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Date: 09/02/2026

DH-DD(2026)212

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Meeting:	1553rd meeting (March 2026) (DH)
Item reference:	Updated Action Report (06/02/2026)

Communication from Malta concerning the case of Shorazova v. Malta (Application No. 51853/19)

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Réunion :	1553e réunion (mars 2026) (DH)
Référence du point :	Bilan d'action mis à jour (06/02/2026)

Communication de Malte concernant l'affaire Shorazova c. Malte (requête n° 51853/19) ***(anglais uniquement)***

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EXECUTION OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

DGI
06 FEV. 2026
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION REPORT

CASE OF SHORAZOVA v. MALTA
APPLICATION NUMBER 51853/19

Judgement delivered on 3 March 2022
Judgement became final on 3 June 2022

I. DESCRIPTION OF THE CASE

1. The case concerns a violation of Article 1 of Protocol no. 1, arising as a result of a freezing order issued against the applicant, in pursuance of a request received from the Kazakh authorities under the United Nations Convention against Transnational Organised Crime, and repeatedly renewed for a period of almost eight (8) years.

2. The Court found that the applicant did not have sufficient procedural safeguards. It noted that, over the period of almost 8 years, no court or authority had thoroughly examined whether the conditions necessary for the issuing of a freezing order were present, in particular whether the applicant had the status of a person "charged or accused" according to domestic law; and, in consequence, whether the freezing order should have been issued at all. It therefore found a violation of Article 1 of Protocol no. 1.

II. INDIVIDUAL MEASURES

Just Satisfaction

3. The just satisfaction awarded by the Court in respect of non-pecuniary damages, as well as costs and expenses, has been paid and evidence previously supplied.

Other Measures

4. The freezing order in question was revoked by the Criminal Court on 23 July 2021. Therefore, the national authorities consider that there are no further individual measures to be taken in this case.

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III. GENERAL MEASURES

5. The Government considers that the violation found by the Court stems from an inadequate assessment carried out by the authorities and domestic courts in issuing and extending the freezing order in question. In its judgement, the Court criticized the fact that '*in nearly eight years no authority or domestic court had thoroughly examined*' (§107) whether the applicant was to be considered a "charged or accused" person in Kazakhstan, or adequately considered the credibility of the alleged charges against her (§117), and that '*no domestic court appears to have made an assessment concerning the extent of the freezing order issued in February 2014 in relation to the "charges" set out by the Kazakh authorities, neither at the time nor in subsequent renewals*' (§114). Therefore, the source of the violation in this case was not the law itself, but rather the application of the law by the relevant national authorities.

6. It ought to be emphasized that the very unique and specific circumstances of this case were of crucial importance to the Court's assessment – particularly the fact that **the applicant's status as a mere suspect in Kazakhstan was obfuscated during the domestic proceedings *as a result the applicants' own actions*,** as the Court acknowledged at paragraph 107 of the judgment.[1] Indeed, upon a specific request to this effect made by the applicant and her husband, the Court of Magistrates had by its decree of 10 October 2014 declared that *they were to be considered accused persons in criminal proceedings* in Kazakhstan, and they thus had legal standing in the proceedings as accused, with the relevant rights.

7. In its judgement, the Court noted the fact that Article 435C of the Criminal Code and its equivalent Article 10 of the Prevention of Money Laundering Act do not specify that the Criminal Court may reject an application for issuing a freezing order on the grounds that the issuing of the said freezing order would go against *ordre public* or be contrary to the legal system of Malta. However, it should be noted that ensuring observance of *ordre public* or that orders given are in compliance with the legal system of Malta does not need to be stated in the law itself. It is intrinsic in the functioning of any court in Malta that there is observance

[1] "*The Court observes that at the time of the regular observations it had not been disputed that the order complained of was issued in accordance with the law, namely Article 435C of the Criminal Code and Article 10 of the Prevention of Money Laundering Act. Subsequent to the belated factual update, and in particular the findings of the Criminal Court of 23 July 2021, it would appear that the freezing order issued and kept in place for nearly eight years had not been in accordance with the law ab initio since, according to the Criminal Court, the applicant did not have, and never had, the status of a charged or accused person in Kazakhstan, but only that of a suspect. The Court, however, observes that prior to that (besides the original order of the Criminal Court and subsequent renewals) other jurisdictions including the Court of Magistrates and the courts of constitutional competence – had repeatedly considered the applicant as a person charged or accused and confirmed the lawfulness of the measure.* ***Indeed, this appears to have been compounded by the fact that the applicant and her husband requested to be considered as accused*** *(see paragraph 47 above).* …." (emphasis added).

of the principle of *ordre public* and the legal system itself, and no order is given by a court if it considers that it could be in breach thereof.

8. In any event, the procedure merits of this judgment has since been superseded by the entry into force of the **Proceeds of Crime Act (Cap. 621)** on 12 March 2021,[2] which now exclusively governs the issuing of freezing orders in all cases except in the context of offences against the provisions of the Medical and Kindred Professions Ordinance or of the Dangerous Drugs Ordinance.[3]

9. The provisions of Article 55 of the Proceeds of Crime Act ("POCA") apply to any request for legal assistance received by the Maltese authorities from a judicial, prosecuting or administrative authority of any state pursuant to any treaty, convention or agreement applicable to Malta, or in accordance with European Union Law, for the monitoring of any account, the investigation of any matter, the attachment of any property or the seizure and freezing of any property in Malta, in connection with the investigation or prosecution of an offence or in connection with the enforcement of a judgment relative to an "equivalent offence". In terms of Article 36(1) of the Act, which applies to proceedings instituted pursuant to Art. 55, freezing orders can only be issued *where a person is accused or charged with a "relevant offence"*, meaning any offence under any law, not being an offence of an involuntary nature, which is liable to the punishment of imprisonment or detention for a maximum term of at least one (1) year (vide Art. 4 POCA).[4] Thus, the Proceeds of Crime Act effectively covers all types of crimes punishable by imprisonment or detention of at least one year, with the exception of offences against the provisions of the Medical and Kindred Professions Ordinance and of the Dangerous Drugs Ordinance, thus replacing the procedures previously stipulated, *inter alia,* in the Prevention of Money Laundering Act and the Dangerous Drugs Ordinance in respect of such offences.

10. In such cases, the Attorney General or the Director of the Asset Recovery Bureau, as the case may be, may request the Criminal Court to make a Monitoring Order, an Investigation Order, an Attachment Order and, or a Seizing and Freezing Order. All the procedural safeguards laid down in Part IV of the Act apply to the execution of such requests, insofar as Article 55(1) provides that the Criminal Court shall issue such order, at the request of the Attorney General or the Director of the Asset Recovery Bureau, "*in accordance with and having all the effects as provided in Part IV as if the equivalent offence were a relevant offence*" under Maltese law.

11. In agreement with the Office of the Attorney General, any such requests are in practice directed to the Asset Recovery Bureau (ARB), which submits the relevant request for a freezing order to the Criminal Court after having determined

[2] Full text accessible on the following link https://legislation.mt/eli/cap/621/eng
[3] Article 23A of the Criminal Code.
[4] Article 55(2) of the POCA clarifies that, in the context of requests for the issuing of, inter alia, a freezing order by a foreign authority, "*an "equivalent offence" is an offence under the law of the judicial, prosecuting or administrative authority making the request, by whatever name called, which had it been committed in Malta would constitute a relevant offence*".

that all applicable legal requirements are satisfied. This is a marked departure from the previous preceudre at issue in *Shorazova*, governed by Article 649(1) of the Criminal Code, which merely required the Attorney General to passively *communicate* to a magistrate a request made by a judicial, prosecuting, or administrative authority of any place outside Malta for, inter alia, the seizure of assets in connection with the investigation of a crime, without requiring or even permitting the Attorney General to conduct a *prima facie* assessment of the grounds and context of the request. The ARB's role in such cases is, on the contrary, to first and foremost assess whether all legal requirements stipulated in Articles 36 and 55 of the POCA are satisfied, following which it is to submit a request to the Court outlining the basis of the request, specifying the applicable treaty, convention, or agreement between Malta and the foreign country, and annexing thereto the corresponding foreign court or prosecution order.

Conditions to be met for a freezing order to be issued

12. In terms of Article 55 of the POCA, where the Attorney General or the Director of the Asset Recovery Bureau receive a request for, *inter alia*, the seizure and freezing of any property in Malta by a judicial, prosecuting or administrative authority of any place outside Malta, in connection with the investigation or prosecution of an equivalent offence, they may request the Criminal Court to make a Seizing and Freezing Order, in accordance with and having all the effects as provided in Article 36, as if the equivalent offence were a relevant offence under Maltese law.

13. Pursuant to Article 36(1) POCA, the conditions that must be met in order for a Seizing and Freezing Order to be issued by the Criminal Court in the context of such a request are the following:

(i) the person whose assets are subject to the order must be either ***accused or charged*** **with an "equivalent offence" in another country**,[5] namely any act or omission by any name called which, if committed in Malta, would constitute an offence liable to the punishment of imprisonment or detention for a maximum term of at least one (1) year. This requirement significantly narrows the scope of such orders, and is thus envisaged to adequately safeguard against arbitrary applications for seizing and freezing orders, including those made upon a request from a foreign jurisdiction, as occurred in *Shorazova* where the applicant – despite her express wish to be considered as an "accused" for the purposes of the domestic proceedings – did not in fact have the status of a charged or accused person in Kazakhstan, but only that of a suspect;

(ii) the prosecution (in this case the ARB) *may* requests the issue of a Seizing and Freezing Order, after having verified that all relevant legal conditions apply; and

[5] Contrast, for instance, with the issuing of investigation orders pursuant to Article 34 or of attachment orders pursuant to Article 35 of Cap. 621, which may be issued in relation to *suspects*.

(iii) pursuant to Article 36(3)(a) of the Act, the request for a Seizing and Freezing Order must also indicate the assets or sum of money, or both, subject to confiscation. Thus a foreign request for freezing of assets should specifically *identify* the assets/property to be frozen. If such a request does not specify the property, it could be considered as a fishing expedition for information to determine what assets the accused possesses in Malta. Such a determination should be made through other channels, prior to sending a request for freezing of assets to Malta.

14. For the sake of completeness it is noted that, where the request originates from a judicial or administrative authority in another EU Member State, the relevant provisions of Directive (EU) 2024/1260 on asset recovery and confiscation and/or of Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders would also apply, as the case may be.

Refusal of requests contrary to ordre public or contrary to the legal system of Malta

15. In accordance with Article 36(3)(a) of the POCA the prosecution (in such instances, the ARB) is tasked with examining whether the request from a foreign authority is to be accepted or denied for reasons provided in the treaty itself. In the specific context of the UN Convention Against Transnational Organized Crime, on which the request from the Kazakh authorities at issue in Shorazova was based, such reasons would include a breach of Malta's *ordre public*, as assessed *inter alia* in the light of the supremacy of the Fundamental Human Rights and Freedoms included in Chapter IV of the Constitution of Malta and the ECHR. The request for a Seizing and Freezing Order shall be made by the ARB by means of an application indicating the assets or sum of money subject to confiscation in the case of a conviction.

16. In any event, as noted above, it is the overriding duty of any domestic court to ensure observance of *ordre public* and that any orders or judgments given are in compliance with the legal system of Malta.

Assessment of the nature of the accusations in the Requesting State

17. It ought to be noted that there have not been any similar cases, following the judgment in *Shorazova v Malta*, concerning a request made under Art. 55 of the POCA. Nonetheless, prior to proceeding to the execution or otherwise of a foreign request for the issuing of a freezing or confiscation order, certain checks are in practice made by the competent authorities to ensure that the execution of such request does not hinder any local investigations or other proceedings; and that it does not raise any doubts regarding, for instance, the status as charged or accused of the person concerned under the law of the requesting State, the correlation between the property subject to the freezing order and the charges against the individual, and the proportionality of the measure requested in the specific circumstances of the case. In fact, according to the wording of Article 55(1) of the

POCA, the Attorney General and the Director of the ARB are *not obliged* to request the issuing of a freezing order in such circumstances, but they 'may' request it. This implies that the examination as to whether confidence may be placed in the request from the foreign jurisdiction falls to be conducted at the pre-application stage by the prosecution authorities.

18. In any event, should any such question in practice be raised by the party concerned before the Criminal Court, that court would have discretion to consider it or to refer the question to a Court of Constitutional jurisdiction for determination as to whether the circumstances constitute a situation where the person's fundamental rights are likely to be breached by the issuing of the requested freezing order.

Challenges to Freezing Orders

19. Once a Seizing and Freezing order is issued by the Court pursuant to Article 36(1) of the Act, such Order may effectively be challenged by the person concerned either in full or in part. In terms of Article 36(8)(ii) of the POCA, when such an order is issued the person accused or charged may, within seven (7) working days from the date of the Court's decision, file an application before the Criminal Court requesting the total or partial revocation of the order, which order shall remain in force until a decision is given by the Criminal Court. The Criminal Court shall grant the prosecution and the Director seven (7) working days to reply to the request of the person accused or charged. The decision of the Criminal Court on the application shall be delivered within seven (7) working days from the filing of the replies or from when the time limit for their filing lapsed.

20. According to Article 36(5)(a), the person accused or charged may also apply to the Court requesting it to *vary* a Seizing and Freezing Order. Upon such application, the Court shall determine what monies may be paid to or received by the person charged or accused during the validity of such Order, to allow him and his family a decent living in a yearly amount not exceeding the amount established by the Minister by order in the Gazette and any other amount which the Court considers justified to meet necessary expenses. Furthermore, pursuant to Article 36(5)(b), on a court application of the person accused or charged the Court shall, subject to such conditions as it deems fit, determine what moneys may be paid or received by that person during the validity of a Seizing and Freezing Order to allow him to carry on any trade, business, profession or occupation; or authorise the payment of debts which are due by the person accused or charged to bona fide creditors and which were contracted before the Seizing and Freezing Order was made; or, on good ground, authorise the person accused or charged to transfer movable or immovable property.

21. Whereas the assessment of proportionality under the POCA is only specifically referred to in the context of confiscation orders,[6] nonetheless the

[6] Under Articles 38(7) and 48(6) of the Act.

possibility to contest a Seizing and Freezing Order pursuant to Article 36(8)(ii) implicitly covers questions of disproportionality, given the importance of the principle of proportionality as a general principle of domestic law. Similarly, the possibility to request a variation of the order, pursuant to Article 36(5), implies that the person charged or accused may request the Court to adjust the sum of money to be received by such person to allow him and his family a decent living; or to allow him to carry on his trade, business or profession; or to authorise the payment of debts due to bona fide creditors, which also implies a proportionality assessment.

22. Finally, pursuant to Article 36(3)(c) of the Act, a third party who establishes that a Seizing and Freezing Order is causing him immediate and irreparable prejudice may request the Court to vary the Order to mitigate such harm, to the extent that it is practicable to do so, without adjudicating the issues that the third party would be entitled to raise in accordance with Article 39 of the Act. That article provides for the additional possibility for any person to claim that he is the owner of any property subject to a Seizing and Freezing Order, or that he has rights over such property, by applying to the Civil Court (Asset Recovery Section) to issue a declaration to such effect.

Hearing of the affected party prior to the decision to renew a freezing order

23. Currently, the law does not specifically provide that the affected party must be heard prior to the Court's decision to renew a freezing order or a confiscation order. However, it is a generally accepted and basic principle of Maltese procedural law that a court before which any application is made must decide upon that application. There is nothing in the law which prevents a court from allowing written or oral submissions to be made by the party concerned on the renewal of a freezing or a confiscation order if the court feels that allowing such submissions is warranted in the interests of justice, especially in view of the overriding duty to ensure adherence to the fundamental human rights protected by the Convention and by the Constitution.

Publication and dissemination

24. In view of the nature of the judgement, it is believed that the publication and dissemination thereof form an integral part of its full execution, particularly in light of the unique circumstances of this case which were recognised by the Court at paragraph 112 of its judgement. Thus, the judgement has been disseminated to members of the judiciary as well the Attorney General's Office and the Asset Recovery Bureau. The judgement has also received ample media coverage.[7]

[7] https://www.independent.com.mt/articles/2022-03-04/local-news/EHCR-finds-Malta-in-breach-over-asset-freeze-of-possible-political-trial-widow-6736241144.

IV. GOVERNMENT'S CONCLUSIONS

25. In view of the above considerations, Government considers that it has adopted the necessary individual and general measures to fully execute the judgement, and therefore invites the Committee of Ministers to close its examination of this case.