



Property-seizure case declared inadmissible

In its judgment in the case of [FU QUAN, s.r.o. v. the Czech Republic](#) (application no. 24827/14) the Grand Chamber of the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the seizure of property amounting to nearly 2.1 million euros belonging to the applicant company in the course of a tax evasion investigation and the trial against its managing director and another member. The property was held for five years.

The Grand Chamber found it appropriate to deal firstly with the complaints under Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy), which were the applicant company's main complaints in its application to the Court.

It found that the applicant company did not base its civil action on irregular official conduct nor did it argue that the lower courts had misconstrued its civil action and should have treated it as an action based on such conduct. Finally, the applicant company could have brought a new action specifying irregular official conduct as the cause of the damage. Accordingly, the Grand Chamber found the applicant company's access-to-court complaint inadmissible as manifestly ill-founded. The complaint under Article 13 was considered to be absorbed under Article 6 § 1.

The Grand Chamber defined the scope of the applicant company's complaints under Article 1 Protocol No.1. finding three complaints made.

Regarding the damage to the applicant company's property while held by the authorities, the Grand Chamber held that only the members who had been prosecuted had been entitled to compensation, not the applicant company which had not been a party, and so it ruled that complaint inadmissible.

The Grand Chamber, upholding the government's preliminary objection, judged inadmissible for failure to exhaust domestic remedies the complaints concerning the authorities' alleged failure to take due care of the applicant company's seized property and the delay in returning it after its members' acquittals.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, FU QUAN, s.r.o., is a company based in the Czech Republic.

In 2005 the only two members of the company, one of whom was the managing director, were accused of tax evasion and detained. The domestic authorities ordered the seizure of the company's property, including its merchandise, its funds and a leased vehicle. The value of the seized property was around 62.4 million Czech korunas (CZK – about 2.1 million euros (EUR) at that time).

The managing director and the other member lodged complaints with the national courts regarding the seizure, which were rejected as unfounded by the Prague Municipal Court.

In 2006 and 2007 the two members were found guilty of tax evasion. Those judgments were quashed on appeal. They were eventually acquitted on appeal in their retrial in 2009.

In May 2010 funds that had been seized from the applicant company were returned to it. Later that year the Municipal Court ordered the return of the applicant company's merchandise, which was completed in September of that year.

In June 2011 the applicant company brought a civil action against the State seeking compensation for the damage sustained by the unwarranted seizure of its property and by the unwarranted detention of its managing director and other member. The company relied on the State Liability Act but did not expressly specify whether the damage had been caused by an unlawful decision or by irregular official conduct, the two possible grounds for State liability. The first and the second-instance civil courts treated the applicant company's civil action as an action based on an unlawful decision and dismissed it because under the Act in question only parties to the proceedings in which an unlawful decision was adopted were entitled to compensation on that ground.

An appeal on points of law was rejected as inadmissible by the Czech Supreme Court, while a later constitutional complaint was ruled inadmissible by the Czech Constitutional Court.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 25 March 2014.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy) of the Convention, the applicant company claims that it was unable to obtain compensation for the damage to its property, and that it was denied access to a court.

On 17 March 2022 a Chamber of the Court held by 5 votes to 2 that there had been a violation of Article 1 of Protocol No. 1 and that it was not necessary to examine the complaints under Article 6 § 1 and Article 13 of the Convention. It awarded the applicant company CZK 12 million in respect of pecuniary damage.

On 5 September 2022 the panel of the Grand Chamber referred the case to the Grand Chamber following a request by the Czech Government. On 14 October 2022 the President, after consulting the parties, decided not to hold a hearing before the Grand Chamber.

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.

The judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra O'Leary (Ireland), *President*,
Georges Ravarani (Luxembourg),
Marko Bošnjak (Slovenia),
Gabriele Kucsko-Stadlmayer (Austria),
Pere Pastor Vilanova (Andorra),
Arnfinn Bårdsen (Norway),
Branko Lubarda (Serbia),
Mārtiņš Mits (Latvia),
Jovan Ilievski (North Macedonia),
Péter Paczolay (Hungary),
Lado Chanturia (Georgia),
María Elósegui (Spain),
Darian Pavli (Albania),
Ioannis Ktistakis (Greece),
Frédéric Krenc (Belgium),
Mykola Gnatovskyy (Ukraine),
Pavel Simon (the Czech Republic), *ad hoc Judge*,

and also Søren Prebensen, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 6 § 1 and Article 13

The applicant company argued that the national courts had been excessively formalistic and should have treated its civil action as an action based on irregular official conduct.

The Chamber had accepted that argument, stating that it had been up to the national courts to examine the facts as submitted by the applicant company under the relevant provisions of the State Liability Act.

The Grand Chamber, however, considered that the Chamber had not taken into account that this might not have been possible under domestic law, specifically that the facts as presented by the applicant company in its civil action might have prevented the national courts from treating its action as being based on irregular official conduct. Furthermore, before the national courts, unlike before the Chamber of the Court, the applicant company had *not* even once mentioned irregular official conduct or argued that those courts had misconstrued its civil action and should have treated it as an action based on such conduct. As a rule, parties could not present arguments before the Court that had not been made already before the national courts.

The Grand Chamber also noted that, for a further four months after the decision dismissing its civil action had become final, the applicant company could have brought a new action, based on irregular official conduct.

The complaint concerning access to a court was therefore declared inadmissible as manifestly ill-founded. The complaint under Article 13 was considered to be absorbed under Article 6 § 1.

Article 1 of Protocol No. 1

The Grand Chamber established that the applicant company had raised altogether three complaints before the Court under Article 1 of Protocol No. 1, specifically:

- (a) the complaint relating to the damage to its property following the unwarranted prosecution and detention of its managing director and its other member;
- (b) the complaint of failure by the domestic authorities to take due care of its seized property; and
- (c) the complaint of undue delay in lifting the seizure after the acquittal of its director and other member.

As regards the complaint under (a), the Grand Chamber reiterated that acquittal or discontinuance of criminal proceedings did not automatically imply a need for compensation. Any entitlement to compensation derives from national law. The Grand Chamber then noted that the applicant company had not been a party to the criminal proceedings against its members. Under the State Liability Act only the parties to the proceedings in which an unlawful decision had been adopted were entitled to compensation. Since the applicant company's compensation claim thus had not had a sufficient basis in domestic law, Article 1 of Protocol No. 1 was not applicable. This complaint was therefore declared inadmissible.

As regards the complaint under (b), the Grand Chamber reiterated that when the authorities seized property, they assumed a duty of care towards its owners. They must take reasonable efforts to preserve it. The applicant company had had the opportunity to obtain compensation from the State as a failure by the authorities to take due care of seized property constituted irregular official conduct. However, from the findings regarding the applicant company's complaint under Article 6 § 1 of the Convention it followed that it had not properly availed itself of that opportunity. As a result, that complaint was declared inadmissible for failure to exhaust domestic remedies.

As regards the complaint under (c), the Chamber of the Court had found that there had been no justifiable reason for retaining the applicant company's property for a year and a half after the acquittal of its members. However, the Grand Chamber found that this complaint had not been raised in the initial application before the Court, only being added later when the applicant company made its observations. The Grand Chamber stated that the Court could not set aside the six-month rule regarding admissibility (applications must arrive with the Court no more than four months – at the time six months – after the final decision in a case before the national authorities. See [press release](#) of 1 February 2022) even if the Government did not object. Furthermore, as with the complaint under (b), the applicant company had had the opportunity to obtain compensation from the State as undue delay in lifting the seizure also constituted irregular official conduct. However, the findings concerning the applicant company's complaint under Article 6 § 1 of the Convention suggested that it had not properly availed itself of that opportunity. As a result, this complaint was also declared inadmissible for non-exhaustion of domestic remedies.

The judgment is available in English and French.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Neil Connolly (tel.: + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Jane Swift (tel.: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.