-Busch Inc. v Portugal [GC], app. no. 73049/01, § 63; Öneryıldız v Turkey [GC] app. no. 48939/99, § 124; Broniowski v Poland [GC] app. no. 31443/96, § 129

[92] Sporrong and Lönnroth v Sweden, app. nos. 7151/75 and 7152/75, § 56 - 57

[93] Beyeler v Italy [GC], app. no. 33202/96, § 101

[94] Raimondo v Italy [GC], app. no. 12954/87, § 29

79. The "three rules" approach under P1-1, established in *Sporrong and Lönnroth v Sweden*, provides three property protections: peaceful enjoyment[95], deprivation under specific conditions[96], and state control for the public interest.[97] These rules are interconnected, with specific interferences under the second and third rules interpreted in line with the general principle of peaceful enjoyment. [98]

80. These three rules are interconnected in the sense that the second and third rules address specific types of interference with property rights and must be interpreted in accordance with the general principle of peaceful enjoyment of property set out in the first rule. Once interference is established, the Court determines its category in each case. [99]

81. In the Applicant's case, the permanent seizure of her land, cannabis plants, and financial assets constitutes deprivation under the second rule of P1-1, as it extinguished her ownership and use. The Court must assess whether this amounts to *de facto* expropriation, ensuring rights are practical and effective, as in *Papamichalopoulos v Greece*. [100] While the Court *B.K.M. Lojistik v Slovenia* found property control for criminal instruments in the public interest to be in line with the Convention, permanent seizure without restitution or proportionality qualifies as deprivation. [101]

82. The State's actions in this case amount to a deprivation of property under the second rule, as they irreversibly extinguished the Applicant's property rights without adequate remedy or justification.

3.2.3. Interference

83. The state's forfeiture of the Applicant's possessions does not satisfy the requirements of P1-1.

84. To be compatible with P1-1, the interference must meet specific criteria. In *Beyeler v Italy*, the Court stated that the interference must comply with the principle of lawfulness, pursue a legitimate aim, and use means reasonably proportionate to achieving that aim.[102]

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[95] James and Others v the United Kingdom app. no. 8793/79, § 37
[96] Anheuser-Busch Inc. v Portugal [GC], app. no. 73049/01, § 62
[97] Sporrong and Lönnroth v Sweden, app. nos. 7151/75 and 7152/75, § 61; AGOSI v the United Kingdom, app. no. 9118/80, § 52
[98] B. K. M. Lojistik Tasimacilik Ticaret Limited Sirketi v Slovenia, app. no. 42079/12, § 36; AGOSI v the United Kingdom, app. no. 9118/80, § 48; Centro Europa 7 S.r.l. and Di Stefano v Italy [GC], app. no. 38433/09, § 185
[99] Harris, O'Boyle, Warbrick, (2018), p. 884
[100] Belvedere Alberghiera S.r.l. v Italy, app. no. 31524/96, § 53; Papamichalopoulos v Greece, app. no. 14556/89, § 44-46; *see also* Vasilescu v Romania, app. no. 27053/95, § 51
[101] B. K. M. Lojistik Tasimacilik Ticaret Limited Sirketi v Slovenia, app. no. 42079/12, § 37, 38
[102] Beyeler v Italy [GC] app. no. 33202/96, § 108-114

3.2.3.1 Prescribed by law

85. The seizure of the Applicant's property by Zemland does not comply with the lawfulness requirement under P1-1 of the ECHR, as it fails to meet the criterion that any interference with property rights must be in accordance with domestic law that is clear, accessible, and prevents arbitrary actions by the authorities. [103]

86. The quality of legal rules is essential for predictability and certainty, particularly in criminal law. The principle of foreseeability, central to the legality principle (*nullum crimen sine lege*) in Art. 7 of the ECHR, mandates clarity in defining punishable acts through *lex certa* and *lex stricta*.[104] *Lex certa* requires laws to clearly define criminal conduct, enabling individuals to foresee consequences from statutory language or, if needed, judicial interpretation, which must remain limited and not exceed the law's intent.[105] Foreseeability may still be achieved even if legal interpretation is required to clarify a law's application.[106]

87. Under P1-1 of the ECHR, interference with property rights must follow laws that are accessible, foreseeable, and precise.[107] Laws must enable individuals to predict legal consequences and avoid ambiguity that allows arbitrary application.[108] "In accordance with the law" demands not only the adherence to domestic legislation, but alignment with the rule of law principles enshrined in the ECHR's Preamble.[109] In asset forfeiture cases, especially of punitive or preventive nature, statutes must be explicit and prevent discretionary enforcement.[110]

88. Zemland's Criminal Code prohibits cannabis-related activities and provides a clear basis for property forfeiture.[111] However, the legal and procedural framework governing the application of forfeiture measures fails to meet the qualitative standards of lawfulness required under P1-1 of ECHR.

[103] East West Alliance Limited v Ukraine, app. no. 19336/04, § 167; Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v Bulgaria, app. no. 3503/08, § 37; Vistiņš and Perepjolkins v Latvia [GC], app. no. 71243/01, § 96
[104] Truu, M. (2022), p. 98-110; Rychlewska A. (2017), p. 163 – 186
[105] Ibid.
[106] Cantoni v France, app. no. 17862/91, § 35
[107] Carbonara and Ventura v Italy, app. no. 24638/94, § 63, 64; Lekić v Slovenia, app. no. 36480/07, § 94
[108] Sunday Times v United Kingdom (no. 1), app. no. 6538/74, § 49; Kokkinakis v Greece, app. no. 14307/88, § 40; Jokela v. Finland, app. no. 28856/95, § 45; Capital Bank AD v Bulgaria, app. no. 49429/99, § 134; Stolyarova v Russia, app. no. 15711/13, § 43
[109] Malone v the United Kingdom, app. no. 8691/79, § 67
[110] Markus v Latvia, app. no. 17483/10, § 73
[111] Criminal Code, Article 251, 255 and Annex F to the Criminal code (Case study, § 32-38)

3.2.3.1.1. Substantive Deficiencies in Zemland Law

89. The main issue with Zemland's Criminal Code is its substantive vagueness, violating the principle of lawfulness under P1-1.

90. The vagueness of Zemland's law, especially in Art. 255 of the Criminal Code, is exacerbated by the absence of procedural safeguards and its failure to ensure foreseeability, undermining the clarity required under the principle of *lex certa*. Procedural guarantees, such as evidence-based reasoning are essential to prevent arbitrary or disproportionate outcomes.[112] However, Zemland's forfeiture regime grants courts broad discretion to confiscate property without clear criteria, operating as an automatic sanction for trafficking offenses.[113] It does not clarify whether confiscated property must be linked to the offense or if the measure is necessary or proportionate, leaving individuals unable to predict its application. While legal advice may aid understanding, it cannot address these substantive flaws in Zemland's Criminal Code.

91. The forfeiture of the Applicant's share of family land used for cannabis cultivation may be justified as *instrumentum sceleris*[114] and aligned with crime prevention goals, consistent with *Gogitidze and Others v Georgia*, though its proportionality requires scrutiny.[115] However, the confiscation of 20,000 EUR, representing all the Applicant's monetary assets, lacks any proven link to the alleged trafficking offense.[116] Zemland's law does not require a connection between criminal activity and confiscated assets, a deficiency noted in *Markus v Latvia*, where the Court found a P1-1 violation.[117] This lack of clarity and safeguards enabled arbitrary and disproportionate confiscation, undermining legal certainty and the principle of "prescribed by law."[118]

3.2.3.2. Legitimate aim

92. A legitimate aim for the measure exists, yet as will be demonstrated below, the appropriate balance with the aim pursued was not achieved.[119] The Respondent must prove how the individual's actions threaten this aim, and even if the Court accepts the aim, the Applicant argues it was disproportionate.

[112] Todorov and Others v Bulgaria, app. nos. 50705/11 and 6 others, § 220
[113] Criminal Code, Article 255
[114] *Instrumentum sceleris*, is per the Court ECHR terminology for property used or intended for a crime (B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia, no. 42079/12, § 37, 38)
[115] Gogitidze and Others v Georgia, app. no. 36862/05, § 105
[116] Case study, § 13
[117] Markus v Latvia, app. no. 17483/10, § 70,75
[118] Beyeler v Italy, app. no. 33202/96, § 109
[119] J. Law (2009)

3.2.3.3. Proportionality

93. The Applicant claims that seizing her land share and 20,000 EUR is excessive and violates her property rights under P1-1. While authorities disagree, prioritizing individual rights over state interests is essential to prevent setting a concerning basis for future decisions.

94. The principle of proportionality represents a critical judicial technique central to decision-making within the framework of the ECHR and it involves weighing two competing values, with one being a specific fundamental right and the other a public interest and fair balance is disrupted if the person concerned has to bear an excessive and disproportionate burden because of the State's action or inaction.[120]

3.2.3.3.1. Necessary in a democratic society

95. The fair balance principle is used for assessing the proportionality of Respondents' interferences with the ECHR rights of applicants.[121] The test was devised particularly to provide a criterion by which to evaluate compliance with P1-1.[122]

96. One component of the test is whether the authorities could have reasonably employed less intrusive measures.[123] However, the mere availability of such alternatives does not automatically render the legislation unjustified. As long as the legislature acts within its MoA, it is not the Court's role to determine whether the legislation was the optimal solution.[124]

97. In assessing proportionality, the Court applies the MoA, which can be broad or narrow. Priority is given to the state's judgment within its jurisdiction.[125] For social and economic policies, the MoA is wide, and the Court respects the legislature's view of the "public interest" unless it lacks a reasonable foundation.[126] As noted in *N.K.M. v Hungary*, a wide MoA applies when laws are adopted to implement public interest policies.[127]

98. On the other hand, when vulnerable individuals, such as those with severe disabilities or lacking means to alleviate suffering, are involved, the State's MoA is significantly narrower. The Court often requires national authorities to thoroughly assess personal situations, justify refusals with compelling reasons, address specific difficulties, consider alternatives, and

[120] Sporrong and Lönnroth v Sweden, app. no. 7151/75 and 7152/75, § 69-74; Maggio and Others v Italy, app. nos. 46286/09, et al. § 57; G.I.E.M. S.R.L. and Others v Italy [GC], app. nos. 1828/06, et al., § 300; Uzan and Others v Turkey, app. no. 19620/05, et al., § 203

[121] Gerard (2019), p. 350

[122] Air Canada v the United Kingdom, app. no. 18465/91, §46

[123] James and Others v United Kingdom, app. no. 8793/79, §51

[124] James and Others v United Kingdom, app. no. 8793/79, §51

[125] Handyside v the United Kingdom, app. no. 5493/72, § 48, 49

[126] Béláné Nagy v Hungary [GC], app. no. 53080/13, §113

[127] N.K.M. v Hungary, app. no 66529/11, § 49, 61

uphold dignity and autonomy under the ECHR. [128] Authorities must substantively engage with health-related requests, avoiding procedural dismissals, and provide individualized, meaningful examinations.[129] Thus, a narrower MoA applies in this case.

99. The forfeiture of the Applicant's property violates her right to the peaceful enjoyment of possessions, as Zemlandic authorities failed to balance the public interest with her personal and economic circumstances. She has been deprived of a vital asset, exacerbating her financial and health challenges as a low-income worker with MS. The measure imposes a disproportionate burden, disregarding her advocacy for the medical use of cannabis and the absence of any intent to profit.

100. The case of *G.I.E.M. S.R.L. v Italy* underscores that proportionality requires an assessment of personal vulnerability and circumstances, while the case *Raimondo v Italy* concerns organized crime, which is incomparable to the Applicant's non-commercial cultivation of cannabis.[130] Her actions do not pose societal harm and are distinct from typical drug-related offenses.

101. As highlighted in *Hentrich v France* and *Beyeler v Italy*, forfeiture measures must adhere to the principle of proportionality.[131] By confiscating her share of the land, Zemlandic authorities imposed an unjust measure, ignoring her vulnerability, worsening her hardship, and failing to serve any legitimate public interest.

102. The confiscation of EUR 20,000, constituting the Applicant's entire assets, is based on alleged links to drug trafficking without evidence proving the money originated from criminal activity. This constitutes an excessive violation of her property rights under P1-1 of the ECHR. The Zemlandic first-instance court merely speculated that the amount "highly likely included" proceeds from drug trafficking, which is insufficient to justify such an extreme measure. While a balance of probabilities may suffice for confiscation in cases involving serious offenses, the Applicant's private consumption of cannabis does not meet the threshold for a serious offense, as confirmed in *Thörn v Sweden*.[132]

103. Unlike in *Veits v Estonia*, where clear evidence supported the confiscation, no proof exists here that the seized funds were proceeds of a crime.[133] This underscores the disproportionate

[128] Jivan v Romania, app. no. 43939/13, §§42, 51-52, Diaconeasa v Romania, app. no. 23247/16, §§ 48, 61, 64
[129] Koch v. Germany, app. no. 497/09, §§ 65-72
[130] G.I.E.M. S.R.L. and Others v. Italy [GC], app. no. 1828/06 34163/07 19029/11, § 301
[131] Hentrich v France, app. no. 13616/88, § 48; Beyeler v. Italy, app. no. 33202/96, § 114
[132] Thörn v. Sweden, app. no. 24547/18, § 49
[133] Veits v Estonia, app. no. 12951/11, § 74

nature of the measure, imposed without adequate justification or adherence to the principle of proportionality under P1-1 of the ECHR.

104. Moreover, the domestic authorities failed to assess the specific amounts allegedly derived from criminal activity, a key requirement for proportionality. The confiscation rests on indirect and insufficient evidence, rendering it arbitrary. In *Patrascu v Romania*, the Court emphasized that confiscation must be evidence-based, particularly when linked to personal health concerns.[134] In this case, the Applicant's actions were motivated by medical necessity, making the measure excessive and unwarranted.

105. Zemland's zero-tolerance approach ignored the Applicant's medical condition and lack of commercial intent, treating her outside the context of typical drug offenses and imposing a disproportionate burden without serving a legitimate aim. The issue lies not in procedural safeguards but in the penalty's disproportionality to the offense. As the domestic court failed to establish the origin of the Applicant's assets, the measure lacks a factual basis, rendering it disproportionate, and this failure cannot be attributed to the individual.

105. In light of the foregoing, Zemland, based on the ambiguous provisions of the Law, disproportionately deprived the Applicant of a share of her land and bank assets, thereby grossly violating her right to the peaceful enjoyment of possessions, as guaranteed by P1-1.

4. CONCLUSION

For the reasons stated above, the Applicant respectfully requests the Court:

1. To adjudge and declare the application admissible;
2. To adjudge and declare that the Respondent has violated the Applicant's rights under Article 8 and of the ECHR;
3. To adjudge and declare that the Respondent has violated the Applicant's rights under P1-1.

[134] Patrascu v Romania, app. no. 7600/09, § 39