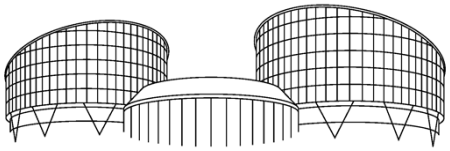

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF FERHATOVIĆ v. SLOVENIA

(Application no. 64725/19)

JUDGMENT

Art 1 P1 • Control of the use of property • Seizure of copper wire bags from the applicant, charges against whom were eventually withdrawn, and handover to the company from which the wire had allegedly been stolen • Lack of legal procedure safeguarding the interests of those concerned against arbitrariness in returning seized items to alleged injured party • Domestic courts' failure to rectify shortcomings • Fair balance between competing interests upset

STRASBOURG

7 July 2022

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 Ferhatović v. Slovenia,

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

Péter Paczolay, *President*,
Marko Bošnjak,
Krzysztof Wojtyczek,
Alena Poláčková,
Lorraine Schembri Orland,
Ioannis Ktistakis,
Davor Derenčinović, *Judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 64725/19) 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 national, Mr Sebastjan Ferhatović ("the applicant"), on 6 December 2019;

the decision to give notice to the Slovenian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 14 June 2022,

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

INTRODUCTION

1. The case concerns the seizure of three large bags of copper wire from the applicant – a defendant in criminal proceedings – and their handover to Company E., from which the wire had allegedly been stolen. The applicant complained that the police had handed the wire over to Company E. in breach of Article 1 of Protocol No.1 to Convention.

THE FACTS

2. The applicant was born in 1985 and lives in Ljubljana. He was represented by Mr B. Penko, a lawyer practising in Ljubljana.

3. The Government were represented by their Agent, Mrs V. Klemenc, Senior State Attorney.

4. The facts of the case may be summarised as follows.

I. SEIZURE OF THE COPPER WIRE AND RELATED CIRCUMSTANCES

5. On 7 February 2009, patrolling officers of one of the police stations in Ljubljana noticed three men pushing a white Mazda van bearing no licence

plates and the applicant driving behind it in a car. Later that day, the patrolling police officers learned from other police officers that an identical Mazda vehicle had been spotted outside the site of two burglaries in Tobačna Street in Ljubljana, on 5 and 6 February 2009, during which a large quantity of cable containing copper had been stolen to the detriment of Company E. The officers then returned to the location of the sighting. Upon arrival, they saw several persons at the applicant's address unloading into his garage what appeared to be copper products and wire from a Mazda van, which allegedly looked like the one appearing on the video footage recorded by the surveillance cameras at the scene of the burglary.

6. Further to obtaining an order from the investigating judge on 8 February 2009, a house search was carried out at the applicant's address, during which eight large canvas bags containing mostly copper wire were found and seized. A certificate of seizure of items (*potrdilo o zasegu predmetov*) indicating that the wire had been seized from the applicant was handed to the latter. Subsequently, the police officers allegedly found that the dimensions of the wire in three of the seized bags corresponded to the dimensions of the cables stolen from Company E.

7. On 24 April 2009, the aforementioned three bags with copper wire were given to Company E. The remaining five bags were returned to the applicant on 11 May 2009.

8. On 13 April 2010, the police lodged a criminal complaint with the Ljubljana District State Prosecutor's Office, accusing the applicant of committing the criminal offence of concealment under Section 217 (1) of the Criminal Code by accepting copper wire (peeled cables) and hiding them in his garage in the knowledge that they originated from a crime. The damage incurred by Company E. was valued at approximately 23,000 euros (EUR).

9. On 22 September 2010 a request for the initiation of a criminal investigation was made by the State Prosecutor's Office. Charges were lodged against the applicant on 27 December 2011.

10. On 26 November 2012 the State Prosecutor's Office withdrew the charges, and the criminal proceedings before Ljubljana District Court were consequently discontinued on 20 December 2012.

11. On 7 January 2013, the applicant lodged a request with the Ljubljana District Court for the three bags of copper wire that had been handed over to Company E. to be returned to him. He indicated that each bag weighed around 800 kg.

12. On 10 January 2013 the Ljubljana District Court sent a letter to the applicant informing him that the bags in question had been handed over to the injured party on 24 April 2009.

II. CIVIL PROCEEDINGS FOR COMPENSATION

13. On 8 April 2013, the applicant lodged with the Ljubljana Local Court a claim against the State. He sought compensation in the amount of EUR 13,750, corresponding to the value of the seized and never returned three bags of copper wire. He explained that he had been collecting waste metals and selling them. He had kept the bags containing the above-mentioned copper wire in his garage for over two years in order to sell it in large quantities at a higher price. He referred to, *inter alia*, section 224 of the Criminal Procedure Act, which stipulated that seized items should be returned to their owner if criminal proceedings in respect of them were discontinued, and if such items had not been confiscated by means of a special decision.

14. The defendant objected to the claim, both regarding the grounds and the amount of compensation sought. In his pleadings the applicant maintained that he was the owner of the copper wires that had been seized. When questioned at the hearing, he stated that his family had been collecting waste metal from construction sites and around different neighbourhoods, and that they had acquired such material either by paying money for it or providing certain services in return, or had acquired it for free. He denied receiving the bags in question on 7 February 2009 and said that he did not remember where and how exactly he had acquired the copper wire that had been in them. He stated that his family had been accumulating the wire that had been in the bags for over two years at different locations and had been planning to sell it. Company E's representative, M.Č., who had collected the three bags with the wire from the police, explained that they had later been sold "in Kočevje, to some Roma" and that the money had been given directly to Company E's director. When asked whether the copper wire had been stripped from the cables that had been stolen from Company E., M.Č. said that this could not be determined, as the wire, which had been thick to different degrees, had been cleaned and cut, and had not been examined when it had been collected. The police officer who had worked on the case concerning the cables stolen from Company E. testified that the seized copper wire had certainly originated from the kind of cables that had been stolen, but that such cables were available practically everywhere. However, given the nature of the chain of events, the police had considered that they had belonged to Company E. He was not able to provide any details as to the quantity of the wire in question and said that the bags had not been weighed. He also confirmed that the bags had been handed over to Company E. without any court order to that effect.

15. On 9 June 2015 the Ljubljana Local Court rejected the applicant's claim as time-barred. The court also held that the objection raised by the defendant regarding the applicant's standing to lodge the claim was

well-founded, as the applicant had himself stated that the copper wire belonged not only to him but also to five other members of his family.

16. The applicant appealed.

17. On 23 March 2016 the Ljubljana Higher Court set aside the judgment and remitted the case. It emphasised that the statutory limitation period had not begun to run until the conclusion of the criminal proceedings. It also found that the first-instance court's opinion concerning the applicant's standing had not been correct, noting that: the copper wire had been seized from the applicant; he had been the defendant in the criminal proceedings; and under section 224 of the Criminal Procedure Act, the seized items were to be returned to the person that had possessed them (*imetnik*) – but not necessarily owned them. It instructed the first-instance court to establish all the elements of the civil tort.

18. On 12 July 2016, following the re-examination of the case, the Ljubljana Local Court dismissed the applicant's claim. Referring to the applicant's testimony, the court noted that it "could not reach with a degree of certainty (*s stopnjo gotovosti*) the conclusion that the plaintiff had been in fact the owner of the [copper wire in question]". The court went on to note as follows:

> "The first-instance court had [previously] taken the position that damage, as one element of civil tort, could have been considered to exist only if the injured party had been the actual owner of the item. [...] The second instance court took in this connection a different position – notably that for the seized item to be returned it was sufficient under section 244 of the Criminal Procedure Act that the person was the "holder" (*imetnik*) and not the owner (*lastnik*) of the item. Having regard to the foregoing and taking into account that the copper was seized only from the plaintiff and that only the latter (and not the relatives – presumed co-owners) was accused in the criminal proceedings, the objection of the defendant concerning the lack of standing is also unfounded ..."

19. The court furthermore observed that while the copper wire that had been seized from the applicant had very likely originated from the electrical cables that had been stolen from Company E. it could not reliably establish that they had indeed belonged to Company E. In the court's view "there [was therefore] an indication that in the present case the conditions for the return of the goods to Company E. on the basis of section 110 (1) of the Criminal Procedure Act had not been met." However, in the domestic court's view, this in itself did not mean that the State was liable for damages. The court found that the police officers, when deciding to hand the items over to Company E. under section 110 (1) of the Criminal Procedure Act, had acted with the care and diligence expected of them in such cases and had had reasonable grounds to believe that the copper wire kept in the three seized bags originated from the electrical cables that were taken from Company E. It concluded as follows:

> "Because [the police officers'] actions were in line with the [... relevant] standards and therefore satisfied the required [degree of] diligence, their conduct could not be

> considered unlawful even if [they] wrongly determined that the conditions for the return of the items under section 110 (1) of the Criminal Procedure Act were fulfilled. Therefore, since one of the elements necessary for the civil liability has not been established, the claim of the plaintiff should be in its entirety dismissed."

20. The applicant appealed. He argued that the police had acted unlawfully as they had not complied with section 110 of the Criminal Procedure Act, which clearly provided that only items that undoubtedly belonged to the injured party in question should be given to the latter before the end of the criminal proceedings.

21. On 21 December 2016 the Ljubljana Higher Court dismissed the applicant's appeal. It emphasised that one of the preconditions for the defendant's civil liability was the occurrence of damage, whereby the burden of proof that such damage existed was borne by the alleged injured party. It pointed out that the applicant had alleged that his property had been reduced but that he had not disputed the firs-instance court's finding that he had failed to prove his ownership of the copper products in question. In the appellate court's view, since the applicant therefore could have not been considered as the owner of the seized items, he could not have suffered any damage, even if the items had been seized from him. The appellate court emphasised that this was the reason why the applicant would not be entitled to compensation, even in the event that the conduct of the police had been unlawful.

22. The applicant lodged an application for leave to appeal on points of law, arguing, *inter alia*, that it had not been disputed that the copper wire had been seized from him, that the wire had been given to Company E. (whose ownership of the wire had never been proved), that the police had not complied with the clear legal provision contained in section 110 of the Criminal Procedure Act, that the lower courts had disregarded the property law regarding the acquisition of a title to movable property without an owner (*res derelictae*), and that he had explained in enough detail how he had acquired the seized wire and that he simply could have not produced any more evidence to demonstrate his ownership of the wire in question. He also maintained that it had remained unexplained throughout the proceedings why he had been entitled to retrieve possession of five bags containing seized wire and not the remaining three, despite the discontinuation of the criminal proceedings against him.

23. On 6 April 2017 the Supreme Court dismissed the applicant's application.

24. The applicant lodged a constitutional complaint citing, *inter alia*, the right to property under Article 33 of the Constitution and Article 1 of the Protocol No.1 to the Convention.

25. On 15 July 2019 the Constitutional Court decided not to accept the constitutional complaint for consideration.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

26. Under the Criminal Procedure Act an object may be seized when it is considered to be a product or object of crime (*corpus delicti*) or to constitute an item of evidence. An object may be definitively confiscated only by means of a court decision or, in certain exceptional cases, by a decision of a public prosecutor. Any object may be seized, regardless of who owns it (a suspect or injured party, or possibly a third party). Provisions that are relevant in this respect read as follows:

Section 220

"(1) Objects that must be seized under the Criminal Code, or that may prove to [constitute] evidence in criminal proceedings, shall be seized and delivered to the court for safekeeping or secured in some other way.

(2) Custodians of such objects shall be bound to hand them over, upon the request of the police, state prosecutor or the court. ...

...

(4) Police officers shall be entitled to seize objects referred to in the first paragraph of this section when acting under sections 148 and 164 of this Act or when executing orders of a court.

..."

Section 224

"Objects seized during criminal proceedings shall be returned to the owner or the holder (*imetnik)* if the proceedings are discontinued and there are no grounds for them to be confiscated (*se vzamejo*) (section 498)."

Section 498

"(1) Objects ... shall be confiscated even when criminal proceedings do not end in a verdict of guilt if there is a danger that they might be used for a criminal act or where so required in the interests of public safety or for moral considerations.

(2) A special ruling thereon shall be issued by the body before which the proceedings were conducted ...

(3) A court shall render a ruling on the confiscation (*odvzem)* of objects referred to in the first paragraph of this section even where a provision to that effect is not contained in the judgement of conviction.

...

(5) The owner of the objects [in question] shall be entitled to appeal against the decision referred to in the second and third paragraphs of this section ... If a ruling [delivered] under paragraph two of this section was not rendered by a court, an appeal shall be heard by a court panel ..."

Section 498(a)

"(1) Unless a guilty verdict [is delivered], money or property of illegal origin, as referred to in section 245 of the Criminal Code [that is to say money laundering] or an unlawfully given and accepted bribe, as referred to in sections 151, 157, 241, 242, 261, 262, 263 and 264 of the Criminal Code, shall also be confiscated if

1) elements of a criminal offence, as referred to in section 245 of the Criminal Code, indicating that the money or property [in question] ... originated from crimes have been proved, or

2) elements of a criminal offence, as referred to in sections 151, 157, 241, 242, 261, 262, 263 and 264 of the Criminal Code, indicate that an award, gift, bribe or any other proceeds were given or accepted have been proved.

(3) A special decision on this shall be delivered by a [court] panel ... upon a reasoned proposal of the State Prosecutor; before that, the investigating judge must, at the panel's request, gather information and investigate all the circumstances that are important for establishing the illegal origin of money or property, or of the bribe given or accepted unlawfully.

...

(4) The owner of the confiscated money, property or bribe shall be entitled to appeal against the decision referred to in the second paragraph of this section ..."

27. Items seized for the purposes of criminal proceedings may be returned to the injured party pending the outcome of such proceedings under the conditions set out in section 110 of the Criminal Procedure Act, which reads as follows:

"(1) If the items [in question] without doubt belong to the injured party and are not needed as evidence in criminal proceedings, they shall be delivered to the injured party before the end of the proceedings.

(2) If several injured parties claim title to the items, they shall be instructed to institute civil proceedings ...

(3) Objects needed as evidence shall be seized, and returned to the owner after the proceedings are concluded. If such objects are indispensable to the owner, they may be returned to him or her before the conclusion of the proceedings, against their commitment to produce the objects when so requested."

28. According to a legal opinion given by a general session of the Supreme Court of the Republic of Slovenia on 19 December 1990, items seized by the police in pre-trial proceedings and not handed over to a court for safekeeping must be returned to the defendant by the police.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

29. The applicant complained that the handover of his copper wire to Company E. had been in breach of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. Compatibility ratione materiae and victim status

30. The Government first argued that the applicant had failed to prove that he had been the owner of the copper wire seized from him. His civil claim for compensation thus had no prospect of success and could have not given rise to any interest protected by Article 1 of Protocol No. 1. In this connection, they submitted a number of decisions adopted by the Supreme Court and the Ljubljana Higher Court concerning seized items returned to the injured party under section 110 of the Criminal Procedure Act. In those decisions the domestic courts – deciding on claims lodged by defendants from whom the items in question had been seized – found either that those items had been returned to the rightful owner or that the plaintiff had been found not to be the owner of the seized items. As regards the latter case, the Supreme Court noted in decision II Ips 442/2007 of 11 February 2010 that the plaintiff had obtained a seized car in bad faith from someone who had not been its owner and should thus not have been entitled to any compensation in relation to its seizure.

31. The Government moreover submitted that the applicant's acknowledgment that the copper wire had belonged to the applicant's entire family should be taken into consideration when determining his victim status.

32. The applicant cited decision II Cp 1028/2013 of the Ljubljana Higher Court of 22 May 2013, in which that court had found that, according to the settled jurisprudence, it had to be assumed that the person from whom items had been seized during the criminal proceedings had been their owner or holder (*imetnik*). The applicant also argued that at the hearing before the first-instance court he had explained in detail how he had acquired the seized copper wire – namely by collecting it at construction sites, around different

neighbourhoods, from farms, and so on. He emphasised that it had been impossible for him to produce more evidence regarding the acquisition of discarded wire. He also pointed out that there had been no dispute as regards the remaining five bags, which had had a lower value and had been returned to him.

33. As regards the case-law submitted by the Government, the applicant argued that it concerned cases in which the domestic courts had found that the real owner of seized items had been the injured party, to whom those items had been returned. That case-law thus concerned situations that had been different from that which applied in his case.

34. The Court reiterates that the concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning that is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets may also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I, and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I).

35. The Court notes that the three bags of copper wire were indisputably seized from the applicant and given to Company E. It does not appear to have been proved in any proceedings that that wire had been stolen or obtained illegally in some other way before its seizure. The Court therefore understands that in the absence of a confiscation decision, that wire, had it not been given to Company E., would have had to be returned to the applicant (see section 224 of the Criminal Procedure Act, cited in paragraph 26; see also paragraph 28 above). The Court moreover notes that while it is for the domestic courts to assess the evidence before them, the applicant provided an explanation as to how he had acquired the wire in question (see paragraph 14 above). Although this explanation was vague and limited, it could not be considered to be without basis, especially having regard to the domestic authorities' findings to the effect that it had not been reliably shown that the wire in question derived from Company E's electrical cables (see paragraphs 14 and 19 above). This suffices to render Article 1 of Protocol No. 1 applicable in the instant case (compare *Rummi v. Estonia*, no. 63362/09, § 105, 15 January 2015). For the same reasons (and noting that only the applicant's name was indicated on the certificate of seizure – see paragraph 6 above), the Court sees no reason to find that he could not claim to be the victim of the alleged violation. The Government's related objection (see paragraphs 30 and 31 above) should thus be dismissed.

2. Exhaustion of domestic remedies

36. The Government also objected that the applicant had failed to exhaust the available domestic remedies, because in his appeal against the judgment of 12 July 2016 he had not challenged the Ljubljana Local Court's "evidentiary" finding that he had not proved that he had been the owner of the seized items. The judgment had thus become final in that respect. This finding could not be disputed in the course of the appeal on points of law or the constitutional complaint. The Government further argued that the applicant had consequently also failed to comply with the six-month time-limit as regards the issue of the ownership of the seized copper wire.

37. The applicant argued that he had invoked his right of property throughout the proceedings. He pointed out that the Ljubljana Local Court had found that the copper wire had been seized from him and that he had had standing to pursue the proceedings. The first-instance court had not dismissed his claim on the grounds of a lack of proof of ownership but because it had considered the actions of the police officers to have been lawful. The applicant thus had no reason to complain in his appeal about the issue of ownership.

38. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 68, 17 September 2009, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014). It must be applied with some degree of flexibility and without excessive formalism. At the same time, it normally requires that the complaints intended to be made subsequently at the international level should have been aired before the appropriate national courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (*Scoppola*, cited above, § 69).

39. The Court observes that in the present case it has not been disputed that the applicant used all available legal avenues and that therein he complained that the police had disposed of his copper wire unlawfully. The Court takes note of the Government's argument that in his appeal against the judgment of 12 July 2016 the applicant should have challenged the first-instance court's finding that he had not proved that he had been the owner of the wire in question (see paragraph 36 above). However, the Court observes that the first-instance court dismissed the applicant's claim not because it did not consider him to be the owner of the seized items but because it found that the police officers' conduct could have not been considered unlawful (see paragraphs 18 and 19 above) – a finding which the applicant undoubtedly challenged in his appeal (see paragraph 20 above). The Court therefore cannot agree with the Government that the applicant failed to exhaust domestic remedies. The fact that in his appeal on points of law and

his constitutional complaint he was no longer able to dispute the facts established by the lower courts (see paragraph 36 above) is related to the features of the domestic remedies in question and cannot not be held against the applicant. This objection, as well as the related objection concerning compliance with the six-month rule, should therefore be dismissed.

3. Conclusion

40. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

41. The applicant argued that the three bags of copper wire should have been returned to him since he had not been convicted of any offence in relation to them. There had been no grounds on which the police could justify giving the bags to Company E., as it had not been established that they undoubtedly belonged to that company. As noted in the judgment of 12 July 2016, the items had been returned to Company E. in breach of the requirements of section 110 of the Criminal Procedure Act.

42. The Government maintained that although section 224 of Criminal Procedure Act concerned items seized during criminal proceedings, items seized before the initiation of criminal proceedings should be treated the same way. They argued that in the present case the seizure of the copper wire had amounted to control of the use of property. They further submitted that the police had had reasonable basis to believe that the copper wire in question had originated from the electrical cables stolen from Company E. The Government pointed out that the legal and factual presumptions had not been incompatible with the Convention and argued that the applicant had been in a position to effectively challenge the measure that had allegedly interfered with his property rights. The domestic courts had properly assessed the evidence and had delivered well-reasoned decisions.

2. The Court's assessment

(a) General principles

43. The Court reiterates that it has been its constant approach that confiscation, even though it does involve deprivation of possessions, nevertheless constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Sun v. Russia*, no. 31004/02, § 25, 5 February 2009; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; and *Gogitidze and Others v. Georgia*, no. 36862/05, § 94, 12 May 2015). In such cases the Court must establish

whether the measure was lawful and "in accordance with the general interest", and whether there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Džinić v. Croatia*, no. 38359/13, §§ 61 and 62, 17 May 2016, and *Gogitidze and Others*, cited above, §§ 96 and 97). As regards the latter, the character of the interference, the aim pursued, the nature of the property rights interfered with, and the behaviour of the applicant and the interfering State authorities are among the principal factors material to an assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant (see *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, § 149, 16 March 2021).

44. Furthermore, the Court has, on many occasions, noted that although Article 1 of Protocol No. 1 contains no explicit procedural requirements, domestic proceedings must afford the aggrieved individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging measures interfering with the rights guaranteed by this provision (see *Rummi v. Estonia*, cited above, § 105, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 302, 28 June 2018).

(b) Application of the principles to the present case

45. The Court notes that the interference with the applicant's right under Article 1 of Protocol No. 1 relates to the police's decision to hand the items seized from the applicant over to Company E., from which they had allegedly been stolen. Under Slovenian law, the "return" of items to an injured party, except in the event that they are needed for evidence (see paragraph 3 of section 110 of the Criminal Procedure Act, cited in paragraph 27 above) seems to be definite and unconditional, the injured party being free to dispose of such items. In the present case, it resulted in the irrevocable forfeiture of the seized items, which, from the perspective of its practical consequences, could be compared to a confiscation measure (see, for instance, *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002; *Gogitidze and Others,* cited above; *Riela and Others*, cited above; *Phillips v. the United Kingdom*, no. 41087/98, ECHR 2001-VII; and *Silickienė v. Lithuania*, no. 20496/02, 10 April 2012). Therefore, despite its far reaching consequences, the interference in the present case falls to be classified as the control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see paragraph 43 above; compare *Rummi*, cited above, § 105; *Gogitidze and Others*, cited above, § 94; and *Arcuri and Others v. Italy* (dec.), no. 52024/99, 5 July 2001). It remains to be determined whether this interference complied with the conditions set out in that paragraph.

46. As regards the question of the lawfulness of the interference, the Court considers it appropriate to leave this open and to examine the case from the standpoint of proportionality. Within that context it will also address any relevant deficiencies in the applicable domestic regulatory framework (see, *mutatis mutandis*, *Aktiva DOO v. Serbia*, no. 23079/11, § 81, 19 January 2021).

47. The Court next observes that the decision of the police to give the wire to Company E. could in principle be considered to have operated in the general interest of combating criminal activities (see *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 58, 1 April 2010, with further references). Moreover, it can be deemed to have been in line with the general interest of the community because it was meant to ensure that the injured parties in the criminal proceedings would promptly have restored their belongings to them.

48. As to the proportionality of the interference, it should first be noted that the criminal proceedings against the applicant relating to the seizure of the copper wire in question were discontinued because the charges against him had been withdrawn. He has thus not been found guilty of any criminal offence in this respect and, as noted in paragraph 35 above, would be in principle entitled to have the seized items returned to him had they not been handed over to Company E. The handover of the items to Company E. was based on section 110 (1) of the Criminal Procedure Act, which provided that items that had been seized by police could be given to an injured party before the end of criminal proceedings in the event that the injured party was undoubtedly their owner (see paragraph 27 above). Despite the serious character of the measure (see paragraph 45 above) the decision to "return" the items to the injured party seems to have lain entirely at the police's discretion.

49. The Court reiterates in this connection that the requisite balance between the interference with the applicant's right to the peaceful enjoyment of his or her possessions and the aim sought to be realised will not be achieved if the applicant has had to bear an individual and excessive burden (see *Gogitidze and Others*, cited above, § 97) or has not been provided with a reasonable opportunity of putting his case to the responsible authorities for the purpose of effectively challenging the measure in question (see *Rummi*, cited above, § 104, and *AGOSI v. the United Kingdom*, 24 October 1986, § 55, Series A no. 108). By way of comparison, it observes that under Slovenian law a permanent seizure in the form of confiscation could be ordered in the absence of a guilty verdict under section 498 of the Criminal Procedure Act only if there were a risk that a property could be used for a criminal activity or where it was so required in the interests of public safety or for moral considerations. Furthermore, under section 498(a) of the same Act, money or property of illegal origin used in money laundering and an unlawfully given and accepted bribe could be confiscated, in the event that

their unlawful nature was proved. In such instances, a special procedure, including a possibility of appeal to a judicial body, was provided for (see paragraph 28 above). By contrast, under section 110 (1) of the Criminal Procedure Act the "return" of seized items to an alleged injured party was not accompanied by any safeguards against arbitrariness (see paragraphs 27 and 48 above).

50. The Court would point out that, understandably, there might be circumstances in which it is justified to give seized property to its presumed owner prior to the completion of the criminal proceedings against the person from whom that property was seized. However, in the present case it does not seem to have been reliably established that Company E. was the owner of the copper wire in question. Moreover, no consideration was given to the question of whether Company E. needed the wire to be handed over to it before the end of the criminal proceedings because it would be, for instance, indispensable for its operations, or would require particular storage conditions. In fact, the documents in the case file do not suggest that there was any urgency justifying handover of the wire to Company E. at that point in time. As can be seen from the evidence gathered in the domestic proceedings, E's employees sold the wire soon after collecting it from the police (see paragraph 14 above). Be this as it may, the crux of the problem lies in the fact that the relevant domestic law authorised the police to hand the seized items over to the alleged injured party without there being in place any legal procedure aimed at safeguarding the interests of those concerned and ensuring that legitimate grounds for the "return" of the items had been met and a fair balance between the competing interests struck.

51. In consequence, the only possibility for the applicant to assert his property rights in respect of the seized wire was to have recourse to civil proceedings. However, in the present case, the applicant's claim for compensation was dismissed. The Ljubljana Higher Court concluded that the applicant could have not been considered to be the owner of the seized items because he had not challenged the first-instance court's finding to that effect (see paragraphs 18, 19 and 21 above). The Supreme Court and Constitutional Court dismissed his complaints (see paragraphs 23 and 25 above) without providing specific reasons underpinning their decisions. In view of the foregoing and taking account of its above-mentioned finding that the applicant had a possession eligible for protection under Article 1 of Protocol No. 1 (see paragraph 35 above) and that he gave the domestic authorities an opportunity to put right the violation (see paragraph 39 above), the Court considers that the domestic courts did not rectify the shortcomings relating to the forfeiture of the copper wire, which resulted in the applicant being deprived of procedural safeguards against an arbitrary or disproportionate interference.

52. Given these circumstances the Court is bound to conclude that the fair balance that should be struck between the protection of the right of property and the requirements of general interest was upset in the present case.

53. There has accordingly been a violation of Article 1 of Protocol No. 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He also claimed the following amounts in respect of pecuniary damage: EUR 13,750, plus interest (a total of EUR 22,794) as compensation for the seized copper wire, and EUR 108,000 on account of the loss of financial assets that he would have allegedly obtained had he been able to invest the money from the seized copper wire in a company.

56. The Government argued that the applicant's claim relating to the income that he would have allegedly realised had he established a company was purely speculative.

57. As regards non-pecuniary damage, the Court considers that the finding of a violation of Article 1 of Protocol No. 1 constitutes in itself sufficient just satisfaction. As regards pecuniary damage, it finds wholly speculative and thus unsubstantiated the applicant's claim based on an alleged loss of income relating to his being prevented from potentially investing in a company. On the other hand, the Court, having regard to the information in its possession and noting the fact that the Government did not provide any evidence to refute the applicant's assessment of the value of the copper wire in question, finds it appropriate to award the applicant EUR 13,750 in respect of pecuniary damage. A one-off payment of twenty per cent interest should be added to that amount (see *Vaskrsić v. Slovenia*, no. 31371/12, § 98, 25 April 2017). The applicant should thus receive EUR 16,500, plus any tax that may be chargeable.

B. Costs and expenses

58. The applicant also claimed EUR 6,964 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

59. The Government argued that that claim was excessive.

60. 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 were actually and necessarily incurred and are reasonable as to quantum. 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 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

61. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 16,500 (sixteen thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Péter Paczolay President