



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

FIFTH SECTION

CASE OF FISCHER v. THE CZECH REPUBLIC

(Application no. 24314/13)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Genuine examination of merits and preliminary determination of dispute on unlawfulness of a resolution to increase company's share capital, despite dismissal, for legal certainty reasons, of application to have the resolution set aside • Possibility for applicant to seek compensation following those proceedings • Evolution of domestic practice since Court's earlier case-law finding Art 6 § 1 violations

STRASBOURG

24 February 2022

FINAL

24/05/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fischer v. the Czech Republic,

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

Síofra O’Leary, *President*,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar,
Kateřina Šimáčková, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 24314/13) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Václav Fischer (“the applicant”), on 5 April 2013;

the decision to give notice to the Czech Government (“the Government”) of the complaints concerning the applicant’s right of access to a court and his property rights and to declare the remainder of the application inadmissible;

the decision of the German Government not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties’ observations;

Having deliberated in private on 25 January 2022,

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

INTRODUCTION

1. The case essentially concerns a complaint under Article 6 of the Convention regarding access to court. The applicant considered that the domestic courts refused to protect his rights breached by a resolution adopted at a general meeting of a company of which he was a minority shareholder. The applicant also complained that, as a consequence, he had suffered a violation of his property rights.

THE FACTS

2. The applicant was born in 1954 and lives in Berlin. He was represented before the Court by Mr J. Černohlávek, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicant owned 100% of the shares in Cestovní kancelář FISCHER, a.s., a joint-stock company incorporated under Czech law (hereinafter “the company”). On 4 November 2003 the applicant and

K & K Capital Group a.s., another joint-stock company incorporated under Czech law and controlled by K.K., entered into an agreement to form a consortium. The agreement stipulated, *inter alia*, that in the event of an increase in the company's share capital, both parties to the agreement would have the right to participate in the increase in proportion to their share in the company. Subsequently, the applicant transferred 75% of the company's shares to K & K Capital Group.

6. At its general meeting on 3 March 2004 the company adopted, by vote of the K & K Capital Group, a resolution to increase the company's share capital from 1,000,000 Czech korunas (CZK) to CZK 11,000,000. The pre-emptive subscription rights of the shareholders of the company were excluded with a view to offering the newly issued shares to a certain entity, Kapitálová společnost K & K a.s., a joint-stock company incorporated under Czech law and controlled by K.K., in order to reinforce internal financial resources. Indeed, according to a report prepared by the company's board of directors and submitted at the general meeting, the company's negative equity and insufficient resources required the consolidation of its economic situation by means of an offer from an entity which was external to the company at the time, given that the capital controlled by the company's minority shareholders was insufficient compared with the amount needed to reinforce the company's own resources. The applicant objected and voted against the resolution. As a result of the increase in the company's share capital, his share decreased from 25% to 2.3%.

I. PROCEEDINGS TO SET ASIDE THE RESOLUTION OF THE GENERAL MEETING TO INCREASE THE COMPANY'S SHARE CAPITAL

7. On 9 March 2004 the applicant lodged an application with the Prague Municipal Court seeking to have the resolution to increase the company's share capital set aside (*určení neplatnosti usnesení valné hromady*). He asserted that the resolution had been adopted contrary to the applicable law, namely Article 204a § 5 of the Commercial Code, and that it had violated the consortium agreement (see paragraph 5 above). In his view, the pre-emptive subscription rights of the then shareholders could be excluded only if there was a serious reason on the part of the company to do so; that had not been the case in this instance, since the new shareholder had not brought anything valuable to the company which could not have been provided by the existing shareholders. Thus, the only purpose of the resolution had been for K.K. to seize control of the company.

8. Before the Prague Municipal Court had given a ruling on the matter, a merger with three other companies was approved at the general meeting of the company on 17 December 2004 (this resolution was also challenged by the applicant – see paragraphs 15-17 below). The merger was recorded in the

Commercial Register on 18 March 2005. As a result of the merger, the merged company's share capital increased substantially in comparison to the company's capital before the merger and the applicant's share decreased from 2.3% to 0.07%.

9. On 13 April 2005 the Prague Municipal Court dismissed the applicant's application. It found that the resolution to increase the company's share was compliant with the applicable law. It noted that even if the resolution had been unlawful, it could not be set aside, as provided by Article 131 § 3 (c) of the Commercial Code, given that the merger that had taken place after the adoption of the resolution in question had already been recorded in the Commercial Register.

10. Following an appeal by the applicant, the Prague High Court upheld the decision to dismiss the application and held that the resolution was to be considered lawful.

11. The applicant lodged an appeal on points of law. On 24 June 2008, the Supreme Court quashed the decision and remitted the case to the High Court, holding that Article 204a § 5 of the Commercial Code had not been complied with.

12. On 12 February 2009 the High Court again upheld the Municipal Court's judgment of 13 April 2005. It held that although the resolution had breached the consortium agreement, being thus contrary to good morals, and circumvented the law, it could not be set aside for the reasons set out in Article 131 § 3 (b) of the Commercial Code. Indeed, as a result of the subsequent merger of the company with three other joint-stock companies, those entities had been dissolved and their shareholders had received shares in the company and gained bona fide rights associated with those shares, which would have been substantially interfered with if the impugned resolution had been set aside.

13. On 16 June 2010 the Supreme Court dismissed another appeal on points of law by the applicant, endorsing the High Court's interpretation and application of Article 131 § 3 (b) of the Commercial Code. It further observed that a shareholder whose rights had been infringed, as in the present case, was entitled to seek compensation from the company for any damage suffered as well as just satisfaction for a violation of his or her fundamental rights (Article 131 § 4 of the Commercial Code).

14. On 8 October 2012 the Constitutional Court dismissed a constitutional appeal by the applicant as manifestly ill-founded. It held that his right of access to a court had been secured by the Supreme Court, which had examined his appeal on points of law. As for the applicant's property rights, the Constitutional Court noted that the mere possession of shares in a joint-stock company did not guarantee their holder an unchanged position and influence over the company. It shared the view of the Supreme Court that the statutory limitation period set out in Article 131 § 4 of the Commercial Code

allowed the applicant to initiate compensation proceedings even after his application to have the resolution set aside had been dismissed.

II. PROCEEDINGS TO SET ASIDE THE RESOLUTION OF THE GENERAL MEETING TO APPROVE THE MERGER

15. On 20 December 2004 the applicant lodged an application with the Prague Municipal Court seeking to have the resolution of the general meeting of 17 December 2004 approving the merger set aside. Submitting that he still owned a 25% share of the company, he argued, *inter alia*, that the resolution had not been approved by the required 90% majority.

16. On 17 January 2012 the court dismissed the application, pointing to the fact that the applicant's application to set aside the resolution to increase the company's share capital had been dismissed. It thus found that he had no longer held a 25% share of the company on 17 December 2004 and that the resolution had been adopted by the required majority. The court added that even if there had been a violation, it would have to take into consideration Article 131 § 3 (c) and possibly also (b) because the merger had already been recorded in the Commercial Register.

17. On an appeal by the applicant, the High Court upheld the above-mentioned judgment on 17 May 2013.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE COMMERCIAL CODE (LAW NO. 513/1991 AS IN FORCE AT THE RELEVANT TIME)

18. Pursuant to Article 131 § 1 of the Commercial Code, shareholders could challenge a general meeting resolution by lodging an application to have it set aside if the resolution was considered to have contravened the law, a deed of incorporation or the company's by-laws. The provision was applicable to general meeting resolutions of joint-stock companies by virtue of Article 183 § 1.

19. The relevant parts of Article 131 § 3 read as follows:

“The court shall not set aside a general meeting resolution under paragraphs 1 or 2 of Article 131 if

...

(b) the application under paragraph 1 would substantially interfere with the rights of third parties acquired in good faith,

(c) the court in charge of the Commercial Register has recorded the merger, transfer of assets, demerger, or change of legal form in the Commercial Register ...”

20. The relevant part of Article 131 § 4 provided as follows:

“Persons who have suffered damage on account of a resolution of a general meeting adopted contrary to the law, a deed of incorporation or by-laws have the right to claim damages (*náhrada škody*) and just satisfaction (*přiměřené zadostiučinění*) for the impairment of shareholders’ fundamental rights, and may be awarded financial compensation. This right may be asserted even if a court did not set the general meeting resolution aside on any of the grounds set out in Article 131 § 3. The claim for just satisfaction must be made before the court within the same time-limit as that set for lodging an application to set aside a general meeting resolution, or within three months from the date on which the decision of a court under Article 131 § 3 becomes final.”

21. Under Article 397, the limitation period was set at four years unless otherwise provided in respect of specific rights.

22. Under Article 398, regarding the right to damages, the limitation period was to start on the day when the person concerned learned or could have learned of the damage and of the person liable to provide compensation in respect of that damage. The limitation period was to end, at the latest, ten years from the date when the violation occurred.

II. JUDICIAL PRACTICE

23. The Government submitted several court decisions by which the claimants had been awarded just satisfaction under Article 131 § 4 of the Commercial Code.

24. Decision no. 24 Cm 185/2005 was given by the Ostrava Regional Court on 19 July 2006 following another decision given on 10 April 2006 by which that court had refused, with reference to Article 131 § 3 (a) of the Commercial Code, to set aside the general meeting resolutions challenged by the claimant, finding in the reasoning of its judgment that although there had been a breach of the claimant’s rights, the violation had been negligible and had not had serious legal consequences. In the subsequent proceedings on just satisfaction, the court ordered the company to send an apology to the claimant for having breached his shareholder’s rights and granted in full the claimant’s claim in respect of non-pecuniary damage, submitted under Article 131 § 4 of the Commercial Code within three months from the date on which the decision of 10 April 2006 had become final. The court considered it established, on the basis of its decision of 10 April 2006 and the documents relating to the general meeting in question, that the company had breached the rights of the claimant as a shareholder, causing him non-pecuniary damage which had to be compensated by an award of just satisfaction; no award in respect of pecuniary damage had been claimed in that case.

25. By decisions no. 26 Cm 65/2004 of 19 July 2006 and no. 15 Cm 195/2010 of 14 April 2011 of the Ostrava Regional Court and decision no. 9/50 Cm 53/2004 of 14 March 2014 of the Brno Regional Court, general meeting resolutions which had been challenged by the claimants were set aside on account of their unlawfulness, and the claimants, whose fundamental rights were found to have been violated by the respective

companies' courses of action, were awarded just satisfaction under Article 131 § 4 of the Commercial Code. The courts noted that the purpose of the just satisfaction was to mitigate primarily non-pecuniary damage, the amount of which could be determined at the court's own discretion, while other claims could be raised by means of a claim for damages; however, if it appeared that it would be difficult to make a claim in respect of pecuniary damage in that way, redress could also be provided by way of just satisfaction.

26. In judgment no. III. ÚS 2671/09 of 3 March 2011, the Constitutional Court interpreted the relevant provisions of the domestic law in a way that, in its view, was compatible with the Convention, taking into account especially the Court's judgment in *Kohlhofer and Minarik v. the Czech Republic* (nos. 32921/03, 28464/04 and 5344/05, 15 October 2009). It held that the appellant could have instituted proceedings under Article 131 § 4 of the Commercial Code for just satisfaction in respect of an unlawful resolution of a general meeting. In those proceedings, the courts would have had to decide, as a necessary preliminary question, on the lawfulness of the resolution in respect of which the appellant had been seeking access to a court. Consequently, the Constitutional Court considered that the appellant's right of access to a court was sufficiently safeguarded in other proceedings. The relevant part of the judgment reads:

"... the issue of the validity or invalidity of a general meeting resolution is an issue for the court to examine as a preliminary question in related proceedings on such 'new' claims [for additional compensation or damages]; in such proceedings, in which the appellant is (or could be) a fully-fledged participant, he may defend his rights appropriately, including by adequately challenging the general meeting resolution. ... the granting of 'certain claims for damages and just satisfaction' can thereby include a statement that the previously challenged general meeting resolution contained some of the deficiencies alleged by the appellant."

27. The Constitutional Court reiterated those considerations in decision no. I. ÚS 311/13 of 19 June 2014.

28. In decision no. 29 Cdo 1048/2008 of 30 March 2011 the Supreme Court accepted the Constitutional Court's conclusion that the issue of the validity or invalidity of a general meeting resolution would be examined by the court as a preliminary question in proceedings concerning the right to damages or just satisfaction, or additional compensation.

29. In decision no. 29 Cdo 2838/2011 of 29 April 2013, the Supreme Court observed that, under Article 131 § 4 of the Commercial Code, a person who suffered damage on account of the unlawfulness of a general meeting resolution was entitled to compensation for such damage; however, just satisfaction in respect of non-pecuniary damage could only be claimed by parties in the event of a violation of their fundamental rights and could only be granted provided that the non-pecuniary damage suffered had not been redressed by the setting aside of the impugned resolution.

RESOLUTION OF THE COMMITTEE OF MINISTERS OF
THE COUNCIL OF EUROPE ON THE EXECUTION OF THE
JUDGMENT IN *KOHLHOFER AND MINARIK*

30. The Committee of Ministers of the Council of Europe closed its examination of *Kohlhofer and Minarik* (cited above) and subsequent cases by adopting Resolution CM/ResDH(2013)140 on 10 July 2013 and Resolution CM/ResDH(2013)227 on 20 November 2013.

31. The relevant parts of Resolution CM/ResDH(2013)140 read as follows:

“Action Report submitted by the Czech Government on 3 December 2012

...

In 2011, the Ministry of Justice prepared an amendment of the relevant legislation which became Act No. 355/2011 and entered into force on 1 January 2012 (the “Act”). The Act *inter alia* explicitly reflects the *Kohlhofer and Minarik* judgment and introduces measures intended to remedy the previous legislative shortcomings identified by the Court.

In particular, [Article] 131(3)(c) of the Commercial Code, i.e. one of the provisions that were at the centre of the Court’s criticism, has been abolished.

Furthermore, sections 57(2) and (3) of the Companies Transformations Act have been modified in order to provide for a possibility to continue the proceedings to set aside a decision on transformation of the company (such as transfer of assets to the majority shareholder) after the entry of the transformation into the Commercial Register. This applies on condition that a minority shareholder changes the object of his motion to seek a determination whether the transformation project (e.g. transfer of assets) or the decision approving it are contrary to the legislation or internal statutes of the company.

Upon a court’s decision declaring an inconsistency of such transformation project or of the corresponding decision with legislation or the company’s internal statutes, the minority shareholders are entitled to claim damages or a just satisfaction for non-pecuniary damage.

Therefore, even after the entry of the transformation into the Commercial Register, minority shareholders will have access to court to contest the general meeting’s resolution that has deprived them of their shares. Despite not being able to achieve quashing of the resolution, the merits of their claims, in particular the question whether the resolution had been adopted in breach of law or the company’s internal statutes, will be heard and finally decided in adversarial proceedings before the court.

Such solution allows for striking a fair balance between the competing interests of the minority shareholders on the one hand and those of the majority shareholder, the company and the broader public interest on the other hand.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant complained under Article 6 of the Convention that the courts had refused to protect his rights breached by the resolution of 3 March 2004 to increase the share capital of the company of which he was a minority shareholder. He stated that this happened despite the courts having acknowledged that the general meeting resolution was not lawful.

Article 6 § 1 of the Convention reads as follows, in so far as relevant:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

33. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

34. The applicant pointed to *Kohlhofer and Minarik* (cited above, §§ 93 and 102), in which the courts had not discontinued the setting-aside proceedings but had dismissed the application, referring to Article 131 § 3 (c) of the Commercial Code. Although they had in this way made a determination of the merits within the meaning of the Government's observations, the Court had still found that as a result of the application of Article 131 § 3 (c) of the Commercial Code, whose effects could not be mitigated within proceedings for damages or just satisfaction, which pursued different objectives, the applicants' access to a court had been limited. The applicant inferred from this that in order for the matter to be determined on the merits, the issue of the lawfulness of a general meeting resolution had to be addressed in the operative part of the court's decision, which was the only binding part, and not in its reasoning; this was confirmed by new legislation, in force from 1 January 2012 and not applicable in his case, which had been referred to by the Government. Since in the present case the courts' opinion that the impugned resolution had circumvented the law had been expressed only in the reasoning of their decision, no determination of the merits had been made.

35. Furthermore, the applicant underlined that he had challenged the resolution only a few days after its adoption and that all the interested parties, including the companies that had later taken part in the merger, had been aware of that challenge and could not have been acting in good faith. However, that issue, which had triggered the application of Article 131

§ 3 (b) of the Commercial Code, had only been decisive for the High Court's decision of 12 February 2009, which was why he could not have contested it earlier.

36. The Government submitted that, unlike in the cases referred to by the applicant (namely *Kohlhofer and Minarik*, cited above, and *Roman Minarik v. the Czech Republic*, no. 58874/11, 22 November 2012), where the courts had refused to deal with the merits of the applicants' complaint that the general meeting resolution had been unlawful, in the present case the applicant's right of access to a court had been observed, since his application to have the impugned resolution set aside had been duly heard and decided upon. In particular, the Prague High Court had explicitly held in its decision of 12 February 2009 that the general meeting resolution of 3 March 2004 had been adopted contrary to the consortium agreement and good morals and that it had also circumvented the law. The reason why the applicant's application had not been granted, with reference to Article 131 § 3 (b) of the Commercial Code, was that setting aside that resolution several years after its adoption would have been very problematic from the perspective of legal certainty and would have seriously interfered with the rights acquired in good faith by third parties through the subsequent merger and with the interests of the company itself. The applicant had failed to challenge those grounds.

37. In the Government's view, the courts had ruled on the matter after having followed adversarial proceedings and thoroughly weighing all the rights and interests at stake, and their course of action could not be considered disproportionate. The fact that the courts had ultimately expressed their opinion on the lawfulness of the impugned resolution, even if only in the reasoning part of their decisions, had enabled the applicant to initiate proceedings for compensation under Article 131 § 4 of the Commercial Code, which, however, he had failed to do.

38. The Government asserted that the outcome of the domestic proceedings in the present case was thus in line with the solution offered by the new legislation, which had been in force since 1 January 2012 and had been accepted by the Committee of Ministers of the Council of Europe (see paragraphs 30-31 above). That legislation (Act no. 355/2011) allowed for the determination of the lawfulness of a resolution on the transformation of a company (such as a transfer of shares to the majority shareholder) after the entry of the transformation in the Commercial Register, without the resolution being set aside. According to the Committee of Ministers, this allowed a fair balance to be struck between the competing interests of the minority shareholders on the one hand and those of the majority shareholder, the company and the broader public interest on the other hand, regard also being had to the fact that a declaration of unlawfulness would entitle minority shareholders to claim damages or just satisfaction.

2. *The Court's assessment*

39. The Court reiterates that Article 6 § 1 of the Convention embodies the “right to a court”, which guarantees not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see, for example, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016; *Kutić v. Croatia*, no. 48778/99, §§ 25 and 32, 1 March 2002, regarding the staying of proceedings; *Beneficio Cappella Paolini v. San Marino*, no. 40786/98, § 29, 13 July 2004, concerning a denial of justice; *Marini v. Albania*, no. 3738/02, §§ 118-23, 18 December 2007, concerning a refusal to give a final decision on the applicant’s constitutional appeal as a result of a tied vote; and *Frezadou v. Greece*, no. 2683/12, §§ 43-48, 8 November 2018, regarding the discontinuation of the proceedings on the grounds that there was no legal interest in pursuing the application, as the administrative decision at issue had expired).

40. Nevertheless, where a person claims the right of access to a court, that Convention right may be in conflict with another person’s right to legal certainty, which constitutes one of the fundamental aspects of the rule of law and is likewise secured under the Convention. Such a situation requires a balancing exercise between conflicting interests, and the Court accords the State a wide margin of appreciation (see *Sanofi Pasteur v. France*, no. 25137/16, §§ 52 and 56-58, 13 February 2020).

41. The Court observes that it has already examined numerous applications against the Czech Republic in which it found a violation of Article 6 § 1 on account of lack of access to a court, as the domestic courts had refused to examine the merits of the applicants’ complaint that general meeting resolutions had been unlawful (see *Kohlhofer and Minarik*, cited above; *Minarik v. the Czech Republic*, no. 46677/06, 10 February 2011; *Kohlhofer v. the Czech Republic* [Committee], no. 22915/07, 13 October 2011; *Solaris, s.r.o. and Others v. the Czech Republic* [Committee], no. 8992/07, 13 October 2011; *Minarik and Others v. the Czech Republic* [Committee], no. 10583/09, 13 October 2011; and *Roman Minarik*, cited above).

42. It is to be noted, however, that there is a difference between the above-mentioned cases and the present case and that domestic practice seems to have evolved in the meantime, partly in response to the requirements of the Convention as reflected in the Court’s case-law (see paragraphs 26 et seq. above). Indeed, in *Kohlhofer and Minarik* (cited above), referred to by the applicant (see paragraph 28 above), the courts not only dismissed the application to set aside the resolution but also refused to deal with the applicants’ complaints that the resolution at issue was unlawful, referring to Article 131 § 3 of the Commercial Code. In the present case, however, the Court notes that the High Court examined the applicant’s arguments and endorsed his view, holding, albeit only in the reasoning part of its decision

(see paragraph 12 above), that the resolution of 3 March 2004 had violated the consortium agreement and good morals and had circumvented the law. Consequently, irrespective of the ultimate dismissal of his claim to have the impugned resolution set aside, the applicant obtained a genuine examination by the High Court of the lawfulness of that resolution. Accordingly, in the present case Article 131 § 3 of the Commercial Code was not applied in a manner that prevented any further examination of the merits of the applicant's claim (compare and contrast *Kohlhofer and Minarik*, cited above, § 100).

43. Indeed, while the High Court did not grant the applicant's claim to have the resolution of 3 March 2004 set aside, Article 6 § 1 of the Convention does not guarantee a particular outcome in any case (see, for example, *Klasen v. Germany*, no. 75204/01, § 43, 5 October 2006). What is important from the perspective of the right of access to a court is that the dispute which an applicant submits for adjudication is the subject of a genuine examination (see *Velikovi and Others v. Bulgaria*, nos. 43278/98 and 8 others, § 259, 15 March 2007, and *Konkurrenten.no AS v. Norway* (dec.), no. 47341/15, § 46, 5 November 2019). In the present case, it is clear from the reasoning of the relevant decisions that, according to the domestic courts, the resolution had been contrary to good morals and had circumvented the law; thus, the applicant's argument about the unlawfulness did not remain unaddressed. The reason why it had not been set aside was the necessity to protect third parties who had in the meantime acquired shares of the company in good faith, as provided in Article 131 § 3 (b) of the Commercial Code. The Court has already acknowledged in a similar context that giving companies flexibility in determining their shareholdership, and the concomitant limitation on challenges to asset transfers once they have been registered, can be seen as enhancing trade, economic development and stability in commercial markets, and thus pursuing a legitimate aim in the public interest, even in a situation where they benefit a private person, such as the main shareholder (see *Kohlhofer and Minarik*, cited above, § 98). In this respect, the Court shares the Government's view (see paragraph 36 above) that such regulation also pursued the legitimate aim of preserving legal certainty.

44. The situation in the present case can thus be compared to the case referred to by the Government (see paragraph 24 above), in which the domestic court had likewise found, in the reasoning of its judgment, that the claimant's rights had been breached at the general meeting, but had not set the respective resolution aside for the reasons set out in Article 131 § 3 (a) of the Commercial Code.

45. The Court notes that – as emphasised in the Supreme Court's decision of 16 June 2010 in the applicant's case, endorsed by the Constitutional Court's decision of 8 October 2012 (see paragraphs 13 and 14 above) – it was open to the applicant, following the setting-aside proceedings, to seek compensation from the company for any damage suffered in relation to the impugned resolution, as well as just satisfaction for a violation of his

fundamental rights, under Article 131 § 4 of the Commercial Code (see paragraphs 54 and 55 below). It notes, furthermore, that it transpires from the decisions nos. III. ÚS 2671/09 and I. ÚS 311/13 (see paragraphs 26 and 27 above), in which the Constitutional Court called upon the courts to examine the lawfulness of the general meeting resolutions as a necessary preliminary question in proceedings for just satisfaction under Article 131 § 4 of the Commercial Code, that in future those proceedings should suffice to secure the right of access to a court in respect of that issue.

46. Having regard to the foregoing, the Court is of the view that the finding of unlawfulness made in particular by the High Court in respect of the resolution challenged by the applicant, although not followed by the setting aside of that resolution, amounted to a genuine examination of his claim. Moreover, it did not prevent any further examination of that claim within the compensation proceedings under Article 131 § 4 of the Commercial Code, which the applicant had the opportunity to initiate, although he declined to avail himself thereof (compare *Roman Minarik*, cited above, § 37).

47. Against this background, the Court finds that the applicant obtained in the present case a preliminary determination of the civil dispute regarding the unlawfulness of the impugned resolution and the ensuing consequences, which enabled him to seek financial compensation on that account; although the latter avenue offered a reasonable chance of success (see also paragraph 55 below), the applicant did not use it. The judicial decisions in question cannot, therefore, be considered a disproportionate limitation on the applicant's right of access to a court.

There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

48. The applicant complained that as a result of the impugned resolution to increase the company's share capital, which the courts had refused to set aside, and the subsequent merger, his share had been reduced to the extent that he had lost any influence within the company. He further complained that compensation proceedings under Article 131 § 4 of the Commercial Code could not provide him with effective redress in that regard.

He relied on Article 1 of Protocol No. 1, the relevant part of which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

49. With reference to *Freitag v. Germany* (no. 71440/01, § 55, 17 July 2007), the Government objected that the applicant had not used the remedies provided for in Article 131 § 4 of the Commercial Code, having lodged

neither a claim for damages nor an even more appropriate claim for just satisfaction. It followed from the wording of that provision, as well as from the relevant case-law, that such claims could be granted either when the court decided to set the unlawful resolution aside or when it refused to do so on the grounds provided in Article 131 § 3 of the Commercial Code.

50. As to the procedural difficulties alleged by the applicant (see paragraph 51 below), the Government argued that if the amount of damages had proved to be difficult to determine, the court could have used its discretion to assess it, which was in any event the rule in the matter of just satisfaction; that there had been a possibility of formulating the claim in such a way that court fees would amount to a lump sum, and that in any event the fees would not have exceeded 4% of the amount claimed and the applicant could have requested an exemption; that the three-month limitation period set out in Article 131 § 4 in respect of claims for just satisfaction started to run from the date on which the court's decision under Article 131 §§ 1 or 3 (that is, in the present case, the decision of 12 February 2009) had become final; and that the general limitation periods set out in Articles 397 and 398 of the Commercial Code, which applied to claims for damages, arguably started to run from the same date. The Government added that examples from judicial practice showed that the sums awarded by way of just satisfaction under Article 131 § 4 of the Commercial Code could not be considered symbolic, as alleged by the applicant.

51. The applicant asserted that since he had primarily sought *restitutio in integrum*, he had not considered that compensation proceedings under Article 131 § 4 of the Commercial Code could provide him with effective redress. Moreover, just satisfaction for non-pecuniary damage did not in his view constitute a remedy for a violation of Article 1 of Protocol No. 1 since it did not provide for compensation for economic losses. He further argued that it would have been difficult in his case to substantiate the exact amount of damage sustained, that he would have been required to bear the costs of expert reports in that respect as well as high court fees, and that the special statutory limitations in Article 131 § 4 applied only to claims for just satisfaction, whereas it was not clear when the four-year subjective limitation period for claiming damages started to run.

52. The Court observes that the applicant's complaint is directed at the entire process of the company's transformation and the position of minority shareholders within the company. It has previously found that compensation proceedings, albeit those concerning payment for surrendered shares under a different provision of the Commercial Code, were crucial in the light of Article 1 of Protocol No. 1 (see *Kohlhofer and Minarik*, cited above, §§ 51 and 112).

53. Furthermore, according to the Court's established case-law, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that

avenue of redress (see *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 86, 20 September 2011).

54. Turning to the present case, the Court notes that Article 131 § 4 of the Commercial Code provided for two judicial procedures – one for damages and the other for just satisfaction – aimed at compensating for any damage that a shareholder might have suffered as a result of a breach of his or her fundamental rights. The relevant provision expressly specified that damages and just satisfaction could be awarded even if a court did not set the general meeting resolution aside for one of the reasons set out in Article 131 § 3 of the Commercial Code.

55. Considering the state of domestic law at the material time (see paragraphs 24, 25 and 29 above), as confirmed in the applicant's case by the Supreme Court's decision of 16 June 2010 and the Constitutional Court's decision of 8 October 2012 (see paragraphs 13 and 14 above), the Court is satisfied that the proceedings under Article 131 § 4 of the Commercial Code were capable of affording the applicant redress for his complaints and offered reasonable prospects of success. In this context, and in the absence of any domestic precedents adduced by the applicant to the opposite effect, the Court observes that the applicant has not convincingly refuted the Government's argument (see paragraph 50 above) that this avenue was still open to him following the High Court's decision of 12 February 2009.

56. Thus, in view of the fact that the applicant declined to use the remedy offered by Article 131 § 4 of the Commercial Code, the Court considers that this complaint is inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 24 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Síofra O'Leary
President