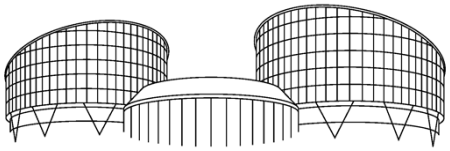

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PRODUKCIJA PLUS STORITVENO PODJETJE D.O.O. v. SLOVENIA

(Application no. 47072/15)

JUDGMENT

STRASBOURG

23 October 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Produkcija Plus storitveno podjetje d.o.o. v. Slovenia,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Iulia Antoanella Motoc,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 47072/15) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian company, Produkcija Plus storitveno podjetje d.o.o. ("the applicant company"), on 18 September 2015.

2. The applicant was represented by Mr A. Melihen, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were represented by their Agent, Ms N. Pintar Gosenca, State Attorney.

3. The applicant alleged that Articles 6 and 13 had been breached on account of the lack of an oral hearing and the lack of opportunity to be heard and have witnesses examined on its behalf in proceedings concerning the imposition of a fine for the obstruction of an inspection and proceedings concerning a violation of competition rules.

4. On 27 May 2016 the aforementioned complaints concerning Articles 6 and 13 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a private media company whose registered office is in Ljubljana.

6. On 10 August 2011 the Competition Protection Office ("the Office") initiated proceedings against the applicant company under section 23 of the Prevention of the Restriction of Competition Act (hereinafter "the Competition Act", see paragraph 25 below), following a complaint from two television stations that the applicant company had abused its dominant position.

A. Proceedings concerning the obstruction of an inspection

7. On 10 August 2011 the Office issued an order to inspect the premises, which contained a warning that if the inspection was obstructed an order imposing a fine amounting to 1% of the applicant company's annual turnover in the preceding business year could be issued.

8. On 21 September 2011 the Office issued an inspection report which indicated that on 11 August 2011 officers of the Office had arrived at the applicant company's premises at 9.05 a.m. Mr V., the applicant company's director, had not been present and none of the applicant company's employees had allowed the inspection to be carried out. According to the report, Mr S., the direct marketing executive, explained to the officers that he was not authorised to accept and sign the inspection order or the order to initiate proceedings against the applicant company. The officers asked him to direct them to someone authorised or to the mailroom, so that they could serve the orders and start the inspection. Mr S. took the officers to the mailroom but nobody was there. An employee who arrived at the mailroom at 9.25 a.m. refused to sign anything and said that she would call her superior. A moment later Mr P., the deputy finance executive, arrived at the mailroom. It is stated in the report that in a loud voice he then asked the officers to leave, pointing with his hand in the direction of the exit and showing no intention to cooperate with the officers, despite being warned by them that refusal to cooperate would be regarded as an obstruction of the inspection, resulting in a fine. Since none of the employees wanted to accept the orders, the officers eventually left them in the mailroom and the orders were thus deemed to be served. According to the report, at 9.31 a.m. the officers left the building because they believed that the inspection would not be possible without police assistance. At 9.57 a.m., after the arrival of the police, the officers again entered the applicant company's premises. At 10 a.m. Mr V. arrived. He apologised for the inconvenience and was willing to cooperate. At 10.45 a.m. the officers started the inspection, which was then carried out without any obstructive behaviour on the part of the applicant company.

9. On 6 October 2011 the applicant company commented on the inspection report, maintaining that nobody had raised their voices at the officers or had asked them to leave the company's premises. According to their comments, Mr P. had only asked the officers to wait in the reception

area for the person on whom they could serve the orders. Nothing had prevented them from carrying out the inspection. The officers had decided to leave and call the police of their own motion. The police intervention had been unnecessary.

10. By an order of 21 February 2012 the Office fined the applicant company 105,000 euros (EUR), 0.2 % of the company's annual net turnover in the preceding year, for obstructing the inspection on 11 August 2011. The obstruction had been Mr P.'s unwillingness to cooperate with officers and to immediately facilitate access to evidence and its preservation. It concluded that the applicant company had obstructed the inspection by not making the inspection physically possible (*preiskava ni bila fizično omogočena*) after being requested and warned to do so by the officers. Waiting in the reception area for the applicant company to prepare for the inspection or for the authorised person of the company to arrive ran contrary to the purpose of an unannounced inspection, which was to secure evidence. The Office also held that it was a company's duty to cooperate even when its legal representative was absent. In setting the fine, the Office considered that the inspection had been delayed for one hour and thirty minutes, and for twenty-six minutes the applicant company's conduct had been outside the officers' control and could have resulted in the destruction of incriminating evidence. Referring to the EU Commission's practice, it held that the punishment had to be stringent enough to deter the offenders. It also had regard to the subsequent exemplary cooperation of the applicant company and the fact that this had been the first time a fine had been imposed under the Competition Act.

11. On 22 March 2012 the applicant company brought an action and an application for an interim measure against the above order (see paragraph 10 above), reiterating the complaints it had raised before the Office (see paragraph 9 above). It requested an oral hearing, maintaining that a direct examination of the evidence was required to properly establish the facts of the case. In particular, the four witnesses, who had been present at the premises on the day of the alleged obstruction, would prove that the applicant company had not obstructed the inspection or refused to cooperate with the officers. They would also show that the officers had not properly introduced themselves and had tried to enter the premises in an aggressive manner. The applicant company also argued that the officers could not be prevented from doing something which they had not specifically requested, namely access to specific places or persons under the inspection. At the time the obstruction had allegedly been committed, the officers had only asked for someone on whom they could serve the orders and had been subsequently politely asked to wait in the reception area. The applicant company's employees had complied with the duty to cooperate by trying to find that person. The applicant company argued that the officers could have freely continued with the inspection. Furthermore, had there been an

obstruction of the inspection, the Office would have sanctioned the company on the spot and not six months later. As to Mr P., it held that he had not been an employee of the applicant company and had not been authorised to collect any mail. Since he was only in a contractual relationship with the applicant company, his allegedly illegal actions could not be attributed to it. Lastly, given the amount of the fine imposed, which was excessive, immediately enforceable and of a punitive nature, the proceedings at issue had been criminal in nature and required adequate fair trial guarantees.

12. Meanwhile, in 2013 the Competition Protection Agency ("the Agency") took over the Office's tasks and assumed full control of all its pending matters.

13. On 26 November 2013 the Supreme Court dismissed the applicant company's action (see paragraph 11 above). It noted at the outset that the applicant company was not allowed to introduce new facts and evidence in the judicial review proceedings and that they would not be taken into consideration. The court emphasised that although the applicant company had contested the facts as established by the Office (see paragraph 10 above), it had not challenged the fact that the officers could not immediately after their arrival at the company's premises secure the evidence. In particular, the majority of the management had been absent, while Mr P. had refused to cooperate and had asked the officers to leave the premises until the arrival of his superiors. According to the Supreme Court, the applicant company had merely argued that the above-described acts had not constituted an obstruction of the inspection. In the Supreme Court's opinion this was not a question of fact but purely of law. In this connection, the court held that making the officers wait in the reception area while the company prepared for the inspection ran contrary to the purpose of an inspection. It was irrelevant whether the company's employees had raised their voices at the officers or had asked them to leave. The only important fact was that the authorised persons could not immediately start securing the evidence. The applicant company had not acted in accordance with the minimum duty to cooperate, which had been necessary for the inspection, and had thus obstructed it. The court also rejected the argument that Mr P. could not obstruct the inspection, finding that he was a contractual worker working in the name of the applicant company in accordance with section 31(5) of the Competition Act (see paragraph 25 below). Lastly, the court deemed the imposed fine adequate, considering the seriousness of the violation and the relevant circumstances of the case.

14. On 6 May 2015 the Constitutional Court refused to accept a constitutional complaint lodged by the applicant for consideration, finding that it did not concern an important constitutional question or entail a violation of human rights which would have serious consequences for the company.

15. On 15 September 2015 the tax authorities enforced the collection of the imposed fine from the applicant company.

B. Proceedings concerning the finding of a violation of competition rules (supervision proceedings)

16. Meanwhile, on 7 August 2012 the Office issued a summary of the relevant facts (*povzetek relevantnih dejstev*), expressing the opinion that the applicant company had abused its dominant position in the television advertising market.

17. On 24 September 2012 the applicant company commented on the summary of the relevant facts, requesting an oral hearing and for the examination of several witnesses to prove that it had not restricted competition.

18. On 24 April 2013 the Agency decided that the applicant company had been abusing its dominant position in the television advertising market. It found that by requesting exclusivity in advertising from customers and offering them conditional loyalty discounts the applicant company had restricted competition. The Agency also ordered the applicant company to end the above infringement of competition rules, notably section 9 of the Competition Act and Article 102 of the Treaty on the Functioning of the European Union (TFEU). It refused to hold a hearing on the grounds that it was not necessary to hear the witnesses proposed by the applicant company and that the applicant company had had adequate opportunity to present its case in writing. The Agency also noted that the minor-offence proceedings that generally followed were separate from the administrative proceedings. The latter ended with a decision establishing a violation of competition rules, whereas the first also involved a consideration of responsibility for the minor offence at issue and the imposition of a fine.

19. On 24 May 2013 the applicant company brought an action against the Agency's infringement decision (see paragraph 18 above). It reiterated the complaints made before the Agency (see paragraph 17 above), adding that the Agency had violated its right to adversary proceedings and to defend itself. It also requested that the Supreme Court examine the proposed witnesses at an oral hearing.

20. On 3 December 2013 the Supreme Court dismissed the action (see paragraph 19 above). It held that the examination of the witnesses proposed by the applicant was unnecessary because the facts of the case had already been fully established by the Agency, which had provided logical and convincing reasons for each of the central issues in dispute. Consequently, it refused to hold a hearing.

21. On 30 June 2015 the Constitutional Court refused to accept a constitutional complaint lodged by the applicant company for consideration, finding that it did not concern an important constitutional question or entail

a violation of human rights which would have serious consequences for the company.

C. Minor-offence proceedings concerning a violation of competition rules

22. On 7 May 2014 the Agency initiated minor-offence proceedings, alleging a violation of competition rules by the applicant company and three responsible individuals of the company. In accordance with the Minor Offences Act, the Agency informed those involved in the proceedings in writing of the alleged minor offence and invited them to submit their written statements within five days of service of the document. On 21 July 2014 it found that they had committed a minor offence under section 73(1) of the Competition Act (see paragraph 25 below), imposing a fine of EUR 4,994,491 on the applicant company and several thousand euros on each of the responsible individuals.

23. On 3 November 2014 the Ljubljana Local Court granted their application for judicial review and stayed the minor-offence proceedings, finding that the act, as it had been described in the operative part of the impugned decision, did not constitute a minor offence.

24. On 18 September 2015 the Ljubljana Higher Court dismissed an appeal by the Agency and upheld the first-instance judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Prevention of the Restriction of Competition Act

25. The relevant provisions of the Competition Act (Official Gazette no. 36/08, with further amendments), as in force at the relevant time, read as follows:

Section 9

"(1) Any abuse by one or more undertakings of a dominant position in a market in the territory of the Republic of Slovenia or a substantial part of it shall be prohibited.

..."

Section 12

"(1) The Agency is responsible for monitoring the implementation of this Act and Articles 101 and 102 of the Treaty on the Functioning of the European Union [TFEU]. The Agency monitors and analyses the market conditions to the extent necessary for the development of effective competition, conducts proceedings and issues decisions in accordance with this Act, and submits its opinions to the National Assembly and the Government on general issues within its competence.

(2) The Agency shall act as a minor-offence authority, [when] adopting decisions in cases of minor offences concerning a violation of the provisions of this Act or the provisions of Articles 101 and 102 of the TFEU, in accordance with the law governing minor offences, unless otherwise stipulated by this Act. Minor-offence proceedings shall be conducted by an authorised official of the Agency, which meets the conditions under the law governing minor offences.

..."

Section 15

"(1) The Agency shall decide on matters within its competence in accordance with this Act, following the procedure set out in this Act.

(2) Unless otherwise stipulated by this Act, the provisions of the law governing general administrative procedure shall apply to the decision-making of the Agency.

(3) There shall be no appeal against decisions issued by the Agency."

Section 21

"The Agency shall decide in the proceedings without an oral hearing unless the official conducting the proceedings considers that an oral hearing is necessary to clarify or establish the essential facts."

Section 23

"The Agency may decide to initiate proceedings of its own motion if it learns of circumstances indicating that the provisions of sections 6 or 9 of this Act or Articles 101 or 102 of the TFEU have been violated."

Section 29

"(1) An inspection shall be conducted by employees of the Agency ... (hereinafter "the authorised person").

(2) Authorised persons may:

- access and examine premises, land and means of transport (hereinafter "the premises") at the registered office of the undertaking and in other locations at which the undertaking itself or another undertaking authorised by the undertaking concerned performs the activity and business for which there is a probability of a violation of the provisions of this Act or Articles 101 or 102 of the TFEU;

- examine the books of account, contracts, documents, business correspondence, business records and other information relating to the business of the undertaking, irrespective of the medium on which they are stored (hereinafter "books of account and other documentation");

- take or obtain in any form copies or extracts of books of account and other documentation ...;

- seal all business premises and business books of account and other documentation for the period and to the extent necessary for the inspection;

- seize items and books of account and other documentation for a maximum of twenty working days;

- request any representative or member of staff of the undertaking (hereinafter "the representative") to give an oral or written explanation of the facts or documents relating to the subject matter and purpose of the inspection ...;

- examine papers disclosing the identity of persons;

- perform other actions in line with the purpose of the inspection.

..."

Section 31

"...

(2) If an undertaking obstructs the authorised person in the exercise of [his or her] powers under subsection (2) of section 29 of this Act, the Agency may issue an order imposing on the undertaking a fine in the amount of 1% of its annual turnover in the preceding business year. The time-limit for payment of the fine shall be no less than fifteen days and no more than a month.

...

(4) An order under subsections (2) and (3) of this section is enforceable. Enforcement shall be conducted by the tax authorities ...

(5) An undertaking shall be deemed to be obstructing an inspection if the inspection is being obstructed by the members of its management or supervisory bodies, its employees, or by its contractual workers."

Section 34

"(1) The Agency shall draw up an inspection report after completing the inspection.

...

(4) The undertaking subject to the inspection may comment on the inspection report within fifteen days of service."

Section 36

"(1) A summary of the relevant facts shall include findings of fact and evidence relevant to the decision.

..."

Section 37

"(1) The Agency may issue a decision establishing the existence of a violation of sections 6 or 9 of this Act or Articles 101 or 102 of the TFEU, and require the undertaking concerned to cease the violation.

(2) The same decision may impose on the undertaking an obligation to take reasonable measures to eliminate the violation and its consequences in particular through the disposal of the business or part of the undertaking's business, a division of the undertaking or a disposal of shares in the undertaking, the transfer of industrial property rights and other rights, the conclusion of licensing and other agreements that may be concluded in the course of operations between undertakings, or by ensuring access to the infrastructure.

..."

Section 54

"(1) A judicial review of the Agency's decisions shall be provided in the proceedings prescribed by this Act (hereinafter "judicial review proceedings").

(2) The law governing administrative disputes shall apply, *mutatis mutandis*, to judicial review proceedings initiated against Agency's decisions, unless otherwise stipulated by this Act."

Section 57

"In judicial review proceedings the complainant may not introduce new facts or present new evidence."

Section 58

"The court shall review the Agency's decisions within the limits of the action and within the limits of the grounds stated in the action, and shall, of its own motion, pay attention to significant violations of the provisions of the proceedings ..."

Section 59

"The court shall, as a rule, decide without a hearing."

Section 61

"No appeal shall be allowed against a judgment or order issued in judicial review proceedings."

Section 73

"(1) A fine of up to 10% of the annual turnover of the undertaking in the preceding business year shall be imposed on a legal entity, sole proprietor or self-employed individual:

...

- for abuse of a dominant position in contravention of section 9 of this Act or Article 102 of the TFEU,

...

(2) A fine of between EUR 5,000 and EUR 10,000 shall be imposed on the responsible person of a legal entity ... for the minor offence referred to in the preceding subsection.

..."

B. Administrative Disputes Act

26. The applicable provisions of the Administrative Disputes Act (Official Gazette no. 105/06, with further amendments) are set out in *Mirovni Inštitut v. Slovenia* (no. 32303/13, §§ 19, 21 and 22, 13 March 2018).

27. In addition, section 64 reads, in so far as relevant, as follows:

> "(1) The court shall uphold the action and annul the contested administrative decision by way of a judgment:
>
> ...
>
> 2. if it concludes that it is unable to resolve the dispute on the basis on the facts of the case established in the proceedings for issuing the administrative decision because the evidence was assessed erroneously, the established facts contradict the data from the case file, the essential facts were incompletely established, or an erroneous conclusion was drawn from the established facts ..."

28. The Administrative Disputes Act does not provide for the reopening of proceedings before the domestic courts on the basis of a finding by the Court of a violation of the Convention.

C. Criminal Code

29. Article 299 of the Criminal Code (Official Gazette no. 55/2008, with further amendments) provides, in so far as relevant, as follows:

> "(1) Whoever, by force or threat of imminent use of force, prevents an official from performing an official act intended to be carried out within the scope of his official duties ... shall be sentenced ..."

D. Case-law of the Constitutional Court

30. On 11 April 2013 the Constitutional Court, in the context of examining the constitutionality of several Competition Act provisions, held that the Act regulated two different kinds of proceedings regarding the assessment of competition law violations: proceedings which were in their entirety carried out under the provisions of the Competition Act and proceedings on minor offences which were carried out almost entirely under the provisions of the Minor Offences Act (decision no. U-I-40/12). On the basis of an examination of the applicable law, the court assumed that the proceedings for determining violations of competition law which were carried out in their entirety under the Competition Act – supervision proceedings – were not, in themselves, regulated as punitive. The Constitutional Court also held that the supervisory powers of the Agency were directed towards the reestablishment of the compliance of the market with competition rules. By contrast, the court noted that the minor-offence proceedings, in which the Agency imposed a fine as a repressive measure for general and special preventive and retributive purposes, were of a punitive nature.

31. In decisions of 17 September 2015 (no. Up-164/14) and 7 July 2016 (no. Up-217/15) the Constitutional Court confirmed that the supervision proceedings and the minor-offence proceedings under the Competition Act were formally separated and that proceedings which were in their entirety held under the provisions of the Competition Act were not punitive.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant company complained under Articles 6 and 13 of the Convention that the proceedings concerning a violation of competition rules and the proceedings concerning the imposition of a fine for the obstruction of an inspection had not been fair in that it had had no oral hearing, where it could defend itself and have the witnesses proposed by it examined on its behalf.

33. The Court, master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, ECHR 2018), will examine the complaint from the standpoint of Article 6 of the Convention alone, which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

A. Admissibility

1. The parties' submissions

(a) The Government

34. The Government contended that none of the proceedings at issue had related to a "criminal charge" against the applicant company and that the complaints were therefore not compatible *ratione materiae* with the provisions of the Convention.

35. As to the proceedings concerning the finding of a violation of competition rules, the Government argued that under the domestic legislation they fell outside the criminal-law system and had been considered to be administrative proceedings. Referring to the Constitutional Court's case-law (see paragraphs 30 and 31 above), they stressed that the proceedings at issue had been conducted in their entirety in accordance with the Competition Act and had been separated from the minor-offence

proceedings. In both the Agency had had to establish a violation, but it had only been in the latter that the Agency had determined the objective and subjective elements of the minor offence concerned and imposed a fine. They emphasised that in minor-offence proceedings offenders could be heard on all the facts and evidence of the case. Regarding the nature of the violation, the Government argued that the provisions of competition law were not universally applicable, but applied only to the conduct of undertakings that affected competition in the market. The main purpose of issuing the infringement decision had been to end the anti-competition practices and to restore market compliance with competition rules. In the administrative proceedings the Agency could only impose reasonable measures under section 37 of the Competition Act (see paragraph 25 above) aimed at eliminating the violation and its consequences. Noting that the minor-offence decision against the applicant company had been set aside by the domestic courts, they argued that no fine or any other sanction had been imposed on the applicant company for the violation established by a final decision in the administrative proceedings.

36. As to the proceedings concerning the imposition of a fine for the obstruction of an inspection, the Government held, firstly, that under the domestic legislation, the imposition of a fine did not fall within the criminal-law system. It was an administrative (procedural) penalty, which was not entered in criminal records and did not have any other legal consequences in respect of a criminal conviction under Slovenian law. Secondly, they maintained that the purpose of the fine was to enable the Agency to effectively exercise its supervisory powers under the Competition Act. The fine was not universally applicable. Lastly, the Government submitted that the amount of the fine depended on the economic size of the undertaking, whereas the maximum fine could not be higher than 1% of the undertaking's annual turnover in the preceding business year. In the present case, the imposed fine had been five times smaller than the maximum statutory fine, which could not be converted into a prison sentence.

(b) The applicant company

37. As to the proceedings concerning the finding of a violation of competition rules, the applicant company argued that the formal separation of administrative and minor-offence proceedings in the Competition Act was artificial because the proceedings were intertwined and conducted with the aim of imposing a fine for a substantive violation of competition rules. The fact that in the administrative proceedings only a declaratory decision on the abuse of a dominant position had been issued without any measures or actual effect, only confirmed its view that their only purpose had been to impose a fine in the subsequent minor-offence proceedings. In addition, criminal proceedings could be instigated against an undertaking and the

persons responsible on the basis of the findings and conclusions of the Agency. With regard to the severity of the penalty, the applicant company asserted that a fine of up to 10% of the undertaking's annual turnover in the preceding year was extremely stringent, and that it had initially been fined EUR 4,994,491.60.

38. As to the proceedings concerning the obstruction of an inspection, the applicant company submitted that the fine had had all characteristics of a criminal penalty, namely special and general deterrence and a retributive function. Since it had been imposed six months after the inspection had been completed, the fine had not pursued the objective of conducting a smooth inspection, but had only intended to punish. Lastly, regarding the severity of the penalty, the applicant company argued that the imposed fine had been extremely high and that the impugned decision on the fine had been directly enforceable.

2. The Court's assessment

39. The Court reiterates its established case-law that, in determining the existence of a "criminal charge", it is necessary to have regard to three factors: the legal classification of the measure in question in national law, the very nature of the measure, and the nature and degree of severity of the "penalty" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22). Furthermore, these criteria are alternative and not cumulative: for Article 6 to apply in respect of the words "criminal charge", it suffices that the offence in question should by its nature be "criminal" from the point of view of the Convention, or should have made the person concerned liable to a sanction which, by virtue of its nature and degree of severity, belongs in general to the "criminal" sphere. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a "criminal charge" (see *Jussila v. Finland* [GC], no. 73053/01, §§ 30 and 31, ECHR 2006-XIII, and *Zaicevs v. Latvia*, no. 65022/01, § 31, ECHR 2007-IX (extracts)).

40. The Court notes at the outset that the Slovenian legal system outlines two different kinds of proceedings regarding the assessment of competition law violations: proceedings, like those concerned here, which are in their entirety held under the provisions of the Competition Act (supervision proceedings), and proceedings on minor offences which are carried out almost entirely under the provisions of the Minor Offences Act (see paragraph 30 above). It further notes that the same facts which gave rise to supervision proceedings could constitute the factual basis for a minor offence (section 73 of the Competition Act, see paragraph 25 above). However, the Court observes that the Agency can impose a fine only in minor-offence proceedings, when acting as a minor-offence authority pursuant to section 12(2) of the Competition Act (see paragraph 25 above).

Furthermore, in minor-offence proceedings the domestic courts are in no way bound by the administrative decision of the Agency. They have jurisdiction to decide on all aspects of the case. Moreover, the administrative decision of the Agency can stand without the minor-offence decision. Therefore, the Court considers that the supervision proceedings, on the one hand, and the minor-offence proceedings before the Agency and ensuing judicial review proceedings, on the other, should be regarded as two separate sets of proceedings for the purposes of Article 6 of the Convention. It will now turn to examine whether the criminal limb of Article 6 applied to the supervision proceedings.

(a) As regards the proceedings concerning the finding of a violation of competition rules (supervision proceedings)

41. As regards the domestic classification of the finding of a violation of competition rules, the Court notes that an examination of the relevant legislation and the case-law of the Constitutional Court (see paragraphs 25-31 above) shows that the measure in question, considered in isolation, cannot be said to belong to criminal law under the domestic legal system. In this connection, the Court observes that the Agency when conducting supervision proceedings applies the rules of administrative procedure (section 15 of the Competition Act, see paragraph 25 above). Similarly, the legality of the decision-making of the Agency in this type of proceedings is subject to appeal before the Supreme Court, which decides in special judicial review proceedings, applying, *mutatis mutandis*, provisions of the Administrative Disputes Act (section 54 of the Competition Act, see paragraph 25 above). However, this consideration is not decisive, as the indications furnished by the domestic law have only a relative value (see *A. Menarini Diagnostics S.R.L. v. Italy*, no. 43509/08, § 39, 27 September 2011).

42. The Court must now look at the nature of the offence and nature and degree of severity of the sanction which the applicant company risked incurring. It notes that the provision found to have been infringed by the applicant company (section 9 of the Competition Act, see paragraph 25 above) was intended to preserve free competition in the market. The Agency as a public regulatory authority monitored restrictive agreements and abuses of dominant position. These are general interests of society, usually protected by criminal law (see *A. Menarini Diagnostics S.R.L.*, cited above, § 40). On the other hand, the contested decision (see paragraph 18 above) was issued by the Agency acting in its capacity as a supervisory authority (and not a minor-offence authority). When acting in such a capacity, the Agency was only entitled to determine the existence of a violation of competition rules, demand that the undertaking cease the violation and impose on the undertaking certain measures which it considered suitable for remedying the established violation and its consequences (section 37 of the

Competition Act, see paragraph 25 above). In the supervision proceedings the decisions were to be issued on objective grounds without the need to establish any criminal intent or negligence on the undertaking's part and were not entered in criminal records. The Court further finds it particularly important that in the present case, the impugned decision imposed no measures on the applicant company (compare and contrast with *A. Menarini Diagnostics S.R.L.*, cited above, § 41). In fact, the applicant company itself acknowledged that the Agency in the supervision proceedings had only issued a declaratory decision on the abuse of a dominant position without any measures or actual effect on the applicant company (see paragraph 37 above).

43. Having regard to these factors, the Court considers that the decision issued in the supervision proceedings was not of a criminal character and was not intended to punish or deter but to restore the normal market situation (see, *mutatis mutandis*, *OOO Neste St. Petersburg, ZAO Kirishiavtoservice, OOO Nevskaya Toplivnaya, ZAO Transservice, OOO Faeton, OOO PTK-Service v. Russia* (dec.), nos. 69042/01, 69050/01, 69054/01, 69055/01, 69056/01, 69058/01, 3 June 2004; and contrast with *Janosevic v. Sweden*, no. 34619/97, § 68, ECHR 2002-VII). The supervision proceedings, as conducted in the present case, did not therefore involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention. Moreover, the Court notes that there was no monetary obligation imposed on the applicant company and it does not discern any other aspect of the case that would warrant examination of the applicability of Article 6 in its civil limb.

44. It follows that the complaint regarding the supervision proceedings is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

(b) As regards the proceedings concerning the imposition of a fine for the obstruction of an inspection

45. As regards the first criterion, under the test established in *Engel and Others* (see paragraph 39 above), it is clear that the fine at issue was imposed pursuant to the Competition Act and was administrative under national law (see also paragraph 41 above). However, this is not decisive (see *Öztürk v. Germany*, 21 February 1984, § 52, Series A no. 73, and *A. Menarini Diagnostics S.R.L.*, cited above, § 39). As for the second criterion, the Court notes that the measure imposed on the applicant company resulted from section 31 of the Competition Act, which applies a general obligation to a specific circumstance, that is, the imposition of fines on undertakings obstructing the Agency's officers in the exercise of their powers (see, *mutatis mutandis*, *Özmurat İnşaat Elektrik Nakliyat Temizlik San. ve Tic. Ltd. Şti. v. Turkey* no. 48657/06, § 25, 28 November 2017). It

would appear that the prohibition on obstructing inspections was intended to ensure effective exercise of the Agency's powers. The Court observes that the effective exercise of official duties of agents of the State appears to be in the general interests of society, protected also by the Criminal Code in Slovenia (see paragraph 29 above). Moreover, with regard to the third criterion, it observes that the fine at issue concerned a substantial amount and that the maximum fine the applicant risked incurring amounted to more than EUR 500,000. Furthermore, the fine was directly enforceable (section 31(4) of the Competition Act, see paragraph 25 above). It was imposed several months after the inspection had finished, thus did not pursue the aim of ensuring an effective inspection. It was essentially intended to punish the unlawful conduct, in order to prevent reoffending, and not to compensate any damage caused by the applicant company.

46. In the light of the above, the Court finds Article 6 applicable under its criminal head to the proceedings concerning the imposition of a fine for the obstruction of an inspection.

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

B. Merits

1. The parties' submissions

(a) The applicant company

48. The applicant company argued that it had not been given an opportunity to be heard in the proceedings before the Supreme Court, to present the facts and to submit evidence in its favour. The Supreme Court had not held a hearing and examined the witnesses proposed on its behalf, although it had disputed the facts which had been essential for the outcome of the case. Moreover, the court had not had full jurisdiction and had based its decision exclusively on findings which had been unilaterally established by the Agency's officers.

(b) The Government

49. The Government contended that the obligation under Article 6 § 1 to hold an oral hearing was not absolute. In this connection, it held that section 21 of the Competition Act (see paragraph 25 above) did not prevent the Agency from conducting an oral hearing when this was necessary in order to achieve the objective pursued by it. In the course of judicial review, section 59 of the Administrative Disputes Act (see paragraph 26 above) specified cases in which the administrative court could adjudicate without a hearing. They emphasised in this connection that section 59 of the

Competition Act (see paragraph 25 above) did not prevent the court from conducting a hearing if the case in question so required. The absence of an oral hearing in the present case had thus not been a result of a structural problem or shortcomings in domestic legislation.

50. Furthermore, the Government argued that the applicant company had had the opportunity to present evidence in its favour in its comments on the inspection report (see paragraph 8 above), as well as in its application for judicial review (see paragraph 11 above). However, it had only disputed the facts of the case which had not been relevant to the Supreme Court's findings that the act in question had amounted to the obstruction of an inspection. Furthermore, they held that the request to call witnesses before the court had not been substantiated. Since the positions of the parties to the court proceedings differed only in terms of legal assessment, it had not been necessary for the Supreme Court to conduct an oral hearing.

2. The Court's assessment

51. The Court reiterates that while entrusting the prosecution and punishment of administrative offences to administrative authorities is not inconsistent with the Convention, the person concerned must have an opportunity to challenge any decision made against him before a tribunal that offers the guarantees of Article 6 (see *Lauko v. Slovakia*, 2 September 1998, § 64, *Reports of Judgments and Decisions* 1998-VI). Therefore, decisions taken by administrative authorities which do not themselves satisfy the requirements of Article 6 § 1 of the Convention must be subject to subsequent control by a judicial body that has full jurisdiction, which means jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Grande Stevens and Others v. Italy*, nos. 18640/10 and 4 others, § 139, 4 March 2014).

52. Turning to the present case, the Court observes that the penalty complained of by the applicant company was imposed by the Agency, which is an administrative authority (see, *mutatis mutandis*, *Grande Stevens and Others*, cited above, § 138). The Court further observes that the applicant company had the possibility, which it used, to challenge the penalty imposed by the Agency before the Supreme Court (section 61 of the Competition Act, see paragraph 25 above). The applicant company complained, however, that the facts of its case had not been examined by the Supreme Court, which had moreover refused to examine the proposed evidence by way of conducting an oral hearing and examining witnesses (see paragraph 48 above).

53. The Court also reiterates in this connection that an oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where an accused has an entitlement to have his case "heard", with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses (see *Jussila*, cited above, § 40).

54. As regards the nature of the criminal charges in the present case, the Court observes that the offence in question – obstruction of an inspection – was observed by the Agency's officers in person and that those officers' observations were the sole basis for the applicant company's conviction (see *mutatis mutandis*, *Flisar v. Slovenia*, no. 3127/09, § 38, 29 September 2011). The Court notes that in such cases an oral hearing may be essential for the protection of the accused person's interests in that it can put the credibility of the officers' findings to the test (see *Milenović v. Slovenia*, no. 11411/11, § 32, 28 February 2013).

55. The Court does not find it necessary to establish the extent to which the competence of the Supreme Court to review the facts of the case was constrained by section 57 of the Competition Act (see paragraph 25 above), as the core question the Court is called to examine is whether, in the circumstances of the case, the Supreme Court's review of the contested administrative decision met the requirements of Article 6 § 1 of the Convention (see paragraph 51 above).

56. In this connection, the Court observes that the applicant company in its remedy lodged with the Supreme Court disputed the facts as established by the administrative authorities and requested that the four witnesses who had been present on the premises at the time of the alleged obstruction be called (see paragraph 11 above). It argued, *inter alia*, that the officers had been able to start the inspection immediately after their arrival at the premises and that they had only asked the applicant company to provide them with someone on whom they could serve the orders. This in the Court's view cannot be considered a purely legal question, as alleged by the Government (see paragraph 50 above).

57. The Court points out that the Supreme Court was the first and only tribunal (section 61 of the Competition Act, see paragraph 25 above) to examine the applicant company's case and as such it was required under Article 6 § 1 of the Convention to examine not only legal aspects of the case but to review the facts on which the applicant company's punishment was based and which the applicant company disputed (see paragraph 51 above).

58. However, and despite the fact that it considered the Agency's finding that the officers had not been able to start securing the evidence immediately after their arrival at the applicant company's premises to be essential for the case (see paragraph 13 above), the Supreme Court made no reference to any other evidence than the impugned decision itself. It did not hear the evidence requested by the applicant company aimed at proving the opposite. In fact, in connection with the submitted evidence, the Supreme Court only referred to the rule that no new evidence and facts were allowed at that stage of the proceedings (see paragraph 25 above). Furthermore, despite the applicant company expressly requesting that a hearing be held, the Supreme Court neither acknowledged the request nor gave any reasons for not granting it (see paragraph 13 above, *Mirovni Inštitut v. Slovenia* no. 32303/13, § 44, 13 March 2018).

59. In view of the above, the Court finds that the applicant company was deprived of a right to have the factual aspects of the administrative decision issued against it reviewed by the tribunal with full jurisdiction.

60. There has accordingly been a violation of Article 6 § 1 of the Convention. In view of this finding, the Court does not find it necessary to examine separately whether the rights of the defence set out in paragraph 3 (c) and (d) of Article 6 have been respected (see, *mutatis mutandis*, *Kallio v. Finland*, no. 40199/02, § 52, 22 July 2008).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

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

A. Damage

62. The applicant company claimed 105,000 euros (EUR) in respect of pecuniary damage, which is the amount it had to pay as a fine for obstructing the inspection. It did not make any claim in respect of non-pecuniary damage and explicitly renounced its right to do so.

63. The Government argued that there was no causal link between the compensation claimed in respect of pecuniary damage and the alleged violation in the present case.

64. As to the alleged pecuniary damage, it is true that the Court cannot speculate as to what the outcome of the proceedings complained of would have been had the violation of Article 6 § 1 of the Convention not occurred.

65. However, the Court refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 136, 23 February 2016). In this connection, it should be noted that under domestic law, in particular the Administrative Disputes Act, the applicant company has no possibility to seek the reopening of the proceedings at issue on the basis of a finding by the Court of a violation of Article 6 of the Convention (see paragraph 28 above). It follows that the pecuniary damage sustained by the applicant company, namely the fine that it had to pay for obstructing the inspection, may not be remedied at the domestic level.

66. The Court has previously dealt with cases where it could not speculate as to what the outcome of the trial would have been had there been no violation of the procedural guarantees of Article 6 of the Convention (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 80, ECHR 1999-II; *Destrehem v. France*, no. 56651/00, § 52, 18 May 2004; and *Miessen v. Belgium*, no. 31517/12, § 78, 18 October 2016). In those cases the Court did not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (*perte de chances réelles*) and awarded the applicants a sum in respect of both pecuniary and non-pecuniary damage (ibid.).

67. According to Article 41 of the Convention, "the Court shall, if necessary, afford just satisfaction to the injured party" when, *inter alia*, "the internal law of the High Contracting Party concerned allows only partial reparation to be made." As the Administrative Disputes Act does not provide for the reopening of the proceedings on the basis of a finding by the Court of a violation of Article 6 of the Convention (see paragraphs 28 and 65 above; compare and contrast with *Navalnyy and Ofitserov*, cited above, §§ 136 and 137), and having regard to the nature of the violation found, the Court, ruling on an equitable basis, awards the applicant EUR 52,500 in respect of pecuniary damage, plus any tax that may be chargeable on this amount.

68. As the applicant company did not make a claim in respect of non-pecuniary damage, the Court is not called upon to make any award under that head.

B. Costs and expenses

69. The applicant also claimed EUR 7,020 for the costs and expenses incurred before the domestic courts and EUR 3,420 for those incurred before the Court.

70. The Government argued that the applicant company's claim for costs and expenses was unreasonably excessive, especially with respect to the cost of legal services under the domestic legislation.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000 covering costs under all heads.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning the fairness of the proceedings regarding the imposition of a fine for the obstruction of an inspection admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*, unanimously, that there is no need to examine separately the applicant's complaints under Article 6 § 3 (c) and (d) of the Convention;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 52,500 (fifty-two thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, by five votes to two, the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ganna Yudkivska
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Bošnjak;

(b) joint partly dissenting opinion of Judges Pinto de Albuquerque and Vehabović.

G.Y.
M.T.

CONCURRING OPINION OF JUDGE BOŠNJAK

1. In the present case, I voted with the other members of the Chamber to find a violation of Article 6 § 1 of the Convention and, with the majority, to award the applicant company EUR 52,500 in respect of pecuniary damage. Equally, I agree with the reasoning as contained in the judgment. Nevertheless, I submit this concurring opinion in order (a) to signal possible systemic problems at the level of domestic legislation and (b) to advance some further arguments in respect of the "loss of real opportunities" doctrine.

2. According to our Court's well-established case-law under Article 6 § 1 of the Convention, the decisions taken by administrative authorities in cases involving the determination of an individual's civil rights and obligations or of criminal charges against him or her must be subject to subsequent control by a judicial body that has full jurisdiction over the case, which means jurisdiction to examine all questions of fact and law relevant to the dispute before it (see, for example, *Grande Stevens and Others v. Italy*, nos. 18640/10 and 4 others, 4 March 2014). Since in the present case the Supreme Court refused to examine the facts on which the applicant company's conviction was based, the violation of the applicant company's rights under Article 6 § 1 of the Convention was simply obvious.

3. As the Court's task is neither to review the domestic courts' interpretation of national law nor the conformity of the domestic legislation with the Convention requirements, it comes as no surprise that the present judgment refrains from any analysis of possible causes of the violation in question. In my capacity as the national judge, I nonetheless wish to invite the stakeholders in the Slovenian legal system, notably the legislature, the Government and the judiciary, to reflect on whether any amendments to the relevant legislation are needed in order to avoid similar violations in future. In this respect, these stakeholders might wish to turn their attention to the applicable provisions on administrative disputes governing the extent to which it is possible for plaintiffs to address questions of fact in their submissions to the competent court performing judicial review, and the corresponding extent of competence of that court to review or even autonomously establish the relevant facts. Alternatively, it might be of importance to establish whether the implementation of the existing legislative provisions is in conformity with the Convention requirements outlined above.

4. In addition, I personally find it striking that the domestic law does not expressly allow for the reopening of the proceedings in the present case, although this has been considered as the most appropriate form of redress on numerous occasions (see, for example, *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, 23 February 2016). Furthermore, it is unclear whether any other form of redress is available to the applicant company in

the present situation at the national level. Without entering into an analysis of whether a claim for damages, lodged in civil contentious proceedings, or a request for reopening with analogous interpretation of the provisions governing criminal procedure could provide a way out in this situation, I find it of particular importance that Article 15 § 4 of the Slovenian Constitution expressly guarantees the right to obtain redress for any violation of human rights and fundamental freedoms. In the light of this provision, one would reasonably expect the legal system to put in place effective and straightforward legal avenues for victims, particularly in cases where the violation has been established by a judgment of this Court.

5. In the absence of any unequivocal provisions of domestic law providing for redress, the Court was called upon to rule on the applicant company's claim for an award of EUR 105,000 in respect of pecuniary damage, which corresponds to the amount of the fine paid in the domestic proceedings. It is impossible to speculate on what the outcome of the proceedings before the Supreme Court would have been had the violation not occurred. Equally, the Court must refrain from any speculation on the hypothetical outcome of any reopening or redress proceedings had the domestic legal system provided for them. To put it simply: if in the present case the Supreme Court conducted evidentiary proceedings and established the relevant facts of the case autonomously, it may have found for the applicant company, but, equally, it could have dismissed the applicant company's action and confirmed the fine as imposed by the Office. It could also have done something in between, e.g. reduced the impugned fine in the light of the circumstances of the case, which it would establish on its own.

6. In this respect, the Court's position was similar to that of the national courts when called upon to decide cases where it is uncertain whether the claimant would earn or otherwise benefit from a certain amount, prize or profit without an illegal act or omission being committed by the defendant. In such situations, many legal systems have developed the "loss of real opportunities" doctrine (Fr. *perte de chances réelles*), according to which the amount of damages to be awarded corresponds to the likely amount of the claimant's gain had there been no violation. This doctrine has been accepted by the Court in a number of cases cited in the present judgment, a fact which constituted solid ground to guide the decision-making in our case.

7. Since the circumstances did not allow for any conclusion as to the probable outcome of the case at the domestic level had there been no violation, I believe it was fair and just to split the difference and to award the applicant company EUR 52,500. Going beyond that amount would have led the Court to go deeper into the facts and merits of a potential reopened case and to find itself in the position of first-instance judge, a role for which it is not suited.

8. I must admit that the position taken by the minority within the Chamber, namely that the applicant company should be awarded the full amount of the fine as pecuniary damages, is a tempting one. It is true that it was the respondent State which committed the violation and, likewise, that it is the respondent State which has failed to put in place an effective avenue of redress. However, this would entail a punitive element in the assessment of damages, which in turn would run contrary to the Court's existing case-law. Pursuant to Article 30 of the Convention, any such decision could only be taken by the Grand Chamber. Furthermore, the damage suffered by the applicant company was the lost opportunity to benefit from a fair trial. This is a form of damage in itself, which has to be compensated in the present case.

9. In any event, if the applicant company wishes to make a claim for the remainder of the amount paid as a fine, it could consider the possibility of exploring uncertain avenues, including those indicated in point 4 of this concurring opinion. In this respect, Article 15 § 4 of the Constitution may serve as a good source of inspiration.

JOINT PARTLY DISSENTING OPINION OF JUDGES PINTO DE ALBUQUERQUE AND VEHABOVIĆ

1. We agree with the present judgment, except on a single point. We are unable to share the view of the majority of the Chamber that only half of the amount of pecuniary damage claimed should be awarded to the applicant company as a consequence of the finding of a violation of Article 6 § 1 of the Convention.

2. The penalty complained of by the applicant company was imposed by the Agency, which is an administrative authority. That same penalty was disputed by the applicant company before the Supreme Court, which refused to examine the proposed evidence by way of conducting an oral hearing and examining witnesses. This evidence was essential, since the offence in question had been observed by the Agency's officers in person and their testimony was the sole basis for the applicant's conviction. As a result the applicant company was fined 105,000 euros, which it paid (see paragraph 15 of the judgment).

3. In our view, the most appropriate form of redress in respect of Article 6 violations is the reopening of the proceedings, if requested by the applicant (see *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 136, 23 February 2016, and the separate opinion of Judge Pinto de Albuquerque, joined by Judges Karakaş, Sajó, Lazarova Trajkovska, Tsotsoria, Vehabović and Kūris, in *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, 11 July 2017). The same principle applies to this case. In this regard, we find it highly problematic that Slovenian law does not allow for the reopening of the present proceedings (see paragraph 65 of the judgment). This is not in accordance with Recommendation (2000)2 of the Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, and hence Slovenian law lacks basic human rights safeguards in this regard.

4. As a matter of principle, whenever the Court finds a violation of Article 6 § 1 of the Convention and where no possibility exists for the reopening of the proceedings before the domestic authorities on the basis of that judgment, the full amount of pecuniary damage sustained by the applicant as a consequence of that violation should be paid, if requested.

5. It is true that the outcome of the proceedings might have been the same had there been no violation of Article 6. But we do not know that without the proceedings being reopened, which is not possible in the present case. Hence, the applicant company will not get full justice: on the one hand, it does not get a second chance to discuss the case while benefiting from the procedural guarantees of Article 6 and, on the other hand, it does not get full compensation for the amount of pecuniary damage sustained precisely on account of the violation of Article 6.

6. In any event, we find it unreasonable to regard the applicant company as having suffered a loss of real opportunities, as happened in those cases cited by the majority in paragraph 66 of the judgment (*Pélissier and Sassi v. France* [GC], no. 25444/94, § 80, ECHR 1999 II; *Destrehem v. France*, no. 56651/00, § 52, 18 May 2004; and *Miessen v. Belgium*, no. 31517/12, § 78, 18 October 2016).

The present case must be distinguished from those cases. In *Pelissier and Sassi* the alleged pecuniary damage included a fine applied by the Aix-en-Provence Court of Appeal, but also the time the applicants had spent, to the detriment of their work, defending what had been abnormally lengthy criminal proceedings, and the loss of profit and business opportunities as a result of the conviction. In *Destrehem*, the alleged pecuniary damage included the loss of employment and the loss of the possibility to sit the competition to become a public employee. In *Miessen*, the pecuniary damage related to the loss of a financial subsidy that the applicant had claimed but did not receive. In all the cases mentioned by the majority there was an element of loss of real opportunities, which was taken into consideration for the purposes of calculating the pecuniary damage.

In the present case, the applicant company was fined and the alleged pecuniary damage consisted exclusively in the amount of the unduly paid fine. There was no claim on the part of the applicant company regarding any future opportunities that it allegedly lost as a result of the Article 6 violation.

7. To sum up, we see no reasonable explanation for awarding compensation equal to only half of the sum that the applicant company paid to the authorities. Furthermore, we would invite the national authorities to consider the need to review the domestic law with regard to the re-examination or reopening of cases at domestic level, including cases dealt with under the Administrative Disputes Act, following judgments of the European Court of Human Rights.