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Team: 34

13th edition of the

HELGA PEDERSEN MOOT COURT COMPETITION

Marlier

vs

Zemland

Submission of the Respondent

ELSA International
email: helgapedersen@elsa.org
tel.: +32 2 646 2626
helgapedersenmoot.elsa.org

The European Law Students' Association

COUNCIL OF EUROPE
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List of Abbreviations

HPMCC	Helga Pedersen Moot Court Competition
Case	Helga Pedersen Moot Court Competition Case 13th Edition: Marlier v. Zemland
Clarification Questions	Helga Pedersen Moot Court Competition Answers to Clarification Questions 13th Edition
ECHR/the Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
P1-1	Article 1 of Protocol No. 1 of the ECHR
ECtHR/the Court	European Court of Human Rights
CCZ	Criminal Code of Zemland
NRAM	National Register of Authorised Medicines of Zemland
LCS	Law on Controlled Substances
SCND	Single Convention On Narcotic Drugs
UNCAIT	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
WHO	World Health Organization

Summary of Submissions

- The Respondent submits that the Applicant's complaints are inadmissible as they are manifestly ill-founded, being of a fourth-instance nature, and no right to engage in or promote the dissemination of narcotics can be inferred from the Convention.
- The Respondent argues that the alleged violation of Article 8 of the Convention is justified under Article 8 § 2:
    - The interference was lawful, in accordance with the LCS and the CCZ, meeting the requirements of clarity and foreseeability.
    - The interference furthered the legitimate aims of of "*the prevention of disorder or crime*" and "*the protection of health or morals*".
    - The interference was necessary in a democratic society, balancing competing interests: acquitting the Applicant would violate Zemland's international obligations, and the scientific uncertainty surrounding medical cannabis, combined with the high risk of dissemination justified a deterrent effect. The Supreme Court imposed a reduced penalty, considered reasonable due to the State's broad margin of appreciation in public health matters.
- Regarding the violation of Article 1 of Protocol No. 1, the State of Zemland affirms that the forfeited cannabis is not "*possessions*," as there was no legitimate expectation of enjoying a property right.
- The Respondent further submits that there was no violation of the right to property, as the interference was justified under Article 1, specifically its second paragraph, as the forfeiture of objects and proceeds of crime is considered *"control of use*" by the Court.
    - The interference was in accordance with the law, namely the CCZ.
    - The interference furthered the public interest of eradicating drug trafficking and confiscating unlawfully acquired funds.
    - The forfeiture was not arbitrary, complied with procedural requirements, and fell within the State's margin of appreciation regarding the proportionality between the means employed and the aims sought, as no less invasive alternative was available to prevent crime-related financial gain and deter future offenses.

Submissions

1. Admissibility

1.1. The Applicant's complaints are manifestly ill-founded

1.1.1. The Applicant's complaints are of a fourth-instance nature

[1] The State of Zemland submits that the application is inadmissible under Article 35 of the Convention: The Applicant's claims to the Court regarding alleged violations of Article 8 and Article 1 of Protocol no. 1 of the Convention are manifestly ill-founded.

[2] The Respondent acknowledges that the Applicant has exhausted all domestic remedies and complied with the four-month time limit in submitting her complaint. Nevertheless, the Respondent argues that the Applicant's complaints are of a fourth-instance nature, amounting to an attempt to retry the case heard by the domestic courts of Zemland. Established case law confirms that the Court's scope of review is limited; it does not permit re-examination of the findings and conclusions of the domestic courts regarding the facts of the case, the interpretation and application of domestic law and the guilt or innocence of the accused, in so far as the latter are not flagrantly and manifestly arbitrary.[1]

[3] The Applicant was afforded a fair trial—as evidenced by the fact that she has not alleged a violation of Article 6 of the Convention—but was ultimately dissatisfied with the outcome. However, the domestic authorities thoroughly examined her complaints in substance at all levels of the judicial process, with proceedings before the first-instance, appellate and Supreme courts of Zemland, where her conviction was confirmed and reasonably supported within the scope of the applicable legal framework. The "*major amount*" of cannabis found in the Applicant's property and her conduct qualifying as both possession and traffic of illicit substances envisaged a "*harsher sentence*" according to the Criminal Code of Zemland (the "**CCZ**"). Since both offences carry penalties ranging from one to ten years, a two-year and six months prison sentence is clearly proportionate and may not be considered unfair or arbitrary.

[1] De Tommaso v. Italy [GC], app. no. 43395/09, 23 February 2017, § 170; Kononov v. Latvia [GC], app. no. 36376/04, 17 May 2010, § 189.

Furthermore, the forfeiture of the proceeds of crime is an automatic sanction in Zemland's Criminal system when an individual is found guilty of trafficking, its extent having been quantified by the first-instance court on the basis of a balance of probabilities—a standard of proof explicitly admitted by the Court.[2]

[4] Thus, on the grounds of the fourth-instance nature of the Applicant's complaints and the lack of appearance of arbitrariness and unfairness in the domestic courts' rulings, the Respondent submits that the claims are manifestly ill-founded and requests that the Court declares the application inadmissible.

1.1.2. Absence of an apparent violation of the rights granted by Article 8

[5] The Respondent submits that the application is partially inadmissible under Article 35 of the Convention, with respect to the alleged violation of Article 8, due to the absence of an apparent violation of the Applicant's rights.

[6] To address whether there has been an interference with the rights guaranteed by Article 8 of the Convention, the subject-matter of the case must be examined *in limine*. While the instant case ostensibly concerns the criminal conviction of the Applicant, "*there is no Convention case-law in which the Court has accepted that a criminal conviction in itself constitutes an interference with the convict's right to respect for private life.*"[3] The personal, social, psychological and economic suffering are foreseeable consequences of the commission of a criminal offence and, therefore, cannot serve as a basis for claiming that a criminal conviction in itself amounts to an interference with the right to respect for "*private life*" within the meaning of Article 8 of the Convention.

[7] The **instant case** actually concerns the unlicensed cultivation of cannabis intended for self-medication purposes, distributed to third-parties without any control by the authorities.[4] Although a case can be argued on the basis of the inability of the Applicant to access certain medical treatment under Article 8—even though the Convention does not guarantee a right to

2 Balsamo v. San Marino, app. nos. 20319/17 and 21414/17, 8 October 2019, § 91.

3 Gillberg v. Sweden [GC], app. no. 41723/06, 3 April 2012, § 68.

4 Thörn v. Sweden, app. no. 24547/18, 1 September 2022, § 55.

a specific treatment sought by an Applicant[5]—the traffic of illicit substances clearly does not fall within the scope of personal autonomy and personal development.

[8] Therefore, the Applicant's conviction for trafficking illicit substances cannot be contested under Article 8, as no right to engage in or promote the dissemination of narcotics can be inferred from the Convention. Insofar as this reflects a clear absence of a violation, it follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

2. Merits

2.1. Alleged violation of Article 8 of the Convention

[9] If the Court finds the Applicant's claims to be admissible, the Respondent further submits that any alleged interference with the Applicant's right to respect for private life was justified under the terms of Article 8 § 2.

2.1.1. The interference was in accordance with the law

[10] It cannot be disputed that the interference was in accordance with the law, namely the Law on Controlled Substances (the "**LCS**") and the CCZ.[6] Furthermore, the national law is clear, foreseeable and adequately accessible, as evidenced by the fact that no violation of Article 7 has been raised.

[11] Pursuant to Section 10 of the LCS, it is a serious offense to manufacture or possess narcotics in contravention of the law. The list of narcotic drugs annexed to the LCS permits the cultivation of hemp only if it contains less than 0.3% tetrahydrocannabinol (THC) and is not used for the production of illicit substances. Moreover, Section 12 stipulates that a narcotic drug may be used in clinical practice only after it has been registered in the National Register of Authorised Medicines (the "**NRAM**"). Based on the above, the cultivation or possession of narcotic drugs containing more than 0.3% THC and not registered in the NRAM is not in

5 Thörn v. Sweden, app. no. 24547/18, 1 September 2022, § 47.

6 Thörn v. Sweden, app. no. 24547/18 1 September 2022, § 49.

compliance with the LCS and therefore constitutes a serious offense, as the Applicant was duly warned by her doctors (Case § 4).

[12] Articles 251 and 255 of the CCZ establish penalties for the possession and trafficking of illicit substances, respectively, with punishments varying according to the nature and quantity of the narcotics, as well as other relevant circumstances. Forfeiture of possessions is an automatic sanction if an individual is found guilty of trafficking illegal substances.

[13] The reasonable discretion afforded to national courts to determine penalties on a case-by-case basis, within the limits of the minimum and maximum penalties prescribed by Annex F of the CCZ, is consistent with established case law. The Court has previously acknowledged the inherent impossibility of achieving absolute certainty in the drafting of laws and the potential risk that striving for such certainty may lead to excessive rigidity.[7]

[14] Consequently, the prison sentence and forfeiture of possessions imposed on the Applicant are foreseeable outcomes of the enforcement of Zemlandic national law.

2.1.2. The interference furthered a legitimate aim

[15] It is equally undisputed that the interference pursued the legitimate aims of "*the prevention of disorder or crime*" and "*the protection of health or morals*" as set out in Article 8 § 2 of the Convention. The Court's approach is typically succinct when verifying the existence of a legitimate aim[8] and has previously affirmed that the pursuance of the aforementioned aims could not "*be called into question*"[9] in *Thörn v. Sweden*, where the Applicant was punished for the self-consumption of cannabinoids. While Thörn v. Sweden bears strong similarities to the present case, a notable distinction exists: The Applicant in this case has not been convicted solely for self-consumption but was instead convicted for distributing cannabis. This offense, involving trafficking, underscores an even stronger justification for protecting public health. Accordingly, it only remains to be demonstrated that the interference was necessary in a democratic society.

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7 Silver and Others v. the United Kingdom, 25 March 1983, Series A no. 61, § 88.

8 S.A.S. v. France [GC], app. no. 43835/11, ECHR 2014, § 114.

9 Thörn v. Sweden, app. no. 24547/18 1 September 2022, § 49.

2.1.3. The interference was necessary in a democratic society

[16] The remaining question is whether the interference was "*necessary in a democratic society*" within the meaning of Article 8 § 2 of the Convention. The State of Zemland submits that its national authorities have met the Court's requirements concerning the necessity of the impugned interference.

[17] The Court has clarified the notion of "*necessity*" for the purposes of Article 8 in the sense that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. When determining whether an interference is "*necessary*", the Court must consider the margin of appreciation left to the State's authorities.[10] The margin of appreciation afforded to national authorities varies depending on the nature of the issues and the seriousness of the interests at stake. A wider margin is granted in matters involving delicate moral and ethical questions lacking consensus at the European level,[11] such as matters of public health.[12] National authorities are better placed than the international judiciary to determine what better serves the public interest on social or economic grounds, and therefore, the Court must respect the legislature's policy choice unless it is "*manifestly without reasonable foundation*".[13]

[18] The issue to be examined is whether the domestic authorities violated the Applicant's right to respect for private life by failing to exempt him from the general criminal liability typically associated with the acts in question—namely, the production, consumption, and trafficking of substances classified as narcotics under domestic law—based on the grounds he had invoked. The determination is not whether a different or less rigid policy could have been adopted[14] but rather whether Zemland's judiciary struck a fair balance between the Applicant's interest in accessing pain relief and the general interest in upholding the system of control over

10 Piechowicz v. Poland, app. no. 20071/07, 17 April 2012, § 212.

11 Paradiso and Campanelli v. Italy [GC], app. no. 25358/12, 24 January 2017, §§ 179-184.

12 Thörn v. Sweden, app. no. 24547/18, 1 September 2022, § 46.

13 Abdyusheva and Others v. Russia, app. nos. 58502/11 and 2 others, 26 November 2019, §§ 111-112.

14 Vavřička and Others v. the Czech Republic [GC], app. nos. 47621/13 and 5 others, 8 April 2021, § 310.

narcotics and medicines. Having outlined the terms of the debate, we must examine the specific balance of interests struck by the national authorities in the present case.

[19] The first-instance court heard expert testimony and reviewed documentary evidence regarding the use of medical cannabis for chronically ill patients, which proved inconclusive as to whether medical cannabis should be recommended for the clinical management of pain. The court concluded that there is no right to demand specific treatments or medications of one's choice; rather, all treatment options must remain within the boundaries of existing legislation. As the Applicant had not adhered to the legal framework, she was found guilty of trafficking and possession of drugs and sentenced to two years and six months in prison (out of a maximum possible sentence of ten years).

[20] The appellate court determined that the cultivation of cannabis was a measure of last resort, undertaken to enable the Applicant to live with as little suffering as possible. It also noted that she had not admitted guilt and subsequently found her not guilty of the alleged crimes, overturning the first-instance conviction.

[21] Nevertheless, it is the Supreme Court's ruling—against whose procedure no objections have been made by the Applicant—that must be examined thoroughly. The high court, while acknowledging the Applicant's difficulties and the severity of her health condition, concluded that she was neither in an emergency nor a life-threatening situation and was fully aware of the illegality of her actions and the potential consequences. It concurred with the reasoning and conclusions of the first-instance court. Furthermore, the Supreme court held that a two-year and six-month prison sentence was not disproportionate under the circumstances of the case and did not raise any issues under the Convention. In doing so, it addressed the necessity of the interference in a democratic society.

[22] The quantity of cannabis discovered on the family property—100 grams of dried cannabis and six plants—constitutes a "*major amount*" under Annex F of the Criminal Code, representing approximately 40% of the legal range, which spans from 0.5 grams to 250 grams. A penalty corresponding to 40% of the maximum range would amount to approximately four years and six months of imprisonment. This penalty would be further increased under the CCZ due to the Applicant's conviction for two separate offenses: possession and trafficking.

[23] It is evident that both the first-instance court and, subsequently, the Supreme court reduced the prescribed penalty for these crimes, taking into account the relevant circumstances

of the case and thereby striking a balance between the competing interests. The penalty for trafficking illicit substances alone (ranging from one to ten years)—which cannot, in any way, be subsumed under Article 8 of the Convention (see above, §§ 5-8) and may not be re-evaluated by the Court—adequately encompasses the imposed sentence.

[24] It was not only the unlicensed production and use of narcotics that prompted Zemland's judiciary to bring charges against the Applicant but also the significant risk of disseminating cannabis with elevated levels of THC.[15] This concern is underscored by the fact that criminal proceedings were initiated only after the Applicant began offering dried cannabis to her acquaintances in June 2021, approximately one year and six months after she had started her own consumption.

[25] Previous case-law by the Court[16] has examined the use and risks associated to medical cannabis, concluding that "*the general efficacy of cannabis therapy had to date not been proved*" and that it "*caused more substantive adverse reactions*". The United Nations Office for Drugs and Crime and the World Health Organization (the "**WHO**") have manifested that "*the use of cannabis for medical purposes was only desirable if based on sound scientific evidence, for which such substances had to be subjected to extensive laboratory and clinical trials"*. Moreover, the WHO has deemed marijuana cigarettes of uncertain composition and emitting harmful smoke unsuitable for medicinal purposes.

[26] The Single Convention On Narcotic Drugs (the "**SCND**") of 1961 classifies cannabis under Schedule I, alongside substances associated with a high risk of abuse and dependency. Substances in this category are subject to stringent control measures under the convention imposing international obligations on the Parties, including the requirement that cannabis be supplied or dispensed only with a medical prescription (Article 30.2). This international commitment is further reinforced by Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the "**UNCAIT**"), which obligates the Parties to establish the production and trafficking of narcotics as criminal offences.

[27] The recent removal of cannabis from Schedule IV of the SCND warrants cautious interpretation, as under Article 2, paragraph 5(b), of the Convention, Parties are obligated to

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15 Thörn v. Sweden, app. no. 24547/18 1 September 2022, § 57.

16 A.M. and A.K. v. Hungary (dec.), app. nos. 21320/15 and 35837/15, 4 April 2017, §§ 27-33.

adopt the recommended measures "*if, in their opinion, the prevailing conditions in their country render it the most appropriate means of protecting public health and welfare.*" Thus, they may adopt measures that do not adhere to the set recommendations.

[28] The report[17] recommending the removal of cannabis from Schedule IV explicitly advised against removing it from Schedule I, citing "*the high rates of public health problems associated with cannabis use*," "*the numerous adverse effects of long-term cannabis use*," and the fact that cannabis "*can cause physical dependence in individuals who use it daily or near-daily*."

[29] The same report addressed the therapeutic use of cannabidiol derivatives for treating multiple sclerosis, the condition affecting the Applicant. Based on "*limited robust scientific evidence on the therapeutic use of cannabis*" and the risks posed by delta-9-tetrahydrocannabinol (9-THC), the primary psychoactive compound in cannabis, the Committee recommended adding 9-THC to Schedule I, effectively rejecting the use of medical cannabis to treat this illness. However, the Committee acknowledged that Sativex, a cannabis-based preparation, demonstrated moderate efficacy in reducing spasticity in multiple sclerosis and treating other conditions with minimal risk of abuse. Accordingly, it recommended removing such preparations from Schedule I.

[30] We can therefore conclude that other clinically tested alternatives were available to the Applicant, who did not file for an exception under Section 12 of the LCS to use Sativex or other tested preparations. These alternatives have demonstrated some efficacy in treating her condition and pose a less severe risk to public health than raw cannabis.

[31] Finally, several reports[18] have highlighted the lack of consensus among European States regarding the use of marijuana for medical purposes, which is authorized in only a few States. This underscores the early stage of development and understanding surrounding the issue and has led the Court to grant States a broader margin of appreciation.[19]

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17 WHO Expert Committee on Drug Dependence: *forty-first report*, January 2019. https://www.who.int/groups/ecdd/forty-first-ecdd-documents

18 European Monitoring Centre for Drugs and Drug Addiction: *Cannabis Laws in Europe, Questions and answers for policymaking*, June 2023. https://www.euda.europa.eu/publications/faq/cannabis-laws-europe-questions-and-answers-for-policymaking_en

19 Paradiso and Campanelli v. Italy [GC], app. no. 25358/12, 24 January 2017, §§ 179-184.

[32] Summing up, the Supreme Court of Zemland balanced the competing interests at stake in a reasonable manner, in compliance with the requirements of the Court's case law. The Applicant engaged in conduct that posed a severe threat to public health. She possessed a "major amount" of dried cannabis and cannabis plants with high levels of THC—a substance controlled in Zemland in accordance with International Law. Furthermore, it was proven that she trafficked cannabis, as it remains uncontested that she gave cannabis to some of her acquaintances, and she publicized her illegal activities on social media.

[33] The effectiveness of medical cannabis, the risks associated with its consumption, and its potential side effects remain largely unknown due to a lack of sound scientific evidence. This uncertainty has led national authorities to prohibit its use, particularly in cases of self-consumption where no medical supervision is involved, as was the case here.

[34] In accordance with its international obligations, the Applicant's conduct could not go unpunished, as doing so would have set a dangerous precedent with a high risk of encouraging the dissemination of narcotics. Permitting such behavior would have effectively led the State to abandon its duty to enforce Article 51 of the Constitution of Zemland and protect public health—not only the Applicant's health, given her vulnerable condition and the lack of conclusive data on the potential risks and benefits of experimental treatments,[20] but also that of the entire population of Zemland.

[35] In light of the above, and given that the Applicant was never denied appropriate health solutions aligned with available medical knowledge, her only complaint is that she was not provided with the specific experimental treatment she desired. However, it is well-established case law that "*a right to […] a specific treatment sought by an applicant [is] not among the rights guaranteed under the Convention or its Protocols*".[21]

[36] By imposing a prison sentence of two years and six months—which is unlikely to be served in full due to her condition and circumstances—the Supreme Court struck a balance between the competing interests at stake. Typically, the amount of cannabis found in her possession and her conviction for possession and trafficking would result in a sentence of four to six years (§ 22). The Court's decision to impose a sentence significantly below the statutory maximum underscores the judiciary's commitment to proportionality, taking into account the

[20] Haas v. Switzerland, , app. no. 31322/07, § 54, ECHR 2011.

[21] Thörn v. Sweden, app. no. 24547/18 1 September 2022, § 47.

Applicant's health while maintaining the deterrent effect necessary to protect public health and enforce the system of control of narcotics and medicine. As such, the final decision clearly falls within the State's reasonable margin of appreciation and must be deemed necessary in a democratic society.

2.2. Alleged violation of Article 1 of Protocol no. 1 of the Convention

2.2.1. The forfeited cannabis plants and dried cannabis do not constitute "possessions" within the meaning of Article 1 of Protocol 1

[37] The State of Zemland does not dispute that the forfeited sum of 20.000€ and the land qualify as "*possessions*" within the scope of Article 1 § 1 of Protocol 1. This conclusion, however, does not extend to the six cannabis plants and 100 grams of dried cannabis.

[38] To determine whether existing possessions or assets fall within the scope of Article 1, the Applicant must be able to argue that she had at least a "*legitimate expectation*" of obtaining effective enjoyment of a property right.[22] However, given the domestic law in force at the time of the forfeiture, which criminalizes cannabis possession and, therefore, does not uphold property rights over it, the Applicant cannot claim the existence of any legitimate expectation of retaining the cannabis. The Court's case law has established that the effective exercise of a property right or the legitimate expectation of such exercise is required for assets and rights to constitute "*possessions*" within the meaning of Article 1 of Protocol 1.[23]

2.2.2. The interference constitutes a "*control of use*"

[39] Should the forfeited cannabis plants and dried cannabis be considered "*possessions*," contrary to the Respondent's position, it remains undisputed that the State of Zemland's interference in seizing the plants for destruction constitutes a "*control of use*" as provided under the second paragraph of Article 1 of Protocol No. 1 (P1-1). Although the Applicant was

[22] Pressos Compania Naviera S.A. and Others v. Belgium, 20 November 1995, Series A no. 332, § 31.

[23] Prince Hans-Adam II of Liechtenstein v. Germany [GC], app. no. 42527/98, ECHR 2001-VIII, §§ 82-83.

permanently deprived of ownership of the drugs, these items represent the object of the criminal offense (*objectum sceleris*). Accordingly, the Court's case law finds that the kind of measures taken by the national courts are "*authorized by the second paragraph of Article 1 of Protocol No. 1 (P1-1), interpreted in light of the legal principle common to the Contracting States, whereby items whose use has been lawfully adjudged illicit and dangerous to the general interest are forfeited with a view to destruction.*"[24]

[40] The same conclusion applies to the forfeited €20,000, which constituted the proceeds of the criminal offense (*productum sceleris*). In cases involving the confiscation of proceeds derived from a criminal offense following a conviction, the Court considers such confiscation a control of the use of property.[25]

[41] To support the above, the Court has considered that confiscation qualifies as control of use, even if there is a permanent transfer of ownership, if the assets were themselves unlawfully acquired,[26] as long as domestic courts prove a causal link between the predicated offences and the assets subject to confiscation.[27]

[42] The forfeited land, which had been used in the commission of the crime (*instrumentum sceleris*), raises more complex issues. Nevertheless, the Court has consistently held in cases involving *instrumenta sceleris* that even though the measure in question had resulted in a deprivation of a possession, it was taken in the interest of a public policy, such as preventing drug trafficking. Accordingly, such measures are considered an instance of control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, which authorises States to enact "*such laws as [they deem] necessary to control the use of property in accordance with the general interest*"[28] and such has been the conclusion reached by the Court regarding confiscations within a criminal-law consisting of removing the instruments from possible future use in criminal activities.[29] In previous case law, the general confiscation

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24 Handyside v. the United Kingdom, 7 December 1976, Series A no. 24, § 63.

25 Phillips v. the United Kingdom, app. no. 41087/98, ECHR 2001-VII, § 51.

26 Arcuri and Others v. Italy (dec.), app. no. 52024/99, ECHR 2001-VII.

27 Mandev and Others v. Bulgaria, app. nos. 57002/11, 61872/11, 46024/12, 6430/13 and 67333/13, 23 September 2024, §§ 100-105.

28 Air Canada v. the United Kingdom, 5 May 1995, Series A no. 316-A, §§ 33-34.

29 Ulemek v. Serbia (dec.), app. no. 41680/13, 2 February 2021, § 65.

of an Applicant's property following their criminal conviction has also been classified as a "*control of use.*"[30]

[43] The fact that the deprivation constitutes a permanent measure does not alter the above, since the measure does not involve third parties. Only the land owned and used by the Applicant was forfeited, leaving the Applicant's siblings' share unaffected (see Clarification Questions §§8 and 46). The Court has previously considered the forfeiture of an instrument of crime as a deprivation of possessions when both requirements—permanence and effect upon third parties—are fulfilled.[31] In this case, however, one of those requirements is absent.

[44] Should the Court conclude, contrary to the Respondent's submission, that the forfeiture of the land does not constitute a "*control of use*" the Respondent further submits, in the alternative, that the Court should refrain from determining whether the interference in question constitutes a deprivation of possessions or a control of use, as has been done in considerable case law.[32] This approach is justified by the fact that resolving this issue is unnecessary, given that the principles governing the justification of interference remain substantially the same. These principles include the legitimacy of the aim of the interference, its proportionality, and the preservation of a fair balance.

2.2.3. The interference was in accordance with the law

[45] The Court's scrutiny of the lawfulness of a measure is less rigorous in cases classified as "*control of use*" rather than "*deprivation of property*," and is even absent in several such cases.[33] Nevertheless, since the control of the use of the Applicant's properties arose as a consequence of the enforcement of national laws—paraphrasing the second paragraph of Article 1 of Protocol No. 1—the State of Zemland submits that the forfeiture was in accordance with the law, compatible with the rule of law and free from arbitrariness.

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30 Markus v. Latvia, app. no. 17483/10, 11 June 2020, § 70.

31 B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia, app. no. 42079/12, 17 January 2017, §§ 47-48.

32 Denisova and Moiseyeva v. Russia, app. no. 16903/03, 1 April 2010, § 55.

33 Phillips v. the United Kingdom, app. no. 41087/98, ECHR 2001-VII, §§ 51-54.

[46] It is undisputed that the execution of the forfeiture order had a basis in Zemlandic law, namely Zemland's Criminal Code (CCZ) which stipulates that the forfeiture of possessions is an automatic sanction if an individual is found guilty of trafficking illegal substances, with the extent and amount of forfeited possessions determined by the competent court on a case-by-case basis. The publication of this law in official gazettes ensures that the applicable provisions are sufficiently accessible.

[47] As to the precision and foreseeability of the law, it must be noted that the content of the aforementioned article of the CCZ is formulated in a manner that enables citizens to regulate their conduct by reasonably foreseeing, under the circumstances, the consequences of a given action. The Applicant knew or ought to have known that engaging in the giving, delivering or distributing cannabis was not only punishable with a prison sentence, but also with the forfeiture of the *objectum, productum* and *instrumentum sceleris*.

[48] The extent of forfeiture is determined on a case-by-case basis, a solution endorsed by the Court, which recognizes that the consequences of conduct need not be foreseeable with absolute certainty, as excessive rigidity is undesirable.[34] Furthermore, the Court has emphasized the importance of providing sufficient discretion to judges, allowing them to modify their decisions if applying forfeiture would result in a serious risk of injustice—a flexibility that would be impossible if excessive rigidity and foreseeability were to be obtained.

[49] Finally, this case must be distinguished from *Markus v. Latvia.*[35] In that case, the general confiscation of the Applicant's property followed a criminal conviction based on the Latvian Criminal Code. The Applicant argued that the law lacked foreseeability, as emphasized by the Latvian Constitutional Court, due to divergent case law regarding the trial court's authority to determine the extent of property confiscation. Specifically, trial courts frequently interpreted their competence as being limited to ordering the confiscation of the entirety of a person's property, often resulting in outcomes that could be deemed disproportionate. The Court in *Markus* concluded that Latvian law failed to provide adequate protection against arbitrariness and did not ensure an individualized assessment of the penalty of property confiscation imposed on the Applicant. In particular, the law did not specify the particular

34 Centro Europa 7 S.R.L. and di Stefano v. Italy [GC], app. no. 38433/09, ECHR 2012, § 141.

35 Markus v. Latvia, app. no. 17483/10, 11 June 2020, §§ 68-75.

property to be confiscated or establish a clear connection between the forfeiture and the criminal offense, such as proportionality or the illicit origin of the property.

[50] In the present case, there is no indication that the Supreme Court's application of the law exceeded reasonable limits of interpretation. The cannabis constituted the direct object of the criminal offense, the money was highly likely to have been derived from criminal activity—a standard of proof to which we will later return—and the forfeited land was limited to the portion used to cultivate the plants, rather than the entirety of the property. Had the decision been arbitrary, Zemland's system of appeals would have rectified it, as the right to a fair trial, as guaranteed under Article 6 of the Convention, is a cornerstone of Zemland's legal system and Constitution. In contrast to *Markus,* Zemlandic law ensures proportionality between the criminal offense and the confiscation, as well as an individualized assessment and identification of the specific property to be forfeited, thereby guaranteeing its foreseeability.

[51] It must be concluded that the Applicant could have regulated her conduct accordingly, and that the consequences of their actions were, to a reasonable extent, foreseeable. While the specific extent of the forfeiture was to be determined by the court, this determination was based on a balance of probabilities and a justification that allowed for considerations of justice and equity. Therefore, the forfeiture was prescribed by law and this fact was never contested by the Applicant in the domestic proceedings.

2.2.4. The interference furthered a public interest

[52] The Respondent further submits that the confiscation of the Applicant's property served a public interest, as required by Article 1 of Protocol No. 1, specifically the eradication of drug trafficking[36] and the confiscation of unlawfully acquired funds.[37] It is a matter of settled case law that confiscation in criminal proceedings aligns with the general interest of the community, as the forfeiture of money or assets obtained through illegal activities, or purchased with the proceeds of crime, is a necessary and effective means of combating criminal behavior.[38]

[36] Butler v. The United Kingdom, app. no. 41661/98, 27 June 2002.

[37] Honecker and Others v. Germany (dec.), app. nos. 53991/00 and 54999/00, ECHR 2001-XII.

[38] Todorov v. Bulgaria (dec.), app. no. 65850/01, 13 May 2008, § 186.

[53] A confiscation order in respect of criminally acquired property operates in the general interest by deterring individuals from engaging in criminal activities and ensuring that crime does not pay. Such measures are both punitive and preventive in nature.

2.2.5. A "*fair balance*" was struck between the demands of the general interest of the community and the requirements of the protection of the Applicant's fundamental rights

[54] The only issue raised in substance by the Applicant before the national courts regarding her right to the peaceful enjoyment of possessions concerned the alleged lack of proportionality of the forfeiture—not the lack of legal basis or the general interest pursued. She argued that the forfeiture would severely worsen her economic situation and negatively impact her state of health. Although the proportionality limb encompasses several issues, which will be addressed accordingly, it is important to note that these matters were not specifically raised before the national courts.

[55] In balancing the competing general interests referenced in §§ 51–52 against the Applicant's right to property, the Court has established a set of procedural requirements that, although not explicitly stated in Article 1 of Protocol No. 1, are particularly significant. These include the ability to effectively challenge the measure and the allocation of the *onus* and burden of proof.

[56] It must first be emphasized that the procedural requirements under Article 1 of Protocol No. 1 are not as rigid as those under Article 6. The Court has held that the proceedings in question must afford the individual a reasonable opportunity to present their case to the relevant authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In determining whether this condition has been satisfied, the Court adopts a comprehensive approach.[39]

[57] In the present case, the Applicant was represented by legal counsel throughout the proceedings and had the opportunity—of which she made ample use—to present her arguments at all three levels of jurisdiction. This is evidenced by the fact that the appellate court agreed

[39] Jokela v. Finland, app. no. 28856/95, ECHR 2002-IV, § 45.

with the Applicant and reversed the forfeiture, although it was subsequently reinstated by the Supreme Court. Accordingly, the Applicant was in a position to effectively challenge the measures and the criminal character of the assets.[40]

[58] Moreover, the standard of proof applied by the national authorities has been explicitly upheld by the Court on multiple occasions. It must be stated *in limine* that most applications filed to the Court challenging the use of an *onus probandi* or a standard of proof regarding the criminal character of forfeited possessions, which the applicants deemed unjust, are based on alleged violations of Article 6 of the Convention.[41] The Court has consistently held that these requirements are subject to less stringent examination in cases concerning Article 1 of Protocol No. 1.[42]

[59] The criminal character of the forfeited cannabis, the *objectum sceleris*, is undisputed, as is the use of the land for cultivating this narcotic, the *instrumentum sceleris*. It is the forfeited sum of money, however, that the Applicant may challenge, due to the application of a standard of proof based on a balance of probabilities. The first-instance court, a conclusion later upheld by the Supreme Court, deemed it "*highly likely*" (§ 13 of the Case) that the Applicant's funds in the bank were proceeds from the crime of drug trafficking (*productum sceleris*).

[60] Moreover, it is not the Court's task to reassess the conclusions of domestic courts regarding factual matters, particularly with respect to the Applicant's proven income from lawful sources and their expenses, unless those conclusions are arbitrary or manifestly unreasonable.[43] In *Todorov and Others v. Bulgaria*, the case of Katsarov[44] bears significant resemblance to that of the Applicant. Katsarov was convicted of drug possession, including intent to sell (in the present case, trafficking has been proven beyond a reasonable doubt). The lack of any lawful income for extended periods or the small amount thereof (the Applicant in this case has a monthly income of €800 net) and the large sum paid simultaneously by Katsarov led the domestic courts to conclude that the funds constituted proceeds of crime and to confiscate them. The Court found this conclusion to be "*well-reasoned*" and stated that it

40 Geerings v. Netherlands, app. no. 30810/03, 1 March 2007, § 44.

41 Salabiaku v. France, 7 October 1988, Series A no. 141-A, § 28.

42 Saccoccia v. Austria, app. no. 69917/01, 18 December 2008, § 89.

43 Todorov and Others v. Bulgaria, app. nos. 50705/11 and 6 others, 13 July 2021, § 255.

44 Todorov and Others v. Bulgaria, app. nos. 50705/11 and 6 others, 13 July 2021, §§ 262-265.

"*[saw] no reason to question them."* It thus concluded that the assets forfeited from Katsarov were reasonably shown to be the proceeds of crime.

[61] The Court has approved the application of confiscation measures not only to the direct proceeds of crime but also to any property, including income and other indirect benefits, derived from the conversion or transformation of the direct proceeds of crime, or the intermingling of such proceeds with other assets, which may be lawful.[45] Had the funds in the bank account been derived from income generated by the Applicant's publication of her unlawful activities on social media, these funds should nonetheless be regarded as indirect benefits of her criminal conduct. Moreover, the Court has affirmed that the issuance of confiscation orders, based on a balance of probabilities or a high probability of illicit origin, is both legitimate and within the scope of Article 1.[46] This approach does not require proof of the criminal nature of the property "*beyond a reasonable doubt*" and admits the use of presumptions, even in criminal proceedings[47] in so far as their operation is accompanied by effective judicial guarantees.[48]

[62] It must be concluded that the forfeiture of the Applicant's property complied with all applicable procedural requirements. The remaining issue to be considered is whether, in substance, a fair balance has been struck between the facts of the case and the legal consequences thereof, particularly in light of the wide margin of appreciation afforded to the State in implementing policy measures aimed at eradicating drug trafficking.[49]

[63] The forfeiture of the cannabis plants leaves no room for debate: as a prohibited substance, it must be confiscated due to the high risk of dissemination, particularly in light of the Applicant's conviction for trafficking, and the lack of sound scientific evidence regarding its effectiveness and potential side effects. Medical authorities in Zemland, after thorough analysis, have determined that, given the current state of knowledge, the risks associated with medical cannabis outweigh its potential benefits. Consequently, criminal courts should not overrule the expert opinions of medical professionals. However, the State of Zemland submits

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45 Gogitidze and Others v. Georgia, app. no. 36862/05, 12 May 2015, § 105.

46 Balsamo v. San Marino, app. nos. 20319/17 and 21414/17, 8 October 2019, § 91.

47 Salabiaku v. France, 7 October 1988, Series A no. 141-A, § 28.

48 Todorov and Others v. Bulgaria, app. nos. 50705/11 and 6 others, 13 July 2021, §205.

49 Butler v. The United Kingdom, app. no. 41661/98, 27 June 2002.

that the NRAM will consider granting the Applicant access to Sativex on compassionate grounds. Unlike raw cannabis, Sativex has undergone rigorous clinical testing and is already approved in several European countries.

[64] The Applicant's state of health has been taken into account; however, her subjective belief in the efficacy of medical cannabis does not provide a legal justification for violating national laws. Accordingly, alternative remedies have been identified in § 63, but the forfeiture of the *objectum sceleris* cannot, in any way, be considered disproportionate.

[65] Moreover, the illicit origin of the money has been proved based on a preponderance of evidence. The Applicant, whose wage amounts to 800 EUR net and has incurred in costly treatments, has not been able to prove the licit origins of the money. The use of presumptions and the aforementioned standard of proof based on high probability has been discussed in §§ 58-62. Accordingly, the forfeiture of the proceeds of crime was imperative to deter individuals from engaging in criminal activities and ensuring that crime does not pay.

[66] The Applicant's economic conditions were given due consideration by the domestic courts throughout the proceedings. First, the Applicant's access to standard treatments and medical care is fully ensured through Zemland's public health insurance system (see Clarification Question §75). This guarantees that her essential healthcare needs are met, irrespective of her financial circumstances.

[67] Second, the forfeiture of the proceeds of crime, as mandated by the CCZ, is a penalty ancillary to the criminal offense of drug trafficking and is designed to address the severity of such crimes. While the Applicant argues that the forfeiture has adversely impacted her financial situation, it must be emphasized that no punishment related to proceeds of crime can be considered disproportionate solely on the basis of its economic consequences for the convicted individual. Even in cases where the entirety of an individual's property has an illicit origin and they are left without assets, the forfeiture serves an essential punitive and deterrent purpose. Its primary aim is to ensure that no individual benefits from illegal activities, which is fundamental to upholding the rule of law and public confidence in the justice system.

[68] Third, the Applicant's claim of disproportionate impact is outweighed by the need to combat drug trafficking, a serious offense with wide-ranging societal harm. In this context, the economic effects on the convicted person are a foreseeable and necessary consequence of enforcing criminal penalties. The Applicant was not arbitrarily subjected to these measures;

rather, the forfeiture was carefully tailored to reflect the proceeds of her crime, thereby maintaining a proportionate relationship between the offense and the penalty.

[69] Finally, the domestic courts were mindful of their duty to balance justice and equity in applying the forfeiture. The decision to confiscate the *productum sceleris* was made after a thorough assessment of the Applicant's financial situation and the specific circumstances of the case, an individualized approach aligning with the principle of proportionality enshrined in the Convention. It is evident that a reasonable relationship of proportionality exists between the means employed and the aim pursued, particularly given the wide margin of appreciation afforded to States under the Convention in implementing general measures of political, economic, or social strategy. The Court generally defers to the legislature's policy choices in such matters unless those choices are "manifestly without reasonable foundation."[50]

[70] Moreover, the confiscation of the land used to grow cannabis for medicinal purposes is not disproportionate, given the Applicant's persistent refusal to comply with the existing legal framework. The Court, in its own words, has found no violation of Article 1 of Protocol No. 1 in most cases involving the seizure and/or confiscation of means of transport used for illegal purposes (*instrumentum sceleris*), which bears a strong resemblance to the present case.[51] It is undisputed that the Applicant has continuously demonstrated an unwillingness to cease her activities, as evidenced by her appeal to have the cannabis plants returned to her and her request for consumption to be permitted (§ 16 of the Case). The Applicant's actions indicate a clear intent to continue cultivating and using cannabis, despite the illegality of such conduct under national law. In light of this, the domestic courts were justified in concluding that no other measures could effectively prevent the Applicant from continuing her unlawful activities, thus necessitating the confiscation of the land.

[71] The confiscation of the land must be understood as the least invasive means of addressing the issue at hand. The domestic courts carefully weighed the potential alternatives to safeguard the general interest of preventing illegal drug trafficking while protecting the rights of the individual. Given the Applicant's apparent disregard for legal restrictions, it was determined that maintaining the land in her possession would only facilitate the continuation of unlawful activity. In this context, the confiscation of the land was seen as a necessary step

50 Balsamo v. San Marino, app. nos. 20319/17 and 21414/17, 8 October 2019, § 81.

51 B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia, app. no. 42079/12, 17 January 2017, § 44.

to prevent future offenses. Therefore, the confiscation measure can be considered a proportionate response, given the Applicant's clear intent to persist in her unlawful conduct, with the only other alternative to prevent reoffending being imprisonment.

[72] Finally, it must be stated that Article 1 of Protocol No. 1 does not, of itself, give rise to an entitlement to compensation for any loss alleged to have been suffered as a result of the impounding of the property's during the criminal proceedings.[52] No lack of due compensation is to be alleged, given that an impairment of the convict's economic situation is precisely the aim sought by legislative policy and, in enforcing such laws, the domestic courts of Zemland.

[73] In conclusion, the domestic courts have carefully balanced the competing interests in this case, ensuring that the general interest of combating drug trafficking and protecting public health is adequately served, while also respecting the Applicant's fundamental right to the peaceful enjoyment of her possessions. The domestic courts were fully aware of the Applicant's economic circumstances, but they ultimately determined that the need to prevent further criminal activity and deter possible future offenses outweighed the impact on her financial position. Moreover, the procedural safeguards available to the Applicant ensured that her right to challenge the measure was fully protected. Throughout the proceedings, the Applicant had the opportunity to present her case, and her arguments were duly considered by the national courts. The Court also found that the standard of proof applied by the domestic authorities, based on a balance of probabilities, was appropriate in this context.

[74] Therefore, the Respondent pleads that a fair balance was struck between the general interest of combating drug trafficking and the protection of the Applicant's fundamental rights, in full accordance with Article 1 of Protocol No. 1 of the Convention.

3. Conclusions

In light of the submissions presented above, the Respondent respectfully requests the Court:

a) To declare the application inadmissible; and, alternatively, to the extent that the application is deemed admissible,

b) To adjudge and declare that the Respondent has not violated the Applicant's rights under Article 8 of the Convention and Article 1 of Protocol No. 1 of the Convention.

[52] Adamczyk v. Poland (dec.), app. no. 28551/04, 7 November 2006.