

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

GRAND CHAMBER

DECISION

Application no. 54155/16
SLOVENIA against CROATIA

The European Court of Human Rights, sitting on 18 November 2020 as a Grand Chamber composed of:

Robert Spano, *President*,
Linos-Alexandre Sicilianos,
Jon Fridrik Kjølbro,
Ksenija Turković,
Angelika Nußberger,
Paul Lemmens,
Síofra O'Leary,
Vincent A. De Gaetano,
Helen Keller,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Marko Bošnjak,
Lətif Hüseynov,
Jovan Ilievski,
Lado Chanturia,
Arnfinn Bårdsen, *judges*,
and Johan Callewaert, *Deputy to the Registrar*,

Having deliberated on 12 June 2019 and 18 November 2020, decides as follows:

PROCEDURE

1. The case originated in an inter-State application (no. 54155/16) lodged with the Court by the Government of the Republic of Slovenia against the Government of the Republic of Croatia under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 September 2016.

2. The Slovenian Government ("the applicant Government") are represented by their Agent, N. Pintar Gosenca. The Croatian Government ("the respondent Government") are represented by their Agent, Ms Š. Stažnik.

3. The application was allocated to the Third Section of the Court (Rule 51 § 1 of the Rules of Court). Having regard to the observations submitted by both Governments, on 18 December 2018 the Chamber relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention).

4. A hearing on the admissibility of the application took place in public in the Human Rights Building, Strasbourg, on 12 June 2019 (Rules 51 § 5 and 71 § 1).

There appeared before the Court:

(a) for the respondent Government

Ms Š. Stažnik,	*Agent*,
Mr J. McBride,	
Ms N. Katić,	*Counsel*,
Ms L. Barberić,	
Ms A. Krmek,	*Advisers*;

(b) for the applicant Government

Ms N. Pintar Gosenca,	*Agent*,
Ms A. Polak Petrič,	
Mr B. Juratowitch QC,	
Ms M. Menard,	
Mr D. Müller	*Counsel*,
Mr M. Dragonja,	
Ms M. Prevc,	
Ms E. Lap,	
Mr B. Pucelj,	
Ms K. Rejec Longar,	*Advisers*.

5. The Court heard addresses by Mr McBride, Ms Polak Petrič and Mr Juratowitch QC. Ms Stažnik, Mr McBride and Mr Juratowitch QC subsequently replied to questions put by the judges.

THE FACTS

A. General background to the case

6. The general factual and legal background to the case, as established by the Court in *Kovačić and Others v. Slovenia* ([GC], nos. 44574/98, 45133/98 and 48316/99, §§ 27-31, 3 October 2008), *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* ([GC], no. 60642/08, ECHR 2014) and *Ljubljanska banka d.d. v. Croatia* ((dec.), no. 29003/07, 12 May 2015), may be summarised as follows.

7. Before the economic reforms that were carried out in the Socialist Federal Republic of Yugoslavia (hereafter "the SFRY") in 1989-90, its commercial banking system consisted of "basic" and "associated" banks. Basic banks had separate legal personality but were integrated into the organisational structure of one of the nine associated banks. As a rule, basic banks were founded and controlled by socially-owned companies based in the same territorial unit (that is, in one of the Republics – Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia – or Autonomous Provinces – Kosovo and Vojvodina). Socially-owned companies were the flagship of the Yugoslav model of self-management: neither private nor State-owned, they were collective property controlled by their employees, based on a Communist vision of industrial relations. At least two basic banks could form an associated bank.

8. The Ljubljana Bank (in Slovenian and Croatian: *Ljubljanska banka*) was founded in 1955 under the laws of the then People's Republic of Slovenia. In 1969 it opened an office in Zagreb in the then Socialist Republic of Croatia. From 1978 until 1 January 1990 the Ljubljana Bank Ljubljana (hereafter "the Ljubljana Bank Head Office") operated as an "associated bank" (in Slovenian: *Ljubljanska banka – združena banka*) and was composed of Ljubljana Basic Bank Sarajevo, Ljubljana Basic Bank Zagreb, Ljubljana Basic Bank Skopje and a number of other basic banks. In the same period the Ljubljana Bank's Zagreb office operated as a "basic bank", that is, as the Ljubljana Basic Bank Zagreb (in Croatian: *Ljubljanska banka – Osnovna banka Zagreb*) and had separate legal personality under the law of the then Socialist Republic of Croatia. It was, however, integrated into the organisational structure of the Ljubljana Bank.

9. Within the framework of the 1989-90 reforms, the SFRY abolished the system of basic and associated banks described above. This shift in the banking regulations allowed some basic banks to opt for an independent status, while others became branches (without legal personality) of the former associated banks to which they had belonged.

10. On 19 December 1989 the Ljubljana Bank Head Office was re-registered as a joint-stock company (in Slovenian: *delniška družba, "d.d."*)

in the then Socialist Republic of Slovenia. The change was entered in the register of commercial companies the same day and became effective on 1 January 1990.

11. On 29 December 1989 the Ljubljana Basic Bank Zagreb was re-registered with effect from 1 January 1990 as the Zagreb Main Branch (in Slovenian *Ljubljanska banka d.d. Ljubljana – Glavna podružnica Zagreb*; in Croatian: *Ljubljanska banka d.d. Ljubljana – Glavna filijala Zagreb*) in the registers of commercial companies in both the then Socialist Republic of Slovenia and the Socialist Republic of Croatia, that is, as a business unit of the Ljubljana Bank (in Slovenian: *del podjetja*, in Croatian: *dio poduzeća*) without legal personality.

12. Shortly after its declaration of independence on 25 June 1991, Slovenia nationalised the Ljubljana Bank. In 1994, it restructured the bank by virtue of the 1994 Amendments to the 1991 Constitutional Act Implementing the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. Most – but not all – of the bank's assets and a part of its liabilities were transferred to a new bank – the New Ljubljana Bank (*Nova Ljubljanska banka*). The old Ljubljana Bank was initially administered by the Bank Rehabilitation Agency of Slovenia. It is now controlled by a Slovenian Government agency – the Succession Fund.

B. Cases covered by the present application

13. The initial application submitted by Slovenia before the Court concerned 26 particular civil cases brought before the Croatian courts by the Ljubljana Bank and/or the Ljubljana Bank Zagreb Main Branch (hereinafter collectively referred to as the "Ljubljana Bank"). On 2 February 2017, the applicant Government added 17 additional similar cases. In their further observations of 12 July 2017, submitted in reply to those of the respondent Government, they added five more particular cases to the list of domestic proceedings covered by the present application, thus bringing the total number of these cases to 48.

14. According to the applicant Government, as its Croatian debtors failed to repay their liabilities, the Ljubljana Bank lodged civil claims with Croatian courts, starting from 1991. As of 1994, over 80 such cases were pending before Croatian courts. These cases concerned unpaid and overdue receivables from credit loans and guarantees, mainly given to companies operating in the agricultural and food sectors of Croatia. These legal proceedings lasted on average 18 years or more. In more than a half of all these 80 cases, the debtors were subject to bankruptcy or liquidation proceedings, thus making the enforcement of the claims of the Ljubljana Bank impossible.

15. Moreover, since 2004, the Croatian courts, including the Constitutional Court, denied the *locus standi* of the Ljubljana Bank. According to the interpretation adopted by Croatian courts, claims which the Ljubljana Bank had against various Croatian companies arising from loans it had granted them in the former Yugoslavia, had been transferred to the New Ljubljana Bank by the entry into force on 27 July 1994 of the 1994 Amendments to the 1991 Constitutional Act of Slovenia, in particular by virtue of its section 22 (b) paragraph 1 (see paragraph 18 below). Thus, in those courts' view, the Ljubljana Bank had no standing to sue in order to obtain repayment of such loans. The Slovenian Government declared that this interpretation was arbitrary, since the aforementioned transfer of claims was only partial, and the claims against Croatian debtors remained with the Ljubljana Bank. According to the Croatian Government, this interpretation by the Croatian courts was not universal and only applied to some precise cases, where it was legally justified.

16. According to the applicant Government, the particular cases covered by the present application may be divided into four categories. Firstly, in several cases, the Croatian Constitutional Court confirmed the lower instance decisions finding that Ljubljana Bank lacked active standing to pursue its claims. Secondly, there are cases that are still pending, but the defendants have introduced the argument based on the aforementioned findings of the Constitutional Court; the Slovenian Government considered that these cases were in any event doomed to fail. Thirdly, there were similar proceedings that ended in a dismissal of the claims submitted by the Ljubljana Bank. Fourthly, in several cases, the Ljubljana Bank had been successful in securing favourable decisions of Croatian courts but had nevertheless been unable to enforce them for other reasons.

17. The respondent Government explained that a significant part of the judicial case files in the individual cases referred to by the applicant Government has been destroyed due to the passage of time, according to the Croatian domestic rules on dealing with judicial archives.

LEGAL FRAMEWORK AND PRACTICE

A. Relevant Slovenian domestic law

18. Section 22 (b) of the 1991 Constitutional Act Implementing the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (*Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*, Official Gazette of the Republic of Slovenia no. 1/91), as amended by the 1994 Amendments (*Ustavni zakon o dopolnitvah Ustavnega zakona za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*, Official

Gazette of the Republic of Slovenia no. 45/94), which entered into force on 27 July 1994, reads as follows:

> "The Ljubljana Bank d.d., Ljubljana and the Maribor Credit Bank, d.d. Maribor shall transfer their respective businesses and assets to the new banks established under the provisions of this Constitutional Act.
>
> Notwithstanding the provisions of the preceding paragraph, the Ljubljana Bank d.d., Ljubljana and the Maribor Credit Bank, d.d. Maribor shall retain:
>
> (i) all potential obligations arising out of joint liability under the 'New Financing Agreement' and other potential obligations arising out of relations with the National Bank of Yugoslavia and the former SFRY in the part where the debtors are [located] in other republics of the former SFRY;
>
> (ii) the relevant portion of potential claims under those headings;
>
> (iii) all obligations relating to foreign currency [deposited] on foreign-currency ordinary and savings accounts in respect of which the Republic of Slovenia did not assume guarantees under section 19 of this Act;
>
> (iv) obligations to the National Bank of Yugoslavia and those obligations to foreign creditors that were guaranteed by the SFRY where funds were used by the ultimate beneficiaries from other republics of the former SFRY;
>
> (v) the claims related thereto.
>
> The Ljubljana Bank d.d., Ljubljana shall maintain its links with the existing branches and subsidiaries of Ljubljana Bank d.d. based in the other republics on the territory of the former SFRY, but shall retain the corresponding share of claims against the National Bank of Yugoslavia in respect of foreign-currency savings accounts."

19. Section 25 of the Banking Act 2015 (*Zakon o bančništvu*, *ZBan-2*, *Uradni list RS*, št. 25/15) reads as follows:

> "(1) A bank shall be organised in the legal form of a joint-stock company or a European company.
>
> (2) Unless otherwise provided by this Act, Companies Act provisions regarding joint-stock companies and European companies shall apply to banks."

20. The relevant provisions of the Companies Act 2006 (*Zakon o gospodarskih družbah*, *ZGD-1*, *Uradni list RS*, št. 65/09, with further amendments) read as follows:

Section 3

> "(1) For the purposes of this Act, a company shall be a legal person that independently pursues a gainful activity as its sole activity.
>
> (2) For the purposes of this Act, gainful activity shall be any profit-oriented market activity.
>
> (3) The company referred to in paragraph (1) of this Section shall take one of the following legal forms:
>
> – partnership: unlimited liability company or limited partnership; or

– company limited by shares: limited liability company, joint-stock company, partnership limited by shares or European company.

(4) The companies referred to in the preceding paragraph shall be considered as companies even if they carry out, in full or in part, a non-profit activity.

(5) A company or economic interest grouping may be established by any natural or legal person unless otherwise provided by the law.

..."

Section 7

"(1) ... [A] company shall assume responsibility for [its] liabilities with all [its] assets.

(2) The law shall determine when and how the company members shall share liability with the company."

Section 8

"(1) Notwithstanding the preceding Section, Company Members shall also assume responsibility for the liabilities of the company in the following cases:

– if they have abused the company as a legal person in order to attain an objective that is forbidden to them as individuals;

– if they have abused the company as a legal person in order to cause damage to their or company's creditors;

– if, in violation of the law, they have used the assets of the company as a legal person as their own personal assets; or

– if for their own benefit, or for the benefit of some other person, they have reduced the assets of the company, where they knew or should have known that the company would not be capable of meeting its liabilities to third persons.

..."

Section 9 (1)

"The provisions of this part of the Act shall apply to all companies unless explicitly provided otherwise."

Section 168

"(1) A joint-stock company is a company which has its share capital divided into stocks.

(2) A joint-stock company is liable to creditors for its obligations with all its assets.

(3) Shareholders are not liable to creditors for the company's obligations."

Section 169

"A joint-stock company may be formed by one or more natural or legal persons who shall adopt the company's articles of association."

Section 265 (1)

"The management directs the business operations of the company independently and at its own liability."

Section 266 (1)

"The management acts on the company's behalf and represents the company."

Section 292 (1)

"Shareholders exercise their rights in respect of company matters at a general meeting, unless otherwise provided by this Act."

Section 293 (6)

"The general meeting may not decide on issues concerning the conduct of business unless so requested by the management."

21. The relevant provisions of the Services of Public Economic Interest Act 1993 (*Zakon o gospodarskih javnih službah, ZGJS*, *Uradni list RS,* št. 32/93) read as follows:

Section 1

"This Act determines the method and forms of performance of services of public economic interest.

Services of public economic interest provide material public goods as products and services whose permanent and uninterrupted production in the public interest shall be ensured by Republic of Slovenia or municipality or other local community in order to meet public needs when and insofar as they cannot be met on the market."

Section 2

"Services of public economic interest are determined by law ..."

Section 6

"Slovenia (the State) or a local community provides services of public economic interest in one of the following legal forms:

– public utility unit, when it would be uneconomic or irrational to set up a public corporation or to grant a concession due to the small scale or characteristics of the service;

– public service agency, when the services include one or more services of public economic interest, which due to their nature cannot be performed as profitable or this is not their purpose;

– public company, when performing one or more services of public economic interest of a larger scale or when this is required by the monopoly nature of the activity, if that activity can be performed as profitable;

– by granting concessions.

Public service agencies and public companies have to prepare a quality management program adopted by the founder.

A concessionaire and a private law entity which operates with a public capital contribution in matters of the performance of services of public economic interest, operates in accordance with the manner prescribed for the performance of a public service."

B. Relevant international law material

1. Interpretation of international treaties

22. The Vienna Convention of 1969 on the Law of Treaties provides as follows:

Article 31
General rule of interpretation

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended."

Article 32
Supplementary means of interpretation

"Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable."

2. The specific nature of human rights treaties

(a) The International Court of Justice

23. In its advisory opinion of 28 May 1951 on the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (*ICJ Reports* 1951, at p. 23), the International Court of Justice stated:

> "... In such a convention the contracting States do not have any interest of their own: They merely have, one and all, a common interest, namely the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. ..."

(b) The Inter-American Court of Human Rights

24. In its advisory opinion OC-2/82 of 24 September 1982 on the Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Articles 74 and 75) (Series A, no. 2, paragraph 29), the Inter-American Court of Human Rights declared:

> "The Court must emphasise ... that modern human rights treaties ... are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. ..."

(c) The United Nations Human Rights Committee

25. The relevant part of the General Comment no. 24 on the Issues Relating to Reservations Made upon Ratification or Accession to the International Covenant on Civil and Political Rights or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, adopted at the 52nd session of the United Nations Human Rights Committee on 4 November 1994 (CCPR/C/21/Rev.1/Add.6 (1994), paragraph 17), reads as follows:

> "[I]t is the Vienna Convention on the Law of Treaties that provides the definition of reservations and also the application of the object and purpose test in the absence of other specific provisions. But the Committee believes that its provisions on the role of State objections in relation to reservations are inappropriate to address the problem of reservations to human rights treaties. Such treaties ... are not a web of inter-State exchanges of mutual obligations. They concern the endowment of individuals with rights. The principle of inter-State reciprocity has no place ..."

C. Relevant European Union law material

26. In the case of *Bank Mellat v. Council* (Case T-496/10, judgment of 29 January 2013, EU:T:2013:39), an Iranian commercial bank owned by the Iranian State brought an action before the General Court of the European Union, seeking a complete or partial annulment of several Council regulations and decisions subjecting it to sanctions in the general framework of restrictive measures taken against Iran with the aim of preventing nuclear proliferation. According to the applicant bank, these measures breached fundamental rights guaranteed in the legal order of the European Union. The European Commission and the Council of the European Union contended that legal persons which are emanations of non-member countries, such as the applicant bank, which they considered was an emanation of the Iranian State, could not rely on fundamental rights protection and guarantees under European Union law. The General Court rejected this argument in the following terms:

> "36. In that regard, it must first be observed that neither in the Charter of Fundamental Rights of the European Union (OJ 2010, C 83, p. 389) nor in European Union primary law are there any provisions which state that legal persons who are emanations of States are not entitled to the protection of fundamental rights. On the contrary, the provisions of the Charter which are relevant to the pleas raised by the applicant, and in particular Articles 17, 41 and 47, guarantee the rights of 'everyone', a wording which includes legal persons such as the applicant.
>
> 37. Nonetheless, the Council and the Commission rely, in this context, on Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('ECHR'), the effect of which is that applications submitted by governmental organisations to the European Court of Human Rights are not admissible.
>
> 38. First, Article 34 of the ECHR is a procedural provision which is not applicable to procedures before the Courts of the European Union. Secondly, according to the case-law of the European Court of Human Rights, the aim of that provision is to ensure that a State which is a party to the ECHR is not both applicant and defendant before that court (see, to that effect, judgment of the European Court of Human Rights of 13 December 2007, *Islamic Republic of Iran Shipping Lines v. Turkey*, No 40998/98, § 81, ECHR 2007-V). That argument is not applicable to the present case.
>
> 39. The Council and the Commission also argue that the justification of the rule on which they rely is that a State is the guarantor of respect for fundamental rights in its territory but cannot qualify for such rights.
>
> 40. However, even if that justification were applicable in relation to an internal situation, the fact that a State is the guarantor of respect for fundamental rights in its own territory is of no relevance as regards the extent of the rights to which legal persons which are emanations of that same State may be entitled in the territory of other States.
>
> 41. In the light of the foregoing, it must be held that European Union law contains no rule preventing legal persons which are emanations of non-Member countries from taking advantage of fundamental rights protection and guarantees. Those rights may

therefore be relied upon by those persons before the Courts of the European Union in so far as those rights are compatible with their status as legal persons.

42. Further, and in any event, the Council and the Commission have not put forward any evidence capable of proving that the applicant was in fact an emanation of the Iranian State, that is, an entity which participated in the exercise of governmental powers or which ran a public service under governmental control (see, to that effect, judgment of the European Court of Human Rights *Islamic Republic of Iran Shipping Lines v. Turkey*, cited above in paragraph 38, § 79).

43. In that regard, first, the Council maintains that the applicant runs a public service under the control of the Iranian government since it provides financial services which are essential for the operation of the Iranian economy. The Council does not however contest the applicant's claims that those services represent commercial activities carried out in a competitive sector and subject to the ordinary law. In those circumstances, the fact that those activities are essential for the operation of a State's economy cannot, by itself, confer on them the status of a public service.

44. Next, the Commission maintains that the fact that the applicant is involved in nuclear proliferation demonstrates that it participates in the exercise of governmental powers. However, in adopting that approach the Commission assumes the truth of a premise which the applicant denies is true and which is a question of fact at the very core of the dispute before the Court. Further, the claimed involvement of the applicant in nuclear proliferation, as set out in the contested measures, cannot be assimilated to the exercise of State powers, but to commercial transactions entered into with entities engaged in nuclear proliferation. Consequently, that claim cannot justify the classification of the applicant as an emanation of the Iranian State.

45. Lastly, the Commission considers that the applicant is an emanation of the Iranian State because of the latter's participation in its share capital. Leaving aside the fact that, according to the information provided by the applicant, which is not disputed by the Council and the Commission, the holding concerned is only a minority shareholding, that participation does not by itself imply that the applicant participates in the exercise of governmental powers or that it runs a public service.

46. In the light of all the foregoing, it must be concluded that the applicant may take advantage of fundamental rights protection and guarantees."

27. The Council appealed to the Court of Justice of the European Union. It complained, *inter alia*, that the General Court had made an error of law by holding that even if it were established that the bank was an emanation of the Iranian State, this bank would still be entitled to rely on fundamental rights protections and guarantees before the courts of the European Union. The Council relied in particular on Article 34 of the Convention, insisting that the *ratio legis* of this provision was that a State cannot enjoy fundamental rights. It also contested the General Court's finding that there was no evidence to show that the *Bank Mellat* actually was a governmental organisation. The Court of Justice rejected these arguments (*Council v. Bank Mellat*, Case C-176/13 P, judgment of 18 February 2016, EU:C:2016:96):

"48. It must be pointed out that the action brought by *Bank Mellat* falls within the scope of the second paragraph of Article 275 [of the Treaty on the Functioning of the European Union] ...

49. *Bank Mellat* puts forward pleas alleging an infringement of its rights of defence and its right to effective judicial protection. Such rights may be invoked by any natural person or any entity bringing an action before the Courts of the European Union.

50. The same applies to pleas alleging an infringement of essential procedural requirements, such as that alleging an infringement of the obligation to state the reasons for a measure.

51. As regards pleas alleging a manifest error of assessment or a breach of the general principle of proportionality, it must be noted that the question whether a State entity is entitled to invoke them is one that relates to the merits of the case ...

52. In the light of the above, the Council's plea must be rejected, and there is no need to examine the argument that the General Court erred in holding that it was not established that *Bank Mellat* was a State entity, since that argument is ineffective."

28. In another, similar case, the Council and the Commission did not dispute the right of the applicant company itself to seek the annulment of the contested measures; they only denied that it had certain fundamental rights upon which it relied in order to obtain annulment. The General Court rejected this argument, which sought to reject the plea as inadmissible when, in its view, it concerned the merits. The Council appealed to the Court of Justice, arguing that if an entity which is a government organisation for the purposes of Article 34 of the Convention, does not have the fundamental right to the protection of property or other fundamental rights, it does not have locus standi to rely on an alleged infringement of those rights before the General Court. The Court of Justice held (*Council v. Manufacturing Support & Procurement Kala Naft Co., Tehran*, Case C-348/12 P, judgment of 28 November 2013, EU:C:2013:772):

"50. ... *Kala Naft*'s action fell within the scope of the second paragraph of Article 275 [of the Treaty on the Functioning of the European Union]. The company had *locus standi* to challenge before the Courts of the European Union its inclusion on the list contained in the acts at issue, as that listing was of direct and individual concern to it within the meaning of the fourth paragraph of Article 263 [of the Treaty on the Functioning of the European Union]. Its legal interest in bringing proceedings could not, therefore, be disputed.

51. The General Court correctly considered, therefore, in paragraph 45 of the judgment under appeal, that the argument as to whether *Kala Naft* was entitled to invoke fundamental rights protections and guarantees did not concern the admissibility of the action or even of a plea, but related to the merits of the case."

29. Finally, in the case of *Petro Suisse Intertrade Co. SA v. Council* (Joined Cases T-156/13 and T-373/14, judgment of 18 September 2015, EU:T:2015:646), the General Court confirmed the interpretation to be given to the aforementioned judgment:

"39. Moreover, in its judgment of 28 November 2013 in *Council v. Manufacturing Support & Procurement Kala Naft* ..., the Court of Justice rejected the inadmissibility arguments raised by the Council and the Commission according to which, as an emanation of the Iranian State, the applicant in the case in question, *Manufacturing*

> *Support & Procurement Kala Naft Co.*, did not enjoy protection of fundamental rights. The Court thus confirmed, in essence, that an entity which was an emanation of a non-Member State was entitled, by invoking, where applicable, fundamental rights guarantees, to bring an action for annulment of the restrictive measures adopted against it."

30. This approach has been repeated, both by the General Court and by the Court of Justice of the European Union, in several similar cases involving companies which may have been emanations of the Iranian State which were challenging the imposition of restrictive measures (see, among others, *Sina Bank v. Council*, Case T-67/12, judgment of the General Court of 4 June 2014, paragraphs 56-62; *Bank of Industry and Mine v. Council*, Case T-10/13, judgment of the General Court of 29 April 2015, paragraphs 57-58; *Council v. Bank Saderat Iran*, Case C-200/13 P, judgment of the Court of Justice of 21 April 2016, paragraph 50). In *Bank of Industry and Mine v. Council*, the General Court held:

> "57. However, even if that justification were applicable in relation to an internal situation, the fact that a State is the guarantor of respect for fundamental rights in its own territory is of no relevance as regards the extent of the rights to which legal persons which are emanations of that same State may be entitled in the territory of third countries (judgment in *Bank Melli Iran* v *Council*, cited in paragraph 53 above, EU:T:2013:397, paragraph 69).
>
> 58. In the light of the foregoing, it must be held that EU law contains no rule preventing legal persons which are emanations of non-Member States from taking advantage of fundamental rights protection and guarantees. Consequently, even if the applicant, as a public entity, is an emanation of the Iranian State, it may rely on those rights before the Courts of the European Union in so far as they are compatible with its status as a legal person (see, to that effect, *Bank Melli Iran* v *Council*, cited in paragraph 53 above, EU:T:2013:397, paragraph 70)."

COMPLAINTS

31. The applicant Government complained that, through systematic arbitrary and unlawful conduct amounting to an administrative practice, the Croatian authorities have prevented and continue to prevent the Ljubljana Bank from enforcing and collecting the debts of its Croatian debtors in Croatia. This alleged practice consists, firstly, in a systematically arbitrary interpretation of the relevant Slovenian law by Croatian courts, which refuse to recognise the *locus standi* of the Ljubljana Bank before them regarding these claims; secondly, in the interference of members of the executive branch of the respondent Government in judicial proceedings; thirdly, in systematically protracting the proceedings and various other procedural shortcomings, and fourthly, in the refusal of enforcement of final judicial decisions given in favour of the Ljubljana Bank by the Croatian courts. The applicant Government alleged multiple violations of Article 6 § 1, Article 13 and Article 14 of the Convention and of Article 1 of Protocol No. 1. Under Article 41 of the Convention, they also requested just

satisfaction corresponding to the losses incurred by the Ljubljana Bank as a result of the alleged violations.

THE LAW

32. With respect to the aforementioned complaints, the respondent Government raised three preliminary objections to the admissibility of the present application. First of all, they contended that it was, as such, incompatible with Article 33 of the Convention in that the applicant Government were not entitled to lodge it with the Court in the form of an inter-State case. Secondly, the respondent Government stated that the application should be dismissed for failure to exhaust domestic remedies "according to the generally recognised rules of international law", contrary to the requirement of Article 35 § 1 of the Convention. Thirdly, they objected that the application had been submitted outside the six-month time-limit set in that same provision.

I. OBJECTION AS TO THE INCOMPATIBILITY OF THE APPLICATION WITH ARTICLE 33 OF THE CONVENTION

33. Relying on the Court's decision in *Ljubljanska banka d.d. v. Croatia* ((dec.), no. 29003/07, 12 May 2015), the respondent Government contended that, since the Ljubljana Bank had been found not to be a "non-governmental organisation" within the meaning of Article 34 of the Convention and therefore could not lodge an individual application with the Court, the Convention likewise precluded the applicant Government from vindicating the rights of this entity by means of inter-State proceedings under Article 33. The applicant Government disagreed with this objection; furthermore, in their initial observations, they claimed that the Court was not authorised to examine it at the admissibility stage of the proceedings.

34. The relevant provisions of the Convention read as follows:

Article 1

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 19

"To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as 'the Court'. ..."

Article 32

"1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide."

Article 33

"Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party."

Article 34

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Article 35

"1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2. The Court shall not deal with any application submitted under Article 34 that

...

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; ..."

35. Before deciding on whether the present application is compatible with Article 33 of the Convention, the Court will ascertain whether the relevant provisions of the Convention allow it to examine this objection at the admissibility stage of the proceedings.

A. Whether the Court may examine the present objection at the admissibility stage

1. The parties' arguments

(a) The Croatian Government

36. The respondent Government considered that the range of preliminary issues that the Court could examine at the admissibility stage of an inter-State case was not limited to those mentioned in Article 35 § 1 of the Convention. From the formal point of view, it was true that, in an inter-State case, the Court could only check the fulfilment of two formal procedural

admissibility conditions set by Article 35 § 1, that is, the exhaustion of domestic remedies and the observance of the six-month time-limit. Nevertheless, already at this preliminary stage, the Court did have competence to determine whether the application was wholly unsubstantiated, or otherwise lacking the requirements of a genuine "allegation" within the meaning of Article 33 of the Convention. The respondent Government referred to several decisions of the Court and of the European Commission of Human Rights (hereinafter "the Commission") in inter-State applications, in which both Convention institutions had recognised that they might, at this stage, carry out some admissibility assessment going beyond the two criteria laid down in Article 35 § 1. Thus, they might, and should, ascertain whether or not there was prima facie evidence of compliance with the exhaustion rule, or whether or not there was enough evidence to allow a judicial examination of the case in the first place. In any event, the question of interpretation of the Court's jurisdiction under Article 33 did not need to be reserved for the merits stage.

37. The respondent Government further considered that the key question at stake in the present case was a "jurisdiction" issue within the meaning of Article 32 of the Convention. According to Article 32 § 1, the jurisdiction of the Court extended to all matters concerning the interpretation and application of the Convention which were referred to it as provided in Article 33, but that necessarily included the scope of the authorisation given to the Court by the latter provision. Moreover, a disagreement between the parties as to whether the applicant Government were entitled to submit an application under Article 33 of the Convention was a "dispute as to whether the Court has jurisdiction" within the meaning of Article 32 § 2, and the Convention did not preclude the Court from resolving it at the admissibility stage.

(b) The Slovenian Government

38. In their written observations, the applicant Government pointed out that in an inter-State case, all issues other than those specified in Article 35 § 1 were reserved for the post-admissibility stage and had to be examined together with the merits of the case. In other words, the only reasons for which an inter-State application could be declared inadmissible at the preliminary stage were the non-exhaustion of domestic remedies and failure to comply with the six-month time-limit. Conversely, the Court could not carry out a "preliminary examination on the merits" of the case and declare the application inadmissible for any of the other reasons mentioned in Article 35 – for instance, as incompatible with the Convention or its Protocols, manifestly ill-founded, or an abuse of the right of application. Therefore, the applicant Government contended that the Court was not competent to deal with the question of the compatibility of the application

with Article 33 of the Convention at the admissibility stage of proceedings, and that this question had to be reserved for a later stage.

39. However, at the hearing of 12 June 2019, the applicant Government conceded that the question of interpretation of any provision of the Convention, including Article 33, and, accordingly, whether the present application was compatible with it, was an issue of "jurisdiction" for the purposes of Article 32 § 1, and that the second paragraph of the same Article empowered the Court to examine it at the admissibility stage.

2. The Court's assessment

40. On the one hand, it is clear from the explicit wording of the provisions of Article 35 §§ 2 and 3 of the Convention – which allow the Court to declare applications inadmissible on the grounds that they are substantially the same as a matter already examined by the Court or submitted to another procedure of international investigation or settlement, incompatible with the provisions of the Convention, manifestly ill founded, or abusive – that they are confined to individual applications under Article 34 and are therefore inapplicable to inter-State applications submitted under Article 33 of the Convention (see *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, Decisions and Reports (DR) 2, p. 125, at p. 138; *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940-9944/82, Commission decision of 6 December 1983, DR 35, p. 143, at p. 162; and *Georgia v. Russia (II)* (dec.), no. 38263/08, §§ 64 and 79, 13 December 2011). Therefore, as the applicant Government have correctly pointed out, the only reasons for which an inter-State application can be rejected at the admissibility stage on the basis of Article 35 are the non-exhaustion of domestic remedies and the failure to comply with the six-month time-limit, mentioned in paragraph 1 of that Article.

41. On the other hand, the Convention institutions have never construed the procedural provisions of the Convention in such a restrictive way as to exclude any possibility of carrying out a preliminary assessment of the content of the case outside the framework of Article 35 § 1. Thus, the Court has repeatedly held that, despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law (see, for example, *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 134, 21 June 2016, and *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 174, 15 March 2018). Therefore, the wording of Articles 33 and 35 cannot be construed as preventing the Court from already establishing at the admissibility stage, under general principles governing the exercise of jurisdiction by international tribunals, whether it has any competence at all to deal with the matter laid before it (see *Georgia v. Russia*, cited above, § 64). While the wording of Article 35 §§ 2 and 3

makes reference to Article 34, it does not exclude the application of a general rule providing for the possibility of declaring an inter-State application inadmissible if it is clear, from the outset, that it is wholly unsubstantiated, or otherwise lacking the requirements of a genuine allegation within the meaning of Article 33 of the Convention (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, at pp. 161-62). In the Court's view, such an approach is also consistent with the principle of procedural economy.

42. In accordance with the foregoing, the Convention institutions have already decided at the admissibility stage on such preliminary issues as the *locus standi* of the applicant government as the legitimate representative of the respective State (see *Cyprus v. Turkey*, cited above, at pp. 135-36, and *Cyprus v. Turkey*, no. 8007/77, Commission decision of 10 July 1978, DR 13, p. 85, at pp. 146-48); the jurisdiction *ratione loci* of the Convention institutions (see *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, at pp. 136-37, and *Cyprus v. Turkey*, no. 8007/77, at pp. 148-50, both cited above); the prima facie existence of the jurisdiction of the respondent State (see *Cyprus v. Turkey*, no. 25781/94, Commission decision of 28 June 1996, DR 86-A, p. 104, at pp. 130-31); the existence of prima facie evidence of a breach of the Convention in the light of the evidence adduced by the parties (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, at pp. 160-62); and whether there is a "special agreement" between the parties, within the meaning of the current Article 55 of the Convention, which would possibly preclude the case from being examined by the Convention institutions (see *Cyprus v. Turkey*, no. 25781/94, cited above, at pp. 137-38). Moreover, even if the Convention itself does not allow an inter-State application to be rejected at the admissibility stage as constituting an abuse of the right of petition, the Commission nevertheless examined the content of several applications in the light of a general principle according to which the right to bring proceedings before an international body must not be manifestly misused, on the assumption that such a general principle existed (see *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, at p. 138; *Cyprus v. Turkey*, nos. 8007/77, at p. 156; and *Cyprus v. Turkey*, no. 25781/94, at p. 135, all cited above).

43. Turning to the specific circumstances of the present case, the Court considers that the key preliminary issue raised by the case – whether it may examine an inter-State application vindicating the rights of a legal entity which is prima facie not "non-governmental" – falls outside the scope of any of the admissibility criteria set out in Article 35 of the Convention, as they have always been understood in the settled case-law of the Convention institutions. Firstly, in the Court's view, this question cannot be equated with the criterion of the compatibility of the application *ratione personae* with the provisions of the Convention. Unlike in the individual case of *Ljubljanska banka d.d.* (cited above), where the applicant bank was deemed

by its nature not to be entitled to lodge an application under Article 34 given the absence of sufficient institutional and operational independence from the State, the Slovenian Government are undoubtedly entitled to submit an inter-State application under Article 33; moreover, they do not have to be in any way – even indirectly – aggrieved by the alleged violations (see, in this regard, *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 46, ECHR 2014). It has also never been asserted that these alleged violations were not attributable to the authorities of the respondent High Contracting Party (contrast *Naku v. Lithuania and Sweden*, no. 26126/07, §§ 78-79, 8 November 2016; *Rustamov v. Russia*, no. 11209/10, §§ 183-84, 3 July 2012; *Djokaba Lambi Longa v. the Netherlands* (dec.), no. 33917/12, §§ 68-84, ECHR 2012; or *Sotirov and Others v. Bulgaria* (dec.), no. 13999/05, 5 July 2011). Furthermore, even if the key preliminary question raised by the case is directly linked to the subject matter of the application, it cannot be equated with the issue of compatibility *ratione materiae* with the provisions of the Convention either, since this admissibility criterion has always been understood as exclusively referring to the material content of the rights guaranteed by the Convention and the Protocols thereto (see, for example, *Károly Nagy v. Hungary* [GC], no. 56665/09, §§ 77-78, 14 September 2017, or, in respect of a valid reservation made by a specific respondent State, *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, ECHR 2001-XI).

44. The Court agrees with both parties that the key issue of the present case is a matter which goes to the Court's jurisdiction within the meaning of Article 32 of the Convention, rather than a question of admissibility in the narrow sense of that term. In fact, the question whether the Convention as a human rights treaty can create fundamental rights for State-owned and State-run entities goes beyond the boundaries of the Convention mechanism and touches upon a general issue of international law, especially in the light of the universally recognised specific nature of human rights treaties (see paragraphs 23-25 above).

3. Conclusion

45. Consequently, the Court considers that there is a genuine "dispute as to whether [it] has jurisdiction" within the meaning of Article 32 § 2 of the Convention, which can be adjudicated at any stage of the proceedings. The Court does not therefore need to declare the present application admissible in order to be able to consider the key issue of the case.

B. Whether the scope of Article 33 of the Convention allows an applicant Government to vindicate the rights of an organisation which is not "non-governmental" for the purposes of Article 34

1. The parties' arguments

(a) The Croatian Government

46. The respondent Government reiterated the distinction, drawn by the Court, between two categories of inter-State complaints lodged under Article 33 of the Convention: those pertaining to general issues with a view to vindicating the public order of Europe, and those where the applicant State complained of violations by another Contracting Party of the basic human rights of one or more clearly identified or identifiable persons (*Cyprus v. Turkey* (just satisfaction), cited above, §§ 44-45, and *Georgia v. Russia* (just satisfaction) [GC], no. 13255/07, § 21, 31 January 2019). The complaints raised by Slovenia in the present case could not belong to the former category, since it had not been proven that decisions rendered by domestic courts on the active standing of a bank in civil and enforcement proceedings would endanger European public order to the extent that inter-State procedure would be warranted. Moreover, Croatia's membership of the European Union proved that it had harmonised its judiciary with the EU standards. Therefore, the Croatian Government concluded that the present application could only be defined as belonging to the latter category of inter-State cases, "substantially similar not only to those made in an individual application under Article 34 of the Convention, but also to claims filed in the context of diplomatic protection" (*Cyprus v. Turkey* (just satisfaction), cited above, § 45).

47. Referring to the case-law of the Court, as well as to that of the Inter-American Court of Human Rights, the International Court of Justice, and the United Nations Human Rights Committee, the respondent Government submitted that any inter-State dispute under any existing international or supranational mechanism of protection of human rights had to be related to a prima facie violation of fundamental rights of an individual. By entering into such mechanisms, Contracting States assumed obligations towards all persons within their jurisdiction, and not in relation to each other, and these obligations were not subject to any notion of reciprocity. It was an individual, and not a State, who was protected by the human rights treaties, which did not create any subjective rights for the High Contracting Parties themselves and were not intended to protect their own interests.

48. In the light of the aforementioned general principle, the respondent Government argued that if a governmental organisation was not entitled to submit an individual application to the Court pursuant to Article 34, then it could not be recognised as a "victim" of a violation of any Convention right. They rejected the possibility of interpreting the relevant provisions of

the Convention in a way that would dissociate the existence of substantive rights from the availability of a remedy, thus creating two categories of victims: those whose rights could be protected by the individual complaint mechanism of Article 34, and those who enjoyed the same rights but could only be protected through an inter-State procedure under Article 33. The fact that Article 34 restricted the right of individual application to "any person, non-governmental organisation or group of individuals", whereas the substantive provisions of the Convention established rights for "everyone", could not be used as a ground for such a distinction. The real purpose of the restrictive wording of Article 34 was a strict definition of legal standing before the Court, which not only listed the types of persons who could be applicants, but, contrary to Article 33, also required a "victim" status of that very same person, thus preventing an *actio popularis*.

49. According to the respondent Government, the fact that governmental organisations were not mentioned in Article 34 among the types of possible victims of the violations of the Convention indicated that the protection of their rights had not been envisaged by its drafters. If the intention of the authors of the Convention was indeed to guarantee human rights to governmental organisations, then it was hard to explain why they had been excluded from the scope of Article 34.

50. The respondent Government rejected the possibility of drawing a distinction between State organs *stricto sensu*, which would be excluded from the Convention guarantees, and other government-owned and government-run entities which would enjoy protection through Article 33. In cases like the present one, where the entity lacked sufficient institutional and operational independence from the Slovenian State and was technically owned by a State-operated Succession Fund, any just satisfaction award made by the Court under Article 41 of the Convention would not benefit any individual victim but would instead remain with the State. This would be contrary to the basic purpose of the inter-State procedure. The sole real aim of any inter-State application of this nature was to try to protect the economic and financial interests of the State. Thus, for example, in the present case, the Slovenian Government were ultimately aiming to facilitate payments of savings in accordance with the judgment in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* ([GC], no. 60642/08, ECHR 2014). The respondent Government also considered it illogical to treat differently, for that purpose, a governmental organisation of the respondent State and a governmental organisation of another Contracting Party or of a third country (including municipal governments and similar institutions).

51. Finally, the respondent Government acknowledged the existence of the case-law of the Court of Justice of the European Union according to which foreign State-owned companies could lodge direct appeals with the European Union courts (paragraphs 26-30 above). However, they

considered it not to be relevant in the present case, not least because the Court of Justice had explicitly recognised that it was not bound by the procedural rules of the Convention.

52. In short, the respondent Government alleged that the applicant Government were trying to turn the Court into a platform for resolution of an unresolved inter-State dispute, which was contrary to the meaning and purpose of the Convention as a human rights treaty. Since the rights and interests of legal entities such as the Ljubljana Bank could not be protected by means of an inter-State application according to Article 33, there was no "genuine allegation" of a violation of human rights for the purposes of that provision, and the examination of any such application would be beyond the jurisdiction conferred on the Court by the Convention.

(b) The Slovenian Government

53. The applicant Government recognised that, according to the Court's decision in *Ljubljanska banka d.d.* (cited above), the Ljubljana Bank "must, for the purposes of Article 34 of the Convention, be regarded as a governmental organisation", and therefore "ha[d] no standing to lodge an individual application with the Court". However, they submitted that this did not in any way mean that it could not enjoy any fundamental rights under the Convention; in fact, the question whether a legal entity had substantive rights protected by the Convention, and whether it had procedural standing to bring claims directly before the Court, were two different questions that should not be conflated.

54. In order to substantiate their position, the applicant Government invoked three series of arguments. First of all, they recalled the history of the Convention mechanism: before 1 November 1998, when Protocol No. 11 entered into force, the Commission had only had jurisdiction to hear individual applications if the respective Contracting State had issued a formal declaration recognising its competence, which it could do for a fixed period. Nevertheless, even if a Contracting Party did not make such a declaration, it remained bound by Article 1 of the Convention; persons and legal entities within its jurisdiction enjoyed substantive rights under the Convention, and these rights could therefore be breached by this State. This showed that the existence of a substantive right and the availability of a remedy under the Convention were two totally independent questions.

55. Secondly, the applicant Government drew the Court's attention to the different wording in Article 34 and in Articles guaranteeing specific fundamental rights. While Article 34 limited the availability of the individual complaint procedure to "any person, non-governmental organisation or group of individuals", other Articles did not contain such restrictive wording. Thus, Article 1, Article 6 § 1 and Article 13 of the Convention established rights for "everyone" ("*toute personne*" in French), whereas Article 1 of Protocol No. 1 protected the property rights of "every

natural or legal person" ("*toute personne physique ou morale*"). If the intention of the authors of the Convention had been to limit the enjoyment of these rights to strictly non-governmental entities, they would have used a wording similar to that of Article 34. The applicant Government did not see any reason why government-owned and government-run entities should be deprived of the substantive protection of the Convention. Consequently, such entities – and the Ljubljana Bank among them – could be "victims" of violations of the respective rights.

56. The applicant Government recognised that not all such entities should benefit from Convention guarantees and from recourse to the inter-State application mechanism established in Article 33. A State institution *stricto sensu* (such as, for example, a public prosecutor's office) would obviously be excluded since it formed part of the respective State and exercises public power on its behalf. This should be the sole decisive criterion when deciding when Article 33 could apply. Consequently, the substantive rights of a legal entity which was neither an organ nor a constituent part of the respective State and which was not endowed with any public powers would be able to be protected through recourse to the inter-State mechanism, even if it would not qualify as a "non-governmental" organisation under Article 34 because of the lack of "sufficient institutional and operational independence from the State".

57. Thirdly, the applicant Government reiterated the case-law of the Court according to which the main *ratio legis* of the inadmissibility of individual applications brought by governmental bodies or State companies was to prevent a Contracting Party acting as both an applicant and a respondent party before the Court (*Islamic Republic of Iran Shipping Lines v. Turkey*, no. 40998/98, § 81, ECHR 2007-V). However, this consideration did not apply in the present case, where the Ljubljana Bank belonged to a Contracting State other than the respondent one. The Slovenian Government also referred to several judgments of the General Court of the European Union and the Court of Justice of the European Union (paragraphs 26-30 above), according to which a legal entity wholly owned by a foreign State entity enjoyed fundamental rights and could claim their effective legal protection.

58. The applicant Government denied submitting the application in order to protect their own financial interests. In this regard, they referred to the well-established case-law of the Court concerning the respect for the "corporate veil" and the clear distinction between the rights of a company and those of its shareholders. Therefore, even if the protection of the rights of a public company would also benefit the State which owned it, the possible economic interests were irrelevant. Thus, in the present case, Slovenia was acting not as the shareholder of the Ljubljana Bank, but as a High Contracting Party exercising its procedural right under Article 33 of

the Convention to invoke Croatia's international responsibility for breaching human rights and thus violating the public order of Europe.

59. In the light of the foregoing, the applicant Government concluded that Article 33 of the Convention allowed the Court to adjudicate inter-State cases aiming at protecting the rights of government-owned and government-run entities provided that they were neither organs nor constituent parts of the respective States, even if these entities did not qualify as "non-governmental" under Article 34.

2. The Court's assessment

60. In the present case, the Court must first determine whether it may examine an inter-State application submitted by a High Contracting Party with a view to protecting the rights and interests of a legal entity which does not qualify as a "non-governmental organisation" within the meaning of Article 34 of the Convention and is therefore not entitled to lodge an individual application. The relevant case-law principles regarding the interpretation of the Convention as an international treaty may be summarised as follows (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 118-22 and 125, 8 November 2016, with further references).

(a) As an international treaty, the Convention must be interpreted in the light of the rules of interpretation provided for in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969 (see paragraph 22 above). In accordance with those provisions, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn.

(b) Regard must also be had to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must also be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions.

(c) The object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. Moreover, as an instrument for the protection of human rights, the Convention comprises more than mere reciprocal engagements between Contracting States.

(d) When interpreting the Convention, recourse may also be had to supplementary means of interpretation, including the *travaux préparatoires* of the treaty, either to confirm a meaning determined in accordance with other methods, or to establish the meaning where

it would otherwise be ambiguous, obscure, or manifestly absurd or unreasonable.

61. The Court also reiterates that under Article 34 of the Convention, a legal entity "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto" may submit an individual application to the Court, provided that it is a "non-governmental organisation" within the meaning of that provision. The idea behind this principle is to prevent a Contracting Party from acting as both an applicant and a respondent party before the Court. The term "governmental organisations", as opposed to "non-governmental organisations" within the meaning of Article 34, includes legal entities which participate in the exercise of governmental powers or run a public service under government control. The term "governmental organisations" applies not only to the central organs of the State, but also to decentralised authorities that exercise "public functions", regardless of their autonomy *vis-à-vis* the central organs; likewise it applies to regional and local authorities, including municipalities. In order to determine whether any given legal person falls within one of the two above categories, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out, the context in which it is carried out and the degree of its independence from the political authorities (see *Ärztekammer für Wien and Dorner v. Austria*, no. 8895/10, § 35, 16 February 2016, as well as *Österreichischer Rundfunk v. Austria*, no. 35841/02, §§ 48-54, 7 December 2006; *Radio France and Others v. France* (dec.), no. 53984/00, § 26, ECHR 2003-X; and *Islamic Republic of Iran Shipping Lines*, cited above, §§ 78-81).

62. In so far as companies are concerned, the Court has considered a company to be "non-governmental" for the purposes of Article 34 where it was governed essentially by company law, did not enjoy any governmental or other powers beyond those conferred by ordinary private law in the exercise of its activities, and was subject to the jurisdiction of the ordinary rather than the administrative courts. The Court has also taken into account the fact that an applicant company carried out commercial activities and had neither a public service role nor a monopoly in a competitive sector (see *Ärztekammer für Wien and Dorner*, cited above, § 36, with further references).

63. However, none of the aforementioned factors alone can be considered to be decisive; the Court has always taken into account all the relevant factual and legal circumstances in their entirety. Thus, for example, in the particular historical and legal context of some Contracting States, the Court has applied substantially the same general criterion as is applied to the question of responsibility of the State under Article 1 of Protocol No. 1 to the Convention for the debts of State-owned companies, namely whether the company enjoys "sufficient institutional and operational independence from

the State" (see *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, §§ 97-99, 15 January 2008; *Ljubljanska banka d.d.*, cited above, § 53; and *JKP Vodovod Kraljevo v. Serbia* (dec.), nos. 57691/09 and 19719/10, § 24, 16 October 2018; and compare *Ališić and Others*, cited above, §§ 114-15). In this respect, the Court considers that the legal concepts mentioned in Article 34 of the Convention must be interpreted autonomously and irrespective of the relevant domestic concepts (see, *mutatis mutandis*, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, 7 November 2013, and *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). Therefore, the fact that an applicant company is incorporated under domestic law as a legal entity separate from the State is not decisive in determining whether it is "non-governmental" within the meaning of Article 34 (see *Ljubljanska banka d.d.*, § 54, and *JKP Vodovod Kraljevo*, § 25, both cited above).

64. While recognising that not all legal entities should benefit from substantive Convention guarantees and from the possibility of recourse to the inter-State application mechanism set out in Article 33, the applicant Government have suggested that different criteria should apply to individual and inter-State applications. While the chief criterion to determine whether an organisation may lodge an individual application under Article 34 would remain the same as it is now – that is, broadly speaking, "sufficient institutional and operational independence from the State" – the only legal entities excluded from the benefit of the inter-State application mechanism under Article 33 would be State institutions in the narrow sense of the word, forming a constituent part of the respective State and exercising public power on its behalf. Other legal entities which would not qualify as "non-governmental" under Article 34 would still be able to have their rights vindicated by a Contracting State by means of an inter-State application (see paragraph 55 above). The Court is not persuaded by this approach for three reasons.

65. Firstly, it is a well-established general principle of interpretation of the Convention that it must be read as a whole and that its Articles should be construed in such a way as to promote internal consistency and harmony between its provisions (see, among many other authorities, *Johnston and Others v. Ireland*, 18 December 1986, § 57, Series A no. 112; *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, §§ 47-48, ECHR 2005-X; and *Mihalache v. Romania* [GC], no. 54012/10, § 92, 8 July 2019). In the Court's view, the internal coherence of the Convention is an important principle that applies to the substantive rights enshrined in Section I of the Convention but equally to the jurisdictional and procedural provisions – in the present case to Articles 1, 33 and 34.

66. Secondly, the Court should take into account the specific nature of the Convention as an instrument for the effective protection of human rights, universally recognised in international law. As the International

Court of Justice stated in its advisory opinion of 28 May 1951, the particular logic of a human rights treaty is that the contracting States do not have any interest of their own and do not pursue their individual advantages; instead, they are supposed to tend towards an objective common interest which is the protection of the rights of individuals (see paragraph 23 above). The Court also refers to the relevant documents adopted by the Inter-American Court of Human Rights and the United Nations Human Rights Committee, according to which, "[i]n concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction"; these treaties "concern the endowment of individuals with rights", and "[t]he principle of inter-State reciprocity has no place" (see paragraphs 24-25 above). Moreover, the Court itself has held that, according to the very nature of the Convention, even in an inter-State case it is always the individual, and not the State, who is directly or indirectly harmed and primarily "injured" by a violation of one or several Convention rights (see *Cyprus v. Turkey* (just satisfaction), cited above, § 46). In other words, only individuals, groups of individuals and legal entities which qualify as "non-governmental organisations" within the meaning of Article 34 can be bearers of rights under the Convention, but not a Contracting State or any legal entity which has to be regarded as a governmental organisation (see paragraphs 61-62 above). To state otherwise would be to contradict the fundamental underlying objective of the Convention expressed in both its Article 1 and its Preamble.

67. Thirdly, turning to the specific purpose of Article 33 of the Convention, the Court reiterates that there are two basic categories of inter-State complaints: those pertaining to general issues with a view to protecting the public order of Europe, and those where the applicant State complains of violations by another Contracting Party of the basic human rights of one or more clearly identified or identifiable persons; the latter are substantially similar both to individual applications under Article 34 and to claims filed in the context of diplomatic protection (see *Cyprus v. Turkey* (just satisfaction), cited above, §§ 43-45). The Court agrees with the respondent Government that the present application, aimed at protecting the interests of one concrete legal entity in forty-eight precisely circumscribed sets of legal proceedings, and claiming just satisfaction on behalf of it under Article 41 of the Convention, belongs to the latter category of inter-State cases and not to the former. However, the Court does not consider that this distinction is decisive in the context of the present application; in any case, as it has already said, it is the individual, and not the State, who is directly or indirectly harmed and primarily "injured" by a violation of Convention rights (see paragraph 66 above). Therefore, if just satisfaction is afforded in an inter-State case, it should always be for the benefit of individual victims

and not for the benefit of the State (see *Cyprus v. Turkey* (just satisfaction), cited above, § 46). However, if the Court found a violation of one or several Convention rights in a case brought by a State under Article 33 on behalf of an entity lacking sufficient institutional and operational independence from it, and awarded a sum of money as just satisfaction, then the eventual final beneficiary of the Court's judgment would be that same State and no one else.

68. In their observations, the applicant Government have referred to the judgment in *Islamic Republic of Iran Shipping Lines* (cited above), in which the Court recognised the *locus standi* of an Iranian State company despite its public-law status. In this regard, the Court has already held that the term "non-governmental organisation" in Article 34 of the Convention cannot be construed so as to exclude only those "governmental" organisations which could be regarded as a part of the respondent State or under the strict control thereof. For the purposes of Article 34, the term "governmental organisations" includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities (ibid., § 79). On the other hand, this exclusion applies even if the application is lodged by a "governmental" entity of a State which is not party to the Convention (ibid., § 81, and see *Ljubljanska banka d.d.*, cited above, § 55). In *Islamic Republic of Iran Shipping Lines* (cited above, §§ 78-82) the Court recognised the *locus standi* of the applicant company, having established that it was independent enough to qualify as "non-governmental" for the purposes of Article 34, according to the criteria set out in the Court's own case-law, irrespective of its nationality. The aforementioned judgment therefore is in keeping with the overall logic of an internally coherent and uniform interpretation of the provisions of the Convention.

69. Concerning the references made by the applicant Government to judgments of the General Court and the Court of Justice of the European Union (see paragraphs 26-30 and 57 above), the Court notes that the conditions of admissibility of various complaints before the Court may differ from those that are applicable before the European Union courts. Therefore, the Court does not consider that those judgments referred to can, as such, have a dispositive bearing on the interpretation of Article 34 of the Convention. In this regard, the Court observes that in its judgment of 29 January 2013 in *Bank Mellat v. Council* (see paragraph 26 above), the General Court of the European Union recognised that "Article 34 of the [Convention] is a procedural provision which is not applicable to procedures before the Courts of the European Union").

3. Conclusion

70. In the light of the foregoing, the Court considers that Article 33 of the Convention does not allow an applicant Government to vindicate the rights of a legal entity which would not qualify as a "non-governmental organisation" and therefore would not be entitled to lodge an individual application under Article 34.

C. Whether the Court may examine the present application on the basis of Article 33 of the Convention

1. The parties' arguments

(a) The Croatian Government

71. Since the case of *Ljubljanska banka d.d.*, cited above, concerned one individual instance of alleged violations out of those covered by the present application, the respondent Government argued that the other party was simply trying to circumvent the Court's inadmissibility decision by taking over the same complaints and trying to resubmit them through the inter-State procedure, contrary to the basic purpose of that procedure and of the Convention as a whole.

72. In this connection, the respondent Government reiterated that in *Ljubljanska banka d.d.*, the Court had already firmly and unambiguously established that, lacking any sufficient institutional and operational independence from the Slovenian State, the Ljubljana Bank was not a "non-governmental organisation" within the meaning of Article 34 of the Convention. They supported this conclusion by emphasising that this entity was not "non-governmental" by nature: it was not a trading body but a mere claims body the only purpose of which is recovery of debts; it had neither customers nor active shareholders other than the State; it was controlled by the Succession Fund, which was a Slovenian Government agency. In these circumstances, the respondent Government concluded that Slovenia was trying to protect its own economic and financial interests rather than individual human rights guaranteed by the Convention, and that the present application was therefore incompatible with Article 33.

(b) The Slovenian Government

73. The applicant Government considered that the inadmissibility decision in the *Ljubljanska banka d.d.* case could not be understood as denying the "victim" status of the Ljubljana Bank. It was true that in *Ljubljanska banka d.d.*, the Court had concluded that this entity "must, for the purposes of Article 34 of the Convention, be regarded as a governmental organisation" (ibid., § 54). However, the Court had not assessed its status for the purposes of any other provision of the Convention, specifically Article 33. The aforementioned decision therefore had to be construed

strictly and in no way prejudged the admissibility of the present inter-State case. Nor should the present case be conflated with *Ališić and Others* (cited above), the key issue of which had been the responsibility of Slovenia (and several other States) under international law rather than the degree and nature of autonomy of the Ljubljana Bank.

74. In any event, according to the applicant Government, the mere fact that a State owned a company did not equate the latter with that State. The Court itself had recognised that although "it [did] not enjoy sufficient institutional and operational independence from the State", the Ljubljana Bank was nevertheless "a separate legal entity" (ibid., § 54). The Ljubljana Bank, whose sole task was the management of its own assets and liabilities, had never acted as a constituent part of the Slovenian State and had never exercised any public function or governmental authority – even after that State had become its sole shareholder. It could not take any actions binding on third parties. It remained a separate legal entity, managed in accordance with the Slovenian Companies Act, and the State only exercised the typical rights and obligations of a shareholder in a joint-stock company. The Succession Fund exercised its rights at the general meeting in accordance with the ordinary company law but was prohibited from exercising any influence on the management of the bank. Finally, the decisions taken by the Ljubljana Bank were not subject to administrative courts. In these circumstances, the Ljubljana Bank was sufficiently independent from the Slovenian State to be able to have its rights vindicated by the latter through the mechanism set out in Article 33 of the Convention.

75. Moreover, the applicant Government noted that all 48 cases underlying the present application related to debts of Croatian companies arising from different transactions with the bank at the time when it had not been owned by the State. If the Court took a rigid approach and refused the Ljubljana Bank standing under the Convention, it would mean that many banks that had become State-owned following the financial crisis and were later privatised again would lose and acquire substantive rights under the Convention depending on who their owner was at any given point in time.

2. The Court's assessment

76. The Court has determined that there is a direct systemic correlation between Articles 33 and 34 of the Convention in that an organisation which is not "non-governmental" within the meaning of Article 34 cannot have its rights protected by a government through the mechanism of Article 33 (see paragraph 70 above). Regarding the circumstances of the present case, the Court reiterates its findings in *Ališić and Others* (cited above):

> "114. Having found that Ljubljanska Banka Ljubljana and Investbanka were and still are liable for 'old' foreign-currency savings in their Bosnian-Herzegovinian branches, it must be examined, as the Chamber did, whether Slovenia and Serbia were responsible for the failure of those banks to repay their debt to the applicants. In this

regard, the Court reiterates that a State may be responsible for debts of a State-owned company, even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention ... The key criteria used in the above-mentioned cases to determine whether the State was indeed responsible for such debts were as follows: the company's legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control).

115. Additional factors to be taken into consideration are whether the State was directly responsible for the company's financial difficulties, siphoned the corporate funds to the detriment of the company and its stakeholders, failed to keep an arm's-length relationship with the company or otherwise acted in abuse of the corporate form ... Lastly, as to the companies under the regime of social ownership, which was widely used in the SFRY and is still used in Serbia, the Court has held that they do not, in general, enjoy 'sufficient institutional and operational independence from the State' to absolve the latter from its responsibility under the Convention (see, among many other authorities, *R. Kačapor and Others*, cited above, §§ 96-99, and *Zastava It Turs v. Serbia* (dec.), no. 24922/12, §§ 19-23, 9 April 2013).

116. ... [T]he Court notes that Ljubljanska Banka Ljubljana is State-owned by Slovenia and controlled by a Slovenian government agency – the Succession Fund ... It is moreover crucial that by virtue of an amendment to the 1991 Constitutional Act, Slovenia transferred most of that bank's assets to a new bank, to the detriment of the bank and its stakeholders ... The State thus disposed of Ljubljanska Banka Ljubljana's assets as it saw fit ... The Grand Chamber therefore agrees with and endorses the Chamber's finding that there are sufficient grounds to deem Slovenia responsible for Ljubljanska Banka Ljubljana's debt to Ms Ališić and Mr Sadžak. ..."

77. In *Ljubljanska banka d.d.* (cited above), the Court referred to the aforementioned findings as a basis for the following conclusions:

"53. Even though those findings were made in the context of responsibility of the State under Article 1 of Protocol No. 1 to the Convention for the debts of State-owned companies, the Court has already held that findings made in such context apply with equal force in the context of determining whether a (State-owned) company may be considered a 'non-governmental organisation' within the meaning of Article 34 of the Convention (compare *Zastava It Turs*, cited above, §§ 21-23, with *R. Kačapor and Others* [cited above], §§ 97-99 ...).

54. The Court therefore considers that although the applicant bank is a separate legal entity, it does not enjoy sufficient institutional and operational independence from the State and must, for the purposes of Article 34 of the Convention, be regarded as a governmental organisation ... It thus has no standing to lodge an individual application with the Court."

78. In the light of the parties' observations and of all the material before it, the Court sees no reason to depart from these findings. It reiterates that, in order to determine whether any given legal person is "governmental" or "non-governmental", account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its

independence from the political authorities (see *Islamic Republic of Iran Shipping Lines*, cited above, § 79). In the light of these criteria, it notes once again that, even if the Ljubljana Bank is a separate legal entity which does not participate in the exercise of governmental powers, it is owned by the Slovenian State, which has disposed of its assets as it saw fit, and is controlled by a Slovenian government agency, the Succession Fund. Notwithstanding the fact that, according to the applicant Government, it is organised as a joint-stock company, governed by company law and is not subject to the jurisdiction of administrative courts (see paragraph 74 above), the applicant Government have not contested the respondent Government's claim that the Ljubljana Bank has neither customers nor active shareholders other than the State (see paragraph 72 above). Moreover, in *Ališić and Others* (cited above) the Court held the Slovenian State responsible for the debt of the respective local branch of the Ljubljana Bank towards two of the applicants (ibid., § 116). Even though those findings were made in the context of responsibility of the State under Article 1 of Protocol No. 1, the Court considers that this is an important criterion in the context of determining whether a legal entity may be considered to be "non-governmental". In these circumstances, the Court concludes that the Ljubljana Bank does not enjoy sufficient institutional and operational independence from the State and cannot be regarded as a "non-governmental organisation" within the meaning of Article 34.

3. Conclusion

79. The Court reiterates that the Ljubljana Bank is not a "non-governmental organisation" for the purposes of Article 34 of the Convention, and, as such, has no standing to lodge an individual application. Accordingly, Article 33 does not empower the Court to examine an inter-State application alleging a violation of any Convention right in respect of this legal entity. The Court therefore lacks jurisdiction to take cognisance of the present case.

II. THE REMAINING PRELIMINARY OBJECTIONS

80. The respondent Government have raised two additional preliminary objections, alleging, respectively, non-exhaustion of domestic remedies and failure to comply with the six-month time limit, contrary to the requirements of Article 35 § 1 of the Convention. In view of the conclusion reached by the Court in paragraph 79, it considers that there is no need to examine these objections separately.

FOR THESE REASONS, THE COURT, BY A MAJORITY,

Holds that it has no jurisdiction to take cognisance of the application.

Done in English and French and notified in writing on 16 December 2020.

Johan Callewaert	Robert Spano
Deputy to the Registrar	President