



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

FIRST SECTION

CASE OF FU QUAN, S.R.O. v. THE CZECH REPUBLIC

(Application no. 24827/14)

JUDGMENT

Art 1 P1 • Control of the use of property • Unlawful retention of applicant company's merchandise, for almost a year and a half, after acquittal of director and associate in criminal proceedings in the context of which it had been seized

STRASBOURG

17 March 2022

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
01/06/2023**

This judgment may be subject to editorial revision.

In the case of FU QUAN, s.r.o. v. the Czech Republic,

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

Krzysztof Wojtyczek, *President*,

Armen Harutyunyan,

Pauliine Koskelo,

Tim Eicke,

Linos-Alexandre Sicilianos,

Ksenija Turković,

Aleš Pejchal, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 24827/14) 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 Czech limited liability company, FU QUAN, s.r.o. (“the applicant company”), on 25 March 2014;

the decision to give notice to the Czech Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 8 February 2022,

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

INTRODUCTION

1. The case concerns damage to a merchandise of the applicant company alleged to have been caused by the seizure of its property in the course of the criminal proceedings against its associates. The applicant company also alleged that it was deprived of access to a court on account of a formalistic and restrictive interpretation of the national law.

THE FACTS

2. The applicant company, FU QUAN, s.r.o., is a Czech limited liability company incorporated under Czech law with its registered office in Prague.

3. The applicant company was represented by Mr J. Stránský, a lawyer practising in Prague.

4. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

5. The applicant company alleged that its rights under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated.

6. On 15 December 2015 notice of the application was given to the Government.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CRIMINAL PROCEEDINGS

8. On 25 April 2005 the applicant company's only two associates (*společník*), one of whom was also its managing director (*jednatel*), were accused of tax evasion. They were arrested on 26 April 2005 and two days later the Prague 2 District Court (*obvodní soud*) remanded them in custody.

9. On 27 April 2005 the Prague Municipal Prosecutor Office (*městské státní zastupitelství*) ordered, under Article 347 § 1 of the Code of Criminal Procedure, the seizure of property belonging to the applicant company, including merchandise (clothing) and a vehicle leased under a contract. It banned the accused associates from disposing of the property seized unless such action aimed to prevent an imminent risk of damage. The merchandise was seized between 2 May and 27 June 2005 in the presence of the applicant's managing director. It was entrusted to the Office for Government Representation in Property Matters (*Úřad pro zastupování státu ve věcech majetkových* – hereinafter “the OGRPM”) in boxes on pallets. According to an expert report, the value of the merchandise was 62,424,027 Czech korunas (CZK – 2,393,100 euros (EUR)).

10. The applicant company's two associates, one acting in his capacity as managing director, filed complaints against the seizure of the property, but on 9 June 2005 the Prague Municipal Court (*městský soud*) dismissed them as unfounded. The Municipal Court stated that one of the associates did not have any family or social connections in the Czech Republic and maintained regular contact with his family in China and that the second associate did not even have a valid residence permit in the Czech Republic. It went on to conclude that in the view of the connections of the accused with China and in the view of the nature of their criminal conduct in question there was a suspicion that the accused would transfer the property to China.

11. On 14 November 2005 the police returned to the accused associates several electronic devices, bank cards and other personal items, stating that they were not necessary for the purposes of the criminal investigation and proceedings and that there was no prospect of their forfeiture or confiscation. On 21 November 2005 the car was returned to the leasing company.

12. On 12 April 2006 the municipal prosecutor's office filed an indictment against the two associates.

13. On 16 March 2007, during the trial, the two men were released from custody.

14. On 2 November 2006, 16 July 2007 and 2 May 2008 the Prague Municipal Court repeatedly found the applicant company's associates guilty of tax evasion.

15. On 16 March 2007 and 25 January 2008 the Prague High Court (*vrchní soud*) quashed the first two convictions of the two associates, remitting the case to the first-instance court, and eventually acquitted them on 27 February 2009. In its last judgment, which became final on the same day, the appellate court stated:

“... it has not been proved that the events for which the accused are being prosecuted happened. That means that even though the events described most probably happened, it has not been established that they happened in a manner that would justify that a specific act be attributed to the accused, neither separately nor together, and therefore it may not be found that they committed such an act either separately or as accomplices, and it is, hence, not possible to conclude that any of the accused committed an act that could be regarded as a crime specified in the indictment, that is to say, the crime of tax evasion in relation to the seized merchandise and the money transferred.”

16. According to the Government, on 9 June 2009 the presiding judge of the Municipal Court asked the Municipal Prosecutor’s Office to request a decision regarding the pieces of evidence that had been seized from the applicant’s warehouse on Kolbenova Street.

17. Furthermore, in a letter dated 13 August 2009 addressed to the Municipal Court, the OGRPM asked when a decision terminating the custody of the applicant’s seized goods would be made.

18. The Government also stated that on 9 September 2009 the above-mentioned presiding judge had asked the applicant’s corporate agent, who had previously declared that there had also been goods belonging to other companies in the applicant’s warehouse, to identify the applicant’s property within 14 days of receipt of the letter. However, the letter was not served because the addressee was unknown at the address given.

19. By a decision of the Municipal Court of 9 September 2009 the funds seized during the criminal proceedings were deposited in an escrow account of the Prague 2 District Court. Following a complaint by one of the defendants, on 30 March 2010 the High Court quashed that decision, instructing the Municipal Court to reconsider the case and adopt a new decision. The case file in question was returned to the Municipal Court on 3 May 2010.

20. On 22 September 2009 the applicant’s corporate agent stated that “all of the seized goods ... are now the property of FU QUAN, s.r.o.”.

21. By a decision of 17 May 2010 the Municipal Court returned the funds seized in the criminal proceedings to the former defendants, G.G. and J.G.

22. The case file was subsequently sent to the Ministry of Justice for examination of claims for damages raised following the acquittal, and was returned to the Municipal Court on 1 July 2010.

23. On 13 July 2010 the Municipal Court, following a complaint by G.G. and J.G., delivered a new decision concerning the return of the seized goods.

24. On 22 July 2010 the Municipal Court decided to return the seized merchandise to the applicant company, pursuant to Article 80 of the CCP. On 17 August 2010 the decision became final.

25. On 6 September 2010 the seized goods were inspected in the warehouse of the OGRPM. The applicant's corporate agent and the representative of the OGRPM agreed that the goods would be handed back over several days, to be specified in advance by the applicant's corporate agent to the OGRPM. Each day a record of the handover of goods would be drawn up and signed by both parties and would state the number of pallets handed over. The applicant's corporate agent then labelled the pallets with seals and a stamp.

26. Between 14 and 23 September 2010, over a total of six days, the seized goods were handed over to the applicant's corporate agent. As agreed, the handovers were recorded in reports and photographs were taken which, according to the Government, clearly showed that the goods had normally been stored in cardboard boxes wrapped in plastic sheeting or in plastic bags.

II. COMPENSATION PROCEEDINGS

27. On 27 January 2011 the applicant company sought compensation from the Ministry of Justice under the State Liability Act (Act no. 82/1998), claiming CZK 63,294,609 (EUR 2,426,475). It primarily claimed 61,887,364 CZK (2,404,201 EUR) for damage caused by the five-year storage of its merchandise, corresponding to the difference between the original value of the seized merchandise (CZK 62,424,027 – EUR 2,425,082) and the amount obtained by selling part of the merchandise (CZK 536,663 – EUR 20,849). It argued, among other things, as follows:

“By a decision of the presiding judge at the Prague Municipal Court ... of 22 July 2010, it was decided that the merchandise would be returned. Part of it was handed over *in natura*. After taking back the merchandise, we discovered that the returned goods were in a deplorable condition. The merchandise had been seized for five years! The merchandise consisted of clothing, which is highly perishable when stored for a long period of time. Furthermore, after five years, any clothing becomes unsaleable due to changing fashion trends (regardless of the truly catastrophic condition of the merchandise). Our company was able to sell some of the goods, but (because of its condition) for a fraction of the original price.”

The amount sought also included compensation for equipment that had remained at its offices after its managing director had been detained, but which had been stolen because the police had not secured it. The applicant company further argued that the arrest of its managing director and seizure of its financial assets had left it unable to pay its telephone bills, which had led to enforcement action being taken against it. It had also been unable to make its payments under the leasing contract, which had resulted in the imposition of a contractual penalty and to it being unable to acquire ownership of the vehicle.

28. The Ministry dismissed the applicant company's claims on 26 May 2011. With respect to the damage allegedly caused to the seized merchandise, the Ministry stated:

"The Ministry ... is not responsible for the passing of time as such. The alleged depreciation of the merchandise is not in any way substantiated. Nowhere is it said that the merchandise in question could not have been sold by the applicant at a higher price after being returned by the law enforcement authorities or that all the merchandise would have been sold at the alleged price if the managing director had not been prosecuted. Accordingly, this claim appears to be purely speculative and unsubstantiated."

The Ministry further dismissed all the other compensation claims raised by the applicant.

29. On 2 June 2011 the applicant company initiated compensation proceedings before the Prague 2 District Court. With respect to the seized merchandise, it claimed:

"The Ministry completely ignored the [applicant company's] claim for compensation for damage caused in connection with the custody of its managing director and other associate, which completely paralysed the operations of the company."

It then proceeded to reassert the claim it had raised before the Ministry and further added, *inter alia*:

"[The applicant company] considers that the storage of the goods for five years caused damage corresponding to the difference between the original value of the seized merchandise ... and the sale price obtained ...

...

[The applicant company] is not claiming that the Ministry is responsible for 'the passing of time'. [It] is claiming damages for the objective destruction of the seized merchandise which was caused in connection with the exercise of State authority. According to [the applicant company], it is irrelevant whether the merchandise could have been sold for a higher price and it is impossible to prove whether the merchandise would have been sold in real time. [The applicant company] does not accept the conclusion that its claim is speculative. As has already been stated, the merchandise was returned to the [applicant company] following its five-year storage in a totally deplorable condition. This ... was caused by the decision of the criminal justice authority; therefore, the causal link with the damage is established."

30. On 13 December 2011 the applicant company withdrew its claim for CZK 2,782,682.63 (EUR 106,677) corresponding to the amount obtained by selling another part of the merchandise. It appears that the proceedings relating to that part of the claim were discontinued by a decision (*usnesení*) of 28 December 2011.

31. On 28 December 2011 the District Court dismissed the action as unfounded and stated:

"[T]he court concluded, following an assessment of the evidence, that the action was [unfounded]. The preconditions for the State to incur legal liability for damage caused by the exercise of public power by a decision or maladministration are the existence of an unlawful decision or maladministration, damage [suffered by] the injured party and a causal link between the maladministration or unlawful decision and the damage.

In the present case, first and foremost, the court has found that [the applicant company] does not have *locus standi* as a plaintiff, because it was not party to the above-described criminal proceedings initiated in order to prosecute its managing director and associate. [The applicant company] cannot therefore have suffered any damage in connection with the criminal prosecution of its managing director and associate. Such a conclusion was already reached in a judgment of the Supreme Court (*Nejvyšší soud*) of 15 December 2005, no. 25 Cdo 1956/2004, which stated that a company had no right ... to compensation for damage caused by an unlawful decision issued in connection with the criminal prosecution of its managing director ... Therefore, there is no causal link between the damage claimed by [the applicant company] as a plaintiff and the criminal prosecution of its managing director and associate.”

The District Court further dismissed the applicant company’s claims concerning other alleged damage caused in connection with the criminal proceedings of the applicant company’s managing director and associate.

32. On 15 May 2012 the Municipal Court upheld the first-instance judgment. The court examined the issue of whether or not the applicant company had suffered damage as a result of the detention decision and unlawful criminal proceedings concerning its managing director. It held, in particular, that:

“According to the factual description of the action, the applicant [company] seeks compensation for the damage caused to it ‘by the managing director and other partner’s placement in custody’. ... The applicant claims that [because of] the managing director and partner’s placement in custody, its operations were completely paralysed and it was deprived of its effective human potential.

[The applicant company] filed a total of [four] separate claims for compensation, specifying that the alleged damage consisted of: 1. expenses incurred as a result of the non-payment of telecommunications services of CZK 23,245 because of the managing director’s time in custody; 2. the reduced value of the merchandise seized in the criminal proceedings of CZK 61,887,364 (after the partial withdrawal of CZK 59,104,681.37); 3. the theft of office equipment and the disposal of personal belongings as a result of the managing director’s custody of CZK 684,000, and 4. compensation for the unfulfilled vehicle leasing contract owing to the managing director being in custody ...

According to the facts as presented ... it is necessary to legally classify the claimant’s claim (as the claimant itself does, referring to section 33 of the State Liability Act) as a claim for compensation for damage caused by a decision on custody, in other words, caused by an unlawful decision ... Section 9 of the State Liability Act provides that ... a person entitled to compensation for damage [caused by a] detention decision [is] a person [who was detained]. [This] provision provides that a person fully unequivocally and undoubtedly entitled [to compensation] is a person who has been prosecuted in detention, which [may only be the case with] a physical person. Certainly, a company cannot be considered to be a person who has suffered damage caused by pre-trial detention ... It can be concluded that if the pre-trial detention of a particular [individual] is formulated as the reason (the cause of the damage), then it is necessary to consider the claim under section 9 of the State Liability Act as belonging solely and exclusively to that particular [individual].

While the claimant has not asserted that the damage resulted from the unlawful criminal proceedings ... brought against its managing director and associate, the [present] claim ... can also be considered on this basis ... In judicial practice, [it] has already been established that termination of a criminal prosecution or an acquittal ...

has the same consequences as the annulment of an unlawful decision under section 8(1) of the State Liability Act. The person having] legal standing to [bring] such a claim is ‘the party’ in the proceedings in which the unlawful decision was issued. In the present case, there is no doubt that the communication of the charges (unlawful decision) and the acquittal (decision quashing the unlawful decision) concerned physical persons, namely the managing director or partner of [the applicant company], where these individuals were parties to the criminal proceedings. The [applicant company], as a legal person, cannot be regarded as a party to the criminal proceedings, since it has not been prosecuted. It cannot be considered such a person, even taking into account that the individual prosecuted is the sole managing director or partner of a trading company. The individual can therefore be a member, official or statutory representative of various legal entities, and the influence of that person within that legal entity can be absolutely extraordinary, unique or irreplaceable. There is no doubt that in such a case the criminal prosecution of an individual has a fundamental influence or impact on the functioning of a legal person. However, this cannot alter the fact that the injured person under the State Liability Act, [as a result of] an unlawful decision on the communication of the charges, is a person who has been prosecuted; in this case, the managing director or associate of the [applicant company].

...

With respect to the [applicant company’s] claim for the payment of [compensation for] damage resulting from ‘the five-year storage of the merchandise’ which was seized during the criminal proceedings, it has to be further noted that apart from the above-mentioned lack of *locus standi* of [the applicant company], there is no causal link between the unlawful decision on custody or indictment of its managing director or associate and the alleged damage caused in connection with ‘the five-year storage of the merchandise’. ... If the merchandise had been seized... and later returned to the managing director of [the applicant company], it may not be automatically concluded that the State is liable ... for the loss of value of the merchandise caused by the mere passing of time. The mere fact that the proceedings resulted in an acquittal cannot lead to the conclusion that all the acts carried out in the course of those proceedings (such as the seizure of the goods and their return to the representative) constituted an unlawful decision or irregular official conduct (which the claimant has not even argued).”

33. On 15 November 2012 the Supreme Court dismissed an appeal on points of law (*dovolání*) lodged by the company as inadmissible. It stated, *inter alia*:

“When the criminal prosecution of a person is not concluded by a verdict of guilty in a judgment of a criminal court, any claims for compensation for damage caused in connection with the prosecution are to be assessed under the relevant provision on compensation for unlawful decisions ... Under section 7 of the State Liability Act, only a party to the proceedings in which an unlawful decision has been issued has the right to compensation for damage caused by that decision ... It was therefore established in case-law that a company does not have a right to compensation for damage caused by an unlawful decision issued in connection with the criminal prosecution of its managing director ...”

34. On 16 January 2013 the applicant company lodged a constitutional complaint (*ústavní stížnost*), alleging a violation of its right to a fair trial and to the peaceful enjoyment of its possessions.

35. On 26 September 2013 the Constitutional Court (*Ústavní soud*) dismissed the constitutional complaint as manifestly ill-founded, finding

that the courts had duly responded to the objections raised by the applicant company and that their conclusions had not been tainted by arbitrariness.

36. Upon request, the Director General of the OGRPM sent a letter to the Government Agent on 19 February 2016, which stated, *inter alia*:

“[The applicant] company ... began communicating with the Office in respect of the seized [merchandise] following the decision of the Prague Municipal Court ... of 22 July 2010 ... When taking the [merchandise] back, the [applicant] company ... did not claim that it was damaged; on the contrary, it confirmed that the property was in good condition and the merchandise undamaged ... At the same time, the Office considers it appropriate to note that some articles were identified as counterfeit.”

RELEVANT LEGAL FRAMEWORK

I. CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

Article 36

“1. Everyone may assert, through the prescribed procedure, his or her rights before an independent and impartial court or, in specified cases, before another body.

2. Unless a law provides otherwise, a person who claims that his or her rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and freedoms listed in this Charter may not be removed from the jurisdiction of courts.

3. Everybody is entitled to compensation for damage caused by an unlawful decision of a court, other State bodies, or public administrative authorities, or as the result of an incorrect official procedure.

4. Conditions therefor and detailed provisions shall be set by law.”

II. CODE OF CRIMINAL PROCEDURE (ACT NO. 141/1961), AS IN FORCE AT THE MATERIAL TIME

37. The relevant part of the Code of Criminal Procedure (hereinafter “the CCP”) reads as follows:

Article 48

“1. The court or, in preparatory proceedings, the public prosecutor shall [cancel] a seizure [order] if:

- (a) the reason for which it was [granted] ceases to apply;
- (b) the criminal prosecution has been discontinued or has ended in an acquittal;
- (c) four months have elapsed since the judgment convicting the accused became final or since the decision referring the case to another authority came into effect.

2. The seizure [order] must be limited if it is no longer necessary to the same extent.

3. The court or, in preparatory proceedings, the public prosecutor, may, at the request of the accused, authorise the execution of an act in respect of the seized property.

4. The accused has the right to request, at any time, the limitation or cancellation of the ordered seizure; in such cases the court or the public prosecutor shall inform the injured party whose claim has been secured. If the request is dismissed, the accused

may, if no new reasons have been given, only resubmit it after [thirty] days have elapsed since the decision came into effect.”

Article 78 § 1

“Anyone in possession of an item important for criminal proceedings shall present it to the court, the public prosecutor or the police upon request; if it is necessary to secure the item for the purposes of criminal proceedings, he or she shall hand it over to the authorities listed. The person shall be informed in the request that in the event of non-compliance, the article may be seized and other consequences may arise (Article 66).”

Article 79 § 1

“If an important item is not handed over by the person in possession of it upon request, [it] may be seized pursuant to a warrant issued by the president of a chamber of a court or, in preparatory proceedings, pursuant to a warrant issued by the public prosecutor or the police. The police shall, in order to issue such a warrant, seek the prior consent of a public prosecutor.”

Article 80 § 1

“If an item that has been handed over pursuant to Article 78 or seized pursuant to Article 79 is no longer necessary for the purposes of criminal proceedings and there is no prospect of its forfeiture or confiscation, it shall be returned to the person who handed it over or from whom it was seized ...”

Article 147 § 1

“When deciding a complaint, the superior authority shall review:

- (a) the accuracy of the decision at issue against which the complainant may lodge a complaint; and
- (b) the proceedings preceding the decision at issue.”

Article 347

“1. If an accused is prosecuted for a criminal offence for which, given [its] nature and seriousness and the circumstances of the accused, the sentence of confiscation of property may be expected and there is concern that the execution of such a sentence shall be obstructed or made difficult, the court or, in preparatory proceedings, the public prosecutor may seize the property of the accused ...

- 2. A complaint against a seizure order is admissible.”

Article 349¹

“1. The [court] or, in preparatory proceedings, the public prosecutor shall cancel or limit the seizure if the grounds for which the property or specific part were seized have ceased to exist or if the seizure is no longer necessary to the extent ordered.

...

3. Once the [seizure order] becomes final, the accused may request cancellation or limitation of the seizure at any time. The court or, in preparatory proceedings, the prosecutor shall decide the request without delay. If the request is rejected, the accused may not repeat it until [thirty] days after the decision becomes final, unless new reasons are given.

¹ Introduced into the CCP by Act no. 86/2015 with effect from 1 June 2015.

...”

III. ACT NO. 279/2003 ON THE SEIZURE OF PROPERTY AND ITEMS IN CRIMINAL PROCEEDINGS

38. Section 10(1) provides that an administrator must act in accordance with the law in order to prevent depreciation or reduction of the seized property. Under section 10(2), an administrator must properly secure movable property handed over by [or taken from] the accused and protect it from depreciation, in particular damage, destruction, loss, theft or misuse. He or she must also take the action necessary to preserve the value of the items.

IV. STATE LIABILITY ACT (ACT NO. 82/1998)

39. The relevant parts of the State Liability Act read as follows:

Section 5

“The State is liable, under the conditions set out in the Act, for any damage caused by:

- (a) an unlawful decision delivered in civil proceedings, administrative proceedings, proceedings conducted under the Code of Administrative Court Procedure or criminal proceedings;
- (b) irregular official conduct.”

Section 7(1)

“Any party to proceedings in which an unlawful decision has been delivered is entitled to compensation for any damage caused by the unlawful decision.”

Section 8(1)

“Compensation for damage caused by an unlawful decision may only be claimed if the decision in question has been quashed or changed for being unlawful; unless the Act provides otherwise ...”

Section 9(1)

“Anyone who has been held in custody and has suffered damage caused by a decision on such custody may claim compensation for such damage in the event of acquittal, if the criminal proceedings have been discontinued or if the case has been referred to a different authority.”

Section 13

“1. The State is liable for any damage caused by irregular official conduct. Failure to take action or to deliver a decision within a specific time-limit is considered irregular official conduct. If there is no time-limit set for a specific action or decision, failure to take action or to deliver a decision within a reasonable time constitutes irregular official conduct.

2. Anyone who has suffered damage caused by irregular official conduct is entitled to compensation.”

V. CASE-LAW OF THE SUPREME COURT

40. The Supreme Court has held in various decisions (notably nos. 25 Cdo 1956/2004 of 15 December 2005, 30 Cdo 2767/2013 of 26 August 2014 and 30 Cdo 4086/2015 of 8 March 2016) that a claimant lacks *locus standi* in proceedings against the State seeking compensation for damage caused by an unlawful decision delivered in proceedings to which he or she has not been a party.

41. In judgment no. 25 Cdo 356/2003 of 26 May 2004 the Supreme Court noted:

“Where items taken away from the accused within criminal proceedings suffered destruction during storage and could not be returned to a person entitled constitutes incorrect official procedure by a State authority.”

42. In its judgment no. 25 Cdo 2809/2006 of 19 February 2009 the Supreme Court noted:

“The right to compensation belongs to a person who has suffered damage as a result of the incorrect official procedure at any time, regardless of whether he or she was a party to the proceedings.”

43. In decision no. 25 Cdo 1627/2008 of 21 October 2010 the Supreme Court stated that a failure to protect seized items constituted irregular official conduct and that the owners, regardless of whether or not they had been party to the criminal proceedings in a case, could claim compensation from the State.

VI. CASE-LAW OF THE CONSTITUTIONAL COURT

44. In judgment no. I. ÚS 201/01 of 10 October 2001 the Constitutional Court examined a constitutional appeal by a company concerning police interference that had consisted of a search of its registered office and the seizure of documents. The Constitutional Court found a violation of the company’s rights and ordered the police to restore the situation that existed prior to the violation and to return the seized documents. That reasoning was followed by the Constitutional Court in other decisions (for example, nos. II. ÚS 298/05 of 6 October 2005, II. ÚS 362/06 of 1 November 2006, IV. ÚS 3370/10 of 23 February 2012 and II. ÚS 2979/10 of 29 March 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

45. The applicant company complained that it had been paralysed in its operations for about five years and wrongfully deprived of its property owing to the acts of the authorities in the criminal proceedings brought

against its managing director and associate, without having been able to prevent or mitigate the resulting damage to the company. It relied on Article 1 of Protocol No. 1, which provides 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. The parties’ submissions

46. The Government argued that the applicant company had not exhausted domestic remedies as it had never challenged the seizure of its property before the Constitutional Court. Furthermore, the managing director had neither objected to the Municipal Court’s decision of 9 June 2005 by way of a constitutional complaint nor applied to cancel or limit the seizure order under Article 349 § 1 of the CCP. In their additional observations, the Government admitted that at the relevant time, this provision had not existed in the same wording, as the applicant claimed (see paragraph 48 below). Nonetheless, they referred to Article 48 of the CCP which had been in force at the relevant time and to the settled practice, according to which the courts were informed if the seizure was excessive or of a lack of grounds by means of a request filed by the parties to the proceedings, and were consequently obliged to decide on the matter (see *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, 24 February 2011, §§ 16, 45, 50 etc.)

47. In addition, they maintained that in the proceedings for damages, the applicant company had failed to describe the cause of the damage, as required by domestic case-law, and had prevented the domestic courts from assessing whether its claims were well-founded. Moreover, even after the dismissal of the applicant company’s action, it could have brought a new action specifying the cause of the damage. That option had been available to the applicant company for a further four months after the decision in the compensation proceedings had become final.

48. The applicant company submitted that the constitutional complaint had been inaccessible and ineffective and had offered no reasonable prospects of success. It also pointed out that Article 349 § 3 of the CCP, referred to by the Government, as well as Article 349 § 4 of the CCP had not been included in the CCP until 1 June 2015. The applicant company further argued that it had been the task of the courts to consider its claim under the State Liability Act under a different legal provision, but they had failed to do so.

2. *The Court's assessment*

49. The Court reiterates that the purpose of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The State must have a chance to put matters right through its own legal system before having to answer before an international body for its acts. In consequence, complaints intended to be brought subsequently before the Court should first have been made – at least in substance – to the appropriate domestic body (see *Hutten-Czapska v. Poland* (dec.), no. 35014/97, 16 September 2003). Moreover, where there is doubt as to the prospects of success in a particular case, the issue should be submitted to the domestic courts for resolution (see *Horváth and Vadász v. Hungary* (dec.), no. 2351/06, 9 November 2010, with reference to *Roseiro Bento v. Portugal* (dec.), no. 29288/02, ECHR 2004-XII (extracts)).

The Court also reiterates that if more than one potentially effective remedy is available, the applicant is only required to have used one of them (see *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V (extracts); *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-XII (extracts); *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009; and *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). Indeed, when one remedy has been attempted, use of another remedy which has essentially the same purpose is not required (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 84, 24 January 2008; *Kozacioğlu v. Turkey* [GC], no. 2334/03, §§ 40 et seq., 19 February 2009; *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Lagutin and Others v. Russia*, nos. 6228/09 and 4 others, § 75, 24 April 2014; and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019). It is for the applicant to select the remedy that is most appropriate in his or her case (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 110-11, ECHR 2014 (extracts), and *Nicolae Virgiliu Tănase*, cited above, § 176, concerning the choice made by an applicant to join the criminal proceedings as a civil party and not to lodge a separate civil action).

50. Firstly, the Court emphasises that the main object of the present application is not the decision to seize the applicant company's goods; it concerns the impossibility of recovering compensation for damage to merchandise that had lost its value due to its seizure for five years and the passing of time. In order to obtain compensation for damage, the applicant company lodged a claim under the State Liability Act. The Court notes that under this Act, the State is liable for any damage caused by an unlawful decision or irregular official conduct (see paragraph 37 above). As provided for in section 7(1) of the State Liability Act, only the parties to the proceedings which gave rise to a decision causing damage are entitled to compensation for any damage caused by that unlawful decision. Indeed, according to the Supreme Court's case-law, a claimant who was not a party

to proceedings lacks *locus standi* in compensation proceedings against the State if the party argues that the damage was caused by an unlawful decision in the original proceedings. The Supreme Court even gave a ruling on a specific situation of the *locus standi* of a company which had suffered damage as a result of a decision issued in the criminal proceedings involving its managing director, observing that in such cases the company does not have *locus standi* in the compensation proceedings (see paragraph 38 above).

51. In contrast, under section 13(2) of the State Liability Act, anyone is entitled to compensation for damage caused by irregular official conduct. Accordingly, the Supreme Court's case-law indicates that anyone who has suffered damage as a result of irregular official conduct is entitled to compensation and has *locus standi* in compensation proceedings, regardless of whether he or she was a party to the proceedings in which the irregular conduct took place. Therefore, owners of damaged seized items may claim compensation from the State regardless of whether or not they were party to the criminal proceedings (see paragraphs 39-41 above).

52. Turning to the present case, the Court observes that the applicant company lodged an action for compensation for damage caused by the State without specifying whether the damage, in its opinion, had been caused by an unlawful decision or irregular official conduct, the two possible causes provided for by the State Liability Act. Nevertheless, the Court is satisfied that it clearly followed from the action (see paragraph 27 above) that the applicant company claimed damages for depreciation of the merchandise seized by the State in the course of the criminal proceedings caused by the passing of time. It was then up to the domestic courts, applying the principle *Iura novit curia* (the court knows the law), to subsume the facts of the case as described by the applicant company under the appropriate provisions of the State Liability Act in order to deal with the merits of its claims.

53. The Court further observes that the national courts examined and ruled on the applicant company's action to determine the liability of the State without requiring a constitutional complaint concerning the previous decision to seize the goods to be lodged. It is therefore clear that the absence of a decision by the Constitutional Court on the unlawfulness of the seizure of the goods was not a decisive factor for the outcome of the proceedings.

54. Furthermore, the Court doubts the reasonable prospects of success of an incidental constitutional complaint lodged by the applicant company in this matter (contrast *Colloredo Mansfeldová v. Czech Republic* (dec.), no. 14549/05, 4 October 2011). Under Article 147 § 1 of the CCP, a complaint against a decision to seize property in the course of criminal proceedings provides those whose property has been seized with the possibility of contesting the lawfulness of the decision. Its aim is not, therefore, to prevent damage that may occur to the seized property while in possession of the State or to compensate for the damage already sustained as a result of a prolonged seizure. However, the applicant did not seek compensation for the unlawful seizure of the merchandise, but for damage

caused by the passing of the time that occurred to it while in possession of the State. The Court thus observes that a constitutional complaint against the dismissal of the applicant company's complaint against the decision to seize the merchandise did not offer reasonable prospects of success as it is not contested that the seizure itself was lawful. In the circumstances of the present case, the Court considers that proceedings before the Constitutional Court cannot be regarded as an effective remedy (see *Vomočil and Art 38, a.s. v. the Czech Republic* (dec.), § 48, with further references).

55. Turning to the possibility of seeking a cancellation or limitation of a seizure order under Article 48 § 1 of the CCP, the Court observes that such a right belongs exclusively to the accused. Even though in the present case both accused were closely connected to the applicant company, being its managing director and associate, the Court observes that the applicant company itself had no right, under domestic law, to seek a cancellation or limitation of the seizure order (see paragraph 37 above).

56. Furthermore, Article 80 § 1 of the CCP requires the State to return to a person from whom an item has been seized anything that is no longer necessary for the purposes of the criminal proceedings where there is no prospect of its forfeiture or confiscation (see paragraph 37 above). Thus, it is primarily the State's duty to return any seized items where the need to hold them ceased to exist and limiting the interference with the property rights to the extent strictly necessary.

57. In view of the above, the Court is satisfied that the applicant company did all that could be reasonably expected of it to exhaust the available domestic remedies, as required by Article 35 § 1 of the Convention. The Government's objection must therefore be rejected.

58. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

59. The applicant company claimed that it had been unlawfully deprived of its property owing to the unlawful prosecution of its only two associates who, having been held in custody for two years, had been adversely affected and "paralysed" in their activities.

60. The applicant company did not share the Government's opinion, who argued that the complaint was not legitimate. In reply to their observations (see paragraphs 63-64 below), the applicant company stressed that the seized goods had basically been its only property of value and that the seizure had therefore imposed an excessive burden on it. It further claimed that the national authorities had had an obligation to immediately return the seized goods after the final judgment on acquittal had been

issued, but had failed to do so in a timely manner. Admitting that its representative had not objected to the deplorable condition of the seized goods during the handing over, the applicant company noted, however, that owing to the packaging of the goods, it had been impossible to verify their condition at that very moment.

61. The applicant company argued that all the relevant facts about the cause of the damage, its amount and the causal link had been described. The issue of the required entitlement under some statutory authority – according to Act No. 82/1998 – was a purely legal one. Therefore, if the courts had viewed the asserted claim at least somewhat objectively, the facts could and should have been assessed in the light of the legal provisions regarding the incorrect official procedure (under section 13 of Act no. 82/1998) and not under sections 7 and 9 of this Act. According to the Government, compensation would be available in such a case.

62. According to the applicant company, all the domestic courts construed its asserted claim in an excessively formalistic manner so that the case could instead be rejected for procedural and legal reasons, in particular for the applicant company's allegedly not having *locus standi*. It argued that the extremely formalistic to restrictive interpretation of the relevant provisions of Act no. 82/1998 had led to a complete inability to obtain judicial protection of the rights not *de facto* admitted by the domestic decisions in the proceedings for damages in respect of damage caused in the exercise of public authority, and that it could not settle the "injustice" indirectly caused to its members. In addition, the fact remained that the seized goods had only depreciated owing to the passage of time, which was in sharp contrast to section 10(1) and (2) of Act no. 279/2003.

63. The Government admitted that the interference with the applicant company's right to the peaceful enjoyment of its possessions had occurred as a result of the seizure of its property. They stressed however that the property had been seized pursuant to a decision of the Municipal Prosecutor's Office under Article 347 § 1 of the CCP, and that the Czech legal order provided the applicant company with a sufficient degree of protection from arbitrariness. The Government noted that the applicant company's goods had been seized because they had been suspected to have come from criminal activity. The aim of the seizure had been to prevent – given the personal situation of the two prosecuted associates and their strong connections with the People's Republic of China – the property being transferred to China. In the Government's view, it could not be disputed that in the present case the interference had had a legal basis and that at the same time there had been a general interest in combatting and preventing serious forms of economic crime.

64. The Government further noted that the interference in question had been limited to the minimum extent necessary and that therefore no disproportionate burden had been imposed on the applicant company. As to the duration of the seizure of the property in question, the Government

stated that it was logical that the seizure had persisted throughout the criminal proceedings because the underlying reasons had lasted throughout that time. Moreover, the duration of the criminal proceedings in the present case could not be considered *a priori* unreasonable. The Government further stressed that although the prosecution had ended in an acquittal the criminal proceedings had been justified and conducted in a lawful way. Moreover, even the period from the acquittal to the decision to return the seized goods on 22 July 2010 could not be considered to be an unjustified delay. They also pointed out that the applicant company's managing director and associate could have requested the return of goods at any time during the criminal proceedings, and especially after the delivery of the judgment of acquittal. However, neither had made use of that opportunity.

2. *The Court's assessment*

(a) **Applicable general principles**

65. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01 § 62, ECHR 2007-I, *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108; *Hábenczius v. Hungary*, no. 44473/06, § 27, 21 October 2014 and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 217, ECHR 2015).

66. A seizure of property for legal proceedings normally relates to the control of the use of property, which falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A; *Patrikova v. Bulgaria*, no. 71835/01, § 81, 4 March 2010; *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, § 117, 5 November 2013; *Hábenczius*, cited above, § 28; *Džinić v. Croatia*, no. 38359/13, § 62, 17 May 2016; *Lachikhina v. Russia*, no. 38783/07, § 58, 10 October 2017; and *Adamczyk v. Poland* (dec.), no. 28551/04, 7 November 2006; contrast *Waldemar Nowakowski v. Poland*, no. 55167/11, § 46, 24 July 2012).

67. In order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be

proportionate, that is, it must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *Zammit and Attard Cassar v. Malta*, no. 1046/12, § 47, 30 July 2015). The requisite balance will not be struck if the person or persons concerned have had to bear an individual and excessive burden (see *James and Others, v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98; *Schirmer v. Poland*, no. 68880/01, § 35, 21 September 2004; *Wieczorek v. Poland*, no. 18176/05, § 59-60, 8 December 2009; and *Hábenczius*, cited above, § 29; compare and contrast *Ian Edgar (Liverpool) Limited v. the United Kingdom* (dec.), no. 37683/97, 25 January 2000).

68. The application of provisional measures in the context of judicial proceedings, aimed at anticipating a possible confiscation of property, has already been held to be in the “general interest” of the community (see, for example, *Borzhonov v. Russia*, no. 18274/04, § 58, 22 January 2009, and the cases cited therein; *East West Alliance Limited v. Ukraine*, no. 19336/04, § 187, 23 January 2014; and *Džinić*, cited above, § 65).

69. Furthermore, as the Court has previously found on a number of occasions, when assessing whether a seizure of property was lawful, regard must be had not only to whether the original decision to seize the property was in accordance with domestic law, but also to the subsequent actions of the domestic authorities. The Court has thus previously found a violation of Article 1 of the Protocol No. 1 in a situation where the domestic authorities failed to comply with the national law concerning the obligations the State had when handling the seized property (see *Metalco Bt. v. Hungary*, no. 34976/05, § 17, 1 February 2011), where the length of time for which the property had been seized seemed unjustifiable in the circumstances of the case at issue (see *Patrikova v. Bulgaria*, no. 71835/01, § 98, 4 March 2010), and where the national authorities had failed to comply with a final domestic court decision ordering the return of its merchandise, which had been seized as evidence in criminal proceedings (see *Stolkowski v. Poland*, no. 58795/15, §§ 81-82, 21 December 2021).

(b) Application of the above principles to the present case

70. Turning to the present case, the Court observes that the applicant company’s property was seized pursuant to a decision of the Municipal Prosecutor’s Office under Article 347 § 1 of the CCP. The seizure was ordered upon a strong suspicion that the seized goods were connected to the serious economic criminal activity with which the managing director and associate of the applicant company had been charged and in order to prevent the property being transferred to the People’s Republic of China in the event of them being convicted (see paragraph 10 above). The applicant company’s complaint concerns the manner in which the seized merchandise was handled during the criminal proceedings brought against its managing

director and associate, and the resulting damage after its protracted storage. Thus, the interference with property rights in the present case can be examined as a measure for securing physical evidence in ongoing criminal proceedings (see *Avendi OOD v. Bulgaria*, no. 48786/09, § 65, with further references, 4 June 2020).

71. The domestic authorities duly explained that the applicant company and the accused both had strong connections to the People's Republic of China. The Court therefore accepts that the original decision to seize the applicant's merchandise was in accordance with domestic law.

72. However, the Court finds that the aforesaid legal basis provided for in Article 347 of the CCP for the measure concerned ceased to be relevant after the acquittal of the applicant company's managing director and associate on 27 February 2009 (see paragraph 13 above). The criminal proceedings themselves lasted a considerably long time and the Municipal Court did not decide to return the merchandise to the applicant company until 22 July 2010, that is to say one year and four months later (see paragraphs 22 above).

73. Admittedly, the Czech authorities took a few procedural steps with regard to the return of the seized merchandise (see paragraphs 14-16 above). However, despite those actions, the Court finds it difficult to accept that the domestic authorities gave sufficiently plausible explanation for the protracted return of the goods to the applicant company after the judgment on acquittal became final.

74. The Court acknowledges the importance of the investigation of suspected serious economic crimes, as in the instant case. Nevertheless, it is not persuaded that any justifiable reasons existed to retain the applicant company's merchandise for almost a year and a half after the criminal proceedings ended by a judgment of acquittal.

75. The foregoing considerations are sufficient for the Court to conclude that the retention of the merchandise after 27 February 2009 constituted an unlawful interference with the applicant company's property rights. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

76. The applicant company further complained under Article 6 § 1 and Article 13 of the Convention of an excessively formalistic and restrictive interpretation of the relevant provisions of the State Liability Act, as a result of which the domestic courts had denied it any access to a court regarding its claims for compensation for damage caused by the State in the exercise of public authority, which had failed to protect the seized merchandise.

77. However, having regard to the facts of the case, the submissions of the parties and its findings under Article 1 of Protocol No. 1 to the Convention, the Court considers that it has examined the main legal

questions raised in the present application and that there is no need to give a separate ruling on the remaining complaints (see, among other authorities, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *The Argeş College of Legal Advisers v. Romania*, no. 2162/05, § 47, 8 March 2011; *Women On Waves and Others v. Portugal*, no. 31276/05, § 47, 3 February 2009; *Velcea and Mazăre v. Romania*, no. 64301/01, § 138, 1 December 2009; *Villa v. Italy*, no. 19675/06, § 55, 20 April 2010; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 72, ECHR 2012; and *Mehmet Hatip Dicle v. Turkey*, no. 9858/04, § 41, 15 October 2013; see also *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 210-11, ECHR 2009; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. Article 41 of the Convention provides:

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

79. The applicant company claimed that it had suffered pecuniary damage amounting to 59,104,681 Czech korunas (CZK) owing to the five-year seizure of its goods. It claimed a further CZK 23,245 and CZK 700,000 on account of the managing director’s inability to pay the applicant company’s phone bills and to ensure payments stemming from a lease contract while in custody, and a further CZK 684,000 for the valuables left on its premises without any security. In support of its claims, the applicant company submitted various documents, including the expert opinion of 15 August 2005, commercial invoices and invoices (*faktura – daňový doklad*), motion for an enforcement order and for appointment of a judicial enforcement officer (*návrh na nařízení exekuce a na pověření soudního exekutora provedením exekuce*) issued by Telefónica O² Czech Republic, a.s. on 18 January 2010, the enforcement order appointing the judicial enforcement officer delivered by the Prague 4 District Court on 24 February 2010, the notice to fulfil enforceable obligation (*výzva ke splnění vymáhané povinnosti*) issued by the judicial enforcement officer on 30 March 2010, the order for payment of execution costs (*příkaz k úhradě nákladů exekuce*) of 28 December 2010 and the payment order (*příkaz k úhradě*) dated 23 December 2010, concerning telecommunication services, the financial leasing contract (*smlouva o finančním leasingu*) with the ŠkoFIN and the record of car reception (*protokol o převzetí motorového vozidla*) of August 2002, the police decision issued on 21 November 2005 concerning the return of the car to the applicant company and documents regarding the financial settlement with the ŠkoFIN dated 6 April 2006. The applicant company did not submit a claim for non-pecuniary damage or costs and expenses.

80. The Government claimed that the applicant company had failed to prove that any actual damage had been caused. They further noted that since the applicant company had not submitted any claim in respect of non-pecuniary damage or costs and expenses, no award in respect of non-pecuniary damage or redress should be made.

81. In the present case, the Court found a violation of Article 1 of Protocol No. 1 to the Convention. However, it is unable to establish the precise extent to which the violation it has found affected the applicant company's property rights, having regard, in particular, to the specific background of the instant case and the absence of a comparable commercial situation on the Czech market. Without speculating on the profits which the applicant company would have received if the violation of the Convention had not occurred, the Court considers that the company certainly suffered a real loss of opportunities. In these specific circumstances, the Court finds it appropriate to award a lump sum in compensation for the loss of value of the seized property. It must also take into account the fact that the applicant company was able to market the seized merchandise after its return only in part, and that it did not receive any compensation at the domestic level in respect of the period concerned (see paragraphs 25-33 and 73 above).

82. Having regard to all the above factors, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant company an aggregate sum of CZK 12,000,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;
2. *Holds*, by 5 votes to 2, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*, by 5 votes to 2, that it is not necessary to examine the complaint under Article 6 § 1 and Article 13 of the Convention;
4. *Holds*, by 5 votes to 2,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, CZK 12,000,000 (twelve million Czech korunas), plus any tax that may be chargeable on that amount, in respect of pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 17 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Krzysztof Wojtyczek
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Koskelo and Eicke is annexed to this judgment.

K.W.
R.D.

JOINT DISSENTING OPINION OF JUDGES KOSKELO AND EICKE

1. We have regrettably been unable to agree with the majority in this case. In our opinion, the application is clearly inadmissible owing to a failure to exhaust domestic remedies in so far as the complaint raised under Article 1 of Protocol No. 1 is concerned. As to the complaints under Articles 6 and 13, they are in our opinion inadmissible on the grounds of being manifestly ill-founded.

I. COMPLAINT RAISED UNDER ARTICLE 1 OF PROTOCOL NO. 1

2. At the outset, we are compelled to note that the description of the applicant's complaint in the judgment is confused and contradictory; with at least four different characterisations of the complaint being formulated. Initially, at paragraph 43 of the judgment, which begins the Court's examination of the case, the applicant company's complaint is described as being that "it had been paralysed in its operations for about five years and wrongfully deprived of its property owing to the acts of the authorities in the criminal proceedings brought against its managing director and associate". Thereafter, at paragraph 48, which addresses the admissibility of the complaint, the main object of the application is described as the "impossibility of recovering compensation for damage to the merchandise that had lost its value due to its seizure and the passing of time". At paragraph 57, which introduces the examination of the merits, the applicant company's complaint is characterised as being that it had been "unlawfully deprived of its property owing to the unlawful prosecution of its only two associates who, having been held in custody for two years, had been adversely affected and 'paralysed' in their activities". Finally, in the context of the assessment of the merits, it is suggested, in paragraph 68, that the complaint concerns the "manner in which the seized merchandise was handled during the criminal proceedings brought against its managing director and associate, and the resulting damage after its protracted storage".

3. In our view, such discrepancy and confusion are not acceptable in the context of any court of law examining an application before it. In fact, it is evident that this obfuscation and failure to identify clearly the nature of the complaint is a key reason underlying the untenable conclusions reached by the majority.

4. It is also evident, on the material before the Court, that it was the failure by the applicant company to identify properly or accurately the grounds on which it applied to the domestic courts which is at the root of its failure to obtain redress at the domestic level.

5. As a consequence, it therefore seems clear to us that the applicant company had not properly exhausted the available domestic remedies.

6. After all, while it is quite clear under the relevant domestic law that there was no "impossibility" for the company to recover compensation for

damage caused to the seized goods, to the extent that such damage arose from “irregular conduct” by the authorities in the manner in which that merchandise was handled by them, the applicant company had failed to claim compensation on these grounds at the domestic level. This is the reason why the company was unsuccessful in the domestic proceedings brought by it. The claims that had been brought were doomed to fail because the decisive factual basis relied upon was mistaken.

7. More specifically, according to the uncontradicted statement of facts by the Government, the applicant company’s action for damages was based on the claim that it, the applicant company, had incurred damage in consequence of the *detention of its corporate agent*, which in turn paralysed its operations; an outcome suggested to have been “caused by a prosecuting authority’s decision”. Such action would have been based on sections 5(a), 7 and 9 of the State Liability Act and its applicability was “confirmed” by the applicant company’s reliance on section 33 of that Act. However, this action failed because, as stated by the Supreme Court, the company did not have *locus standi* to sue the State for compensation relating to damage caused by the detention of its corporate agent and member or for compensation relating to damage caused by their criminal prosecution; after all, it had neither been detained nor charged.

8. By contrast, it is – and was at the material time – clear under domestic law that the company would have had a claim for compensation arising from *damage caused to its property that was seized* in the course of criminal proceedings where such damage arose from “irregular official conduct” in relation to that property. Such an action would have to have been brought, as far as we understand it, under or by reference to section 5(b) and 13 of the State Liability Act. The company, however, never advanced such a claim, neither at the outset nor, after having been unsuccessful at first instance (see paragraph 29), on appeal.

9. In the context, we both recall and emphasise that is a fundamental principle of civil procedure that the plaintiff must present the *decisive facts* on which the claim is based. This is also clearly stated in the Czech Code of Civil Procedure, Article 79 § 1, according to which the plaintiff must explain the decisive facts underlying the claim.

10. Furthermore, it is important to note that this basic requirement has nothing to do with the principle of “*iura novit curia*”. In particular, it is not enough for the “decisive facts” to appear somewhere in the case file, they must be presented by the plaintiff when submitting the factual grounds for the claim with a view to establishing the appropriate cause of action.

11. In the present circumstances, it was incumbent on the applicant company to specify the facts which allegedly constituted the “irregular official conduct” in relation to the seized goods that belonged to it. Clearly, neither the detention of the two associates and the prosecutor’s decision to bring charges, nor the seizure of the goods, were as such capable of constituting “irregular official conduct” in this sense. It is also clear that the civil courts were only called upon, and procedurally permitted, to examine

the claims on the factual grounds relied upon by the company. Those courts cannot depart from their role as impartial adjudicators of cases brought before them and assume the role of legal assistants of one party to the proceedings for the purpose of amending their claims with a view to improving their chances of success.

12. Having only claimed compensation for damage allegedly incurred in consequence of the detention and/or criminal prosecution of its corporate agent and associate, the company in our view plainly failed to use the proper remedy that was available to it with a view to obtaining compensation for any damage incurred as result of any “irregular official conduct” in relation to the seized goods. This was a strategic procedural error which could not have been remedied by the domestic courts. In this respect, the latter were not “excessively formalistic” but merely adhered to the fundamentals of civil procedure, as they must.

13. Consequently, this is not a situation where the remedy used was merely an alternative “potentially effective” remedy. As domestic law stood, the claim as brought, on the grounds that were relied upon, was clearly doomed to fail from the outset. At the same time, the clearly available remedy, described by the majority as merely “potentially effective”, was not used by the applicant company.

14. This point is very important, not only within the context of domestic proceedings but with a view to the Convention proceedings as well. The requirement to exhaust domestic remedies is a cornerstone of the system, which would be fundamentally distorted if an applicant were allowed to skip the available domestic remedy that corresponds to his or her actual claim and subsequently turn to this Court at first instance to obtain redress for the claim that he or she failed to bring domestically. Unfortunately, this is what the majority have allowed to occur in the present case.

15. We regret that by proceeding in this manner the majority have set aside the need to ensure equal treatment of applicants before the Court. The duty to exhaust domestic remedies must be applied consistently to all applicants. No selective approach in this regard can be justified.

16. As already stated, we consider that for the above reasons, the complaint under Article 1 of Protocol No. 1 should have been declared inadmissible owing to the applicant company’s failure to exhaust the available domestic remedies.

17. Consequently, given that the majority decided to examine the complaint on the merits, we voted against the finding of a violation of Article 1 of Protocol No. 1, and also against the award for pecuniary damage claimed by the applicant before the Court.

II. COMPLAINTS RAISED UNDER ARTICLE 6 § 1 AND ARTICLE 13

18. The majority, having declared the application admissible and having found a violation of Article 1 of Protocol No. 1, held that it was not necessary to examine the complaints under Article 6 § 1 and Article 13. For

our part, we consider that the latter complaints were inadmissible on the grounds of being manifestly ill-founded and we therefore voted against admissibility in respect of the entire application.

19. Under Article 6 § 1 and Article 13, the applicant company complained of an excessively formalistic and restrictive interpretation by the domestic courts of the relevant provisions of the State Liability Act. It claimed that, as a result, the domestic courts had denied it any access to a court regarding its claims for compensation for damage caused by the State in the exercise of public authority, resulting in a failure to protect the seized merchandise.

20. We find these complaints manifestly ill-founded for essentially the same reasons as those set out above in relation to the applicant company's failure to exhaust the available domestic remedies. In the present case, there was no excessively formalistic or restrictive interpretation by the domestic courts of the relevant provisions of national law. Instead, there was a failure on the part of the applicant company and its representatives to correctly set out the decisive facts in relation to the applicable cause of action, on the basis of which it wished to claim, and was entitled to claim, damages for the alleged failure of the competent authorities to ensure the proper care and timely return of the seized goods. The circumstances of the case raised no issue under Article 6 § 1 or under Article 13.