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

FOURTH SECTION

CASE OF BIMAL D.D. v. BOSNIA AND HERZEGOVINA

(Application no. 27289/17)

JUDGMENT

STRASBOURG

31 August 2021

This judgment is final but it may be subject to editorial revision.

In the case of BIMAL d.d. v. Bosnia and Herzegovina,

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

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 27289/17) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a company registered in Bosnia and Herzegovina, BIMAL d.d. ("the applicant"), on 28 March 2017;

the decision to give notice to the Government of Bosnia and Herzegovina ("the Government") of the complaint concerning Article 6 § 1 and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 29 June 2021,

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

INTRODUCTION

1. The present case concerns the failure of the domestic court to forward to the applicant company the response of the other party during the judicial-review proceedings.

THE FACTS

2. The applicant company is a private joint stock company whose registered office is in Brčko District.[1] It was represented by Mr D. Brković and Mr I. Studen, lawyers practising in Brčko District.

3. The Government were represented by their Acting Agent at the time, Ms M. Mijić.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

[1] Bosnia and Herzegovina consist of two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, and Brčko District.

I. PROCEEDINGS BEFORE THE COMPETITION COUNCIL

5. On 13 April 2011 the applicant company signed a contract with two other companies – B. (with its registered office in the Republika Srpska) and C. (with its registered office in the Federation of Bosnia and Herzegovina) – for the creation of a legal entity, E. (in the form of a joint venture) for the treatment of packaging waste.

6. On 24 May 2013 the applicant company, together with its two contractual parties, formally notified the Competition Council of the creation of the legal entity E., pursuant to section 16 of the Competition Act (see paragraph 22 below).

7. On 1 August 2013 the Competition Council ruled that the concentration was in line with the Competition Act. It held that it had the form of a full-function joint venture and was as such subject to a notification requirement. For the purposes of assessing the competition effects of the concentration the Competition Council deemed the relevant geographical area to be Bosnia and Herzegovina as a whole, and stated, *inter alia*:

> "The applicants, on the basis of an assessment [determining that they] manage 277,270 tonnes of packaging waste in Bosnia and Herzegovina, have assessed that the economic entity E. has a 15.8% share of the relevant market in Bosnia and Herzegovina on the basis of its activities and [the fact that it has concluded] 200 contracts with business entities for which it undertakes to manage packaging waste."

8. However, the Competition Council furthermore held that the parties had (i) not notified it of the concentration within the statutory fifteen-day time-limit, and (ii) implemented it before the Competition Council had declared it to be in line with the Competition Act. It imposed separate fines on all three companies – which, in the case of the applicant company, comprised a fine of 104,572 convertible marks (BAM)[2] (amounting to 0.04% of its annual turnover in 2010) for its failure to notify the Competition Council within the statutory time-limit, and a fine of BAM 329,403 (or 0.126% of its annual turnover in 2010) for the implementation of the concentration before the Competition Council had declared it to be in line with the Competition Act. The Competition Council emphasised that the fines were of both a punitive and a deterrent nature, and that it would collect the fines forcibly if they were not paid voluntarily and in a timely manner.

9. On 5 August 2013 the applicant company lodged an application with the Competition Council for the proceedings to be reopened, arguing that its turnover had not been correctly reported to the Council.

[2] The convertible mark uses the same fixed exchange rate to the euro as the German mark: EUR 1 = BAM 1.95583.

10. On 13 August 2013 the three companies jointly lodged an application with the Competition Council for the reopening of the proceedings, referring to the previous application of the applicant company (see paragraph 9 above), and also extending the scope of the initial application so that it encompassed the issue of the calculation of the fines and the definition of the relevant geographical market. That application was supplemented by the provision of additional information on 27 August 2013.

11. On 11 September 2013 the three companies jointly informed the Competition Council that their previous applications for the reopening of the proceedings (see paragraphs 10 above) should be considered as a request for it to reconsider its decision of 1 August 2013, as it had been based on incomplete information.

12. On 10 October 2013 the Competition Council issued a decision upholding that request as relating to the calculation of the imposed fines according to the correctly reported turnover. The applicant company's fines were thus reset at BAM 57,998 (or 0.04% of its annual turnover in 2010) for its failure to notify the Competition Council within the statutory time-limit and BAM 182,694 (or 0.126% of its annual turnover in 2010) for the implementation of the concentration before the Competition Council had declared it to be in line with the Competition Act.

II. PROCEEDINGS BEFORE THE STATE COURT

13. Meanwhile, on 29 August 2013 the three companies jointly brought an administrative action in the State Court ("*Sud Bosne i Hercegovine*") against the decision of the Competition Council of 1 August 2013 (see paragraph 7 above). They argued that the legal entity that they had established (see paragraph 5 above) did not constitute a concentration within the meaning of the Competition Act, and that consequently (i) notifying the Competition Council of the establishment of that legal entity had not been obligatory, (ii) the Competition Council had not defined (pursuant to the Competition Act) the relevant geographic market, and (iii) the fines imposed had been "draconian" and unlawful. The State Court referred the administrative action to the Competition Council, inviting it to respond, and also ordered it to forward to it the complete file relating to the concentration.

14. On 3 October 2013 the Competition Council submitted to the State Court its response to the administrative action brought against its decision; on 14 October 2013 it submitted a supplement to that reply informing the court of its decision of 10 October 2013 (see paragraph 12 above). In its reply it stated, *inter alia*, the following:

> "Since the economic entity E. acquires (buys) – that is to say conducts the management of – packaging waste for economic entities outside [the territory of] of

> the Federation of Bosnia and Herzegovina (B. – the Republika Srpska, Bimal – Brčko District, plus 200 other concluded contracts) the Competition Council has determined the territory of Bosnia and Herzegovina to be the relevant geographic market."

15. On 28 September 2015 the Competition Council lodged a notification ("o*bavještenje*") with the State Court, informing it of the application lodged for the reconsideration of its decision (see paragraph 11 above), and it referred to the decision of 10 October 2013 that it had subsequently issued (see paragraph 12 above). It furthermore noted that the arguments relating to the relevant geographical market were irrelevant to the conclusions set out in its initial decision.

16. On 16 November 2015 the State Court delivered its judgment, which upheld the decisions of the Competition Council of 1 August 2013 and 10 October 2013. It also stated, *inter alia*, the following:

> "...
>
> In its response to the administrative action the defendant [that is to say the Competition Council] recommended that the administrative action be dismissed, while in [its] subsequent notification of 28 September 2015, it indicated that – acting upon the application for the reconsideration of its decision of 1 August 2013 regarding the fine imposed on the "Bimal" undertaking ...,which it provided as a supplement – it had issued a decision on 10 October 2013 allowing that application, and that the imposed fine had been reduced. In the cited notification it also indicated that the assertions of the complainant regarding the assessment of the geographical market and other information were irrelevant, as they could not influence the admissibility of the concentration ..., since [the Competition Council] had not assessed the concentration as incompatible [with the Competition Act] by its decision of 1 August 2013 [sic], but rather, had deemed it compatible.
>
> ...
>
> ... Since the economic entity E. acquires (buys) – namely conducts – the management of the packaging waste of economic entities [based] outside of Federation of Bosnia and Herzegovina (B. – Republika Srpska, Bimal – Brčko District, plus 200 other concluded contracts) the defendant party correctly determined the territory of Bosnia and Herzegovina as the relevant geographical market.
>
> ..."

The above-cited response of the Competition Council to the administrative action, and the subsequent notification lodged with the Court by the Competition Council, were not forwarded to the applicant company (see paragraphs 14 and 15 above).

17. On 22 December 2015 the three companies jointly lodged an application for the reconsideration of the State Court's judgment with the appellate panel of the same court.

18. On 5 January 2016 the Competition Council submitted its reply to the appellate panel of the State Court, in which it reiterated its stance regarding the definition of the geographical market and regarding the alleged unlawfulness and the amount of the imposed fines.

19. On 11 April 2016 the State Court's appellate panel dismissed the application for the reconsideration of the State Court's judgment (see paragraph 16 above). It noted that it had received the reply of the Competition Council. It did not forward that reply to the applicant company.

III. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

20. On 17 June 2016 the applicant company lodged a constitutional appeal with the Constitutional Court against the judgments in the administrative judicial-review proceedings (see paragraphs 16 and 19 above). It complained, under Article 6 of the Convention, about, *inter alia*, the failure of the State Court to forward to it the responses submitted by the Competition Council (see paragraphs 14, 15 and 18 above) to its administrative action (see paragraph 13 above) and its application for the reconsideration of the State Court's judgment of 16 November 2015 (see paragraph 17 above), thus violating the principles of adversarial proceedings and the equality of arms.

21. On 15 September 2016 the Constitutional Court dismissed the appeal as ill-founded.

RELEVANT LEGAL FRAMEWORK

22. The relevant provisions of the 2005 Competition Act (*Zakon o konkurenciji*), published in the Official Gazette of Bosnia and Herzegovina ("OG BH") nos. 48/05, 76/07 and 80/09, read as follows:

Section 12
(Concentration)

"(1) A concentration, within the meaning of this Act, shall mean:

...

(c) a joint venture on a lasting basis between two or more independent economic entities that act as an independent economic entity.

...

(3) [The following] shall not be considered, within the meaning of paragraph (1), as a concentration:

...

(c) when the joint venture has as a goal the coordination of market activities between two or more economic entities that remain independent ... "

Section 13
(Prohibited concentrations)

"Concentrations are prohibited between economic entities that would significantly impede effective market competition in the whole market of Bosnia and Herzegovina or in a substantial part of it, ... particularly those that would create a new or strengthen an existing dominant position."

Section 16
(Notification of concentration)

"(1) Economic subjects (participants in a concentration) are obliged to give notice of the concentration [in question], within the meaning of sections 12 and 14 [stating the total turnover for the purposes of assessing the concentration] of this Act, within fifteen days of the conclusion of the [relevant] agreement, the announcement of the public bid [in question], or the acquisition of a controlling interest, depending on which occurs first.

..."

Section 18
(Decision on concentration)

"...

(9) A concentration will not be implemented before the issuance of a decision that declares that concentration to be in line [with the Competition Act] under sections 12 and 14 of this Act.

..."

Section 26
(Rules of procedure)

"The Competition Council applies the Administrative Proceedings Act ... in proceedings before it, unless otherwise provided by this Act."

Section 43
(Final decision of the Competition Council)

"...

(6) The decision issued by the Competition Council shall not affect any possible criminal and/or civil responsibility determined by the relevant courts.

..."

Section 46
(Judicial review)

"(1) The decision of the Competition Council is final.

(2) An aggrieved party may initiate administrative judicial-review proceedings before the State Court within thirty days of receiving the decision [in question] or of the day the publication thereof."

Section 48
(Fines for serious violations of the Act)

"(1) An economic entity or a physical person shall be punished with a fine not exceeding 10% of the aggregate turnover of the economic entity, from the calendar year preceding that in which the violation of the Act occurred, if:

...

e) it implements the concentration prior to the [issuance of] the decision on concentration, within the meaning of section 18(9) of this Act.

...

Section 49
(Fines for other violations of the Act)

(1) The Competition Council may impose a fine on an economic entity not exceeding 1% of the aggregate turnover in the previous business year, if:

...

(b) it does not give notice of the concentration, pursuant to section 16 of this Act.

..."

Section 52
(Fixing the amount of fines)

"The Competition Council, in fixing the amount of the fine, shall have regard to the intent and duration of the violation of the provisions of this Act."

23. The relevant provision of the 2002 Administrative Disputes Act (*Zakon o upravnim sporovima Bosne i Hercegovine*), published in OG BH no. 19/02, 88/07, 83/08 and 74/10, read as follows:

Section 60 a)

"In respect of procedural questions related to an administrative dispute that are not regulated by this Act, the relevant provisions of the law regulating the civil procedure shall be applicable."

24. The relevant provisions of the 2004 Civil Procedure Act (*Zakon o parničnom postupku pred Sudom Bosne i Hercegovine*), published in OG BH no. 36/04, 84/07, 58/13 and 94/16, read as follows:

Section 10

"Every party has a right to make known its views ("*očitovati se*") regarding the proposals and requests ("*o prijedlozima i zahtjevima*") made by the opposing party. The court is only empowered to decide on a request regarding which the opposite party was not given an opportunity to make its views known when so determined by this Act."

Section 274

"...

(1) The civil action, the reply to the civil action, the counterclaim and reply to the counterclaim, and legal remedies and other statements, proposals and notices provided outside the hearing, shall be submitted in writing (submissions) ...

...

(5) A sufficient number of copies of submissions (with supplements) delivered to the opposite party shall be submitted to the court for [needs of] the court and the opposite party."

Section 276

"...

(4) If a sufficient number of copies of the submissions or supplements are not submitted, the court shall invite the applicant to submit them by a certain deadline. If the applicant fails to act upon such an order, the court shall reject such a submission."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant company complained that the judicial-review proceedings before the State Court had been unfair. In particular, it complained that the State Court had failed to forward to it the replies of the Competition Council submitted during the proceedings and had therefore deprived it of the possibility to comment on them. The applicant company relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

26. The Government maintained that the application was manifestly ill-founded.

27. The applicant company disagreed.

28. The Court notes that the Government did not contest the applicability of Article 6 of the Convention to the facts of the present case. At the same time, it reiterates that the scope of the Court's jurisdiction is determined by the Convention itself (in particular by Article 32), and not by the parties' submissions in respect of a particular case. Consequently, the mere absence of a plea of incompatibility with the Convention cannot extend that jurisdiction. Accordingly, the Court has to satisfy itself that it has jurisdiction in respect of any case brought before it, and is therefore

obliged to examine the question of its jurisdiction at every stage of the proceedings – even where no objection has been raised in this respect (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 201, ECHR 2014 (extracts)).

29. The concept of a "criminal charge" in Article 6 § 1 is an autonomous one (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 122, 6 November 2018). The Court's established case-law sets out three criteria, commonly known as the "Engel criteria", that are to be considered in determining whether or not there was a "criminal charge" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22, and *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 75, 22 December 2020). The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. 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, among other authorities, *Jussila v. Finland* [GC], no. 73053/01, §§ 30-31, ECHR 2006-XIV; *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X; and *Gestur Jónsson and Ragnar Halldór Hall*, cited above, §§ 77-78). The fact that an offence is not punishable by imprisonment is not by itself decisive for the purposes of the applicability of the criminal limb of Article 6 of the Convention since, as the Court has stressed on numerous occasions, the relative lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see the above-cited cases of *Ramos Nunes de Carvalho e Sá*, § 122, and *Gestur Jónsson and Ragnar Halldór Hall*, § 78).

30. The Court notes at the outset that the Bosnian legal system outlines a single set of proceedings regarding the assessment of violations of competition law, so that the Competition Council both conducts the proceedings concerning the finding of a violation of competition rules and imposes fines in those same proceedings under the provisions of the Competition Act (sections 48 and 49 of the Competition Act – see paragraph 22 above). As regards the domestic classification of the finding of a violation of competition rules, the Court notes than the relevant legislation does not expressly classify the measure in question as one belonging to criminal law (section 43(6) of the Competition Act). In this connection, the Court observes that the Competition Council, when conducting proceedings, applies the rules of administrative procedure (section 26 of the Competition Act). Similarly, the legality of the decision-making of the Competition Council in this type of proceedings is subject to appeal before the State

Court, which decides in judicial-review proceedings, applying provisions of the Administrative Disputes Act (see paragraph 22 above). However, that consideration is not decisive, as indications furnished by domestic law have only a relative value (see *A. Menarini Diagnostics S.R.L. v. Italy*, no. 43509/08, § 39, 27 September 2011).

31. The Court must now look at the nature of the offence and the nature and degree of severity of the sanction that the applicant company risked incurring. It notes that the provisions found to have been infringed by the applicant company (sections 16 and 18 of the Competition Act – see paragraph 22 above) were intended to preserve free competition in the relevant market. The Competition Council, as a public regulatory authority, monitored concentrations of economic entities on the market for the purpose of verifying whether they would significantly impede effective market competition – particularly through the creation or strengthening of a dominant position. These constitute general interests of society and are usually protected by criminal law (see *A. Menarini Diagnostics S.R.L.*, cited above, § 40). Furthermore, the determination of the violation of the competition rules was immediately followed by punishment through the imposition of fines, which, as stated in the impugned decision (see paragraph 8 above), had a punitive and deterrent character (see, *mutatis mutandis*, *Jussila*, cited above, § 38). Moreover, the Court observes that the fines at issue concerned a substantial amount (see, *mutatis mutandis*, *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, no. 47072/15, §§ 10 and 45, 23 October 2018), and that the maximum fine the applicant company had risked incurring was significantly higher, as it was linked to its aggregate turnover.

32. In the light of the above, the Court finds that Article 6 is applicable under its criminal head to the proceedings at issue.

33. The Court further 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

34. The applicant company argued that the failure to forward to it the replies that the Competition Council had submitted during the judicial-review proceedings had resulted in those proceedings being unfair. Such an omission on the part of the State Court was also contrary to the domestic law – namely sections 10, 274 and 276 of the 2004 Civil Procedure Act (see paragraph 24 above), which were applicable under section 60(a) of the 2002 Administrative Disputes Act (see paragraph 23 above). The applicant company furthermore argued that large parts of both judgments of the State Court had simply been transcribed word-for-word from whole sections of the replies submitted by the Competition Council. Some of those parts had

contained new allegations – particularly with regard to the relevant geographical market. The judgments of the State Court had "supplemented, clarified, specified and made concrete" the otherwise deficient reasoning of the Competition Council in respect of the definition of the relevant market.

35. The Government contested the assertion of the applicant company that the failure to forward to it the replies submitted by the Competition Council had been contrary to domestic law, arguing that that administrative judicial-review proceedings and civil procedures were distinct, and that even though parties' rights under Article 6 of the Convention were protected under both kinds of proceedings, those proceedings were not conducted under identical rules and in the same manner. Moreover, the Government argued that the replies had not contained any new factual or legal arguments, and that the alleged "transcriptions" noted by the applicant company (see paragraph 34 above) could not constitute such arguments. Lastly, they submitted that if the applicant company had wished and had considered it necessary it could have at any time requested access to the case file and taken a copy of the opposite party's submissions and submitted comments on them.

36. In accordance with the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent. In this context, importance is attached to appearances as well as to the increased sensitivity to the fair administration of justice (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 140, ECHR 2005-IV; see also *Bulut v. Austria*, 22 February 1996, *Reports of Judgments and Decisions* 1996-II, p. 359, § 47, and *Moiseyev v. Russia*, no. 62936/00, § 203, 9 October 2008).

37. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. Various ways are conceivable in which national law may meet this requirement. However, whatever method is chosen, it should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment on them (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 91, 18 December 2018; see also, *Zahirović v. Croatia*, no. 58590/11, § 42, 25 April 2013).

38. Turning to the present case, the Court firstly notes that on 3 October 2013 and on 5 January 2016 the Competition Council, being the defendant in the administrative judicial-review proceedings at issue, submitted replies to the applicant company's administrative action and its application for the reconsideration of the State Court's judgment of 16 November 2015. Those replies requested that the action be dismissed and the application for reconsideration be rejected. They also contained submissions on the substantive issues raised by the case (see paragraphs 14 and 18 above). It is

not contested that those replies were not forwarded to the applicant company and that it therefore had no opportunity to comment on them.

39. The Court furthermore notes that there is a dispute between the parties as to whether that omission on the part of the State Court was in accordance with the domestic law. In this regard the Court reiterates that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention (see, among other authorities, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, and *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X). In other words, it will seek to ascertain whether, in the light of the relevant case-law under Article 6 of the Convention, the State Court ought to have given an opportunity to the applicant company to acquaint itself with and to comment on the replies submitted by the Competition Council.

40. The Court has repeatedly held that in such a situation the effect that the observations actually had on the judgment is of little consequence (see *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, § 57, 19 May 2005) because it is for the parties to a dispute to state whether or not a document calls for their comments (see *Ziegler v. Switzerland*, no. 33499/96, § 38, 21 February 2002; *Zahirović*, cited above, § 43). What is particularly at stake here is the litigants' confidence in the workings of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (see, for example, *Ziegler*, cited above). Regarding the Government's argument that the applicant company could have requested access to the case file and thus have taken note of the opposite party's argument, the Court observes that the onus was on the State Court to afford the applicant company an opportunity to comment on the Competition Council's submissions (*Zahirović*, cited above, § 48, with further references).

41. It follows that in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1 of the Convention, required that the applicant company be given an opportunity to have knowledge of and to comment on the reply submitted by the opposing party (see *Steck-Risch and Others*, cited above, § 58; *Zahirović*, cited above, § 49). However, the applicant company was not afforded this opportunity.

42. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Bartenbach v. Austria*, no. 39120/03, §§ 32-34, 20 March 2008, and *Zahirović*, cited above, §§ 44-50). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

43. There has accordingly been a violation of Article 6 § 1 of the Convention in the instant case on account of the breach of the principle of equality of arms.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant company claimed 15,000 euros (EUR) in respect of non-pecuniary damage. In that respect the applicant company submitted, in particular, that members of its management team were under anxiety and stress due to domestic courts' omission to present them with the impugned documents which were essential for the outcome of the case and that, as a result, the awarded fine was directly caused by the domestic courts' error.

46. The Government considered the amount claimed by the applicant company excessive and unsubstantiated, also submitting that the finding of a violation constituted sufficient just satisfaction.

47. The Court considers that the applicant company has suffered some non-pecuniary damage as a result of the violation found which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant company EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant company claimed a total of EUR 8,828.29 in respect of costs and expenses incurred before the Constitutional Court and before the Court and an additional EUR 125.62 for costs and expenses in respect of translation services.

49. The Government contested this claim, stating that it was excessive and unjustified.

50. 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 (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). 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 1,500 covering costs and

expenses under all heads, plus any tax that may be chargeable to the applicant company.

C. Default interest

51. 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 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 31 August 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President