



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

## GRAND CHAMBER

### CASE OF FU QUAN, s.r.o. v. THE CZECH REPUBLIC

*(Application no. 24827/14)*

## JUDGMENT

Art 6 § 1 (civil) • Access to court • Domestic courts' failure to examine merits of claim, subsuming case facts under relevant law provision by means of principle of *jura novit curia*, in absence of appropriate arguments from claimant • No excessive formalism

Art 1 P1 • Control of use of property • Company's omission to duly raise before domestic courts complaints of authorities' failure to take good care of its seized property and undue delay in lifting seizure • Art 1 P1 inapplicable to company's compensation claim – based on unwarranted prosecution and detention of its managing director and associate – for lack of sufficient basis in domestic law

STRASBOURG

1 June 2023

*This judgment is final but it 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, sitting as a Grand Chamber composed of:

Síofra O’Leary,  
Georges Ravarani,  
Marko Bošnjak,  
Gabriele Kucsko-Stadlmayer,  
Pere Pastor Vilanova,  
Arnfinn Bårdsen,  
Branko Lubarda,  
Mārtiņš Mits,  
Jovan Ilievski,  
Péter Paczolay,  
Lado Chanturia,  
María Elósegui,  
Darian Pavli,  
Ioannis Ktistakis,  
Frédéric Krenc,  
Mykola Gnatovskyy, *judges*,  
Pavel Simon, *ad hoc judge*,

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 3 May 2023,

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

**PROCEDURE**

1. The case originated in an 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 Fu Quan, s.r.o. (“the applicant company”), a commercial company incorporated under Czech law, on 25 March 2014.

2. The applicant company was represented before the Chamber by Mr J. Stránský, and before the Grand Chamber by Mr D. Hlaváč, both lawyers practising in Prague with the law firm Stránský & Partneři.

3. The Czech Government (“the Government”) were represented before the Chamber by their Agent at the time, Mr V.A. Schorm, and before the Grand Chamber by his successor in that position, Mr P. Konůpka, both of the Ministry of Justice.

4. The applicant company alleged, in particular, that it had been denied access to a court on account of a formalistic and restrictive interpretation of the national law by the domestic courts. The applicant company also alleged that it had sustained damage on account of the seizure of its property in the criminal proceedings against its managing director and its other member, who were eventually acquitted, and of their detention pending trial. It relied on

Article 6 § 1 and Article 13 of the Convention and on Article 1 of Protocol No. 1 thereto.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 15 December 2015 the Government were given notice of the application. The parties exchanged observations on the admissibility and merits of the application.

6. On 17 March 2022 a Chamber of that Section, composed of Krzysztof Wojtyczek, President, Armen Harutyunyan, Pauliine Koskelo, Tim Eicke, Linos-Alexandre Sicilianos, Ksenija Turković, Aleš Pejchal, judges, and Renata Degener, Section Registrar, delivered its judgment. The Chamber, by a majority, declared the application admissible and held, by five votes to two, that there had been a violation of Article 1 of Protocol No. 1 to the Convention and that it was not necessary to examine the complaint under Article 6 § 1 and Article 13 of the Convention. Judges Koskelo and Eicke expressed a joint dissenting opinion.

7. On 17 June 2022 the Government requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 5 September 2022 the panel of the Grand Chamber granted the request.

8. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

9. As Kateřina Šimáčková, the judge elected in respect of the Czech Republic, withdrew from sitting in the case (Rule 28 § 3), the President of the Grand Chamber decided to appoint Pavel Simon to sit as an *ad hoc* judge both in this case and in *Grosam v. the Czech Republic*, no. 19750/13 (Article 26 § 4 of the Convention and Rule 71 § 1 and Rule 29 § 1), which were to be examined simultaneously (Rule 71 § 1 and Rule 42 § 2).

10. On 14 October 2022 the President, after consulting the parties, decided not to hold a hearing (Rule 71 § 2 and Rule 59 § 3 *in fine*).

11. The applicant company and the Government each filed written observations on admissibility and the merits. The parties did not reply to each other's observations.

12. In addition, third-party comments were received from the Slovenian and Polish Governments, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 71 § 1 and Rule 44 § 3). The parties did not reply to those comments (Rule 71 § 1 and Rule 44 § 6).

## THE FACTS

13. The applicant company, Fu Quan, s.r.o., is a limited liability company incorporated under Czech law with its registered office in Prague.

## I. THE CRIMINAL PROCEEDINGS

14. On 25 April 2005 the applicant company's only two members (*společník*), one of whom was also the company's 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.

15. On 27 April 2005 the Prague municipal prosecutor's office (*městské státní zastupitelství*) ordered, under Article 347 § 1 of the Code of Criminal Procedure (see paragraph 57 below), the seizure of property belonging to the applicant company, including merchandise (clothing) and a vehicle leased under a leasing contract. It prohibited the accused company members from disposing of the seized property unless such action aimed to prevent an imminent risk of damage. The merchandise was seized between 2 May and 27 June 2005. 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.

16. According to an expert report of 15 August 2005, commissioned by the police, the value of the seized merchandise was 62,424,027 Czech korunas (CZK) (2,116,218 euros (EUR) at that time). The report stated that some of the clothes showed signs of damage due to long-term storage and that they were faded and out of fashion. The expert who prepared the report later added, for the purposes of the criminal proceedings against the applicant company's members, that when preparing her report, she had physically examined all the merchandise and that “a large part of the goods were of very poor quality, damaged, the boxes had been eaten through by mice, many of the clothes were faded and wrinkled”.

17. The applicant company's two members, 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 members did not have any family or social ties or immovable property in the Czech Republic and maintained regular contact with his family in China, and that the second member also had strong ties with China and did not even have a valid residence permit in the Czech Republic. It went on to conclude that, in view of their connections with China, of which country they were nationals, and having regard to their criminal conduct in question, there was a suspicion that they would try to prevent execution of a possible future sentence of confiscation of property by transferring the applicant company's property to China.

18. On 14 November 2005 the police returned to the accused company members 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 likelihood of their

forfeiture or confiscation. On 21 November 2005 the leased car (see paragraph 15 above) was returned to the leasing company.

19. On 12 April 2006 the municipal prosecutor's office indicted the two company members.

20. On 16 March 2007, during the trial, the two accused company members were released from custody.

21. By judgments of 2 November 2006 and 16 July 2007 respectively, the Prague Municipal Court found the applicant company's members guilty of tax evasion. However, those judgments were quashed on appeal by the Prague High Court (*vrchní soud*) on 16 March 2007 and 25 January 2008 respectively, and the case was remitted to the first-instance court.

22. By a judgment of 2 May 2008, the Prague Municipal Court found the accused guilty for the third time.

23. By a judgment of 27 February 2009, which became final on the same day, the Prague High Court acquitted the accused. It held as follows:

“[I]t has not been proved that the events for which the accused are being prosecuted actually 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, either separately or together, and therefore it may not be found that they committed such an act either separately or as accomplices. Hence, it is not possible to conclude that either of the accused committed an act that could be regarded as the crime specified in the indictment, that is to say, the crime of tax evasion in relation to the seized merchandise and the money transferred.”

## II. THE RETURN OF THE SEIZED PROPERTY

24. On 9 June 2009 the Municipal Court asked the municipal prosecutor's office to propose a decision regarding the seized property.

### A. The seized funds

25. By a decision of the Municipal Court of 9 September 2009, the funds seized during the criminal proceedings were deposited in an escrow account. Following a complaint by one of the applicant company's members, on 30 March 2010 the High Court quashed that decision and remitted the case.

26. In the fresh proceedings, by a decision of 17 May 2010, the Municipal Court returned the seized funds to the applicant company.

### B. The seized merchandise

27. Meanwhile, in a letter of 13 August 2009, the OGRPM asked the Municipal Court when a decision terminating the seizure of the applicant company's merchandise would be made.

28. On 9 September 2009 the Municipal Court asked the applicant company's managing director, who had previously stated that in the

company's warehouse there had also been merchandise belonging to other companies, to identify his company's property within fourteen days of receipt of the letter. However, the letter was not served because the addressee could not be found at the address indicated in the letter, the reason being that the applicant company had changed the address of its registered office at around that time.

29. On 22 September 2009 the applicant company's managing director stated that all the seized merchandise belonged to the applicant company.

30. The case file was subsequently sent to the Ministry of Justice for examination of the company's compensation claims (see paragraphs 36-49 below), and was returned to the Municipal Court on 1 July 2010.

31. By a decision of 22 July 2010, the Municipal Court decided to return the seized merchandise to the applicant company, pursuant to Article 80 of the Code of Criminal Procedure (see paragraph 57 below). That decision became final on 17 August 2010.

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

33. Between 14 and 23 September 2010, over a total of six days, the seized merchandise was handed over to the applicant company's managing director. As agreed, the handovers were recorded in reports and photographs were taken which, according to the Government, clearly showed that the merchandise had been stored in the normal way, in cardboard boxes wrapped in plastic sheeting or in plastic bags.

34. Following a 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 that the merchandise was undamaged ... At the same time, the Office considers it appropriate to note that some articles were identified as counterfeit."

### III. THE COMPENSATION PROCEEDINGS

#### **A. Compensation sought by the applicant company's managing director**

35. On 13 December 2010 the applicant company's managing director sought compensation from the Ministry of Justice under the State Liability

Act (see paragraph 59 below) for damage in the form of loss of earnings, which was granted on 26 May 2011. He was awarded CZK 116,960 (EUR 4,754 at that time) in compensation for the 690 days he had spent in custody (that is, an amount of CZK 170 per day pursuant to the State Liability Act).

## **B. Compensation sought by the applicant company**

36. Meanwhile, on 27 January 2011 the applicant company sought CZK 63,294,609 (EUR 2,613,599) from the Ministry of Justice as compensation for the damage caused by the detention of its managing director, who had eventually been acquitted. It relied on the State Liability Act (see paragraphs 59-64 below) because it considered that the damage had been caused in the exercise of public authority. The only provision the applicant company referred to was section 14 of that Act (see paragraph 60 below).

37. The applicant company's principal claim, amounting to CZK 61,887,364 (EUR 2,555,490 at the time), concerned the loss of value of its merchandise caused by the five-year storage. That sum corresponded to the difference between the original value of the seized merchandise (CZK 62,424,027), as established by the expert (see paragraph 16 above), and the amount the applicant company had obtained by selling a part of the merchandise (CZK 536,663). In respect of that part of its compensation claim, the applicant company argued, among other things, as follows:

“By a decision of ... the Prague Municipal Court ... of 22 July 2010, it was decided that the merchandise would be returned. ... After taking it back, we discovered that the returned merchandise was in a deplorable condition. The seizure of the merchandise lasted five years! These were clothes, that is to say, goods whose condition deteriorates considerably with prolonged storage. Furthermore, after five years, any clothing becomes practically unsaleable due to changing fashion trends (leaving aside the truly catastrophic actual condition (*katastrofální faktický stav*) of the merchandise). Our company was able to sell off a part of the merchandise, but (because of its condition) only for a fraction of its original value.”

38. The remaining claims of the applicant company concerned 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 the seizure of its financial assets had left it unable to pay its telephone bills, which had led to enforcement proceedings being instituted against it, resulting, eventually, in the payment of default interest and of the costs of the enforcement proceedings to the telecommunications company as the enforcement creditor. 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 the company being unable to acquire ownership of the leased vehicle.

39. On 26 May 2011 the Ministry issued an opinion refusing the applicant company's claims. The relevant parts of that opinion read as follows:

**OPINION**

“[W]ith regard to the awarding of compensation for an unlawful decision pursuant to [the State Liability Act].

...

Based on its content, the Ministry of Justice considers [the applicant company's] submission to be a claim under [the State Liability Act] for damage caused in the exercise of public authority by a decision or irregular official conduct ...

**Assessment of the case**

Under [the State Liability Act], the conditions for establishing the State's liability for damage are:

- (1) the existence of a ground for liability (an unlawful decision or irregular official conduct);
- (2) the occurrence of damage;
- (3) the existence of a causal link between the ground for liability and the occurrence of damage. All of these conditions must be fulfilled together in order for the State to be held liable for the damage and for compensation to be awarded.

In its assessment of the claim, the Ministry considered all the conditions for the establishment of liability. A ground for liability was found to exist, as an unlawful decision had been rendered in the proceedings. However, the other conditions for establishing the State's liability were not found to be present.

...

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 stated that the merchandise in question could not have been sold by the claimant at a higher price after it was returned by the law-enforcement authorities or that the claimant would have sold all the merchandise at the alleged price if the managing director had not been prosecuted. Accordingly, this claim appears to be purely speculative and unsubstantiated.”

40. The Ministry also dismissed the applicant company's remaining claims (see paragraph 38 above).

41. On 2 June 2011 the applicant company brought a civil action against the State before the Prague 2 District Court, seeking compensation for the damage sustained on account of the detention of its managing director and other member, who had eventually been acquitted. It again relied on the State Liability Act (see paragraphs 59-64 below) but this time the provisions it referred to were sections 15(2), 33 and 35 of that Act (see paragraphs 61 and 63-64 below). The relevant parts of the applicant company's civil action read as follows:

**I.**

**Facts establishing entitlement to compensation for damage**

“[T]he Ministry of Justice completely ignored the [applicant company’s] claim for compensation for the damage sustained in connection with the custody of its managing director and other member, which completely paralysed the operations of the company. Not only were the plaintiff’s members deprived of their liberty, but almost all the plaintiff’s stored merchandise was seized, along with substantial sums of money found at the company’s registered office and during searches of the homes of the persons concerned. All the plaintiff’s accounting records and documents required for its operation were seized, and it was entirely deprived of funds. Through no fault of its own, the plaintiff therefore *de facto* ceased operation as a result of the State’s actions, and thus found itself in a difficult financial situation.

...”

**II.**

**Compliance with the limitation period for bringing a claim**

“[O]n 27 February 2009 the Prague High Court delivered a judgment ... in which it ... acquitted the managing director. This acquittal is final ... The two-year limitation period for claiming compensation provided for in section 33 of [the State Liability Act] therefore began to run on 28 February 2009 and would have expired on 28 February 2011. On 27 January 2011, however, the relevant claim was filed with ... the Ministry of Justice ... so that in accordance with section 35 of [the State Liability Act] the limitation period did not run between 27 January 2011 and 26 May 2011 (the date of the Ministry of Justice decision). The limitation period for the plaintiff to bring a claim for compensation before the court has therefore been complied with ...”

**III.**

**Pecuniary damage**

“... ”

**2. Compensation for the damage to the seized merchandise**

On 22 July 2010, pursuant to the decision of ... the Prague Municipal Court ... it was ordered that this merchandise be returned ... After taking it back, however, the plaintiff discovered that the returned merchandise was in a deplorable condition. The seizure of the merchandise lasted five years! These were clothes, that is to say, goods whose condition deteriorates considerably with prolonged storage. Furthermore, after five years, any clothing becomes practically unsaleable owing to changing fashion trends (leaving aside the truly catastrophic actual condition (*katastrofální faktický stav*) of the merchandise).

The plaintiff nonetheless managed to sell off a part of the merchandise, but (because of its condition) only for a fraction of its original value ...

The plaintiff considers that, as a result of the five-year storage of the merchandise, it sustained damage amounting to the difference between the original price of the merchandise [established by] the aforementioned expert opinion (CZK 62,424,027) and the proceeds it received from the sale of a part of the merchandise (CZK 536,663). The plaintiff thus sustained damage in an amount of CZK 61,887,364 (i.e., CZK 62,424,027 minus CZK 536,663).

... The plaintiff does not argue that the Ministry is responsible for ‘the passage of time’. [It] is seeking compensation for the objective deterioration ... of the seized

merchandise which occurred in connection with the exercise of public authority. In the plaintiff's view, it is irrelevant whether the merchandise could have been sold for a higher price, and it is impossible to prove that all of [it] would have been sold at the given time. [The applicant company] does not accept the conclusion that its claim is speculative. As stated above, the merchandise was returned to the plaintiff after five years of storage in a totally deplorable condition. This ... was caused by the decision of the law-enforcement [that is, criminal justice] authority; therefore, the causal link with the damage is established ..."

**3. Compensation for damage for the theft of office equipment and the disposal of personal belongings**

"When its managing director was remanded in custody, items of property belonging to the plaintiff which were located on its office premises ... were left ... without any form of security or protection. While the managing director was held in custody the following items were disposed of ..."

**IV.**

**Assertion of claim for compensation for damage**

**Ad (1) Expenses incurred as a result of non-payment for telecommunications services**

"[T]he plaintiff claims compensation for the damage specified above, consisting in the expenses incurred as a result of non-payment for telecommunications services, in an amount of CZK 23,245."

**Ad (2) Damage to seized merchandise**

"In view of all the information provided above, the plaintiff considers it proven that damage was caused to it in the exercise of public authority. Under section 15(2) of [the State Liability Act] the plaintiff hereby claims compensation for the damage consisting in the absolute depreciation of the seized merchandise, equal to the difference between its value as determined by the expert opinion and the total sum obtained from the sale of a part of the merchandise, i.e., an amount of CZK 61,887,364."

**Ad (3) Damage due to the loss of office equipment and personal belongings**

"[T]he plaintiff hereby claims compensation for damage consisting in the loss of company office equipment and personal belongings with a total value of CZK 684,000."

**Ad (4) Damage resulting from an unfulfilled vehicle leasing contract**

"[T]he plaintiff hereby claims compensation for damage resulting from non-fulfilment of a financial leasing contract for a ... car, as a result of which the plaintiff sustained pecuniary damage in an amount of CZK 700,000, corresponding to the value of the vehicle at that time."

42. On 13 December 2011 the applicant company withdrew its claim for CZK 2,782,682.63 (EUR 108,935 at that time) corresponding to the amount obtained by selling another part of the merchandise. The proceedings relating to that part of the claim were discontinued by a decision (*usnesení*) of 28 December 2011.

43. By a judgment of 28 December 2011, the District Court dismissed the applicant company's action as unfounded on the grounds that, under the State Liability Act, only the parties to the proceedings from which an unlawful

decision originated could seek compensation for damage sustained on account of that decision. The relevant parts of that judgment read as follows:

“As grounds for its action the plaintiff stated that its managing director ... and its other member ... had been prosecuted ... for the criminal offence of evasion of taxes ... Pursuant to the decision of the Prague 2 District Court of 28 April 2005 ... the managing director and the other member were remanded in custody ... The plaintiff’s managing director and his co-accused were subsequently released from custody by a decision of the Prague High Court of 16 March 2007 ... He spent 690 days in custody.

...

[T]he court finds ... that the action is unfounded. The conditions for the State to incur legal liability for damage caused in the exercise of public authority by a decision or irregular official conduct are the existence of an unlawful decision or irregular official conduct, of damage [sustained by] the injured party and of a causal link between the irregular official conduct or unlawful decision and that damage. Most importantly, in the present case, the court finds no *locus standi* on the part of the plaintiff, which, as a legal person, was not a party to the above-mentioned criminal proceedings in which its managing director and other member were prosecuted. Therefore, the plaintiff could not have sustained any damage in connection with the criminal prosecution of its managing director and other member. This view was already expressed by the Supreme Court in its judgment of 15 December 2005 No. 25 Cdo 1956/2004 ... in which it held that a company was not entitled ... to compensation for the damage caused by an unlawful decision issued in connection with the criminal prosecution of its managing director. Although that decision relates to Act no. 58/1969, its applicability to the [State Liability Act] remains unaffected, as the conditions for establishing *locus standi* on the part of the plaintiff have not changed. ... Therefore, there is no causal link between the damage claimed by the plaintiff as a legal person and the criminal prosecution of its managing director and other member.”

44. The applicant company appealed. In its appeal it argued as follows:

## II.

“[The District Court] ... abstained from any review ... as regards the causal link between the unlawful decision and the pecuniary damage sustained by the plaintiff ...

In the reasoning of the impugned judgment the ground ... given for dismissing the action is ... that the plaintiff did not have *locus standi*. This argument primarily relied on section 7(1) of the [State Liability Act], according to which only the parties to the proceedings in which an unlawful decision was issued are entitled to compensation for damage. In the case at hand, however, the parties to the proceedings were [both] members of the plaintiff, and one of them was also its sole managing director.

The plaintiff considers that such a conclusion – albeit supported by the decision of the Supreme Court of 15 December 2005 referred to ... – is incorrect and/or unlawful, primarily on account of the excessively formalistic interpretation of the [State Liability Act] made by the court concerned. In the situation at issue the plaintiff was, figuratively speaking, also being held in ... detention, as all of its human constituents (as a legal person) were in custody at the time (i.e., both of its members, including the managing director). It was thus inconceivable that the plaintiff could have been active in any way, commercially or otherwise.

In the plaintiff’s view, this resulted in a violation of its constitutionally guaranteed rights and freedoms ... enshrined in Article 11 of the Charter of Fundamental Rights

and Freedoms ('the Charter'), which protects the right of both natural and legal persons to own property, and Article 36 of the Charter, which guarantees the right to a fair trial and the judicial protection of rights.

...

The plaintiff similarly draws attention to the international-law dimension of the protection of property and possessions, as guaranteed, for example, by Article 1 of Protocol No. 1 to the Convention ..., by which the Czech Republic is bound ...

In a different context, the right to compensation for unlawful detention is also referred to in Article 9 § 5 of the International Covenant on Civil and Political Rights ..., which provides that '[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'.

### III.

This excessively formalistic and even restrictive interpretation of the relevant provisions of the [State Liability Act] (by the court) in effect made it impossible for the plaintiff to seek judicial protection of its rights, as the impugned judgment barred it *de facto* from proceedings concerning compensation for damage caused in the exercise of public authority, and it was thereby prevented from obtaining redress for the 'injustice' indirectly caused to its members. In the plaintiff's opinion, the way in which the court interpreted the substantive legal rules is in conflict with the ideas and principles of the functioning of the rule of law ... Taken to the point of absurdity, it is easy to imagine a situation where a great number of commercial companies (or legal entities in general) are destroyed by the State on the technical grounds that they lack *locus standi* in compensation proceedings. When a criminal prosecution is brought against the governing body of a commercial company, the company itself is never a party to the criminal proceedings ..., but this by no means rules out the possibility that the company will sustain damage as a result of those criminal proceedings.

In the present case, the unfairness of such an interpretation is compounded by the fact that the plaintiff company was deprived of all its effective human capital by a sudden and unannounced police action which prevented it from paying even its most routine expenses. This action, taken without regard for its consequences, made it impossible to cover payments to telephone operators and leasing payments for cars ... The company's funds were seized, and no measures were permitted, let alone taken, to prevent the damage which inevitably occurred soon afterwards as a direct consequence. That damage was caused to the plaintiff, and consequently to its members, as a result of direct action taken by public authorities. Further official investigation found this action to have been ... unlawful.

...

It was the State which caused damage to the plaintiff by its actions. The company, which in terms of human resources consists solely of its members (who were affected, *inter alia*, by the State's actions), seeks compensation for that damage. The impugned decision legally classifies the claim as falling under [the State Liability Act], and then formalistically infers that the plaintiff company, which sustained the damage, is not entitled to bring an action and that the State does not, and never has to, bear actual liability for the consequences of such excesses.

As a result of its unacceptable formalism, this [outcome] merely represents a crude method of disclaiming any liability whatsoever in the exercise of public authority. In this context, the plaintiff also draws attention to a possible conflict with the principle of legality enshrined in Article 2 § 2 of the Charter."

45. By a judgment of 15 May 2012, the Municipal Court dismissed the applicant company's appeal and upheld the first-instance judgment. The Municipal Court judgment, in its relevant parts, read as follows:

"According to the facts as presented in the action, the plaintiff is seeking compensation for the damage caused to it by the 'placement in custody of its managing director and other member. ... The plaintiff maintains that [because of] its managing director's and other member's placement in custody its operations were completely paralysed and it was deprived of its effective human capital. The plaintiff further argues in its action that it brought the claim within the limitation period, referring in this context to section 33 of the [State Liability Act] and to the judgment of 27 February 2009 by which its managing director was acquitted.

In its action the plaintiff made a total of four separate compensation claims, specifying that the alleged damage consisted of: 1. expenses incurred as a result of the non-payment of telecommunications services because of its managing director being held in custody, in an amount of CZK 23,245; 2. the reduced value of the merchandise seized in the criminal proceedings as a result of its five-year storage, in an amount of CZK 61,887,364 (CZK 59,104,681.37 after the partial withdrawal); 3. the theft of office equipment and the taking of personal belongings as a result of the managing director's custody, in an amount 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 in the action it is necessary to legally characterise the plaintiff's claim (as the plaintiff itself does, referring to section 33 of the State Liability Act) as a claim for compensation for damage caused by a decision on custody, and more specifically an unlawful decision. Section 9(1) of the State Liability Act provides that the person ... entitled to compensation for damage caused by a decision on custody is the person who was held in custody. The provision in question specifies that a person ... entitled [to compensation] is a person who was held in detention ..., which [may only be the case with] a natural person. This provision does not permit any other interpretation as to the person entitled. Certainly, a commercial company whose managing director and other member were remanded in ... detention (even where there are no other members) cannot be considered a person having sustained damage caused by ... detention ... It can be concluded that if the detention ... of a particular individual is cited 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.

Although the plaintiff did not argue ... that the damage resulted from the unlawful criminal proceedings ... brought against its managing director and other member, the plaintiff's claim can also be examined on ... that ground ... In judicial practice, [it] has already been established that the discontinuation of a criminal prosecution, or an acquittal (as was the case here), has the same consequences as the quashing of an unlawful decision under section 8(1) of the State Liability Act. The person having *locus standi* to [bring] such a claim is 'the party to the proceedings' in which the unlawful decision was issued. In the present case, there is no doubt that the bringing of the charges (unlawful decision) and the acquittal (decision quashing the unlawful decision) concerned natural persons, namely the plaintiff's managing director and other member, and that ... these individuals were parties to the criminal proceedings. The plaintiff, 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 party even taking into account the fact that the individual prosecuted is the sole managing director or member of the commercial company. It is the rule, not the exception, that a prosecuted individual lives

within a certain organised community and has many relationships with other entities, whether of a family, work, business or social nature, etc. An individual can therefore serve as a member, officer or statutory representative of various legal entities, and the influence of that individual within that legal entity may be absolutely exceptional, unique or irreplaceable. There is no doubt that in such a case the criminal prosecution of a natural person 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 to bring charges, is the person who was prosecuted, in this case, the plaintiff's managing director or its other member. A similar issue has already been considered by the Supreme Court in its decision No. 25 Cdo 1956/2004, to which the first-instance court correctly referred in the reasoning of its judgment ...

As regards the plaintiff's claim for compensation for the damage caused by the 'five-year storage' of the merchandise that was seized during the criminal proceedings, it must be noted that, quite apart from the plaintiff's lack of *locus standi* ... there is also no causal link between the unlawful decision on custody or [the decision] to bring charges against the plaintiff's managing director and other member, and the damage allegedly sustained as a consequence of the 'five-year storage of the merchandise'. The plaintiff made no claims in relation to the cause of this damage other than a general allegation regarding its managing director's or other member's ... detention and/or prosecution.

The fact that the merchandise was seized ... and later returned to the plaintiff's managing director does not automatically mean that the State is liable ... for the loss of value of the merchandise caused by the passage of time. The mere fact that the proceedings resulted in an acquittal cannot lead to the conclusion that all the procedural acts carried out in the course of those proceedings (such as the seizure of the merchandise and its return to the managing director) constituted an unlawful decision or irregular official conduct (something that the plaintiff has not even argued).

Based on the reasoning above, the appellate court finds the conclusion of the first-instance court that the plaintiff lacks *locus standi* to be correct. This lack of *locus standi* is also linked to the correct legal conclusion of the first-instance court that there is no causal link between the alleged damage sustained by the plaintiff and the criminal prosecution of its managing director (other member)."

46. The applicant company then lodged an appeal on points of law (*dovolání*) with the Supreme Court in which it repeated the same arguments it had raised in its appeal to the second-instance court (see paragraph 44 above).

47. By a decision of 15 November 2012, the Supreme Court declared the applicant company's appeal on points of law inadmissible. It held, *inter alia*, as follows:

"When the criminal prosecution of a person does not end in ... a [conviction], 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 ... Section 7 of the State Liability Act ... provides that only a party to the proceedings in which an unlawful decision was issued is entitled to compensation for damage ... It is established in case-law that a commercial company is not entitled to compensation for damage caused by an unlawful decision, where [the damage] is sustained as a result of the criminal prosecution of its managing director ...

The conclusion of the appellate court that the plaintiff company lacks *locus standi*, either in a dispute against the State concerning compensation for damage caused by the detention of its managing director and other member or in a dispute concerning compensation for damage caused by their prosecution, is therefore consistent with the settled case-law of the Supreme Court, from which there is no reason to deviate in the present case. In so far as the appellant considers that the appellate court erred in making an excessively formalistic interpretation of the State Liability Act, it must be noted that the Charter of Fundamental Rights and Freedoms ('the Charter') does not provide for a direct claim for compensation for damage caused by an unlawful decision or irregular official conduct. The Charter states that the conditions and detailed provisions in respect of the State's liability for damage so caused shall be set out by law (Article 36 §§ 3 and 4 of the Charter of Fundamental Rights and Freedoms), which ... is ... the [State Liability Act]. In this context, the Constitutional Court has previously held that Article 36 § 3 of the Charter recognises an entitlement to compensation for damage caused by an unlawful decision of a court, another State body or the public administrative authorities, or as the result of irregular official conduct, only if the general conditions laid down by law are fulfilled, including the condition of the injured party's *locus standi* within the meaning of section 7(1) of the State Liability Act, and consequently also section 9(1) of [that Act] (cf., for example, the Constitutional Court's decision of 29 July 2008 No. I. ÚS 216/07). An interpretation of the legal rules on State liability for damage due to an unlawful decision that upholds the statutory requirement of *locus standi* ... of the injured party is therefore consistent with the constitutional law of the Czech Republic."

48. On 16 January 2013 the applicant company lodged a constitutional complaint (*ústavní stížnost*), alleging a violation of its right to fair proceedings and its right to the peaceful enjoyment of its possessions. It again reiterated its arguments raised in its appeal and appeal on points of law (see paragraphs 44 and 46 above).

49. By a decision of 26 September 2013 (I. ÚS 267/13), the Constitutional Court (*Ústavní soud*) declared the constitutional complaint inadmissible as manifestly ill-founded, finding that the courts had duly responded to the arguments raised by the applicant company and that their conclusions had not been tainted by arbitrariness. The relevant parts of that decision read as follows:

"In the proceedings concerned, the complainant sought compensation for damage pursuant to [the State Liability Act], which the complainant alleged to have been caused by irregular official conduct in the form of the unlawful detention of its sole managing director ... and its other member.

...

It is clear from the above that in its constitutional complaint the complainant presents arguments which the ordinary courts have thoroughly examined and duly addressed. The Constitutional Court did not find that the conclusions of the ordinary courts were tainted by arbitrariness. The Supreme Court also dealt with the case from a constitutional-law perspective, correctly referring to Constitutional Court decision no. I. ÚS 216/07 ... which can indeed be applied to the case at hand.

In the light of the above, the Constitutional Court [finds] the constitutional complaint to be manifestly ill-founded from a constitutional-law perspective ..."

#### IV. THE APPLICANT COMPANY'S APPLICATION TO THE COURT

50. On 25 March 2014 the applicant company lodged an application with the Court in which it raised complaints under Article 6 § 1 and Article 13 of the Convention, as well as under Article 1 of Protocol No. 1 thereto.

51. In the part of the application form concerning the statement of facts, the applicant company stated that its merchandise, which had been seized for five years, had lost its value and had been returned to it damaged. In addition, the equipment that had remained at the applicant company's offices had been stolen after its managing director had been arrested because the police had not secured it. Furthermore, his detention and the seizure of the applicant company's financial assets had left the company unable to pay its bills for telecommunication services, which had led to enforcement proceedings being instituted against it in which it had had to pay not only a principal debt but also the statutory default interest and the costs of the enforcement proceedings. For the same reasons, the applicant company had also been unable to make its payments under the leasing contract (see paragraph 15 above), which had resulted in the imposition of a contractual penalty and to its being unable to acquire ownership of a vehicle.

52. In that part of the application form, the applicant company also repeated, expressly or in substance, the arguments it had raised in its civil action and in its appeal before the domestic authorities (see paragraphs 41 and 44 above), which it had also reiterated in its appeal on points of law and its constitutional complaint (see paragraphs 46 and 48 above).

53. Since the scope of the applicant company's complaint under Article 1 of Protocol No. 1 became a contentious issue before the Court (see paragraphs 126-149 below), it is deemed useful to reproduce the following extracts from the application form.

54. In the part of the application form concerning the statement of alleged violations of the Convention and/or Protocols and the relevant arguments, the applicant company adduced the following arguments in alleging violations of Article 6 § 1 and Article 13 of the Convention:

"The above-mentioned excessively formalistic and even restrictive interpretation of the relevant provisions of the domestic statutory norms (at all levels of jurisdiction) led to a *de facto* denial of the applicant company's right to seek judicial protection. In fact, the decision of the court [excluded] the company [from] the proceedings for compensation for damage caused in the exercise of public authority and thus did not allow it to obtain redress for the 'injustice' caused indirectly to its members.

The European Court of Human Rights reached the same conclusions and found violations of these rights enshrined in the Convention, for instance in *Tendam v. Spain*[, no. 25720/05, 13 July 2010], where it stated in § 51 (*inter alia*) as follows: 'Article 1 of Protocol No. 1 does not confer a right on an acquitted person to obtain compensation for any damage caused by the seizure of his or her property carried out during the investigation phase of the criminal proceedings. However, if the criminal authorities seize property, they must take the reasonable measures necessary for its preservation, in particular by making an inventory of the property and its condition at the time of the

seizure as well as at the time of its handover to the acquitted owner. In addition, domestic law must provide for the possibility of bringing an action against the State to obtain compensation for damage resulting from the failure to keep such property in a relatively good condition (see *Karamitrov and [O]thers v. Bulgaria*, [no. 53321/99,] § 77, [10 January 2008,] which refers to Article 13 of the Convention, and *Novikov v. Russia*, [no. 35989/02,] § 46[, 18 June 2009]). It is also necessary for such proceedings to ... allow the acquitted owner to defend his or her case.’ In § 55 the Court found that the domestic courts which had examined the applicant’s claim had not taken into account the liability of the judicial authorities in the case or made it possible for the applicant to obtain redress for the damage resulting from the failure to preserve the seized property.

The Court [reached] the same conclusions in its previous rulings, in particular in the case of *Karamitrov and Others v. Bulgaria*[, cited above], a factually similar case in which it found a violation of all the rights relied on in that application (Article 6 § 1 of the Convention, Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention).”

55. In the same part of the application form, the applicant company advanced the following arguments in support of the alleged violation(s) of Article 1 of Protocol No. 1 to the Convention:

“As a result of the above-mentioned action of the authorities of the Czech Republic, the applicant company was completely paralysed for a period of about five years, deprived (illegally) of its property, affected by the unlawful criminal prosecution of its director and its other member, who could not [because of their detention] take any actions or steps ... to effectively prevent or mitigate the damage sustained by the applicant. See, for more detail, the above-mentioned judgment in the case of *Tendam v. Spain*[, cited above], where (among others) a violation of Article 1 of Protocol No. 1 to the Convention was found. A similar case was also dealt with by the European Court in *Novikov v. Russia*[, cited above], where the Court came to the conclusion, in a factually very similar case, that there had been a violation of Article 1 of Protocol No. 1 to the Convention. Last but not least, it is necessary to mention the judgment in the case of *Karamitrov and Others v. Bulgaria*[, cited above], where the Court found, in a factually related case, a violation of all the rights relied on in that application (Article 6 § 1 of the Convention, Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention).”

## RELEVANT LEGAL FRAMEWORK

### I. CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE CZECH REPUBLIC

56. Article 36 of the Charter of Fundamental Rights and Freedoms of the Czech Republic reads as follows:

#### 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 irregular official conduct.

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

## II. RELEVANT LEGISLATION

### A. Code of Criminal Procedure

57. The relevant provisions of the Code of Criminal Procedure (Act no. 141/1961), as in force at the material time, read as follows:

#### Article 48

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

- (a) the reason for which it was [issued] 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 shall have the right to request, at any time, the limitation or lifting 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, resubmit it only once [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 item may be seized and [that] 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 authorisation 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 likelihood 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 on a complaint, the higher-ranking authority shall review:

- (a) the correctness of the decision at issue ...; and
- (b) the proceedings leading to 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 may be obstructed or made difficult, the court or, in preparatory proceedings, the public prosecutor may seize the property of the accused ...

- 2. A complaint shall lie against a seizure order.”

**Article 349<sup>1</sup>**

“1. The [court] or, in preparatory proceedings, the public prosecutor shall set aside 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 the lifting or limitation of the seizure at any time. The court or, in preparatory proceedings, the prosecutor shall decide on the request without delay. If the request is dismissed, the accused may not submit a new one until [thirty] days after the decision becomes final, unless new reasons are given.

...”

**B. Act no. 279/2003 on the seizure of property and items in criminal proceedings**

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

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<sup>1</sup> Introduced into the Code of Criminal Procedure by Act no. 86/2015 with effect from 1 June 2015.

### **C. State Liability Act**

59. The relevant provisions of the State Liability Act (Act no. 82/1998) read as follows:

#### **Section 5**

“The State shall be 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 shall be 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 overturned as being unlawful, unless the [present] Act provides otherwise ...”

#### **Section 9(1)**

“Anyone who has been held in custody and has suffered damage caused by a decision on ... 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 shall be liable for any damage caused by irregular official conduct. Failure to take action or to deliver a decision within a specific time-limit shall be 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 shall constitute irregular official conduct.

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

60. Sections 14 and 15 prescribe a preliminary procedure that must be used before the injured party can bring a civil action in a court. In particular, a claim for compensation has first to be submitted to the relevant State authority specified in section 6 of the Act, which is the Ministry of Justice if the damage occurred in civil or criminal proceedings.

61. Section 15(2) provides that the injured party may claim compensation in court only if his or her claim has not been satisfied in full within six months of bringing it before the relevant State authority.

62. Section 32(1) provides that a claim for compensation under the Act becomes statute-barred three years after the date on which the injured party learned of the damage and the person liable for it. If the basis for exercising the right to compensation for damage is the quashing of a decision, the limitation period runs from the date of service (notification) of the quashing decision.

63. Section 33 provides that a claim for compensation for damage caused by a decision on remand in custody, sentence or protective measures becomes statute-barred two years after the date of finality of the acquittal, the decision to discontinue the criminal proceedings, the quashing decision, the decision transferring the case to a different authority or the decision to impose a less severe sentence.

64. Section 35 provides that the statutory limitation period does not run during the preliminary procedure (see paragraph 60 above).

#### **D. Code of Civil Procedure**

65. Under Article 79 § 1 of the Code of Civil Procedure (Act no. 99/1963), the statement of claim must, *inter alia*, contain a description of the relevant (decisive) facts, the evidence relied on by the plaintiff and the relief (result) sought.

66. Article 118b provides that parties to proceedings must present relevant facts and evidence supporting those facts before a certain stage in the proceedings or within a time-limit set by the court for the parties to supplement the relevant facts, adduce evidence or comply with other procedural obligations. A court can only have regard to facts and evidence submitted after that time if they are intended to challenge the evidence already presented, if they arose after the relevant stage of the proceedings, if they were not submitted in time through no fault of the party concerned, or if they were submitted at the court's request.

67. Article 153 reads as follows:

“(1) The court shall decide on the basis of the established facts of the case.

(2) The court may go beyond the claims of the participants and make an award that differs from or exceeds the award they sought if the proceedings could be instituted even without a claim or if the law provides for a certain method of settling the relationship between the participants.”

### **III. RELEVANT PRACTICE**

#### **A. Case-law of the Supreme Court**

##### *1. Case-law regarding the State Liability Act*

68. The Supreme Court held in a number of 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 plaintiff lacked *locus standi* in proceedings against the State seeking compensation for damage caused by an unlawful decision delivered in proceedings to which he or she had not been a party. The first of those decisions concerned a case in which a company had suffered damage as a result of a decision issued in the criminal proceedings involving its managing director.

69. In judgment no. 25 Cdo 356/2003 of 26 May 2004, the Supreme Court held as follows:

“Where items taken from the accused within criminal proceedings have been destroyed during storage and cannot be returned ... [this] constitutes irregular official conduct by the State authority.”

70. In its judgment no. 25 Cdo 2809/2006 of 19 February 2009, the Supreme Court noted as follows:

“A person who has suffered damage as a result of irregular official conduct at any time shall be entitled to compensation, regardless of whether he or she was a party to the proceedings.”

71. In decision no. 25 Cdo 1627/2008 of 21 October 2010, the Supreme Court held that a failure to protect seized items from damage or loss also constituted irregular official conduct and that anyone who suffered damage as a result was entitled to compensation, regardless of whether that person had been a party to the relevant proceedings.

72. In decision no. 30 Cdo 3310/2013 of 24 June 2015, the Supreme Court held that if, after an acquittal in criminal proceedings, there was an unreasonable delay in setting aside a decision on the seizure of items, this could also be considered irregular official conduct under section 13(1) of the State Liability Act.

## *2. Case-law regarding the Code of Civil Procedure*

73. In judgment no. 25 Cdo 1607/2008 of 18 November 2010, the Supreme Court held as follows:

“In contentious [civil] proceedings governed by the principle of party disposition (which does not only apply in the cases listed in Article 153 § 2 of the Code of Civil Procedure), the court is bound by the statement of claim, that is, by how the plaintiff has defined the subject matter of the proceedings. The definition of the subject matter of the proceedings in the action means the statement of the facts (factual allegations) from which the claim is derived. The legal characterisation of the factual allegations is not part of the statement of the subject matter of the proceedings and the plaintiff is not obliged to state it; any legal characterisation of the claim is not binding on the court. If the court decides on a claim for compensation on the basis of factual findings which enable the claim to be classified in legal terms under a substantive rule of law other than that relied on by the plaintiff, it is its duty to assess the matter in accordance with the relevant statutory provisions and to decide on the claim, irrespective of the legal basis for the compensation asserted by the plaintiff. If, on the basis of the established facts, the plaintiff can be granted the relief he or she seeks, albeit on a different legal basis than that set out in the statement of claim, the court cannot dismiss the claim but must

grant the relief to the plaintiff. It would be an impermissible excess and a violation of the principle of party disposition merely to grant different or greater relief than that sought by the plaintiff in the statement of claim or to grant relief on the basis of a different factual situation than that set out in the claim and established (cf. the judgment of the Supreme Court of 31 July 2003, no. 25 Cdo 1934/2001).

In the present case, the claim for financial compensation was based on the factual allegation that the plaintiff is not, and has not been, allowed to use the immovable property of which she is a co-owner, as that property is being used by the second defendant and her husband and by the third defendant. If, as the Court of Appeal found, in those circumstances the plaintiff's claim is to be assessed under the substantive rules governing claims for ... unjust enrichment and not in the light of the statutory provisions governing [tort] liability, that is merely a different legal classification of the claim, the factual basis remaining unchanged. The difference between a claim for unjust enrichment and a claim for compensation for damage ... cannot be a reason for dismissing the action on the grounds of a different legal characterisation of the claim. Therefore, in so far as the Court of Appeal dismissed the action on the ground that in the present case there was no claim for damages, but rather a claim for ... unjust enrichment, without examining whether the conditions for granting the claim for unjust enrichment were met, its legal assessment of the case was incomplete and therefore incorrect."

74. In judgment no. 32 Cdo 4778/2010 of 23 March 2011, the Supreme Court held as follows:

"Pursuant to Article 153 § 2 of the Code of Civil Procedure, the court may go beyond the parties' claims and make an award that differs from or exceeds the award they seek only if the proceedings could have been instituted even without a claim or if the law provides for a particular method of settling the relationship between the parties. Thus, in contentious [civil] proceedings governed by the principle of party disposition, the court is bound, with the exceptions provided for by law, by the statement of claim, that is to say, by the manner in which the plaintiff has defined the subject matter of the proceedings; the claim asserted in the statement of claim is defined by the statement of the facts on which the plaintiff bases the claim (the legal cause of action) and the claim (the petition). The legal characterisation of the claim (stipulation) is not a compulsory element of the application (cf. Article 79 § 1 of the Code of Civil Procedure). If it is nevertheless included in the application, it is not binding on the court; it is the court's duty (in the spirit of the principle of *jura novit curia*) to seek out the rule of substantive law [which] ... corresponds to the established facts of the case and to assess the claim according to that rule, irrespective of the legal assessment of the case asserted by the plaintiff. It would be to exceed the claim and a breach of the principle of [party] disposition merely to grant relief different from that sought by the plaintiff in the statement of claim or to grant relief on the basis of a different factual situation from that alleged in the claim and the subject matter of the evidence. Therefore ... if a claim for pecuniary relief is asserted in an action based on the factual allegation that the defendant used the non-residential premises on the basis of a lease agreement ... and that the plaintiffs did not receive ... rent from the defendant, but, in the court's view, the lease is void and no other reason for the use is alleged, it does not alter the facts as set out in the statement of claim if the court assesses the plaintiffs' claim for payment of the amount in question under the substantive rules governing claims for ... unjust enrichment."

## **B. Case-law of the Constitutional Court**

75. In judgment no. I. ÚS 201/01 of 10 October 2001, the Constitutional Court examined a constitutional complaint by a company concerning police interference consisting of a search of its business premises 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 had existed prior to the violation and to return the seized documents. That reasoning was followed by the Constitutional Court in other decisions (for example, no. II. ÚS 298/05 of 6 October 2005; no. II. ÚS 362/06 of 1 November 2006; no. IV. ÚS 3370/10 of 23 February 2012; and no. II. ÚS 2979/10 of 29 March 2012).

## **THE LAW**

### **I. SCOPE OF THE CASE AS DEFINED BY THE CHAMBER**

76. The applicant company raised complaints under Article 6 § 1 and Article 13 of the Convention and under Article 1 of Protocol No. 1 thereto (see paragraphs 50-55 above). The relevant parts of those Articles read as follows:

#### **Article 6 (right to a fair hearing)**

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

#### **Article 13 (right to an effective remedy)**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

#### **Article 1 of Protocol No. 1 (protection of property)**

“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.”

77. The Chamber in its judgment defined the complaint(s) under Article 1 of Protocol No. 1 in the following way (see *Fu Quan, s.r.o. v. the Czech Republic*, no. 24827/14, 17 March 2022):

“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. ...

50. [T]he 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. ...

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.

...

70. ... 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. ..."

78. As regards the complaints under Article 6 § 1 and Article 13 of the Convention, the Chamber defined them as follows (*ibid.*):

"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."

79. The Government argued that the applicant company had not exhausted domestic remedies because in the compensation proceedings (see paragraphs 36-49 above) it had failed to describe the cause of the damage, as required by domestic case-law, and had thereby prevented the domestic courts from assessing whether its claims were well founded. Moreover, even after the dismissal of the applicant company's civil 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 (see *Fu Quan, s.r.o.*, cited above, §§ 46-47).

80. The Chamber considered that the main object of the application was the impossibility of recovering compensation for damage to the applicant company's merchandise that had lost its value owing to its seizure for five years and the passing of time (*ibid.*, § 50). It then noted that the applicant company brought its action for compensation for damage caused by the State under the State Liability Act without expressly specifying whether the damage had been caused by an unlawful decision or by irregular official conduct, the two possible causes of action under the Act. Nevertheless, for the Chamber, it followed clearly from the action that the applicant company had claimed compensation for the depreciation of its merchandise seized in the criminal proceedings, and that it had been up to the domestic courts, applying the principle of *jura novit curia*, to subsume the facts of the case as

described by the applicant company under the relevant provisions of the State Liability Act in order to deal with the merits of its claims (*ibid.*, § 52). The Chamber therefore dismissed the Government's non-exhaustion objection and found a violation of Article 1 of Protocol No. 1, holding that there had been no justifiable reasons to retain the applicant company's merchandise for almost a year and a half after the acquittal of its managing director and other member (*ibid.*, §§ 57 and 74-75).

81. In view of that finding, the Chamber considered that there was no need to give a separate ruling on the complaints under Article 6 § 1 and Article 13 of the Convention (*ibid.*, § 77).

## II. THE GOVERNMENT'S PRELIMINARY OBJECTION BEFORE THE GRAND CHAMBER

82. Before the Grand Chamber the Government reiterated their preliminary objection and maintained that the applicant company's complaint under Article 1 of Protocol No. 1 to the Convention was inadmissible for non-exhaustion of domestic remedies (see paragraph 79 above). They also argued that, for the same reason, there had been no violation of the applicant company's rights under Article 6 § 1 and Article 13 of the Convention.

## III. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

### A. Introductory remarks

83. The Grand Chamber notes that the applicant company complained, under Article 6 § 1 and Article 13 of the Convention, that it had been denied access to a court on account of a formalistic and restrictive interpretation of national law by the domestic courts (see paragraphs 54 and 78 above).

84. Even though the Chamber found a violation of Article 1 of Protocol No. 1 and held that there was no need to give a separate ruling on the complaints under Article 6 § 1 and Article 13 (see paragraphs 80-81 above), the Grand Chamber finds it appropriate to deal first with these complaints, which were the applicant company's main complaints in its application to the Court (see paragraph 54 above).

85. The Court first reiterates that the safeguards of Article 6 § 1 are stricter than those of Article 13 (see *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI) and finds that the applicant company's complaint under Article 13 should be considered to be absorbed by its complaint under Article 6 § 1.

86. It is true that in *Karamitrov and Others v. Bulgaria* (no. 53321/99, §§ 75-79, 10 January 2008) – which is one of the cases the applicant company cited in its application form (see paragraphs 54-55 above) – the Court

examined a similar issue to the one in the present case under Article 13 of the Convention taken in conjunction with Article 1 of Protocol No. 1. However, in contrast to the situation in *Karamitrov and Others* (cited above, § 62), the instant case does not concern “the lack of a substantive right of action under domestic law” as it cannot be said that the right to obtain compensation for damage caused by a failure by the authorities to take due care of seized property or their undue delay in lifting the seizure was not recognised under domestic law. On the contrary, the State Liability Act provided for a possibility of obtaining compensation on those grounds (see paragraphs 59 and 69-72 above).

87. Since the question of the applicability of Article 6 § 1 does not therefore arise in this case, the Court will examine this part of the application under that Article alone.

88. The Court observes that the Government’s preliminary objection of non-exhaustion of domestic remedies is closely linked to the merits of the Article 6 § 1 complaint, and specifically to the assessment as to whether the applicant company was denied access to a court (see paragraph 82 above). The parties’ arguments regarding that preliminary objection will therefore be reproduced here (see paragraphs 89-112 below).

## **B. The parties’ submissions**

### *1. The Government*

89. Before the Grand Chamber the Government based their non-exhaustion objection solely on the argument that the applicant company had not made proper use of the civil action available under the State Liability Act. Specifically, in the Government’s view, the applicant company had failed to properly identify the grounds on which it had applied to the domestic courts and to present the decisive facts on which its claim had been based, in particular the facts which had allegedly constituted “irregular official conduct” in relation to the seized goods, as required by Article 79 of the Code of Civil Procedure (see paragraph 65 above).

90. The Government submitted that section 5 of the State Liability Act provided for two separate and distinct possibilities of obtaining compensation for damage caused by the State: the first concerned damage caused by an unlawful decision delivered in civil, administrative or criminal proceedings, and the second concerned damage caused by irregular official conduct (see paragraph 59 above).

91. However, under the Act a claim for compensation for damage caused by a decision could be brought only by those who had been parties to the proceedings in which that decision had been delivered, whereas an action for compensation for damage caused by irregular official conduct was open to anyone who had suffered damage on account of such conduct (see sections 7(1) and 13(2) of the State Liability Act in paragraph 59 above).

Furthermore, the Act explicitly provided that if the damage had been caused by a decision on custody, and the person detained had later been acquitted, the compensation claim could be brought only by that person; this was a specific case of entitlement to compensation for damage caused by an unlawful decision (see section 9(1) of the State Liability Act in paragraph 59 above).

92. This also followed from the established case-law of the Supreme Court at the material time (see paragraphs 68 and 70 above), according to which a failure of the State to take proper care of items seized in criminal proceedings or an unreasonable delay in returning the seized items constituted irregular official conduct (see paragraphs 69 and 71-72 above). Therefore, a claim for compensation for damage sustained in that way could be lodged by the owners of such items regardless of whether they had been a party to the relevant criminal proceedings.

93. Pointing to certain passages in the submissions and statements of the applicant company in the domestic compensation proceedings, the Government argued that, taken as a whole, those submissions and statements had been based predominantly on the argument that the company had sustained damage because of the decision remanding both of its members in custody, which had paralysed its operations (item (a)). This was evident especially from the applicant company's explicit reliance on section 33 of the State Liability Act, which prescribed a time-limit for submitting compensation claims for damage caused by an unlawful decision (see paragraphs 41 and 63 above).

94. However, given the explicit wording of section 7(1) of the State Liability Act (see paragraph 59 above), and the established case-law of the Supreme Court (see paragraph 68 above), the applicant company's action had been doomed to fail from the outset. Since the applicant company had attributed the alleged damage to the decision remanding both of its members in custody, the domestic courts had treated its action as an action for compensation for damage caused by a decision, which could be brought only by parties to the proceedings in which that decision had been delivered. Therefore, the domestic courts had concluded that the applicant company lacked *locus standi* and had dismissed its action. The Government also pointed out that the applicant company's managing director had been successful with his compensation claim for loss of earnings during his detention in custody (see paragraph 35 above) since, as a party to the original criminal proceedings in which the detention decision had been adopted, his *locus standi* had been uncontested.

95. The Government went on to argue that neither in the domestic proceedings nor before the Court had the applicant company submitted any evidence proving that its seized merchandise had indeed been damaged and that the damage in question had been caused by a failure of the State to take proper care of it.

96. Even in its application to the Court, the applicant company still claimed that the domestic authorities had based their conclusions on an “excessively formalistic interpretation” of the State Liability Act, repeating its argument from the domestic proceedings that in the situation at issue the company was also, figuratively speaking, in custody because its entire human capital had been remanded in custody (see paragraph 52 above, with reference to paragraph 44). According to the applicant company, this implied that the courts should have granted it *locus standi* for its action for compensation for damage caused by a decision.

97. It was only in its response to the initial observations of the Government before the Chamber that the applicant company had begun to argue for the first time that the domestic courts should have treated its action as an action for compensation for damage caused by irregular official conduct (see paragraph 106 below).

98. The Chamber had agreed with that argument by holding in its judgment that it followed clearly from the action that the applicant company had claimed compensation for the depreciation of its merchandise seized in the criminal proceedings and that it had been up to the domestic courts, applying the principle of *jura novit curia*, to subsume the facts of the case under the appropriate provisions of the State Liability Act (see paragraph 80 above).

99. As regards that principle, the Government referred to the limits of its application by the Court, as set out in the Court’s case-law (they cited *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 121, 20 March 2018, and *S.M. v. Croatia* [GC], no. 60561/14, § 219, 25 June 2020), according to which the application of that principle was limited by the facts presented by the applicants. They argued that the same limitation applied to national courts. Thus, the domestic courts could not be blamed for not having granted the applicant company’s compensation claim. That was so for the following two reasons.

100. Firstly, the applicant company had never expressly invoked an action for compensation for damage caused by irregular official conduct at the domestic level. Secondly, it had never advanced a single piece of evidence to prove that the seized merchandise had been damaged during the seizure or that there was a causal link between the action (or failure to act) of the relevant State authorities and the depreciation of the merchandise.

101. In those circumstances, bearing in mind that the applicant company had not substantiated its claim in respect of the depreciation of the merchandise by any evidence, awarding it the compensation sought would have entailed the domestic courts doing precisely what they were not allowed to do, namely, seize on facts not adduced by the applicant company and base their decision on facts not covered by its civil action.

102. Therefore, even if the domestic courts had treated the applicant company's action as one based on irregular official conduct, they would have had to dismiss it owing to a complete lack of evidence.

103. The Government concluded that the domestic remedy available to the applicant company had been an action for compensation for damage caused by irregular official conduct, under sections 5(b) and 13 of the State Liability Act (see paragraph 59 above). If properly used and substantiated with sufficient evidence, that remedy could have provided the applicant company with compensation for any irregular official conduct related to the seizure of its merchandise. However, the applicant company (a) had never advanced that claim explicitly at domestic level, (b) had repeatedly referred to another type of action, namely an action for compensation for damage caused by an unlawful decision, and (c) had not specified the facts which allegedly constituted the irregular official conduct, that is, had not advanced any relevant evidence. Therefore, it had not complied with the procedural requirements attached to that remedy under domestic law.

104. The above arguments (see paragraphs 90-103) also meant that the fact that in the circumstances of the case the domestic courts had characterised the applicant company's action as an action for compensation for damage caused by an unlawful decision could not be considered a limitation of the right of access to a court which impaired the very essence of that right.

## 2. *The applicant company*

105. The applicant company reiterated its arguments before the Chamber and relied on the Chamber's findings regarding the Government's non-exhaustion objection (see paragraph 80 above).

106. In particular, the applicant company submitted that it had been the task of the domestic courts to consider its civil action under the State Liability Act under a different legal provision, but that they had failed to do so (see *Fu Quan, s.r.o.*, cited above, § 48). More specifically, all the relevant facts regarding the cause of the damage and its amount had been described. Those facts could and should have been assessed in terms of the State's liability for irregular official conduct under section 13 of the State Liability Act, and not in terms of the State's liability for unlawful decisions under sections 7 and 9 of that Act (see paragraph 59 above), which could supposedly be claimed only by a party to the proceedings in which such decisions had been adopted. However, all the domestic courts had construed its action (and the relevant law) in an excessively formalistic and overly restrictive manner so that the case could be rejected on procedural grounds, namely for the alleged lack of *locus standi*. This had made it impossible for the applicant company to seek judicial protection of its rights.

107. In addition, the applicant company referred to a passage from the Constitutional Court's decision in which that court had stated that the

company “sought compensation for damage pursuant to [the State Liability Act], which the complainant alleged to have been caused by irregular official conduct in the form of the unlawful detention of its sole managing director ... and its other member” (see paragraph 49 above). In the applicant company’s view, this meant that the Constitutional Court had recognised that its civil action had been based on irregular official conduct.

108. The applicant company disagreed with the Chamber’s finding that it was not necessary to examine its complaints under Article 6 § 1 and Article 13 of the Convention. It argued that the Chamber should have dealt with those complaints and examined them on the merits.

### 3. *The third-party interveners*

#### (a) **The Slovenian Government**

109. The Slovenian Government averred that, even when examining compliance with the rule of exhaustion of domestic remedies, the Court had to be careful not to overstep the limits of its jurisdiction by substituting its own view on the application of domestic law for that of the domestic courts and thereby assuming the role of a fourth-instance court.

110. The Slovenian Government also submitted that it was common to every system of civil procedure that plaintiffs had to specify the facts from which their claims and objections originated (*onus proferendi*), as well as present evidence on the basis of which those facts could be established (*onus probandi*). Potential applicants who had not done so would have failed to comply with the procedural requirements of domestic law, which further meant that they would not have properly exhausted domestic remedies.

#### (b) **The Polish Government**

111. The Polish Government likewise stressed that before the domestic courts, applicants had to indicate the facts from which they derived their claims. The Court could not expect the national courts to assist the parties by reformulating their claims and searching for the facts to support them, as that would be in breach of one of the fundamental principles of civil proceedings in all Council of Europe member States, namely the principle of equality of the parties.

112. The Polish Government also warned against an excessively lenient approach to the principle of exhaustion of domestic remedies which, on the one hand, could deprive the respondent State of the possibility of reacting to a violation of the Convention or to a risk of such violation, and, on the other hand, could cause the Court to *de facto* take over the adjudication of the merits of the case, which it was not entitled to do under the Convention. Rather, the Court should examine whether it had been possible to use a domestic remedy and whether the law in that regard had been clear and publicly available, and

if so, whether the applicant had been prevented from using that remedy as a result of excessive formalism.

### C. The Court's assessment

113. The relevant principles emerging from the Court's case-law concerning the right of access to a court and, in particular, the situations in which a restriction of that right amounts to "excessive formalism" are summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79 and 90-99, 5 April 2018).

114. As noted by the Chamber, the applicant company brought its action for compensation for damage caused by the State under the State Liability Act without expressly specifying whether the damage had been caused by an unlawful decision or by irregular official conduct, the two possible causes of action under the Act (see paragraph 80 above). However, as the Government pointed out (see paragraph 93 above), the applicant company did refer to section 33 of the Act, which sets a time-limit for submitting claims for compensation for damage caused by an unlawful decision (see paragraphs 41 and 63 above).

115. In those circumstances the domestic courts treated the applicant company's action as an action against an unlawful decision under section 7 of the State Liability Act and dismissed it for lack of *locus standi* because only parties to the proceedings from which the unlawful decisions originated could claim compensation from the State.

116. In its appeal to the Municipal Court, its appeal on points of law to the Supreme Court and its complaint to the Constitutional Court, as well as in its application to the Court, the applicant company argued that this application of domestic law by the domestic courts was excessively formalistic (see paragraphs 44, 46, 48 and 54 above). However, the applicant company was not explicit as to what this formalism consisted of. Nonetheless, the Court agrees with the Government (see paragraph 96 above) that the applicant company's argument that "in the situation at issue the company was also, figuratively speaking, in custody because its entire human capital had been remanded in custody" suggests that the alleged excessive formalism consisted of the refusal of the domestic courts to disregard the applicable statutory provision and grant the applicant company *locus standi* for its action for compensation for damage caused by the decision on custody.

117. However, as the Government pointed out (see paragraph 97 above), in its subsequent submissions before the Chamber the applicant company appears to have taken the view that what was excessively formalistic was the refusal of the domestic courts to treat its civil action as one based on irregular official conduct (see paragraphs 105-106 above).

118. The Chamber accepted that view by holding, albeit in the context of exhaustion of domestic remedies regarding the complaints under Article 1 of

Protocol No. 1, that it followed clearly from the action that the applicant company had claimed compensation for the depreciation of its merchandise seized in the criminal proceedings. It had then been up to the domestic courts, applying the principle of *jura novit curia*, to subsume the facts of the case as described by the applicant company under the relevant provisions of the State Liability Act in order to deal with the merits of its claims (see paragraph 80 above).

119. However, the Grand Chamber observes that the Chamber reached this conclusion without taking into account the fact that in the circumstances of the case this might not have been possible under domestic law. Therefore, it may well have been the case that the facts as presented by the applicant company in its civil action prevented the domestic courts from treating its action as being based on irregular official conduct.

120. In any event, it is in the first place for the national authorities, and notably the courts, to interpret and apply the domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). In the present case this means ascertaining whether the fact that the domestic courts did not apply the principle of *jura novit curia* and treat the applicant company's action as one based on irregular official conduct constituted excessive formalism and thereby unduly limited its access to a court.

121. The applicant company, which was represented by a lawyer, did not rely in its civil action on sub-paragraph (b) of section 5(1) of the State Liability Act or section 13 thereof (see paragraph 59 above), which provide a legal basis for State liability for damage caused by irregular official conduct. In its submissions before the domestic authorities, the applicant company did not even once mention irregular official conduct. On the contrary, it repeatedly referred to the unlawful character of the prosecution and detention of its managing director and other member, and explicitly referred to section 33 of the State Liability Act, which concerns the time-limit for submitting claims for compensation for damage caused by an unlawful decision (see paragraphs 41 and 63 above). Thus, it cannot but be concluded that the applicant company did not base its civil action on irregular official conduct.

122. What is more, once the first-instance court had dismissed its action for lack of *locus standi* (see paragraph 43 above), the applicant company, in its subsequent remedies (see paragraphs 44, 46 and 48 above), did not argue that the lower court(s) had misconstrued its civil action and should have treated it as an action based on irregular official conduct.

123. This means that before the Court the applicant company adopted a totally different attitude by arguing that the domestic courts should have

treated its civil action as one based on irregular official conduct (see paragraph 117 above). However, parties cannot validly put forward before the Court arguments which they never made before the domestic courts (see, *mutatis mutandis*, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 47, Series A no. 222). In these circumstances, the domestic courts could not be blamed for not treating the applicant company's action as one based on irregular official conduct.

124. Lastly, the Court notes that in their observations before the Chamber the Government argued that, even after the dismissal of the applicant company's civil action, it could have brought a new action specifying irregular official conduct as the cause of the damage. According to the Government, that option had been available to the applicant company for a further four months after the decision in the compensation proceedings had become final (see paragraph 79 above). This was not contested by the applicant company and the Court sees no reason to call this possibility into question.

125. It follows that the applicant company's access-to-court complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and that it must be rejected pursuant to Article 35 § 4.

#### IV. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

##### **A. The scope of the applicant company's complaints under this Article**

###### *1. The Chamber judgment*

126. The Chamber considered that the main object of the application was the impossibility of recovering compensation for damage to merchandise that had lost its value owing to its seizure for five years and the passing of time, and found a violation of Article 1 of Protocol No. 1. It held that there had been no justifiable reasons to retain the applicant company's merchandise for almost a year and a half after the acquittal of its managing director and other member (see paragraph 80 above).

127. The Government disputed the Chamber's assessment, whereas the applicant agreed with it.

128. The Grand Chamber considers that before addressing the admissibility of this part of the application, and given the findings above in relation to the complaints under Article 6 § 1 and Article 13 of the Convention, it must first define the scope of the applicant company's complaints under Article 1 of Protocol No. 1.

## 2. *The parties' submissions*

### (a) **The Government**

129. The Government averred that the applicant company had not been sufficiently specific about the cause of the alleged violation. In their view it was not clear whether that complaint was directed primarily against the decision remanding both of its members in custody and the resultant “paralysing” of the functioning of the company, or whether the main issue was the seizure of its merchandise, the deterioration of the merchandise merely due to the passage of time, or its depreciation owing to a failure of the State to take due care of it.

130. The Government also noted that one issue which had not been raised by the applicant company in its application to the Court (see paragraphs 50-55 above) was the (only) fact on the basis of which the Chamber had found a violation of Article 1 of Protocol No. 1, namely the protracted retention of the applicant company’s merchandise after the acquittal of its managing director and its other member (see paragraphs 80 and 126 above).

### (b) **The applicant company**

131. In its submissions before the Grand Chamber, the applicant company stated as follows (emphasis added):

“The case concerns damage to ... *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 members and the only ... managing director.”

132. The applicant company submitted that the scope of its complaint under Article 1 of Protocol No. 1 concerning the alleged infringement of its rights by the State in violation of the Convention and national law had been defined consistently since the beginning of the domestic proceedings. In the course of those proceedings the applicant company had elaborated upon its legal arguments and had adapted them to the case-law of the highest domestic courts. However, the key facts of the case had always been the same and were the same as those presented in its application to the Court.

133. The applicant company also pointed out that in its constitutional complaint, it had included a reference to a potential infringement of Article 1 of Protocol No. 1 to the Convention (see paragraph 48 above, with further reference to paragraph 44).

### (c) **The third-party interveners**

#### (i) *The Slovenian Government*

134. In their comments the Slovenian Government submitted that the Court had to determine the scope of the case, as that issue had a direct bearing on compliance with the admissibility requirement of exhaustion of domestic remedies.

135. The scope of the case depended on the applicant's complaint, but in the present case it was unclear what that complaint was, namely whether the applicant company was claiming to be the "victim" of (i) an act (the unlawful detention of the company's members which had paralysed the operation of the company), or (ii) a failure to act (irregular official conduct in the form of the protracted retention of the applicant company's merchandise after the acquittal of its director and other member). The Court thus had to ascertain what facts constituted the alleged interference with the applicant company's property rights. For the purposes of exhaustion of domestic remedies, those facts had to correspond to those forming the basis for the cause (unlawful act or omission) of the civil action for compensation which the applicant company had brought before the domestic courts.

*(ii) The Polish Government*

136. Like the Slovenian Government, the Polish Government stressed the need to formulate the applicant company's complaint in an unambiguous manner, as that had implications for the issue of exhaustion of domestic remedies.

*3. The Grand Chamber's assessment*

137. At the outset it should be reiterated that the scope of a case "referred to" the Court in the exercise of the right of individual application is determined by the applicant's complaint or "claim" – which is the term used in Article 34 (see *Radomilja and Others*, cited above, § 109). A complaint in Convention terms comprises two elements, namely factual allegations (that is, to the effect that the applicant is the "victim" of an act or omission) and the legal arguments underpinning them (that is, that the act or omission in question entailed a "violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto"). These two elements are intertwined because the facts complained of ought to be seen in the light of the legal arguments adduced and vice versa (*ibid.*, § 110).

138. The Grand Chamber must therefore ascertain what facts constituted the violation the applicant company complained of under Article 1 of Protocol No. 1 in its application lodged under the Convention and what legal arguments underpinned them (see paragraphs 50-55 above).

139. In this regard it is in the first place important to emphasise that the "unlawfulness" to which the applicant company repeatedly referred in its submissions before the domestic authorities and the Court related to the criminal prosecution and detention of its managing director and other member and concerned "unlawfulness" within the meaning of sections 7 to 9 of the State Liability Act. For the purposes of obtaining compensation from the State, those provisions characterise as "unlawful" any judicial decision which was ultimately quashed or overturned, and any detention of the accused where

the criminal proceedings did not end in his or her conviction (see paragraph 59 above).

140. In other words, the applicant company considered the criminal proceedings against its managing director and other member together with their detention to have been “unlawful” merely because the persons concerned had eventually been acquitted. In the applicant company’s view, the decision to seize its property in the context of those criminal proceedings had also been “unlawful”, as a consequence of the acquittal and not because that decision had been unlawful from the outset or had become unlawful at any point before their acquittal.

141. That being so, the Grand Chamber finds that the applicant company’s application (see paragraphs 50-55 above) relied on two causes or sets of facts constitutive of the alleged violation of its property rights, which cannot be disassociated from the legal arguments underpinning them, namely:

(a) the seizure of its property in the criminal proceedings against its managing director and other member and their detention, which the applicant company regarded as “unlawful” because those criminal proceedings had ended in the acquittal (hereinafter “the unwarranted prosecution and detention”), an argument which presupposes that the State should, under Article 1 of Protocol No. 1, be liable for any damage to property resulting from criminal proceedings in which the accused were eventually acquitted (see paragraph 52 above, with further reference to paragraphs 41 and 44); and

(b) the alleged failure of the domestic authorities to take the reasonable measures necessary for the preservation of its property, that is to say, the failure to secure the equipment which remained at the applicant company’s offices and to properly store the seized merchandise (see paragraphs 54-55 above), an omission potentially in breach of the State’s obligations under Article 1 of Protocol No. 1 (see, for example, *Tendam v. Spain*, no. 25720/05, § 51, 13 July 2010; see also paragraph 160 below).

142. However, it does not appear from the Chamber’s judgment that it reviewed the applicant company’s complaints as described under items (a) and (b) above. On the contrary, as already mentioned, the Chamber considered that the main object of the application was the impossibility of recovering compensation for damage to merchandise that had lost its value owing to its seizure for five years and the passing of time. It found a violation of Article 1 of Protocol No. 1, holding that there had been no justifiable reasons to retain the applicant company’s merchandise for almost a year and a half after the acquittal of its managing director and other member (see paragraphs 80 and 126 above).

143. The Grand Chamber notes that this was a matter that the applicant company had raised for the first time in its observations before the Chamber, dated 17 June 2016 and received at the Court on 20 June 2016, in which the company stated:

“In the subsequent phase – after the closing of the criminal proceedings – the bodies involved in criminal proceedings had to ... return ... the seized goods and surrend[er]ed funds. The applicant is of the opinion that the time – to restore the original state – was disproportionately long.”

144. In the view of the Grand Chamber, whilst the applicant company did mention in the application form that the merchandise had been seized for five years (see paragraphs 51-52 above), it did so only to highlight the extent to which the functioning of the company had been paralysed by the allegedly unlawful decision remanding both of its members in custody (see paragraphs 139-141 above), as it had also done before the domestic authorities.

145. In order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he or she was directly affected by the measure complained of; this is indispensable for putting the protection mechanism of the Convention into motion (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 96, ECHR 2014). Likewise, the Court can base its decision only on the facts complained of (see paragraph 137 above; see also *Radomilja and Others*, cited above, §§ 120-21 and 124). Therefore, it is not sufficient that a violation of the Convention is “evident” from the facts of the case or the applicant’s submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto (*ibid.*, § 110 – see paragraph 137 above), in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not (see, in the context of exhaustion of domestic remedies, *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020).

146. Specifically, the Court has held that ambiguous phrases or isolated words do not suffice for it to accept that a particular complaint had been raised (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 85, 21 November 2019). This follows from Rule 47 § 1 (e)-(f) and § 2 (a) of the Rules of Court, which provides that all applications must contain, *inter alia*, a concise and legible statement of the facts and of the alleged violation(s) of the Convention and the relevant arguments, and that this information should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.

147. This does not prevent applicants from clarifying or elaborating upon their initial submissions during the Convention proceedings. However, if such additions amount, in effect, to raising new and distinct complaints, these complaints must comply, like any other, with the admissibility requirements (see, for example, *Radomilja and Others*, cited above, § 135).

148. In view of the above considerations (see paragraphs 142-146), the Grand Chamber finds that the applicant company’s mention of the five-year storage of its merchandise in its application form (see paragraph 51 above)

was too ambiguous to be interpreted as raising the complaint about the prolonged seizure of that merchandise (compare *Ilias and Ahmed*, cited above, § 86). Had it been the wish of the applicant company at that stage to complain of the prolonged seizure of its property, it should have stated so in its application form in a clear manner. However, it only did so subsequently in its observations of 17 June 2016 to the Chamber (see paragraph 143 above, and compare *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 246, 18 July 2019). The Grand Chamber accordingly considers that this is a matter that constituted a new complaint, which is separate from items (a) and (b) described in paragraph 141 above and which will for the sake of clarity be referred to as item (c) in its examination below.

*4. Conclusion on the scope of the complaints under Article 1 of Protocol No. 1*

149. Having regard to all the considerations above, the Grand Chamber finds that the applicant company raised altogether three complaints before the Court under Article 1 of Protocol No. 1 to the Convention, comprising the following items:

(a) the complaint relating to the damage to its property following the unwarranted prosecution and detention of its managing director and other member (this complaint broadly corresponds to those identified by the Chamber in paragraphs 45 and 59 of its judgment – see paragraphs 77 and 141 above);

(b) the complaint of failure by the domestic authorities to take due care of its seized property (this complaint broadly corresponds to the one identified by the Chamber in paragraph 70 of its judgment – see paragraphs 77 and 141 above); and

(c) the complaint of undue delay in lifting the seizure after the acquittal of its director and other member (this complaint broadly corresponds to the one identified by the Chamber in paragraph 50 of its judgment – see paragraphs 77, 126, 143 and 148 above).

150. Items (a) and (b) were raised in the applicant company's application to the Court and item (c) in its observations before the Chamber after notice of the application had been given to the respondent Government. Whilst the Chamber addressed only the last-mentioned item, the Grand Chamber will consider all three. According to the Court's settled case-law, the "case" referred to the Grand Chamber is the application as it has been declared admissible, together with the complaints which have not been declared inadmissible (see, for example, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 83, 17 January 2023).

151. Having thus defined the scope of the applicant company's complaints under Article 1 of Protocol No. 1, the Grand Chamber will now proceed to examine their admissibility.

## B. Admissibility

### 1. *Complaint relating to the damage to the applicant company's property following the unwarranted prosecution and detention of its managing director and other member*

152. The Court reiterates that under its well-established case-law, it does not follow from Article 1 of Protocol No. 1 that an applicant's acquittal of the criminal charges or the discontinuance of the criminal proceedings must automatically give rise to compensation (see, for example, *Adamczyk v. Poland* (dec.), no. 28551/04, 7 November 2006; *Novikov v. Russia*, no. 35989/02, § 46, 18 June 2009; *Tendam*, cited above, § 51; *Hábenczius v. Hungary*, no. 44473/06, § 30, 21 October 2014; and *Stolkowski v. Poland*, no. 58795/15, § 78, 21 December 2021). This applies *a fortiori* in the present case, where the applicant company was not a party to the criminal proceedings against its managing director and other member, and thus could not have been convicted or acquitted.

153. Rather, as the Court's case-law bears out, it is in principle for the Contracting States to define the conditions for entitlement to compensation in such circumstances (see *Adamczyk*, and *Stolkowski*, § 78, both cited above), and the Court's power of review is limited to ascertaining whether the choice of compensation terms falls outside the State's wide margin of appreciation in this area (see *Stolkowski*, cited above, § 80).

154. This means that any such entitlement to compensation does not derive from Article 1 of Protocol No. 1 to the Convention but from national law. Such claims for compensation thus enjoy the protection of Article 1 of Protocol No. 1 in the same way as any other claims, that is, only when they have a sufficient basis in national law or, in other words, when they are sufficiently established to be enforceable (see *Radomilja and Others*, cited above, §§ 142-43 and 149). It cannot be said that an applicant has a sufficiently established claim for the purposes of that Article where there is a dispute as to the correct interpretation and application of domestic law and where the question whether he or she complied with the statutory requirements is to be determined in judicial proceedings (*ibid.*, § 149).

155. Czech law sets out the statutory conditions for obtaining compensation for damage caused by unwarranted prosecution or detention in sections 7 to 9 of the State Liability Act (see paragraph 59 above), it being understood that those provisions have much wider scope. In particular, sections 7 and 8 entitle parties to any judicial proceedings (not only criminal) to obtain compensation for damage caused by an unlawful judicial decision, that is, by any court decision which was eventually quashed or overturned, whereas section 9 entitles anyone who was held in custody to obtain compensation for damage caused by his or her detention if the criminal proceedings against him or her did not end in conviction (*ibid.*).

156. However, under section 7(1) of the State Liability Act, only the parties to the proceedings in which an unlawful decision was adopted are entitled to compensation for the damage caused by that decision (see paragraph 59 above).

157. Therefore, the applicant company's compensation claim, submitted to the domestic authorities and based on the unwarranted prosecution and detention of its managing director and other member, did not have a sufficient basis in national law. The guarantees of Article 1 of Protocol No. 1 to the Convention therefore do not apply to that claim (see *Radomilja and Others*, cited above, § 151).

158. It follows that the complaint relating to the damage to the applicant company's property following the unwarranted prosecution and detention of its managing director and other member is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and that it must be rejected pursuant to Article 35 § 4.

2. *Complaint of failure by the domestic authorities to take due care of the applicant company's seized property*

159. The Government's preliminary objection of non-exhaustion of domestic remedies concerns this complaint (see paragraph 82 above). The parties' arguments in that regard are summarised in paragraphs 89-108 above.

160. The Court reiterates that when the authorities seize property, they also take on a duty of care in respect of it and are liable for any damage to and/or loss of such property. In such cases the actual damage sustained should not be more extensive than that which is inevitable, if it is to be compatible with Article 1 of Protocol No. 1. As a consequence, when seizing property, the authorities must not only take the reasonable measures necessary for its preservation, but domestic legislation must also provide for the possibility of instituting proceedings against the State in order to obtain compensation for the damage resulting from the failure to keep such property in relatively good condition (see *Dabić v. Croatia*, no. 49001/14, § 55, 18 March 2021, and the cases cited therein).

161. That being so, the Court refers to its findings concerning the applicant company's access-to-court complaint (see paragraphs 113-125 above). From those findings it follows that the applicant company had a possibility of obtaining compensation for the damage resulting from the State authorities' alleged failure to keep its seized property in relatively good condition, but that it did not properly avail itself of that possibility.

162. The Government's preliminary objection of non-exhaustion of domestic remedies (see paragraph 82 above) must therefore be upheld by the Court.

163. It follows that the complaint of failure by the domestic authorities to take due care of the applicant company's seized property is inadmissible

under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and that it must be rejected pursuant to Article 35 § 4.

3. *Complaint of undue delay in lifting the seizure after the acquittal of the applicant company's managing director and other member*

164. The Government's preliminary objection of non-exhaustion of domestic remedies also concerns this complaint (see paragraph 82 above). The parties' arguments in that regard are summarised in paragraphs 89-108 above.

165. The Chamber found a violation of Article 1 of Protocol No. 1 in respect of this complaint, holding that there had been no justifiable reasons to retain the applicant company's merchandise for almost a year and a half after the acquittal of its managing director and other member (see paragraphs 80, 126 and 142 above).

166. However, as pointed out by the Government (see paragraph 130 above) and stated above (see paragraphs 142-148), this complaint was not raised in the applicant company's application to the Court. It was formulated for the first time in the applicant company's observations before the Chamber dated 17 June 2016 (see paragraph 143 above).

167. It follows that this complaint was submitted more than six months after the compensation proceedings had ended on 26 September 2013, when the Constitutional Court deemed the applicant's constitutional complaint inadmissible (see paragraph 49 above).

168. The Court reiterates in this connection that it is not open to it to set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect. This is so because the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions from being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. The rule marks out the temporal limits of supervision carried out by the organs of the Convention, and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Radomilja and Others*, cited above, § 138, and *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 28-31 and 40, 29 June 2012). Since the Court must therefore examine the issue of compliance with the six-month rule of its own motion, it is not necessary to assess whether the Government's argument on this point (see paragraphs 130 and 166 above) can be construed as a plea of inadmissibility based on non-compliance with that rule and whether they are estopped from making such a plea before the Grand Chamber.

169. In any event, even if this complaint had been lodged within the six-month time-limit, the Court considers that it follows from its findings concerning the access-to-court complaint (see paragraphs 113-125 above) that it is inadmissible for non-exhaustion of domestic remedies. The applicant

company had the possibility of obtaining compensation for the damage resulting from any undue delay in lifting the seizure of its property after the acquittal of its managing director and other member, but it did not properly avail itself of that possibility.

170. By way of observation and in response to the argument that it had been up to the domestic courts, applying the principle of *jura novit curia*, to subsume the facts of the case under the relevant provisions of the State Liability Act (see paragraphs 80, 105-106, 126 and 142 above), the Grand Chamber also refers to the following two principles established in its case-law in the context of exhaustion of domestic remedies.

171. Even in those jurisdictions where the domestic courts in civil proceedings are able, or even obliged, to examine the case of their own motion (that is, to apply the principle of *jura novit curia*), applicants are not exempted from raising before them a complaint which they may intend to subsequently make to the Court (see, among other authorities, *Kandarakis v. Greece*, nos. 48345/12 and 2 others, § 77, 11 June 2020), it being understood that for the purposes of exhaustion of domestic remedies the Court must take into account not only the facts but also the legal arguments presented domestically (see *Radomilja and Others*, cited above, § 117, and the cases cited therein).

172. Likewise, it is not sufficient that a violation of the Convention is “evident” from the facts of the case or the applicant’s submissions. Rather, he or she must actually complain (expressly or in substance) of such a violation in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Farzaliyev*, cited above, § 55, and *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, 10 December 2013). This, clearly, cannot be said to have been the situation in the case under consideration.

173. The Government’s preliminary objection of non-exhaustion of domestic remedies (see paragraph 82 above) must therefore be upheld by the Court.

174. It follows that the complaint of undue delay in lifting the seizure after the acquittal of the applicant company’s managing director and other member is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and that it must be rejected pursuant to Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* inadmissible the complaint under Article 6 § 1 of the Convention concerning the lack of access to a court;
2. *Declares* inadmissible the complaint under Article 1 of Protocol No. 1 to the Convention relating to the damage to the applicant company’s

property following the unwarranted prosecution and detention of its managing director and its other member;

3. *Upholds* the Government's preliminary objection that the remaining complaints under Article 1 of Protocol No. 1 to the Convention are inadmissible for non-exhaustion of domestic remedies.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 1 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen  
Deputy to the Registrar

Síofra O'Leary  
President